

SENATE BILL NO. 60  
AMENDMENT IN THE NATURE OF A SUBSTITUTE  
(Proposed by the Senate Committee on Rehabilitation and Social Services  
on \_\_\_\_\_)  
(Patron Prior to Substitute—Senator Locke)

*A BILL to amend and reenact §§ 53.1-134, 53.1-136, 53.1-154, 53.1-155, and 53.1-165.1 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 53.1-154.2, relating to Virginia Parole Board; powers and duties; juvenile offenders; parole procedures and considerations.*

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 53.1-134, 53.1-136, 53.1-154, 53.1-155, and 53.1-165.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 53.1-154.2 as follows:**

**§ 53.1-134. Virginia Parole Board; appointment of members.**

A. There shall be a Virginia Parole Board (the Board) that shall consist of ~~up to five~~ *at least 11* members, *five of whom shall be appointed by the Governor and within 60 days of inauguration, three of whom shall be appointed by the Speaker of the House of Delegates within 60 days of a new House being sworn in during a Senate election year, and three of whom shall be appointed by the Chair of the Senate Committee on Rules within 60 days of a new Senate being sworn in after an election, and all of whom shall be subject to confirmation by the General Assembly, if in session when such appointment is made, and if not in session, then at its next succeeding session. At least one member of the Board shall be a representative of a crime victims' organization or a victim of crime as defined in subsection B of § 19.2-11.01. All members of the Board shall have significant professional experience working in criminal law, corrections, reentry and community services, or victim services.*

B. The members of the Board appointed by the Governor shall include (i) an attorney with significant experience in criminal prosecution; (ii) an attorney with significant experience in criminal defense; (iii) a qualified mental health professional with relevant background in adolescent development, trauma responses, psychology, and decision making; and (iv) a representative of a crime victims organization or a victim of crime as defined in subsection B of § 19.2-11.01.

C. The term of each member of the Board shall be four years. When a vacancy on the Board occurs, the Governor appropriate appointing authority shall appoint a member to ~~fill such~~ *complete the term of the* vacancy within 60 days.

The members of the Board shall serve at the pleasure of the Governor appropriate appointing authority.

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

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. Such eligibility rules shall require consideration of the prisoner's demonstrated rehabilitation, economic and educational development, commitment to prosocial behavior, and community and family supports;

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. *The Board shall ensure that such prisoners have a meaningful opportunity for release* 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. Notify the Department of Corrections of its decision to grant discretionary parole 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 (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;

c. Provide that in any case where a person who is released on parole 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 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;

64 4. Revoke parole and order the reincarceration of any parolee or impose a condition of participation in any  
65 component of the Statewide Community-Based Corrections System for State-Responsible Offenders  
66 (§ 53.1-67.2 et seq.) on any eligible parolee, when, in the judgment of the Board, he has violated the  
67 conditions of his parole or is otherwise unfit to be on parole;

68 5. Issue final discharges to persons released by the Board on parole when the Board is of the opinion that  
69 the discharge of the parolee will not be incompatible with the welfare of such person or of society. Final  
70 discharges granted prior to the expiration of a period of parole shall be granted only upon approval by a  
71 majority of Board members. The Board shall publish an annual report regarding final discharges issued by the  
72 Board during the previous 12 months. The report shall include (i) the name of each prisoner granted final  
73 discharge, (ii) the offense of which the prisoner was convicted, (iii) the jurisdiction in which such offense was  
74 committed, (iv) the length of the prisoner's sentence and the date such sentence was imposed, (v) the amount  
75 of time the prisoner has been on parole in the community, (vi) the basis for the final discharge, and (vii) the  
76 vote of each Board member;

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

79 7. Publish a statement by the fifteenth day of each month regarding the actions taken by the Board on the  
80 parole of prisoners during the prior month. The statement shall list (i) the name of each prisoner considered  
81 for parole, (ii) the offense of which the prisoner was convicted, (iii) the jurisdiction in which such offense  
82 was committed, (iv) the length of the prisoner's sentence and the date such sentence was imposed, (v) the  
83 amount of time the prisoner has served, (vi) whether the prisoner was granted or denied parole, (vii)  
84 individualized reasons for the grant or denial of parole, and (viii) the final vote and the names of the Board  
85 members who voted in favor of granting parole and those who voted against. However, in the case of a  
86 prisoner granted parole, the information set forth in clauses (i) through (viii) regarding such prisoner shall be  
87 included in the statement published in the month immediately succeeding the month in which notification of  
88 the decision to grant parole was given to the attorney for the Commonwealth and any victims;

