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HOUSE BILL NO. 1603

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 3, 2023)

(Patron Prior to Substitute—Delegate Wyatt)

A BILL to amend and reenact § 53.1-202.3 of the Code of Virginia, relating to enhanced earned sentence credits; exemptions; firearm-related offense; felony conviction during confinement.

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 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. ~~13.~~ 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. ~~14.~~ 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. ~~15.~~ 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. ~~16.~~ 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;
17. Any violation of § 18.2-53.1, clause (iii) of § 18.2-95, or § 18.2-108.1, or any felony offense relating to the use or possession of a firearm under Article 4 (§ 18.2-279 et seq.) of Chapter 7 of Title 18.2, except for a violation of § 18.2-282.1, Article 5 (§ 18.2-288 et seq.) of Chapter 7 of Title 18.2, Article 6 (§ 18.2-299 et seq.) of Chapter 7 of Title 18.2, § 18.2-308, or Article 7 (§ 18.2-308.1 et seq.) of Chapter 7 of Title 18.2; or
18. Any felony conviction for an offense that occurred while a prisoner in a local, state, or community correctional facility or in the custody of an employee thereof.

The earning of sentence credits shall be conditioned, in part, upon full participation in and

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60 cooperation with programs to which a person is assigned pursuant to § 53.1-32.1.

61 B. For any offense other than those enumerated in subsection A for which sentence credits may be
62 earned, earned sentence credits shall be awarded and calculated using the following four-level
63 classification system:

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

69 2. Level II. For persons receiving Level II sentence credits, 7.5 days shall be deducted from the
70 person's sentence for every 30 days served. Level II 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 improvement in not more than one area
73 as established by the Department's policies or procedures.

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

79 4. Level IV. No sentence credits shall be awarded to persons classified in Level IV. A person will be
80 classified in Level IV if that person (i) willfully fails to participate in or cooperate with all programs,
81 job assignments, and educational curriculums to which the person is assigned pursuant to § 53.1-32.1 ~~or~~
82 ~~that person;~~ (ii) causes substantial security or operational problems at the correctional facility as
83 established by the Department's policies or procedures; *or (iii) receives a felony conviction for an*
84 *offense that occurred while a prisoner in a local, state, or community correctional facility or in the*
85 *custody of an employee thereof.*

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

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. *Any person who receives a felony*
96 *conviction for an offense that occurred while a prisoner in a local, state, or community correctional*
97 *facility or in the custody of an employee thereof shall be classified in Level IV and shall not receive any*
98 *further earned sentence credits for the sentence or sentences that such prisoner is serving at the time of*
99 *such felony conviction.*

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

103 F. For a juvenile sentenced to serve a portion of his sentence as a serious juvenile offender under
104 § 16.1-285.1, consideration for earning sentence credits shall be conditioned, in part, upon full
105 participation in and cooperation with programs afforded to the juvenile during that portion of the
106 sentence. The Department of Juvenile Justice shall provide a report that describes the juvenile's
107 adherence to the facility's rules and the juvenile's progress toward treatment goals and objectives while
108 sentenced as a serious juvenile offender under § 16.1-285.1.

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