

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF ALBEMARLE

ANTOINE ANDERSON,

Petitioner,

v.

CASE NO. CL22-1066

**HAROLD CLARKE, in his official capacity
as Director of the Virginia Department of Corrections**

and

**KEMSY BOWLES, in his official capacity
as Warden of Coffeewood Correctional Center**

Respondents.

**RESPONDENTS' MOTION TO DISMISS
PETITION FOR WRIT OF HABEAS CORPUS**

Respondents, by counsel, moves this Court to deny and dismiss the Petition for a Writ of Habeas Corpus and states as follows:

Introduction

Petitioner, Antoine¹ Anderson (#1338026), is a Virginia Department of Corrections (“VDOC”) inmate presently incarcerated at Coffeewood Correctional Center. Anderson has filed this petition for a writ of habeas corpus ad subjiciendum in which he complains that VDOC has failed to properly credit his sentences with the proper amount of good time credit in accordance with Code § 53.1-202.3.

As explained in detail below, Anderson’s sentences were reviewed by VDOC’s Court and Legal Section and have been accurately calculated in accordance with the applicable statutes

¹ Also referred to in some documents as “Antinne”

and time computation practices—he has received all credits due him. Because Anderson has a sentence that is enumerated in subsection (A) of Code § 53.1-202.3, he is not eligible to earn Enhanced Earned Sentence Credits. Anderson remains in ESC Class Level 1 and continues to earn 4.5 days good time credits for every 30 days served. Anderson’s projected Good Time Release Date is April 9, 2024. This projected date is based on the assumption that he will continue to earn good time at his present earning level without the occurrence of a future event that impacts the service of his total sentence.

There is no dispute that Anderson is serving sentences for offenses both enumerated in subsection (A) and not enumerated in subsection (A). See Petition ¶ 19; Memo Supp. at 4. The only dispute is whether the language in Budget Item 404(R)(2) precludes Anderson from earning enhanced sentence credit on his sentences that are not enumerated in subsection (A). The answer is definitively yes. First, interpreting the language of 404(R)(2) as only modifying the application of 53.1-202.3 to time spent “incarcerated between July 1, 2022 and June 20, 2024,” as Anderson suggests, would lead to an absurd result in contrast to the plain language of the statutes. Second, the passage of HB5148 did not create an entitlement to earned sentence credit *before* the effective date of July 1, 2022. Third, Budget Item 404(R)(2) does not result in the “loss of earned sentence credit,” rather it narrowed the scope of eligibility for enhanced sentence credit before any changes went into effect. Anderson’s continued detention is neither unlawful nor unconstitutional and does not implicate ex post facto or due process concerns.

Exhibits

Pursuant to Code § 8.01-660, Respondents submits as Exhibit 1 an affidavit of James E. Parks, Director of Inmate Management Services for the Virginia Department of Corrections (“VDOC”), including VDOC’s Court and Legal Services Section (“Court & Legal”). The Court

and Legal Services Section is responsible for computing an inmate's sentence(s) and projecting his anticipated discretionary parole eligibility date, mandatory parole release date, and good time release date. Respondent requests this Court consider this affidavit ("Parks Aff.") and the accompanying attachments enclosures as evidence in this matter.

For the Court's convenience attached as Exhibit 2 is a copy of HB5148, codified in Chapter 50 of the 2020 Special Session I Acts of Assembly² and as Exhibit 3 is a copy of Budget Item 404, codified in Chapter 2 of the 2022 Special Session I Acts of Assembly.³

Background: Earned Sentence Credit

Virginia Code §§ 53.1-202.2 through 53.1-202.4 establish a system of earned sentence credit ("ESC") which applies to felony offenses committed on or after January 1, 1995. Prior to July 1, 2022, the maximum sentence credit an inmate was eligible to earn on all felony offenses committed on or after January 1, 1995 was 4.5 days credit for every 30 days served, as set forth in Code § 53.1-202.3.

Passed during the Virginia General Assembly 2020 Special Session I, HB5148 provided that Code § 53.1-202.3 would be amended as it relates to the amount and rate of credit earned.⁴ For offenses enumerated in subsection (A) the maximum amount of sentence credits that may be earned for every 30 days served is 4.5 days. For all other offenses not excluded by subsection

² Chapter 50 of the 2020 Special Session I Acts of Assembly (HB5148) is also *available at* <https://lis.virginia.gov/cgi-bin/legp604.exe?202+ful+CHAP0050+pdf>.

³ Chapter 2 of the 2022 Special Session I Acts of Assembly is *available at* <https://budget.lis.virginia.gov/get/budget/4623/HB30/>.

⁴ Attached as Exhibit 2 is a copy of HB5148, codified in Chapter 50 of the 2020 Special Session I Acts of Assembly, also *available at* <https://lis.virginia.gov/cgi-bin/legp604.exe?202+ful+CHAP0050+pdf>.

(A) the maximum amount was increased from 4.5 days to 15 days earned for every 30 days served. Parks Aff. ¶ 9.

The implementation language of HB5148 provided that the provisions of HB5148 “shall become effective on July 1, 2022.” And furthermore that “the provisions of § 53.1-202.3 of the Code of Virginia, as amended by this act, shall apply retroactively to the entire sentence of any person who is confined in a state correctional facility and participating in the earned sentence credit system on July 1, 2022.” Exhibit 2 The effective date of the amendment was July 1, 2022. Additionally, “[i]f it is determined that, upon retroactive application” “the release date of any such person passed prior to the effective date of this act, the person shall be released upon approval of an appropriate release plan and within 60 days of such determination.”

