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SENATE BILL NO. 581

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Rehabilitation and Social Services
on January 28, 2022)

(Patron Prior to Substitute—Senator Morrissey)

A *BILL to amend and reenact §§ 53.1-115.2, 53.1-127.1, 53.1-127.2, 53.1-131, and 53.1-131.1 of the Code of Virginia; to amend the Code of Virginia by adding in Article 6 of Chapter 3 of Title 53.1 a section numbered 53.1-127.6; and to repeal §§ 53.1-127.3, 53.1-127.5, and 53.1-131.3 of the Code of Virginia, relating to local correctional facilities; fees.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 53.1-115.2, 53.1-127.1, 53.1-127.2, 53.1-131, and 53.1-131.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 6 of Chapter 3 of Title 53.1 a section numbered 53.1-127.6 as follows:

§ 53.1-115.2. Establishment of stores in regional jails and regional jail farms.

The superintendent of a regional jail or regional jail farm may, with the approval of the governing regional jail or jail farm board or jail authority, provide for the establishment and operation of stores or commissaries in regional jail or regional jail farm facilities to deal in such articles as he deems proper. The net profits from the operation of such stores shall be used within each facility respectively for educational, ~~or recreational, or other beneficial~~ purposes as may be prescribed by the superintendent. ~~Items or services sold by such stores or commissaries, including the sale or rental of electronic devices or media, may be priced at a maximum of 10 percent above the typical market rate for such items or services at non-correctional major retail stores. The facility or superintendent's office shall not receive any commissions or markups from any items or services sold.~~

§ 53.1-127.1. Establishment of stores in local correctional facilities.

A. Each sheriff who operates a correctional facility is authorized to provide for the establishment and operation of a store or commissary to deal in such articles and services as he deems proper. The net profits from the operation of such store that are generated from the inmates' accounts shall be used within the facility for educational, ~~or recreational, or other~~ purposes for the benefit of the inmates as ~~may be prescribed by the sheriff. Any other profits may be used for the general operation of the sheriff's office.~~ ~~Items or services sold by such stores or commissaries, including the sale or rental of electronic devices or media, may be priced at a maximum of 10 percent above the typical market rate for such items or services at non-correctional major retail stores. The facility or sheriff's office shall not receive any commissions or markups from any items or services sold.~~

B. ~~Fees charged for the receipt of funds to any inmate's account shall not exceed three percent of the amount received.~~

C. Upon discharge from a local correctional facility, inmates shall receive the balance of all accounts maintained by the facility for an inmate's use. The inmate shall be given the option to receive the balance by check, electronic funds transfer, or a debit or other account card. No fees shall be charged by the facility or a vendor contracted by the facility to transfer funds, check account balances, or maintain or close an account.

D. The sheriff shall be the purchasing agent in all matters involving the commissary and nonappropriated funds received from inmates. The funds from such operation of a store or commissary and from the inmate telephone services account shall be considered public funds.

§ 53.1-127.2. Fees for electronic visitation and messaging with prisoners in local correctional facilities.

Each sheriff or jail superintendent who operates a correctional facility that utilizes an electronic visitation system or electronic messaging system, including Voice-over-Internet Protocol technology and web-based communication systems, for communication between prisoners and third parties is authorized to provide for the establishment and collection of a fee for the system utilized. ~~The fee shall not exceed the actual costs of establishing and operating such a system and the proceeds shall not be used for any other purpose than to offset the costs of establishing and operating the system. Such electronic visitation systems shall be established with the lowest available rates. Any facility that utilizes such systems (i) shall establish such system allowing for the security needs of the facility, (ii) shall not prohibit in-person visitation, and (iii) shall not exclude any prisoner from its use.~~

~~However, no~~ No fee shall be charged for communication between prisoners and third parties within any local correctional facility or appurtenance thereto operated or controlled by the sheriff or jail superintendent.

