



## Fiscal Impact Statement for Proposed Legislation

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### Virginia Criminal Sentencing Commission

#### House Bill No. 1179 (Patron – Wyatt)

LD#: 24101167

Date: 01/08/2024

Topic: Earned sentence credits for certain offenses

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
\$40,939,956 (774 beds)\*
- **Local Adult Correctional Facilities:**  
\$834,879 (57 beds)
- **Adult Community Corrections Programs:**  
None (\$0)

- **Juvenile Direct Care:**  
Cannot be determined\*\*
- **Juvenile Detention Facilities:**  
Cannot be determined\*\*

\*\*Provided by the Department of Juvenile Justice

\* Pursuant to § 30-19.1:4, fiscal impact statements prepared by the Virginia Criminal Sentencing Commission only include the estimated increase in operating costs associated with additional state-responsible prison beds and do not reflect any other costs or savings that may be associated with the proposed legislation.

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#### Summary of Proposed Legislation:

In 2020, the General Assembly amended § 53.1-202.3 to establish higher, or enhanced, rates of earned sentence credits (up to 15 days for every 30 days served) for incarcerated individuals serving time for certain felonies, including most property and drug offenses. The provision became effective on July 1, 2022. The enhanced sentence credits applied retroactively to the entire sentence of any person who was confined in a state correctional facility and participating in the earned sentence credit system on July 1, 2022.<sup>1</sup> Individuals serving time for specified offenses (mostly violent crimes) were excluded from the enhanced sentence credits and continue to earn at the lower rates (maximum of 4.5 days for every 30 days served). Language in the Appropriation Act adopted by the 2023 General Assembly (Special Session I) provides that, notwithstanding the provisions of § 53.1-202.3, an individual is not eligible for the enhanced sentence credits for any offense if, during the same term of incarceration, he is also serving time for one or more of the exclusionary felonies enumerated in § 53.1-202.3(A).<sup>2</sup>

The bill amends § 53.1-202.3 to limit the amount of sentence credits that may be earned by incarcerated individuals serving time for specified felonies. Under the bill, individuals convicted of specified firearm offenses<sup>3</sup> would no longer be eligible for the enhanced sentence credits available under § 53.1-202.3(B)

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<sup>1</sup> See fourth enactment clause of House Bill 5148 as passed by the 2020 General Assembly, Special Session I.

<sup>2</sup> See Item 404, paragraph R2, of Chapter 1 of the 2023 Acts of Assembly (Special Session I).

<sup>3</sup> Specifically, 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.

[up to 15 days for every 30 days served]. Instead, these individuals would be eligible to earn a maximum of 4.5 days for every 30 days served under § 53.1-202.3(A). In addition, the bill would reduce earned sentence credits to zero for any individual who receives a felony conviction for an offense that occurred while he was confined in a local, state, or community correctional facility or in the custody of an employee thereof.

The bill does not explicitly state if the changes in earned sentence credits would apply 1) retroactively to the entire sentence of a person who is serving time for one of the specified felonies as of July 1, 2024, or 2) only to the period of time served by individuals on or after July 1, 2024, or 3) only to persons sentenced on or after July 1, 2024, or 4) only to offenses committed on or after July 1, 2024.

## Analysis:

The analysis below was provided by the Virginia Department of Corrections (VADOC) regarding the impact of the proposal on the state-responsible (SR) inmate population.

Assuming the first part of this proposal applies to the time served by inmates convicted of the specified weapons offenses committed on/after the effective date of July 1, 2024, the preliminary State-Responsible (SR) New Court Commitments (NCC) for FY2023 were analyzed (n=9,434) to identify those who may be impacted by this proposal. Of these, 1,928 inmates (20.4%) had one or more convictions for one of the weapons offenses affected by this proposal. However, 416 of the 1,928 (21.6%) were already earning sentence credits at the proposed rates (maximum of 4.5 days per 30 days served) due to convictions for other offenses. These 416 inmates would not be affected by this proposal. The remaining 1,512 inmates were earning the enhanced sentence credits and could be impacted by this proposal. An inmate's SR Total Expected Length of Stay (TELOS) is based on their calculated expected release date which takes into account: 1) the rate at which the inmate is earning sentence credits; and 2) the amount of time the inmate was incarcerated prior to conviction/sentencing. Accordingly, an inmate's SR TELOS may be less than one year. The current SR TELOS for 87 of the 1,512 inmates was six years long or longer, so any impact on SR bed space for these 87 would occur beyond the six-year forecast horizon. The remaining 1,425 had a current SR TELOS ranging between 0.1 months and 71.8 months (mean=20.3; median=15.8) and would be impacted by this proposal.

The date an offense is committed determines which inmates would earn the current Enhanced Earned Sentence Credit (ESC) and which inmates would earn the proposed ESC. The SR NCC who commit their offense prior to the proposal's effective date would continue to earn the Enhanced ESC. Only those SR NCC who committed their offense(s) on/after the effective date would earn the Proposed ESC. Therefore, the length of time between the most recent offense date and the New Commitment Date was analyzed to estimate the proportion of the SR NCC who would commit their offense(s) on/after the effective date of the proposal. For the 1,425 SR NCC earning the Enhanced ESC, the length of time between the date of their offense and the New Commitment Date was, on average, 15.3 months (median=10.4 months). More than one-half of the SR NCC (59%) were sentenced within the first 12 months after their offense date, and more than one-quarter (27%) were sentenced between 12 and 24 months after their offense date. The percentages in Table 1 were applied to the forecasted SR NCC for each year throughout the six-year forecast horizon. For example, 59% of the SR NCC sentenced in Year 1 would earn the Proposed ESC. Eighty-six percent of the SR NCC sentenced in Year 2 (59% + 27%) would earn the Proposed ESC, 93% of the SR NCC sentenced in Year 3 (59% + 27% + 7%) would earn the Proposed ESC, and so on through the six years with

Table 1 - Time Between Offense Date and New Commit Date for FY2023 SR NCC Earning Enhanced ESC with Current TELOS <=72 months

<12 Months	842	59%
>=12 but <24 Months	389	27%
>=24 but <36 Months	106	7%
>=36 but <48 Months	32	2%
>=48 but <60 Months	21	1%
>=60 but <72 Months	5	0%
>=72 Months	30	2%
Total	1,425	

98% of the SR sentenced in Year 6 earning the Proposed ESC.