Upon the Generally Assembly’s passage of HB5148, amending Code § 53.1-202.3 as of July 1, 2022, VDOC’s Court and Legal Unit diligently began conducting testing and making preliminary calculations in an effort to identify inmates who had sentences that might possibly be impacted when the amendment became effective. Parks Aff. ¶ 10. However, as the effective date of HB5148 was not until July 1, 2022, no changes could be made to any inmate’s official sentence computation before July 1, 2022. Parks Aff. ¶ 10. VDOC’s Court and Legal Unit identified inmates who, once the 2020 amendments to Code § 53.1-202.3 went into effect on July 1, 2022, upon the retroactive application of enhanced sentence credits, *potentially* had recalculated release dates prior to July 1, 2022 and therefore would need to be released within 60 days of the effective date of the amendment. Parks Aff. ¶ 10.

On April 14, 2022, VDOC’s inmate population was informed by letter posted in every housing unit that any changes in sentence calculations resulting from the amendments to Code § 53.1-202.3 would not happen until July 1, 2022. Parks Aff. ¶ 11, Enclosure B. Any “effort by

the counseling staff to develop home plans is the result of testing and preliminary calculations” because “audited and finalized calculations cannot occur until on and after 7/1/2022.” Parks Aff. ¶ 11, Enclosure C.

On June 22, 2022, the Virginia General Assembly approved the 2022 Biennial Budget. This included Budget Item 404 (R)(2) which states: “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.”⁵ This language only modified the application of Code § 53.1-202.3 by providing that an inmate serving a sentence which is enumerated in subsection (A) of Code § 53.1-202.3 is not eligible to earn enhanced credit on any other sentence they are currently serving. Thus, the maximum amount of sentence credits an inmate can earn for all offenses is 4.5 days for every 30 days served if one of the offenses is excluded by subsection (A). Budget Item 404 (R), passed *before* July 1, 2022, made no changes to the to the implementation language contained HB5148.

On June 24, 2022, VDOC’s inmate population was informed by letter posted in every housing unit that as result of the change implemented in Budget Item 404 (R)(2), “any inmate currently serving a sentence for an offense that is excluded from earning enhanced earned sentence credit is not eligible to earn enhanced credit on any sentence they are currently serving.” Parks Aff. ¶ 13, Enclosure D. The letter once again reiterated that any changes would not go into effect until July 1, 2022 and only then will legal updates begin to be generated that reflect Enhanced Earned Sentence Credits. Parks Aff. ¶ 13, Enclosure D.

⁵ Attached as Exhibit 3 is a copy of Budget Item 404, Chapter 2 of the 2022 Special Session I Acts of Assembly, an entire copy of Chapter 2 of the 2022 Special Session I Acts of Assembly is *available at* <https://budget.lis.virginia.gov/get/budget/4623/HB30/>.

Prior to the effective date of July 1, 2022, no changes were made to any inmate's official sentence computation and no legal updates with new Good Time Release Dates were generated.

Parks Aff. ¶ 14, Enclosure D.

Anderson's Sentence Calculation

On June 28, 2005, Anderson was sentenced to the following felony sentences, to be served consecutively, and totaling 13 years of active incarceration:

- Escape in violation Code § 18.2-478, 1-year term of incarceration in Case No. CR04017427-00
- Abduction in violation Code § 18.2-48.1, 5-year term of incarceration in Case No. CR04017428-00
- Assault on a Law Enforcement Officer in violation Code § 18.2-57, 2-year term of incarceration in Case No. CR040 17429-00
- Assault on a Law Enforcement Officer in violation Code § 18.2-57, 5-year term of incarceration in Case No. CR04017513-00

Parks Aff. ¶ 4, Enclosures A and B.

Anderson became a state-responsible inmate on June 1, 2010. He was in federal custody satisfying a federal sentence and was returned to VDOC custody on January 18, 2013 to begin serving his Virginia sentences. Parks Aff. ¶ 4, Enclosures A and B. When Anderson became a state-responsible inmate on June 1, 2010 he was assigned to ESC Class Level 1 and began earning 4.5 days good time credits for every 30 days served.

Because Anderson has a sentence that is enumerated in subsection (A) of Code § 53.1-202.3, he is not eligible to earn Enhanced Earned Sentence Credits per the changes that went into effect July 1, 2022. Parks Aff. ¶ 16. Anderson remains in ESC Class Level 1 and continues to earn 4.5 days good time credits for every 30 days served. Parks Aff. ¶ 16, Enclosure B.

Contrary to Petitioner's assertions, Anderson's release date was never "revised," rather it remained unchanged by the laws that went into effect on July 1, 2022.

Various components factor into the time computation process such as jail credits earned and lost sentence credits, class level assignments, and any other event that impacts service of the total sentence. Calculating the projected Good Time Release Date for inmates is not simply adding and subtracting days to and from their records. Parks Aff. ¶ 15, Enclosure B. The anticipated Good Time Release Date calculated by Court & Legal is only a projection and is subject to adjustment as these factors change at any time prior to the inmate's actual release from custody. Parks Aff. ¶ 15, Enclosure B. Anderson's projected Good Time Release Date is April 9, 2024. Parks Aff. ¶ 15, Enclosure B. This projected date is based on the assumption that he will continue to earn good time at his present earning level without the occurrence of a future event that impacts the service of his total sentence. Parks Aff. ¶ 15, Enclosure B.

