

## Department of Planning and Budget 2024 Session Fiscal Impact Statement

**1. Bill Number:** HB77 ER

House of Origin	<input type="checkbox"/>	Introduced	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Engrossed
Second House	<input type="checkbox"/>	In Committee	<input type="checkbox"/>	Substitute	<input checked="" type="checkbox"/>	Enrolled

**2. Patron:** Watts

**3. Committee:** Passed both Houses

**4. Title:** Robbery; conforms certain provisions of the Code of Va. to the degrees of robbery offenses, etc.

**5. Summary:** This bill conforms certain provisions of the Code of Virginia to the degrees of robbery offenses established by Chapter 534 of the Acts of Assembly of 2021, Special Session I, which established four levels of penalties for robbery: Class 2 felony when serious bodily injury or death is caused; Class 3 felony when a firearm is displayed or used in a threatening manner; Class 5 felony when physical force was used but did not result in serious bodily injury; and Class 6 felony when threat, intimidation, or any other means not involving a deadly weapon is used.

Changes proposed by this bill include:

- adding the two lesser degrees of robbery to the definition of "predicate criminal act";
- limiting to the two higher degrees of robbery certain non-robbery crimes for which committing such crime with the intent to commit a robbery is an element of the offenses;
- allowing persons convicted of the two lesser degrees of robbery to be eligible for conditional release if they are terminally ill and for the enhanced earned sentence credits;
- allowing persons who are ineligible for parole as a result of being convicted of three certain enumerated offenses to be eligible for parole if convicted of an offense that would constitute any of the three lesser degrees of robbery; and
- limiting the application of the three-strikes law to the two higher degrees of robbery where, during the commission of such robbery, such person caused serious bodily injury to or the death of any other person or used or displayed a firearm in a threatening manner or robbery committed on or after July 1, 2021, and making persons convicted under the three-strikes law eligible for parole if one of the three convictions resulting in the mandatory life sentence would constitute one of the two lesser degrees of robbery.

An enactment clause provides 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, is eligible for conditional release in accordance with the provisions of § 53.1-40.02 of the Code of Virginia, as amended by this bill, 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.

An enactment clause in the bill provides that the provisions of the bill apply retroactively to the entire sentence of anyone who is confined in a state correctional facility and participating in the earned sentence credit system on July 1, 2024, who was meets certain conditions set in the enactment clause. If it is determined that the release date of any such person passed prior to the effective date of this act, the person must be released upon approval of an appropriate release plan and within 60 days of such determination unless otherwise mandated by court order. The enactment clause prohibits claims for wrongful incarceration on the basis of such retroactive application. Finally, if a person is released prior to completion of any reentry programs deemed necessary by the Department of Corrections (DOC) on the person's most recent annual review or prior to completion of any programs mandated by court order, the person must complete such programs under probation, provided that probation is mandated by the court and current community resources are sufficient to facilitate completion of such programs.

6. **Budget Amendment Necessary:** Yes, Item 390.
7. **Fiscal Impact Estimates:** Final. See Item 8 below.
8. **Fiscal Implications:** The Virginia Criminal Sentencing Commission (VCSC) provided the information below on FY 2023 robbery sentencing events. These are sentencing events in which the specific robbery was the primary (most serious) offense at sentencing. If robbery was an additional offense to a more serious felony, the sentencing event was not included in the table. A sentencing event may involve more than one count of robbery. The table includes attempted and conspired robberies.

According to VCSC, these numbers may be an undercount as the new penalties for robbery applied to offenses committed on or after July 1, 2021, unless the prosecutor agreed to apply the new penalties retroactively to an older case, which is discretionary on the part of the prosecutor. VCSC reports that it takes two to three years for a new law to reach its full impact.

	Number of Sentencing Events
Most Serious Offense – FY2023	
Robbery - Death/Serious Injury (Class 2 Felony)	11
Robbery - Firearm (Class 3 Felony)	78
Robbery - Phys Force/Other Deadly Weapon (Class 5 Felony)	67
Robbery - Threat/No Deadly Weapon (Class 6 Felony)	33
Total	189

The bill requires retroactive application of the enhanced earned sentence credits (ESC) for certain robbery charges prior to July 1, 2021, provided the person did not cause serious bodily injury to or the death of another person or use/display a firearm in a threatening manner. In addition, any robbery committed on or after July 1, 2021, under the two higher degrees of robbery, would also be eligible for retroactive application of the enhanced earned sentence credits.

According to DOC, there is no distinction in the statute under which inmates were convicted to provide specific details of the crime for inmates with robbery convictions prior to July 1, 2021. To make this determination, DOC reports that staff would have to conduct research on each conviction to determine the specific details of the crime. Robbery convictions make up about 20 percent of the DOC's inmate population so the numbers requiring research/sentence modification would be very high. Further, because of the age of some of the cases that would require review, DOC is not certain it would have access to all records necessary, which may include police and court records, to classify inmates according to the provisions of the bill. Given the research required by the bill, DOC estimates the need for up to ten Time Computation Specialists at a cost of \$75,200 per position (includes salary and benefits) and estimates that it would take at least 12 months to complete the reviews.

DOC also reports that applying the provisions of this bill to ESC retroactively would require modifications to CORIS, the agency's offender management system. DOC estimates that the changes would cost approximately \$300,000 (one-time) and would require 12 months for these changes to be made, tested, and implemented.

DOC reports that the changes the bill makes to the three-strikes law to expand parole eligibility would present challenges since there is no distinction identifying robberies that caused serious bodily injury or death in the statute prior to July 1, 2021. DOC reports that this provision would require staff resources to complete the additional research, to the extent that the information is available, to process these files. DOC expects that there are a limited number of these cases and the workload could be managed with existing resources.

However, DOC reports that the bill's provision to extend parole eligibility to inmates serving life sentences for convictions including robbery committed prior to July 1, 2021, unless they caused serious bodily injury or death or displayed a firearm in a threatening manner, would require calculation of a discretionary parole eligibility date and a mandatory parole release date. DOC reports that this provision would require an additional CORIS modification at an estimated cost of \$120,000 (one-time). DOC believes that only a portion of this process could be automated, as it would require manual research to identify the specific details of the crime when the robbery was committed prior to July 1, 2021.

In total, DOC estimates that it would require up to ten FTE, at a cost of \$752,000 general fund per year and one-time funding of approximately \$420,000 general fund in the first year for CORIS modifications for an estimated cost of \$1,172,000 in FY 2025 and \$752,000 each year thereafter until the additional positions are no longer needed.

The fiscal impact on bed space at DOC and the workload on Probation and Parole officers cannot be determined until the agency has reviewed eligible inmates for release.

The impact this bill may have on local and regional jails is not known at this time.

The impact this bill may have on the Virginia Parole Board will depend on the additional number of inmates who are deemed parole eligible.

It is possible that the provisions of this bill may expose the Commonwealth to additional litigation. However, any fiscal impact this bill may have on the Office of Attorney General cannot be quantified at this time.

- 9. Specific Agency or Political Subdivisions Affected:** Department of Corrections, Department of Juvenile Justice, local and regional jails, Virginia Parole Board, Local law enforcement agencies, Courts, Commonwealth's Attorneys, Office of the Attorney General, and Public Defenders Offices

- 10. Technical Amendment Necessary:** No

- 11. Other Comments:** None