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HOUSE BILL NO. 735

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary
on February 28, 2022)

(Patron Prior to Substitute—Delegate Bell)

A BILL to amend and reenact § 53.1-202.3, as it shall become effective, 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, 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 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;
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.

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

60 person's sentence for every 30 days served. Level I sentence credits shall be awarded to persons who
61 participate in and cooperate with all programs to which the person is assigned pursuant to § 53.1-32.1
62 and who have no more than one minor correctional infraction and no serious correctional infractions as
63 established by the Department's policies or procedures.

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

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

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

79 C. A person's classification level under subsection B shall be reviewed at least once annually, and the
80 classification level may be adjusted based upon that person's participation in and cooperation with
81 programs, job assignments, and educational curriculums assigned pursuant to § 53.1-32.1. A person's
82 classification and calculation of earned sentence credits shall not be lowered or withheld due to a lack of
83 programming, educational, or employment opportunities at the correctional facility at which the person is
84 confined. Records from this review, including an explanation of the reasons why a person's classification
85 level was or was not adjusted, shall be maintained in the person's correctional file.

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

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

92 F. *Notwithstanding any other provision of this section, a maximum of 4.5 sentence credits may be*
93 *earned for each 30 days served on a sentence for a conviction of any offense if the person is serving or*
94 *has been sentenced to serve a concurrent or consecutive sentence on an offense enumerated in*
95 *subsection A.*

96 G. For a juvenile sentenced to serve a portion of his sentence as a serious juvenile offender under
97 § 16.1-285.1, consideration for earning sentence credits shall be conditioned, in part, upon full
98 participation in and cooperation with programs afforded to the juvenile during that portion of the
99 sentence. The Department of Juvenile Justice shall provide a report that describes the juvenile's
100 adherence to the facility's rules and the juvenile's progress toward treatment goals and objectives while
101 sentenced as a serious juvenile offender under § 16.1-285.1.

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

105 **2. That the provisions of this act shall not become effective unless reenacted by the 2023 Session of**
106 **the General Assembly.**