CHAPTER 12-59
PAROLE

12-59-01. State parole board - Membership.

The state parole board consists of six members, who must be qualified electors of the state, appointed by the governor for terms of three years, arranged so that the terms of two members must expire on December thirty-first of each year. One of the members must be a person experienced in law enforcement, which may include experience as a prosecuting attorney, one must be a licensed attorney, and four must be persons qualified by special experience, education, or training. The governor may only remove a member of the parole board for disability, inefficiency, neglect of duty, or malfeasance in office.

12-59-02. Meetings - Compensation - Rules.

The governor shall appoint a member of the parole board to be chairman. The chairman of the parole board shall designate three members of the parole board for each meeting of the parole board. Meetings of the parole board must be held in accordance with rules established by the parole board and must be held as often as required to properly conduct the business of the board, but in any event not less than six times per year. The parole board may only take action upon the concurrence of at least two members who participated in the same meeting. The final decision of at least two parole board members who participated in the same parole board meeting constitutes the decision of the parole board. Members are entitled to be compensated at the rate of seventy-five dollars per day for each day actually and necessarily spent in the performance of their duties as board members plus the same mileage and expenses as are authorized for state officials and employees. The director of the department of corrections and rehabilitation or the director's designee is the clerk for the parole board.

12-59-03. Supplies - Regulations governing parole.

The board shall formulate rules and regulations governing the manner in which inmates may become eligible for discharge on parole.

12-59-04. Parole records - Inspection.

All parole records of the department of corrections and rehabilitation obtained in the discharge of official duty by any member of the parole board or employee of a division or department of the department of corrections and rehabilitation on behalf of the parole board may not be disclosed except in the manner provided under section 12-47-36. The decisions of the parole board to grant or deny parole are open records.

12-59-05. Consideration by board.

Every inmate's eligibility for parole must be reviewed in accordance with the rules adopted by the parole board. The board shall consider all pertinent information regarding each inmate, including the circumstances of the offense, the presentence report, the inmate's family, educational, and social history and criminal record, the inmate's conduct, employment, participation in education and treatment programs while in the custody of the department of corrections and rehabilitation, and the inmate's medical and psychological records.

12-59-06. General powers of board.

The board may issue process requiring the presence of any person or officer before it, with or without books and papers, in any matters pending before said board. If any such person or officer disobeys the order of the board, the chairman, or acting chairman, of such board may apply to any judge of the district court for an order requiring the attendance of such person or officer, with or without books and papers described in the process. The failure of any such person or officer to comply with such order of the district court shall be held to be a contempt of court and shall be punishable accordingly. Any member of the board, the parole officer, or anyone appointed by the board to secure information for said board shall have the power to examine witnesses and records and to administer oaths to witnesses. The board may employ

psychiatrists or specialists for mental or medical examination of applicants and may take such reasonable steps as it may deem necessary for proper determination of any matters before it.

12-59-07. Requirements precedent to parole.

The parole board may grant parole to an inmate if the board is convinced the inmate will conform to the terms and conditions of parole the board or the department of corrections and rehabilitation may establish for the inmate. The department of corrections and rehabilitation may establish intermediate conditions of parole, including incarceration for a period of seventy-two hours and restitution, subject to the subsequent approval of the parole board.

12-59-08. Medical paroles.

If an inmate, including an inmate whose sentence is subject to sections 12.1-32-02.1 and 12.1-32-09.1, and an inmate sentenced under subsection 1 of section 12.1-32-01, has a serious or terminal medical condition, the parole board may grant the inmate a medical parole. An inmate who receives a medical parole remains under the jurisdiction of the parole board until the expiration of the maximum term or terms of imprisonment for which the inmate was sentenced, less any sentence reduction the inmate has received.

12-59-09. Inmates subject to jurisdiction of parole board.

All inmates sentenced to the legal and physical custody of the department of corrections and rehabilitation are subject to the jurisdiction of the parole board, except when parole for the inmate is prohibited by statute.

12-59-10. Notice of parole review.

The department of corrections and rehabilitation shall provide written notice to the district court and state's attorney's office in the county or counties where judgment of conviction was entered against the inmate when the parole board is reviewing whether an inmate may be released on parole. The notice must include the name of the inmate, and docket number of the criminal judgment, and the date and place for the parole board's meeting to review whether an inmate may be released on parole.

12-59-11. Posting of notice of application in certain cases.

Repealed by S.L. 1973, ch. 116, § 41.

12-59-12. Board may reconsider action.

The board may reconsider its action in granting a parole to any convict at any time before such convict has been released and finally discharged from the penitentiary. Such action may be taken on the board's own motion or on the petition of interested parties.

12-59-13. Indeterminate sentence - Release of prisoner to parole.

Repealed by S.L. 1973, ch. 116, § 41.

12-59-13.1. Indeterminate sentence - Board to determine maximum sentence.

Repealed by S.L. 1973, ch. 116, § 41.

12-59-14. Psychiatric evaluation - Transfer to state hospital.

