

HOUSE BILL NO. 77

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice

on \_\_\_\_\_)

(Patron Prior to Substitute--Delegate Watts)

A BILL to amend and reenact §§ 16.1-309.1, 16.1-330.1, 17.1-805, 18.2-46.1, 18.2-50.3, 18.2-90, 19.2-297.1, 53.1-40.02, 53.1-131.2, 53.1-151, 53.1-165.1, and 53.1-202.3 of the Code of Virginia, relating to robbery.

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

**1. That §§ 16.1-309.1, 16.1-330.1, 17.1-805, 18.2-46.1, 18.2-50.3, 18.2-90, 19.2-297.1, 53.1-40.02, 53.1-131.2, 53.1-151, 53.1-165.1, and 53.1-202.3 of the Code of Virginia are amended and reenacted as follows:**

**§ 16.1-309.1. Exception as to confidentiality.**

A. Notwithstanding any other provision of this article, where consideration of public interest requires, the judge shall make available to the public the name and address of a juvenile and the nature of the offense for which a juvenile has been adjudicated delinquent (i) for an act which would be a Class 1, 2, or 3 felony, forcible rape, ~~robbery~~ or burglary or a related offense as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2 if committed by an adult or (ii) in any case where a juvenile is sentenced as an adult in circuit court.

B. 1. a. At any time prior to disposition, if a juvenile charged with a delinquent act which would constitute a felony if committed by an adult, or held in custody by a law-enforcement officer, or held in a secure facility pursuant to such charge becomes a fugitive from justice, the attorney for the Commonwealth or, upon notice to the Commonwealth's attorney, the Department of Juvenile Justice or a locally operated court services unit, may, with notice to the juvenile's attorney of record, petition the court having jurisdiction of the offense to authorize public release of the juvenile's name, age, physical description and photograph, the charge for which he is sought or for which he was adjudicated and any

27 other information which may expedite his apprehension. Upon a showing that the juvenile is a fugitive  
28 and for good cause, the court shall order release of this information to the public. If a juvenile charged  
29 with a delinquent act that would constitute a felony if committed by an adult, or held in custody by a law-  
30 enforcement officer, or held in a secure facility pursuant to such charge becomes a fugitive from justice  
31 at a time when the court is not in session, the Commonwealth's attorney, the Department of Juvenile  
32 Justice, or a locally operated court services unit may, with notice to the juvenile's attorney of record,  
33 authorize the public release of the juvenile's name, age, physical description and photograph, the charge  
34 for which he is sought, and any other information which may expedite his apprehension.

35       b. At any time prior to disposition, if a juvenile charged with a delinquent act which would  
36 constitute a misdemeanor if committed by an adult, or held in custody by a law-enforcement officer, or  
37 held in a secure facility pursuant to such charge becomes a fugitive from justice, the attorney for the  
38 Commonwealth may, with notice to the juvenile's attorney of record, petition the court having jurisdiction  
39 of the offense to authorize public release of the juvenile's name, age, physical description and photograph,  
40 the charge for which he is sought or for which he was adjudicated and any other information which may  
41 expedite his apprehension. Upon a showing that the juvenile is a fugitive and for good cause, the court  
42 shall order release of this information to the public. If a juvenile charged with a delinquent act that would  
43 constitute a misdemeanor if committed by an adult, or held in custody by a law-enforcement officer, or  
44 held in a secure facility pursuant to such charge becomes a fugitive from justice at a time when the court  
45 is not in session, the attorney for the Commonwealth may, with notice to the juvenile's attorney of record,  
46 authorize the public release of the juvenile's name, age, physical description and photograph, the charge  
47 for which he is sought, and any other information which may expedite his apprehension.

48       2. After final disposition, if a juvenile (i) found to have committed a delinquent act becomes a  
49 fugitive from justice or (ii) who has been committed to the Department of Juvenile Justice pursuant to  
50 subdivision A 14 of § 16.1-278.8 or § 16.1-285.1 becomes a fugitive from justice by escaping from a  
51 facility operated by or under contract with the Department or from the custody of any employee of such  
52 facility, the Department may release to the public the juvenile's name, age, physical description and  
53 photograph, the charge for which he is sought or for which he was committed, and any other information

54 which may expedite his apprehension. The Department shall promptly notify the attorney for the  
55 Commonwealth of the jurisdiction in which the juvenile was tried whenever information is released  
56 pursuant to this subdivision. If a juvenile specified in clause (i) being held after disposition in a secure  
57 facility not operated by or under contract with the Department becomes a fugitive by such escape, the  
58 attorney for the Commonwealth of the locality in which the facility is located may release the information  
59 as provided in this subdivision.

60 C. Whenever a juvenile 14 years of age or older is charged with a delinquent act that would be a  
61 criminal violation of Article 2 (§ 18.2-38 et seq.) of Chapter 4 of Title 18.2, a felony involving a weapon,  
62 a felony violation of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, or an "act of violence" as  
63 defined in subsection A of § 19.2-297.1 if committed by an adult, the judge may, where consideration of  
64 the public interest requires, make the juvenile's name and address available to the public.

65 D. Upon the request of a victim of a delinquent act that would be a felony or that would be a  
66 misdemeanor violation of § 16.1-253.2, 18.2-57, 18.2-57.2, 18.2-60.3, 18.2-60.4, 18.2-67.4, or 18.2-67.5  
67 if committed by an adult, the court may order that such victim be informed of the charge or charges  
68 brought, the findings of the court, and the disposition of the case. For purposes of this section, "victim"  
69 shall be defined as in § 19.2-11.01.

70 E. Upon request, the judge or clerk may disclose if an order of emancipation of a juvenile pursuant  
71 to § 16.1-333 has been entered, provided (i) the order is not being appealed, (ii) the order has not been  
72 terminated, or (iii) there has not been a judicial determination that the order is void ab initio.

73 F. Notwithstanding any other provision of law, a copy of any court order that imposes a curfew or  
74 other restriction on a juvenile may be provided to the chief law-enforcement officer of the county or city  
75 wherein the juvenile resides. The chief law-enforcement officer shall only disclose information contained  
76 in the court order to other law-enforcement officers in the conduct of official duties.

77 G. Notwithstanding any other provision of law, where consideration of public safety requires, the  
78 Department and locally operated court service unit shall release information relating to a juvenile's  
79 criminal street gang involvement, if any, and the criminal street gang-related activity and membership of  
80 others, as criminal street gang is defined in § 18.2-46.1, obtained from an investigation or supervision of

81 a juvenile and shall include the identity or identifying information of the juvenile; however, the  
82 Department and local court service unit shall not release the identifying information of a juvenile not  
83 affiliated with or involved in a criminal street gang unless that information relates to a specific criminal  
84 act. Such information shall be released to any State Police, local police department, sheriff's office, or  
85 law-enforcement task force that is a part of or administered by the Commonwealth or any political  
86 subdivision thereof, and that is responsible for the prevention and detection of crime and the enforcement  
87 of the penal, traffic, or highway laws of the Commonwealth. The exchange of information shall be for the  
88 purpose of an investigation into criminal street gang activity.

