

Department of Planning and Budget
2020 Special Session I - Fiscal Impact Statement

1. Bill Number: SB5034

House of Origin Introduced Substitute Engrossed
Second House In Committee Substitute Enrolled

2. Patron: Boysko

3. Committee: Rehabilitation and Social Services

4. Title: Release of prisoners.

5. Summary: This bill provides that any person serving a sentence imposed upon conviction for a felony offense, other than a Class 1 felony, who is terminally ill or permanently physically disabled is eligible for consideration by the Parole Board for conditional release. The bill also provides that any person serving such sentence (i) who is 65 years of age or older and has served at least five years of the sentence imposed or (ii) who is 60 years of age or older and has served at least 10 years of the sentence imposed is eligible for consideration by the Parole Board for conditional release without the need to petition the Parole Board.

This bill also changes the sentence credits certain offenders can earn. Under current law, an inmate may earn a maximum of four and one-half sentence credits for each 30 days served. This bill replaces the current system with a four-level classification system for any offender who is not serving a sentence for an act of violence as defined in subsection A of § 19.2-297.1 (Sentence of person twice previously convicted of certain violent felonies) or a felony offense in Article 4 (§ 18.2-362 et seq.) of Chapter 8 of Title 18.2 (laws that pertain to bigamy). The new system awards and calculates earned sentence credits based on an inmate's level of participation in and cooperation with all programs to which the inmate is assigned pursuant to § 53.1-32.1 (Classification system; program assignments; mandatory participation) and behavioral conduct as follows:

- Level I - 13 days would be deducted from the inmate's sentence for every 30 days served. If the inmate maintains a Level I classification beyond one year consecutively, sentence credits must be awarded as follows: (i) during the second year, 16 days must be deducted for every 30 days served; (ii) during the third year, 20 days must be deducted for every 30 days served; (iii) during the fourth year, 25 days must be deducted for every 30 days served; and (iv) during the fifth year and any consecutive year thereafter, one day must be deducted for every one day served. Level I sentence credits must be awarded to inmates who participate in and cooperate with all programs to which the inmate is assigned pursuant to § 53.1-32.1 and who have no more than one minor correctional infraction and no serious correctional infractions.
- Level II - 7.5 days would be deducted from the inmate's sentence for every 30 days served. Level II sentence credits must be awarded to inmates who participate in and

cooperate with all programs to which the inmate is assigned pursuant to § 53.1-32.1 but who require improvement in not more than one area.

- Level III - 3.5 days would be deducted from the inmate's sentence for every 30 days served. Level III sentence credits must be awarded to inmates who participate in and cooperate with all programs to which the inmate is assigned pursuant to § 53.1-32.1 but who require significant improvement in two or more areas.
- Level IV - No earned sentence credits can be awarded to any inmate who fails to participate in and cooperate with all programs to which the inmate is assigned pursuant to § 53.1-32.1 or who causes substantial security or operational problems at the correctional facility.

The bill requires that an inmate must be reevaluated and classified each year, or sooner if required by Board regulation, and that documentation of such classification, along with a calculation of the inmate's earned sentence credits, must be included in the inmate's correctional file. The bill provides that an inmate's classification and calculation of earned sentence credits will not be lowered or withheld due to a lack of programming, educational, or employment opportunities at the correctional facility at which the inmate is confined. The bill also sets reporting requirements when an inmate's classification is downgraded and allows an inmate to appeal such reclassification determinations. The bill requires that such appeals be filed and conducted in accordance with Board regulations, and provides that such regulations require appeals to be heard before a neutral and independent arbiter.

The bill sets requirements for earning credits while confined in a local or regional jail prior to conviction or sentencing, setting these at either Level I or the level the inmate was classified at when he was released from his most recent period of confinement.

The bill contains an enactment clause that provides that the new classification system applies retroactively to the entire sentence of any inmate who is confined in a state correctional facility and participating in the earned-sentence-credit system. If it is determined that, upon retroactive application of the provisions of the legislation, the release date of any such inmate passed prior to the effective date of this act, the inmate must be released upon approval of an appropriate release plan and within 60 days of such determination; however, no inmate will have a claim for wrongful incarceration on the basis of such retroactive application.

If an inmate is released prior to completion of any reentry programs deemed necessary by DOC on the inmate's most recent annual review or prior to completion of any programs mandated by court order, the inmate is required to complete such programs under post-release community supervision, provided that release prior to completion of any programs required by the court is not strictly prohibited by the terms of the court order.

