

Department of Planning and Budget

2020 Special Session I - Fiscal Impact Statement

1. Bill Number: HB5148 H3

House of Origin	<input type="checkbox"/> Introduced	<input checked="" type="checkbox"/> Substitute	<input type="checkbox"/> Engrossed
Second House	<input type="checkbox"/> In Committee	<input type="checkbox"/> Substitute	<input type="checkbox"/> Enrolled

2. Patron: Scott

3. Committee: House Appropriations

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

5. Summary: The substitute bill changes the sentence credits certain offenders can earn. Under current law, an inmate may earn a maximum of four and one-half sentence credits for each 30 days served. This substitute bill replaces the current system with a four-level classification system for any offender who is not serving a sentence for the following offenses:

- Class 1 felonies;
- Solicitation to commit murder under § 18.2-29 (Criminal solicitation; penalty) or any violation of § 18.2-32, 18.2-32.1, 18.2-32.2, or 18.2-33 (pertaining to certain homicide crimes);
- Any violation of § 18.2-40 or 18.2-45 (pertaining to lynching and mob-attempted lynching);
- 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 (pertaining to committing, conspiring and aiding and abetting acts of terrorism), or of subsection A of § 18.2-46.6 (pertaining to possession, manufacture, distribution, etc. of weapon of terrorism or hoax device);
- Any kidnapping or abduction felony under Article 3 (§ 18.2-47 et seq.) of Chapter 4 of Title 18.2;
- 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 (strangulation of another) or 18.2-51.7 (female genital mutilation), or any felony violation of § 18.2-57.2 (assault and battery against a family or household member);
- Any felony violation of § 18.2-60.3 (stalking);
- Any felony violation of § 16.1-253.2 or 18.2-60.4 (pertaining to (violation of provisions of protective orders);
- Robbery under § 18.2-58 or carjacking under § 18.2-58.1;
- Criminal sexual assault punishable as a felony under Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2;
- Any violation of § 18.2-90 (entering dwelling house, etc., with intent to commit murder, rape, robbery or arson), 18.2-91(entering dwelling house, etc., with intent to

commit larceny, assault and battery or other felony), or 18.2-93 (entering bank, armed, with intent to commit larceny);

- Any violation of § 18.2-289 (use of machine gun for crime of violence) or subsection A of § 18.2-300 (possession or use of "sawed-off" shotgun or rifle);
- Any felony offense in Article 3 (§ 18.2-346 et seq.) of Chapter 8 of Title 18.2 (prostitution; commercial sexual conduct; commercial exploitation of a minor);
- Any felony offense in Article 4 (§ 18.2-362 et seq.) of Chapter 8 of Title 18.2 (pertaining to certain family offenses; crimes against children), except for a violation of § 18.2-362 (pertaining to bigamy) or subsection B of § 18.2-371.1 (pertaining to reckless disregard for human life by a parent, guardian, or other person responsible for the care of a child under the age of 18);
- Any felony offense in Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 (pertaining to crimes involving morals and decency), except for a violation of subsection A of § 18.2-374.1:1 (knowingly possessing child pornography);
- Any violation of subsection F of § 3.2-6570 (pertaining to death of dog or cat that is a companion animal as a result of torture or physical mistreatment), any felony violation of § 18.2-128 (pertaining to trespass upon church or school property with intent to abduct a student), or any violation of § 18.2-481 (definitions of treason), 37.2-917 (pertaining to escape of person committed to custody as a sexually violent predator), 37.2-918 (pertaining to sexually violent predator on conditional release leaving the Commonwealth), 40.1-100.2 (employment involving sexually explicit visual material, pertaining to minors), or 40.1-103 (cruelty and injuries to children); or
- 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:
 - Any felony violation of § 3.2-6571 (pertaining to animal fighting);
 - 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;
 - Any violation of § 18.2-41 (shooting, stabbing, etc., with intent to maim, kill, etc., by mob) or felony violation of § 18.2-42.1 (acts of violence by mob);
 - Any violation of subsection B, C, or D of § 18.2-46.5 (pertaining to certain acts of Committing, conspiring and aiding and abetting acts of terrorism prohibited) or § 18.2-46.7 (act of bioterrorism against agricultural crops or animals);
 - Any violation of § 18.2-51 (shooting, stabbing, etc., with intent to maim, kill) when done unlawfully but not maliciously, § 18.2-51.1 (malicious bodily injury to law-enforcement officers, firefighters, search and rescue personnel, or emergency medical services personnel) when done unlawfully but not maliciously, or § 18.2-54.1 (attempts to poison) or 18.2-54.2 (adulteration of food, drink, drugs, cosmetics, etc.);

- Arson in violation of § 18.2-77 when the structure burned was occupied, a Class 3 felony violation of § 18.2-79 (burning or destroying meeting house, etc), or a violation of subsection A of § 18.2-374.1:1 (pertaining to intentionally operating an Internet website for the purpose of facilitating the payment for access to child pornography);
- Any violation of § 18.2-89 (burglary) or 18.2-92 (breaking and entering dwelling house with intent to commit other misdemeanor);
- Any violation of § 18.2-423, 18.2-423.01, 18.2-423.1, 18.2-423.2, all of which pertain to displaying items or symbols in certain places with the intent to intimidate, or 18.2-433.2 (pertaining to prohibited paramilitary activity); or
- Any violation of subdivision E 2 of § 40.1-29 (pertaining to failing to pay wages of \$10,000 or more with the intent to defraud).