89 H. Notwithstanding any other provision of Article 12 (§ 16.1-299 et seq.), a clerk of the court shall  
90 report to the Bureau of Immigration and Customs Enforcement of the U.S. Department of Homeland  
91 Security a juvenile who has been detained in a secure facility but only upon an adjudication of delinquency  
92 or finding of guilt for a violent juvenile felony and when there is evidence that the juvenile is in the United  
93 States illegally.

94 I. Notwithstanding any other provision of this article, whenever an intake officer proceeds  
95 informally against a juvenile, the Department or local court service unit may disclose only such  
96 information as necessary to enforce any provision of the diversion program to any law-enforcement  
97 officer, school principal where such juvenile attends school, or known victim. Such information shall  
98 remain confidential and not be part of such juvenile's academic record. Additionally, a local court service  
99 unit may provide information regarding the availability and ordering of a protective order and restitution  
100 and dispositional information to the victim in the case.

101 **§ 16.1-330.1. Serious or Habitual Offender Comprehensive Action Program; definition;**  
102 **disclosure of information; penalty.**

103 A. For purposes of this article, a serious or habitual juvenile offender is a minor who has been (i)  
104 adjudicated delinquent or convicted of murder or attempted murder, ~~armed robbery~~ in violation of  
105 subdivision B 1, 2, or 3 of § 18.2-58, any felony sexual assault or malicious wounding, or a felony violation  
106 of a gang-related crime pursuant to Article 2.1 (§ 18.2-46.1 et seq.) of Chapter 4 of Title 18.2, or (ii)  
107 convicted at least three times for offenses which would be felonies or Class 1 misdemeanors if committed

108 by an adult. Qualifying convictions or adjudications shall include only those for offenses occurring after  
109 July 1, 1993. However, any Serious or Habitual Offender Comprehensive Action Program (SHOCAP) in  
110 existence on July 1, 1993, shall be deemed to have been established pursuant to this article and,  
111 notwithstanding the limitations of this subsection, may continue to supervise persons who were being  
112 supervised on July 1, 1993. Juvenile offenders under SHOCAP supervision at the time of their eighteenth  
113 birthday who have been committed to state care pursuant to subdivision A 14 of § 16.1-278.8 or § 16.1-  
114 285.1 may continue to be supervised by SHOCAP until their twenty-first birthday.

115 B. The Serious or Habitual Offender Comprehensive Action Program (SHOCAP) is a  
116 multidisciplinary interagency case management and information sharing system which enables the  
117 juvenile and criminal justice system, schools, and social service agencies to make more informed decisions  
118 regarding juveniles who repeatedly commit serious criminal and delinquent acts. Each SHOCAP shall  
119 supervise serious or habitual juvenile offenders in the community as well as those under probation or  
120 parole supervision and enhance current conduct control, supervision and treatment efforts to provide a  
121 more coordinated public safety approach to serious juvenile crime, increase the opportunity for success  
122 with juvenile offenders and assist in the development of early intervention strategies.

123 C. Any county or city in the Commonwealth may by action of its governing body establish a  
124 SHOCAP committee. The committee shall consist of representatives from local law enforcement, schools,  
125 attorneys for the Commonwealth, juvenile court services, juvenile detention centers or group homes,  
126 mental and medical health agencies, state and local children and family service agencies, and the  
127 Department of Juvenile Justice. Any county or city which establishes a SHOCAP committee shall, within  
128 45 days of such action, notify the Department of Criminal Justice Services. The Department shall issue  
129 statewide SHOCAP guidelines and provide technical assistance to local jurisdictions on implementation  
130 of SHOCAP.

131 D. Each SHOCAP committee shall share among its members and with other SHOCAP committees  
132 otherwise confidential information on identified serious or habitual juvenile offenders. Every person,  
133 including members of the SHOCAP committee, who is to receive confidential information pursuant to  
134 this article shall maintain the confidentiality of that information.

135 All records and reports concerning serious or habitual juvenile offenders made available to  
136 members of a SHOCAP committee and all records and reports identifying an individual offender which  
137 are generated by the committee from such reports shall be confidential and shall not be disclosed, except  
138 as specifically authorized by this article or other applicable law. Disclosure of the information may be  
139 made to other staff from member agencies as authorized by the SHOCAP committee for the furtherance  
140 of case management, community supervision, conduct control and locating of the offender for the  
141 application and coordination of appropriate services. Staff from the member agencies who receive such  
142 information will be governed by the confidentiality provisions of this article. The staff from the member  
143 agencies who will qualify to have access to the SHOCAP information shall be limited to those individuals  
144 who provide direct services to the offender or who provide community conduct control and supervision  
145 to the offender.

146 The provisions of this article authorizing information sharing between and among SHOCAP  
147 committees shall take precedence over the provisions of (i) Article 12 (§ 16.1-299 et seq.) of Chapter 11  
148 of this title governing dissemination of court and law-enforcement records concerning juveniles, (ii)  
149 Article 5 (§ 22.1-287 et seq.) of Chapter 14 of Title 22.1 governing access to pupil records, (iii) Title 37.2  
150 and any regulations enacted pursuant thereto governing access to juvenile mental health records, and (iv)  
151 Title 63.2 and any regulations enacted pursuant thereto governing access to records concerning treatments  
152 or services provided to a juvenile.

153 E. It shall be unlawful for any staff person from a member agency to disclose or to knowingly  
154 permit, assist or encourage the unauthorized release of any identifying information contained in any  
155 reports or records received or generated by a SHOCAP committee. A violation of this subsection shall be  
156 punishable as a Class 3 misdemeanor.

