



**Fiscal Impact Statement for Proposed Legislation**  
**Virginia Criminal Sentencing Commission**

**House Bill 1773**  
*(Patron(s) – Wyatt)*

**LD#:** 25101079

**Date:** 01/06/2024

**Topic:** Earned sentence credits for certain offenses

**Fiscal Impact Summary:**

<ul style="list-style-type: none"> <li>• <b>State Adult Correctional Facilities:</b> At least \$21,673,730 (395 beds)*</li> <li>• <b>Local Adult Correctional Facilities:</b> At least \$593,723 (29 beds)</li> <li>• <b>Adult Community Corrections Programs:</b> None (\$0)</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Juvenile Direct Care:</b> Cannot be determined**</li> <li>• <b>Juvenile Detention Facilities:</b> Cannot be determined**</li> </ul> <p>**Provided by the Department of Juvenile Justice</p>
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\* 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.

**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).

The bill amends § 53.1-202.3 to limit the sentence credits that may be earned by incarcerated individuals serving time for certain felonies related to firearms. Under the bill, individuals convicted of specified firearm offenses<sup>2</sup> would no longer be eligible for the enhanced sentence credits defined in § 53.1-202.3(B) [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, 2025, or 2) only to the period of time served by individuals on or after July 1, 2025, or 3) only to persons sentenced on or after July 1, 2025, or 4) only to offenses committed on or after July 1, 2025.

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

<sup>2</sup> Specifically, any violation of § 18.2-53.1, clause (iii) of subsection A 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.

**Analysis:**

Based on Circuit Court Case Management System (CMS) data for fiscal year (FY) 2023 and FY2024, 5,213 (10.6%) of felony sentencing events<sup>3</sup> involved a conviction for at least one felony firearm offense affected by the proposal. Of the 5,213 offenders, 67.7% received a state-responsible (prison) term. For the offenders who received a state prison term, the median sentence was 3.0 years. Another 18.1% received a local-responsible (jail) term with a median sentence of 6.0 months. The remaining 14.1% did not receive an active term of incarceration to serve after sentencing.

**Impact of Proposed Legislation:**

**State adult correctional facilities.** By restricting the sentence credits that may be earned by inmates with convictions for certain felony firearm offenses, the proposal will increase the number of state-responsible (prison) beds needed to house affected individuals. The impact is estimated to be at least 395 beds statewide by FY2031. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$21,673,730. The analysis assumes the proposal applies to defendants whose offenses are committed on or after July 1, 2025. This represents the minimum impact estimate, as it is not possible to estimate the impact of the proposal on all inmates who commit offenses while incarcerated. Also, the analysis excludes offenders sentenced solely for probation or other supervision violations, as the specific underlying offense is not easily identifiable. The proposal may have additional impact beyond the six-year forecast window required by § 30-19.1:4.

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

FY26	FY27	FY28	FY29	FY30	FY31
1	46	162	241	340	395

**Local adult correctional facilities.** The bill may also increase the need for local-responsible (jail) beds, specifically for felony offenders given a sentence of 12 months or less. The impact on jail beds is estimated to be at least 29 beds by FY2031 (state costs: \$593,723; local costs: \$914,269).

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

FY26	FY27	FY28	FY29	FY30	FY31
22	27	28	28	29	29

**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 felony offenders 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.

<sup>3</sup> Felony sentencing events including only probation violations, other community supervision violations, or suspended sentence violations were excluded.

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**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$21,673,730 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.**

**Assumptions underlying the analysis include:**

**General Assumptions**

1. State and local responsibility is based on § 53.1-20 as analyzed for the Secretary of Public Safety's Committee on Inmate Forecasting in 2024.
2. New cases resulting in state-responsible sentences were based on forecasts approved by the Secretary of Public Safety's Committee on Inmate Forecasting in 2024.
3. Cost per prison bed was assumed to be \$54,915 per year as provided by the Department of Planning and Budget to the Commission pursuant to § 30-19.1:4. *Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimated amount of necessary appropriation.*
4. Cost per jail bed was based on The Compensation Board's FY2023 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$56.38 per day or \$20,593 per year. The local cost was calculated by using the daily expenditure cost of \$148.62 per inmate (not including capital accounts or debt service) as the base, and subtracting revenues accrued from the state and federal governments, which resulted in \$86.82 per day or \$31,711 per year. *Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.*

**Assumptions relating to offenders**

1. The Commission used FY2023-FY2024 Circuit Court Case Management System (CMS) data to identify felony sentencing events involving a conviction for at least one felony firearm offense affected by the proposal during the two-year period (n=5,213).
2. The analysis assumes the proposal applies to defendants whose offenses are committed on or after July 1, 2025.
3. The analysis excludes offenders sentenced solely for probation or other supervision violations, as the specific underlying offense is not easily identifiable.

**Assumptions relating to sentencing and time served**

1. The impact of the proposed legislation, which would affect offenders who commit felonies on or after July 1, 2025, is phased in to account for case processing time.
2. For each defendant in the FY2023-FY2024 data who would have been affected by the proposal had it been in place at that time, the Commission identified all felony firearm offenses in the event that would be impacted by the proposal.
3. In cases where the CMS data indicated that a particular sentence was to run concurrently to another sentence, it was assumed that the case would be affected by the proposal only if it was the longest sentence in the sentencing event. If the concurrent sentence was not the longest in the event, it was assumed to have no bed space impact.
4. To estimate the time period served on felony firearm offenses under existing law, the Commission applied rates of earned sentence credits authorized by § 53.1-202.3. For each offense in the sentencing event, the Commission applied the average rate at which offenders in Department of Corrections' facilities were earning sentence credits as of August 30, 2024. For offenses eligible for the enhanced sentence credits (up to 15 days for every 30 days served), the average earning rate was 28.2%. For offenses restricted to the lower rates of sentence credits (a maximum of 4.5 days for every 30 days served), the average earning rate was 9.9%.
5. To estimate the period that would be served on felony firearm offenses under the proposal, the Commission applied the average rate at which offenders in Department of Corrections' facilities were earning sentence credits as of August 30, 2024, for offenses restricted to the lower rates of sentence credits (a maximum of 4.5 days for every 30 days served). The average earning rate for these inmates was 9.9%. Under the proposal, the specified felony firearm offenses would be subject to the lower rates.
6. The additional time to be served by each defendant was determined by calculating the difference between the estimated time to be served under the proposal and the time served currently.
7. In order to gauge the timing of the impact, the impact was projected to begin at the point at which the offender would finish serving his/her incarceration term under current law, applying applicable sentence credits, at which point the offender would begin serving the additional time required by the proposed restriction on sentence credits for affected firearm offenses.