The rate at which an inmate earns sentence credits is based upon their Class Level. Most inmates initially default to Class Level 1 when they are first classified which does not represent a clear picture of the Class Level distributions going forward; therefore, the Class Level distribution of the Current SR Confined Population on December 14, 2023, who were earning the Enhanced ESC was applied to the FY2023 SR NCC earning the Enhanced ESC. More than two-thirds (69%) were at Class Level 1 and were earning the maximum of 15 days per 30 days served, resulting in an average Current TELOS of 26.4 months (median=22.0). For this proposal, 69% of the 1,425 SR NCC were assigned to the proposed maximum of 4.5 days per 30 served, resulting in an average Proposed TELOS of 34.5 months (median=28.7). Eight percent were at Class Level 2 and were earning 7.5 days per 30 served. Their average Current TELOS was 31.7 months (median=26.4). Under this proposal, their earning rate would decrease to 3.0 days per 30 served, and the average Proposed TELOS would be 36.1 months (median=30.1). Eleven percent were at Class Level 3 and were earning 3.5 days per 30 served. The average Current TELOS for the Class Level 3 inmates was 35.5 months (median=29.6). Their earning rate would decrease to 1.5 days per 30 served under this proposal, resulting in an average Proposed TELOS of 37.8 months (median=31.4). Twelve percent were at Class Level 4 and were earning 0.0 days per 30 served. Their earning rate would stay the same under this proposal, as would their TELOS (average=39.7 months; median=33.0). Table 2 below shows the differences between the Current and Proposed TELOS for each of the four Class Levels.

Table 2 - Class Level Distribution and Time to Serve for FY2023 SR NCC Currently Earning Enhanced ESC with TELOS <=72 Months

		Current (Earning Enhanced ESC)				LD3671 Proposed ESC			
Class Level	Percent	Days Earned per 30 Days Served	% of Total Sentence to be Served	Median Sentence to Serve (months)	Mean Sentence to Serve (months)	Days Earned per 30 Days Served	% of Total Sentence to be Served	Median Sentence to Serve (months)	Mean Sentence to Serve (months)
Level 1	69%	15	67%	22.0	26.4	4.5	87%	28.7	34.5
Level 2	8%	7.5	80%	26.4	31.7	3.0	91%	30.0	36.1
Level 3	11%	3.5	90%	29.6	35.5	1.5	95%	31.4	37.8
Level 4	12%	0	100%	33.0	39.7	0.0	100%	33.0	39.7

### Impact of Proposed Legislation:

**State adult correctional facilities.** The VADOC provided the following bed space estimation. Assuming the required modifications to the sentence calculation system could be implemented by July 1, 2025, and assuming this proposal only applies to the time served by inmates convicted of offenses committed on/after the effective date of this proposal, the proposed legislation could result in an estimated 774 additional state-responsible inmates by the end of FY2030. These SR inmates may be incarcerated either in a VADOC Facility or in a local/regional jail. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$40,939,956. This represents the minimum impact estimate, as it is not possible to estimate the impact of the proposal on inmates who commit offenses while incarcerated.

### Estimated Six-Year Impact in State-Responsible (Prison) Beds

FY25	FY26	FY27	FY28	FY29	FY30
0	0	705	750	765	774

The VADOC also notes that the proposal would require a change to the sentence calculation system in VACORIS. While not as extensive as the change enacting the Enhanced ESC, there would still be added complexity and significant cost associated with this. VACORIS changes of this nature are done by

VADOC in conjunction with its vendor Abilis. A timeline for completing modifications would require Abilis input/agreement and testing.

**Local adult correctional facilities.** The proposal is also expected to increase the need for local-responsible (jail) beds, as some defendants convicted of the affected offenses will receive a sentence of 12 months or less. The impact on local jail beds is estimated to be an increase of 57 beds by FY2030 (state cost: \$834,879; local cost: \$1,309,536). This represents the minimum impact estimate, as it is not possible to estimate the impact of the proposal on prisoners who commit offenses while confined in jail.

**Estimated Six-Year Impact in Local-Responsible (Jail) Beds**

FY25	FY26	FY27	FY28	FY29	FY30
41	51	55	56	57	57

**Adult community corrections resources.** The proposal is not expected to increase the need for community corrections resources and will delay the need for services for some offenders, as they will remain incarcerated longer prior to being released to the community.

**Virginia's Sentencing Guidelines.** The bill affects sentence credits that may be earned by convicted felons after sentencing. No immediate adjustment to the Sentencing Guidelines would be necessary under the proposal. If the proposal is enacted, the Sentencing Commission in the future would conduct detailed analyses of sentencing patterns to determine if revisions to the Guidelines were necessary.

**Juvenile direct care.** According to the Department of Juvenile Justice (DJJ), the impact of the proposal on direct care (juvenile correctional center or alternative commitment placement) bed space needs cannot be determined.

**Juvenile detention facilities.** The Department of Juvenile Justice reports that the proposal's impact on the bed space needs of juvenile detention facilities cannot be determined.

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**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$40,939,956 for periods of imprisonment in state adult correctional facilities and cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.**

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