

SENATE BILL NO. 1361

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance and Appropriations

on February 1, 2023)

(Patron Prior to Substitute--Senator Morrissey)

A BILL to amend and reenact §§ 2.2-3703, 53.1-136, and 53.1-155 of the Code of Virginia, relating to Parole Board; eligibility determinations; reports.

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

**1. That §§ 2.2-3703, 53.1-136, and 53.1-155 of the Code of Virginia are amended and reenacted as follows:**

**§ 2.2-3703. Public bodies and records to which chapter inapplicable; voter registration and election records; access by persons incarcerated in a state, local, or federal correctional facility.**

A. The provisions of this chapter shall not apply to:

~~1. The Virginia Parole Board (the Board), except that (i) information from the Board providing the number of inmates considered by the Board for discretionary parole, the number of inmates granted or denied parole, and the number of parolees returned to the custody of the Department of Corrections solely as a result of a determination by the Board of a violation of parole shall be open to inspection and available for release, on a monthly basis, as provided by § 2.2-3704; (ii) all guidance documents, as defined in § 2.2-4101, shall be public records and subject to the provisions of this chapter; (iii) all records concerning the finances of the Board shall be public records and subject to the provisions of this chapter; and (iv) individual Board member votes shall be public records and subject to the provisions of this chapter. The information required by clause (i) shall be furnished by offense, sex, race, age of the inmate, and the locality in which the conviction was obtained, upon the request of the party seeking the information. The information required by clause (ii) shall include all documents establishing the policy of the Board or any change in or clarification of such policy with respect to grant, denial, deferral, revocation, or supervision of parole or geriatric release or the process for consideration thereof, and shall be clearly and~~

27 conspicuously posted on the Board's website. However, such information shall not include any portion of  
28 any document reflecting the application of any policy or policy change or clarification of such policy to  
29 an individual inmate;

30 ~~2.~~ Petit juries and grand juries;

31 ~~3-2.~~ Family assessment and planning teams established pursuant to § 2.2-5207;

32 ~~4-3.~~ Sexual assault response teams established pursuant to § 15.2-1627.4, except that records  
33 relating to (i) protocols and policies of the sexual assault response team and (ii) guidelines for the  
34 community's response established by the sexual assault response team shall be public records and subject  
35 to the provisions of this chapter;

36 ~~5-4.~~ Multidisciplinary child sexual abuse response teams established pursuant to § 15.2-1627.5;

37 ~~6-5.~~ The Virginia State Crime Commission; and

38 ~~7-6.~~ The records maintained by the clerks of the courts of record, as defined in § 1-212, for which  
39 clerks are custodians under § 17.1-242, and courts not of record, as defined in § 16.1-69.5, for which  
40 clerks are custodians under § 16.1-69.54, including those transferred for storage, maintenance, or  
41 archiving. Such records shall be requested in accordance with the provisions of §§ 16.1-69.54:1 and 17.1-  
42 208, as appropriate. However, other records maintained by the clerks of such courts shall be public records  
43 and subject to the provisions of this chapter.

44 B. Public access to voter registration and election records shall be governed by the provisions of  
45 Title 24.2 and this chapter. The provisions of Title 24.2 shall be controlling in the event of any conflict.

46 C. No provision of this chapter or Chapter 21 (§ 30-178 et seq.) of Title 30 shall be construed to  
47 afford any rights to any person (i) incarcerated in a state, local or federal correctional facility, whether or  
48 not such facility is (a) located in the Commonwealth or (b) operated pursuant to the Corrections Private  
49 Management Act (§ 53.1-261 et seq.) or (ii) civilly committed pursuant to the Sexually Violent Predators  
50 Act (§ 37.2-900 et seq.). However, this subsection shall not be construed to prevent such persons from  
51 exercising their constitutionally protected rights, including, but not limited to, their right to call for  
52 evidence in their favor in a criminal prosecution.

