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HOUSE BILL NO. 126
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee for Courts of Justice
on _____)
(Patron Prior to Substitute—Delegate Callsen)

A BILL to amend and reenact §§ 53.1-5 and 53.1-68 of the Code of Virginia, relating to local, regional, and community correctional facilities; access to counsel for inmates.

Be it enacted by the General Assembly of Virginia:

1. That §§ 53.1-5 and 53.1-68 of the Code of Virginia are amended and reenacted as follows:

§ 53.1-5. Powers and duties of Board.

The Board shall have the following powers and duties:

- 1. To develop and establish operational and fiscal standards governing the operation of local, regional, and community correctional facilities;
- 2. To advise the Governor and Director on matters relating to corrections;
- 3. To make, adopt, and promulgate such rules and regulations as may be necessary to carry out the provisions of this title and other laws of the Commonwealth pertaining to local, regional, and community correctional facilities. The Board, when promulgating regulations and adopting any policy or guidance document related to the enforcement of any minimum standards applicable to local, regional, and community correctional facilities, shall expressly and specifically include such items in its published agenda for meetings of the Board or any of its subcommittees. No standard, policy, or guidance document may be promulgated, amended, or rescinded in entirety or in part without compliance with this article;
- 4. To ensure the development of programs to educate citizens and elicit public support for the activities of the Department;
- 5. To develop and implement policies and procedures for the review of the death of any inmate that the Board determines warrants review that occurs in any local, regional, or community correctional facility. Such policies and procedures shall incorporate the Board's authority under § 53.1-6 to ensure the production of evidence necessary to conduct a thorough review of any such death. Notwithstanding any other provision of law, the Board shall adhere to procedures of the Administrative Process Act (§ 2.2-4000 et seq.) in promulgating such policies and procedures;
- 6. To establish minimum standards for health care services, including medical, dental, pharmaceutical, and behavioral health services, in local, regional, and community correctional facilities and procedures for

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

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

47 8. *To develop and establish minimum standards for ensuring that attorneys have sufficient opportunities*
48 *to conduct confidential visits with their clients who are held in local, regional, and community correctional*
49 *facilities; and*

50 9. To report annually on or before December 1 to the General Assembly and the Governor on the results
51 of the inspections and audits of local, regional, or community correctional facilities conducted pursuant to
52 § 53.1-68. The report shall include (i) a summary of the results of such inspections and audits, including any
53 trends identified by such inspections and audits and the frequency of violations of each standard established
54 for local, regional, or community correctional facilities, and (ii) any recommendations for changes to the
55 standards established for local, regional, or community correctional facilities to improve the operations,
56 safety, and security of local, regional, or community correctional facilities.

57 **§ 53.1-68. Minimum standards for local correctional facilities and lock-ups; health inspections,**
58 **behavioral health services inspections, and personnel; access to counsel for inmates in local, regional,**
59 **or community correctional facilities.**

60 A. The Board shall establish minimum standards for the construction, equipment, administration, and
61 operation of local correctional facilities, whether heretofore or hereafter established. However, no minimum
62 standard shall be established that includes square footage requirements in excess of accepted national

63 standards. The Board or its agents shall conduct at least one unannounced inspection of each local facility
64 annually. However, in those years in which a certification audit of a facility is performed and the facility is in
65 compliance with all the standards, the Board may elect to suspend the unannounced inspection based upon
66 that certification audit and the history of compliance of the facility with the standards promulgated in
67 accordance with this section, except in any year in which there is a change in the administration of a local or
68 regional jail. The Board shall also establish minimum standards for the construction, equipment, and
69 operation of lock-ups, whether heretofore or hereafter established. However, no minimum standard shall be
70 established that includes square footage requirements in excess of accepted national standards.

71 B. Standards concerning sanitation in local correctional facilities and procedures for enforcing these
72 standards shall be promulgated by the Board with the advice and guidance of the State Health Commissioner.
73 The Board, in conjunction with the Board of Health, shall establish a procedure for the conduct of at least one
74 unannounced annual health inspection by the State Health Commissioner or his agents of each local
75 correctional facility. The Board and the State Health Commissioner may authorize such other announced or
76 unannounced inspections as they consider appropriate.

77 C. The Board shall establish minimum standards for behavioral health services in local correctional
78 facilities and procedures for enforcing such minimum standards, with the advice of and guidance from the
79 Commissioner of Behavioral Health and Developmental Services and the State Inspector General.

