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SENATE BILL NO. 1039

Offered January 8, 2025

Prefiled January 7, 2025

A BILL to amend and reenact §§ 53.1-5 and 53.1-10 of the Code of Virginia, relating to Department of Corrections; State Board of Local and Regional Jails; policies on inmate participation in telehealth.

Patron—Pekarsky

Referred to Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:

1. That §§ 53.1-5 and 53.1-10 of the Code of Virginia are amended and reenacted as follows:

§ 53.1-5. Powers and duties of Board.

The Board shall have the following powers and duties:

1. To develop and establish operational and fiscal standards governing the operation of local, regional, and community correctional facilities;

2. To advise the Governor and Director on matters relating to corrections;

3. To make, adopt and promulgate such rules and regulations as may be necessary to carry out the provisions of this title and other laws of the Commonwealth pertaining to local, regional, and community correctional facilities. The Board, when promulgating regulations and adopting any policy or guidance document related to the enforcement of any minimum standards applicable to local, regional, and community correctional facilities, shall expressly and specifically include such items in its published agenda for meetings of the Board or any of its subcommittees. No standard, policy, or guidance document may be promulgated, amended, or rescinded in entirety or in part without compliance with this article;

4. To ensure the development of programs to educate citizens and elicit public support for the activities of the Department;

5. To develop and implement policies and procedures for the review of the death of any inmate that the Board determines warrants review that occurs in any local, regional, or community correctional facility. Such policies and procedures shall incorporate the Board's authority under § 53.1-6 to ensure the production of evidence necessary to conduct a thorough review of any such death. Notwithstanding any other provision of law, the Board shall adhere to procedures of the Administrative Process Act (§ 2.2-4000 et seq.) in promulgating such policies and procedures;

6. To establish minimum standards for health care services, including medical, dental, pharmaceutical, and behavioral health services, in local, regional, and community correctional facilities and procedures for enforcing such minimum standards, with the advice of and guidance from the Commissioner of Behavioral Health and Developmental Services and State Health Commissioner or their designees. Notwithstanding any other provision of law, the Board shall adhere to procedures of the Administrative Process Act (§ 2.2-4000 et seq.) in promulgating such policies and procedures. Such minimum standards shall require that each local, regional, and community correctional facility submit a standardized quarterly continuous quality improvement report documenting the delivery of health care services, along with any improvements made to those services, to the Board. The Board shall make such reports available to the public on its website. The Board may determine that any local, regional, or community correctional facility that is accredited by the American Correctional Association or National Commission on Correctional Health Care meets such minimum standards solely on the basis of such facility's accreditation status; however, without exception, the requirement that each local, regional, and community correctional facility submit a standardized quarterly continuous quality improvement report to the Board shall be a mandatory minimum standard; and

7. To develop and implement policies for the accommodation in local, regional, and community correctional facilities of inmate participation in telehealth appointments, which shall include policies on designating a private space for such telehealth appointments to occur; and

8. To report annually on or before December 1 to the General Assembly and the Governor on the results of the inspections and audits of local, regional, or community correctional facilities conducted pursuant to § 53.1-68 and the reviews of the deaths of inmates that occur in any local, regional, or community correctional facility conducted pursuant to § 53.1-69.1. The report shall include (i) a summary of the results of such inspections, audits, and reviews, including any trends identified by such inspections, audits, and reviews and the frequency of violations of each standard established for local, regional, or community correctional facilities, and (ii) any recommendations for changes to the standards established for local, regional, or community correctional facilities or the policies and procedures for conducting reviews of the death of inmates to improve the operations, safety, and security of local, regional, or community correctional facilities.

§ 53.1-10. Powers and duties of Director.

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

61 1. To supervise and manage the Department and its system of state correctional facilities;

62 2. To implement the standards and goals of the Board as formulated for local and community correctional
63 programs and facilities and lock-ups;

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

67 4. To establish and maintain a general system of schools for persons committed to the institutions and
68 community-based programs for adults as set forth in § 53.1-67.9. Such system shall include, as applicable,
69 elementary, secondary, postsecondary, career and technical education, adult, and special education schools.

70 a. The Director shall employ a Superintendent who will oversee the operation of educational and
71 vocational programs in all institutions and community-based programs for adults as set forth in § 53.1-67.9
72 operated by the Department. The Department shall be designated as a local education agency (LEA) but shall
73 not be eligible to receive state funds appropriated for direct aid to public education.

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

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

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

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

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

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

101 c. Notwithstanding the Director's discretion to make and enter into all contracts and agreements necessary
102 or incidental to the performance of the Department's duties and the execution of its powers under this title,
103 upon determining that it is necessary to transport Virginia prisoners through or to another state and for other
104 states to transport their prisoners within the Commonwealth, the Director may execute reciprocal agreements
105 with other states' corrections agencies governing such transports that shall include provisions allowing each
106 state to retain authority over its prisoners while in the other state.

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

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

119 8. To make application to the appropriate state and federal entities so as to provide any prisoner who is

120 committed to the custody of the state a Department of Motor Vehicles approved identification card that
121 would expire 90 days from issuance, a copy of his birth certificate if such person was born in the
122 Commonwealth, and a social security card from the Social Security Administration;

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

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

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

140 12. To prescribe and enforce rules prohibiting the possession of obscene materials, as defined in Article 5
141 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2, by prisoners incarcerated in state correctional facilities;

142 13. To develop and administer a survey of each correctional officer, as defined in § 53.1-1, who resigns, is
143 terminated, or is transitioned to a position other than correctional officer for the purpose of evaluating
144 employment conditions and factors that contribute to or impede the retention of correctional officers;

145 14. To promulgate regulations pursuant to the Administrative Process Act (§ 2.2-4000 et seq.) to
146 effectuate the provisions of Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 for human research, as defined in
147 § 32.1-162.16, to be conducted or authorized by the Department. The regulations shall require the human
148 research committee to submit to the Governor, the General Assembly, and the Director or his designee at
149 least annually a report on the human research projects reviewed and approved by the committee and shall
150 require the committee to report any significant deviations from the proposals as approved; ~~and~~

151 15. To provide, pursuant to § 24.2-314, to the Division of Legislative Services, not later than July 1 of any
152 year in which the decennial census is taken and in a format specified by the Division of Legislative Services,
153 information regarding each person incarcerated in a state correctional facility on April 1 of that year. Such
154 information shall include, for each person incarcerated, (i) a unique identifier, other than his name or offender
155 identification number, assigned by the Director; (ii) his residential street address at the time of incarceration,
156 or other legal residence, if known; (iii) his race, his ethnicity as identified by him, and whether he is 18 years
157 of age or older; and (iv) the street address of the correctional facility in which he was incarcerated on April 1
158 of that year; *and*

159 16. *To develop and implement policies for the accommodation in state correctional facilities of inmate
160 participation in telehealth appointments, which shall include policies on designating a private space for such
161 telehealth appointments to occur.*

162 **2. That the Department of Corrections and State Board of Local and Regional Jails shall provide an**
163 **update to the Joint Commission on Health Care by October 1, 2025, on (i) the status of the policies for**
164 **the accommodation of inmate participation in telehealth appointments required to be developed and**
165 **implemented pursuant to the provisions of this act; (ii) opportunities to expand telehealth programs in**
166 **local, regional, state, and community correctional facilities; and (iii) recommended strategies to reduce**
167 **gaps in or barriers to telehealth service delivery in such correctional facilities.**