



Fiscal Impact Statement for Proposed Legislation
Virginia Criminal Sentencing Commission

Senate Bill No. 1542
(Patron –Stuart)

LD#: 23105071

Date: 01/26/2023

Topic: Earned sentence credits for certain offenses

Fiscal Impact Summary:

<ul style="list-style-type: none"> • State Adult Correctional Facilities: \$108,686,760 (2,220 beds)* • Local Adult Correctional Facilities: Cannot be determined • Adult Community Corrections Programs: None (\$0) 	<ul style="list-style-type: none"> • Juvenile Direct Care: Cannot be determined* • Juvenile Detention Facilities: Cannot be determined* <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:

The bill amends § 53.1-202.3 to limit the amount of sentence credits that may be earned by incarcerated individuals serving time for specified felonies. Under the bill, individuals convicted of specified firearm offenses¹ would no longer be eligible for the enhanced sentence credits available under § 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, 2023, or 2) only to the period of time served by individuals on or after July 1, 2023, or 3) only to persons sentenced on or after July 1, 2023, or 4) only to offenses committed on or after July 1, 2023.

In 2020, the General Assembly amended § 53.1-202.3 to establish the 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, 2022.² Individuals serving time for specified offenses (mostly violent crimes) were excluded from the

¹ Specifically, any violation of § 18.2-53.1, clause (iii) 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.

² See fourth enactment clause of House Bill 5148 as passed by the 2020 General Assembly, Special Session I.

enhanced sentence credits and continue to earn at the lower rates (maximum of 4.5 days for every 30 days served). Language in the Appropriation Act adopted by the 2022 General Assembly (Special Session I) provides that, notwithstanding the provisions of § 53.1-202.3, an individual is not eligible for the enhanced sentence credits for any offense if, during the same term of incarceration, he is also serving time for one or more of the exclusionary felonies enumerated § 53.1-202.3(A).

Analysis:

According to the Virginia Department of Corrections (DOC), 2,968 state-responsible inmates confined as of December 31, 2022 were 1) serving time for one or more of the specified firearm offenses and/or a conviction for a felony committed during their incarceration, and 2) were earning the enhanced sentence credits available under § 53.1-202.3(B). The vast majority of the 2,968 inmates (more than 90%) were serving time for a specified firearms offense. DOC indicates that, of the 2,968 inmates, 785 are expected to be released prior to the bill's effective date of July 1, 2023, and would not be impacted by the bill. Another 333 are currently expected to be released on or after July 1, 2029, and would not be affected by the bill during the six-year forecast window specified in § 30-19.1:4 for fiscal impact statements. The remaining 1,850 state-responsible inmates may be impacted by the bill during the six-year forecast horizon.

DOC reports that, for these 1,850 inmates, the average expected length-of-stay that will remain as of July 1, 2023, is estimated to be 20.8 months. If these inmates were restricted to the lower rates of sentence credits under § 53.1-202.3(A) beginning July 1, 2023, and going forward, the average expected length-of-stay remaining when the bill takes effect is estimated to be 35.6 months.³ Thus, for affected inmates currently serving time, the difference in the average expected length-of-stay is estimated to be 14.8 months (1.2 years).

It should be noted that the analysis above does not take into account: 1) the number of future admissions to the state-responsible inmate population; 2) which earned sentence credit system future admissions would fall under; or 3) any felonies future admissions may commit while incarcerated.

Impact of Proposed Legislation:

State adult correctional facilities. By restricting the sentence credits that may be earned by state-responsible inmates convicted of certain offenses, the proposal is expected to increase the number of state-responsible (prison) beds needed to house affected individuals. If the 1,850 state-responsible inmates identified by the Virginia DOC as likely to be affected during the six-year forecast window each stay 1.2 years longer due to the proposed restrictions on sentence credits, the potential impact of the bill could be an additional 2,220 occupied beds (1,850 inmates x 1.2 years). The analysis assumes the bill will apply to the period of time individuals confined as of December 31, 2022, will serve on or after July 1, 2023. Pursuant to the requirements of § 30-19.1:4, the estimated amount of the necessary appropriation would be \$108,686,760.

If the bill applies only to individuals who commit the specified felonies on or after July 1, 2023, or individuals who are sentenced on or after that date, the bill will not affect currently confined state-responsible inmates (unless an individual, after July 1, commits a new felony during his term of incarceration).

The analysis does not address the potential impact associated with future admissions to the state-responsible inmate population, which earned sentence credit system will apply to future admissions, or how many felonies future admissions may commit while incarcerated.

³ This assumes that the affected inmates stay in the same sentence credit level (Level 1, Level 2, Level 3, or Level 4) but that they earn credits at the lower rates provided in § 53.1-202.3(A).

Local adult correctional facilities. Similarly, the bill may increase the need for local-responsible (jail) beds, specifically for felony offenders given a sentence of 12 months or less. Without significant analysis of the Local Inmate Data System (LIDS), the magnitude of the impact on the local-responsible population cannot be estimated.

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 \$108,686,760 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:

1. Cost per prison bed was assumed to be \$48,958 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.*
2. Analysis assumes that all 1,850 state-responsible inmates identified by the Virginia Department of Corrections (DOC) as likely to be affected by the bill during the six-year forecast window each stay 1.2 years longer due to the proposed restrictions on sentence credits.
3. The analysis assumes the bill will apply to the period of time individuals confined as of December 31, 2022, will serve on or after July 1, 2023.

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