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HOUSE BILL NO. 77

Offered January 10, 2024

Prefiled December 26, 2023

A *BILL to amend and reenact §§ 16.1-309.1, 16.1-330.1, 17.1-805, 18.2-46.1, 18.2-50.3, 18.2-90, 19.2-297.1, 53.1-40.02, 53.1-131.2, 53.1-151, 53.1-165.1, and 53.1-202.3 of the Code of Virginia, relating to robbery.*

 Patron—Watts

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-309.1, 16.1-330.1, 17.1-805, 18.2-46.1, 18.2-50.3, 18.2-90, 19.2-297.1, 53.1-40.02, 53.1-131.2, 53.1-151, 53.1-165.1, and 53.1-202.3 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-309.1. Exception as to confidentiality.

A. Notwithstanding any other provision of this article, where consideration of public interest requires, the judge shall make available to the public the name and address of a juvenile and the nature of the offense for which a juvenile has been adjudicated delinquent (i) for an act which would be a Class 1, 2, or 3 felony, forcible rape, ~~robbery~~ or burglary or a related offense as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2 if committed by an adult or (ii) in any case where a juvenile is sentenced as an adult in circuit court.

B. 1. a. At any time prior to disposition, if a juvenile charged with a delinquent act which would constitute a felony if committed by an adult, or held in custody by a law-enforcement officer, or held in a secure facility pursuant to such charge becomes a fugitive from justice, the attorney for the Commonwealth or, upon notice to the Commonwealth's attorney, the Department of Juvenile Justice or a locally operated court services unit, may, with notice to the juvenile's attorney of record, petition the court having jurisdiction of the offense to authorize public release of the juvenile's name, age, physical description and photograph, the charge for which he is sought or for which he was adjudicated and any other information which may expedite his apprehension. Upon a showing that the juvenile is a fugitive and for good cause, the court shall order release of this information to the public. If a juvenile charged with a delinquent act that would constitute a felony if committed by an adult, or held in custody by a law-enforcement officer, or held in a secure facility pursuant to such charge becomes a fugitive from justice at a time when the court is not in session, the Commonwealth's attorney, the Department of Juvenile Justice, or a locally operated court services unit may, with notice to the juvenile's attorney of record, authorize the public release of the juvenile's name, age, physical description and photograph, the charge for which he is sought, and any other information which may expedite his apprehension.

b. At any time prior to disposition, if a juvenile charged with a delinquent act which would constitute a misdemeanor if committed by an adult, or held in custody by a law-enforcement officer, or held in a secure facility pursuant to such charge becomes a fugitive from justice, the attorney for the Commonwealth may, with notice to the juvenile's attorney of record, petition the court having jurisdiction of the offense to authorize public release of the juvenile's name, age, physical description and photograph, the charge for which he is sought or for which he was adjudicated and any other information which may expedite his apprehension. Upon a showing that the juvenile is a fugitive and for good cause, the court shall order release of this information to the public. If a juvenile charged with a delinquent act that would constitute a misdemeanor if committed by an adult, or held in custody by a law-enforcement officer, or held in a secure facility pursuant to such charge becomes a fugitive from justice at a time when the court is not in session, the attorney for the Commonwealth may, with notice to the juvenile's attorney of record, authorize the public release of the juvenile's name, age, physical description and photograph, the charge for which he is sought, and any other information which may expedite his apprehension.

2. After final disposition, if a juvenile (i) found to have committed a delinquent act becomes a fugitive from justice or (ii) who has been committed to the Department of Juvenile Justice pursuant to subdivision A 14 of § 16.1-278.8 or § 16.1-285.1 becomes a fugitive from justice by escaping from a facility operated by or under contract with the Department or from the custody of any employee of such facility, the Department may release to the public the juvenile's name, age, physical description and photograph, the charge for which he is sought or for which he was committed, and any other information which may expedite his apprehension. The Department shall promptly notify the attorney for the Commonwealth of the jurisdiction in which the juvenile was tried whenever information is released

INTRODUCED

HB77

59 pursuant to this subdivision. If a juvenile specified in clause (i) being held after disposition in a secure
60 facility not operated by or under contract with the Department becomes a fugitive by such escape, the
61 attorney for the Commonwealth of the locality in which the facility is located may release the
62 information as provided in this subdivision.

63 C. Whenever a juvenile 14 years of age or older is charged with a delinquent act that would be a
64 criminal violation of Article 2 (§ 18.2-38 et seq.) of Chapter 4 of Title 18.2, a felony involving a
65 weapon, a felony violation of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, or an "act of
66 violence" as defined in subsection A of § 19.2-297.1 if committed by an adult, the judge may, where
67 consideration of the public interest requires, make the juvenile's name and address available to the
68 public.

69 D. Upon the request of a victim of a delinquent act that would be a felony or that would be a
70 misdemeanor violation of § 16.1-253.2, 18.2-57, 18.2-57.2, 18.2-60.3, 18.2-60.4, 18.2-67.4, or 18.2-67.5
71 if committed by an adult, the court may order that such victim be informed of the charge or charges
72 brought, the findings of the court, and the disposition of the case. For purposes of this section, "victim"
73 shall be defined as in § 19.2-11.01.

74 E. Upon request, the judge or clerk may disclose if an order of emancipation of a juvenile pursuant
75 to § 16.1-333 has been entered, provided (i) the order is not being appealed, (ii) the order has not been
76 terminated, or (iii) there has not been a judicial determination that the order is void ab initio.

77 F. Notwithstanding any other provision of law, a copy of any court order that imposes a curfew or
78 other restriction on a juvenile may be provided to the chief law-enforcement officer of the county or city
79 wherein the juvenile resides. The chief law-enforcement officer shall only disclose information contained
80 in the court order to other law-enforcement officers in the conduct of official duties.