89 8. Publish an annual report regarding actions taken by the Board on the parole of prisoners during the  
90 prior year. Such report shall contain each monthly statement published by the Board pursuant to subdivision 7  
91 and a summary that identifies (i) the total number of prisoners considered for parole, (ii) the number of  
92 persons granted parole, (iii) the number of persons denied parole, and (iv) the most common reasons for

93 which parole was granted or denied;

94 9. *a. Ensure that each person eligible for parole receives a timely and thorough review of his suitability for*  
95 *release on parole, including a review of any relevant post-sentencing information. If parole is denied, the*  
96 *Board shall provide (i) the basis for the denial of parole shall be in writing and shall give include specific,*  
97 *individualized reasons for such denial to such inmate and (ii) recommendations such inmate may take to*  
98 *demonstrate commitment to rehabilitation; and*

99 *b. In the case of any prisoner eligible for parole pursuant to subsection E of § 53.1-165.1, if parole is*  
100 *denied, each Board member shall identify the reasoning for such decision at the time such member's vote is*  
101 *cast, including any youth-related factor and evidence of maturity and rehabilitation that was considered. The*  
102 *Board shall provide to such prisoner for whom parole is denied recommendations to demonstrate*  
103 *commitment to rehabilitation and at the next hearing, the Board shall consider whether the prisoner has*  
104 *followed such recommendations; and*

105 10. Convene a public meeting, either in person or via video conference, when conducting the final  
106 deliberation and vote regarding whether *or not* the Board will grant parole to a prisoner. The prisoner being  
107 considered for parole or his attorney shall be permitted to attend such meeting either, in the Board's  
108 discretion, in person or via video conference. The victim shall be permitted to attend and participate in such  
109 meeting either, in the Board's discretion, in person or via video or phone conference or to provide written or  
110 recorded testimony. No decision to grant discretionary parole shall be made by the Board unless such  
111 decision was discussed and debated at a meeting at which no fewer than three of the Board members were  
112 present. Whether the Board grants or denies discretionary parole to an inmate, each Board member shall  
113 identify his reasoning for such decision at the time such member's vote is cast.

114 **§ 53.1-154. Times at which Virginia Parole Board to review cases.**

115 The Virginia Parole Board shall by regulation divide each calendar year into such equal parts as it may  
116 deem appropriate to the efficient administration of the parole system. Unless there be reasonable cause for  
117 extension of the time within which to review and decide a case, the Board shall review and decide the case of  
118 each prisoner no later than that part of the calendar year in which he becomes eligible for parole, and at least  
119 annually thereafter, until he is released on parole or discharged, except that upon any such review the Board  
120 may schedule the next review as much as three years thereafter, provided there are ~~ten~~ 10 years or more or  
121 life imprisonment remaining on the sentence in such case; *however, in the case of those prisoners eligible for*  
122 *parole pursuant to subsection E of § 53.1-165.1, such review shall be conducted annually.* Such reviews shall  
123 include a live interview of the prisoner by a Board member or a staff member designated by the Board. Such

interviews may be conducted in person or by videoconference or telephone at the discretion of the Board. Absent imminent death of the prisoner or other extraordinary circumstances, which shall be documented by the Board in the prisoner's file, the Board shall not grant parole to any prisoner who has not received a live interview within the prior calendar year. Notwithstanding any other provision of this article, in the case of a parole revocation, if such person is otherwise eligible for parole, the Board shall review and decide his case no later than that part of the calendar year one year subsequent to the part of the calendar year in which he was returned to a facility as provided in § 53.1-161. Thereafter, his case shall be reviewed as specified in this section. The Board, in addition, may review the case of any prisoner eligible for parole at any other time and may review the case of any prisoner prior to that part of the year otherwise specified. In the discretion of the Board, interviews may be conducted by the Board or its representatives and may be either public or private.

