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SENATE BILL NO. 834

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Rehabilitation and Social Services
on February 2, 2007)

(Patrons Prior to Substitute—Senators Devolites Davis and Marsh [SB 1287])

A BILL to amend and reenact §§ 19.2-295.1 and 53.1-202.2 of the Code of Virginia and to amend the Code of Virginia by adding in Article 4 of Chapter 6 of Title 53.1 a section numbered 53.1-202.5, relating to earned sentence credits for rehabilitative programs.

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-295.1 and 53.1-202.2 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 4 of Chapter 6 of Title 53.1 a section numbered 53.1-202.5 as follows:

§ 19.2-295.1. Sentencing proceeding by the jury after conviction.

In cases of trial by jury, upon a finding that the defendant is guilty of a felony or a Class 1 misdemeanor, or upon a finding in the trial de novo of an appealed misdemeanor conviction that the defendant is guilty of a Class 1 misdemeanor, a separate proceeding limited to the ascertainment of punishment shall be held as soon as practicable before the same jury. At such proceeding, the Commonwealth shall present the defendant's prior criminal convictions by certified, attested or exemplified copies of the record of conviction, including adult convictions and juvenile convictions and adjudications of delinquency. Prior convictions shall include convictions and adjudications of delinquency under the laws of any state, the District of Columbia, the United States or its territories. The Commonwealth shall provide to the defendant fourteen days prior to trial notice of its intention to introduce evidence of the defendant's prior criminal convictions. Such notice shall include (i) the date of each prior conviction, (ii) the name and jurisdiction of the court where each prior conviction was had, and (iii) each offense of which he was convicted. Prior to commencement of the trial, the Commonwealth shall provide to the defendant photocopies of certified copies of the defendant's prior criminal convictions which it intends to introduce at sentencing. After the Commonwealth has introduced such evidence of prior convictions, or if no such evidence is introduced, the defendant may introduce relevant, admissible evidence related to punishment. Nothing in this section shall prevent the Commonwealth or the defendant from introducing relevant, admissible evidence in rebuttal.

The court shall instruct the jury that the defendant may be eligible for sentence credits pursuant to § 53.1-202.5 in any case to which such credits may apply.

If the jury cannot agree on a punishment and if the defendant, the attorney for the Commonwealth, and the court agree, in the manner provided in § 19.2-257, then the court shall fix punishment.

If the sentence imposed pursuant to this section is subsequently set aside or found invalid solely due to an error in the sentencing proceeding, the court shall impanel a different jury to ascertain punishment, unless the defendant, the attorney for the Commonwealth and the court agree, in the manner provided in § 19.2-257, that the court shall fix punishment.

§ 53.1-202.2. Eligibility for earned sentence credits.

Every person who is convicted of a felony offense committed on or after January 1, 1995, and who is sentenced to serve a term of incarceration in a state or local correctional facility shall be eligible to earn sentence credits in the manner prescribed by this article. Such eligibility shall commence upon the person's incarceration in any correctional facility following entry of a final order of conviction by the committing court. As used in this chapter, "sentence credit" and "earned sentence credit" mean deductions from a person's term of confinement earned through adherence to rules prescribed pursuant to § 53.1-25, through program participation as required by §§ 53.1-32.1 and 53.1-202.3, and 53.1-202.5, and by meeting such other requirements as may be established by law or regulation. One earned sentence credit shall equal a deduction of one day from a person's term of incarceration.

§ 53.1-202.5. *Rate at which sentence credits may be earned for rehabilitative programs; prerequisites.*

Every person who is convicted of a felony offense committed on or after January 1, 1995, that is not a violent felony as defined in § 17.1-805, and who is sentenced to serve a term of incarceration in a state or local correctional facility, may be eligible to earn five additional sentence credits for each 30 days of participation in a rehabilitative program. The earning of these sentence credits shall be conditioned upon full and satisfactory participation in programs to obtain a high school diploma or equivalent certification, college credit, or certification through an accredited vocational training program or other accredited continuing education program. Credit shall be based upon completion of mental health or substance abuse treatment programs deemed appropriate for this credit by the Director. Qualified individuals who conduct or teach said programs without other compensation also

60 *shall be eligible for such credits.*

61 *Credit that has not been earned may not later be granted. Credit for the last year or portion of a*
62 *year of the term of imprisonment shall be prorated and credited within the last six weeks of the*
63 *sentence. Credit awarded under this section shall vest once yearly at such person's annual review, or*
64 *upon full completion of the treatment program, and credit may be denied based on removal from any*
65 *program for noncompliance with program requirements or institutional rules.*

66 *Exemptions to the general educational development requirement may be made as deemed appropriate*
67 *based on the determination and recommendation of Department of Correctional Education personnel.*

68 *Notwithstanding any other provision of law, no portion of any sentence credits earned shall be*
69 *applied to reduce the period of time a person is required to serve before becoming eligible for parole*
70 *upon any sentence.*