81 G. Notwithstanding any other provision of law, where consideration of public safety requires, the
82 Department and locally operated court service unit shall release information relating to a juvenile's
83 criminal street gang involvement, if any, and the criminal street gang-related activity and membership of
84 others, as criminal street gang is defined in § 18.2-46.1, obtained from an investigation or supervision of
85 a juvenile and shall include the identity or identifying information of the juvenile; however, the
86 Department and local court service unit shall not release the identifying information of a juvenile not
87 affiliated with or involved in a criminal street gang unless that information relates to a specific criminal
88 act. Such information shall be released to any State Police, local police department, sheriff's office, or
89 law-enforcement task force that is a part of or administered by the Commonwealth or any political
90 subdivision thereof, and that is responsible for the prevention and detection of crime and the
91 enforcement of the penal, traffic, or highway laws of the Commonwealth. The exchange of information
92 shall be for the purpose of an investigation into criminal street gang activity.

93 H. Notwithstanding any other provision of Article 12 (§ 16.1-299 et seq.), a clerk of the court shall
94 report to the Bureau of Immigration and Customs Enforcement of the U.S. Department of Homeland
95 Security a juvenile who has been detained in a secure facility but only upon an adjudication of
96 delinquency or finding of guilt for a violent juvenile felony and when there is evidence that the juvenile
97 is in the United States illegally.

98 I. Notwithstanding any other provision of this article, whenever an intake officer proceeds informally
99 against a juvenile, the Department or local court service unit may disclose only such information as
100 necessary to enforce any provision of the diversion program to any law-enforcement officer, school
101 principal where such juvenile attends school, or known victim. Such information shall remain
102 confidential and not be part of such juvenile's academic record. Additionally, a local court service unit
103 may provide information regarding the availability and ordering of a protective order and restitution and
104 dispositional information to the victim in the case.

105 **§ 16.1-330.1. Serious or Habitual Offender Comprehensive Action Program; definition;**
106 **disclosure of information; penalty.**

107 A. For purposes of this article, a serious or habitual juvenile offender is a minor who has been (i)
108 adjudicated delinquent or convicted of murder or attempted murder, armed robbery *in violation of*
109 *subdivision B 2 of § 18.2-58*, any felony sexual assault or malicious wounding, or a felony violation of a
110 gang-related crime pursuant to Article 2.1 (§ 18.2-46.1 et seq.) of Chapter 4 of Title 18.2, or (ii)
111 convicted at least three times for offenses which would be felonies or Class 1 misdemeanors if
112 committed by an adult. Qualifying convictions or adjudications shall include only those for offenses
113 occurring after July 1, 1993. However, any Serious or Habitual Offender Comprehensive Action
114 Program (SHOCAP) in existence on July 1, 1993, shall be deemed to have been established pursuant to
115 this article and, notwithstanding the limitations of this subsection, may continue to supervise persons
116 who were being supervised on July 1, 1993. Juvenile offenders under SHOCAP supervision at the time
117 of their eighteenth birthday who have been committed to state care pursuant to subdivision A 14 of
118 § 16.1-278.8 or § 16.1-285.1 may continue to be supervised by SHOCAP until their twenty-first
119 birthday.

120 B. The Serious or Habitual Offender Comprehensive Action Program (SHOCAP) is a

multidisciplinary interagency case management and information sharing system which enables the juvenile and criminal justice system, schools, and social service agencies to make more informed decisions regarding juveniles who repeatedly commit serious criminal and delinquent acts. Each SHOCAP shall supervise serious or habitual juvenile offenders in the community as well as those under probation or parole supervision and enhance current conduct control, supervision and treatment efforts to provide a more coordinated public safety approach to serious juvenile crime, increase the opportunity for success with juvenile offenders and assist in the development of early intervention strategies.

C. Any county or city in the Commonwealth may by action of its governing body establish a SHOCAP committee. The committee shall consist of representatives from local law enforcement, schools, attorneys for the Commonwealth, juvenile court services, juvenile detention centers or group homes, mental and medical health agencies, state and local children and family service agencies, and the Department of Juvenile Justice. Any county or city which establishes a SHOCAP committee shall, within 45 days of such action, notify the Department of Criminal Justice Services. The Department shall issue statewide SHOCAP guidelines and provide technical assistance to local jurisdictions on implementation of SHOCAP.

D. Each SHOCAP committee shall share among its members and with other SHOCAP committees otherwise confidential information on identified serious or habitual juvenile offenders. Every person, including members of the SHOCAP committee, who is to receive confidential information pursuant to this article shall maintain the confidentiality of that information.

All records and reports concerning serious or habitual juvenile offenders made available to members of a SHOCAP committee and all records and reports identifying an individual offender which are generated by the committee from such reports shall be confidential and shall not be disclosed, except as specifically authorized by this article or other applicable law. Disclosure of the information may be made to other staff from member agencies as authorized by the SHOCAP committee for the furtherance of case management, community supervision, conduct control and locating of the offender for the application and coordination of appropriate services. Staff from the member agencies who receive such information will be governed by the confidentiality provisions of this article. The staff from the member agencies who will qualify to have access to the SHOCAP information shall be limited to those individuals who provide direct services to the offender or who provide community conduct control and supervision to the offender.

The provisions of this article authorizing information sharing between and among SHOCAP committees shall take precedence over the provisions of (i) Article 12 (§ 16.1-299 et seq.) of Chapter 11 of this title governing dissemination of court and law-enforcement records concerning juveniles, (ii) Article 5 (§ 22.1-287 et seq.) of Chapter 14 of Title 22.1 governing access to pupil records, (iii) Title 37.2 and any regulations enacted pursuant thereto governing access to juvenile mental health records, and (iv) Title 63.2 and any regulations enacted pursuant thereto governing access to records concerning treatments or services provided to a juvenile.

E. It shall be unlawful for any staff person from a member agency to disclose or to knowingly permit, assist or encourage the unauthorized release of any identifying information contained in any reports or records received or generated by a SHOCAP committee. A violation of this subsection shall be punishable as a Class 3 misdemeanor.