53 **§ 53.1-136. Powers and duties of Board; notice of release of certain inmates.**

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

55 1. Adopt, subject to approval by the Governor, general rules governing the granting of parole and  
56 eligibility requirements, which shall be published and posted for public review. Such eligibility rules shall  
57 require a public safety and scientific risk assessment and consideration of the prisoner's demonstrated  
58 rehabilitation, economic and educational development, commitment to prosocial behavior, and  
59 community and family supports;

60 2. Adopt, subject to approval by the Governor, rules providing for the granting of parole to those  
61 prisoners who are eligible for parole pursuant to § 53.1-165.1 on the basis of demonstrated maturity and  
62 rehabilitation and the lesser culpability of juvenile offenders;

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

67 b. Establish the conditions of postrelease supervision authorized pursuant to § 18.2-10 and  
68 subsection A of § 19.2-295.2;

69 c. Notify the Department of Corrections of its decision to grant discretionary parole or conditional  
70 release to an inmate. The Department of Corrections shall set the release date for such inmate no sooner  
71 than 30 business days from the date that the Department of Corrections receives such notification from  
72 the Chairman of the Board, except that the Department of Corrections may set an earlier release date in  
73 the case of an inmate granted conditional release pursuant to § 53.1-40.02. In the case of an inmate granted  
74 parole who was convicted of a felony and sentenced to a term of 10 or more years, or an inmate granted  
75 conditional release, the Board shall notify the attorney for the Commonwealth in the jurisdiction where  
76 the inmate was sentenced (i) by electronic means at least 21 business days prior to such inmate's release  
77 that such inmate has been granted discretionary parole or conditional release pursuant to § 53.1-40.01 or  
78 53.1-40.02 or (ii) by telephone or other electronic means prior to such inmate's release that such inmate  
79 has been granted conditional release pursuant to § 53.1-40.02 where death is imminent. Nothing in this

80 section shall be construed to alter the obligations of the Board under § 53.1-155 for investigation prior to  
81 release on discretionary parole;

82 d. Provide that in any case where a person who is released on parole or postrelease supervision has  
83 been committed to the Department of Behavioral Health and Developmental Services under the provisions  
84 of Chapter 9 (§ 37.2-900 et seq.) of Title 37.2 the conditions of his parole or postrelease supervision shall  
85 include the requirement that the person comply with all conditions given him by the Department of  
86 Behavioral Health and Developmental Services and that he follow all of the terms of his treatment plan;

87 4. Revoke parole and any period of postrelease and order the reincarceration of any parolee or  
88 felon serving a period of postrelease supervision or impose a condition of participation in any component  
89 of the Statewide Community-Based Corrections System for State-Responsible Offenders (§ 53.1-67.2 et  
90 seq.) on any eligible parolee, when, in the judgment of the Board, he has violated the conditions of his  
91 parole or postrelease supervision or is otherwise unfit to be on parole or on postrelease supervision;

92 5. Issue final discharges to persons released by the Board on parole when the Board is of the  
93 opinion that the discharge of the parolee will not be incompatible with the welfare of such person or of  
94 society;

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

97 7. Publish a statement by the fifteenth day of each month regarding the ~~action~~ actions taken by the  
98 Board on the parole of prisoners ~~within 30 days of such action~~ during the prior month. The statement shall  
99 list (i) the name of each prisoner considered for parole, (ii) the offense of which the prisoner was convicted,  
100 (iii) the jurisdiction in which such offense was committed, (iv) the length of the prisoner's sentence and  
101 the date such sentence was imposed, (v) the amount of time the prisoner has served, (vi) whether the  
102 prisoner was granted or denied parole, ~~and~~ (vii) ~~the basis~~ individualized reasons for the grant or denial of  
103 parole, and (viii) the final vote and the names of the Board members who voted in favor of granting parole  
104 and those who voted against. However, in the case of a prisoner granted parole, the information set forth  
105 in clauses (i) through ~~(vii)~~ (viii) regarding such prisoner shall be included in the statement published in

106 the month immediately succeeding the month in which notification of the decision to grant parole was  
107 given to the attorney for the Commonwealth and any victims;~~and~~

