

# VIRGINIA STATE CRIME COMMISSION



## *Earned Sentence Credits*

# 2020 ANNUAL REPORT

# EARNED SENTENCE CREDITS

## EXECUTIVE SUMMARY

During the 2020 Regular Session of the General Assembly, the House Courts of Justice Committee referred legislation to the Crime Commission (House Bill 1532) which proposed numerous changes to the earned sentence credits system within the Virginia Department of Corrections (VADOC).<sup>1</sup> The Executive Committee of the Crime Commission directed staff to study earned sentence credits and the use of such credits in Virginia. Staff found that earned sentence credits are often intertwined with good time credits, and therefore staff examined both of these types of sentence reduction credit systems.

Sentence reduction credits can reduce the length of confinement for eligible inmates who meet specific requirements set forth in statute, rules, regulations, or department policies. These credits are generally awarded in the form of either earned sentence credits or good time credits. Earned sentence credits are awarded to eligible inmates for completing or participating in various institutional programs, such as educational, vocational, rehabilitation, or treatment courses, or for completing work assignments. Good time credits are awarded to eligible inmates for complying with institutional rules.

As part of this study, staff examined Virginia's current sentence reduction credit systems as set forth in the Code of Virginia and in VADOC Operating Procedures and found that:

- The Code of Virginia includes three sentence reduction credit systems: Earned Sentence Credits, Good Conduct Allowance, and Good Conduct Time;
- Virginia's earned sentence credits system consists of four classification levels as established by VADOC policy;
- The maximum earned sentence credits that can be awarded to an inmate is 4.5 days for every 30 days served, meaning that an inmate who is classified within the earned sentence credits system must serve at least 85% of their total sentence; and,
- Previously awarded sentence reduction credits can be forfeited by an inmate for a violation of VADOC rules or regulations.

Staff also reviewed VADOC institutional programming at state correctional facilities and found that:

- VADOC offers a wide variety of programming to inmates while incarcerated in state correctional facilities;

- VADOC programs frequently have substantial waitlists;
- The time required to complete VADOC programs can range from a few hours to several years; and,
- Both VADOC and private entities provide reentry services to inmates upon their release from incarceration.

Furthermore, staff obtained and analyzed data on the state responsible (SR) inmate population in Virginia. An SR inmate is a person convicted of a felony and sentenced to 1 year or more of incarceration, or a person convicted of a parole violation and sentenced to 2 years or more of incarceration. On June 30, 2019, the total VADOC confined population included 34,719 SR inmates.<sup>2</sup> Staff examined the demographics of these SR inmates, types of sentences served (most serious offense type) among recently released SR inmates, sentence reduction credit classification levels of recently released SR inmates, and recidivism rates among SR inmates released between FY2011 and FY2015. During this broad review, staff found that:

- The SR inmate population in Virginia decreased by 8% between FY2015 and FY2019;
- Individuals who are male, Black, or between the ages of 25 and 44 were overrepresented in Virginia's SR inmate population;
- The number of SR inmates being held in local or regional jails has steadily declined over the past 5 years;
- Over the past decade, an average of 12,400 SR inmates were released annually in Virginia;
- The majority of SR inmates released from custody in CY2019 had a nonviolent offense listed as their most serious offense type;
- The majority of SR inmates released from custody in CY2019 were being awarded sentence reduction credits at the maximum accrual rate (Class Level I);
- Research demonstrates a link between certain predictive factors and recidivism among SR inmates released in Virginia; and,
- Virginia's re-incarceration rate is currently one of the lowest in the nation.

Finally, staff conducted a legal analysis of sentence reduction credit statutes across the United States and found that:

- 42 states award some form of sentence reduction credits;
- The maximum accrual rates for sentence reduction credits vary significantly across states;

- States may award sentence reduction credits at varying rates based upon an inmate's current sentence, prior criminal record, or classification level;
- Some states specifically exclude certain inmates from being awarded sentence reduction credits; and,
- Sentence reduction credits can be forfeited or withheld in most states for institutional infractions or new violations of law.

Crime Commission members reviewed study findings at the August 31, 2020, Commission meeting.<sup>3</sup> Members voted to endorse legislation to amend Virginia's earned sentence credits system in a manner that was substantially similar to the proposals set forth in House Bill 1532 (Del. Don L. Scott) as introduced during the 2020 Regular Session of the General Assembly.

Legislation endorsed by the Crime Commission was introduced during the 2020 Special Session of the General Assembly (House Bill 5148 - Del. Don L. Scott).<sup>4</sup> The bill underwent numerous revisions throughout the legislative process before it was passed by the General Assembly and signed into law by the Governor.<sup>5</sup> The legislation has a delayed enactment and will take effect on July 1, 2022.

