

ACTIONS OF THE 1975 GENERAL ASSEMBLY  
AFFECTING THE  
VIRGINIA DEPARTMENT OF CORRECTIONS

ADULT SERVICES

WORK/STUDY RELEASE - "community activity programs" were added to the work/study release statute (Section 53-38), and the Director of Corrections was authorized to arrange for persons in work release, study release, or community activity programs to be lodged in approved halfway houses. As the statute stood prior to the 1975 session, a sum sufficient to defray the "keep" of an inmate on work release and his pro rata share of the cost of the program were deducted from his wages. This was changed to "a sum sufficient to help defray. . . ." (House Bill 1774)

EXTRAORDINARY "GOOD TIME" - The extraordinary good time statute (Section 53-213.1) which allows the Director, at his discretion, to credit an adult inmate with one to five days per month toward total term of confinement for each month the inmate has been engaged in vocational or educational training or has exhibited unusual effort in job assignment was amended to allow such credit toward the parole eligibility date as well. (House Bill 1494)

AGENCIES REQUIRED TO PURCHASE ARTICLES AND SERVICES - Departments, institutions, and agencies required under Section 53-67 to purchase articles produced or manufactured by inmates of the state correctional system now will be required to purchase services as well, provided such services meet the reasonable requirements of the purchasing department or agency, and provided the Department of Corrections is able to supply the required service. (House Bill 1646)

PHYSICIANS' ASSISTANTS - The Virginia State Board of Medicine was empowered to make rules and regulations with regard to the employment of physicians' assistants by the Department of Corrections (Senate Bill 324). The Board was further empowered to approve the terms and conditions under which physicians employed by the Department may supervise more than two assistants. Since supervision of two assistants formerly was the limit under Section 54-281.5, this change provides an exception for the Department (Senate Bill 324 and House Bill 1718).

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Section 54-276.10 was amended to require physicians and others rendering medical aid to report aid rendered for any traumatic injury believed to have been unlawfully inflicted. This section formerly required reporting only those injuries inflicted by a firearm (Senate Bill 324).

INDETERMINATE SENTENCES - Section 19.1-295.2 was amended to require that a written statement be given to the Director of Corrections and to the sentencing court whenever the Department determines that an individual sentenced under Section 19.1-295.1 (indeterminate sentencing) should be confined at any facility other than the special institution established under Section 53-128.1 et seq. The section's provision for initial study and ultimate confinement at the State Industrial Farm for Women (now Virginia Correctional Center for Women) of women who receive indeterminate sentences under Section 19.1-295.1 was stricken. (Senate Bill 711)

Section 19.1-295.3 was amended to require the release after one year or the maximum confinement for the misdemeanor, whichever is less, of persons convicted of a misdemeanor under Section 19.1-295.1, but who are deemed unsuitable for confinement in the special institution established under Section 53-128.1 et seq. (Senate Bill 709)

INMATE RECORDS - Section 2.1-342 was amended to exclude from the provisions of the Freedom of Information Act "all records of persons imprisoned in a penal institution in this State, provided such records relate to the said imprisonment." (House Bill 1482)

MARRIAGE AND DIVORCE - House Bill 1470 which rewrote Virginia's laws pertaining to marriage and divorce, added a provision for women to be committed for non-support to the state correctional institution for women.

Under previous Virginia law, conviction of "an infamous offense" without the other party's knowledge was grounds for divorce. This language was stricken, and conviction of a felony is now grounds for annulment.

In addition, the non-resumption of cohabitation after confinement in a penitentiary formerly was grounds for divorce. This was changed to conviction of a felony, confinement for more than one year, and non-resumption of cohabitation after knowledge of the confinement. (House Bill 1470)

CONTRABAND UNDER NEW CRIMINAL CODE - Under the new Criminal Code effective October 1, 1975, delivery of contraband to prisoners remains a misdemeanor; however, the penalty was increased with regard to delivering, attempting to deliver, or conspiring to deliver controlled substances or firearms (Section 18.2-474.1). Controlled substances: Class 5 felony, 1 to 10 years, or maximum 12 months jail sentence and \$1,000 fine; firearms, ammunitions, or explosives: Class 3 felony, 5 to 20 years. (House Bill 1719)

CAPITAL PUNISHMENT UNDER NEW CRIMINAL CODE - Under the former provisions of Section 53-291 (Senate Bill 763 amended this section to remove references to killing and bodily injuries), capital punishment was the mandatory sentence for an inmate found guilty of killing an employee or any person lawfully admitted to a penal institution, except another inmate. Under Section 18.2-31 of the new Criminal Code, which is effective October 1, 1975, the willful, deliberate and premeditated killing by an inmate while in the institution or in the custody of an employee will be one of three offenses punishable as a Class 1 felony (mandatory death sentence). The other types of willful, deliberate and premeditated killings punishable by death will be killing for hire and killing in the commission of an abduction, with intent to extort money. (Senate Bill 542 and House Bill 1049)

