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HOUSE BILL NO. 1030
AMENDMENT IN THE NATURE OF A SUBSTITUTE
 (Proposed by the House Committee on Public Safety
 on _____)

(Patron Prior to Substitute—Delegate Wilt)

A BILL to amend and reenact §§ 53.1-136, 53.1-151, 53.1-154, 53.1-154.1, and 53.1-155 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 53.1-151.1, relating to discretionary parole eligibility guidelines.

Be it enacted by the General Assembly of Virginia:

1. That §§ 53.1-136, 53.1-151, 53.1-154, 53.1-154.1, and 53.1-155 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 53.1-151.1 as follows:

§ 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 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

HOUSE SUBSTITUTE

HB1030HC2

60 for parole, (ii) the offense of which the prisoner was convicted, (iii) the jurisdiction in which such offense
 61 was committed, (iv) the length of the prisoner's sentence and the date such sentence was imposed, (v) the
 62 amount of time the prisoner has served, (vi) whether the prisoner was granted or denied parole, (vii)
 63 individualized reasons for the grant or denial of parole, and (viii) the final vote and the names of the Board
 64 members who voted in favor of granting parole and those who voted against. However, in the case of a
 65 prisoner granted parole, the information set forth in clauses (i) through (viii) regarding such prisoner shall be
 66 included in the statement published in the month immediately succeeding the month in which notification of
 67 the decision to grant parole was given to the attorney for the Commonwealth and any victims;

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

73 9. Ensure that each person eligible for parole receives a timely and thorough review of his suitability for
 74 release on parole, including a review of any relevant post-sentencing information, *through use of*
 75 *discretionary parole criteria guidelines pursuant to § 53.1-151.1*. If parole is denied, the basis for the denial
 76 of parole shall be in writing and shall give specific, individualized reasons for such denial to such inmate; and

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

86 **§ 53.1-151. Eligibility for parole.**

87 A. Except as herein otherwise provided, every person convicted of a felony and sentenced and committed
 88 by a court under the laws of this Commonwealth to the Department of Corrections, whether or not such
 89 person is physically received at a Department of Corrections facility, or as provided for in § 19.2-308.1:

90 1. For the first time, shall be eligible for parole after serving one-fourth of the term of imprisonment
 91 imposed, or after serving ~~twelve~~ 12 years of the term of imprisonment imposed if one-fourth of the term of
 92 imprisonment imposed is more than ~~twelve~~ 12 years;

93 2. For the second time, shall be eligible for parole after serving one-third of the term of imprisonment
 94 imposed, or after serving ~~thirteen~~ 13 years of the term of imprisonment imposed if one-third of the term of
 95 imprisonment imposed is more than ~~thirteen~~ 13 years;

96 3. For the third time, shall be eligible for parole after serving one-half of the term of imprisonment
 97 imposed, or after serving ~~fourteen~~ 14 years of the term of imprisonment imposed if one-half of the term of
 98 imprisonment imposed is more than ~~fourteen~~ 14 years;

99 4. For the fourth or subsequent time, shall be eligible for parole after serving three-fourths of the term of
 100 imprisonment imposed, or after serving ~~fifteen~~ 15 years of the term of imprisonment imposed if three-fourths
 101 of the term of imprisonment imposed is more than ~~fifteen~~ 15 years.

102 For the purposes of subdivisions 2, 3, and 4 of subsection A and for the purposes of subsections B1 and
 103 B2, prior commitments shall include commitments to any correctional facility under the laws of any state, the
 104 District of Columbia, the United States or its territories for murder, rape, robbery, forcible sodomy, animate
 105 or inanimate object sexual penetration, aggravated sexual battery, abduction, kidnapping, burglary, felonious
 106 assault or wounding, or manufacturing, selling, giving, distributing, or possessing with the intent to
 107 manufacture, sell, give, or distribute a controlled substance, if such would be a felony if committed in the
 108 Commonwealth. Only prior commitments interrupted by a person's being at liberty, or resulting from the
 109 commission of a felony while in a correctional facility of the Commonwealth, of any other state or of the
 110 United States, shall be included in determining the number of times such person has been convicted,
 111 sentenced and committed for the purposes of subdivisions 2, 3, and 4 of subsection A. ~~At~~ *For purposes of*
 112 *this section, "at liberty" as used herein shall include not only includes* freedom without any legal restraints,
 113 ~~but shall also include~~ release pending trial, sentencing, or appeal, or release on probation or parole, or escape.
 114 In the case of terms of imprisonment to be served consecutively, the total time imposed shall constitute the
 115 term of the imprisonment; in the case of terms of imprisonment to be served concurrently, the longest term
 116 imposed shall be the term of imprisonment. In any case in which a parolee commits an offense while on
 117 parole, only the sentence imposed for such offense and not the sentence or sentences or any part thereof from
 118 which he was paroled shall constitute the term of imprisonment.

