

20201113D

HOUSE BILL NO. 5148

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on September 2, 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 (i) a Class 1 felony; (ii) an act of violence as defined in § 19.2-297.1 involving a minor victim unless such person is ineligible for earned sentence credits pursuant to subsection C of § 19.2-297.1; (iii) a violation of § 18.2-356, 18.2-370, 18.2-370.1, or 18.2-374.3; or (iv) 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) an act of violence as defined in § 19.2-297.1 that does not involve a minor victim unless such person is ineligible for earned sentence credits pursuant to subsection C of § 19.2-297.1; (b) a 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 18.2-371.1; or (c) a violation of § 18.2-355, 18.2-357, 18.2-357.1, 18.2-374.1, 18.2-374.1:1, or 18.2-374.4. 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, 13 days shall be deducted from the person's sentence for every 30 days served. If the person maintains a Level I classification beyond one year consecutively, sentence credits shall be awarded as follows: (i) during the second year, 16 days shall be deducted for every 30 days served; (ii) during the third year, 20 days shall be deducted for every 30 days served; (iii) during the fourth year, 25 days shall be deducted for every 30 days served; and (iv) during the fifth year and any consecutive year thereafter, 30 days shall be deducted 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 and who have no more than one minor correctional infraction and no serious correctional infractions.

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

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

4. Level IV. No sentence credits shall be awarded to persons classified in Level IV. A person will be classified in Level IV if that person willfully fails to participate in or cooperate with all programs, job assignments, and educational curriculums to which the person is assigned pursuant to § 53.1-32.1.

C. For state-responsible persons serving a term of incarceration in a local correctional facility, 30 days shall be deducted from the person's sentence for every 30 days served.

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

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

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

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60 G. For a juvenile sentenced to serve a portion of his sentence as a serious juvenile offender under
61 § 16.1-285.1, consideration for earning sentence credits shall be conditioned, in part, upon full
62 participation in and cooperation with programs afforded to the juvenile during that portion of the
63 sentence. The Department of Juvenile Justice shall provide a report that describes the juvenile's
64 adherence to the facility's rules and the juvenile's progress toward treatment goals and objectives while
65 sentenced as a serious juvenile offender under § 16.1-285.1.

66 H. Notwithstanding any other provision of law, no portion of any sentence credits earned shall be
67 applied to reduce the period of time a person must serve before becoming eligible for parole upon any
68 sentence.

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

70 3. That the provisions of § 53.1-202.3 of the Code of Virginia, as amended by this act, shall apply
71 retroactively to the entire sentence of any inmate who is confined in a state correctional facility
72 and participating in the earned sentence credit system on July 1, 2021. If it is determined that,
73 upon retroactive application of the provisions of § 53.1-202.3 of the Code of Virginia, as amended
74 by this act, the release date of any such inmate passed prior to the effective date of this act, the
75 inmate shall be released upon approval of an appropriate release plan and within 60 days of such
76 determination; however, no inmate shall have a claim for wrongful incarceration pursuant to
77 § 8.01-195.11 of the Code of Virginia on the basis of such retroactive application. If an inmate is
78 released prior to completion of any reentry programs deemed necessary by the Department of
79 Corrections on the inmate's most recent annual review or prior to completion of any programs
80 mandated by court order, the inmate shall be required to complete such programs under
81 post-release community supervision, provided that release prior to completion of any programs
82 required by the court is not strictly prohibited by the terms of the court order.

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

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

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

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