## BACKGROUND

Crime Commission staff engaged in the following activities as part of its study on sentence reduction credits, including both earned sentence credits and good time credits:

- Reviewed available literature and relevant reports;
- Examined sentence reduction credit statutes in the Code of Virginia;
- Reviewed the operating procedures of the Virginia Department of Corrections;
- Requested data on the state responsible inmate population in Virginia;
- Analyzed sentence reduction credit statutes across the United States; and,
- Consulted with key stakeholders.

### *Defining Types of Sentence Reduction Credits*

Sentence reduction credits can reduce the length of confinement for eligible inmates that comply with institutional rules and/or participate in rehabilitative programs or work assignments. Sentence reduction credits are generally awarded in the form of either earned sentence credits or good time credits, which for purposes of this report are defined as follows:

- Earned sentence credits: credits awarded to eligible inmates for completing or participating in various programs, such as educational, vocational, rehabilitation, or treatment courses, or for completing work assignments. These credits may be a one-time award upon completion of a program, or may be awarded on an on-going basis for satisfactory program participation.
- Good time credits: credits awarded to eligible inmates for complying with institutional rules. These credits are typically awarded on a monthly basis.

Earned sentence credits can be awarded in addition to, or combined with, good time credits. If earned sentence credits are awarded in addition to good time credits, the two sentence reduction credit systems will act independently of one another, and therefore may have different accrual rates, eligibility requirements, and exclusions. If earned sentence credits are awarded in combination with good time credits, then there is typically one credit accrual rate that is contingent upon both program participation and good behavior.

### *Scope of the Study*

Two key points must be noted when examining sentence reduction credit systems in Virginia. First, sentence reduction credit systems only apply to state responsible (SR) inmates, which includes persons convicted of a felony and sentenced to 1 year or more of incarceration, or persons convicted of a parole violation and sentenced to 2 years or more of incarceration.<sup>6</sup> Thus, when analyzing data on Virginia's inmate population during this study, staff limited its analysis to only SR inmates. Second, Virginia has a sentence reduction credit system that is referred to as an "earned sentence credits" system; however, that earned sentence credits system awards credits based on a combination of both compliance with institutional rules and participation in programming.<sup>7</sup>

Additionally, when examining the sentence reduction credit systems in other states, staff only examined the primary sentence reduction credit statutes of each state. Staff did not thoroughly review the rules, regulations, department policies, or other statutes governing sentence reduction credits in any state other than Virginia. Therefore, the analysis of sentence reduction credit systems in other states in this report is limited to these statutes; however, states may have additional caveats or exceptions to their sentence reduction credit systems in other rules, regulations, department policies, or statutes, such as penalty statutes.

## VIRGINIA'S SENTENCE REDUCTION CREDIT SYSTEMS

***The Code of Virginia includes three sentence reduction credit systems: Earned Sentence Credits, Good Conduct Allowance, and Good Conduct Time.***

State responsible (SR) inmates in Virginia may be eligible for sentence reduction credits that reduce the length of their confinement. The particular sentence reduction credit system that an inmate may qualify for is based on either the date of conviction or the date the criminal offense was committed:

- Convicted on or before June 30, 1981: Good Conduct Time System (GCT);<sup>8</sup>
- Convicted between July 1, 1981, and December 31, 1994: Good Conduct Allowance System (GCA);<sup>9</sup> and,
- Offense committed on or after January 1, 1995: Earned Sentence Credits System (ESC).<sup>10</sup>

According to data from the Virginia Department of Corrections (VADOC), 91% (31,742 of 34,719) of the confined SR inmate population on June 30, 2019, fell under the ESC system, while 9% (2,977 of 34,719) fell under either the GCT or the GCA systems. Inmates in the GCT and GCA systems are eligible for both sentence reduction credits and parole, while inmates in the ESC system eligible for earned sentence credits, but are not eligible for parole. This report will focus primarily on the most recently implemented system, ESC, which applies to the large majority of Virginia SR inmates.

