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HOUSE BILL NO. 549

Offered January 12, 2022

Prefiled January 11, 2022

A BILL to amend and reenact § 53.1-202.3 of the Code of Virginia, as it shall become effective, relating to Department of Corrections; earned sentence credits; robbery.

Patrons—Scott, D.L. and Simon

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 53.1-202.3, as it shall become effective, of the Code of Virginia is amended and reenacted as follows:

§ 53.1-202.3. (Effective July 1, 2022) Rate at which sentence credits may be earned; prerequisites.

A. A maximum of 4.5 sentence credits may be earned for each 30 days served on a sentence for a conviction for any offense of:

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 *subdivision B 1* of § 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.

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

62 1. Level I. For persons receiving Level I sentence credits, 15 days shall be deducted from the
63 person's sentence for every 30 days served. Level I sentence credits shall be awarded to persons who
64 participate in and cooperate with all programs to which the person is assigned pursuant to § 53.1-32.1
65 and who have no more than one minor correctional infraction and no serious correctional infractions as
66 established by the Department's policies or procedures.

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

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

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

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

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

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

95 F. For a juvenile sentenced to serve a portion of his sentence as a serious juvenile offender under
96 § 16.1-285.1, consideration for earning sentence credits shall be conditioned, in part, upon full
97 participation in and cooperation with programs afforded to the juvenile during that portion of the
98 sentence. The Department of Juvenile Justice shall provide a report that describes the juvenile's
99 adherence to the facility's rules and the juvenile's progress toward treatment goals and objectives while
100 sentenced as a serious juvenile offender under § 16.1-285.1.

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

104 2. That the provisions of § 53.1-202.3 of the Code of Virginia, as amended by this act, shall apply
105 retroactively to the entire sentence of any person who is confined in a state correctional facility
106 and participating in the earned sentence credit system on July 1, 2022, who was (i) convicted of
107 robbery under § 18.2-58 of the Code of Virginia, as it was in effect prior to July 1, 2021, provided
108 that such person, during the commission of such robbery, did not cause serious bodily injury to or
109 the death of another person or (ii) convicted of robbery under subdivision B 2, 3, or 4 of § 18.2-58
110 of the Code of Virginia on or after July 1, 2021. If it is determined that, upon retroactive
111 application of the provisions of § 53.1-202.3 of the Code of Virginia, as amended by this act, the
112 release date of any such person passed prior to the effective date of this act, the person shall be
113 released upon approval of an appropriate release plan and within 60 days of such determination
114 unless otherwise mandated by court order; however, no person shall have a claim for wrongful
115 incarceration pursuant to § 8.01-195.11 of the Code of Virginia on the basis of such retroactive
116 application. If a person is released prior to completion of any reentry programs deemed necessary
117 by the Department of Corrections on the person's most recent annual review or prior to
118 completion of any programs mandated by court order, the person shall be required to complete
119 such programs under probation, provided probation is mandated by the court and current
120 community resources are sufficient to facilitate completion of the aforementioned programs.