

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact § 53.1-202.3 of the Code of Virginia, relating to Department of Corrections; earned sentence credits.

[H 5148]

Approved

Be it enacted by the General Assembly of Virginia:

1. That § 53.1-202.3 of the Code of Virginia is amended and reenacted as follows:

§ 53.1-202.3. Rate at which sentence credits may be earned; prerequisites.

A. A maximum of ~~four~~ and one-half 4.5 sentence credits may be earned for each 30 days served on a sentence for:

1. A Class 1 felony;
2. Solicitation to commit murder under § 18.2-29 or any violation of § 18.2-32, 18.2-32.1, 18.2-32.2, or 18.2-33;
3. Any violation of § 18.2-40 or 18.2-45;
4. Any violation of subsection A of § 18.2-46.5, of subsection D of § 18.2-46.5 if the death of any person results from providing any material support, or of subsection A of § 18.2-46.6;
5. Any kidnapping or abduction felony under Article 3 (§ 18.2-47 et seq.) of Chapter 4 of Title 18.2;
6. Any malicious felonious assault or malicious bodily wounding under Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2, any violation of § 18.2-51.6 or 18.2-51.7, or any felony violation of § 18.2-57.2;
7. Any felony violation of § 18.2-60.3;
8. Any felony violation of § 16.1-253.2 or 18.2-60.4;
9. Robbery under § 18.2-58 or carjacking under § 18.2-58.1;
10. Criminal sexual assault punishable as a felony under Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2;
11. Any violation of § 18.2-90;
12. Any violation of § 18.2-289 or subsection A of § 18.2-300;
13. Any felony offense in Article 3 (§ 18.2-346 et seq.) of Chapter 8 of Title 18.2;
14. Any felony offense in Article 4 (§ 18.2-362 et seq.) of Chapter 8 of Title 18.2, except for a violation of § 18.2-362 or subsection B of § 18.2-371.1;
15. Any felony offense in Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2, except for a violation of subsection A of § 18.2-374.1:1;
16. Any violation of subsection F of § 3.2-6570, any felony violation of § 18.2-128, or any violation of § 18.2-481, 37.2-917, 37.2-918, 40.1-100.2, or 40.1-103; or
17. A second or subsequent violation of the following offenses, in any combination, when such offenses were not part of a common act, transaction, or scheme and such person has been at liberty as defined in § 53.1-151 between each conviction:
 - a. Any felony violation of § 3.2-6571;
 - b. Voluntary manslaughter under Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2;
 - c. Any violation of § 18.2-41 or felony violation of § 18.2-42.1;
 - d. Any violation of subsection B, C, or D of § 18.2-46.5 or § 18.2-46.7;
 - e. Any violation of § 18.2-51 when done unlawfully but not maliciously, § 18.2-51.1 when done unlawfully but not maliciously, or § 18.2-54.1 or 18.2-54.2;
 - f. Arson in violation of § 18.2-77 when the structure burned was occupied or a Class 3 felony violation of § 18.2-79;
 - g. Any violation of § 18.2-89 or 18.2-92;
 - h. Any violation of subsection A of § 18.2-374.1:1;
 - i. Any violation of § 18.2-423, 18.2-423.01, 18.2-423.1, 18.2-423.2, or 18.2-433.2; or
 - j. Any violation of subdivision E 2 of § 40.1-29.

The earning of sentence credits shall be conditioned, in part, upon full participation in and cooperation with programs to which a person is assigned pursuant to § 53.1-32.1.

B. For any offense other than those enumerated in subsection A for which sentence credits may be earned, earned sentence credits shall be awarded and calculated using the following four-level classification system:

1. Level I. For persons receiving Level I sentence credits, 15 days shall be deducted from the person's sentence for every 30 days served. Level I sentence credits shall be awarded to persons who

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HB5148ER

57 participate in and cooperate with all programs to which the person is assigned pursuant to § 53.1-32.1
 58 and who have no more than one minor correctional infraction and no serious correctional infractions as
 59 established by the Department's policies or procedures.

60 2. Level II. For persons receiving Level II sentence credits, 7.5 days shall be deducted from the
 61 person's sentence for every 30 days served. Level II sentence credits shall be awarded to persons who
 62 participate in and cooperate with all programs, job assignments, and educational curriculums to which
 63 the person is assigned pursuant to § 53.1-32.1, but who require improvement in not more than one area
 64 as established by the Department's policies or procedures.

65 3. Level III. For persons receiving Level III sentence credits, 3.5 days shall be deducted from the
 66 person's sentence for every 30 days served. Level III sentence credits shall be awarded to persons who
 67 participate in and cooperate with all programs, job assignments, and educational curriculums to which
 68 the person is assigned pursuant to § 53.1-32.1, but who require significant improvement in two or more
 69 areas as established by the Department's policies or procedures.