80 Such standards shall include:

81 1. Requirements for behavioral health services provided in jails, including requirements for (i) behavioral
82 health screening of individuals committed to local correctional facilities; (ii) referral of individuals committed
83 to local correctional facilities for whom a behavioral health screening indicates reason to believe the person
84 may have mental illness to a behavioral health service provider for a behavioral health assessment; and (iii)
85 the provision of behavioral health services in local correctional facilities, as well as regulations directing the
86 sharing of medical and mental health information and records in accordance with § 53.1-133.03.
87 Requirements related to behavioral health screenings and assessments shall include a requirement that in
88 cases in which there is reason to believe an individual is experiencing acute mental health distress or is at risk
89 for suicide, (a) staff of the local correctional facility shall consult with the behavioral health service provider
90 to implement immediate interventions and shall provide ongoing monitoring to ensure the safety of the
91 individual and (b) the behavioral health assessment shall be completed within 72 hours of completion of the
92 behavioral health screening, except that if the 72-hour period ends on a day that is a Saturday, Sunday, or

93 legal holiday, the assessment shall be completed by the close of business on the next day that is not a
94 Saturday, Sunday, or legal holiday;

95 2. Requirements for discharge planning for individuals with serious mental illness assessed as requiring
96 behavioral health services upon release from the local correctional facility, which shall include (i) creation of
97 a discharge plan, as soon as practicable after completion of the assessment required pursuant to subdivision 1,
98 and (ii) coordination of services and care with community providers, community supervision agencies, and,
99 as appropriate, the individual's family in accordance with the discharge plan until such time as the individual
100 has begun to receive services in accordance with the discharge plan or for a period of 30 days following
101 release from the local correctional facility, whichever occurs sooner. Discharge plans shall ensure access to
102 the full continuum of care for the individual upon release from the local correctional facility and shall include
103 provisions for (a) linking the individual for whom the discharge plan has been prepared to the community
104 services board in the jurisdiction in which he will reside following release and to other supports and services
105 necessary to meet his service needs and (b) communication of information regarding the individual's
106 treatment needs and exchange of treatment records among service providers;

107 3. A requirement for at least one unannounced annual inspection of each local correctional facility by the
108 Board or its agents to determine compliance with the standards for behavioral health services established
109 pursuant to this subsection and such other announced or unannounced inspections as the Board may deem
110 necessary to ensure compliance with the standards for behavioral health services established pursuant to this
111 subsection; and

112 4. Provisions for the billing of the sheriff in charge of a local correctional facility or superintendent of a
113 regional correctional facility by and payment by such sheriff or superintendent to a community services board
114 that provides behavioral health services in the local correctional facility, in accordance with § 53.1-126.

115 D. *The Board shall establish standards to ensure access to counsel, including access to attorneys,*
116 *paralegals, investigators, and other legal staff, for inmates held in any local, regional, or community*
117 *correctional facility. Notwithstanding any other provision of law, the Board shall adhere to the provisions of*
118 *the Administrative Process Act (§ 2.2-4000 et seq.) in promulgating these standards. Such standards shall*
119 *include:*

120 1. *A requirement that, subject to safety, space, and resource constraints, inmates have in-person access to*
121 *counsel in a confidential setting inside the facility, as well as access to counsel via secure and confidential*
122 *telephone or video conference that is not recorded or monitored by any person. Access to counsel, either in*

123 *person or via telephone or video conference, shall be available during regular business hours and at least*
124 *some evenings and weekend days each week;*

125 *2. A requirement that local, regional, and community correctional facility policies and procedures for*
126 *requesting and scheduling access to counsel be publicly posted and that counsel be promptly notified if their*
127 *scheduled legal visit must be delayed, canceled, or otherwise restricted; and*

128 *3. A requirement that any denial or postponement of access to counsel be approved by a supervisor*
129 *working in the correctional facility and accompanied by a rationale explaining the denial or postponement,*
130 *which shall be provided in writing upon request of counsel.*

131 *E. The Department of Criminal Justice Services, in accordance with § 9.1-102, shall establish minimum*
132 *training standards for persons designated to provide courthouse and courtroom security pursuant to the*
133 *provisions of § 53.1-120 and for persons employed as jail officers or custodial officers under the provisions*
134 *of this title. The sheriff shall establish minimum performance standards and management practices to govern*
135 *the employees for whom the sheriff is responsible.*

136 *E. F. The superintendent of a regional jail or jail farm shall establish minimum performance standards and*
137 *management practices to govern the employees for whom the superintendent is responsible.*

138 **2. That the State Board of Local and Regional Jails shall establish standards for inmates' access to**
139 **counsel as required by the provisions of this act no later than January 1, 2027.**