This section does not apply to telephonic communication systems or to electronic video and audio communication systems used in judicial proceedings.

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§ 53.1-127.6. Telephone systems within local correctional facilities.

Local correctional facilities shall offer telephone systems that allow telephone calls to be placed to the telephone number or numbers on an approved call list. Telephone services shall be provided at no cost to the inmate or to any recipient of a call from an inmate when such calls are made to or received from a telephone number on an approved call list. The maximum number of telephone numbers permitted on an approved call list shall be no less than 20. At least one telephone per every 15 inmates shall be available within each housing unit at each local correctional facility. No local correctional facility shall receive any commission from such telephone systems.

§ 53.1-131. Provision for release of prisoner from confinement for employment, educational, or other rehabilitative programs; escape; penalty; disposition of earnings.

A. Any court having jurisdiction for the trial of a person charged with a criminal offense or charged with an offense under Chapter 5 (§ 20-61 et seq.) of Title 20 may, if the defendant is convicted and (i) sentenced to confinement in jail or (ii) being held in jail pending completion of a presentence report pursuant to § 19.2-299, and if it appears to the court that such offender is a suitable candidate for work release, assign the offender to a work release program under the supervision of a probation officer, the sheriff or the administrator of a local or regional jail or a program designated by the court. The court further may authorize the offender to participate in educational or other rehabilitative programs designed to supplement his work release employment. The court shall be notified in writing by the director or administrator of the program to which the offender is assigned of the offender's place of employment and the location of any educational or rehabilitative program in which the offender participates.

Any person who has been sentenced to confinement in jail or who has been convicted of a felony but is confined in jail pursuant to § 53.1-20, in the discretion of the sheriff may be assigned by the sheriff to a work release program under the supervision of the sheriff or the administrator of a local or regional jail. The sheriff may further authorize the offender to participate in educational or other rehabilitative programs as defined in this section designed to supplement his work release employment. The court that sentenced the offender shall be notified in writing by the sheriff or the administrator of a local or regional jail of any such assignment and of the offender's place of employment or other rehabilitative program. The court, in its discretion, may thereafter revoke the authority for such an offender to participate in a work release program.

The sheriff and the Director may enter into agreements whereby persons who are committed to the Department, whether such persons are housed in a state or local correctional facility, and who have met all standards for such release, may participate in a local work release program or in educational or other rehabilitative programs as defined in this section. The administrator of a regional jail and the Director may also enter into such agreements where such agreements are approved in advance by a majority of the sheriffs on the regional jail board. All persons accepted in accordance with this section shall be governed by all regulations applying to local work release, notwithstanding the provisions of any other section of the Code. Local jails shall qualify for compensation for cost of incarceration of such persons pursuant to § 53.1-20.1, less any payment for room and board collected from the inmate.

If an offender who has been assigned to such a program by the court is in violation of the rules of the jail pursuant to § 53.1-117, the sheriff or jail administrator may remove the offender from the work release program, either temporarily or for the duration of the offender's confinement. Upon removing an offender from the work release program, the sheriff or jail administrator shall notify in writing the court that sentenced the offender and indicate the specific violations that led to the decision.

Any offender assigned to such a program by the court or sheriff who, without proper authority or just cause, leaves the area to which he has been assigned to work or attend educational or other rehabilitative programs, or leaves the vehicle or route of travel involved in his going to or returning from such place, is guilty of a Class 1 misdemeanor. In the event such offender leaves the Commonwealth, the offender may be found guilty of an escape as provided in § 18.2-477. An offender who is found guilty of a Class 1 misdemeanor in accordance with this section shall be ineligible for further participation in a work release program during his current term of confinement.

The Board shall prescribe regulations to govern the work release, educational, and other rehabilitative programs authorized by this section.