§ 17.1-805. Adoption of initial discretionary sentencing guideline midpoints.

A. The Commission shall adopt an initial set of discretionary felony sentencing guidelines which shall become effective on January 1, 1995. The initial recommended sentencing range for each felony offense shall be determined first, by computing the actual time-served distribution for similarly situated offenders, in terms of their conviction offense and prior criminal history, released from incarceration during the base period of calendar years 1988 through 1992, increased by 13.4 percent, and second, by eliminating from this range the upper and lower quartiles. The midpoint of each initial recommended sentencing range shall be the median time served for the middle two quartiles and subject to the following additional enhancements:

1. The midpoint of the initial recommended sentencing range for first degree murder, second degree murder, rape in violation of § 18.2-61, forcible sodomy, object sexual penetration, and aggravated sexual battery shall be further increased by (i) 125 percent in cases in which the defendant has no previous conviction of a violent felony offense; (ii) 300 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum punishment of less than 40 years; or (iii) 500 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum punishment of 40 years or more, except that the recommended sentence for a defendant convicted of first degree murder who has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of 40 years or more shall be imprisonment for life;

2. The midpoint of the initial recommended sentencing range for voluntary manslaughter, robbery *in*

182 *violation of subdivision B 1 or 2 of § 18.2-58, aggravated malicious wounding, malicious wounding, and*
183 *any burglary of a dwelling house or statutory burglary of a dwelling house or any burglary committed*
184 *while armed with a deadly weapon or any statutory burglary committed while armed with a deadly*
185 *weapon shall be further increased by (i) 100 percent in cases in which the defendant has no previous*
186 *conviction of a violent felony offense, (ii) 300 percent in cases in which the defendant has previously*
187 *been convicted of a violent felony offense punishable by a maximum term of imprisonment of less than*
188 *40 years, or (iii) 500 percent in cases in which the defendant has previously been convicted of a violent*
189 *felony offense punishable by a maximum term of imprisonment of 40 years or more;*

190 3. The midpoint of the initial recommended sentencing range for manufacturing, selling, giving, or
191 distributing, or possessing with the intent to manufacture, sell, give, or distribute a Schedule I or II
192 controlled substance, shall be increased by (i) 200 percent in cases in which the defendant has
193 previously been convicted of a violent felony offense punishable by a maximum punishment of less than
194 40 years or (ii) 400 percent in cases in which the defendant has previously been convicted of a violent
195 felony offense punishable by a maximum term of imprisonment of 40 years or more; and

196 4. The midpoint of the initial recommended sentencing range for felony offenses not specified in
197 subdivision 1, 2, or 3 shall be increased by 100 percent in cases in which the defendant has previously
198 been convicted of a violent felony offense punishable by a maximum punishment of less than 40 years
199 and by 300 percent in cases in which the defendant has previously been convicted of a violent felony
200 offense punishable by a maximum term of imprisonment of 40 years or more.

201 B. For purposes of this chapter, previous convictions shall include prior adult convictions and
202 juvenile convictions and adjudications of delinquency based on an offense which would have been at the
203 time of conviction a felony if committed by an adult under the laws of any state, the District of
204 Columbia, or the United States or its territories.

205 C. For purposes of this chapter, violent felony offenses shall include any felony violation of
206 § 16.1-253.2; solicitation to commit murder under § 18.2-29; any violation of § 18.2-31, 18.2-32,
207 18.2-32.1, 18.2-32.2, 18.2-33, or 18.2-35; any violation of subsection B of § 18.2-36.1; any violation of
208 § 18.2-40 or 18.2-41; any violation of clause (c)(i) or (ii) of subsection B of § 18.2-46.3; any violation
209 of § 18.2-46.5, 18.2-46.6, or 18.2-46.7; any Class 5 felony violation of § 18.2-47; any felony violation
210 of § 18.2-48, 18.2-48.1, or 18.2-49; any violation of § 18.2-51, 18.2-51.1, 18.2-51.2, 18.2-51.3,
211 18.2-51.4, 18.2-51.6, 18.2-52, 18.2-52.1, 18.2-53, 18.2-53.1, 18.2-54.1, 18.2-54.2, or 18.2-55; any
212 violation of subsection B of § 18.2-57; any felony violation of § 18.2-57.2; any violation of § 18.2-58
213 or 18.2-58.1; any felony violation of § 18.2-60.1, 18.2-60.3, or 18.2-60.4; any violation of § 18.2-61,
214 18.2-64.1, 18.2-67.1, 18.2-67.2, former § 18.2-67.2:1, 18.2-67.3, 18.2-67.5, or 18.2-67.5:1 involving a
215 third conviction of either sexual battery in violation of § 18.2-67.4 or attempted sexual battery in
216 violation of subsection C of § 18.2-67.5; any Class 4 felony violation of § 18.2-63; any violation of
217 subsection A of § 18.2-67.4:1; any violation of subsection A of § 18.2-77; any Class 3 felony violation
218 of § 18.2-79; any Class 3 felony violation of § 18.2-80; any violation of § 18.2-85, 18.2-89, 18.2-90,
219 18.2-91, 18.2-92, or 18.2-93; any felony violation of § 18.2-152.7; any Class 4 felony violation of
220 § 18.2-153; any Class 4 felony violation of § 18.2-154; any Class 4 felony violation of § 18.2-155; any
221 felony violation of § 18.2-162; any violation of § 18.2-279 involving an occupied dwelling; any felony
222 violation of subsection A or B of § 18.2-280; any violation of § 18.2-281; any felony violation of
223 subsection A of § 18.2-282; any felony violation of § 18.2-282.1; any violation of § 18.2-286.1,
224 18.2-287.2, 18.2-289, or 18.2-290; any violation of subsection A of § 18.2-300; any felony violation of
225 subsection C of § 18.2-308.1 or § 18.2-308.2; any violation of § 18.2-308.2:1 or subsection M or N of
226 § 18.2-308.2:2; any violation of § 18.2-308.3 or 18.2-312; any former felony violation of § 18.2-346; any
227 felony violation of § 18.2-346.01, 18.2-348, or 18.2-349; any violation of § 18.2-355, 18.2-356,
228 18.2-357, or 18.2-357.1; any violation of former § 18.2-358; any violation of subsection B of §
229 18.2-361; any violation of subsection B of § 18.2-366; any violation of § 18.2-368, 18.2-370, or
230 18.2-370.1; any violation of subsection A of § 18.2-371.1; any felony violation of § 18.2-369 resulting
231 in serious bodily injury or disease; any violation of § 18.2-374.1; any felony violation of §
232 18.2-374.1:1; any violation of § 18.2-374.3 or 18.2-374.4; any second or subsequent offense under
233 §§ 18.2-379 and 18.2-381; any felony violation of § 18.2-405 or 18.2-406; any violation of § 18.2-408,
234 18.2-413, 18.2-414, 18.2-423, 18.2-423.01, 18.2-423.1, 18.2-423.2, or 18.2-433.2; any felony violation of
235 § 18.2-460, 18.2-474.1, or 18.2-477.1; any violation of § 18.2-477, 18.2-478, 18.2-480, 18.2-481, or
236 18.2-485; any violation of § 37.2-917; any violation of § 52-48; any violation of § 53.1-203; any
237 conspiracy or attempt to commit any offense specified in this subsection, or any substantially similar
238 offense under the laws of any state, the District of Columbia, or the United States or its territories.

