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**HOUSE BILL NO. 549**

Offered January 12, 2022

Prefiled January 11, 2022

A *BILL to amend and reenact § 53.1-202.3, as it shall become effective, of the Code of Virginia, relating to Department of Corrections; earned sentence credits; robbery.*

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Patron—Scott, D.L.

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Committee Referral Pending

**Be it enacted by the General Assembly of Virginia:**

**1. That § 53.1-202.3, as it shall become effective, of the Code of Virginia is amended and reenacted as follows:**

**§ 53.1-202.3. (Effective July 1, 2022) 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 *subdivision B 1* of § 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 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.

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.

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

62 1. Level I. For persons receiving Level I sentence credits, 15 days shall be deducted from the  
63 person's sentence for every 30 days served. Level I sentence credits shall be awarded to persons who  
64 participate in and cooperate with all programs to which the person is assigned pursuant to § 53.1-32.1  
65 and who have no more than one minor correctional infraction and no serious correctional infractions as  
66 established by the Department's policies or procedures.

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

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

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

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

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

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

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

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

104 2. That the provisions of § 53.1-202.3 of the Code of Virginia, as amended by this act, shall apply  
105 retroactively to the entire sentence of any person who is confined in a state correctional facility  
106 and participating in the earned sentence credit system on July 1, 2022, who was (i) convicted of  
107 robbery under § 18.2-58 of the Code of Virginia, as it was in effect prior to July 1, 2021, provided  
108 that such person, during the commission of such robbery, did not cause serious bodily injury to or  
109 the death of another person or (ii) convicted of robbery under subdivision B 2, 3, or 4 of § 18.2-58  
110 of the Code of Virginia on or after July 1, 2021. If it is determined that, upon retroactive  
111 application of the provisions of § 53.1-202.3 of the Code of Virginia, as amended by this act, the  
112 release date of any such person passed prior to the effective date of this act, the person shall be  
113 released upon approval of an appropriate release plan and within 60 days of such determination  
114 unless otherwise mandated by court order; however, no person shall have a claim for wrongful  
115 incarceration pursuant to § 8.01-195.11 of the Code of Virginia on the basis of such retroactive  
116 application. If a person is released prior to completion of any reentry programs deemed necessary  
117 by the Department of Corrections on the person's most recent annual review or prior to  
118 completion of any programs mandated by court order, the person shall be required to complete  
119 such programs under probation, provided probation is mandated by the court and current  
120 community resources are sufficient to facilitate completion of the aforementioned programs.