108 8. Publish an annual report regarding actions taken by the Board on the parole of prisoners during  
109 the prior year. Such report shall contain each monthly statement published by the Board pursuant to  
110 subdivision 7 and a summary that identifies (i) the total number of prisoners considered for parole, (ii) the  
111 number of persons granted parole, (iii) the number of persons denied parole, (iv) the most common reasons  
112 for which parole was granted or denied, and (v) the extent to which the Board relied on prisoner  
113 participation in prison programs when granting parole;

114 9. Ensure that each person eligible for parole receives a timely and thorough review of his  
115 suitability for release on parole, including a review of any relevant post-sentencing information. If parole  
116 is denied, the basis for the denial of parole shall be in writing and shall give specific, individualized reasons  
117 for such denial to such inmate. The Board shall provide guidance steps to a prisoner who is denied parole  
118 and may at the next hearing consider whether the prisoner has taken such steps; and

119 10. Convene a public meeting, either in person or via video conference, when conducting the final  
120 deliberation and vote regarding whether the Board will grant parole to a prisoner. The prisoner being  
121 considered for parole or his attorney shall be permitted to attend such meeting either, in the Board's  
122 discretion, in person or via video conference. The victim shall be permitted to attend and participate in  
123 such meeting either, in the Board's discretion, in person or via video or phone conference or to provide  
124 written or recorded testimony.

125 **§ 53.1-155. Investigation prior to release; transition assistance.**

126 A. No person shall be released on parole by the Board until a thorough investigation has been made  
127 into the prisoner's history, physical and mental condition and character, and his conduct, employment, and  
128 attitude while in prison. All information collected through such investigation shall be made available to  
129 the prisoner or his attorney; however, the Board shall redact all personal information of the victim. The  
130 Board shall also determine that his release on parole will not be incompatible with the interests of society  
131 or of the prisoner. The provisions of this section shall not be applicable to persons released on parole  
132 pursuant to § 53.1-159.

133 B. An investigation conducted pursuant to this section shall include notification that a victim may  
134 submit to the Virginia Parole Board evidence concerning the impact that the release of the prisoner will  
135 have on such victim. This notification shall be sent to the last address provided to the Board by any victim  
136 of a crime for which the prisoner was incarcerated. If additional victim research is necessary, electronic  
137 notification shall be sent to the attorney for the Commonwealth and the director of the victim/witness  
138 program, if one exists, of the jurisdiction in which the offense occurred. The Board shall endeavor  
139 diligently to contact the victim prior to making any decision to release any inmate on discretionary parole.  
140 The victim of a crime for which the prisoner is incarcerated may present to the Board oral or written  
141 testimony concerning the impact that the release of the prisoner will have on the victim, and the Board  
142 shall consider such testimony in its review. Once testimony is submitted by a victim, such testimony shall  
143 remain in the prisoner's parole file and shall be considered by the Board at every parole review. The victim  
144 of a crime for which the prisoner is incarcerated may submit a request in writing or by electronic means  
145 to the Board to be notified of (i) the prisoner's parole eligibility date and mandatory release date as  
146 determined by the Department of Corrections, (ii) any parole-related interview dates, and (iii) the Board's  
147 decision regarding parole for the prisoner. The victim may request that the Board only notify the victim  
148 if, following its review, the Board is inclined to grant parole to the prisoner, in which case the victim shall  
149 have ~~forty-five~~ 45 days to present written or oral testimony for the Board's consideration. If the victim has  
150 requested to be notified only if the Board is inclined to grant parole and no testimony, either written or  
151 oral, is received from the victim within at least ~~forty-five~~ 45 days of the date of the Board's notification,  
152 the Board shall render its decision based on information available to it in accordance with subsection A.  
153 The definition of victim in § 19.2-11.01 shall apply to this section.

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

157 C. Notwithstanding the provisions of subsection A, if a physical or mental examination of a  
158 prisoner eligible for parole has been conducted within the last ~~twelve~~ 12 months, and the prisoner has not

