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HOUSE BILL NO. 1877**AMENDMENT IN THE NATURE OF A SUBSTITUTE**

(Proposed by the House Committee on Militia, Police and Public Safety
on January 18, 2013)

(Patron Prior to Substitute—Delegate Lingamfelter)

A BILL to amend and reenact §§ 53.1-10 and 66-3 of the Code of Virginia, relating to the Departments of Corrections and Juvenile Justice; powers and duties of the Director; law enforcement.

Be it enacted by the General Assembly of Virginia:**1. That §§ 53.1-10 and 66-3 of the Code of Virginia are amended and reenacted as follows:****§ 53.1-10. Powers and duties of Director.**

The Director shall be the chief executive officer of the Department and shall have the following duties and powers:

1. To supervise and manage the Department and its system of state correctional facilities;
2. To implement the standards and goals of the Board as formulated for local and community correctional programs and facilities and lock-ups;

3. To employ such personnel and develop and implement such programs as may be necessary to carry out the provisions of this title, subject to Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2, and within the limits of appropriations made therefor by the General Assembly;

4. To establish and maintain a general system of schools for persons committed to the institutions and community-based programs for adults as set forth in §§ 53.1-67.7 and 53.1-67.8. Such system shall include, as applicable, elementary, secondary, post-secondary, career and technical education, adult, and special education schools.

a. The Director shall employ a Superintendent who will oversee the operation of educational and vocational programs in all institutions and community-based programs for adults as set forth in §§ 53.1-67.7 and 53.1-67.8 operated by the Department. The Department shall be designated as a local education agency (LEA) but shall not be eligible to receive state funds appropriated for direct aid to public education.

b. When the Department employs a teacher licensed by the Board of Education to provide instruction in the schools of the correctional centers, the Department of Human Resource Management shall establish salary schedules for the teachers which endeavor to be competitive with those in effect for the school division in which the correctional center is located.

c. The Superintendent shall develop a functional literacy program for inmates testing below a selected grade level, which shall be at least at the twelfth grade or GED level. The program shall include guidelines for implementation and test administration, participation requirements, criteria for satisfactory completion, and a strategic plan for encouraging enrollment in college or an accredited vocational training program or other accredited continuing education program.

d. For the purposes of this section, the term "functional literacy" shall mean those educational skills necessary to function independently in society, including, but not limited to, reading, writing, comprehension, and arithmetic computation.

e. In evaluating a prisoner's educational needs and abilities pursuant to § 53.1-32.1, the Superintendent shall create a system for identifying prisoners with learning disabilities.

5. a. To make and enter into all contracts and agreements necessary or incidental to the performance of the Department's duties and the execution of its powers under this title, including, but not limited to, contracts with the United States, other states, and agencies and governmental subdivisions of this Commonwealth, and contracts with corporations, partnerships, or individuals which include, but are not limited to, the purchase of water or wastewater treatment services or both as necessary for the expansion or construction of correctional facilities, consistent with applicable standards and goals of the Board;

b. Notwithstanding the Director's discretion to make and enter into all contracts and agreements necessary or incidental to the performance of the Department's duties and the execution of its powers under this title, upon determining that it shall be desirable to contract with a public or private entity for the provision of community-based residential services pursuant to Chapter 5 (§ 53.1-177 et seq.), the Director shall notify the local governing body of the jurisdiction in which the facility is to be located of the proposal and of the facility's proposed location and provide notice, where requested, to the chief law-enforcement officer for such locality when an offender is placed in the facility at issue;

6. To accept, hold and enjoy gifts, donations and bequests on behalf of the Department from the United States government and agencies and instrumentalities thereof, and any other source, subject to the approval of the Governor. To these ends, the Director shall have the power to comply with such conditions and execute such agreements as may be necessary, convenient or desirable, consistent with applicable standards and goals of the Board;

60 7. To collect data pertaining to the demographic characteristics of adults, and juveniles who are
61 adjudicated as adults, incarcerated in state correctional institutions, including, but not limited to, the race
62 or ethnicity, age, and gender of such persons, whether they are a member of a criminal gang, and the
63 types of and extent to which health-related problems are prevalent among such persons. Beginning July
64 1, 1997, such data shall be collected, tabulated quarterly, and reported by the Director to the Governor
65 and the General Assembly at each regular session of the General Assembly thereafter. The report shall
66 be submitted as provided in the procedures of the Division of Legislative Automated Systems for the
67 processing of legislative documents and reports;

