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HOUSE BILL NO. 361

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance and Appropriations
on March 4, 2026)

(Patron Prior to Substitute—Delegate Seibold)

A BILL to amend and reenact § 53.1-202.2 of the Code of Virginia, relating to earned sentence credits; incarceration while awaiting trial or pending an appeal.

Be it enacted by the General Assembly of Virginia:

1. That § 53.1-202.2 of the Code of Virginia is amended and reenacted as follows:

§ 53.1-202.2. Eligibility for earned sentence credits.

A. Every person who is convicted of a felony offense committed on or after January 1, 1995, and who is sentenced to serve a term of incarceration in a state or local correctional facility shall be eligible to earn sentence credits in the manner prescribed by this article. Such eligibility shall commence upon the person's incarceration in any correctional facility following entry of a final order of conviction by the committing court *and shall include any period of time actually spent in any state or local correctional facility, state hospital, or juvenile detention facility for such offense deducted from such person's term of incarceration or detention pursuant to § 53.1-187. All time actually spent by a person in confinement or detention, including such time spent awaiting trial or entry of a final order of conviction by the committing court, shall be used in calculating such person's earned sentence credits.* As used in this chapter, "sentence credit" and "earned sentence credit" mean deductions from a person's term of confinement earned through adherence to rules prescribed pursuant to § 53.1-25, through program participation as required by §§ 53.1-32.1 and 53.1-202.3, and by meeting such other requirements as may be established by law or regulation. One earned sentence credit shall equal a deduction of one day from a person's term of incarceration.

B. A juvenile convicted as an adult and sentenced as a serious juvenile offender under clause (i) of subdivision A 1 of § 16.1-272 shall be eligible to earn sentence credits for the portion of the sentence served with the Department of Juvenile Justice in the manner prescribed by this article. Consideration for earned sentence credits shall require adherence to the facility's rules and the juvenile's progress toward treatment goals and objectives while sentenced as a serious juvenile offender under § 16.1-285.1.

2. That the provisions of § 53.1-202.2 of the Code of Virginia, as amended by this act, shall apply retroactively to any person who is confined in any state or local correctional facility on July 1, 2028. If it is determined that, upon retroactive application of the provisions of § 53.1-202.2 of the Code of Virginia, as amended by this act, the newly determined release date of any such person was prior to the effective date of this act, the person shall be released upon approval of an appropriate release plan, if required, and within 60 days of such determination unless otherwise mandated by court order; however, no person shall have a claim for wrongful incarceration pursuant to § 8.01-195.11 of the Code of Virginia on the basis of such retroactive application. If a person is released prior to completion of any reentry programs deemed necessary by the Department of Corrections on the person's most recent annual review or prior to completion of any programs mandated by court order, the person shall be required to complete such programs under probation, provided probation is mandated by the court and current community resources are sufficient to facilitate completion of the aforementioned programs.

3. That the provisions of this act shall become effective on July 1, 2028.

SENATE SUBSTITUTE

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