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SENATE BILL NO. 1104

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 12, 2021)

(Patrons Prior to Substitute—Senators Obenshain and DeSteph [SB 1293])

A BILL to amend and reenact §§ 53.1-136 and 53.1-155 of the Code of Virginia, relating to parole; notice and certification; monthly reports; discretionary early consideration.

Be it enacted by the General Assembly of Virginia:

1. That §§ 53.1-136 and 53.1-155 of the Code of Virginia are amended and reenacted as follows:

§ 53.1-136. Powers and duties of Board; notice of release of certain inmates.

In addition to the other powers and duties imposed upon the Board by this article, the Board shall:

1. Adopt, subject to approval by the Governor, general rules governing the granting of parole and eligibility requirements, which shall be published and posted for public review;

2. Adopt, subject to approval by the Governor, rules providing for the granting of parole to those prisoners who are eligible for parole pursuant to § 53.1-165.1 on the basis of demonstrated maturity and rehabilitation and the lesser culpability of juvenile offenders;

3. a. Release on parole for such time and upon such terms and conditions as the Board shall prescribe, persons convicted of felonies and confined under the laws of the Commonwealth in any correctional facility in Virginia when those persons become eligible and are found suitable for parole, according to those rules adopted pursuant to subdivisions 1 and 2;

b. Establish the conditions of postrelease supervision authorized pursuant to § 18.2-10 and subsection A of § 19.2-295.2;

c. ~~Notify by certified mail at least 21 business days prior to release on the Department of Corrections of its decision to grant discretionary parole of any or conditional release to an inmate. The Department of Corrections shall set the release date for such inmate no sooner than 30 business days from the date that the Department of Corrections receives such notification from the Chairman of the Board, except that the Department of Corrections may set an earlier release date in the case of an inmate granted conditional release pursuant to § 53.1-40.02. In the case of an inmate granted parole who was convicted of a felony and sentenced to a term of 10 or more years, or an inmate granted conditional release, the Board shall notify the attorney for the Commonwealth in the jurisdiction where the inmate was sentenced. In the case of parole granted for medical reasons, where death is imminent, the attorney for the Commonwealth may be notified (i) by electronic means at least 21 business days prior to such inmate's release that such inmate has been granted discretionary parole or conditional release pursuant to § 53.1-40.01 or 53.1-40.02 or (ii) by telephone or other electronic means prior to such inmate's release that such inmate has been granted conditional release pursuant to § 53.1-40.02 where death is imminent. Nothing in this section shall be construed to alter the obligations of the Board under § 53.1-155 for investigation prior to release on discretionary parole;~~

d. Provide that in any case where a person who is released on parole or postrelease supervision has been committed to the Department of Behavioral Health and Developmental Services under the provisions of Chapter 9 (§ 37.2-900 et seq.) of Title 37.2 the conditions of his parole or postrelease supervision shall include the requirement that the person comply with all conditions given him by the Department of Behavioral Health and Developmental Services and that he follow all of the terms of his treatment plan;

4. Revoke parole and any period of postrelease and order the reincarceration of any parolee or felon serving a period of postrelease supervision or impose a condition of participation in any component of the Statewide Community-Based Corrections System for State-Responsible Offenders (§ 53.1-67.2 et seq.) on any eligible parolee, when, in the judgment of the Board, he has violated the conditions of his parole or postrelease supervision or is otherwise unfit to be on parole or on postrelease supervision;

5. Issue final discharges to persons released by the Board on parole when the Board is of the opinion that the discharge of the parolee will not be incompatible with the welfare of such person or of society;

6. Make investigations and reports with respect to any commutation of sentence, pardon, reprieve or remission of fine, or penalty when requested by the Governor;

7. Publish ~~monthly~~ by the fifteenth day of each month a statement regarding the action taken by the Board on the parole of prisoners during the prior month. The statement shall (i) list the name of each prisoner considered for parole, the offenses of which the prisoner was convicted, the jurisdictions in which such offenses were committed, and the amount of time the prisoner has served and (ii) indicate whether parole was granted or denied, as well as the basis for the grant or denial of parole as described in subdivision 3 a. If parole was granted to a prisoner, his name shall be included on the statement published on the fifteenth day of each month only if the attorney for the Commonwealth and any victims