157 **§ 17.1-805. Adoption of initial discretionary sentencing guideline midpoints.**

158 A. The Commission shall adopt an initial set of discretionary felony sentencing guidelines which  
159 shall become effective on January 1, 1995. The initial recommended sentencing range for each felony  
160 offense shall be determined first, by computing the actual time-served distribution for similarly situated  
161 offenders, in terms of their conviction offense and prior criminal history, released from incarceration

162 during the base period of calendar years 1988 through 1992, increased by 13.4 percent, and second, by  
163 eliminating from this range the upper and lower quartiles. The midpoint of each initial recommended  
164 sentencing range shall be the median time served for the middle two quartiles and subject to the following  
165 additional enhancements:

166 1. The midpoint of the initial recommended sentencing range for first degree murder, second  
167 degree murder, rape in violation of § 18.2-61, forcible sodomy, object sexual penetration, and aggravated  
168 sexual battery shall be further increased by (i) 125 percent in cases in which the defendant has no previous  
169 conviction of a violent felony offense; (ii) 300 percent in cases in which the defendant has previously been  
170 convicted of a violent felony offense punishable by a maximum punishment of less than 40 years; or (iii)  
171 500 percent in cases in which the defendant has previously been convicted of a violent felony offense  
172 punishable by a maximum punishment of 40 years or more, except that the recommended sentence for a  
173 defendant convicted of first degree murder who has previously been convicted of a violent felony offense  
174 punishable by a maximum term of imprisonment of 40 years or more shall be imprisonment for life;

175 2. The midpoint of the initial recommended sentencing range for voluntary manslaughter, robbery  
176 committed before July 1, 2021, where, during the commission of such robbery, such person caused serious  
177 bodily injury to or the death of any other person or used or displayed a firearm in a threatening manner,  
178 robbery committed on or after July 1, 2021, in violation of subdivision B 1 or 2 of § 18.2-58, aggravated  
179 malicious wounding, malicious wounding, and any burglary of a dwelling house or statutory burglary of  
180 a dwelling house or any burglary committed while armed with a deadly weapon or any statutory burglary  
181 committed while armed with a deadly weapon shall be further increased by (i) 100 percent in cases in  
182 which the defendant has no previous conviction of a violent felony offense, (ii) 300 percent in cases in  
183 which the defendant has previously been convicted of a violent felony offense punishable by a maximum  
184 term of imprisonment of less than 40 years, or (iii) 500 percent in cases in which the defendant has  
185 previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of  
186 40 years or more;

187 3. The midpoint of the initial recommended sentencing range for manufacturing, selling, giving,  
188 or distributing, or possessing with the intent to manufacture, sell, give, or distribute a Schedule I or II

189 controlled substance, shall be increased by (i) 200 percent in cases in which the defendant has previously  
190 been convicted of a violent felony offense punishable by a maximum punishment of less than 40 years or  
191 (ii) 400 percent in cases in which the defendant has previously been convicted of a violent felony offense  
192 punishable by a maximum term of imprisonment of 40 years or more; and

193 4. The midpoint of the initial recommended sentencing range for felony offenses not specified in  
194 subdivision 1, 2, or 3 shall be increased by 100 percent in cases in which the defendant has previously  
195 been convicted of a violent felony offense punishable by a maximum punishment of less than 40 years  
196 and by 300 percent in cases in which the defendant has previously been convicted of a violent felony  
197 offense punishable by a maximum term of imprisonment of 40 years or more.

198 B. For purposes of this chapter, previous convictions shall include prior adult convictions and  
199 juvenile convictions and adjudications of delinquency based on an offense which would have been at the  
200 time of conviction a felony if committed by an adult under the laws of any state, the District of Columbia,  
201 or the United States or its territories.

202 C. For purposes of this chapter, violent felony offenses shall include any felony violation of § 16.1-  
203 253.2; solicitation to commit murder under § 18.2-29; any violation of § 18.2-31, 18.2-32, 18.2-32.1, 18.2-  
204 32.2, 18.2-33, or 18.2-35; any violation of subsection B of § 18.2-36.1; any violation of § 18.2-40 or 18.2-  
205 41; any violation of clause (c)(i) or (ii) of subsection B of § 18.2-46.3; any violation of § 18.2-46.5, 18.2-  
206 46.6, or 18.2-46.7; any Class 5 felony violation of § 18.2-47; any felony violation of § 18.2-48, 18.2-48.1,  
207 or 18.2-49; any violation of § 18.2-51, 18.2-51.1, 18.2-51.2, 18.2-51.3, 18.2-51.4, 18.2-51.6, 18.2-52,  
208 18.2-52.1, 18.2-53, 18.2-53.1, 18.2-54.1, 18.2-54.2, or 18.2-55; any violation of subsection B of § 18.2-  
209 57; any felony violation of § 18.2-57.2; any violation of § 18.2-58 or 18.2-58.1; any felony violation of §  
210 18.2-60.1, 18.2-60.3, or 18.2-60.4; any violation of § 18.2-61, 18.2-64.1, 18.2-67.1, 18.2-67.2, former §  
211 18.2-67.2:1, 18.2-67.3, 18.2-67.5, or 18.2-67.5:1 involving a third conviction of either sexual battery in  
212 violation of § 18.2-67.4 or attempted sexual battery in violation of subsection C of § 18.2-67.5; any Class  
213 4 felony violation of § 18.2-63; any violation of subsection A of § 18.2-67.4:1; any violation of subsection  
214 A of § 18.2-77; any Class 3 felony violation of § 18.2-79; any Class 3 felony violation of § 18.2-80; any  
215 violation of § 18.2-85, 18.2-89, 18.2-90, 18.2-91, 18.2-92, or 18.2-93; any felony violation of § 18.2-



216 152.7; any Class 4 felony violation of § 18.2-153; any Class 4 felony violation of § 18.2-154; any Class 4  
217 felony violation of § 18.2-155; any felony violation of § 18.2-162; any violation of § 18.2-279 involving  
218 an occupied dwelling; any felony violation of subsection A or B of § 18.2-280; any violation of § 18.2-  
219 281; any felony violation of subsection A of § 18.2-282; any felony violation of § 18.2-282.1; any violation  
220 of § 18.2-286.1, 18.2-287.2, 18.2-289, or 18.2-290; any violation of subsection A of § 18.2-300; any  
221 felony violation of subsection C of § 18.2-308.1 or § 18.2-308.2; any violation of § 18.2-308.2:1 or  
222 subsection M or N of § 18.2-308.2:2; any violation of § 18.2-308.3 or 18.2-312; any former felony  
223 violation of § 18.2-346; any felony violation of § 18.2-346.01, 18.2-348, or 18.2-349; any violation of §  
224 18.2-355, 18.2-356, 18.2-357, or 18.2-357.1; any violation of former § 18.2-358; any violation of  
225 subsection B of § 18.2-361; any violation of subsection B of § 18.2-366; any violation of § 18.2-368, 18.2-  
226 370, or 18.2-370.1; any violation of subsection A of § 18.2-371.1; any felony violation of § 18.2-369  
227 resulting in serious bodily injury or disease; any violation of § 18.2-374.1; any felony violation of § 18.2-  
228 374.1:1; any violation of § 18.2-374.3 or 18.2-374.4; any second or subsequent offense under §§ 18.2-379  
229 and 18.2-381; any felony violation of § 18.2-405 or 18.2-406; any violation of § 18.2-408, 18.2-413, 18.2-  
230 414, 18.2-423, 18.2-423.01, 18.2-423.1, 18.2-423.2, or 18.2-433.2; any felony violation of § 18.2-460,  
231 18.2-474.1, or 18.2-477.1; any violation of § 18.2-477, 18.2-478, 18.2-480, 18.2-481, or 18.2-485; any  
232 violation of § 37.2-917; any violation of § 52-48; any violation of § 53.1-203; any conspiracy or attempt  
233 to commit any offense specified in this subsection, or any substantially similar offense under the laws of  
234 any state, the District of Columbia, or the United States or its territories.