VDOC has correctly applied Budget Item 404(R)(2)

There is no dispute that Anderson is serving sentences for offenses both enumerated in subsection (A) and not enumerated in subsection (A). *See* Petition ¶ 19; Memo Supp. at 4. The only dispute is whether the language in Budget Item 404(R)(2) precludes Anderson from earning enhanced sentence credit on his sentences that are not enumerated in subsection (A). The answer is definitively yes. First, interpreting the language of 404(R)(2) as only modifying the application of 53.1-202.3 to time spent “incarcerated between July 1, 2022 and June 20, 2024”⁶ as Anderson suggests would lead to an absurd result in contrast to the plain language of the statutes. Second, the passage of HB5148 did not create an entitlement to earned sentence credit *before* the effective date of July 1, 2022. Third, Budget Item 404(R)(2) does not result in the “loss of earned sentence credit,” rather it narrowed the scope of eligibility for enhanced sentence

⁶ Memo Supp. at 9.

credit *before* any changes went into effect. Anderson’s continued detention is neither unlawful nor unconstitutional and does not implicate ex post facto or due process concerns.

Budget Item 404 (R)(2) states: “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.” This language only modified the application of Code § 53.1-202.3 by providing that an inmate serving a sentence which is enumerated in subsection (A) of Code § 53.1-202.3 is not eligible to earn enhanced credit on any other sentence they are currently serving. Budget Item 404 (R), passed before July 1, 2022, made no changes to the to the implementation language contained HB5148.

“The primary purpose of statutory interpretation “is to ascertain and give effect to legislative intent.”” *Botkin v. Commonwealth*, 296 Va. 309, 314–16, 819 S.E.2d 652, 654–55 (2018) (citation and internal quotation marks omitted). The courts “determine[] legislative intent from the words employed in the statute.” *Id.* (quoting *Alger v. Commonwealth*, 267 Va. 255, 259, 590 S.E.2d 563 (2004)). “If language is clear and unambiguous, there is no need for construction by the court; the plain meaning and intent of the enactment will be given it. When an enactment is clear and unequivocal, general rules for construction of statutes do not apply.” *Brown v. Commonwealth*, 284 Va. 538, 543, 733 S.E.2d 638, 640–41 (2012). “While it is true that penal statutes must be strictly construed against the Commonwealth in criminal cases, [courts] will not apply an unreasonably restrictive interpretation of the statute that would subvert the legislative intent expressed therein.” *Alger*, 267 Va. at 259, 590 S.E.2d 563 (citation and internal quotation marks omitted). Nor will courts “assign a construction that amounts to holding that the General Assembly did not mean what it actually has stated.” *Id.* Moreover, “[t]he plain, obvious, and

rational meaning of a statute is to be preferred over any curious, narrow, or strained construction.” *Meeks v. Commonwealth*, 274 Va. 798, 802, 651 S.E.2d 637, 639 (2007).

Contrary to Petitioner’s argument, there is no need for Budget Item 404(R) to include its own additional retroactivity clause. The implementation language in HB5148 requires that the amendments to Code § 53.1-202.3 be applied on July 1, 2022 “retroactively to the entire sentence of any person who is confined in a state correctional facility and participating in the earned sentence credit system on July 1, 2022.” The most plain and harmonious reading of this language and the language in Budget Item 404(R) is that the entire amendment be retroactively and prospectively applied to an inmate’s entire sentence. The legislative intent that the modifications to Code § 53.1-202.3 be applied retroactively is “manifest” through the “explicit terms” demonstrating its retroactive effect. *McCarthy v. Commonwealth*, 73 Va. App. 630, 647, 864 S.E.2d 577, 585 (2021). If this Court were to adopt Petitioner’s interpretation, that would mean the General Assembly intended for there to be one classification system for time spent incarcerated prior to July 1, 2022, another classification system for time spent incarcerated between July 1, 2022 and June 30, 2024, and then a third classification system for time spent incarcerated after June 30, 2024. Such an application prevents the clear intent of the statute and is not congruent to the specific budget allocations to implement the amended sentence credit system as described in Budget Item 404(R)(1).

The Constitution prohibits states from passing any “ex post facto Law.” *U.S. Const., art. I, § 10, cl. 1; and U.S. Const., art. I § 9, cl. 3*. The Ex Post Facto Clause applies to laws made or changed after the date of the underlying offense. Generally, the ex post facto clause bars laws, which by retroactive application, increase the punishment for a crime after its commission. In some instances, retroactive changes in laws governing parole of prisoners may violate the ex post

facto clause. *See Lynce v. Mathis*, 519 U.S. 433 445-446 (1997). The controlling inquiry is whether retroactive application of the changed law created “a substantial risk of increasing the measure of punishment.” *Garner v. Jones*, 529 U.S. 244, 250 (2000) quoting *California Dept. of Corrections v. Morales*, 514 U.S. 499, 509 (1995). Petition asks this Court conclude that Anderson “became eligible for increased earned sentence credits” upon the “enactment” of HB5148 thereby creating “an entitlement to those credits” prior to the effective date of statute on July 11, 2022. Memo Supp. at 11. In support of this claim Petitioner points to caselaw where statutes retroactively *reduced* the amount of earned good time credit *after* it had already been applied.⁷ *See* Memo Supp. at 11–12. In this case, Anderson’s earned or *vested* good time was never reduced—his previously earned good time remains undisturbed and continues to earn 4.5 days for every 30 days served. Furthermore, Anderson has no entitlement to credit before the effective date of the statute. To find otherwise would make the General Assembly’s choice to include a specific effective date—and that upon that date an enhanced sentence credit would be applied to the entire sentence retroactively—utterly meaningless. *See Brown*, 284 Va. 538, 542–45, 733 S.E.2d 638, 640–41 (2012) (holding that “it is a “settled principle of statutory construction that every part of a statute is presumed to have some effect and no part will be considered meaningless unless absolutely necessary”). Because any amendments to Code § 53.1-202.3 did not become effective until July 1, 2022, Anderson cannot claim he had any entitlement to any earned good time prior to that date. Furthermore, taken to its logical conclusion, the proposition that a statute vests rights prior to its effective date would mean that any changes to the statute prior to the effective date would potentially run afoul of the Ex Post

