

Department of Planning and Budget 2023 Fiscal Impact Statement

1. Bill Number: SB1542

House of Origin Introduced Substitute Engrossed

Second House In Committee Substitute Enrolled

2. Patron: Stuart

3. Committee: Judiciary

4. Title: Enhanced earned sentence credits; exemptions; certain firearm-related offenses; felony conviction.

5. Summary: Currently, under §53.1-202.3 Subsection A, a maximum of 4.5 sentence credits may be earned for each 30 days served on a sentence for a conviction of certain felony offenses. However, for offenses other than those enumerated in subsection A, for which sentence credits may be earned, earned sentence credits are awarded and calculated using the following four-level classification system: Level I, 15 days credited for every 30 days served; (highest level); Level II, 7.5 days credited for every 30 days served; Level III, 3.5 days credited for every 30 days served; Level IV, zero sentence credits earned (lowest level). The earning of sentence credits is conditioned, in part, upon full participation in and cooperation with programs to which a person is assigned pursuant to § 53.1-32.1 (Classification system; program assignments; mandatory participation).

Additionally, pursuant to Item 404, R.2. of Chapter 2, 2022 Acts of Assembly, Special Session I, notwithstanding the provisions of § 53.1-202.3, Code of Virginia, a maximum of 4.5 sentence credits may be earned for each 30 days served on a sentence that is concurrent with or consecutive to a sentence for a conviction of an offense enumerated in subsection A of § 53.1-202.3, Code of Virginia.

Under the provisions of the proposed bill, anyone convicted of a violation of the following would not be eligible to participate in the enhanced earned-sentence-credit system and could only earn the maximum of 4.5 sentence credits for each 30 days served:

- § 18.2-53.1 (Use or display of firearm in committing felony);
- clause (iii) of § 18.2-95 (makes simple larceny not from the person of another of any firearm punishable as grand larceny), or § 18.2-108.1 (Receipt of stolen firearm),
- 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 (which establish penalties for dangerous use of firearms and other weapons), except for a violation of § 18.2-282.1 (Brandishing a machete or other bladed weapon with intent to intimidate);
 - Article 5 (§ 18.2-288 et seq.) of Chapter 7 of Title 18.2 (Uniform Machine Gun Act);

- Article 6 (§ 18.2-299 et seq.) of Chapter 7 of Title 18.2 (Sawed-off Shotgun and Sawed-off Rifle Act), § 18.2-308 (Carrying concealed weapons; exceptions; penalty), or
- Article 7 (§ 18.2-308.1 et seq.) of Chapter 7 of Title 18.2 (establishes penalties for other illegal weapons).

The bill also requires that the classification level of anyone convicted of a felony that occurred while a prisoner was confined in a local, state, or community correctional facility or in the custody of an employee thereof must be adjusted to Level IV and the calculation of earned sentence credits reduced to zero.

6. Budget Amendment Necessary: Yes. Item 404.

7. Fiscal Impact Estimates: Preliminary. See Item 8 below.

8. Fiscal Implications: 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 percent) 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 as proposed by the bill 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. 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).

The analysis above does not take into account the number of future admissions to the state-responsible inmate population, which earned sentence credit system future admissions would fall under, or any felonies future admissions may commit while incarcerated.

Pursuant to §30-19.1:4 of the Code of Virginia, the Virginia Criminal Sentencing Commission estimates a fiscal impact of \$108,686,760 (the highest annual cost over the next six years). The amount is based on the projection that the legislation will impact 2,220 prison beds.

The Virginia Criminal Sentencing Commission reports that the bill may also increase the need for local-responsible (jail) beds, specifically for felony offenders given a sentence of 12 months or less. However, without significant analysis of the Local Inmate Data System (LIDS), the magnitude of the impact on the local-responsible population cannot be estimated.

The bill is not expected to increase the need for adult community corrections resources and may delay the need for services for some offenders, as they would remain incarcerated longer before being released to the community.

According to DOC, this bill would require changes to the Virginia Corrections Information System (VACORIS), which DOC uses to track offender data including sentence credits earned and inmate release dates. DOC estimates the one-time cost of making the required modifications at \$275,000. It is expected that DOC could absorb the cost of these modifications. DOC estimates that the modifications would take at least one year before they could be fully implemented.

According to the Office of Attorney General, this bill is not expected to have a fiscal impact on agency operations.

9. Specific Agency or Political Subdivisions Affected: Department of Corrections

10. Technical Amendment Necessary: The second enactment clause for this bill includes both the Virginia Criminal Sentencing Commission's \$108,686,760 impact and a minimum impact of \$50,000. This language should only include the \$108,686,760 impact.

11. Other Comments: None