235 **§ 18.2-46.1. Definitions.**

236 As used in this article, unless the context requires a different meaning:

237 "Act of violence" means those felony offenses described in subsection C of § 17.1-805 or  
238 subsection A of § 19.2-297.1.

239 "Criminal street gang" means any ongoing organization, association, or group of three or more  
240 persons, whether formal or informal, (i) which has as one of its primary objectives or activities the  
241 commission of one or more criminal activities; (ii) which has an identifiable name or identifying sign or  
242 symbol; and (iii) whose members individually or collectively have engaged in the commission of, attempt

243 to commit, conspiracy to commit, or solicitation of two or more predicate criminal acts, at least one of  
244 which is an act of violence, provided such acts were not part of a common act or transaction.

245 "Predicate criminal act" means (i) an act of violence; (ii) any violation of § 18.2-42, 18.2-46.3,  
246 18.2-56.1, 18.2-57, or 18.2-57.2, subdivision B 3 or 4 of § 18.2-58, or § 18.2-59, 18.2-83, 18.2-95, 18.2-  
247 103.1, 18.2-108.1, 18.2-121, 18.2-127, 18.2-128, 18.2-137, 18.2-138, 18.2-146, 18.2-147, 18.2-248.01,  
248 18.2-248.03, 18.2-255, 18.2-255.2, 18.2-287.4, 18.2-300, 18.2-308.1, 18.2-308.2, 18.2-308.2:01, 18.2-  
249 308.4, or 18.2-357.1; (iii) a felony violation of § 18.2-60.3, 18.2-346.01, 18.2-348, or 18.2-349; (iv) a  
250 felony violation of § 4.1-1101, 18.2-248, or 18.2-248.1 or a conspiracy to commit a felony violation of §  
251 4.1-1101, 18.2-248, or 18.2-248.1; (v) any violation of a local ordinance adopted pursuant to § 15.2-  
252 1812.2; or (vi) any substantially similar offense under the laws of another state or territory of the United  
253 States, the District of Columbia, or the United States.

254 **§ 18.2-50.3. Enticing, etc., another into a dwelling house with intent to commit certain**  
255 **felonies; penalty.**

256 Any person who commits a violation of § 18.2-31, 18.2-32, 18.2-32.1, 18.2-48, or 18.2-51.2,  
257 subdivision B 1 or 2 of § 18.2-58, or § 18.2-61, 18.2-67.1, or 18.2-67.2 within a dwelling house and who,  
258 with the intent to commit a felony listed in this section, enticed, solicited, requested, or otherwise caused  
259 the victim to enter such dwelling house is guilty of a Class 6 felony. A violation of this section is a separate  
260 and distinct felony.

261 **§ 18.2-90. Entering dwelling house, etc., with intent to commit murder, rape, robbery or**  
262 **arson; penalty.**

263 If any person in the nighttime enters without breaking or in the daytime breaks and enters or enters  
264 and conceals himself in a dwelling house or an adjoining, occupied outhouse or in the nighttime enters  
265 without breaking or at any time breaks and enters or enters and conceals himself in any building  
266 permanently affixed to realty, or any ship, vessel, or river craft or any railroad car, or any automobile,  
267 truck, or trailer, if such automobile, truck, or trailer is used as a dwelling or place of human habitation,  
268 with intent to commit murder, rape, robbery in violation of subdivision B 1, 2, or 3 of § 18.2-58, or arson  
269 in violation of ~~§§~~ § 18.2-77, 18.2-79, or § 18.2-80, he shall be deemed guilty of statutory burglary, which

270 offense shall be a Class 3 felony. However, if such person was armed with a deadly weapon at the time of  
271 such entry, he shall be guilty of a Class 2 felony.

272 **§ 19.2-297.1. Sentence of person twice previously convicted of certain violent felonies.**

273 A. Any person convicted of two or more separate acts of violence when such offenses were not  
274 part of a common act, transaction or scheme, and who has been at liberty as defined in § 53.1-151 between  
275 each conviction, shall, upon conviction of a third or subsequent act of violence, be sentenced to life  
276 imprisonment and shall not have all or any portion of the sentence suspended, provided it is admitted, or  
277 found by the jury or judge before whom he is tried, that he has been previously convicted of two or more  
278 such acts of violence. For the purposes of this section, "act of violence" means (i) any one of the following  
279 violations of Chapter 4 (§ 18.2-30 et seq.) of Title 18.2:

280 a. First and second degree murder and voluntary manslaughter under Article 1 (§ 18.2-30 et seq.);

281 b. Mob-related felonies under Article 2 (§ 18.2-38 et seq.);

282 c. Any kidnapping or abduction felony under Article 3 (§ 18.2-47 et seq.);

283 d. Any malicious felonious assault or malicious bodily wounding under Article 4 (§ 18.2-51 et  
284 seq.);

285 e. Robbery under subdivision B 1 or 2 of § 18.2-58 and carjacking under § 18.2-58.1;

286 f. Except as otherwise provided in § 18.2-67.5:2 or—§ 18.2-67.5:3, criminal sexual assault  
287 punishable as a felony under Article 7 (§ 18.2-61 et seq.); or

288 g. Arson in violation of § 18.2-77 when the structure burned was occupied or a Class 3 felony  
289 violation of § 18.2-79.

290 (ii) conspiracy to commit any of the violations enumerated in clause (i) of this section; and (iii)  
291 violations as a principal in the second degree or accessory before the fact of the provisions enumerated in  
292 clause (i) of this section.

293 B. Prior convictions shall include convictions under the laws of any state or of the United States  
294 for any offense substantially similar to those listed under "act of violence" if such offense would be a  
295 felony if committed in the Commonwealth.

296 The Commonwealth shall notify the defendant in writing, at least thirty days prior to trial, of its  
297 intention to seek punishment pursuant to this section.