⁷ All the cases the Petitioner’s cites are factually distinguishable because unlike in this case, those situations involved loss of already vested earned good time reduction. *See* Memo Supp. at 11–12, n.2.

Facto Clause. For example if the General Assembly's choose repeal the entire enhanced credit system prior to July 1, 2022, under the Petitioner's analysis ever inmate would be entitled to a period of enhanced sentence calculation for a statute that never went into effect, based solely upon their prior "expectation." In this case, Anderson did not receive any reduction in *vested* earned sentence credit, nor will he serve any additional time as a result. Rather his sentence just remains unchanged. At no time was he actually eligible to have enhanced sentence credit applied to his sentence—rather only the possibility of enhanced credit *after* the statute went into effect July 1, 2022 and only *if* it remained unaltered prior to its effective date.

Conclusion

For all the reasons explained above, Anderson fails to identify any manner in which he is being unlawfully or unconstitutionally confined by Respondents, or denied due process resulting in his continued detention. Accordingly, Anderson's petition for a writ of habeas corpus is without merit and should be dismissed by this Court.

Respondents deny each and every allegation not specifically mentioned herein. Respondents submit that this Court may deny and dismiss this petition as a matter of law without requiring a further hearing. Code § 8.01-654(B)(4); *see also* Code § 8.01-695.

WHEREFORE, Respondents respectfully request that this Honorable Court deny and dismiss the Petition for a Writ of Habeas Corpus and grant any further relief deemed appropriate.

Respectfully Submitted,

HAROLD CLARKE, in his official capacity
as Director of the Virginia Department of
Corrections, and KEMSY BOWLES, in his official
capacity as Warden of Coffeewood Correctional
Center



By: _____
Counsel for Respondents

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Office of the Attorney General
Criminal Justice & Public Safety Division
202 North 9th Street
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 26th day of September 2022, a true copy of the foregoing Respondents' Motion to Dismiss Petition for a Writ of Habeas Corpus was electronically sent to Counsel for the Petitioner: Geri Greenspan at ggreenspan@acluva.org and by mail to 701 E. Franklin Street, Suite 1412, Richmond Virginia, 23219.



Laura H. Cahill
Counsel for Respondents
Assistant Attorney General

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF ALBEMARLE

ANTOINE ANDERSON,

Petitioner,

v.

CASE NO. CL22-1066

**HAROLD CLARKE, in his official capacity
as Director of the Virginia Department of Corrections**

and

**KEMSY BOWLES, in his official capacity
as Warden of Coffeewood Correctional Center**

Respondents.

AFFIDAVIT

State of Virginia, City of Richmond, to-wit:

JAMES E. PARKS, first being duly sworn, states as follows:

1. I am the Director of Inmate Management Services for the Virginia Department of Corrections (“VDOC”), and in that capacity I oversee VDOC’s Court and Legal Services Section (“Court & Legal”) which is responsible for computing an inmate’s sentence(s) and projecting his anticipated discretionary parole eligibility date, mandatory parole release date, and good time release date.
2. I base the information contained in this Affidavit on personal knowledge and records maintained in the regular and ordinary course of business.
3. I have been informed of this Petition filed by inmate Antoine Anderson (VDOC #1338026) and his allegations that his sentence has not been properly calculated.

4. On June 28, 2005, Anderson was sentenced in the Albemarle Circuit Court to the following felony sentences, to be served consecutively, and totaling 13 years of active incarceration:

- a. 1-year term of incarceration in Case No. CR04017427-00: Escape in violation Code § 18.2-478,
- b. 5-year term of incarceration in Case No. CR04017428-00: Abduction in violation Code § 18.2-48.1
- c. 2-year term of incarceration in Case No. CR040 17429-00: Assault on a Law Enforcement Officer in violation Code § 18.2-57
- d. 5-year term of incarceration in Case No. CR04017513-00: Assault on a Law Enforcement Officer in violation Code § 18.2-57

5. Anderson became a state-responsible inmate on June 1, 2010. He was in federal custody satisfying a federal sentence and was returned to VDOC custody on January 18, 2013 to being serving his Virginia sentences.

6. Virginia Code §§ 53.1-202.2 through 53.1-202.4 establish a system of earned sentence credit (“ESC”) which applies to felony offenses committed on or after January 1, 1995.

7. Prior to July 1, 2022, the maximum sentence credit an inmate was eligible to earn on all felony offenses committed on or after January 1, 1995 was 4.5 days credit for every 30 days served, as set forth in Code § 53.1-202.3.

