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**SENATE BILL NO. 1071**

Offered January 8, 2025

Prefiled January 7, 2025

*A BILL to amend and reenact § 53.1-202.3 of the Code of Virginia, relating to enhanced earned sentence credits; exemptions; felony drug offenses.*

Patrons—Peake and Durant

Referred to Committee on Rehabilitation and Social Services

**Be it enacted by the General Assembly of Virginia:****1. That § 53.1-202.3 of the Code of Virginia is amended and reenacted as follows:****§ 53.1-202.3. Rate at which sentence credits may be earned; prerequisites.**

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

1. A Class 1 felony;
2. Solicitation to commit murder under § 18.2-29 or 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 subsection A of § 18.2-46.5, of subsection D of § 18.2-46.5 if the death of any person results from providing any material support, or of subsection A of § 18.2-46.6;
5. Any kidnapping or abduction felony under Article 3 (§ 18.2-47 et seq.) of Chapter 4 of Title 18.2;
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 § 18.2-51.6 or 18.2-51.7, 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 § 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;
11. Any violation of § 18.2-90;
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;
14. Any felony offense in Article 4 (§ 18.2-362 et seq.) of Chapter 8 of Title 18.2, except for a violation of § 18.2-362 or subsection B or C of § 18.2-371.1;
15. Any felony offense in Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2, except for a violation of subsection A of § 18.2-374.1:1;
16. Any violation of subsection F of § 3.2-6570, any felony violation of § 18.2-128, or any violation of § 18.2-481, 37.2-917, 37.2-918, 40.1-100.2, or 40.1-103; or
17. A second or subsequent violation of the following offenses, in any combination, 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. Any felony violation of § 3.2-6571;
  - b. Voluntary manslaughter under Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2;
  - c. Any violation of § 18.2-41 or felony violation of § 18.2-42.1;
  - d. Any violation of subsection B, C, or D of § 18.2-46.5 or § 18.2-46.7;
  - e. Any violation of § 18.2-51 when done unlawfully but not maliciously, § 18.2-51.1 when done unlawfully but not maliciously, or § 18.2-54.1 or 18.2-54.2;
  - f. Arson in violation of § 18.2-77 when the structure burned was occupied or a Class 3 felony violation of § 18.2-79;
  - g. Any violation of § 18.2-89 or 18.2-92;
  - h. Any violation of subsection A of § 18.2-374.1:1;
  - 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~~
  - j. Any violation of subdivision E 2 of § 40.1-29; *or*
  - k. *Any violation of § 18.2-248, 18.2-248.01, or 18.2-248.03.*

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

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

1. Level I. For persons receiving Level I sentence credits, 15 days shall be deducted from the person's

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59 sentence for every 30 days served. Level I sentence credits shall be awarded to persons who participate in and  
60 cooperate with all programs to which the person is assigned pursuant to § 53.1-32.1 and who have no more  
61 than one minor correctional infraction and no serious correctional infractions as established by the  
62 Department's policies or procedures.

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

68 3. Level III. For persons receiving Level III sentence credits, 3.5 days shall be deducted from the person's  
69 sentence for every 30 days served. Level III sentence credits shall be awarded to persons who participate in  
70 and cooperate with all programs, job assignments, and educational curriculums to which the person is  
71 assigned pursuant to § 53.1-32.1, but who require significant improvement in two or more areas as  
72 established by the Department's policies or procedures.

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

78 C. A person's classification level under subsection B shall be reviewed at least once annually, and the  
79 classification level may be adjusted based upon that person's participation in and cooperation with programs,  
80 job assignments, and educational curriculums assigned pursuant to § 53.1-32.1. A person's classification and  
81 calculation of earned sentence credits shall not be lowered or withheld due to a lack of programming,  
82 educational, or employment opportunities at the correctional facility at which the person is confined. Records  
83 from this review, including an explanation of the reasons why a person's classification level was or was not  
84 adjusted, shall be maintained in the person's correctional file.

85 D. A person's classification level under subsection B may be immediately reviewed and adjusted  
86 following removal from a program, job assignment, or educational curriculum that was assigned pursuant to §  
87 53.1-32.1 for disciplinary or noncompliance reasons.

88 E. A person may appeal a reclassification determination under subsection C or D in the manner set forth  
89 in the grievance procedure established by the Director pursuant to his powers and duties as set forth in §  
90 53.1-10.

91 F. For a juvenile sentenced to serve a portion of his sentence as a serious juvenile offender under §  
92 16.1-285.1, consideration for earning sentence credits shall be conditioned, in part, upon full participation in  
93 and cooperation with programs afforded to the juvenile during that portion of the sentence. The Department  
94 of Juvenile Justice shall provide a report that describes the juvenile's adherence to the facility's rules and the  
95 juvenile's progress toward treatment goals and objectives while sentenced as a serious juvenile offender under  
96 § 16.1-285.1.

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

99 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**  
100 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary**  
101 **appropriation is at least \$8,589,188 for periods of imprisonment in state adult correctional facilities**  
102 **and cannot be determined for periods of commitment to the custody of the Department of Juvenile**  
103 **Justice.**