**§ 53.1-154.2. Parole procedures and considerations for certain juvenile offenders; appeal.**

*A. For the purpose of this section, "juvenile offender" means a prisoner eligible for parole pursuant to subsection E of § 53.1-165.1.*

*B. The Board shall provide a meaningful opportunity to obtain release for juvenile offenders on the basis of demonstrated maturity and rehabilitation and the lesser culpability of juvenile offenders.*

*C. In providing such meaningful opportunity to obtain release, the Board shall give substantial weight to the following when making a determination on whether to grant parole to any juvenile offender: (i) such juvenile offender's demonstrated emotional maturity and reflection, including reflection on his past conduct; (ii) such juvenile offender's maturity of judgment, including improved impulse control, development of prosocial relationships, and independence from negative influences; (iii) such juvenile offender's participation in rehabilitative, treatment, and educational programs while incarcerated, if such programs were available to him; (iv) such juvenile offender's employment history while incarcerated, if employment opportunities were available to him; (v) any obstacles such juvenile offender may have faced as a juvenile entering an adult correctional facility; (vi) such juvenile offender's institutional conduct while incarcerated, with greater weight given to more recent conduct occurring after he has had time to mature and adjust to prison; (vii) such juvenile offender's occupational skills and employment potential, including his ability and readiness to assume employment-related obligations and responsibilities; (viii) such juvenile offender's reentry plan; and (ix) any other information relevant to such juvenile offender's maturity and rehabilitation.*

*D. The Board shall give substantial mitigating weight to the following factors when making a determination on whether to grant parole to any juvenile offender: (i) the diminished culpability and heightened capacity for change for juveniles as compared to adults; (ii) the hallmark features of juveniles,*

155 including immaturity, impetuosity, and limited ability to assess or appreciate risks and consequences; (iii) the  
156 age of such juvenile offender at the time of the offense; (iv) whether and to what extent peer or adult pressure  
157 influenced such juvenile offender to commit the offense; (v) such juvenile offender's family and community  
158 circumstances at the time of the offense, including any history of abuse, trauma, poverty, and involvement in  
159 the child welfare system; and (vi) the lack of ability of such juvenile offender to extricate himself from  
160 criminogenic circumstances.

161 E. Under no circumstance shall the Board consider a juvenile offender's age at the time of the offense as  
162 an aggravating factor to deny parole. The Board shall not deny parole for a juvenile offender based  
163 principally on factors outside of his demonstrated ability to change, such as the nature of the offense or any  
164 effects resulting from the commission of such offense.

165 F. A juvenile offender may request for reconsideration or appeal of a decision by the Board not to grant  
166 parole based on (i) the Board's failure to give substantial weight to such juvenile offender's age and its  
167 related mitigating circumstances as required by this section or (ii) the Board's overreliance on static factors  
168 such as the nature and circumstances of the offense and failure to ground its decision in evidence of maturity,  
169 rehabilitation, and a lack of present danger to public safety. The Board shall provide individualized reasons  
170 for the grant or denial of parole upon reconsideration or appeal.

171 **§ 53.1-155. Investigation prior to release; transition assistance.**

172 A. No person shall be released on parole by the Board until a thorough investigation has been made into  
173 the prisoner's history, physical and mental condition and character, and his conduct, employment, and attitude  
174 while in prison. ~~At~~ In advance of the Board's final deliberation and vote regarding whether or not to grant a  
175 prisoner parole, the Board shall provide a true copy of all information collected through such investigation  
176 ~~shall be made available~~ to the prisoner ~~or~~, his attorney, or his designee provided that (i) neither the prisoner  
177 ~~nor~~, his attorney, nor his designee shall willfully or intentionally further disclose, reproduce, copy, or  
178 disseminate such information in any way and (ii) the Board shall redact all personal information of the  
179 victim. Such true copy of information may be provided to the prisoner, his attorney, or his designee  
180 electronically or in paper form. The Board shall also determine that his release on parole will not be  
181 incompatible with the interests of society or of the prisoner. The provisions of this section shall not be  
182 applicable to persons released on parole pursuant to § 53.1-159.