BODILY INJURIES CAUSED BY CONVICTS UNDER NEW CRIMINAL CODE - Under the former provisions of Section 53-291 (Senate Bill 763 amended this section to remove references to killing and bodily injuries), the penalty for an inmate found guilty of causing bodily injury to an employee or any person lawfully admitted to a penal institution, (but not to another inmate), was an additional 3 to 20 year sentence. Under Section 18.2-55 of the new Criminal Code, which is effective October 1, 1975, the offense will be punished as a class 3 felony, 5 to 20 years (Senate Bill 542 and House Bill 1049).

PROBATION AND PAROLE

PAROLE BOARD NAME CHANGE - The name of the Probation and Parole Board was changed to Parole Board. (House Bill 1733) This does not indicate a change in the Board's responsibilities since the probation function already was transferred to the new Division of Probation and Parole Services, a division that was created within the new Department of Corrections effective July 1, 1974.

PAROLE AND PROBATION HEARINGS - Three new articles dealing with probation and parole hearings and revocation of parole were added in Title 53. The first article is the Uniform Interstate Parole and Probation Hearings Act and deals with hearings for out-of-state probationers and parolees being supervised in Virginia and for Virginia probationers and parolees being supervised in other states. The second article deals with the conducting of preliminary hearings to determine probable cause for violation of conditions of parole by out-of-state parolees in Virginia or by Virginia parolees in other states. The third article treats revocation of parole in the above-mentioned cases. (House Bill 1453)

REVOCAION OF PAROLE - Section 53-262 was amended substantially to allow for a preliminary hearing to determine probable cause in parole violations. If probable cause is found by a hearing officer of the Division of Probation and Parole Services, the Parole Board will conduct a hearing. At the request of the hearing officer or the Board, an attorney will be appointed for the parolee. (House Bill 1455)

ASSISTANCE TO FORMER INMATES AND PAROLEES - Under Section 53-250, probation and parole officers have been permitted to assist persons in their territories who have completed parole and who have requested such assistance. This section was amended so that officers may assist persons who have been discharged upon expiration of sentence, as well as former parolees, who request assistance in finding a place to live, finding employment, or in otherwise becoming adjusted to the community. (House Bill 1250)

PRE-SENTENCE REPORTS - Effective October 1, 1975, Section 53-278.1 pertaining to pre-sentence reports, was repealed by House Bill 1280 due to the Recodification of the Code of Criminal Procedure. (House Bill 1166)

Provisions of Section 53-278.1 Repealed: Pre-sentence report an option of the court, (mandatory if defendant so requests) for felony charges for which sentences of 10 years or more may be imposed, after plea or finding of guilty.

Amendment to Section 53-278.1: House Bill 1489 rewrote Section 53-278.1 to make a pre-sentence report an option of the court, or mandatory on request of the defendant, in all felony cases, with language referring to the length of the sentence and the plea being stricken. This change is effective June 1, 1975.

New section pertaining to pre-sentence reports: New Section 19.2-299 in the Criminal Procedure Code, effective October 1, 1975, gives the court the option to direct the preparation of a pre-sentence report in any case. The report is mandatory at the request of a defendant who has entered a guilty plea or been convicted in a trial without a jury of a felony punishable by confinement for more than 10 years. (House Bill 1166)

New Section 19.2-299 requires the probation officer to file his report with the court with copies to defense counsel and the attorney for the Commonwealth "within a reasonable time before the day of sentencing". The present requirement in Section 53-278.1, which was repealed by House Bill 1280, is that the probation officer provide a copy of the report to defense counsel at least five days before presenting the report in court. (House Bill 1166)

The Code Commission has been empowered by House Bill 1280 to incorporate into new Title 19.2 (Criminal Procedure) any sections repealed for purposes of the 1975 recodification but amended at the same session of the General Assembly. The Code Commission thus will determine which portions, if any, of House Bill 1489 will be incorporated in new Section 19.2-299 with reference to pre-sentence reports. The fact that House Bill 1489, amending Section 53-278.1 becomes effective June 1, 1975, that House Bill 1280 repealing Section 53-278.1 becomes effective October 1, 1975, and that House Bill 1166 which contains new Section 19.2-299 becomes effective October 1, 1975, poses a complicated issue.