239 **§ 18.2-46.1. Definitions.**

240 As used in this article, unless the context requires a different meaning:

241 "Act of violence" means those felony offenses described in subsection C of § 17.1-805 or subsection
242 A of § 19.2-297.1.

243 "Criminal street gang" means any ongoing organization, association, or group of three or more

persons, whether formal or informal, (i) which has as one of its primary objectives or activities the commission of one or more criminal activities; (ii) which has an identifiable name or identifying sign or symbol; and (iii) whose members individually or collectively have engaged in the commission of, attempt to commit, conspiracy to commit, or solicitation of two or more predicate criminal acts, at least one of which is an act of violence, provided such acts were not part of a common act or transaction.

"Predicate criminal act" means (i) an act of violence; (ii) any violation of § 18.2-42, 18.2-46.3, 18.2-56.1, 18.2-57, or 18.2-57.2, subdivision B 3 or 4 of § 18.2-58, or § 18.2-59, 18.2-83, 18.2-95, 18.2-103.1, 18.2-108.1, 18.2-121, 18.2-127, 18.2-128, 18.2-137, 18.2-138, 18.2-146, 18.2-147, 18.2-248.01, 18.2-248.03, 18.2-255, 18.2-255.2, 18.2-287.4, 18.2-300, 18.2-308.1, 18.2-308.2, 18.2-308.2:01, 18.2-308.4, or 18.2-357.1; (iii) a felony violation of § 18.2-60.3, 18.2-346.01, 18.2-348, or 18.2-349; (iv) a felony violation of § 4.1-1101, 18.2-248, or 18.2-248.1 or a conspiracy to commit a felony violation of § 4.1-1101, 18.2-248, or 18.2-248.1; (v) any violation of a local ordinance adopted pursuant to § 15.2-1812.2; or (vi) any substantially similar offense under the laws of another state or territory of the United States, the District of Columbia, or the United States.

§ 18.2-50.3. Enticing, etc., another into a dwelling house with intent to commit certain felonies; penalty.

Any person who commits a violation of § 18.2-31, 18.2-32, 18.2-32.1, 18.2-48, or 18.2-51.2, subdivision B 1 or 2 of § 18.2-58, or § 18.2-61, 18.2-67.1, or 18.2-67.2 within a dwelling house and who, with the intent to commit a felony listed in this section, enticed, solicited, requested, or otherwise caused the victim to enter such dwelling house is guilty of a Class 6 felony. A violation of this section is a separate and distinct felony.

§ 18.2-90. Entering dwelling house, etc., with intent to commit murder, rape, robbery or arson; penalty.

If any person in the nighttime enters without breaking or in the daytime breaks and enters or enters and conceals himself in a dwelling house or an adjoining, occupied outhouse or in the nighttime enters without breaking or at any time breaks and enters or enters and conceals himself in any building permanently affixed to realty, or any ship, vessel, or river craft or any railroad car, or any automobile, truck, or trailer, if such automobile, truck, or trailer is used as a dwelling or place of human habitation, with intent to commit murder, rape, robbery in violation of subdivision B 1 or 2 of § 18.2-58, or arson in violation of §§ § 18.2-77, 18.2-79, or § 18.2-80, he shall be deemed guilty of statutory burglary, which offense shall be a Class 3 felony. However, if such person was armed with a deadly weapon at the time of such entry, he shall be guilty of a Class 2 felony.

§ 19.2-297.1. Sentence of person twice previously convicted of certain violent felonies.

A. Any person convicted of two or more separate acts of violence when such offenses were not part of a common act, transaction or scheme, and who has been at liberty as defined in § 53.1-151 between each conviction, shall, upon conviction of a third or subsequent act of violence, be sentenced to life imprisonment and shall not have all or any portion of the sentence suspended, provided it is admitted, or found by the jury or judge before whom he is tried, that he has been previously convicted of two or more such acts of violence. For the purposes of this section, "act of violence" means (i) any one of the following violations of Chapter 4 (§ 18.2-30 et seq.) of Title 18.2:

- a. First and second degree murder and voluntary manslaughter under Article 1 (§ 18.2-30 et seq.);
- b. Mob-related felonies under Article 2 (§ 18.2-38 et seq.);
- c. Any kidnapping or abduction felony under Article 3 (§ 18.2-47 et seq.);
- d. Any malicious felonious assault or malicious bodily wounding under Article 4 (§ 18.2-51 et seq.);
- e. Robbery under subdivision B 1 or 2 of § 18.2-58 and carjacking under § 18.2-58.1;
- f. Except as otherwise provided in § 18.2-67.5:2 or § 18.2-67.5:3, criminal sexual assault punishable as a felony under Article 7 (§ 18.2-61 et seq.); or
- g. Arson in violation of § 18.2-77 when the structure burned was occupied or a Class 3 felony violation of § 18.2-79.