8. When Anderson became a state-responsible inmate on June 1, 2010 he was assigned to ESC Class Level 1 and began earning 4.5 days good time credits for every 30 days served. Copies of Anderson’s Sentence Summary and Summary Audit are attached as Enclosures A and B, respectively.

9. During the Virginia General Assembly 2020 Special Session I, Code § 53.1-202.3 was amended as it relates to the amount and rate of credit earned. For offenses enumerated in subsection (A) the maximum amount of sentence credits that may be earned for every 30 days

served is 4.5 days. For all other offenses not excluded by subsection (A) the maximum amount was increased from 4.5 days to 15 days earned for every 30 days served. The implementation language of the 2020 amendment provided for the retroactive application of the Enhanced Earned Sentence Credits to qualifying sentences. The effective date of the amendment was July 1, 2022.

10. Upon the General Assembly's passage of the bill to amend Code § 53.1-202.3, VDOC's Court and Legal Unit has been diligently conducting testing and making preliminary calculations in an effort to identify inmates who have sentences that possibly be affected. However, as the effective date of the amendment was not until July 1, 2022, no changes could be made to any inmate's official sentence computation before July 1, 2022. VDOC's Court and Legal Unit identified inmates who, once the 2020 amendments went into effect on July 1, 2022, upon the retroactive application of enhanced sentence credits, *potentially* had recalculated release dates prior to July 1, 2022 and therefore would need to be released within 60 days of the effective date of the amendment.

11. On April 14, 2022, VDOC's inmate population was informed by letter posted in every housing unit that any changes in sentence calculations resulting from the amendments to Code § 53.1-202.3 would not happen until July 1, 2022. Any "effort by the counseling staff to develop home plans is the result of testing and preliminary calculations" because "audited and finalized calculations cannot occur until on and after 7/1/2022." A copy of the Letter dated April 14, 2022 is attached as Enclosure C.

12. On June 22, 2022, the Virginia General Assembly approved the 2022 Biennial Budget which includes Budget Item 404 (R)(2). Budget Item 404 (R)(2) modifies the application of Code § 53.1-202.3 by providing that an inmate serving a sentence which is

enumerated in subsection (A) of Code § 53.1-202.3 is not eligible to earn enhanced credit on any other sentence they are currently serving. The maximum amount of sentence credits an inmate can earn for all offenses is 4.5 days for every 30 days served if one of the offenses is excluded by subsection (A).

13. On June 24, 2022, VDOC's inmate population was informed by letter posted in every housing unit that as result of the changes implemented in Budget Item 404 (R)(2), "any inmate currently serving a sentence for an offense that is excluded from earning enhanced earned sentence credit is not eligible to earn enhanced credit on any sentence they are currently serving." The letter once again reiterated that any changes would not go into effect until July 1, 2022 and only then will legal updates begin to be generated that reflect Enhanced Earned Sentence Credits. A copy of the Letter dated June 24, 2022 is attached as Enclosure D.

14. Prior to the effective date of July 1, 2022, no changes were made to any inmate's official sentence computation and no legal updates with new Good Time Release Dates were generated.


15. Various components factor into the time computation process such as jail credits earned and lost sentence credits, class level assignments, and any other event that impacts service of the total sentence. Calculating the projected Good Time Release Date for inmates is not simply adding and subtracting days to and from their records. The anticipated Good Time Release Date calculated by Court & Legal is only a projection and is subject to adjustment as these factors change at any time prior to the inmate's actual release from custody.

16. Because Anderson has a sentence that is enumerated in subsection (A) of Code § 53.1-202.3, he is not eligible to earn Enhanced Earned Sentence Credits. Anderson remains in ESC Class Level 1 and continues to earn 4.5 days good time credits for every 30 days served.

Anderson's projected Good Time Release Date is April 9, 2024. This projected date is based on the assumption that he will continue to earn good time at his present earning level without the occurrence of a future event that impacts the service of his total sentence.


17. To the best of my knowledge and information, Anderson has received all appropriate sentence credits, and his time has been accurately calculated in accordance with applicable Virginia statutes and time computation practices.

JAMES E. PARKS



Affiant

Sworn and subscribed to before me, a Notary Public, in and for the State of Virginia, City of Richmond, this 23 day of September 2022.



Notary Public

My commission expires:

1.31.2024





COMMONWEALTH of VIRGINIA

Department of Corrections


HAROLD W. CLARKE
DIRECTOR

P. O. BOX 26963
RICHMOND, VIRGINIA 23261
(804) 674-3000

April 14, 2022

MEMORANDUM

To: Wardens/Superintendents, Jail Administrators and Inmate Population

From: Harold W. Clarke, Director 

In Re: Enhanced Earned Sentence Credit

During the Virginia General Assembly 2020 Special Session I, Virginia Code § 53.1-202.3 was amended and enacted as it relates to the rate that earned sentence credits may be earned for felony offenses committed on or after 1995. **For qualifying offenses only**, the maximum amount was increased from 4.5 days earned for every 30 days served to 15 days earned for every 30 days served. Offenses eligible to earn the Enhanced Earned Sentence Credit (ESC-2) are largely property, drug related, non-violent offenses. Offenses not eligible to earn the enhanced earned sentence credit will continue to earn at a maximum of 4.5 days for every 30 days served; this is referred to as ESC-1. Offenses excluded from earning Enhanced Earned Sentence Credit are primarily assaultive and sex-related offenses including, but not limited to Murder, Rape, Robbery, Malicious Wounding, and Indecent Liberties. Inmates with multiple offenses may have offenses earning sentence credits at different rates. For a complete list of disqualified offenses, please refer to the Acts of Assembly from the 2020 Special Session pursuant to § 53.1-202.3 that is attached.