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60 *have been notified of such decision to grant parole prior to the statement's publication; otherwise, such*
61 *prisoner's name shall be included on the statement published the following month; and*

62 8. Ensure that each person eligible for parole receives a timely and thorough review of his suitability
63 for release on parole, including a review of any relevant post-sentencing information. If parole is denied,
64 the basis for the denial of parole shall be in writing and shall give specific reasons for such denial to
65 such inmate.

66 **§ 53.1-155. Investigation prior to release; transition assistance.**

67 A. No person shall be released on parole by the Board until a thorough investigation has been made
68 into the prisoner's history, physical and mental condition and character and his conduct, employment and
69 attitude while in prison. The Board shall also determine that his release on parole will not be
70 incompatible with the interests of society or of the prisoner. The provisions of this section shall not be
71 applicable to persons released on parole pursuant to § 53.1-159.

72 B. An investigation conducted pursuant to this section shall include notification that a victim may
73 submit to the Virginia Parole Board evidence concerning the impact that the release of the prisoner will
74 have on such victim. This notification shall be sent to the last address provided to the Board by any
75 victim of a crime for which the prisoner was incarcerated. *If additional victim research is necessary,*
76 *electronic notification shall be sent to the attorney for the Commonwealth and the director of the*
77 *victim/witness program, if one exists, of the jurisdiction in which the offense occurred.* The Board shall
78 endeavor diligently to contact the victim prior to making any decision to release any inmate on
79 discretionary parole. The victim of a crime for which the prisoner is incarcerated may present to the
80 Board oral or written testimony concerning the impact that the release of the prisoner will have on the
81 victim, and the Board shall consider such testimony in its review. Once testimony is submitted by a
82 victim, such testimony shall remain in the prisoner's parole file and shall be considered by the Board at
83 every parole review. The victim of a crime for which the prisoner is incarcerated may submit a ~~written~~
84 *request in writing or by electronic means* to the Board to be notified of (i) the prisoner's parole
85 eligibility date and mandatory release date as determined by the Department of Corrections, (ii) any
86 parole-related interview dates, and (iii) the Board's decision regarding parole for the prisoner. The victim
87 may request that the Board only notify the victim if, following its review, the Board is inclined to grant
88 parole to the prisoner, in which case the victim shall have forty-five days to present written or oral
89 testimony for the Board's consideration. If the victim has requested to be notified only if the Board is
90 inclined to grant parole and no testimony, either written or oral, is received from the victim within at
91 least forty-five days of the date of the Board's notification, the Board shall render its decision based on
92 information available to it in accordance with subsection A. The definition of victim in § 19.2-11.01
93 shall apply to this section.

94 Although any information presented by the victim of a crime for which the prisoner is incarcerated
95 shall be retained in the prisoner's parole file and considered by the Board, such information shall not
96 infringe on the Board's authority to exercise its decision-making authority.

97 C. Notwithstanding the provisions of subsection A, if a physical or mental examination of a prisoner
98 eligible for parole has been conducted within the last twelve months, and the prisoner has not required
99 medical or psychiatric treatment within a like period while incarcerated, the prisoner may be released on
100 parole by the Parole Board directly from a local correctional facility.

101 The Department shall offer each prisoner to be released on parole or under mandatory release who
102 has been sentenced to serve a term of imprisonment of at least three years the opportunity to participate
103 in a transition program within six months of such prisoner's projected or mandatory release date. The
104 program shall include advice for job training opportunities, recommendations for living a law-abiding
105 life, and financial literacy information. The Secretary of Public Safety and Homeland Security shall
106 prescribe guidelines to govern these programs.

107 **2. That the provisions of this act amending subdivision 7 of § 53.1-136 of the Code of Virginia**
108 **shall become effective on July 1, 2022.**