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## HOUSE BILL NO. 1118

Offered January 12, 2022

A *BILL to amend and reenact § 53.1-202.3, as it shall become effective, of the Code of Virginia, relating to earned sentence credits.*

Patrons—Scott, D.L., Carr, Clark, Hope, Jenkins, Kory, Maldonado, McQuinn, Murphy, Rasoul, Shin, Simon and Simonds

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That § 53.1-202.3, as it shall become effective, of the Code of Virginia is amended and reenacted as follows:**

**§ 53.1-202.3. (Effective July 1, 2022) Rate at which sentence credits may be earned; prerequisites.**

A. A maximum of 4.5 sentence credits may be earned *by any person committed to the custody of the Department, regardless of whether the person is confined in a state or local correctional facility*, for each 30 days served on a sentence for a conviction for any offense of:

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 *in which the person used a weapon or threatened or harmed another person during the commission of the offense*;
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;
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 manslaughter under Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2;
  - 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.

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58 The earning of sentence credits shall be conditioned, in part, upon full participation in and  
59 cooperation with programs to which a person is assigned pursuant to § 53.1-32.1.

60 B. For any offense other than those enumerated in subsection A for which sentence credits may be  
61 earned, *including time served for consecutive sentences served after the completion of any offense*  
62 *enumerated in subsection A*, earned sentence credits shall be awarded *to any person committed to the*  
63 *custody of the Department, regardless of whether the person is confined in a state or local correctional*  
64 *facility*, and calculated using the following four-level classification system:

65 1. Level I. For persons receiving Level I sentence credits, 15 days shall be deducted from the  
66 person's sentence for every 30 days served. Level I sentence credits shall be awarded to persons who  
67 participate in and cooperate with all programs to which the person is assigned pursuant to § 53.1-32.1  
68 and who have no more than one minor correctional infraction and no serious correctional infractions  
69 *within the previous 12 months* as established by the Department's policies or procedures.

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

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

80 4. Level IV. No sentence credits shall be awarded to persons classified in Level IV. A person will be  
81 classified in Level IV if that person willfully fails to participate in or cooperate with all programs, job  
82 assignments, and educational curriculums to which the person is assigned pursuant to § 53.1-32.1 or that  
83 person causes substantial security or operational problems at the correctional facility as established by  
84 the Department's policies or procedures.

85 C. A person's classification level under subsection B shall be reviewed at least once annually, and the  
86 classification level may be adjusted based upon that person's participation in and cooperation with  
87 programs, job assignments, and educational curriculums assigned pursuant to § 53.1-32.1. A person's  
88 classification and calculation of earned sentence credits shall not be lowered or withheld due to a lack of  
89 programming, educational, or employment opportunities at the correctional facility at which the person is  
90 confined. Records from this review, including an explanation of the reasons why a person's classification  
91 level was or was not adjusted, shall be maintained in the person's correctional file. *Once sentence credits*  
92 *have been earned, the Department shall not retroactively decrease such sentence credits.*

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

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

99 F. *Regarding persons serving sentences for an offense enumerated in subsection A, the Department*  
100 *shall establish and implement a program that allows the victim of such offense to advocate for the*  
101 *confined person to be reclassified under subsection B. The Department shall also develop a process for*  
102 *granting such reclassifications in instances in which the victim chooses to advocate for reclassification.*  
103 *No person may be reclassified pursuant to this subsection prior to serving 50 percent of his original*  
104 *sentence or 10 years, whichever is less, unless the victim and the attorney for the Commonwealth in the*  
105 *jurisdiction in which the sentence was imposed agree that the person should be reclassified at an earlier*  
106 *time. If a person is reclassified pursuant to this subsection, the provisions of subsection B shall apply*  
107 *retroactively to the person's entire sentence. For the purposes of this subsection, "victim" means the*  
108 *same as that term is defined in subsection B of § 19.2-11.01.*

109 G. For a juvenile sentenced to serve a portion of his sentence as a serious juvenile offender under  
110 § 16.1-285.1, consideration for earning sentence credits shall be conditioned, in part, upon full  
111 participation in and cooperation with programs afforded to the juvenile during that portion of the  
112 sentence. The Department of Juvenile Justice shall provide a report that describes the juvenile's  
113 adherence to the facility's rules and the juvenile's progress toward treatment goals and objectives while  
114 sentenced as a serious juvenile offender under § 16.1-285.1.

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

118 2. That the provisions of § 53.1-202.3 of the Code of Virginia, as it shall become effective and as  
119 amended by this act, shall apply retroactively to the entire sentence of any person who is

120 committed to the custody of the Department of Corrections (the Department), regardless of  
121 whether the person is confined in a state or local correctional facility, and is participating in the  
122 earned sentence credit program on July 1, 2022. A person's sentence shall include time served at a  
123 state or local correctional facility prior to or after conviction, which shall be classified under  
124 subdivision B 1 of § 53.1-202.3 of the Code of Virginia, as it shall become effective and as  
125 amended by this act, unless the individual was previously released from the custody of the  
126 Department under a different classification, in which case the prior classification shall be applied.  
127 The Department shall provide to all persons committed to the custody of the Department notice of  
128 their eligibility or ineligibility for sentence credit adjustment and an adjusted release date by July  
129 1, 2022. Such notice shall include information regarding all dates, convictions, and hearings  
130 applicable to the person's eligibility and classification level. If the Department determines that,  
131 upon retroactive application of § 53.1-202.3 of the Code of Virginia, as it shall become effective  
132 and as amended by this act, the adjusted release date of a person passed prior to the effective date  
133 of this act, the Department shall release such person within 60 days upon approval of an  
134 appropriate release plan, unless otherwise provided by court order; however, no person shall have  
135 a claim for wrongful incarceration pursuant to § 8.01-195.11 of the Code of Virginia on the basis  
136 of such retroactive application. If a person is released prior to completion of any reentry programs  
137 deemed necessary by the Department on the person's most recent annual review or prior to  
138 completion of any programs mandated by court order, the person shall be required to complete  
139 such programs under probation, provided probation is mandated by court order and sufficient  
140 community resources exist to facilitate the completion of such programs. The Department shall  
141 establish a process through which inmates may, with the option of retaining legal counsel, appeal  
142 the Department's determinations regarding sentence credit adjustments, classification levels, and  
143 adjusted release dates and assemble a neutral, independent appeals committee to hear and make  
144 determinations regarding such appeals. The appeals committee shall consider all materials and  
145 information relevant to the Department's determinations, including charging documents,  
146 indictments, plea offers and agreements, sentencing guidelines, presentencing reports, court records  
147 and orders, and sentencing orders. Petitions for appeal shall be filed with the appeals committee  
148 within 90 days after the inmate is provided notice of the Department's determinations and the  
149 Department shall submit a written response within 30 days after a petition for appeal is submitted.