298 C. Any person sentenced to life imprisonment pursuant to this section shall not be eligible for  
299 parole and shall not be eligible for any good conduct allowance or any earned sentence credits under  
300 Chapter 6 (§ 53.1-186 et seq.) of Title 53.1. However, any person subject to the provisions of this section,  
301 other than a person who was sentenced under subsection A of § 18.2-67.5:3 for criminal sexual assault  
302 convictions specified in subdivision f, (i) who has reached the age of sixty-five or older and who has  
303 served at least five years of the sentence imposed or (ii) who has reached the age of sixty or older and who  
304 has served at least ten years of the sentence imposed may petition the Parole Board for conditional release.  
305 The Parole Board shall promulgate regulations to implement the provisions of this subsection.

306 **§ 53.1-40.02. Conditional release of terminally ill prisoners.**

307 A. As used in this section, "terminally ill" means having a chronic or progressive medical condition  
308 caused by injury, disease, or illness where the medical prognosis is the person's death within 12 months.

309 B. Any person serving a sentence imposed upon a conviction for a felony offense, except as  
310 provided in subsection C, who is terminally ill may petition the Parole Board for conditional release.

311 C. A person who is terminally ill and is serving a sentence imposed upon a conviction for one of  
312 the following offenses shall not be eligible to petition the Parole Board for conditional release:

313 1. A Class 1 felony;

314 2. Any violation of § 18.2-32, 18.2-32.1, 18.2-32.2, or 18.2-33;

315 3. Any violation of § 18.2-40 or 18.2-45;

316 4. Any violation of § 18.2-46.5, subsection A or B of § 18.2-46.6, or § 18.2-46.7;

317 5. Any kidnapping or abduction felony under Article 3 (§ 18.2-47 et seq.) of Chapter 4 of Title  
318 18.2, except for a violation of § 18.2-49.1;

319 6. Any malicious felonious assault or malicious bodily wounding under Article 4 (§ 18.2-51 et  
320 seq.) of Chapter 4 of Title 18.2, any violation of § 18.2-51.7, 18.2-54.1, or 18.2-54.2, or any felony  
321 violation of § 18.2-57.2;

322 7. Any felony violation of § 18.2-60.3;

- 323 8. Any felony violation of § 16.1-253.2 or 18.2-60.4;
- 324 9. Robbery under subdivision B 1 or 2 of § 18.2-58 or carjacking under § 18.2-58.1;
- 325 10. Criminal sexual assault punishable as a felony under Article 7 (§ 18.2-61 et seq.) of Chapter 4
- 326 of Title 18.2, except, when not committed against a minor, a violation of subdivision A 5 of § 18.2-67.3,
- 327 § 18.2-67.4:1, subsection B of § 18.2-67.5, or § 18.2-67.5:1;
- 328 11. Any violation of § 18.2-90 or 18.2-93;
- 329 12. Any violation of § 18.2-289 or subsection A of § 18.2-300;
- 330 13. Any felony offense in Article 3 (§ 18.2-346 et seq.) of Chapter 8 of Title 18.2 involving a
- 331 minor victim;
- 332 14. Any felony offense in Article 4 (§ 18.2-362 et seq.) of Chapter 8 of Title 18.2 involving a
- 333 minor victim, except for a violation of § 18.2-362 or 18.2-370.5 or subsection B of § 18.2-371.1;
- 334 15. Any felony offense in Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 involving a
- 335 minor victim, except for a violation of subsection A of § 18.2-374.1:1;
- 336 16. Any violation of § 18.2-481, 40.1-100.2, or 40.1-103; or
- 337 17. A second or subsequent felony violation of the following offenses when such offenses were
- 338 not part of a common act, transaction, or scheme and such person has been at liberty as defined in § 53.1-
- 339 151 between each conviction:
  - 340 a. Voluntary or involuntary manslaughter under Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title
  - 341 18.2 or any crime punishable as such;
  - 342 b. Any violation of § 18.2-41 or 18.2-42.1;
  - 343 c. Any violation of subsection C of § 18.2-46.6;
  - 344 d. Any violation when done unlawfully but not maliciously of § 18.2-51 or 18.2-51.1;
  - 345 e. Arson in violation of § 18.2-77 when the structure burned was occupied or a Class 3 felony
  - 346 violation of § 18.2-79;
  - 347 f. Any violation of § 18.2-89 with the intent to commit any larceny or § 18.2-92;
  - 348 g. Any violation of subsection A of § 18.2-374.1:1;
  - 349 h. Any violation of § 18.2-423, 18.2-423.01, 18.2-423.1, 18.2-423.2, or 18.2-433.2; or

350 i. Any violation of subdivision E 2 of § 40.1-29.

351 D. The Parole Board shall promulgate regulations to implement the provisions of this section.

352 § 53.1-131.2. **Assignment to a home/electronic incarceration program; payment to defray**  
353 **costs; escape; penalty.**

354 A. Any court having jurisdiction for the trial of a person charged with a criminal offense, a traffic  
355 offense or an offense under Chapter 5 (§ 20-61 et seq.) of Title 20, or failure to pay child support pursuant  
356 to a court order may, if the defendant is convicted and sentenced to confinement in a state or local  
357 correctional facility, and if it appears to the court that such an offender is a suitable candidate for  
358 home/electronic incarceration, assign the offender to a home/electronic incarceration program as a  
359 condition of probation, if such program exists, under the supervision of the sheriff, the administrator of a  
360 local or regional jail, or a Department of Corrections probation and parole district office established  
361 pursuant to § 53.1-141. However, any offender who is convicted of any of the following violations of  
362 Chapter 4 (§ 18.2-30 et seq.) of Title 18.2 shall not be eligible for participation in the home/electronic  
363 incarceration program: (i) first and second degree murder and voluntary manslaughter under Article 1 (§  
364 18.2-30 et seq.); (ii) mob-related felonies under Article 2 (§ 18.2-38 et seq.); (iii) any kidnapping or  
365 abduction felony under Article 3 (§ 18.2-47 et seq.); (iv) any malicious felonious assault or malicious  
366 bodily wounding under Article 4 (§ 18.2-51 et seq.); (v) robbery under subdivision B 1 or 2 of § 18.2-58  
367 or carjacking under § 18.2-58.1; or (vi) any criminal sexual assault punishable as a felony under Article 7  
368 (§ 18.2-61 et seq.). The court may further authorize the offender's participation in work release  
369 employment or educational or other rehabilitative programs as defined in § 53.1-131 or, as appropriate, in  
370 a court-ordered intensive case monitoring program for child support. The court shall be notified in writing  
371 by the director or administrator of the program to which the offender is assigned of the offender's place of  
372 home/electronic incarceration, place of employment, and the location of any educational or rehabilitative  
373 program in which the offender participates.