6. Budget Amendment Necessary: Yes. Items 402 and 429.

7. Fiscal Impact Estimates: Preliminary. See Item 8 below.

8. Fiscal Implications: The bill defines permanently physically disabled as having a chronic or progressive medical condition caused by injury, disease, or illness that renders a person permanently and irreversibly physically disabled and such condition renders the person no longer a threat to society. The Department of Corrections (DOC) estimates that it houses an average of 18 permanently and physically disabled inmates on an annual basis. According to DOC, approximately nine would meet the age and served-time criteria established for geriatric conditional release. Therefore, DOC estimates that nine offenders would be eligible for parole consideration as permanently physically disabled. The DOC estimates that it spends between \$50,000 and \$100,000 to provide offsite medical services to inmates and pharmaceutical costs for offenders who are permanently physically disabled depending on the individual needs of the offender.

The bill defines terminally ill as having a chronic or progressive medical condition caused by injury, disease, or illness where the medical prognosis is the person's death within 12 months. DOC estimates that on average, it may have approximately 16 terminally ill inmates within an annual period. DOC reports that it spends an average of approximately \$84,000 per individual during the last 12 months of an inmate's life for offsite medical, pharmaceutical, and housing costs. In the event that release occurs with only six months of life remaining, DOC estimates that savings would be reduced to approximately \$50,000 per individual, and if the inmate is released with three months of life remaining, the approximate savings per individual is reduced to approximately \$30,000 per individual.

Although the bill increases the number of offenders who are eligible for parole, it is not possible to know how many of these may be granted parole. Any savings associated with this bill are dependent upon the number of offenders actually released from prison. Further, DOC reports that in order for offenders to be released, housing placement must be secured for them in the community before they are released. In the event that housing placement cannot be secured for an offender, the individual would remain in the care of DOC for public safety reasons, and any associated savings would not be realized.

According to the Parole Board, one additional part-time parole examiner, at an estimated cost of \$39,023 per year, would be required to review parole considerations for offenders made eligible for parole under the provisions of this bill.

The 1994 General Assembly Special Session II abolished discretionary and mandatory parole release for felony offenses committed on or after January 1, 1995. A system of earned sentence credits was established under code section 53.1-202.3 whereby felony offenses committed on or after January 1, 1995, may earn a maximum of 4.5 sentence credits for every 30 days served. Under the provisions of this bill, offenders serving sentences for an act of violence as defined in subsection A of § 19.2-297.1 (Sentence of person twice previously convicted of certain violent felonies) or a felony offense in Article 4 (§ 18.2-362 et seq.) of Chapter 8 of Title 18.2 (laws that pertain to bigamy) would continue earning sentence credits under the current system. According to DOC, as of February 28, 2020, 17,964 offenders had one or more convictions in these categories. These offenders would not be affected by this bill.

For offenders who meet the proposed eligibility requirements, this bill expands and substantially increases the earning rates by establishing a tiered system that mandates offenders earn credits based on program participation and behavioral conduct. The bill requires retroactive calculation for all state responsible offenders at the time of enactment. According to DOC, February 28, 2020, data identified 2,831 offenders that may be eligible for release in the first year under the provisions of this bill. This total includes 2,607 offenders housed in DOC facilities that would be eligible under the provisions of this bill.

DOC estimates that there are approximately 6,100 state-responsible offenders housed in jails, out of these, 224 state-responsible offenders house in local jails would be eligible under the provisions of this bill. As inmates are released from DOC facilities, the state-responsible offenders held in local jails would be moved from the jails into a DOC facility when beds become available. The Commonwealth currently pays localities \$12.00 per day for each state-responsible offender held in a jail. Therefore, the total amount paid to jails for state-responsible offenders would be reduced to the extent that, and the rate at which, offenders eligible for release as a result of this bill are moved to DOC facilities.

If 2,607 inmates were moved from local jails to DOC to fill vacancies created by this bill for a full year, the savings would be approximately \$11.4 million. Actual savings would need to be determined based on the number of inmates released from DOC facilities, the schedule of those releases, and the schedule of the transfer of state-responsible prisoners from local and regional jails to DOC facilities.

After all state-responsible inmates have been removed from local and regional jails, DOC will begin to realize savings in prison operations to the extent that the prison population is reduced. It is not possible to estimate when those savings might begin to occur until more information is known about the number of and rate at which credits will be earned by inmates and the impact these calculations along with other factors will have on the prison and jail forecast.

The 2019 Report on the Offender Population Forecast for FY 2020 through FY 2025 (2019 Offender Forecast Report) estimated that there will be 12,353 newly committed state-responsible offenders in FY 2021 and that this number would grow by less than one percent per year through FY 2024. Some of these state-responsible offenders will be held in jails. The Commonwealth would continue paying jails for housing state-responsible offenders until they are moved into a DOC facility.

