

20201159D

HOUSE BILL NO. HB 5148

FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Delegate Scott
on September 9, 2020)

(Patron Prior to Substitute—Delegate Scott)

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

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, 18.2-91, or 18.2-93;
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 or involuntary manslaughter under Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2 or any crime punishable as such;
 - 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, a Class 3 felony violation of § 18.2-79, or a violation of subsection A of § 18.2-374.1:1;
 - g. Any violation of § 18.2-89 or 18.2-92;
 - h. Any violation of § 18.2-423, 18.2-423.01, 18.2-423.1, 18.2-423.2, or 18.2-433.2; or
 - i. 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 participate in and cooperate with all programs to which the person is assigned pursuant to § 53.1-32.1

60 and who have no more than one minor correctional infraction and no serious correctional infractions.

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

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.

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.

73 C. A person's classification level under subsection B shall be reviewed at least once annually, and
74 the classification level may be adjusted based upon that person's participation in and cooperation with
75 programs, job assignments, and educational curriculums assigned pursuant to § 53.1-32.1. Records from
76 this review, including an explanation of the reasons why a person's classification level was or was not
77 adjusted, shall be maintained in the person's correctional file.

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

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

84 F. For a juvenile sentenced to serve a portion of his sentence as a serious juvenile offender under
85 § 16.1-285.1, consideration for earning sentence credits shall be conditioned, in part, upon full
86 participation in and cooperation with programs afforded to the juvenile during that portion of the
87 sentence. The Department of Juvenile Justice shall provide a report that describes the juvenile's
88 adherence to the facility's rules and the juvenile's progress toward treatment goals and objectives while
89 sentenced as a serious juvenile offender under § 16.1-285.1.

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

93 2. That the provisions of this act shall become effective on July 1, 2021.

94 3. That the provisions of § 53.1-202.3 of the Code of Virginia, as amended by this act, shall apply
95 retroactively to the entire sentence of any inmate who is confined in a state correctional facility
96 and participating in the earned sentence credit system on July 1, 2021. If it is determined that,
97 upon retroactive application of the provisions of § 53.1-202.3 of the Code of Virginia, as amended
98 by this act, the release date of any such inmate passed prior to the effective date of this act, the
99 inmate shall be released upon approval of an appropriate release plan and within 60 days of such
100 determination; however, no inmate shall have a claim for wrongful incarceration pursuant to
101 § 8.01-195.11 of the Code of Virginia on the basis of such retroactive application. If an inmate is
102 released prior to completion of any reentry programs deemed necessary by the Department of
103 Corrections on the inmate's most recent annual review or prior to completion of any programs
104 mandated by court order, the inmate shall be required to complete such programs under
105 post-release community supervision, provided that release prior to completion of any programs
106 required by the court is not strictly prohibited by the terms of the court order.

107 4. That the Department of Corrections shall ensure that similar programs for earning sentence
108 credits are available at all state correctional facilities.

109 5. That the Department of Corrections shall ensure that similar rehabilitative and reentry
110 programs are available at all probation and parole offices.

111 6. That the Department of Criminal Justice Services shall continue to administer grant funding to
112 private entities for the purpose of assisting in reentry services.

113 7. That the Department of Corrections (the Department) shall determine whether implementation
114 of this act will result in any cost savings to the Department and shall provide a report on such
115 finding to the Virginia State Crime Commission, the Chair of the House Committee on
116 Appropriations, and the Chair of the Senate Committee on Finance and Appropriations by
117 January 1, 2021.