This change is effective 7/1/2022. **No legal updates can be generated that reflect Enhanced Earned Sentence Credits prior to 7/1/2022.** The current effort by the counseling staff to develop home plans is the result of testing and preliminary calculations. Audited and finalized calculations cannot occur until on and after 7/1/2022. The Community Release Unit is currently working with jail staff to secure home plans for state responsible inmates in local and regional jails.

The implementation language provides for the retroactive application of the Enhanced Earned Sentence Credits to qualifying sentences. Therefore, once the additional sentence credits are applied and release dates are recalculated on July 1, those found to be eligible for release will be scheduled within 60 days, or by 8/30/2022. This is outlined in the Acts of Assembly for § 53.1-202.3 in item 4. **Any inmate with a current Good Time Release Date from 7/1/2022 – 8/30/2022 will be released on that date and will not have a date change.**

Priority will be given to cases with the closest release dates; revised release dates related to ESC-2 that are years in the future may take 6-8 months to complete. Your patience as we work through this endeavor is appreciated. As we get closer to the implementation date, more information will be communicated.

ENCLOSURE C



COMMONWEALTH of VIRGINIA

Department of Corrections

HAROLD W. CLARKE
DIRECTOR

P. O. BOX 26963
RICHMOND, VIRGINIA 23261
(804) 674-3000

June 24, 2022

MEMORANDUM

To: Wardens/Superintendents, Jail Administrators and Inmate Population

From: Harold W. Clarke, Director

In Re: Enhanced Earned Sentence Credit Update

During the Virginia General Assembly 2020 Special Session I, Virginia Code § 53.1-202.3 was amended and enacted as it relates to the rate that earned sentence credits may be earned for felony offenses committed on or after 1995. **For qualifying offenses only**, the maximum amount was increased from 4.5 days earned for every 30 days served to 15 days earned for every 30 days served. Offenses eligible to earn the Enhanced Earned Sentence Credit (ESC2) are largely property, drug related, non-violent offenses. Offenses not eligible to earn the enhanced earned sentence credit will continue to earn at a maximum of 4.5 days for every 30 days served; this is referred to as ESC-1. **On June 17, 2022, the Virginia General Assembly approved a budget amendment changing the offense classifications that are eligible to earn enhanced earned sentence credits. As a result, any inmate currently serving a sentence for an offense that is excluded from earning enhanced earned sentence credit is not eligible to earn enhanced credit on any sentence they are currently serving.**

This change is effective 7/1/2022 and legal updates will begin to be generated that reflect Enhanced Earned Sentence Credits on that day. DOC facilities will begin releases as the result of Enhanced Earned Sentence credit on 7/6/2022. Revised release dates due to ESC-2 that are years in the future are expected to take at least 6 months to complete.

Your patience as we work through this endeavor is appreciated.

ENCLOSURE D

VIRGINIA ACTS OF ASSEMBLY -- 2020 SPECIAL SESSION I

CHAPTER 50

An Act to amend and reenact § 53.1-202.3 of the Code of Virginia, relating to Department of Corrections; earned sentence credits.

[H 5148]

Approved November 9, 2020

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 ~~four and one-half~~ 4.5 sentence credits may be earned for each 30 days served on a sentence for:

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;
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.

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

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

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

established by the Department's policies or procedures.

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

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

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

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

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

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

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

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

2. That the Department of Corrections (the Department) shall convene a work group to study the impact of the sentence credit amendments set forth in this act. The work group shall include representatives of the Senate Committee on Finance and Appropriations, the House Committee on Appropriations, the Virginia State Crime Commission, and any other stakeholders the Department deems appropriate. The Division of Legislative Services shall provide staff support to the work group. The Department shall report to the Governor and the General Assembly by July 1, 2021, the membership of the work group and the work group's plan for conducting such study, including any data and information upon which the work group will rely in conducting such study, and shall report its finding and conclusions to the Governor and the General Assembly by June 1, 2023. The report shall include (i) the state fiscal impact of the sentence credit amendments, including any cost savings realized by reducing the length of time spent by persons in state correctional facilities; (ii) the number of persons affected by the sentence credit amendments and the distribution of such persons among state correctional facilities; (iii) a detailed six-year plan describing the estimated releases by facility under this act, accounting for any persons who will be transferred from jail, as well as persons who would be otherwise released in the covered years; and (iv) any other information the Department deems relevant.

3. That the provisions of this act, other than the provisions of the second enactment of this act, shall become effective on July 1, 2022.

4. That the provisions of § 53.1-202.3 of the Code of Virginia, as amended by this act, shall apply retroactively to the entire sentence of any person who is confined in a state correctional facility and participating in the earned sentence credit system on July 1, 2022. If it is determined that, upon retroactive application of the provisions of § 53.1-202.3 of the Code of Virginia, as amended by this act, the release date of any such person passed prior to the effective date of this act, the person shall be released upon approval of an appropriate release plan and within 60 days of such determination unless otherwise mandated by court order; however, no person shall have a claim for wrongful incarceration pursuant to § 8.01-195.11 of the Code of Virginia on the basis of such

retroactive application. If a person is released prior to completion of any reentry programs deemed necessary by the Department of Corrections on the person's most recent annual review or prior to completion of any programs mandated by court order, the person shall be required to complete such programs under probation, provided probation is mandated by the court and current community resources are sufficient to facilitate completion of the aforementioned programs.

