

1 SENATE BILL NO. 60

2 AMENDMENT IN THE NATURE OF A SUBSTITUTE

3 (Proposed by the Senate Committee on Rehabilitation and Social Services

4 on _____)

5 (Patron Prior to Substitute—Senator Locke)

6 *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*
7 *Virginia and to amend the Code of Virginia by adding a section numbered 53.1-154.2, relating to Virginia*
8 *Parole Board; powers and duties; juvenile offenders; parole procedures and considerations.*9 **Be it enacted by the General Assembly of Virginia:**10 **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**
11 **and reenacted and that the Code of Virginia is amended by adding a section numbered 53.1-154.2 as**
12 **follows:**13 **§ 53.1-134. Virginia Parole Board; appointment of members.**14 A. There shall be a Virginia Parole Board (the Board) that shall consist of ~~up to five~~ at least 11 members,
15 *five of whom shall be appointed by the Governor and within 60 days of inauguration, three of whom shall be*
16 *appointed by the Speaker of the House of Delegates within 60 days of a new House being sworn in during a*
17 *Senate election year, and three of whom shall be appointed by the Chair of the Senate Committee on Rules*
18 *within 60 days of a new Senate being sworn in after an election, and all of whom shall be subject to*
19 *confirmation by the General Assembly, if in session when such appointment is made, and if not in session,*
20 *then at its next succeeding session. At least one member of the Board shall be a representative of a crime*
21 *victims' organization or a victim of crime as defined in subsection B of § 19.2-11.01. All members of the*
22 *Board shall have significant professional experience working in criminal law, corrections, reentry and*
23 *community services, or victim services.*24 B. The members of the Board appointed by the Governor shall include (i) an attorney with significant
25 experience in criminal prosecution; (ii) an attorney with significant experience in criminal defense; (iii) a
26 qualified mental health professional with relevant background in adolescent development, trauma responses,
27 psychology, and decision making; and (iv) a representative of a crime victims organization or a victim of
28 crime as defined in subsection B of § 19.2-11.01.29 C. The term of each member of the Board shall be four years. When a vacancy on the Board occurs, the
30 Governor appropriate appointing authority shall appoint a member to ~~fill such~~ complete the term of the
31 vacancy within 60 days.

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

33 § 53.1-136. Powers and duties of Board; notice of release of certain inmates; report.

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

35 1. Adopt, subject to approval by the Governor, general rules governing the granting of parole and
36 eligibility requirements, which shall be published and posted for public review. Such eligibility rules shall
37 require consideration of the prisoner's demonstrated rehabilitation, economic and educational development,
38 commitment to prosocial behavior, and community and family supports;

39 2. Adopt, subject to approval by the Governor, rules providing for the granting of parole to those prisoners
40 who are eligible for parole pursuant to § 53.1-165.1. *The Board shall ensure that such prisoners have a*
41 *meaningful opportunity for release* on the basis of demonstrated maturity and rehabilitation and the lesser
42 culpability of juvenile offenders;

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

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

59 c. Provide that in any case where a person who is released on parole has been committed to the
60 Department of Behavioral Health and Developmental Services under the provisions of Chapter 9 (§ 37.2-900
61 et seq.) of Title 37.2 the conditions of his parole shall include the requirement that the person comply with all
62 conditions given him by the Department of Behavioral Health and Developmental Services and that he follow
63 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

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

134 ***§ 53.1-154.2. Parole procedures and considerations for certain juvenile offenders; appeal.***

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

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

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

152 *D. The Board shall give substantial mitigating weight to the following factors when making a
153 determination on whether to grant parole to any juvenile offender: (i) the diminished culpability and
154 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. *All 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

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

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

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

211 The Department shall offer each prisoner to be released on parole or under mandatory release who has
212 been sentenced to serve a term of imprisonment of at least three years the opportunity to participate in a
213 transition program within six months of such prisoner's projected or mandatory release date. The program
214 shall include advice for job training opportunities, recommendations for living a law-abiding life, and
215 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.