YOUTH SERVICES

CUSTODY, ABUSE AND NEGLECT - Section 16.1-166 was amended to permit the court's clerk or deputy clerk, when designated by the judge, to endorse the summons or other process for taking immediate custody of a child. (House Bill 1151)

Section 16.1-173 was amended to require that when a child is taken into custody and not released, he shall be brought before a court the next day (former language of the section: "on the first day the court thereafter sits") for a determination to be made as to legal representation and detention. The section was strengthened further by adding the requirement that if the court does not sit on the following day, such determination is to be made by a judge no later than 72 hours from the time the child is taken into custody. (House Bill 1160)

Section 16.1-197 (Children taken into custody) was amended to permit a judge, clerk, or probation officer to place in the temporary custody of the local welfare board a child who has been taken into custody pursuant to Section 16.1-194 by virtue of his being abused, abandoned, or neglected. (House Bill 1505)

House Bill 1671 sought to amend Section 16.1-173 so as to require the appointment of an attorney as guardian ad litem for the child in any proceeding involving abuse or neglect. This proposed amendment was deleted. The amendment which passed requires appointment of counsel for indigent parents when custody may be at issue in an action in which the Commonwealth or one of its agencies is the petitioner. (House Bill 1671)

Provisions regarding abuse or neglect of children were repealed from Chapter 8 (Juvenile and Domestic Relations Courts) of Title 16.1 and new provisions regarding abuse and neglect were added in Title 63.1 (Welfare). A child protective services unit is to be established in the State Department of Welfare, and local departments of welfare are to foster interdisciplinary teams which will assist the local departments in identifying abused and neglected children and in coordinating programs and services for such children and their families. The Director of the Division of Youth Services, and five other persons are to be members of a committee which will advise the Department and Board of Welfare and the Governor on matters concerning prevention and treatment. (House Bill 416)

REPORTS BY JUVENILE PROBATION OFFICERS - Section 16.1-208.1 was amended to require juvenile probation officers conducting investigations at the direction of the court to supply copies of the resulting report to all attorneys in the case as well as to the

clerk of the court. Previously, such reports were filed with the clerk who made copies available to attorneys upon request. (House Bill 1410)

DIAGNOSTIC ASSESSMENT PRIOR TO FINAL DISPOSITION - Section 16.1-190 was amended to permit the juvenile and domestic relations court to refer a child, with the concurrence of his attorney and after the adjudicatory hearing, to the Department of Corrections for diagnostic assessment prior to disposition of his case, provided that personnel, services, and space are available. (Senate Bill 857)

INVOLUNTARY DETENTION AND TREATMENT - Section 37.1-67.1 was amended to permit involuntary detention, involuntary admission, and treatment (mental illness) of persons under the age of 14 when under commitment to the State Board of Corrections (Senate Bill 882).

INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN - An Interstate Compact on the Placement of Children in out-of-state foster care or child caring institutions, excluding mental institutions or hospitals, was added in Title 63.1 (Welfare). The Compact provides that children adjudicated delinquent may be placed in an institution in another state if a hearing is conducted and the court finds that equivalent facilities are not available in the sending agency's jurisdiction. This compact does not apply to any placements pursuant to other compacts or agreements having the force of law. (House Bill 1536)

COMMUNITY GROUP HOMES - Section 53-331 which authorized the State Board of Corrections to maintain halfway houses for juveniles was amended in order to reflect diversified uses for these facilities. The section formerly specified that "halfway houses" were to be used for the temporary care of older juveniles ready for release from direct state care but who have no suitable homes to return to. The section was amended to rename the facilities "community group homes" and to specify that they are to be used for juveniles in direct state care. The definition of placement plans to be developed for children in the facilities also was expanded from "plans consisting of adequate housing and suitable employment" to "plans consisting of adequate care and treatment and suitable education, training, and/or employment". (House Bill 1214)

BOARD GIVEN AUTHORITY TO NAME JUVENILE INSTITUTIONS - References to juvenile institutions by name in the Code (Section 53-330) were removed and the State Board of Corrections was given the authority to name all institutions operated for the care of

children committed to the Board of Corrections. (House Bill 1215)

INCREASED ALLOWANCE FOR WARDS - Section 53-333 was amended to provide an allowance for state wards of 30-cents per day, regardless of age (previously 15 or 25-cents per day was provided, depending on age). An additional allowance also may be given to cover incidental needs for required school activities, foster care, and other special placements. (House Bill 1216)

MARRIAGE OF MINORS - Section 20-48 was amended to reduce the minimum age of marriage from 18 for males and 16 for females to 16 for both, with consent of parent. Exceptions referring to pregnancy were stricken. The revised section retains the requirement that the judge having jurisdiction of an adjudicated child must give his consent and the Commissioner of Public Welfare must give his consent for a committed child. (Note: The 1974 bill separating the Department of Welfare and Institutions added commitment to Department of Corrections to this section, but neglected to add consent of Director of Corrections for marriage of a child committed to the Department)

Section 20-49 was amended substantially so that the section now only provides that the judge of the circuit court where either party resides may issue, or cause to be issued, a marriage license for person(s) under 18. References to consent of parents and wards of the state were removed from this section. (House Bill 1470)

#### REHABILITATIVE SCHOOL AUTHORITY

A bill changing the composition of the Board of the Rehabilitative School Authority (RSA), which supervises the educational programs of all adult and juvenile institutions operated by the Department of Corrections was vetoed.

