

20201238D

SENATE BILL NO. 5034

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on September 22, 2020)

(Patron Prior to Substitute—Senator Boysko)

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. 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 § 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, 18.2-91, or 18.2-93;
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 or involuntary manslaughter under Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2 or any crime punishable as such;
 - 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.

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

60 *participate in and cooperate with all programs to which the person is assigned pursuant to § 53.1-32.1*
61 *and who have no more than one minor correctional infraction and no serious correctional infractions.*

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

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

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

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

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

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

85 *F. For a juvenile sentenced to serve a portion of his sentence as a serious juvenile offender under*
86 *§ 16.1-285.1, consideration for earning sentence credits shall be conditioned, in part, upon full*
87 *participation in and cooperation with programs afforded to the juvenile during that portion of the*
88 *sentence. The Department of Juvenile Justice shall provide a report that describes the juvenile's*
89 *adherence to the facility's rules and the juvenile's progress toward treatment goals and objectives while*
90 *sentenced as a serious juvenile offender under § 16.1-285.1.*

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

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

95 **3. That the provisions of § 53.1-202.3 of the Code of Virginia, as amended by this act, shall apply**
96 **retroactively to the entire sentence of any inmate who is confined in a state correctional facility**
97 **and participating in the earned sentence credit system on July 1, 2021. If it is determined that,**
98 **upon retroactive application of the provisions of § 53.1-202.3 of the Code of Virginia, as amended**
99 **by this act, the release date of any such inmate passed prior to the effective date of this act, the**
100 **inmate shall be released upon approval of an appropriate release plan and within 60 days of such**
101 **determination; however, no inmate shall have a claim for wrongful incarceration pursuant to**
102 **§ 8.01-195.11 of the Code of Virginia on the basis of such retroactive application. If an inmate is**
103 **released prior to completion of any reentry programs deemed necessary by the Department of**
104 **Corrections on the inmate's most recent annual review or prior to completion of any programs**
105 **mandated by court order, the inmate shall be required to complete such programs under**
106 **post-release community supervision, provided that release prior to completion of any programs**
107 **required by the court is not strictly prohibited by the terms of the court order.**

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

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

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

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