5. That the Department of Corrections shall ensure that educational, vocational, counseling, and substance abuse programs for earning sentence credits are available at all state correctional facilities.

6. That the Department of Corrections shall ensure that educational, vocational, counseling, substance abuse, rehabilitative, and reentry services are available at all probation and parole offices.

7. That the Department of Criminal Justice Services shall continue to administer grant funding to private entities for the purpose of assisting in reentry services.

VIRGINIA STATE BUDGET

2022 Special Session I

Budget Bill - HB30 (Chapter 2)

Bill Order » Office of Public Safety and Homeland Security » Item 404

Department of Corrections

Item 404	First Year - FY2023	Second Year - FY2024
Administrative and Support Services (39900)	\$193,189,083	\$192,727,270
General Management and Direction (39901)	\$33,235,862	\$32,977,922
Information Technology Services (39902)	\$80,215,543	\$80,201,040
Accounting and Budgeting Services (39903)	\$6,327,168	\$6,327,168
Architectural and Engineering Services (39904)	\$18,395,849	\$17,973,910
Jail Regulation, Inspections, and Investigations (39905)	\$971,215	\$971,215
Human Resources Services (39914)	\$13,806,733	\$14,039,302
Planning and Evaluation Services (39916)	\$1,917,612	\$1,917,612
Procurement and Distribution Services (39918)	\$16,842,666	\$16,842,666
Training Academy (39929)	\$11,144,616	\$11,144,616
Offender Classification and Time Computation Services (39930)	\$10,331,819	\$10,331,819
Fund Sources:		
General	\$185,743,442	\$185,281,629
Special	\$7,290,106	\$7,290,106
Dedicated Special Revenue	\$155,535	\$155,535

Authority: §§ [53.1-1](#) and [53.1-10](#), Code of Virginia.

A.1. Any plan to modernize and integrate the automated systems of the Department of Corrections shall be based on developing the integrated system in phases, or modules. Furthermore, any such integrated system shall be designed to provide the department the data needed to evaluate its programs, including that data needed to measure recidivism.

2. The appropriation in this Item includes \$600,000 the first year and \$600,000 the second year from the Contract Prisoners Special Revenue Fund to defray a portion of the costs of maintaining and enhancing the offender management system.

B. Included in this appropriation is \$550,000 the first year and \$550,000 the second year from nongeneral funds to be used for installation and operating expenses of the telemedicine program operated by the Department of Corrections. The source of the funds is revenue from inmate fees collected for medical services.

C. Included in this appropriation is \$1,100,000 the first year and \$1,100,000 the second year from nongeneral funds

to be used by the Department of Corrections for the operations of its Corrections Construction Unit. The State Comptroller shall continue the Corrections Construction Unit Special Operating Fund on the books of the Commonwealth to reflect the activities of contracts between the Corrections Construction Unit and (i) institutions within the Department of Corrections for work not related to a capital project and (ii) agencies without the Department of Corrections for work performed for those agencies.

D. Notwithstanding the provisions of § 53.1-20 A. and B., Code of Virginia, the Director, Department of Corrections, shall receive offenders into the state correctional system from local and regional jails at such time as he determines that sufficient, secure and appropriate housing is available, placing a priority on receiving inmates diagnosed and being treated for HIV, mental illnesses requiring medication, or Hepatitis C. The director shall maximize, consistent with inmate and staff safety, the use of bed space in the state correctional system. The director shall report monthly to the Secretary of Public Safety and Homeland Security and the Department of Planning and Budget on the number of inmates housed in the state correctional system, the number of inmate beds available, and the number of offenders housed in local and regional jails that meet the criteria set out in § 53.1-20 A. and B.

E. Notwithstanding any requirement to the contrary, any building, fixture, or structure to be placed, erected or constructed on, or removed or demolished from the property of the Commonwealth of Virginia under the control of the Department of Corrections shall not be subject to review and approval by the Art and Architectural Review Board as contemplated by § 2.2-2402, Code of Virginia. However, if the Department of Corrections seeks to construct a facility that is not a secure correctional facility or a structure located on the property of a secure correctional facility, then the Department of Corrections shall submit that structure to the Art and Architectural Review Board for review and approval by that board. Such other structures could include probation and parole district offices or regional offices.

F. The Commonwealth of Virginia shall convey 45 acres (more or less) of property, being a portion of Culpeper County Tax Map No. 75, parcel 32, lying in the Cedar Mountain Magisterial District of Culpeper County, Virginia, in consideration of the County's construction of water capacity and service line(s) adequate to serve the needs of the Department of Corrections' Coffeewood Facility and the Department of Juvenile Justice's Culpeper Juvenile Correctional Facility (hereinafter "the facilities"). The cost of the water improvements necessary to serve the facilities, including an eight-inch water service line, and including engineering and land/easement acquisition costs, shall be paid by the Commonwealth, less and except (i) the value of the property for the jail conveyed by the Commonwealth to the County (\$150,382, based on valuation by the Culpeper County Assessor), and (ii) the cost of increasing the size of the water service line from eight inches to twelve inches, in order to accommodate planned county needs.

G. Notwithstanding the provisions of § 58.1-3403, Code of Virginia, the Department of Corrections shall be exempt from the payment of service charges levied in lieu of taxes by any county, city, or town.

