

Department of Planning and Budget 2020 Fiscal Impact Statement

1. **Bill Number:** HB1532

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

2. **Patron:** Scott

3. **Committee:** Public Safety

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

5. **Summary:** Under current law, an inmate may earn a maximum of four and one-half sentence credits for each 30 days served. This bill replaces the current system with a four-level classification system, which outlines the awarding and calculation of 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 - 13 days would be deducted from the inmate's sentence for every 30 days served. If the inmate maintains a Level I classification beyond one year consecutively, sentence credits must be awarded as follows: (i) during the second year, 16 days must be deducted for every 30 days served; (ii) during the third year, 20 days must be deducted for every 30 days served; (iii) during the fourth year, 25 days must be deducted for every 30 days served; and (iv) during the fifth year and any consecutive year thereafter, 30 days must be deducted 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.

The bill requires that an inmate must be reevaluated and classified each year, or sooner if required by Board regulation, and that documentation of such classification, along with a calculation of the inmate's earned sentence credits, must be included in the inmate's correctional file. The bill provides that an inmate's classification and calculation of earned sentence credits will not be lowered or withheld due to a lack of programming, educational, or employment opportunities at the correctional facility at which the inmate is confined. The bill also sets reporting requirements when an inmate's classification is downgraded and allows an inmate to appeal such reclassification determinations. The bill requires that such appeals be filed and conducted in accordance with Board regulations, and provides that such regulations require appeals to be heard before a neutral and independent arbiter.

The bill sets requirements for earning credits while confined in a local or regional jail prior to conviction or sentencing, setting these at either Level I or the level the inmate was classified at when he was released from his most recent period of confinement.

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, 2020. 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 shall 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.

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. This bill expands and substantially increases the earning rates by establishing a complex tiered system that mandates offenders earn credits based on program participation and behavioral conduct. The bill requires retroactive calculation for all state responsible offenders at the time of enactment. It also requires an inmate to complete reentry programs deemed necessary under post-release community supervision if the inmate was released from incarceration prior to completion of reentry programs.

According to DOC, this bill would affect the computation of time served of approximately 32,179 offenders. This population includes offenders who received sentences after parole was abolished but does not include those who are serving one or more life sentences. DOC estimates that as many as 6,972 offenders may be eligible for release in the first year under the provisions of this bill. DOC reports that there are approximately 7,000 state-responsible offenders currently housed in local jails who also would be eligible. As DOC inmates are released, these state-responsible offenders held in local jails would be moved from the jails into a DOC facility as beds become available. The Commonwealth currently pays localities \$12.00 a day for each state-responsible offender held in a jail. Therefore, the amount paid to jails for such offenders would be reduced to the extent that, and the rate at which, such offenders are moved to DOC facilities to receive reentry programs prior to release. For those offenders who were released prior to completion of reentry programs and would be required to complete such programs under post-release community supervision, DOC will need to assess the cost of providing those services based on the number of offenders who have to complete those programs. DOC will need to contract with local service providers, including substance abuse and mental health providers. The cost of those services cannot be determined at this time.

Additionally, the agency expects that once released, these 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. At a ratio of 70 offenders to one supervising officer, the agency would need to hire and train an additional 100 probation/parole officers to supervise the 6,972 offenders who likely would be released in the first year of the program. In addition, the agency 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, and additional staff to compute sentence credits for release purposes. DOC estimates that these new positions would cost approximately \$12.6 million each year. Capital funding also may be needed for additional office space, depending on the number of probation and parole officers hired.

Currently, the DOC spends an average of \$3,920 annually for each offender who participates in re-entry programs. These programs are offered to offenders who are within 12 months of their release date to minimize recidivism rates and enhance public safety before offenders return to their community. The DOC also expects costs for re-entry services to increase as the number of offenders who are to be released grows and would need to adjust its programmatic policies to provide the required reentry services to include release plans for each prisoner.

Prisoners who were incarcerated for sexually violent offenses and eligible for release under the bill could also be subject to the Civil Commitment of Sexually Violent Predators (SVP) Act (§ 37.2-900 et seq.); however, the immediate impact cannot be determined at this time.

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 \$1.0 million to modify VACORIS to incorporate the new sentence credit tiers and that two additional Information Technology (IT) specialists, at a cost of \$215,902 annually, would be required to manage the vendor-change process. According to DOC, the process to make the required changes may take up to two years to analyze, develop, and test. This timeline conflicts with the provisions of the bill, which would require implementation as soon the bill became law.

Because most of these offenders are subject to supervision after release, if they violate the terms and condition of their supervision they would temporarily be held in local jails; however, the impact that re-incarcerating violators may have on local correctional facilities would be offset by the number of state-responsible offenders that would be transferred to DOC for re-entry services before release. The Commonwealth currently pays localities \$4.00 a day for each local-responsible prisoner held in a jail and \$12.00 a day for each state-responsible prisoner. It also funds a considerable portion of the jails' operating costs, e.g. correctional officers. The state's share of these costs on a per prisoner, per day basis varies from locality to locality. According to the Compensation Board's most recent Jail Cost Report (November 2019), the estimated total state support for local jails averaged \$34.07 per inmate, per day in FY 2018.

9. Specific Agency or Political Subdivisions Affected: Department of Corrections; Local Correctional facilities, Compensation Board, Department of Behavioral Health and Developmental Services, Courts

10. Technical Amendment Necessary: None

11. Other Comments: None