



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill 2192 (Patron - Freitas)

LD#: 25102490

Date: 12/27/2024

Topic: Earned sentence credits for individuals convicted of felonies

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$287,480,025 (5,235 beds)*
- **Local Adult Correctional Facilities:**
\$8,048,359 (391 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 submitted 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, 2022.¹ 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). Currently, an individual is eligible for the enhanced sentence credits for an offense even if, during the same term of incarceration, he is also serving time for one or more of the exclusionary felonies listed in § 53.1-202.3(A).² Individuals convicted of attempts, conspiracies, and solicitations to commit an offense listed in § 53.1-202.3(A) earn sentence credits at the higher rate (up to 15 days per 30 days served).³

The proposal, in essence, repeals the enhanced sentence credits that have been in place since July 1, 2022. All felony offenders would be limited to earning a maximum of 4.5 days for every 30 days served.

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

² Language in the Appropriation Act adopted by the 2023 General Assembly (Special Session I) included language to specify that an inmate would *not* be eligible for the enhanced sentence credits for any offense if, during the same term of incarceration, he was also serving time for one or more of the exclusionary felonies listed in § 53.1-202.3(A); however, the language was not included in the Appropriation Act passed by the 2024 General Assembly (Special Session I) that became effective on July 1, 2024.

³ Following the Supreme Court of Virginia decision in *Vasquez v. Dotson* on April 18, 2024, the Virginia Department of Corrections began recalculating release dates, applying the enhanced sentence credit rates (maximum of 15 days for every 30 days served), for all inmates serving time for attempts, conspiracies, or solicitations to commit crimes listed in § 53.1-202.3 (with the exception of solicitation to commit murder, as that crime is specifically listed in § 53.1-202.3(A) as being limited to 4.5 days for every 30 days served).

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 as of July 1, 2024; 2) only to the period of time served by individuals on or after July 1, 2024; 3) only to persons sentenced on or after July 1, 2024; or 4) only to offenses committed on or after July 1, 2024.

Analysis:

Based on Circuit Court Case Management System (CMS) data for fiscal year (FY) 2023 and FY2024, there were 43,360 felony sentencing events during the two-year period. The analysis excluded sentencing events in which the defendant had a felony probation violation, other community supervision violation, or suspended sentence violation but did not have a conviction for a new felony offense. Among these events, 16,453 (37.9%) of the defendants received a state-responsible (prison) term. The majority of these individuals (14,358 of the 16,453, or 87.3%) had at least one offense in the sentencing event eligible for the enhanced sentence credits provided in § 53.1-202.3 and, therefore, could be impacted by the proposal. For offenses eligible for the enhanced sentence credits (up to 15 days for every 30 days served), the average rate at which offenders in Department of Corrections' facilities were earning sentence credits as of August 30, 2024, 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%. Among the 14,358 offenders who received a state prison term during the two-year period who would have been impacted by the proposal, 12,670 had a projected length-of-stay of six years or less, meaning any impact on their length-of-stay due to this proposal would occur within the six-year forecast window required by § 30-19.1:4. Based on available Circuit Court CMS data, for these 12,670 individuals, the average additional time that would be served due to the proposal (had it been in effect during FY2023-FY2024) was estimated to be 4.5 months.

Impact of Proposed Legislation:

State adult correctional facilities. By limiting all felony offenders to earning sentence credits at a maximum of 4.5 days for every 30 days served, the proposal will increase the number of state-responsible (prison) beds needed to house affected individuals.

The Virginia Department of Corrections (VADOC) provided the impact estimation below. The impact is estimated to be 5,235 beds statewide by FY2031. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$287,480,025.

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

FY26	FY27	FY28	FY29	FY30	FY31
0	5,183	5,204	5,218	5,230	5,235

The VADOC also notes that the proposal would require a change to the sentence calculation system in VACORIS. It is expected to take 12 months for the necessary modification to be made, tested and implemented. The minimum cost estimate for the CORIS modification is \$150,000.

Local adult correctional facilities. The bill is expected to 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 391 beds by FY2031 (state costs: \$8,048,359; local costs: \$12,393,605).

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

FY26	FY27	FY28	FY29	FY30	FY31
333	371	380	385	391	391

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.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$287,480,025 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 Local-Responsible (Jail) Bed impact

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. 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 Circuit Court Case Management System (CMS) data to identify felony offenders sentenced to a local-responsible (jail) term in FY2023 and FY2024 who had at least one offense in the sentencing event eligible for the enhanced sentence credits provided in § 53.1-202.3.

Assumptions relating to sentencing and time served

1. For the identified defendants, the Commission determined the total effective sentence (imposed sentence less any suspended time) for the affected offenses.
2. To estimate the time period served on affected felony offenses under existing law, the Commission applied rates of earned sentence as authorized by § 53.1-202.3. The Commission assumed all affected offenders currently earn sentence credits based on the average rate at which offenders in Department of Corrections (DOC) facilities were earning sentence credits as of August 30, 2024. This average rate (27.3%) was calculated based only on offenders who are eligible for the enhanced sentence credits (maximum of 15 days for every 30 served).
3. To estimate the time that would be served as a result of the proposal, the Commission assigned affected offenders the lower sentence credit rates as provided in § 53.1-202.3(A). The Commission applied the overall average rate at which inmates subject to the lower sentence credits were earning as of August 30, 2024 (9.9%).
4. The additional time to be served by each defendant was estimated by calculating the difference between the time to be served under the proposal and the time served currently.

Limitations

1. This analysis reflects the impact of the proposed change on local-responsible (jail) offenders who commit their offenses on or after July 1, 2025; this estimate does not include the impact of applying any of the new requirements to current jail prisoners.
2. The analysis excluded sentencing events in which the defendant had a felony probation violation, other community supervision violation, or suspended sentence violation but did not have a conviction for a new felony offense. For individuals who violate probation, etc., the underlying felony offense is not easily discernible in the data; therefore, the level of sentence credits that may be earned by those individuals is not known.