(ii) conspiracy to commit any of the violations enumerated in clause (i) of this section; and (iii) violations as a principal in the second degree or accessory before the fact of the provisions enumerated in clause (i) of this section.

B. Prior convictions shall include convictions under the laws of any state or of the United States for any offense substantially similar to those listed under "act of violence" if such offense would be a felony if committed in the Commonwealth.

The Commonwealth shall notify the defendant in writing, at least thirty days prior to trial, of its intention to seek punishment pursuant to this section.

C. Any person sentenced to life imprisonment pursuant to this section shall not be eligible for parole and shall not be eligible for any good conduct allowance or any earned sentence credits under Chapter 6 (§ 53.1-186 et seq.) of Title 53.1. However, any person subject to the provisions of this section, other than a person who was sentenced under subsection A of § 18.2-67.5:3 for criminal sexual assault

convictions specified in subdivision f, (i) who has reached the age of sixty-five or older and who has served at least five years of the sentence imposed or (ii) who has reached the age of sixty or older and who has served at least ten years of the sentence imposed may petition the Parole Board for conditional release. The Parole Board shall promulgate regulations to implement the provisions of this subsection.

§ 53.1-40.02. Conditional release of terminally ill prisoners.

A. As used in this section, "terminally ill" means having a chronic or progressive medical condition caused by injury, disease, or illness where the medical prognosis is the person's death within 12 months.

B. Any person serving a sentence imposed upon a conviction for a felony offense, except as provided in subsection C, who is terminally ill may petition the Parole Board for conditional release.

C. A person who is terminally ill and is serving a sentence imposed upon a conviction for one of the following offenses shall not be eligible to petition the Parole Board for conditional release:

1. A Class 1 felony;
2. 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 § 18.2-46.5, subsection A or B of § 18.2-46.6, or § 18.2-46.7;
5. Any kidnapping or abduction felony under Article 3 (§ 18.2-47 et seq.) of Chapter 4 of Title 18.2, except for a violation of § 18.2-49.1;
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 § 18.2-51.7, 18.2-54.1, or 18.2-54.2, 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 *subdivision B 1 or 2 of* § 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, except, when not committed against a minor, a violation of subdivision A 5 of § 18.2-67.3, § 18.2-67.4:1, subsection B of § 18.2-67.5, or § 18.2-67.5:1;
11. Any violation of § 18.2-90 or 18.2-93;
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 involving a minor victim;
14. Any felony offense in Article 4 (§ 18.2-362 et seq.) of Chapter 8 of Title 18.2 involving a minor victim, except for a violation of § 18.2-362 or 18.2-370.5 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 involving a minor victim, except for a violation of subsection A of § 18.2-374.1:1;
16. Any violation of § 18.2-481, 40.1-100.2, or 40.1-103; or
17. A second or subsequent felony violation of the following offenses 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. 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;
 - b. Any violation of § 18.2-41 or 18.2-42.1;
 - c. Any violation of subsection C of § 18.2-46.6;
 - d. Any violation when done unlawfully but not maliciously of § 18.2-51 or 18.2-51.1;
 - e. Arson in violation of § 18.2-77 when the structure burned was occupied or a Class 3 felony violation of § 18.2-79;
 - f. Any violation of § 18.2-89 with the intent to commit any larceny or § 18.2-92;
 - g. Any violation of subsection A of § 18.2-374.1:1;
 - h. Any violation of § 18.2-423, 18.2-423.01, 18.2-423.1, 18.2-423.2, or 18.2-433.2; or
 - i. Any violation of subdivision E 2 of § 40.1-29.

D. The Parole Board shall promulgate regulations to implement the provisions of this section.

§ 53.1-131.2. Assignment to a home/electronic incarceration program; payment to defray costs; escape; penalty.

A. Any court having jurisdiction for the trial of a person charged with a criminal offense, a traffic offense or an offense under Chapter 5 (§ 20-61 et seq.) of Title 20, or failure to pay child support pursuant to a court order may, if the defendant is convicted and sentenced to confinement in a state or local correctional facility, and if it appears to the court that such an offender is a suitable candidate for home/electronic incarceration, assign the offender to a home/electronic incarceration program as a condition of probation, if such program exists, under the supervision of the sheriff, the administrator of a local or regional jail, or a Department of Corrections probation and parole district office established pursuant to § 53.1-141. However, any offender who is convicted of any of the following violations of Chapter 4 (§ 18.2-30 et seq.) of Title 18.2 shall not be eligible for participation in the home/electronic incarceration program: (i) first and second degree murder and voluntary manslaughter under Article 1

(§ 18.2-30 et seq.); (ii) mob-related felonies under Article 2 (§ 18.2-38 et seq.); (iii) any kidnapping or abduction felony under Article 3 (§ 18.2-47 et seq.); (iv) any malicious felonious assault or malicious bodily wounding under Article 4 (§ 18.2-51 et seq.); (v) robbery under *subdivision B 1 or 2 of § 18.2-58 or carjacking under § 18.2-58.1*; or (vi) any criminal sexual assault punishable as a felony under Article 7 (§ 18.2-61 et seq.). The court may further authorize the offender's participation in work release employment or educational or other rehabilitative programs as defined in § 53.1-131 or, as appropriate, in a court-ordered intensive case monitoring program for child support. The court shall be notified in writing by the director or administrator of the program to which the offender is assigned of the offender's place of home/electronic incarceration, place of employment, and the location of any educational or rehabilitative program in which the offender participates.

