

December 17, 2025

Chadwick S. Dotson, Director
Virginia Department of Corrections
P.O. Box 26963
Richmond, VA 23261

Re: Earned Sentence Credit Program

Dear Director Dotson:

We write to bring to your attention a policy and practice of the Virginia Department of Corrections (VADOC) that contravenes the laws establishing Virginia's earned sentence credit (ESC) program. As a result of this policy and practice, VADOC is over-detaining a significant number of people by denying them all of the sentence credits to which they are entitled. We demand that VADOC immediately revise its policies and change its practices to conform with the law and ensure that everyone in its custody receives all of the sentence credits they have earned.

Specifically, VADOC currently fails to begin awarding enhanced sentence credits on the date at which people become eligible to earn such credits. Instead, VADOC uses an arbitrary date, not defined or provided for by law, to determine when individuals begin earning sentence credits.

Virginia law provides that anyone convicted of a felony offense after January 1, 1995 and sentenced to serve a term of incarceration is eligible to earn sentence credits "upon the person's incarceration in any correctional facility following entry of a final order of conviction by the committing court." Va. Code Ann. § 53.1-202.2(A). The language of the statute is mandatory; persons who meet the statutory criteria "shall be eligible" for credits, and their eligibility "shall commence" on the statutorily prescribed date.

When the General Assembly created the enhanced earned sentence credit system that went into effect on July 1, 2022, it specified that "sentence credits shall be awarded and calculated" using the classification system set out in that code section. Va. Code Ann. § 53.1-202.3(B). Again, this language is mandatory.

Taken together, the mandatory language in these sections of the Virginia Code leaves VADOC no discretion over when to begin awarding eligible individuals full enhanced sentence credits. Instead, eligible individuals *must* begin earning enhanced sentence credits upon their incarceration following the entry of a final order of conviction.

However, under VADOC's current internal operating procedures, eligible individuals do not begin earning enhanced sentence credits until their "custody responsibility date" (CRD), which is not defined



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anywhere in statute. VADOC's operating procedures do not explain how a person's CRD is determined. Until their CRD, individuals may earn sentence credits only "at the rate of ... 2.25 days for each 30 days served on sentences under ESC-1 and ESC-2." OP830.3 at 14; OP830.4 at 7-8.

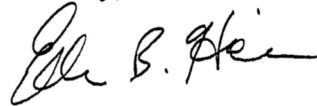
In practice, a person's CRD could be months after the date of their statutory eligibility for earned sentence credits. We are aware of numerous individuals whose CRDs are six months or more after the date of their incarceration following the entry of a final order of conviction on sentences eligible for enhanced sentence credits. This has resulted in them serving sentences that are weeks or months longer than they would have served, had VADOC correctly implemented the earned sentence credit program according to the law.

Because VADOC's current policies and practices violate Virginia law, and result in the unconstitutional over-detention of an unknown but significant number of people in its custody, we request that VADOC immediately revise its operating procedures to comply with the law and recalculate the release dates of people currently in custody based on the revised procedures.

Please provide a response to this letter by January 2, 2026, including copies of any policy changes, instructions, or guidance that VADOC issues in order to conform its practices to the requirements of the law. Should the Department decline to make adequate changes, we intend to explore all available remedies, including, but not limited to, additional legal proceedings.

We hope to resolve this matter as soon as possible and would be happy to meet to discuss any questions or concerns you might have.

Sincerely,



Eden Heilman
Legal Director

Cc: Jason Miyares, Attorney General



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