Currently, the DOC spends an average of \$3,920 annually for each offender who participates in re-entry programs. These programs are offered to offenders who are within 12 months of their release date to minimize recidivism rates and to enhance public safety before offenders return to their community. The DOC expects these costs for re-entry services to increase as the number of offenders who are to be released grows. DOC will need to adjust its programmatic policies to provide the required reentry services to include release plans for each prisoner. For those offenders who were released prior to completion of reentry programs and would be required to complete such programs under post-release community supervision, DOC will need to assess the cost of providing those services based on the

changes required to delivery services in the community post-release and the number of offenders who will have to complete those programs. DOC believes it will need to contract with local service providers, including substance abuse and mental health providers to provide those services. The cost of those services cannot be determined at this time.

Additionally, the agency expects that once released, these offenders would be supervised by probation and parole officers, resulting in additional need for resources to expand reentry services and programs in various probation and parole districts. Currently, the type of supervision is categorized by distinct levels of supervision that correspond with an offender's treatment plan. At a ratio of 70 offenders for each supervising officer, the agency would need to hire and train an additional 40 probation/parole (P&P) officers to supervise the 2,831 offenders who likely would be released in the first year of the program. The actual number of P&P officers needed depends on the level of supervision released offenders require. In addition, the agency would need to hire and train additional release planning coordinator positions, mental health and substance abuse services staff for community release, sex offender screening staff, and additional staff to compute sentence credits for release purposes. DOC estimates that these new positions would cost approximately \$5.4 million each year. Capital funding also may be needed for additional P&P office space, depending on the number of probation and parole officers hired.

Prisoners who were incarcerated for sexually violent offenses and eligible for parole under the bill could be subject to the Civil Commitment of Sexually Violent Predators (SVP) Act (§ 37.2-900 et seq.). The SVP Act applies to prisoners in the DOC who are incarcerated for sexually violent offenses who are nearing their release date. According to the Department of Behavioral Health and Developmental Services (DBHDS), although the number of sex-offenders who would be eligible for parole is not known at this time, it could affect the SVP population if sex-offenders are transferred to civil commitments at faster rates than they are under current law. This would have an impact on the costs of operating these facilities; however, the immediate impact cannot be determined at this time.

This bill will require changes to the Virginia Corrections Information System (VACORIS), which DOC uses to track offender data including time served and sentence credits earned. DOC estimates that it would cost \$1.0 million to modify VACORIS to incorporate the new sentence credit tiers and that two additional Information Technology (IT) specialists, at a cost of \$215,902 annually, would be required to manage the vendor-change process. According to DOC, the process to make the required changes may take up to two years to analyze, develop, and test. This timeline conflicts with the provisions of the bill, which would require implementation as soon the bill became law.

Because most of these offenders are subject to supervision after release, if they violate the terms and conditions of their supervision they would temporarily be held in local jails.

According to the 2019 Offender Population Forecast Report, 2,394 offenders are expected to be re-incarcerated as technical probation violators in FY 2021. On average, the group of inmates is approximately 6 percent of the adult state-responsible offender population. However, the impact that re-incarcerating violators may have on local correctional facilities

would be offset by the number of state-responsible offenders that would be transferred to DOC for re-entry services before release. If re-incarceration numbers were to increase, it would erode the savings estimated above from jail per diems.

The Commonwealth currently pays localities \$4.00 a day for each local-responsible prisoner held in a jail and \$12.00 a day for each state-responsible prisoner. It also funds a considerable portion of the jails' operating costs, e.g. correctional officers. The state's share of these costs on a per prisoner, per day basis varies from locality to locality. According to the Compensation Board's most recent Jail Cost Report (November 2019), the estimated total state support for local jails averaged \$34.07 per inmate, per day in FY 2018.

9. Specific Agency or Political Subdivisions Affected: Department of Corrections; Local Correctional facilities, Virginia Parole Board, Compensation Board, Department of Behavioral Health and Developmental Services, Courts

10. Technical Amendment Necessary: None

11. Other Comments: The DOC estimates that, due to the complexity in changes required in time computation and the volume of potential offender cases to review, it would need two years to implement this legislation.

Additionally, Chapter 1289, 2020 Acts of Assembly, contains the following language in Item 429, relating to conditional geriatric release:

Notwithstanding the provisions of § 53.1-40.01, Code of Virginia, the Parole Board shall annually consider for conditional release those inmates who meet the criteria for conditional geriatric release set out in § 53.1-40.01, Code of Virginia, except that upon any such review the Board may schedule the next review as many as three years thereafter. If any such inmate is also eligible for discretionary parole under the provisions of § 53.1-151 et seq., Code of Virginia, the board shall not be required to consider that inmate for conditional geriatric release unless the inmate petitions the board for conditional geriatric release.