All other offenders would be classified under the proposed system, which awards and calculates earned sentence credits based on an inmate's level of participation in and cooperation with all programs to which the inmate is assigned pursuant to § 53.1-32.1 (Classification system; program assignments; mandatory participation) and behavioral conduct as follows:

- Level I - For inmates receiving Level I sentence credits, 15 days would be deducted from the inmate's sentence for every 30 days served. Level I sentence credits must be awarded to inmates who participate in and cooperate with all programs to which the inmate is assigned pursuant to § 53.1-32.1 and who have no more than one minor correctional infraction and no serious correctional infractions.
- Level II - 7.5 days would be deducted from the inmate's sentence for every 30 days served. Level II sentence credits must be awarded to inmates who participate in and cooperate with all programs to which the inmate is assigned pursuant to § 53.1-32.1 but who require improvement in not more than one area.
- Level III - 3.5 days would be deducted from the inmate's sentence for every 30 days served. Level III sentence credits must be awarded to inmates who participate in and cooperate with all programs to which the inmate is assigned pursuant to § 53.1-32.1 but who require significant improvement in two or more areas.
- Level IV - No earned sentence credits can be awarded to any inmate who fails to participate in and cooperate with all programs to which the inmate is assigned pursuant to § 53.1-32.1 or who causes substantial security or operational problems at the correctional facility.

Under the provisions of the substitute bill, for state-responsible persons serving a term of incarceration in a local correctional facility, 30 days must be deducted from the person's sentence for every 30 days served.

The substitute bill requires that a person's classification level under the new system must be reviewed at least once annually, and provides that 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, must be maintained in the person's correctional file.

The substitute bill allows that a person's classification level under the new system 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. The substitute bill also allows a person to appeal if a reclassification determination was made as a result of that person's participation in and cooperation with programs, job assignments, and educational curriculums or his removal from a program, job assignment, or educational curriculum for disciplinary or noncompliance reasons. Such appeal must follow 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.

The substitute bill delays the effective date of the legislation until July 1, 2021.

The bill contains an enactment clause that provides that the new classification system applies retroactively to the entire sentence of any inmate who is confined in a state correctional facility and participating in the earned-sentence-credit system on July 1, 2021. If it is determined that, upon retroactive application of the provisions of the legislation, the release date of any such inmate passed prior to the effective date of this act, the inmate must be released upon approval of an appropriate release plan and within 60 days of such determination; however, no inmate will have a claim for wrongful incarceration on the basis of such retroactive application.

If an inmate is released prior to completion of any reentry programs deemed necessary by DOC on the inmate's most recent annual review or prior to completion of any programs mandated by court order, the inmate is required to complete such programs under post-release community supervision, provided that release prior to completion of any programs required by the court is not strictly prohibited by the terms of the court order.

Additional enactment clauses included in the substitute bill require that DOC must ensure that similar programs for earning sentence credits are available at all state correctional facilities, that DOC must ensure that similar rehabilitative and reentry programs are available at all probation and parole offices, and that the Department of Criminal Justice Services must continue to administer grant funding to private entities for the purpose of assisting in reentry services.

The final enactment clause requires DOC to determine whether implementation of this act will result in any cost savings and to provide a report on such finding to the Virginia State Crime Commission, the Chair of the House Committee on Appropriations, and the Chair of the Senate Committee on Finance and Appropriations by January 1, 2021.

6. Budget Amendment Necessary: Yes. Item 402.

7. Fiscal Impact Estimates: Preliminary. See Item 8 below.

- 8. Fiscal Implications:** The 1994 General Assembly Special Session II abolished discretionary and mandatory parole release for felony offenses committed on or after January 1, 1995. A system of earned sentence credits was established under code section 53.1-202.3 whereby felony offenses committed on or after January 1, 1995, may earn a maximum of 4.5 sentence credits for every 30 days served.

Under the provisions of the substitute bill, offenders serving sentences for offenses enumerated above would continue earning sentence credits under the current system. For offenders who meet the proposed new eligibility requirements, this bill expands and substantially increases the credit earning rates by establishing a tiered system that mandates offenders earn credits based on program participation and behavioral conduct. The substitute bill delays the effective date of the new earned-sentence-credit structure, including the retroactive calculation of the entire sentence of any inmate who is confined in a state correctional facility and participating in the earned-sentence-credit system, until July 1, 2021.

This bill will require changes to the Virginia Corrections Information System (VACORIS), which DOC uses to track offender data including time served and sentence credits earned. DOC estimates that it would cost a total of \$1.0 million to modify VACORIS to incorporate the new earned-sentence-credit tiers. According to DOC, no significant time computation changes have been made to VACORIS since 2006 and the agency expects that the process to make the required changes may take up to two years to analyze, develop, and fully test.