183 B. An investigation conducted pursuant to this section shall include notification that a victim may submit  
184 to the Virginia Parole Board evidence concerning the impact that the release of the prisoner will have on such  
185 victim. This notification shall be sent to the last address provided to the Board by any victim of a crime for

which the prisoner was incarcerated. If additional victim research is necessary, electronic notification shall be sent to the attorney for the Commonwealth and the director of the victim/witness program, if one exists, of the jurisdiction in which the offense occurred. The Board shall endeavor diligently to contact the victim prior to making any decision to release any inmate on discretionary parole. The victim of a crime for which the prisoner is incarcerated may present to the Board oral, including by virtual means, or written testimony concerning the impact that the release of the prisoner will have on the victim, and the Board shall consider such testimony in its review. Once testimony is submitted by a victim, such testimony shall remain in the prisoner's parole file and shall be considered by the Board at every parole review. The victim of a crime for which the prisoner is incarcerated may submit a request in writing or by electronic means to the Board to be notified of (i) the prisoner's parole eligibility date and mandatory release date as determined by the Department of Corrections, (ii) any parole-related interview dates, and (iii) the Board's decision regarding parole for the prisoner. The victim may request that the Board only notify the victim if, following its review, the Board is inclined to grant parole to the prisoner, in which case the victim shall have 45 days to present written or oral testimony for the Board's consideration. If the victim has requested to be notified only if the Board is inclined to grant parole and no testimony, either written or oral, is received from the victim within at least 45 days of the date of the Board's notification, the Board shall render its decision based on information available to it in accordance with subsection A. The definition of victim in § 19.2-11.01 shall apply to this section.

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

C. Notwithstanding the provisions of subsection A, if a physical or mental examination of a prisoner eligible for parole has been conducted within the last 12 months, and the prisoner has not required medical or psychiatric treatment within a like period while incarcerated, the prisoner may be released on parole by the Parole Board directly from a local correctional facility.

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

216 guidelines to govern these programs.

217 **§ 53.1-165.1. Limitation on the application of parole statutes.**

218 A. The provisions of this article, except §§ 53.1-160 and 53.1-160.1, shall not apply to any sentence  
219 imposed or to any prisoner incarcerated upon a conviction for a felony offense committed on or after January  
220 1, 1995. Any person sentenced to a term of incarceration for a felony offense committed on or after January  
221 1, 1995, shall not be eligible for parole upon that offense.

222 B. The provisions of this article shall apply to any person who was sentenced by a jury prior to June 9,  
223 2000, for any felony offense committed on or after January 1, 1995, and who remained incarcerated for such  
224 offense on July 1, 2020, other than (i) a Class 1 felony or (ii) any of the following felony offenses where the  
225 victim was a minor: (a) rape in violation of § 18.2-61; (b) forcible sodomy in violation of § 18.2-67.1; (c)  
226 object sexual penetration in violation of § 18.2-67.2; (d) aggravated sexual battery in violation of § 18.2-67.3;  
227 (e) an attempt to commit a violation of clause (a), (b), (c), or (d); or (f) carnal knowledge in violation of  
228 § 18.2-63, 18.2-64.1, or 18.2-64.2.

229 C. The Parole Board shall establish procedures for consideration of parole of persons entitled under  
230 subsection B consistent with the provisions of § 53.1-154.

231 D. Any person who meets eligibility criteria for parole under subsection B and pursuant to § 53.1-151 as  
232 of July 1, 2020, shall be scheduled for a parole interview no later than July 1, 2021, allowing for extension of  
233 time for reasonable cause.

234 E. Notwithstanding the provisions of subsection A or any other provision of this article to the contrary,  
235 any person sentenced to a term of life imprisonment for a single felony or multiple felonies committed while  
236 the person was a juvenile and who has served at least 20 years of such sentence shall be eligible for parole  
237 and any person who has active sentences that total more than 20 years for a single felony or multiple felonies  
238 committed while the person was a juvenile and who has served at least 20 years of such sentences shall be  
239 eligible for parole. The Board shall review and decide the case of each prisoner who is eligible for parole in  
240 accordance with §§ 53.1-154 and 53.1-154.2 and rules adopted pursuant to subdivision 2 of § 53.1-136.