

20201142D

HOUSE BILL NO. 5148

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Appropriations
on September 4, 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. First or second degree murder under Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2;

3. Any kidnapping or abduction felony under Article 3 (§ 18.2-47 et seq.) of Chapter 4 of Title 18.2;

4. Any malicious felonious assault or malicious bodily wounding under Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2 or felony violation of § 18.2-57.2;

5. Robbery under § 18.2-58 or carjacking under § 18.2-58.1;

6. Except as otherwise provided in § 18.2-67.5:2 or 18.2-67.5:3, criminal sexual assault punishable as a felony under Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2;

7. Any violation of § 18.2-90, 18.2-91, or 18.2-93;

8. Any felony violation of § 16.1-253.2 or 18.2-60.4;

9. Any felony offense in Article 3 (§ 18.2-346 et seq.) of Chapter 8 of Title 18.2;

10. 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 18.2-371.1;

11. 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; or

12. 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: (i) 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; (ii) a mob-related felony under Article 2 (§ 18.2-38 et seq.) of Chapter 4 of Title 18.2; (iii) arson in violation of § 18.2-77 when the structure burned was occupied or a Class 3 felony violation of § 18.2-79; or (iv) a violation of subsection A of § 18.2-374.1:1.

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 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

60 *programs, job assignments, and educational curriculums assigned pursuant to § 53.1-32.1. Records from*
61 *this review, including an explanation of the reasons why a person's classification level was or was not*
62 *adjusted, shall be maintained in the person's correctional file.*

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

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

69 *G. For a juvenile sentenced to serve a portion of his sentence as a serious juvenile offender under*
70 *§ 16.1-285.1, consideration for earning sentence credits shall be conditioned, in part, upon full*
71 *participation in and cooperation with programs afforded to the juvenile during that portion of the*
72 *sentence. The Department of Juvenile Justice shall provide a report that describes the juvenile's*
73 *adherence to the facility's rules and the juvenile's progress toward treatment goals and objectives while*
74 *sentenced as a serious juvenile offender under § 16.1-285.1.*

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

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

79 **3. That the provisions of § 53.1-202.3 of the Code of Virginia, as amended by this act, shall apply**
80 **retroactively to the entire sentence of any inmate who is confined in a state correctional facility**
81 **and participating in the earned sentence credit system on July 1, 2021. If it is determined that,**
82 **upon retroactive application of the provisions of § 53.1-202.3 of the Code of Virginia, as amended**
83 **by this act, the release date of any such inmate passed prior to the effective date of this act, the**
84 **inmate shall be released upon approval of an appropriate release plan and within 60 days of such**
85 **determination; however, no inmate shall have a claim for wrongful incarceration pursuant to**
86 **§ 8.01-195.11 of the Code of Virginia on the basis of such retroactive application. If an inmate is**
87 **released prior to completion of any reentry programs deemed necessary by the Department of**
88 **Corrections on the inmate's most recent annual review or prior to completion of any programs**
89 **mandated by court order, the inmate shall be required to complete such programs under**
90 **post-release community supervision, provided that release prior to completion of any programs**
91 **required by the court is not strictly prohibited by the terms of the court order.**

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

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

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

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