374 B. In any city or county in which a home/electronic incarceration program established pursuant to  
375 this section is available, the court, subject to approval by the sheriff or the jail superintendent of a local or

376 regional jail, may assign the accused to such a program pending trial if it appears to the court that the  
377 accused is a suitable candidate for home/electronic incarceration.

378 C. Any person who has been sentenced to jail or convicted and sentenced to confinement in prison  
379 but is actually serving his sentence in jail, after notice to the attorney for the Commonwealth of the  
380 convicting jurisdiction, may be assigned by the sheriff to a home/electronic incarceration program under  
381 the supervision of the sheriff, the administrator of a local or regional jail, or a Department of Corrections  
382 probation and parole office established pursuant to § 53.1-141. However, if the offender violates any  
383 provision of the terms of the home/electronic incarceration agreement, the offender may have the  
384 assignment revoked and, if revoked, shall be held in the jail facility to which he was originally sentenced.  
385 Such person shall be eligible if his term of confinement does not include a sentence for a conviction of a  
386 felony violent crime, a felony sexual offense, burglary or manufacturing, selling, giving, distributing or  
387 possessing with the intent to manufacture, sell, give or distribute a Schedule I or Schedule II controlled  
388 substance. The court shall retain authority to remove the offender from such home/electronic incarceration  
389 program. The court which sentenced the offender shall be notified in writing by the sheriff or the  
390 administrator of a local or regional jail of the offender's place of home/electronic incarceration and place  
391 of employment or other rehabilitative program.

392 D. The Board may prescribe regulations to govern home/electronic incarceration programs, and  
393 the Director may prescribe rules to govern home/electronic incarceration programs operated under the  
394 supervision of a Department of Corrections probation and parole district office established pursuant to §  
395 53.1-141.

396 E. Any offender or accused assigned to such a program by the court or sheriff who, without proper  
397 authority or just cause, leaves his place of home/electronic incarceration, the area to which he has been  
398 assigned to work or attend educational or other rehabilitative programs, including a court-ordered  
399 intensive case monitoring program for child support, or the vehicle or route of travel involved in his going  
400 to or returning from such place, is guilty of a Class 1 misdemeanor. An offender or accused who is found  
401 guilty of a violation of this section shall be ineligible for further participation in a home/electronic  
402 incarceration program during his current term of confinement.

403 F. The director or administrator of a home/electronic incarceration program who also operates a  
404 residential program may remove an offender from a home/electronic incarceration program and place him  
405 in such residential program if the offender commits a noncriminal program violation. The court shall be  
406 notified of the violation and of the placement of the offender in the residential program.

407 G. The director or administrator of a home/electronic incarceration program may charge the  
408 offender or accused a fee for participating in the program which shall be used for the cost of  
409 home/electronic incarceration equipment. The offender or accused shall be required to pay the program  
410 for any damage to the equipment which is in his possession or for failure to return the equipment to the  
411 program.

412 H. Any wages earned by an offender or accused assigned to a home/electronic incarceration  
413 program and participating in work release shall be paid to the director or administrator after standard  
414 payroll deductions required by law. Distribution of the money collected shall be made in the following  
415 order of priority to:

- 416 1. Meet the obligation of any judicial or administrative order to provide support and such funds  
417 shall be disbursed according to the terms of such order;
- 418 2. Pay any fines, restitution or costs as ordered by the court;
- 419 3. Pay travel and other such expenses made necessary by his work release employment or  
420 participation in an education or rehabilitative program, including the sums specified in § 53.1-150; and
- 421 4. Defray the offender's keep.

422 The balance shall be credited to the offender's account or sent to his family in an amount the  
423 offender so chooses.

424 The State Board of Local and Regional Jails shall promulgate regulations governing the receipt of  
425 wages paid to persons participating in such programs, except programs operated under the supervision of  
426 a Department of Corrections probation and parole district office established pursuant to § 53.1-141, the  
427 withholding of payments, and the disbursement of appropriate funds. The Director shall prescribe rules  
428 governing the receipt of wages paid to persons participating in such programs operated under the



429 supervision of a Department of Corrections probation and parole district office established pursuant to §  
430 53.1-141, the withholding of payments, and the disbursement of appropriate funds.

431 I. For the purposes of this section, "sheriff" means the sheriff of the jurisdiction where the person  
432 charged with the criminal offense was convicted and sentenced, provided that the sheriff may designate a  
433 deputy sheriff or regional jail administrator to assign offenders to home/electronic incarceration programs  
434 pursuant to this section.

435 **§ 53.1-151. Eligibility for parole.**

436 A. Except as herein otherwise provided, every person convicted of a felony and sentenced and  
437 committed by a court under the laws of this Commonwealth to the Department of Corrections, whether or  
438 not such person is physically received at a Department of Corrections facility, or as provided for in § 19.2-  
439 308.1:

440 1. For the first time, shall be eligible for parole after serving one-fourth of the term of imprisonment  
441 imposed, or after serving twelve years of the term of imprisonment imposed if one-fourth of the term of  
442 imprisonment imposed is more than twelve years;

443 2. For the second time, shall be eligible for parole after serving one-third of the term of  
444 imprisonment imposed, or after serving thirteen years of the term of imprisonment imposed if one-third  
445 of the term of imprisonment imposed is more than thirteen years;

446 3. For the third time, shall be eligible for parole after serving one-half of the term of imprisonment  
447 imposed, or after serving fourteen years of the term of imprisonment imposed if one-half of the term of  
448 imprisonment imposed is more than fourteen years;

449 4. For the fourth or subsequent time, shall be eligible for parole after serving three-fourths of the  
450 term of imprisonment imposed, or after serving fifteen years of the term of imprisonment imposed if three-  
451 fourths of the term of imprisonment imposed is more than fifteen years.

452 For the purposes of subdivisions 2, 3 and 4 of subsection A and for the purposes of subsections B1  
453 and B2, prior commitments shall include commitments to any correctional facility under the laws of any  
454 state, the District of Columbia, the United States or its territories for murder, rape, robbery, forcible  
455 sodomy, animate or inanimate object sexual penetration, aggravated sexual battery, abduction,

456 kidnapping, burglary, felonious assault or wounding, or manufacturing, selling, giving, distributing or  
457 possessing with the intent to manufacture, sell, give or distribute a controlled substance, if such would be  
458 a felony if committed in the Commonwealth. Only prior commitments interrupted by a person's being at  
459 liberty, or resulting from the commission of a felony while in a correctional facility of the Commonwealth,  
460 of any other state or of the United States, shall be included in determining the number of times such person  
461 has been convicted, sentenced and committed for the purposes of subdivisions 2, 3 and 4 of subsection A.  
462 "At liberty" as used herein shall include not only freedom without any legal restraints, but shall also  
463 include release pending trial, sentencing or appeal, or release on probation or parole or escape. In the case  
464 of terms of imprisonment to be served consecutively, the total time imposed shall constitute the term of  
465 the imprisonment; in the case of terms of imprisonment to be served concurrently, the longest term  
466 imposed shall be the term of imprisonment. In any case in which a parolee commits an offense while on  
467 parole, only the sentence imposed for such offense and not the sentence or sentences or any part thereof  
468 from which he was paroled shall constitute the term of imprisonment.