The legislation would have amended Section 22-41.2 to as designate "ex officio" individuals who currently serve on the RSA Board by virtue of their positions (Chairman of the Parole Board, the heads of the Adult Services and Youth Services Divisions in the Department of Corrections, and the Director of Vocational Education in the Department of Education). It also would have increased the number of gubernatorial appointees on the Board from three to eight; however, due to an error in a House amendment, provision was made only for an increase to seven gubernatorial appointees. Finally, it would have added the stipulation that no appointee shall serve more than two consecutive four year terms. (Senate Bill 721--VETOED)



### RELIEF BILLS

Monetary compensation was awarded to J. Patrick Graybeal, Commonwealth's Attorney for Montgomery County, who lost both hands and sustained other injuries as the result of a bomb explosion. (Senate Bill 554) Frank H. DeWease, Jr., who was on parole at the time of the December, 1973, incident, was sentenced in July, 1974, to 20 years for malicious wounding of Graybeal.

Compensation also was awarded to three individuals whose personal property was damaged by runaways from Appalachian Learning Center. (House Bill 1463, House Bill 1609, House Bill 1620)

### CHANGES IN GOVERNOR'S CABINET

The post of Secretary of Finance in the Governor's cabinet was abolished and the Secretary of Administration was named the Secretary of Administration and Finance. The Department of Corrections and the Parole Board were removed as responsibilities of the Secretary of Human Affairs; the Department of Corrections was placed under the Secretary of Administration and Finance; the Parole Board was not placed under any Secretary; however, the Governor retains his prerogative to assign any state agency to any Secretary. (Senate Bill 798)

### STUDIES

COMPENSATION OF PRISONERS AND WARDS, ACCIDENTAL INJURY OR DEATH - Section 53-222.1 pertaining to compensation of prisoners and wards in certain cases for accidental injury or death, enacted in 1974, was repealed at the 1975 session. The House committee on Health, Welfare and Institutions and the Senate Committee on Rehabilitation and Social Services were directed to study and develop an inmate injury and death benefit program. No date was designated for completion of the study or submission of a report. (Senate Bill 946)

CORRECTIONAL INSTITUTIONS IN CHESAPEAKE - The Department of Corrections was requested to make a reasonable effort to solicit the recommendations and advice of the Chesapeake City Council with respect to correctional institutions in that city. Chesapeake City Council may serve as an advisory committee. (House Joint Resolution 236).

GROUP FOSTER HOMES FOR JUVENILES - By means of a resolution based on the statement that neither juvenile institutions nor foster homes can always meet the needs of pre-delinquents and "first offense" delinquents, a Joint subcommittee of the House Committee on Health, Welfare and Institutions and the Senate Committee on Rehabilitation and Social Services was directed to study the need for and the financing of group foster homes for juveniles. Five members of the legislature are to serve, along with six citizens. No date was designated for submission of a report. (House Joint Resolution 231)

CRIME COMMISSION STUDIES - The Crime Commission was directed to study sentencing procedures, jury sentencing, bifurcated trials, and indeterminate sentencing, with a report to be made by November 1, 1976 (House Joint Resolution 211). The Crime Commission also was directed to conduct a study, in consultation with the Virginia Advisory Legislative Council's committees on Services to Youthful Offenders and on Probation and Parole, on sentencing laws and practices, indeterminate sentencing, and judge v. jury sentencing, with a report due September 1, 1976. (Senate Joint Resolution 118)

SPEEDY TRIALS - The Commission on Speedy Trials in Criminal Cases, to be composed of seven legislators and seven gubernatorial appointees was created. A report is due November 1, 1975. (Senate Joint Resolution 124)

LORTON REFORMATORY - The Commission on the Acquisition of Lorton Reformatory was created. Seven legislators, the Chairman of the Board of Supervisors of Fairfax County, and five citizens appointed by the Governor will serve on the Commission. The Governor was designated an ex officio member. (Senate Joint Resolution 103)

DRUG AND ALCOHOL ABUSE - The Virginia Advisory Legislative Council was directed to continue its study on the feasibility of combining all drug and alcohol abuse programs into one state agency. A report is due December 1, 1975. (Senate Joint Resolution 111)

NEEDS OF YOUNG CHILDREN - The Virginia Advisory Legislative Council was directed to continue its study on the needs of young children. A report is due October 1, 1975. (House Joint Resolution 192).

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