119 The Department of Corrections shall make all reasonable efforts to determine prior convictions and
 120 commitments of each inmate for the enumerated offenses.

121 B. Persons sentenced to die shall not be eligible for parole. Any person sentenced to life imprisonment

122 who escapes from a correctional facility or from any person in charge of his custody shall not be eligible for
123 parole.

124 B1. Any person convicted of three separate felony offenses of (i) murder, (ii) rape, or (iii) robbery by the
125 presenting of firearms or other deadly weapon, or any combination of the offenses specified in subdivisions
126 (i), (ii), or (iii) when such offenses were not part of a common act, transaction, or scheme shall not be eligible
127 for parole. In the event of a determination by the Department of Corrections that an individual is not eligible
128 for parole under this subsection, the Parole Board may in its discretion, review that determination, and make
129 a determination for parole eligibility pursuant to *the discretionary parole criteria guidelines in § 53.1-151.1*
130 *and regulations promulgated by the Board for that purpose.* Any determination of the Parole Board of
131 parole eligibility thereby shall supersede any prior determination of parole ineligibility by the Department of
132 Corrections under this subsection.

133 B2. Any person convicted of three separate felony offenses of manufacturing, selling, giving, distributing,
134 or possessing with the intent to manufacture, sell, give, or distribute a controlled substance, when such
135 offenses were not part of a common act, transaction, or scheme, and who has been at liberty as defined in this
136 section between each conviction, shall not be eligible for parole.

137 C. Any person sentenced to life imprisonment for the first time shall be eligible for parole after serving
138 ~~fifteen~~ 15 years, except that if such sentence was for a Class 1 felony violation or the first degree murder of a
139 child under the age of eight in violation of § 18.2-32, he shall be eligible for parole after serving ~~twenty-five~~
140 25 years, unless he is ineligible for parole pursuant to subsection B1 or B2.

141 D. A person who has been sentenced to two or more life sentences, except a person to whom the
142 provisions of subsection B1, B2, or E of this section are applicable, shall be eligible for parole after serving
143 ~~twenty~~ 20 years of imprisonment, except that if either such sentence, or both, was or were for a Class 1 felony
144 violation, and he is not otherwise ineligible for parole pursuant to subsection B1, B2, or E of this section, he
145 shall be eligible for parole only after serving ~~thirty~~ 30 years.

146 E. A person convicted of an offense and sentenced to life imprisonment after being paroled from a
147 previous life sentence shall not be eligible for parole.

148 E1. Any person who has been convicted of murder in the first degree, rape in violation of § 18.2-61,
149 forcible sodomy, animate or inanimate object sexual penetration, or aggravated sexual battery and who has
150 been sentenced to a term of years shall, upon a first commitment to the Department of Corrections, be eligible
151 for parole after serving two-thirds of the term of imprisonment imposed or after serving ~~fourteen~~ 14 years of
152 the term of imprisonment imposed if two-thirds of the term of imprisonment imposed is more than ~~fourteen~~
153 14 years. If such person has been previously committed to the Department of Corrections, such person shall
154 be eligible for parole after serving three-fourths of the term of imprisonment imposed or after serving ~~fifteen~~
155 15 years of the terms of imprisonment imposed if three-fourths of the term of imprisonment imposed is more
156 than ~~fifteen~~ 15 years.

157 F. If the sentence of a person convicted of a felony and sentenced to the Department is partially
158 suspended, he shall be eligible for parole based on the portion of such sentence execution which was not
159 suspended.

160 G. The eligibility time for parole as specified in subsections A, C, and D of this section may be modified
161 as provided in §§ 53.1-191, 53.1-197 and 53.1-198.

162 H. The time for eligibility for parole as specified in subsection D of this section shall apply only to those
163 criminal acts committed on or after July 1, 1976.

164 I. The provisions of subdivisions 2, 3, and 4 of subsection A shall apply only to persons committed to the
165 Department of Corrections on or after July 1, 1979, but such persons' convictions and commitments shall
166 include all felony convictions and commitments without regard to the date of such convictions and
167 commitments.