469         The Department of Corrections shall make all reasonable efforts to determine prior convictions  
470 and commitments of each inmate for the enumerated offenses.

471         B. Persons sentenced to die shall not be eligible for parole. Any person sentenced to life  
472 imprisonment who escapes from a correctional facility or from any person in charge of his custody shall  
473 not be eligible for parole.

474         B1. Any person convicted of three separate felony offenses of (i) murder, (ii) rape<sub>2</sub> or (iii) robbery  
475 by the presenting of firearms ~~or other deadly weapon~~, or any combination of the offenses specified in  
476 ~~subdivisions~~ clauses (i), (ii)<sub>2</sub> or (iii) when such offenses were not part of a common act, transaction<sub>2</sub> or  
477 scheme shall not be eligible for parole. In the event of a determination by the Department of Corrections  
478 that an individual is not eligible for parole under this subsection, the Parole Board may in its discretion,  
479 review that determination, and make a determination for parole eligibility pursuant to regulations  
480 promulgated by it for that purpose. Any determination of the Parole Board of parole eligibility thereby  
481 shall supersede any prior determination of parole ineligibility by the Department of Corrections under this  
482 subsection.

483 B2. Any person convicted of three separate felony offenses of manufacturing, selling, giving,  
484 distributing or possessing with the intent to manufacture, sell, give or distribute a controlled substance,  
485 when such offenses were not part of a common act, transaction or scheme, and who has been at liberty as  
486 defined in this section between each conviction, shall not be eligible for parole.

487 C. Any person sentenced to life imprisonment for the first time shall be eligible for parole after  
488 serving fifteen years, except that if such sentence was for a Class 1 felony violation or the first degree  
489 murder of a child under the age of eight in violation of § 18.2-32, he shall be eligible for parole after  
490 serving twenty-five years, unless he is ineligible for parole pursuant to subsection B1 or B2.

491 D. A person who has been sentenced to two or more life sentences, except a person to whom the  
492 provisions of subsection B1, B2, or E of this section are applicable, shall be eligible for parole after serving  
493 twenty years of imprisonment, except that if either such sentence, or both, was or were for a Class 1 felony  
494 violation, and he is not otherwise ineligible for parole pursuant to subsection B1, B2, or E of this section,  
495 he shall be eligible for parole only after serving thirty years.

496 E. A person convicted of an offense and sentenced to life imprisonment after being paroled from  
497 a previous life sentence shall not be eligible for parole.

498 E1. Any person who has been convicted of murder in the first degree, rape in violation of § 18.2-  
499 61, forcible sodomy, animate or inanimate object sexual penetration or aggravated sexual battery and who  
500 has been sentenced to a term of years shall, upon a first commitment to the Department of Corrections, be  
501 eligible for parole after serving two-thirds of the term of imprisonment imposed or after serving fourteen  
502 years of the term of imprisonment imposed if two-thirds of the term of imprisonment imposed is more  
503 than fourteen years. If such person has been previously committed to the Department of Corrections, such  
504 person shall be eligible for parole after serving three-fourths of the term of imprisonment imposed or after  
505 serving fifteen years of the terms of imprisonment imposed if three-fourths of the term of imprisonment  
506 imposed is more than fifteen years.

507 F. If the sentence of a person convicted of a felony and sentenced to the Department is partially  
508 suspended, he shall be eligible for parole based on the portion of such sentence execution which was not  
509 suspended.

510 G. The eligibility time for parole as specified in subsections A, C and D of this section may be  
511 modified as provided in §§ 53.1-191, 53.1-197 and 53.1-198.

512 H. The time for eligibility for parole as specified in subsection D of this section shall apply only  
513 to those criminal acts committed on or after July 1, 1976.

514 I. The provisions of subdivisions 2, 3 and 4 of subsection A shall apply only to persons committed  
515 to the Department of Corrections on or after July 1, 1979, but such persons' convictions and commitments  
516 shall include all felony convictions and commitments without regard to the date of such convictions and  
517 commitments.

518 **§ 53.1-165.1. Limitation on the application of parole statutes.**

519 A. The provisions of this article, except §§ 53.1-160 and 53.1-160.1, shall not apply to any sentence  
520 imposed or to any prisoner incarcerated upon a conviction for a felony offense committed on or after  
521 January 1, 1995. Any person sentenced to a term of incarceration for a felony offense committed on or  
522 after January 1, 1995, shall not be eligible for parole upon that offense.

523 B. The provisions of this article shall apply to any person who was sentenced by a jury prior to  
524 June 9, 2000, for any felony offense committed on or after January 1, 1995, and who remained incarcerated  
525 for such offense on July 1, 2020, other than (i) a Class 1 felony or (ii) any of the following felony offenses  
526 where the victim was a minor: (a) rape in violation of § 18.2-61; (b) forcible sodomy in violation of §  
527 18.2-67.1; (c) object sexual penetration in violation of § 18.2-67.2; (d) aggravated sexual battery in  
528 violation of § 18.2-67.3; (e) an attempt to commit a violation of clause (a), (b), (c), or (d); or (f) carnal  
529 knowledge in violation of § 18.2-63, 18.2-64.1, or 18.2-64.2.

530 C. The Parole Board shall establish procedures for consideration of parole of persons entitled under  
531 subsection B or F consistent with the provisions of § 53.1-154.

532 D. Any person who meets eligibility criteria for parole under subsection B and pursuant to § 53.1-  
533 151 as of July 1, 2020, shall be scheduled for a parole interview no later than July 1, 2021, allowing for  
534 extension of time for reasonable cause.

535 E. Notwithstanding the provisions of subsection A or any other provision of this article to the  
536 contrary, any person sentenced to a term of life imprisonment for a single felony or multiple felonies

537 committed while the person was a juvenile and who has served at least 20 years of such sentence shall be  
538 eligible for parole and any person who has active sentences that total more than 20 years for a single felony  
539 or multiple felonies committed while the person was a juvenile and who has served at least 20 years of  
540 such sentences shall be eligible for parole. The Board shall review and decide the case of each prisoner  
541 who is eligible for parole in accordance with § 53.1-154 and rules adopted pursuant to subdivision 2 of §  
542 53.1-136.