B. In any city or county in which a home/electronic incarceration program established pursuant to this section is available, the court, subject to approval by the sheriff or the jail superintendent of a local or regional jail, may assign the accused to such a program pending trial if it appears to the court that the accused is a suitable candidate for home/electronic incarceration.

C. Any person who has been sentenced to jail or convicted and sentenced to confinement in prison but is actually serving his sentence in jail, after notice to the attorney for the Commonwealth of the convicting jurisdiction, may be assigned by the sheriff to a home/electronic incarceration program under the supervision of the sheriff, the administrator of a local or regional jail, or a Department of Corrections probation and parole office established pursuant to § 53.1-141. However, if the offender violates any provision of the terms of the home/electronic incarceration agreement, the offender may have the assignment revoked and, if revoked, shall be held in the jail facility to which he was originally sentenced. Such person shall be eligible if his term of confinement does not include a sentence for a conviction of a felony violent crime, a felony sexual offense, burglary or manufacturing, selling, giving, distributing or possessing with the intent to manufacture, sell, give or distribute a Schedule I or Schedule II controlled substance. The court shall retain authority to remove the offender from such home/electronic incarceration program. The court which sentenced the offender shall be notified in writing by the sheriff or the administrator of a local or regional jail of the offender's place of home/electronic incarceration and place of employment or other rehabilitative program.

D. The Board may prescribe regulations to govern home/electronic incarceration programs, and the Director may prescribe rules to govern home/electronic incarceration programs operated under the supervision of a Department of Corrections probation and parole district office established pursuant to § 53.1-141.

E. Any offender or accused assigned to such a program by the court or sheriff who, without proper authority or just cause, leaves his place of home/electronic incarceration, the area to which he has been assigned to work or attend educational or other rehabilitative programs, including a court-ordered intensive case monitoring program for child support, or the vehicle or route of travel involved in his going to or returning from such place, is guilty of a Class 1 misdemeanor. An offender or accused who is found guilty of a violation of this section shall be ineligible for further participation in a home/electronic incarceration program during his current term of confinement.

F. The director or administrator of a home/electronic incarceration program who also operates a residential program may remove an offender from a home/electronic incarceration program and place him in such residential program if the offender commits a noncriminal program violation. The court shall be notified of the violation and of the placement of the offender in the residential program.

G. The director or administrator of a home/electronic incarceration program may charge the offender or accused a fee for participating in the program which shall be used for the cost of home/electronic incarceration equipment. The offender or accused shall be required to pay the program for any damage to the equipment which is in his possession or for failure to return the equipment to the program.

H. Any wages earned by an offender or accused assigned to a home/electronic incarceration program and participating in work release shall be paid to the director or administrator after standard payroll deductions required by law. Distribution of the money collected shall be made in the following order of priority to:

1. Meet the obligation of any judicial or administrative order to provide support and such funds shall be disbursed according to the terms of such order;

2. Pay any fines, restitution or costs as ordered by the court;

3. Pay travel and other such expenses made necessary by his work release employment or participation in an education or rehabilitative program, including the sums specified in § 53.1-150; and

4. Defray the offender's keep.

The balance shall be credited to the offender's account or sent to his family in an amount the offender so chooses.

The State Board of Local and Regional Jails shall promulgate regulations governing the receipt of wages paid to persons participating in such programs, except programs operated under the supervision of

428 a Department of Corrections probation and parole district office established pursuant to § 53.1-141, the
429 withholding of payments, and the disbursement of appropriate funds. The Director shall prescribe rules
430 governing the receipt of wages paid to persons participating in such programs operated under the
431 supervision of a Department of Corrections probation and parole district office established pursuant to
432 § 53.1-141, the withholding of payments, and the disbursement of appropriate funds.

433 I. For the purposes of this section, "sheriff" means the sheriff of the jurisdiction where the person
434 charged with the criminal offense was convicted and sentenced, provided that the sheriff may designate
435 a deputy sheriff or regional jail administrator to assign offenders to home/electronic incarceration
436 programs pursuant to this section.

437 **§ 53.1-151. Eligibility for parole.**

438 A. Except as herein otherwise provided, every person convicted of a felony and sentenced and
439 committed by a court under the laws of this Commonwealth to the Department of Corrections, whether
440 or not such person is physically received at a Department of Corrections facility, or as provided for in
441 § 19.2-308.1:

442 1. For the first time, shall be eligible for parole after serving one-fourth of the term of imprisonment
443 imposed, or after serving twelve years of the term of imprisonment imposed if one-fourth of the term of
444 imprisonment imposed is more than twelve years;

445 2. For the second time, shall be eligible for parole after serving one-third of the term of
446 imprisonment imposed, or after serving thirteen years of the term of imprisonment imposed if one-third
447 of the term of imprisonment imposed is more than thirteen years;

448 3. For the third time, shall be eligible for parole after serving one-half of the term of imprisonment
449 imposed, or after serving fourteen years of the term of imprisonment imposed if one-half of the term of
450 imprisonment imposed is more than fourteen years;

451 4. For the fourth or subsequent time, shall be eligible for parole after serving three-fourths of the
452 term of imprisonment imposed, or after serving fifteen years of the term of imprisonment imposed if
453 three-fourths of the term of imprisonment imposed is more than fifteen years.