168 **§ 53.1-151.1. Eligibility for parole; discretionary parole criteria guidelines.**

169 A. *The Parole Board or staff designated by the Board shall use the information collected through the*
170 *investigation required by § 53.1-155 to determine discretionary parole criteria guidelines when evaluating a*
171 *prisoner eligible for parole. The Department of Corrections shall assist to the fullest extent possible with*
172 *requests for records.*

173 B. *A completed discretionary parole criteria worksheet shall be provided to the prisoner in advance of the*
174 *parole hearing. If an eligible prisoner believes that his worksheet score is inaccurate, the prisoner shall be*
175 *permitted to contest the worksheet score and to provide records necessary to correct such score prior to the*
176 *Board's vote on the decision to grant parole. If the Parole Board finds the prisoner's contest is well-founded,*
177 *the worksheet score shall be updated accordingly. Eligibility for parole shall be computed using the schedule*
178 *set out below:*

179 **SCHEDULE OF DISCRETIONARY PAROLE CRITERIA**

180 1. *Compliant with case plan*

181 *No: 0*

182 *Yes: 10*

183 2. *Major infraction within past five years*

184 *None: 0*
 185 *Per major infraction: -10*
 186 *3. Minor infraction within past five years*
 187 *None: 0*
 188 *Per minor infraction: -2*
 189 *4. Applied for or enrolled in educational, vocational, or therapeutic program*
 190 *No: 0*
 191 *Yes: 5*
 192 *5. Completed educational and vocational programs*
 193 *Associate's degree or above: 5*
 194 *High school degree or GED: 5*
 195 *Journeyman trade skill: 5*
 196 *Vocational trade: 3*
 197 *6. Verified residential plan*
 198 *No: 0*
 199 *Yes: 15*
 200 *7. Previous state responsible incarceration*
 201 *None: 0*
 202 *Per previous state responsible incarceration: -5*
 203 *8. Length of time served*
 204 *Per 10 years: 5*
 205 *9. Age of offender at time of offense*
 206 *26 years of age or older: 0*
 207 *21-25 years of age: 5*
 208 *18-20 years of age: 10*
 209 *18 years of age or younger: 15*
 210 *10. Verified employment plan*
 211 *No: 0*
 212 *Yes: 15*
 213 **TOTAL OF SCORES**
 214 *Tier 1: 50 or more points*
 215 *Tier 2: 25-49 points*
 216 *Tier 3: 0-25 points*
 217 *C. A maximum of 10 points may be earned by a prisoner for satisfying the criteria listed in subdivision B*
 218 *5, verified educational and vocational programs.*
 219 *D. A maximum of 15 points may be earned by a prisoner for satisfying the criteria listed in subdivision B*
 220 *6, verified residential plan. Such a plan requires the prisoner to provide a letter of verification.*
 221 *E. A prisoner shall earn five points for every 10 years served, and there shall be no limit to the amount of*
 222 *points a prisoner may earn for satisfying the criteria listed in subdivision B 8, length of time served.*
 223 *F. A prisoner shall earn 15 points for satisfying the criteria listed in subdivision B 10, verified*
 224 *employment plan. Such a plan requires the prisoner to provide a letter of verification. Any prisoner that is (i)*
 225 *permanently disabled or (ii) 65 years of age or older and retired shall receive the full amount of points under*
 226 *subdivision B 10.*
 227 *G. If a prisoner's score is within the Tier 1 range, such prisoner shall receive favorable consideration for*
 228 *parole. If a prisoner's score is within the Tier 2 range, such prisoner may be considered a suitable candidate*
 229 *for parole. If a prisoner's score is within the Tier 3 range, such prisoner is presumed to be unsuitable for*
 230 *parole at the time of the hearing.*
 231 *If the Parole Board deviates from the recommendation based on the worksheet score for a prisoner scored*
 232 *at Tier 1 or Tier 3, the Board shall provide a written explanation for such deviation.*
 233 *Nothing in this section shall prohibit the Board from making its final determination based on the*
 234 *individual facts and circumstances of the prisoner.*
 235 **§ 53.1-154. Times at which Parole Board to review cases.**
 236 *The Virginia Parole Board shall by regulation divide each calendar year into such equal parts as it may*
 237 *deem appropriate to the efficient administration of the parole system. Unless there ~~be~~ is reasonable cause for*
 238 *extension of the time within which to review and decide a case, the Board shall review and decide the case of*
 239 *each prisoner no later than that part of the calendar year in which he becomes eligible for parole, and at least*
 240 *annually thereafter, until he is released on parole or discharged, except that upon any such review the Board*
 241 *may schedule the next review as much as three years thereafter, provided there are ~~ten~~ 10 years or more or*
 242 *life imprisonment remaining on the sentence in such case. Such reviews shall include a live interview of the*
 243 *prisoner and completion of the discretionary parole criteria guidelines by a Board member or a staff member*
 244 *designated by the Board. Such interviews may be conducted in person or by videoconference or telephone at*
 245 *the discretion of the Board. Absent imminent death of the prisoner or other extraordinary circumstances,*