543 F. Notwithstanding the provisions of subsection C of § 19.2-297.1, the provisions of this article  
544 shall apply to any person who was sentenced to a term of life imprisonment pursuant to § 19.2-297.1  
545 where (i) at least one of the acts of violence committed by such person upon which the life sentence was  
546 predicated was for robbery in violation of § 18.2-58 committed prior to July 1, 2021, and (ii) such person,  
547 during the commission of such robbery, did not (a) cause serious bodily injury to or the death of another  
548 person or (b) use or display a firearm in a threatening manner.

549 **§ 53.1-202.3. Rate at which sentence credits may be earned; prerequisites.**

550 A. A maximum of 4.5 sentence credits may be earned for each 30 days served on a sentence for a  
551 conviction for any offense of:

- 552 1. A Class 1 felony;
- 553 2. Solicitation to commit murder under § 18.2-29 or any violation of § 18.2-32, 18.2-32.1, 18.2-  
554 32.2, or 18.2-33;
- 555 3. Any violation of § 18.2-40 or 18.2-45;
- 556 4. Any violation of subsection A of § 18.2-46.5, of subsection D of § 18.2-46.5 if the death of any  
557 person results from providing any material support, or of subsection A of § 18.2-46.6;
- 558 5. Any kidnapping or abduction felony under Article 3 (§ 18.2-47 et seq.) of Chapter 4 of Title  
559 18.2;
- 560 6. Any malicious felonious assault or malicious bodily wounding under Article 4 (§ 18.2-51 et  
561 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 §  
562 18.2-57.2;
- 563 7. Any felony violation of § 18.2-60.3;

- 564 8. Any felony violation of § 16.1-253.2 or 18.2-60.4;
- 565 9. Robbery under subdivision B 1 or 2 of § 18.2-58 or carjacking under § 18.2-58.1;
- 566 10. Criminal sexual assault punishable as a felony under Article 7 (§ 18.2-61 et seq.) of Chapter 4
- 567 of Title 18.2;
- 568 11. Any violation of § 18.2-90;
- 569 12. Any violation of § 18.2-289 or subsection A of § 18.2-300;
- 570 13. Any felony offense in Article 3 (§ 18.2-346 et seq.) of Chapter 8 of Title 18.2;
- 571 14. Any felony offense in Article 4 (§ 18.2-362 et seq.) of Chapter 8 of Title 18.2, except for a
- 572 violation of § 18.2-362 or subsection B of § 18.2-371.1;
- 573 15. Any felony offense in Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2, except for a
- 574 violation of subsection A of § 18.2-374.1:1;
- 575 16. Any violation of subsection F of § 3.2-6570, any felony violation of § 18.2-128, or any
- 576 violation of § 18.2-481, 37.2-917, 37.2-918, 40.1-100.2, or 40.1-103; or
- 577 17. A second or subsequent violation of the following offenses, in any combination, when such
- 578 offenses were not part of a common act, transaction, or scheme and such person has been at liberty as
- 579 defined in § 53.1-151 between each conviction:
  - 580 a. Any felony violation of § 3.2-6571;
  - 581 b. Voluntary manslaughter under Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2;
  - 582 c. Any violation of § 18.2-41 or felony violation of § 18.2-42.1;
  - 583 d. Any violation of subsection B, C, or D of § 18.2-46.5 or § 18.2-46.7;
  - 584 e. Any violation of § 18.2-51 when done unlawfully but not maliciously, § 18.2-51.1 when done
  - 585 unlawfully but not maliciously, or § 18.2-54.1 or 18.2-54.2;
  - 586 f. Arson in violation of § 18.2-77 when the structure burned was occupied or a Class 3 felony
  - 587 violation of § 18.2-79;
  - 588 g. Any violation of § 18.2-89 or 18.2-92;
  - 589 h. Any violation of subsection A of § 18.2-374.1:1;
  - 590 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

591 j. Any violation of subdivision E 2 of § 40.1-29.

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

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

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

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

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

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

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

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

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

630 F. For a juvenile sentenced to serve a portion of his sentence as a serious juvenile offender under  
631 § 16.1-285.1, consideration for earning sentence credits shall be conditioned, in part, upon full  
632 participation in and cooperation with programs afforded to the juvenile during that portion of the sentence.  
633 The Department of Juvenile Justice shall provide a report that describes the juvenile's adherence to the  
634 facility's rules and the juvenile's progress toward treatment goals and objectives while sentenced as a  
635 serious juvenile offender under § 16.1-285.1.

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

639 **2. That any person convicted of robbery under § 18.2-58 of the Code of Virginia, as it was in effect**  
640 **prior to July 1, 2021, where such conviction would have rendered such person ineligible for**  
641 **conditional release pursuant to § 53.1-40.02 of the Code of Virginia, as amended by this act, shall**  
642 **be eligible for conditional release in accordance with the provisions of § 53.1-40.02 of the Code of**  
643 **Virginia, as amended by this act, provided that such person, during the commission of such robbery,**



644 did not (i) cause serious bodily injury to or the death of another person or (ii) use or display a  
645 firearm in a threatening manner.

646 3. That the provisions of § 53.1-202.3 of the Code of Virginia, as amended by this act, shall apply  
647 retroactively to the entire sentence of any person who is confined in a state correctional facility and  
648 participating in the earned sentence credit system on July 1, 2024, who was (i) convicted of robbery  
649 under § 18.2-58 of the Code of Virginia, as it was in effect prior to July 1, 2021, provided that such  
650 person, during the commission of such robbery, did not (a) cause serious bodily injury to or the  
651 death of another person or (b) use or display a firearm in a threatening manner or (ii) convicted of  
652 robbery under subdivision B 3 or 4 of § 18.2-58 of the Code of Virginia on or after July 1, 2021. If  
653 it is determined that, upon retroactive application of the provisions of § 53.1-202.3 of the Code of  
654 Virginia, as amended by this act, the release date of any such person passed prior to the effective  
655 date of this act, the person shall be released upon approval of an appropriate release plan and within  
656 60 days of such determination unless otherwise mandated by court order; however, no person shall  
657 have a claim for wrongful incarceration pursuant to § 8.01-195.11 of the Code of Virginia on the  
658 basis of such retroactive application. If a person is released prior to completion of any reentry  
659 programs deemed necessary by the Department of Corrections on the person's most recent annual  
660 review or prior to completion of any programs mandated by court order, the person shall be  
661 required to complete such programs under probation, provided that probation is mandated by the  
662 court and current community resources are sufficient to facilitate completion of such programs.

663 #