



# Fiscal Impact Statement for Proposed Legislation

## Virginia Criminal Sentencing Commission

### House Bill No. 451 (Patron – Obenshain)

LD#: 24101839

Date: 12/19/2023

Topic: Earned sentence credits for certain offenses

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
At least \$6,088,002 (115 beds)\*
- **Local Adult Correctional Facilities:**  
Likely to be small
- **Adult Community Corrections Programs:**  
None (\$0)

- **Juvenile Direct Care:**  
Cannot be determined\*\*
- **Juvenile Detention Facilities:**  
Cannot be determined\*\*

\*\*Provided by the Department of Juvenile Justice

\* 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:

In 2020, the General Assembly amended § 53.1-202.3 to establish 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 eligible person who was confined in a state correctional facility and participating in the earned sentence credit system on July 1, 2022.<sup>1</sup> Individuals serving time for specified offenses (mostly violent crimes) were excluded from the 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 2023 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 in § 53.1-202.3(A).<sup>2</sup>

The proposal adds felony drug distribution/transportation crimes under §§ 18.2-248, 18.2-248.01 or 18.2-248.03 to the list of offenses in § 53.1-202.3(A17). Under this subsection, a person is not eligible for the enhanced sentence credits if he has a second or subsequent conviction for any of the listed offenses, in any combination, when such offenses were not part of a common act, transaction, or scheme and such person has been at liberty in between each conviction. Such individuals must earn at the lower rates and, therefore, would be limited to earning a maximum of 4.5 days for every 30 days served.

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 as of July 1, 2024, 2) only to the period of time served

<sup>1</sup> See fourth enactment clause of House Bill 5148 as passed by the 2020 General Assembly, Special Session I.

<sup>2</sup> See Item 404, paragraph R2, of Chapter 1 of the 2023 Acts of Assembly (Special Session I).

by individuals on or after July 1, 2024, 3) only to persons sentenced on or after July 1, 2024, or 4) only to offenses committed on or after July 1, 2024.

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**Analysis:**

Available data are insufficiently detailed to readily identify all offenders who may be affected by the proposal. Existing data, however, can be used to identify individuals who are convicted of a second or subsequent felony drug distribution/transportation offense under §§ 18.2-248, 18.2-248.01 or 18.2-248.03.

Based on Circuit Court Case Management System (CMS) data for fiscal year (FY) 2022 and FY2023, at least 492 offenders were convicted of a second or subsequent felony drug distribution/transportation offense under §§ 18.2-248, 18.2-248.01 or 18.2-248.03. Nearly all (97%) of these offenders received a state-responsible (prison) term. The median prison sentence in these cases was 5.0 years.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** By restricting the sentence credits that may be earned by offenders convicted of the specified offenses, the proposal may increase the number of state-responsible (prison) beds needed to house affected individuals. The impact is estimated to be at least 115 beds statewide by FY2030. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$6,088,002. This should be considered a minimum estimate as some offenders who would be affected by the proposal cannot be readily identified using available data. Furthermore, additional offenders may be affected because § 53.1-202.3(A17) specifies that a second or subsequent conviction for any of the specified offenses, in any combination, will result in the offender earning at the lower rates (i.e., the offender does not need to have two convictions for the same offense for the lower rates to apply); however, this analysis focused on offenders with a second or subsequent drug distribution/transportation conviction. Finally, this analysis reflects individuals sentenced or after July 1, 2024, and does not include inmates currently incarcerated.

**Estimated Six-Year Impact in State-Responsible (Prison) Beds**

FY25	FY26	FY27	FY28	FY29	FY30
0	1	14	45	81	115

**Local adult correctional facilities.** Any impact on local-responsible (jail) bed space needs is likely to be small, as nearly all offenders convicted of the specified offenses receive a state prison term.

**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 \$6,088,002 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 include:**

**General Assumptions**

1. State and local responsibility is based on § 53.1-20 as analyzed for the Secretary of Public Safety's Committee on Inmate Forecasting in 2023.
2. New cases resulting in state-responsible sentences were based on forecasts approved by the Secretary of Public Safety's Committee on Inmate Forecasting in 2023.
3. Cost per prison bed was assumed to be \$52,894 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.*
4. Cost per jail bed was based on The Compensation Board's FY2021 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$40.39 per day or \$14,752 per year. The local cost was calculated by using the daily expenditure cost of \$107.81 per inmate (not including capital accounts or debt service) as the base, and subtracting revenues accrued from the state and federal governments, which resulted in \$63.35 per day or \$23,139 per year. *Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.*

**Assumptions relating to offenders**

1. The Commission used FY2022 and FY2023 Circuit Court Case Management System (CMS) data to identify offenders convicted of a second or subsequent felony drug distribution/transportation offense under §§ 18.2-248, 18.2-248.01 or 18.2-248.03 (n=492 for the two-year period).
2. If, due to the nature of additional offenses in the sentencing event, the offender was already required to serve time under the lower sentence credit rates provided in § 53.1-202.3(A), the offender was excluded from the analysis.
3. Any offenders who received a life sentence were excluded from the analysis.

**Assumptions relating to sentencing and time served**

1. For each defendant in the FY2022-FY2023 data who would have been affected by the proposal had it been in place at that time, the Commission identified the sentence ordered by the court for the specified drug offense(s).
2. To estimate the time period served on specified felony drug offenses under existing law, the Commission applied rates of earned sentence as authorized by § 53.1-202.3. Specifically, the Commission assumed all affected offenders would earn sentence credits based on the average rates at which felony drug distribution offenders in Department of Corrections' facilities were earning sentence credits as of September 30, 2023.
3. To estimate the time that would be served as a result of the proposal, the Commission assigned affected offenders the lower sentence credit rates as provided in § 53.1-202.3(A). The Commission applied the overall average rate at which inmates subject to the lower sentence credits were earning as of September 30, 2023.
4. The additional time to be served by each defendant was estimated by calculating the difference between the time to be served under the proposal and the time served currently.
5. In order to gauge the timing of the impact, it was assumed that offenders would begin serving the additional time required by the proposal on the estimated date they would have been released under current law.

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