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

255 **§ 53.1-154.1. Authority of Director to recommend parole review; release upon review.**

256 The Director is authorized to determine those prisoners who may be suitable parole risks and whose
 257 interests and those of society will be served by their early parole release and to recommend such prisoners to
 258 the Parole Board for early parole consideration. In making such recommendation, the Director shall take into
 259 account the prisoner's criminal history record, mental and physical condition, employability, institutional
 260 adjustment and such other factors as may be appropriate, including the risk of violence to others. The case of
 261 any such prisoner so recommended may be reviewed by the Parole Board prior to such prisoner's date of
 262 eligibility for parole. Upon appropriate review, *including completion of the discretionary parole criteria*
 263 *guidelines by the Parole Board or a staff member designated by the Parole Board*, the Parole Board may
 264 release on parole prior to the date of eligibility for parole any prisoner so recommended by the Director.
 265 However, no prisoner shall be released until he has served at least one-fourth of the term of imprisonment
 266 imposed, or until he has served ~~twelve~~ 12 years of the term of imprisonment imposed if one-fourth of the
 267 term of imprisonment imposed is more than ~~twelve~~ 12 years, except as such time is reduced by any other
 268 provision of law.

269 This section shall have no application to persons not eligible for parole pursuant to subsections B, B1 and
 270 E of § 53.1-151.

271 **§ 53.1-155. Investigation prior to release; transition assistance.**

272 A. No person shall be released on parole by the Board until a thorough investigation has been made into
 273 the prisoner's history, physical and mental condition and character, and his conduct, employment, and attitude
 274 while in prison. All information collected through such investigation shall be made available to the prisoner
 275 or his attorney, provided that (i) neither the prisoner nor his attorney shall further disclose, reproduce, copy,
 276 or disseminate such information in any way and (ii) the Board shall redact all personal information of the
 277 victim. *Such information shall also be used by the Board, or staff designated by the Board, to complete the*
 278 *discretionary parole eligibility guidelines.* The Board shall also determine that his release on parole will not
 279 be incompatible with the interests of society or of the prisoner. The provisions of this section shall not be
 280 applicable to persons released on parole pursuant to § 53.1-159.

281 B. An investigation conducted pursuant to this section shall include notification that a victim may submit
 282 to the ~~Virginia~~ Parole Board evidence concerning the impact that the release of the prisoner will have on such
 283 victim. This notification shall be sent to the last address provided to the Board by any victim of a crime for
 284 which the prisoner was incarcerated. If additional victim research is necessary, electronic notification shall be
 285 sent to the attorney for the Commonwealth and the director of the victim/witness program, if one exists, of
 286 the jurisdiction in which the offense occurred. The Board shall endeavor diligently to contact the victim prior
 287 to making any decision to release any inmate on discretionary parole. The victim of a crime for which the
 288 prisoner is incarcerated may present to the Board oral, including by virtual means, or written testimony
 289 concerning the impact that the release of the prisoner will have on the victim, and the Board shall consider
 290 such testimony in its review. Once testimony is submitted by a victim, such testimony shall remain in the
 291 prisoner's parole file and shall be considered by the Board at every parole review. The victim of a crime for
 292 which the prisoner is incarcerated may submit a request in writing or by electronic means to the Board to be
 293 notified of (i) the prisoner's parole eligibility date and mandatory release date as determined by the
 294 Department of Corrections, (ii) any parole-related interview dates, and (iii) the Board's decision regarding
 295 parole for the prisoner. The victim may request that the Board only notify the victim if, following its review,
 296 the Board is inclined to grant parole to the prisoner, in which case the victim shall have 45 days to present
 297 written or oral testimony for the Board's consideration. If the victim has requested to be notified only if the
 298 Board is inclined to grant parole and no testimony, either written or oral, is received from the victim within at
 299 least 45 days of the date of the Board's notification, the Board shall render its decision based on information
 300 available to it in accordance with subsection A. The definition of victim in § 19.2-11.01 shall apply to this
 301 section.

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

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

308 Parole Board directly from a local correctional facility.

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