454 For the purposes of subdivisions 2, 3 and 4 of subsection A and for the purposes of subsections B1
455 and B2, prior commitments shall include commitments to any correctional facility under the laws of any
456 state, the District of Columbia, the United States or its territories for murder, rape, robbery, forcible
457 sodomy, animate or inanimate object sexual penetration, aggravated sexual battery, abduction,
458 kidnapping, burglary, felonious assault or wounding, or manufacturing, selling, giving, distributing or
459 possessing with the intent to manufacture, sell, give or distribute a controlled substance, if such would
460 be a felony if committed in the Commonwealth. Only prior commitments interrupted by a person's being
461 at liberty, or resulting from the commission of a felony while in a correctional facility of the
462 Commonwealth, of any other state or of the United States, shall be included in determining the number
463 of times such person has been convicted, sentenced and committed for the purposes of subdivisions 2, 3
464 and 4 of subsection A. "At liberty" as used herein shall include not only freedom without any legal
465 restraints, but shall also include release pending trial, sentencing or appeal, or release on probation or
466 parole or escape. In the case of terms of imprisonment to be served consecutively, the total time
467 imposed shall constitute the term of the imprisonment; in the case of terms of imprisonment to be
468 served concurrently, the longest term imposed shall be the term of imprisonment. In any case in which a
469 parolee commits an offense while on parole, only the sentence imposed for such offense and not the
470 sentence or sentences or any part thereof from which he was paroled shall constitute the term of
471 imprisonment.

472 The Department of Corrections shall make all reasonable efforts to determine prior convictions and
473 commitments of each inmate for the enumerated offenses.

474 B. Persons sentenced to die shall not be eligible for parole. Any person sentenced to life
475 imprisonment who escapes from a correctional facility or from any person in charge of his custody shall
476 not be eligible for parole.

477 B1. Any person convicted of three separate felony offenses of (i) murder, (ii) rape, or (iii) robbery
478 by the presenting of firearms or other deadly weapon *or that causes serious bodily injury to or the*
479 *death of another*, or any combination of the offenses specified in subdivisions (i), (ii), or (iii) when such
480 offenses were not part of a common act, transaction, or scheme shall not be eligible for parole. In the
481 event of a determination by the Department of Corrections that an individual is not eligible for parole
482 under this subsection, the Parole Board may in its discretion, review that determination, and make a
483 determination for parole eligibility pursuant to regulations promulgated by it for that purpose. Any
484 determination of the Parole Board of parole eligibility thereby shall supersede any prior determination of
485 parole ineligibility by the Department of Corrections under this subsection.

486 B2. Any person convicted of three separate felony offenses of manufacturing, selling, giving,
487 distributing or possessing with the intent to manufacture, sell, give or distribute a controlled substance,
488 when such offenses were not part of a common act, transaction or scheme, and who has been at liberty
489 as defined in this section between each conviction, shall not be eligible for parole.

C. Any person sentenced to life imprisonment for the first time shall be eligible for parole after serving fifteen years, except that if such sentence was for a Class 1 felony violation or the first degree murder of a child under the age of eight in violation of § 18.2-32, he shall be eligible for parole after serving twenty-five years, unless he is ineligible for parole pursuant to subsection B1 or B2.

D. A person who has been sentenced to two or more life sentences, except a person to whom the provisions of subsection B1, B2, or E of this section are applicable, shall be eligible for parole after serving twenty years of imprisonment, except that if either such sentence, or both, was or were for a Class 1 felony violation, and he is not otherwise ineligible for parole pursuant to subsection B1, B2, or E of this section, he shall be eligible for parole only after serving thirty years.

E. A person convicted of an offense and sentenced to life imprisonment after being paroled from a previous life sentence shall not be eligible for parole.

E1. Any person who has been convicted of murder in the first degree, rape in violation of § 18.2-61, forcible sodomy, animate or inanimate object sexual penetration or aggravated sexual battery and who has been sentenced to a term of years shall, upon a first commitment to the Department of Corrections, be eligible for parole after serving two-thirds of the term of imprisonment imposed or after serving fourteen years of the term of imprisonment imposed if two-thirds of the term of imprisonment imposed is more than fourteen years. If such person has been previously committed to the Department of Corrections, such person shall be eligible for parole after serving three-fourths of the term of imprisonment imposed or after serving fifteen years of the terms of imprisonment imposed if three-fourths of the term of imprisonment imposed is more than fifteen years.

F. If the sentence of a person convicted of a felony and sentenced to the Department is partially suspended, he shall be eligible for parole based on the portion of such sentence execution which was not suspended.

G. The eligibility time for parole as specified in subsections A, C and D of this section may be modified as provided in §§ 53.1-191, 53.1-197 and 53.1-198.

H. The time for eligibility for parole as specified in subsection D of this section shall apply only to those criminal acts committed on or after July 1, 1976.

I. The provisions of subdivisions 2, 3 and 4 of subsection A shall apply only to persons committed to the Department of Corrections on or after July 1, 1979, but such persons' convictions and commitments shall include all felony convictions and commitments without regard to the date of such convictions and commitments.

§ 53.1-165.1. Limitation on the application of parole statutes.

A. The provisions of this article, except §§ 53.1-160 and 53.1-160.1, shall not apply to any sentence imposed or to any prisoner incarcerated upon a conviction for a felony offense committed on or after January 1, 1995. Any person sentenced to a term of incarceration for a felony offense committed on or after January 1, 1995, shall not be eligible for parole upon that offense.

B. The provisions of this article shall apply to any person who was sentenced by a jury prior to June 9, 2000, for any felony offense committed on or after January 1, 1995, and who remained incarcerated for such offense on July 1, 2020, other than (i) a Class 1 felony or (ii) any of the following felony offenses where the victim was a minor: (a) rape in violation of § 18.2-61; (b) forcible sodomy in violation of § 18.2-67.1; (c) object sexual penetration in violation of § 18.2-67.2; (d) aggravated sexual battery in violation of § 18.2-67.3; (e) an attempt to commit a violation of clause (a), (b), (c), or (d); or (f) carnal knowledge in violation of § 18.2-63, 18.2-64.1, or 18.2-64.2.

C. The Parole Board shall establish procedures for consideration of parole of persons entitled under subsection B or F consistent with the provisions of § 53.1-154.

D. Any person who meets eligibility criteria for parole under subsection B and pursuant to § 53.1-151 as of July 1, 2020, shall be scheduled for a parole interview no later than July 1, 2021, allowing for extension of time for reasonable cause.

