

HOUSE BILL NO. 1603

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice

on _____)

(Patron Prior to Substitute--Delegate Wyatt)

A BILL to amend and reenact § 53.1-202.3 of the Code of Virginia, relating to enhanced earned sentence credits; exemptions; firearm-related offense; felony conviction during confinement.

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 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;

53 18. Any violation of § 18.2-53.1, clause (iii) of § 18.2-95, or § 18.2-108.1, or any felony offense
54 relating to the use or possession of a firearm under Article 4 (§ 18.2-279 et seq.) of Chapter 7 of Title
55 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,
56 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
57 Chapter 7 of Title 18.2; or

58 19. Any felony conviction for an offense that occurred while a prisoner in a local, state, or
59 community correctional facility or in the custody of an employee thereof.

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

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

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

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

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

80 4. Level IV. No sentence credits shall be awarded to persons classified in Level IV. A person will
81 be classified in Level IV if that person (i) willfully fails to participate in or cooperate with all programs,
82 job assignments, and educational curriculums to which the person is assigned pursuant to § 53.1-32.1-~~or~~
83 ~~that person;~~ (ii) causes substantial security or operational problems at the correctional facility as
84 established by the Department's policies or procedures; or (iii) receives a felony conviction for an offense
85 that occurred while a prisoner in a local, state, or community correctional facility or in the custody of an
86 employee thereof.

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

94 D. A person's classification level under subsection B may be immediately reviewed and adjusted
95 following removal from a program, job assignment, or educational curriculum that was assigned pursuant
96 to § 53.1-32.1 for disciplinary or noncompliance reasons. Any person who receives a felony conviction
97 for an offense that occurred while a prisoner in a local, state, or community correctional facility or in the
98 custody of an employee thereof shall be classified in Level IV and shall not receive any further earned
99 sentence credits for the sentence or sentences that such prisoner is serving at the time of such felony
100 conviction.

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

104 F. For a juvenile sentenced to serve a portion of his sentence as a serious juvenile offender under
105 § 16.1-285.1, consideration for earning sentence credits shall be conditioned, in part, upon full
106 participation in and cooperation with programs afforded to the juvenile during that portion of the sentence.

107 The Department of Juvenile Justice shall provide a report that describes the juvenile's adherence to the
108 facility's rules and the juvenile's progress toward treatment goals and objectives while sentenced as a
109 serious juvenile offender under § 16.1-285.1.

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

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