

Department of Planning and Budget 2022 Fiscal Impact Statement

1. Bill Number: HB549

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

2. Patron: Scott, D.L.

3. Committee: Courts of Justice

4. Title: Department of Corrections; earned sentence credits; robbery.

5. Summary: Under current law, an inmate may earn a maximum of four and one-half sentence credits for each 30 days served. Beginning July 1, 2022, the current system will be replaced with a four-level classification system, allowing sentence credits to be earned based on an inmate's behavioral conduct and participation in all programs to which the inmate is assigned pursuant to § 53.1-32.1 (Classification system; program assignments; mandatory participation). Inmates who are convicted of certain crimes will not be eligible to participate in the enhanced sentence credit system and instead will continue to earn the current four and one-half sentence credits for each 30 days served.

Under the provisions of this bill, those who cause serious bodily injury to or the death of any other person during the commission of a robbery would be subject to a maximum of four and one-half sentence credits for each 30 days served. All other robbery offenses would be eligible to earn sentence credits under the enhanced system that will become effective July 1, 2022.

An enactment clause provides that the proposed change applies retroactively to the entire sentence of any person who is confined in a state correctional facility and participating in the earned sentence credit system on July 1, 2022, who was:

- i. convicted of robbery under § 18.2-58 of the Code of Virginia, as it was in effect prior to July 1, 2021, provided that such person, during the commission of the robbery did not cause serious bodily injury to or the death of another person or
- ii. convicted of robbery under subdivision B 2 (displaying a firearm in a threatening manner), B 3 (using physical force not resulting in serious bodily injury), or B 4 (using threat or intimidation or any other means not involving a deadly weapon) of § 18.2-58 of the Code of Virginia on or after July 1, 2021.

The enactment clause also provides that if it is determined that the release date of any such person passed prior to the effective date of this proposal, the person must be released upon approval of an appropriate release plan and within 60 days of such determination unless otherwise mandated by court order. No person may have a claim pursuant to § 8.01-195.11 (governs compensation for wrongful incarceration) on the basis of such retroactive application.

6. **Budget Amendment Necessary:** Yes, Items 61 and 402.
7. **Fiscal Impact Estimates:** Preliminary. See Item 8 below.
8. **Fiscal Implications:** Prior to July 1, 2021, the crime of robbery was an unclassified felony punishable by a term of incarceration of five years to life. Chapter 534 of the Acts of Assembly of 2021, Special Session I, categorized the crime of robbery into four degrees based on the severity of the offense. Under the provisions of this bill, only those who cause serious bodily injury to or the death of any other person during the commission of a robbery (Class 2 felony charge) would be ineligible to participate in the enhanced earned-sentence-credit structure that will become effective July 1, 2022.

According to the Department of Corrections (DOC), data on robbery convictions under the newly classified offenses is not sufficiently detailed to assess how the proposal would impact the number of inmates who may be eligible under the new structure. DOC reports that identifying offenders will require manual research of robbery convictions and estimates that robbery convictions make up approximately 20 percent of the state-responsible (SR) population (currently, this affects 6,051 inmates). Given the extent of manual work required, DOC estimates that up to ten computation staff, at a cost of \$74,812 each, and up to eleven computation auditors, at a cost of \$82,456 each (position costs include salary and benefits), may be needed to identify potential offenders and recalculate sentences that would be affected by this bill.

Offenders who are released as a result of this proposal are required to complete reentry programs deemed necessary by the Department of Corrections under probation. Depending on the number of offenders who require probation supervision, additional probation and parole officers may be needed. The Introduced budget (HB30/SB30) includes \$1.1 million in FY 2023 and \$1.3 million in FY 2024 from the general fund for DOC to hire 19 additional probation and parole officers to handle the increased workload expected as a result of implementing the enhanced earned-sentence-credit legislation as it will become law on July 1, 2022. These additional positions may be available to mitigate at least a portion of increases in probation and parole cases that would result from the provisions of this bill. However, because DOC does not have sufficient data, it is not known if additional resources for probation and parole officers are needed and how soon the agency may need those positions.

According to the Office of Attorney General (OAG), this bill is expected to increase the number of lawsuits filed by inmates who are disputing their sentence classifications. As a result, OAG estimates that the workload created by this bill may require the addition of two Attorney I positions, at a cost of \$138,598 each, and one legal secretary, at a cost of \$100,199 (position costs include salaries and benefits).

9. **Specific Agency or Political Subdivisions Affected:** Department of Corrections, Office of Attorney General
10. **Technical Amendment Necessary:** No

11. Other Comments: None