E. Notwithstanding the provisions of subsection A or any other provision of this article to the contrary, any person sentenced to a term of life imprisonment for a single felony or multiple felonies committed while the person was a juvenile and who has served at least 20 years of such sentence shall be eligible for parole and any person who has active sentences that total more than 20 years for a single felony or multiple felonies committed while the person was a juvenile and who has served at least 20 years of such sentences shall be eligible for parole. The Board shall review and decide the case of each prisoner who is eligible for parole in accordance with § 53.1-154 and rules adopted pursuant to subdivision 2 of § 53.1-136.

F. Notwithstanding the provisions of subsection C of § 19.2-297.1, the provisions of this article shall apply to any person who was sentenced to a term of life imprisonment pursuant to § 19.2-297.1 where (i) at least one of the acts of violence committed by such person upon which the life sentence was predicated was for robbery in violation of § 18.2-58 committed prior to July 1, 2022, and (ii) such person, during the commission of such robbery, did not (a) cause serious bodily injury to or the death

551 of another person, (b) use or display a firearm in a threatening manner, or (c) use physical force or use
552 or display a deadly weapon other than a firearm in a threatening manner.

553 **§ 53.1-202.3. Rate at which sentence credits may be earned; prerequisites.**

554 A. A maximum of 4.5 sentence credits may be earned for each 30 days served on a sentence for a
555 conviction for any offense of:

556 1. A Class 1 felony;

557 2. Solicitation to commit murder under § 18.2-29 or any violation of § 18.2-32, 18.2-32.1, 18.2-32.2,
558 or 18.2-33;

559 3. Any violation of § 18.2-40 or 18.2-45;

560 4. Any violation of subsection A of § 18.2-46.5, of subsection D of § 18.2-46.5 if the death of any
561 person results from providing any material support, or of subsection A of § 18.2-46.6;

562 5. Any kidnapping or abduction felony under Article 3 (§ 18.2-47 et seq.) of Chapter 4 of Title
563 18.2;

564 6. Any malicious felonious assault or malicious bodily wounding under Article 4 (§ 18.2-51 et seq.)
565 of Chapter 4 of Title 18.2, any violation of § 18.2-51.6 or 18.2-51.7, or any felony violation of
566 § 18.2-57.2;

567 7. Any felony violation of § 18.2-60.3;

568 8. Any felony violation of § 16.1-253.2 or 18.2-60.4;

569 9. Robbery under *subdivision B 1 or 2* of § 18.2-58 or carjacking under § 18.2-58.1;

570 10. Criminal sexual assault punishable as a felony under Article 7 (§ 18.2-61 et seq.) of Chapter 4 of
571 Title 18.2;

572 11. Any violation of § 18.2-90;

573 12. Any violation of § 18.2-289 or subsection A of § 18.2-300;

574 13. Any felony offense in Article 3 (§ 18.2-346 et seq.) of Chapter 8 of Title 18.2;

575 14. Any felony offense in Article 4 (§ 18.2-362 et seq.) of Chapter 8 of Title 18.2, except for a
576 violation of § 18.2-362 or subsection B of § 18.2-371.1;

577 15. Any felony offense in Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2, except for a
578 violation of subsection A of § 18.2-374.1:1;

579 16. Any violation of subsection F of § 3.2-6570, any felony violation of § 18.2-128, or any violation
580 of § 18.2-481, 37.2-917, 37.2-918, 40.1-100.2, or 40.1-103; or

581 17. A second or subsequent violation of the following offenses, in any combination, when such
582 offenses were not part of a common act, transaction, or scheme and such person has been at liberty as
583 defined in § 53.1-151 between each conviction:

584 a. Any felony violation of § 3.2-6571;

585 b. Voluntary manslaughter under Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2;

586 c. Any violation of § 18.2-41 or felony violation of § 18.2-42.1;

587 d. Any violation of subsection B, C, or D of § 18.2-46.5 or § 18.2-46.7;

588 e. Any violation of § 18.2-51 when done unlawfully but not maliciously, § 18.2-51.1 when done
589 unlawfully but not maliciously, or § 18.2-54.1 or 18.2-54.2;

590 f. Arson in violation of § 18.2-77 when the structure burned was occupied or a Class 3 felony
591 violation of § 18.2-79;

592 g. Any violation of § 18.2-89 or 18.2-92;

593 h. Any violation of subsection A of § 18.2-374.1:1;

594 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

595 j. Any violation of subdivision E 2 of § 40.1-29.

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

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

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

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

611 3. Level III. For persons receiving Level III sentence credits, 3.5 days shall be deducted from the
612 person's sentence for every 30 days served. Level III sentence credits shall be awarded to persons who

participate in and cooperate with all programs, job assignments, and educational curriculums to which the person is assigned pursuant to § 53.1-32.1, but who require significant improvement in two or more areas as established by the Department's policies or procedures.

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

C. A person's classification level under subsection B shall be reviewed at least once annually, and 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. A person's classification and calculation of earned sentence credits shall not be lowered or withheld due to a lack of programming, educational, or employment opportunities at the correctional facility at which the person is confined. Records from this review, including an explanation of the reasons why a person's classification level was or was not adjusted, shall be maintained in the person's correctional file.

D. A person's classification level under subsection B 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.

E. A person may appeal a reclassification determination under subsection C or D in 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.

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

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

2. That any person convicted of robbery under § 18.2-58 of the Code of Virginia, as it was in effect prior to July 1, 2021, where such conviction would have rendered such person ineligible for conditional release pursuant to § 53.1-40.02 of the Code of Virginia, as amended by this act, shall be eligible for conditional release in accordance with the provisions of § 53.1-40.02 of the Code of Virginia, as amended by this act, provided that such person, during the commission of such robbery, did not (i) cause serious bodily injury to or the death of another person or (ii) use or display a firearm in a threatening manner.