

HOUSE BILL NO. 318
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Public Safety
on _____)
(Patron Prior to Substitute—Delegate Hope)

A BILL to amend and reenact §§ 53.1-134, 53.1-136, 53.1-154, and 53.1-165.1 of the Code of Virginia; to amend the Code of Virginia by adding a section numbered 53.1-154.2; and to repeal § 53.1-155 of the Code of Virginia, 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, 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 *subsection E of § 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;

4. Revoke parole and order the reincarceration of any parolee 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 is otherwise unfit to be on parole;

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. Final discharges granted prior to the expiration of a period of parole shall be granted only upon approval by a majority of Board members. The Board shall publish an annual report regarding final discharges issued by the Board during the previous 12 months. The report shall include (i) the name of each prisoner granted final discharge, (ii) the offense of which the prisoner was convicted, (iii) the jurisdiction in which such offense was committed, (iv) the length of the prisoner's sentence and the date such sentence was imposed, (v) the amount of time the prisoner has been on parole in the community, (vi) the basis for the final discharge, and (vii) the vote of each Board member;

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

8. Publish an annual report regarding actions taken by the Board on the parole of prisoners during the prior year. Such report shall contain each monthly statement published by the Board pursuant to subdivision 7 and a summary that identifies (i) the total number of prisoners considered for parole, (ii) the number of

persons granted parole, (iii) the number of persons denied parole, and (iv) the most common reasons for which parole was granted or denied;

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

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

10. Convene a public meeting, either in person or via video conference, when conducting the final deliberation and vote regarding whether the Board will grant parole to a prisoner. The prisoner being considered for parole or his attorney shall be permitted to attend such meeting either, in the Board's discretion, in person or via video conference. The victim shall be permitted to attend and participate in such meeting either, in the Board's discretion, in person or via video or phone conference or to provide written or recorded testimony. No decision to grant discretionary parole shall be made by the Board unless such decision was discussed and debated at a meeting at which no fewer than three of the Board members were present. Whether the Board grants or denies discretionary parole to an inmate, each Board member shall identify his reasoning for such decision at the time such member's vote is cast.

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

The Virginia Parole Board shall by regulation divide each calendar year into such equal parts as it may deem appropriate to the efficient administration of the parole system. Unless there be reasonable cause for extension of the time within which to review and decide a case, the Board shall review and decide the case of each prisoner no later than that part of the calendar year in which he becomes eligible for parole, and at least annually thereafter, until he is released on parole or discharged, except that upon any such review the Board may schedule the next review as much as three years thereafter, provided there are ~~ten~~ 10 years or more or life imprisonment remaining on the sentence in such case; *however, in the case of those prisoners eligible for*

parole pursuant to subsection E of § 53.1-165.1, such review shall be conducted annually. Such reviews shall 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

154 determination on whether to grant parole to any juvenile offender: (i) the diminished culpability and
155 heightened capacity for change for juveniles as compared to adults; (ii) the hallmark features of juveniles,
156 including immaturity, impetuosity, and limited ability to assess or appreciate risks and consequences; (iii) the
157 age of such juvenile offender at the time of the offense; (iv) whether and to what extent peer or adult pressure
158 influenced such juvenile offender to commit the offense; (v) such juvenile offender's family and community
159 circumstances at the time of the offense, including any history of abuse, trauma, poverty, and involvement in
160 the child welfare system; and (vi) the lack of ability of such juvenile offender to extricate himself from
161 criminogenic circumstances.

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

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

172 **§ 53.1-165.1. Limitation on the application of parole statutes.**

173 A. The provisions of this article, except §§ 53.1-160 and 53.1-160.1, shall not apply to any sentence
174 imposed or to any prisoner incarcerated upon a conviction for a felony offense committed on or after January
175 1, 1995. Any person sentenced to a term of incarceration for a felony offense committed on or after January
176 1, 1995, shall not be eligible for parole upon that offense.

177 B. The provisions of this article shall apply to any person who was sentenced by a jury prior to June 9,
178 2000, for any felony offense committed on or after January 1, 1995, and who remained incarcerated for such
179 offense on July 1, 2020, other than (i) a Class 1 felony or (ii) any of the following felony offenses where the
180 victim was a minor: (a) rape in violation of § 18.2-61; (b) forcible sodomy in violation of § 18.2-67.1; (c)
181 object sexual penetration in violation of § 18.2-67.2; (d) aggravated sexual battery in violation of § 18.2-67.3;
182 (e) an attempt to commit a violation of clause (a), (b), (c), or (d); or (f) carnal knowledge in violation of
183 § 18.2-63, 18.2-64.1, or 18.2-64.2.

184 C. The Parole Board shall establish procedures for consideration of parole of persons entitled under

185 subsection B consistent with the provisions of § 53.1-154.

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

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

196 **2. That the provisions § 53.1-134 of the Code of Virginia, as amended by this act, shall become effective**
197 **on July 1, 2028.**

198 **3. That § 53.1-155 of the Code of Virginia is repealed.**