H. The Department of Corrections shall serve as the Federal Bonding Coordinator and shall work with the Virginia Community College System and its workforce development programs and services to provide fidelity bonds to those offenders released from jails or state correctional centers who are required to provide fidelity bonds as a condition of employment. The department is authorized to use funds from the Contract Prisoners Special Revenue Fund to pay the costs of this activity.

I. In the event the Department of Corrections closes a correctional facility for which it has entered into an agreement with any locality to pay a proportionate share of the debt service for the establishment of utilities to serve the facility, the department shall continue to pay its agreed upon share of the debt service, subject to the schedule previously agreed upon.

J. Included in the appropriation for this Item is \$1,000,000 the first year and \$1,000,000 the second year from the general fund for the costs of security technology and hardware for the inmate telephone system.

K. From the appropriation in this Item, \$500,000 the first year and \$500,000 the second year from the general fund shall be used to present seminars on overcoming obstacles to re-entry and to promote family integration in the correctional centers designated for intensive re-entry programs. The department shall submit a report by October 15 of each year to the Chairs of the House Appropriations and Senate Finance and Appropriations Committees, the Secretary of Public Safety and Homeland Security, and the Department of Planning and Budget on the use of this funding.

L. Included in the appropriation for this Item is \$426,832 the first year and \$426,832 the second year from the general fund and four positions to assist the State Board of Local and Regional Jails in carrying out its duties under the authority of § 53.1-69.1, Code of Virginia, to review deaths of inmates in local correctional facilities. One of the positions provided is for an Executive Director.

M.1. Consistent with the provisions of Chapter 198 of the 2017 Session of the General Assembly, the Director, Department of Corrections, shall implement the recommendations relating to the Department of Corrections made by the Department of Medical Assistance Services in its November 30, 2017 report on streamlining the Medicaid application and enrollment process for incarcerated individuals.

2. For the purpose of implementing these recommendations, included in the appropriation for this item are \$37,400 the first year and \$37,400 the second year from the general fund, and \$112,200 the first year and \$112,200 the second year from nongeneral funds and two positions.

N. By September 1 of each year, the Department of Corrections shall remit data to the Director of the Department of Planning and Budget and the Chairs of the House Appropriations and Senate Finance and Appropriations Committees regarding medical treatment provided to offenders at each facility. The data shall include, as a proportion of average daily population at each facility, the levels of inmates who received care, including: the specific proportions of inmates from each facility who were treated as inpatients, the specific proportion of inmates from each facility who were treated as outpatients, data on prescription drug administration, and the proportion of inmates from each facility who received other discrete services. When negotiating contracts with healthcare vendors, the Department of Corrections shall include the reporting of data required under this paragraph as a requirement within the contract.

O. The Department of Corrections is authorized to purchase from the Town of Craigsville approximately 122 acres, more or less, located adjacent to the Augusta Correctional Center. In consideration for this acreage, the Department will provide wastewater treatment services to the Town at no cost for a period adequate to equal the value of the property conveyed. The value of the property shall be established by averaging the value of one appraisal provided by the Department of Corrections and one by the Town of Craigsville.

P. The Commonwealth of Virginia shall convey 65 acres of property consisting of Clarke County Tax Map No. 27, new parcel A, situated in the Greenway Magisterial District of Clarke County, Virginia, to the Virginia Port Authority (VPA), on behalf of the Virginia Inland Port (VIP). The VPA, on behalf of the VIP, shall collaborate with representatives of Clarke County to promote the use of the land for economic development purposes. The VIP shall enter into a memorandum-of-understanding with Clarke County on the development and execution of mutually advantageous economic development proposals.

Q.1. Included within the appropriation for this item is \$7,281,666 the first year and \$7,281,666 the second year from the general fund and \$1,000,000 the first year and \$1,000,000 the second year from the Contract Prisoners Special Revenue Fund for implementation of an electronic health records system in all facilities.

2. The Department of Corrections shall report on the total costs of implementing electronic health records at all of its facilities based on the selected vendor and the sufficiency of its on-going funding for full implementation at all facilities. The report shall identify all funding currently budgeted for the project, the timeline for implementation,

and the inter-operability of the system with the information technology systems used by the Department and its vendors. The Department shall utilize its nongeneral funds appropriated for this purpose prior to using the general fund appropriation. The Department shall provide a report containing the aforementioned information to the Chairs of the House Appropriations and Senate Finance and Appropriations Committees within 60 days of selecting its vendor.

R. 1. Included in the appropriation for this item is \$7,909,652 in the first year and \$8,125,783 in the second year and 105 positions from the general fund for the Department to implement the earned-sentence-credit structure set forth in House Bill 5148 and Senate Bill 5034 of the 2020 Special Session I.

2. 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.

S. Included in the appropriation for this Item is \$500,000 the first year from the general fund for the estimated net increase in the operating cost of adult correctional facilities resulting from the enactment of sentencing legislation as listed below. This amount shall be paid into the Corrections Special Reserve Fund, established pursuant to § 30-19.1:4, Code of Virginia.

1. House Bill 434 -- \$50,000
2. House Bill 451 -- \$50,000
3. House Bill 496 and Senate Bill 687 -- \$50,000
4. House Bill 740 and Senate Bill 729 -- \$50,000
5. House Bill 993 and Senate Bill 440 -- \$50,000
6. House Bill 763 and Senate Bill 403 -- \$50,000
7. House Bill 1332 and Senate Bill 700 -- \$50,000
8. House Bill 1306 -- \$50,000
9. Senate Bill 227 -- \$50,000
10. Senate Bill 249 -- \$50,000