68 8. To make application to the appropriate state and federal entities so as to provide any prisoner who
69 is committed to the custody of the state a Department of Motor Vehicles approved identification card
70 that would expire 90 days from issuance, a copy of his birth certificate if such person was born in the
71 Commonwealth, and a social security card from the Social Security Administration;

72 9. To forward to the Commonwealth's Attorneys' Services Council, updated on a monthly basis, a list
73 of all identified criminal gang members incarcerated in state correctional institutions. The list shall
74 contain identifying information for each criminal gang member, as well as his criminal record; ~~and~~

75 10. To give notice, to the attorney for the Commonwealth prosecuting a defendant for an offense that
76 occurred in a state correctional facility, of that defendant's known gang membership. The notice shall
77 contain identifying information for each criminal gang member as well as his criminal record; *and*

78 *11. To designate employees of the Department with internal investigations authority to have the same*
79 *power as a sheriff or a law-enforcement officer in the investigation of allegations of criminal behavior*
80 *affecting the operations of the Department. Such employees shall be subject to any minimum training*
81 *standards established by the Department of Criminal Justice Services under § 9.1-102 for*
82 *law-enforcement officers prior to exercising any law-enforcement power granted under this subdivision.*
83 *Nothing in this section shall be construed to grant the Department any authority over the operation and*
84 *security of local jails not specified in any other provision of law. The Department shall investigate*
85 *allegations of criminal behavior in accordance with a written agreement entered into with the*
86 *Department of State Police. The Department shall not investigate any action falling within the authority*
87 *vested in the Office of the State Inspector General pursuant to Chapter 3.2 (§ 2.2-307 et seq.) of Title*
88 *2.2 unless specifically authorized by the Office of the State Inspector General.*

89 **§ 66-3. Powers of the Director.**

90 A. The Director of the Department shall have the following general powers:

91 1. To employ such personnel as may be required to carry out the purposes of this title.

92 2. To make and enter into all contracts and agreements necessary or incidental to the performance of
93 his duties and the execution of his powers under this title, including, but not limited to, contracts and
94 agreements with the United States, other states, and agencies and governmental subdivisions of the
95 Commonwealth.

96 3. With the prior approval of the Governor, to enter into agreements with a public or private entity
97 to operate a work program for children committed to the Department.

98 4. With the prior approval of the Governor, to acquire real property, by purchase or gift, needed for
99 new or existing state juvenile correctional facilities and for administrative and other facilities necessary
100 to the operations of the Department, pursuant to regulations promulgated by the Board to ensure
101 adequate public notice and local hearing.

102 5. To establish and maintain schools of the appropriate grades, levels, and types in the institutions for
103 persons committed to juvenile correctional centers.

104 6. To enter into such agreements with private entities, nonprofit civic organizations, school divisions,
105 and public and private two-year and four-year institutions of higher education as it may deem necessary
106 to provide age-appropriate educational programs and training, including career and technical education;
107 career development opportunities; public service projects; restricted Internet access to online courses of
108 institutions of higher education and approved or accredited online secondary education or adult
109 education and literacy programs leading to a diploma or the General Education Development (GED)
110 program and testing; access to postsecondary education that includes college credit, certification through
111 an accredited vocational training program, or other accredited continuing education program using
112 videoconferencing technology; and other learning experiences in the furtherance of its duties and
113 responsibilities under this chapter for persons committed to the institutions comprising the Department.

114 *7. To designate employees of the Department with internal investigations authority to have the same*
115 *power as a sheriff or a law-enforcement officer in the investigation of allegations of criminal behavior*
116 *affecting the operations of the Department. Such employees shall be subject to any minimum training*
117 *standards established by the Department of Criminal Justice Services under § 9.1-102 for*
118 *law-enforcement officers prior to exercising any law-enforcement power granted under this subdivision.*
119 *Nothing in this section shall be construed to grant the Department any authority over the operation and*
120 *security of detention homes not specified in any other provision of law. The Department shall investigate*
121 *allegations of criminal behavior in accordance with a written agreement entered into with the*

122 *Department of State Police. The Department shall not investigate any action falling within the authority*
123 *vested in the Office of the State Inspector General pursuant to Chapter 3.2 (§ 2.2-307 et seq.) of Title*
124 *2.2 unless specifically authorized by the Office of the State Inspector General.*
125 8. To do all acts necessary or convenient to carry out the purposes of this title.
126 B. The Director shall comply with and require all school facilities within the Department to comply
127 with applicable regulations and statutes, both state and federal.