

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact §§ 53.1-40.10, 53.1-68, and 53.1-133.03 of the Code of Virginia, relating
2 to behavioral health services; exchange of medical and mental health information and records;
3 correctional facilities.

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

5 **1. That §§ 53.1-40.10, 53.1-68, and 53.1-133.03 of the Code of Virginia are amended and reenacted**
6 **as follows:**

7 **§ 53.1-40.10. Exchange of medical and mental health information and records.**

8 A. Whenever a person is committed to a state correctional facility, the following shall be entitled
9 to obtain medical and mental health information and records concerning such person from a health care
10 provider, even when such person does not provide consent or consent is not readily obtainable:

11 1. The person in charge of the facility, or his designee shall be entitled to obtain medical records
12 concerning such person from a health care provider. In addition, medical and mental health information
13 and records of any person committed to the Department of Corrections may be exchanged among the
14 following:

15 1. Administrative personnel for the facility in which the prisoner is imprisoned when there is
16 reasonable cause to believe that such information is necessary to maintain the security and safety of the
17 facility, its employees, or other prisoners. The information exchanged shall continue to be confidential
18 and disclosure shall be limited to that necessary to ensure the safety and security of the facility, when
19 such information and records are necessary (i) for the provision of health care to the person committed,
20 (ii) to protect the health and safety of the person committed or other residents or staff of the facility, or
21 (iii) to maintain the security and safety of the facility. Such information and records may be exchanged
22 among administrative personnel for the facility in which the person is imprisoned as necessary to
23 maintain the security and safety of the facility, its employees, or other prisoners. The information
24 exchanged shall continue to be confidential and disclosure shall be limited to that necessary to ensure
25 the security and safety of the facility.

26 2. Members of the Parole Board, as specified in § 53.1-138, in order to conduct the investigation
27 required under § 53.1-155.

28 3. Probation and parole officers for use in parole and probation planning, release and
29 supervision.

30 4. Officials within the Department for the purpose of formulating recommendations for treatment
31 and rehabilitative programs; classification, security and work assignments; and determining the
32 necessity for medical, dental and mental health care, treatment and programs.

33 5. Medical and mental health hospitals and facilities, both public and private, including
34 community-~~service~~ services boards, for use in planning for and supervision of post-incarceration medical
35 and mental health care, treatment, and programs.

36 6. The Department for Aging and Rehabilitative Services, the Department of Social Services, and
37 any local department of social services in the Commonwealth for the purposes of reentry planning and
38 post-incarceration placement and services.

39 B. Substance abuse records subject to federal regulations, Confidentiality of Alcohol and Drug
40 Abuse Patient Records, 42 C.F.R. § 2.11 et seq., shall not be subject to the provisions of this section.
41 The disclosure of results of a test for human immunodeficiency virus shall not be permitted except as
42 provided in § 32.1-36.1.

43 C. The release of medical and mental health information and records to any other agency or
44 individual shall be subject to all regulations promulgated by the Department-~~which that~~ govern
45 confidentiality of such records. Medical and mental health information concerning a prisoner-~~which that~~
46 has been exchanged pursuant to this section may be used only as provided herein and shall otherwise
47 remain confidential and protected from disclosure.

48 **§ 53.1-68. Minimum standards for local correctional facilities and lock-ups; health**
49 **inspections, behavioral health services inspections, and personnel.**

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

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

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

68 C. The Board shall establish minimum standards for behavioral health services in local
69 correctional facilities and procedures for enforcing such minimum standards, with the advice of and
70 guidance from the Commissioner of Behavioral Health and Developmental Services and the State
71 Inspector General. Such standards shall include forensic discharge planning services and regulations
72 directing the sharing of medical and mental health information and records in accordance with § 53.1-
73 133.03.

74 Such standards shall include procedures for the conduct of at least one unannounced annual
75 inspection of each local correctional facility by the Board or its agents to determine compliance with the
76 standards for behavioral health services established pursuant to this subsection and such other
77 announced or unannounced inspections as the Board may deem necessary to ensure compliance with the
78 standards for behavioral health services established pursuant to this subsection.

79 Such standards shall also include a procedure by which a community services board that
80 provides behavioral health services in the local correctional facility may bill the sheriff or superintendent
81 for the provision of such services and by which the sheriff or superintendent shall pay for such
82 behavioral health services if provided by the community services board in accordance with § 53.1-126.

83 As used in this subsection, "forensic discharge planning services" means the (i) screening and
84 assessment of psychiatric, medical, social services, employment, and residential needs, as well as risk
85 factors, upon entry into a local correctional facility for all incarcerated persons; (ii) provision of
86 appropriate behavioral health services to incarcerated persons to reflect the assessed needs of such
87 person; (iii) development of a discharge plan for those persons who have been assessed as requiring
88 behavioral health services that will provide such person with a continuum of care after being released
89 from the local correctional facility; and (iv) coordination of care with community providers and
90 community supervision agencies as provided by the discharge plan for those persons who have been
91 assessed as needing behavioral health services when released from incarceration, including the exchange
92 of treatment records, communication of treatment needs, and linkage of those recently released persons
93 with a local community services board or other available services and support options. Forensic
94 discharge planning services shall begin as soon as possible upon entry into the local correctional facility
95 and shall continue after a person has been released from incarceration for a period of 30 days or until the
96 individual has started to receive appropriate services and support by a provider identified in the
97 discharge plan, whichever is sooner. A discharge plan for those offenders who have been assessed as
98 requiring behavioral health services shall be developed as soon as possible after a person has been
99 assessed.

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

105 ~~D-E.~~ The superintendent of a regional jail or jail farm shall establish minimum performance
106 standards and management practices to govern the employees for whom the superintendent is
107 responsible.

108 **§ 53.1-133.03. Exchange of medical and mental health information and records.**

109 ~~Notwithstanding any other provision of law relating to disclosure and confidentiality of patient~~
110 ~~records maintained by a health care provider, whenever~~ A. Whenever a person is committed to a local or
111 regional correctional facility, the following shall be entitled to obtain medical and mental health
112 information and records concerning such person from a health care provider, even when such person
113 does not provide consent or consent is not readily obtainable:

114 1. The person in charge of the facility, or his designee ~~shall be entitled to obtain medical records~~
115 ~~concerning such person from a health care provider. In addition, medical and mental health information~~
116 ~~and records of any person committed to jail, and transferred to another correctional facility, may be~~
117 ~~exchanged among the following:~~

118 ~~1. Administrative personnel of the correctional facilities involved and of the administrative~~
119 ~~personnel within the holding facility when there is reasonable cause to believe that such information is~~
120 ~~necessary to maintain the security and safety of the holding facility, its employees, or prisoners. The~~
121 ~~information exchanged shall continue to be confidential and disclosure shall be limited to that necessary~~
122 ~~to ensure the safety and security of the facility, when such information and records are necessary (i) for~~
123 ~~the provision of health care to the person committed, (ii) to protect the health and safety of the person~~
124 ~~committed or other residents or staff of the facility, or (iii) to maintain the security and safety of the~~
125 ~~facility. Such information and records of any person committed to jail and transferred to another~~
126 ~~correctional facility may be exchanged among administrative personnel of the correctional facilities~~
127 ~~involved and of the administrative personnel within the holding facility when there is reasonable cause~~
128 ~~to believe that such information is necessary to maintain the security and safety of the holding facility,~~
129 ~~its employees, or prisoners. The information exchanged shall continue to be confidential and disclosure~~
130 ~~shall be limited to that necessary to ensure the security and safety of the facility.~~