70 4. Level IV. No sentence credits shall be awarded to persons classified in Level IV. A person will be
 71 classified in Level IV if that person willfully fails to participate in or cooperate with all programs, job
 72 assignments, and educational curriculums to which the person is assigned pursuant to § 53.1-32.1 or
 73 that person causes substantial security or operational problems at the correctional facility as established
 74 by the Department's policies or procedures.

75 C. A person's classification level under subsection B shall be reviewed at least once annually, and
 76 the classification level may be adjusted based upon that person's participation in and cooperation with
 77 programs, job assignments, and educational curriculums assigned pursuant to § 53.1-32.1. A person's
 78 classification and calculation of earned sentence credits shall not be lowered or withheld due to a lack
 79 of programming, educational, or employment opportunities at the correctional facility at which the
 80 person is confined. Records from this review, including an explanation of the reasons why a person's
 81 classification level was or was not adjusted, shall be maintained in the person's correctional file.

82 D. A person's classification level under subsection B may be immediately reviewed and adjusted
 83 following removal from a program, job assignment, or educational curriculum that was assigned
 84 pursuant to § 53.1-32.1 for disciplinary or noncompliance reasons.

85 E. A person may appeal a reclassification determination under subsection C or D in the manner set
 86 forth in the grievance procedure established by the Director pursuant to his powers and duties as set
 87 forth in § 53.1-10.

88 F. For a juvenile sentenced to serve a portion of his sentence as a serious juvenile offender under
 89 § 16.1-285.1, consideration for earning sentence credits shall be conditioned, in part, upon full
 90 participation in and cooperation with programs afforded to the juvenile during that portion of the
 91 sentence. The Department of Juvenile Justice shall provide a report that describes the juvenile's
 92 adherence to the facility's rules and the juvenile's progress toward treatment goals and objectives while
 93 sentenced as a serious juvenile offender under § 16.1-285.1.

94 G. Notwithstanding any other provision of law, no portion of any sentence credits earned shall be
 95 applied to reduce the period of time a person must serve before becoming eligible for parole upon any
 96 sentence.

97 2. That the Department of Corrections (the Department) shall convene a work group to study the
 98 impact of the sentence credit amendments set forth in this act. The work group shall include
 99 representatives of the Senate Committee on Finance and Appropriations, the House Committee on
 100 Appropriations, the Virginia State Crime Commission, and any other stakeholders the Department
 101 deems appropriate. The Division of Legislative Services shall provide staff support to the work
 102 group. The Department shall report to the Governor and the General Assembly by July 1, 2021,
 103 the membership of the work group and the work group's plan for conducting such study,
 104 including any data and information upon which the work group will rely in conducting such
 105 study, and shall report its finding and conclusions to the Governor and the General Assembly by
 106 December 1, 2022. The report shall include (i) the state fiscal impact of the sentence credit
 107 amendments, including any cost savings realized by reducing the length of time spent by persons
 108 in state correctional facilities; (ii) the number of persons affected by the sentence credit
 109 amendments and the distribution of such persons among state correctional facilities; (iii) a detailed
 110 six-year plan describing the estimated releases by facility under this act, accounting for any
 111 persons who will be transferred from jail, as well as persons who would be otherwise released in
 112 the covered years; and (iv) any other information the Department deems relevant.

113 3. That the provisions of this act, other than the provisions of the second enactment of this act,
 114 shall become effective on January 1, 2022.

115 4. That the provisions of § 53.1-202.3 of the Code of Virginia, as amended by this act, shall apply
 116 retroactively to the entire sentence of any person who is confined in a state correctional facility
 117 and participating in the earned sentence credit system on January 1, 2022. If it is determined that,

118 upon retroactive application of the provisions of § 53.1-202.3 of the Code of Virginia, as amended
119 by this act, the release date of any such person passed prior to the effective date of this act, the
120 person shall be released upon approval of an appropriate release plan and within 60 days of such
121 determination unless otherwise mandated by court order; however, no person shall have a claim
122 for wrongful incarceration pursuant to § 8.01-195.11 of the Code of Virginia on the basis of such
123 retroactive application. If a person is released prior to completion of any reentry programs
124 deemed necessary by the Department of Corrections on the person's most recent annual review or
125 prior to completion of any programs mandated by court order, the person shall be required to
126 complete such programs under probation, provided probation is mandated by the court and
127 current community resources are sufficient to facilitate completion of the aforementioned
128 programs.

129 5. That the Department of Corrections shall ensure that educational, vocational, counseling, and
130 substance abuse programs for earning sentence credits are available at all state correctional
131 facilities.

132 6. That the Department of Corrections shall ensure that educational, vocational, counseling, and
133 substance abuse rehabilitative and reentry programs are available at all probation and parole
134 offices.

135 7. That the Department of Criminal Justice Services shall continue to administer grant funding to
136 private entities for the purpose of assisting in reentry services.