According to DOC, the process of updating VACORIS would require two new Information Technology (IT) specialists, at an annual cost of \$107,951 each (including salary and benefits), to manage the vendor-change process. These costs would be incurred beginning in FY2021, with the personnel costs prorated based on the date of the passage of the bill. In addition to the IT specialists required in FY2021, DOC estimates the need for 10 new time computation staff, at an annual cost of \$69,836 each (including salary and benefits), which would assist with testing VACORIS changes. DOC identified a start date for all 12 of these positions of March 1, 2021, which would equate to \$304,753 in FY2021.

For reference purposes, DOC reports that, as of February 28, 2020, 21,094 offenders had one or more convictions in the excluded offense categories in the substitute version of the bill or who were otherwise not impacted by this bill (those who are parole system offenders and those sentenced to life imprisonment or to death). Such offenders would not be eligible to participate in the new earned-sentence-credit structure proposed by the bill.

DOC estimates that as of February 28, 2020, as many as 1,162 offenders would be eligible for release in the first year if the provisions of this bill were to take effect immediately. Approximately 11,987 offenders would be eligible sometime after the first year. These estimates are likely to change by the time the bill takes effect on July 1, 2021.

The Commonwealth currently pays localities \$12.00 per day for each state-responsible offender held in a jail. If 1,162 inmates were moved from local jails to DOC to fill vacancies created by this bill for a full year, the savings could be approximately \$5.1 million. Actual savings would be determined based on the number of inmates released from DOC facilities,

the schedule of those releases, and the schedule of the transfer of eligible state-responsible prisoners from local and regional jails to DOC facilities.

After eligible state-responsible inmates have been removed from local and regional jails, DOC will begin to realize savings in prison operations to the extent that the prison population is reduced. DOC reports that it spent an average of \$33,994 for each inmate held in a DOC facility. However, it is not possible to estimate when those savings might begin to occur until more information is known about the number of and rate at which credits will be earned by inmates and the impact these calculations along with other factors will have on the prison and jail forecast.

DOC expects that once released, offenders would be supervised by probation and parole officers, resulting in additional need for resources to expand reentry services and programs in various probation and parole districts. Currently, the type of supervision is categorized by distinct levels of supervision that correspond with an offender's treatment plan, with an overall ratio of 70 offenders for each supervising officer. The actual number of P&P officers needed depends on the level of supervision released offenders require. Additionally, DOC would need to hire and train additional release planning coordinator positions, mental health and substance abuse services staff for community release, sex offender screening staff, as well as additional programming and academic instruction staff for expanded reentry services.

Based on releasing 1,162 offenders, DOC estimates that these new positions would cost approximately \$7.1 million each year. Future costs for such positions would depend on the number of offenders who are transferred from jails, the number of offenders who require various types of re-entry programming, and the rate at which offenders are released into community supervision. Because the bill requires DOC to determine whether implementation of this act will result in any cost savings, the agency would have to determine, as offenders are released, whether savings can be reallocated for these additional positions without requiring new funding. Capital funding also may be needed for additional P&P office space, depending on the number of probation and parole officers hired.

Prisoners who were incarcerated for sexually violent offenses and eligible for parole under the bill could be subject to the Civil Commitment of Sexually Violent Predators (SVP) Act (§ 37.2-900 et seq.). The SVP Act applies to prisoners in the DOC who are incarcerated for sexually violent offenses who are nearing their release date. According to the Department of Behavioral Health and Developmental Services (DBHDS), although the number of sex-offenders who would be eligible for parole is not known at this time, it could affect the SVP population if sex-offenders are transferred to civil commitments at faster rates than they are under current law. This would have an impact on the costs of operating these facilities; however, the impact cannot be determined at this time.

The substitute bill's enactment clause requiring DOC to provide a report on whether the provisions of the bill will result in any costs savings to the Virginia State Crime Commission, the Chair of the House Committee on Appropriations, and the Chair of the Senate Committee on Finance and Appropriations by January 1, 2021, is not expected to have fiscal impact on the agency. It is expected that the report DOC presents to the General Assembly may

provide better information to assess the fiscal impact the proposed earn-sentence-credit structure will have on the agency.

The Attorney General's Office (OAG) expects an increase in requests for advice and litigation associated with the proposed legislation, which would require three new attorney positions, three new paralegals and two new secretaries to address the workload presented by the proposed legislation. The OAG estimates the annual cost for these additional positions, including indirect and travel-related costs, at \$958,845. The provisions of the substitute bill do not become effective until July 1, 2021; therefore, the impact on OAG is expected to begin in FY2022.

According to the Department of Criminal Justice Services, this bill is not expected to have a fiscal impact on agency operations.

- 9. Specific Agency or Political Subdivisions Affected:** Department of Corrections, Local Correctional facilities, Department of Criminal Justice Services, Compensation Board, Department of Behavioral Health and Developmental Services, Courts, Office of the Attorney General

10. Technical Amendment Necessary: None

11. Other Comments: None