The parole board may cause any person who has been paroled under the provisions of this chapter to be given psychiatric evaluation or to be transferred to the state hospital for diagnosis and disposition according to such conditions as may be prescribed by the board.

12-59-15. Breach of parole - Hearings - Order of recommitment.

1. When it is alleged that a parolee has violated any of the terms or conditions of parole established by the parole board or by the department of corrections and rehabilitation, the director of the department of corrections and rehabilitation may issue a warrant for the arrest of the parolee.

2. Upon issuance of a warrant of arrest for a parole violation, the running of the time period of parole must be suspended until the parole board issues a final order under this section. The parolee is entitled to credit for time spent in physical custody from the time of arrest until the time the parole board issues a final order.
3. The parolee is entitled to a preliminary hearing, as promptly as is convenient after the arrest and reasonably near the place of the alleged violation or arrest, to determine whether there is probable cause to find that the parolee violated any of the terms and conditions of parole established by the board or by the department of corrections and rehabilitation.
4. The preliminary hearing must be conducted before the director of the department of corrections and rehabilitation or other hearing officer authorized by the director. The preliminary hearing must be conducted by a disinterested hearing officer not directly involved in the supervision of the parolee or by the person bringing the allegation of a parole violation.
5. If the hearing officer determines there is probable cause to find that the parolee has violated any of the terms and conditions of parole established by the board or by the department of corrections and rehabilitation, the board may redetermine the time remaining in the period of parole to reflect any portion of the period during which the parolee was not under supervision or not in the custody of law enforcement personnel in the state.
6. If the hearing officer determines there is probable cause to find that the parolee has violated any of the terms and conditions of parole established by the board or by the department of corrections and rehabilitation, the parolee must be returned to the physical custody of the department of corrections and rehabilitation, transferred to another correctional facility or the state hospital, or released from actual custody pursuant to such terms and conditions as may be established by the parole board or the department of corrections and rehabilitation, pending a final revocation hearing before the parole board. If the board determines at the final revocation hearing that the parolee has violated any of the terms and conditions of parole established by the board or by the department of corrections and rehabilitation, it may order that the parolee be recommitted to the physical custody of the department of corrections and rehabilitation to serve all or part of the remaining time of the sentence that has not been served in custody.
7. At any hearing pursuant to this section a record must be made and the parolee shall have:
   a. Written notice of the purpose of the hearing and the alleged violations.
   b. The opportunity to be heard in person and present witnesses and documentary evidence.
   c. The opportunity to confront and cross-examine adverse witnesses, unless the hearing officer determines that confrontation would create a risk of harm to the witness.
   d. A written statement as to the reasons for the decision.
8. When the board determines the parolee has absconded from supervision, the board may order the parolee to pay the costs of being returned to the board. Moneys recovered under this subsection must be remitted to the department of corrections and rehabilitation.

12-59-16. Execution of order of recommitment - Fees and payment thereof.

Repealed by S.L. 1997, ch. 116, § 10.

12-59-17. Causing parolee or probationer to violate parole or probation - Penalty.

Any person knowing that another person is on parole, or on probation, who willfully causes such parolee or probationer to violate the terms or conditions of the parolee's or probationer's parole or probation is guilty of a class A misdemeanor.

12-59-18. Orders not reviewable - Exception.

Orders of the board are not reviewable except as to compliance with the terms of this chapter or subsection 3 or 4 of section 12.1-32-02.

12-59-19. Reports of board and governor.

Repealed by S.L. 1977, ch. 116, § 9.

12-59-20. Probation and parole officers as peace officers.

1. Probation and parole officers have the power of a peace officer:
   a. For the purpose of enforcing probation and parole laws; and
   b. To enforce the law, conduct investigations, and make arrests for violations of the law on or within any premises under the control of the department of corrections and rehabilitation.
2. Probation and parole officers shall provide assistance to and receive assistance from other law enforcement officers in securing and jailing probation and parole violators and other offenders and in preventing and controlling of criminal activity.
3. Probation and parole officers may supervise sexually dangerous individuals released to community placement on an outpatient basis in accordance with section 25-03.3-24.

12-59-21. Establishment and modification of parole expiration dates.

The parole board shall establish parole expiration dates in all parole cases. The parole board may not establish an initial parole expiration date that is earlier than the expiration date of the parolee's court-imposed sentence, less sentence reduction received under chapter 12-54.1. The length of the period of parole may not be extended more than five years for a felony and two years for a misdemeanor beyond the date that the court-imposed sentence would have otherwise expired had parole not been granted. The parole board may allow a parolee to earn performance-based parole reduction at the rate of up to five days per month in accordance with performance criteria established by the parole board. The board may terminate a parolee's supervision at any time earlier than the established date of release from parole if the parole board determines that early termination of supervision is warranted and termination of supervision is in the interest of justice. The parole board may not terminate supervision for a parolee who has a life sentence with opportunity for parole earlier than five years from the established date of release on parole.

12-59-22. Twenty-four seven sobriety program.

The parole board may authorize participation in the twenty-four seven sobriety program as an intermediate sanction or condition of parole.