Any wages earned pursuant to this section by an offender may, upon order of the court, be paid to the director or administrator of the program after standard payroll deductions required by law. Distribution of such wages shall be made for the following purposes:

1. To pay an amount to defray the cost of his keep;
2. To pay travel and other such expenses made necessary by his work release employment or participation in an educational or rehabilitative program;
3. To provide support and maintenance for his dependents or to make payments to the local department of social services or the Commissioner of Social Services, as appropriate, on behalf of dependents who are receiving public assistance or social services as defined in § 63.2-100; or
4. 2. To pay any fines, restitution, or costs as ordered by the court.

Any balance at the end of his sentence shall be paid to the offender upon his release.

B. For the purposes of this section:

"Educational program" means a program of learning recognized by the State Council of Higher Education, the State Board of Education, the Director, or the State Board of Local and Regional Jails.

"Rehabilitative program" includes an alcohol and drug treatment program, mental health program, family counseling, community service or other community program approved by the court having jurisdiction over the offender.

"Sheriff" means the sheriff of the jurisdiction where the person charged with the criminal offense was convicted and sentenced, provided that the sheriff may designate a deputy sheriff or regional jail administrator to assign offenders to work release programs under this section.

"Work release" means full-time employment or participation in suitable career and technical education programs.

§ 53.1-131.1. Provision for sentencing of person to nonconsecutive days in jail; penalty.

Any court having jurisdiction for the trial of a person charged with a misdemeanor, traffic offense, any offense under Chapter 5 (§ 20-61 et seq.) of Title 20, or a felony that is not an act of violence as defined in § 19.2-297.1 may, for good cause, if the defendant is convicted and sentenced to confinement in jail and the active portion of the sentence remaining to be served is 45 days or less, impose the remaining time to be served on weekends or nonconsecutive days to permit the convicted defendant to retain gainful employment; however, the court shall not impose weekends or nonconsecutive days for a person convicted of a felony if the Commonwealth objects. A person sentenced pursuant to this section shall pay an amount to defray the cost of his keep, which amount shall be the actual cost of incarceration but shall not exceed that amount charged to the Compensation Board for purposes of reimbursement as provided in the general appropriation act. Such amount shall be collected by the sheriff, if he is responsible for operating a jail, or by the regional jail superintendent, and remitted by the sheriff to the treasurer of the appropriate county or city, or by the regional jail superintendent to the regional jail board or authority, solely for the purposes of defraying the costs of such weekend or nonconsecutive incarceration. The funds collected pursuant to this section shall not be used for purposes other than those provided for in this section. The assessment provided for herein shall be in addition to any other fees prescribed by law. If the defendant willfully fails to report at times specified by the court, the sentence imposed pursuant to this section shall be revoked and a straight jail sentence imposed.

If an offender who has been sentenced to nonconsecutive days by the court is in violation of the rules of the jail pursuant to § 53.1-117, the sheriff or jail administrator may require the offender to serve out a portion or the entirety of the remainder of his sentence in consecutive days. Upon revoking the offender's ability to serve his sentence on nonconsecutive days, the sheriff or jail administrator shall notify in writing the court that sentenced the offender and indicate the specific violations that led to the decision.

The time served by a person sentenced for violation of state law in a local jail, regional jail, or local jail farm pursuant to this section shall be included in the count of prisoner days reported by the Department for the purpose of apportioning state funds to local correctional facilities for operating costs in accordance with § 53.1-84.

2. That §§ 53.1-127.3, 53.1-127.5, and 53.1-131.3 of the Code of Virginia are repealed.

3. That the provisions of this act shall become effective July 1, 2023.

4. That the provisions of this act shall not become effective unless reenacted by the 2023 Session of the General Assembly.

5. That the State Board of Local and Regional Jails (the Board) shall convene a work group to study implementation of the provisions of this act. Such work group shall consult with all relevant stakeholders. The Board shall report its findings and recommendations to the Chairmen of the Senate Committee on Rehabilitation and Social Services and the House Committee on Public Safety by October 1, 2022.