### ***Good Conduct Time (GCT) System***

State responsible inmates confined for a felony conviction that was entered on or before June 30, 1981, may be eligible for sentence reduction credits under the GCT system.<sup>11</sup> These inmates may be awarded good conduct credits at a flat rate of 10 days per 20 days served.<sup>12</sup> Good conduct credits are awarded based on an inmate's adherence to written institutional rules and regulations.<sup>13</sup> These inmates can also be awarded an additional 1 to 5 days of credits per month for participation in vocational or educational programs, or for "unusual progress towards rehabilitation."<sup>14</sup> Unlike the other two sentence reduction credit systems in Virginia, all credits awarded under the GCT system can reduce an inmate's term of imprisonment for the purpose of determining their parole eligibility date.<sup>15</sup>

### ***Good Conduct Allowance (GCA) System***

State responsible inmates confined for a felony conviction that was entered between July 1, 1981, and December 31, 1994, may be eligible for sentence reduction credits under the GCA system.<sup>16</sup> Additionally, inmates who are confined for a conviction entered prior to July 1, 1981, and who were eligible for the GCT system, can opt into the GCA system.<sup>17</sup> Under the GCA system, the number of good conduct allowance credits awarded to eligible inmates is based on a four-level classification system established by the Code of Virginia.<sup>18</sup> There is one credit accrual rate in the GCA system that includes both compliance with institutional rules and program participation.<sup>19</sup> Inmates in Class I are awarded the maximum accrual of 30 days per 30 days served, inmates in Class II are awarded 20 days per 30 days served, inmates in Class III are awarded 10 days per 30 days served, and inmates in Class IV are not awarded any credits.<sup>20</sup> Credits awarded under the GCA system can be applied to reduce an inmate's maximum term of confinement; however, only one-half of the credits can be applied to reduce an inmate's parole eligibility date.<sup>21</sup>

### ***Earned Sentence Credits (ESC) System***

State responsible inmates confined for a felony offense committed on or after January 1, 1995, may be eligible to receive sentence reduction credits under the ESC system.<sup>22</sup> Virginia's ESC system was implemented in 1995 in conjunction with the abolition of parole and the enactment of truth-in-sentencing.<sup>23</sup> Earned sentence credits are awarded based on adherence to institutional rules and participation in programs or work assignments through the VADOC.<sup>24</sup> Under the ESC system, an inmate can be awarded up to 4.5 days of earned sentence credits for every 30 days served, with a maximum reduction of 15% of their total sentence.<sup>25</sup> Inmates who refuse to accept a program assignment, and inmates who have been sentenced to life imprisonment, are not eligible to be awarded earned sentence credits.<sup>26</sup>

### ***Virginia's ESC system consists of four classification levels as established by VADOC policy.***

While the Code of Virginia establishes the maximum accrual rate and general eligibility requirements for earned sentence credits, the process for administering the ESC system is set forth in VADOC policy. According to VADOC operating procedures, earned sentence credits are awarded based on four classification levels. The maximum award at each classification level is as follows:<sup>27</sup>

- Class Level I: 4.5 days for every 30 days served

- Class Level II: 3.0 days for every 30 days served
- Class Level III: 1.5 days for every 30 days served
- Class Level IV: no earned sentence credits awarded

An inmate's classification level is based on an annual evaluation conducted by VADOC counselors.<sup>28</sup> Infractions, work assignments, and reentry planning, which includes participation in educational, vocational, and treatment programs, are the basis for this evaluation.<sup>29</sup> A numerical score is rendered after the evaluation and is used to determine an inmate's classification level.<sup>30</sup> Generally, inmates in Class Level I participate in programming and have no or limited institutional infractions.<sup>31</sup> State responsible inmates are initially assigned to Class Level I; however, this classification can be adjusted if the inmate receives any disciplinary infractions while awaiting transfer to a VADOC facility.<sup>32</sup> Inmates in Class Level II participate in programming, but have some minor institutional infractions, while inmates in Class Level III participate in programming, but have multiple institutional infractions.<sup>33</sup> Finally, inmates in Class Level IV either do not participate in programming, have serious institutional infractions, or are not eligible to be awarded earned sentence credits.<sup>34</sup>

While classification levels are evaluated annually by a VADOC counselor, an inmate's classification level can also be adjusted following an administrative review. These administrative reviews, which can be held at any time, generally occur when an inmate no longer appears to be eligible or suitable for their current classification level, such as when an inmate is removed from or refuses to participate in a program.<sup>35</sup> A formal due process hearing is required if there is the possibility of a reduction of an inmate's earning levels outside of the annual review.<sup>36</sup>

***Previously awarded sentence reduction credits can be forfeited by an inmate for a violation of VADOC rules or regulations.***

Accumulated sentence reduction credits (under any of Virginia's three sentence reduction systems) can be partially or fully forfeited following a violation of prohibited behavior as set forth VADOC's *Code of Offenses*.<sup>37</sup> The *Code of Offenses* lists a variety of prohibited conduct by inmates that can be punished through VADOC disciplinary actions or criminal prosecution. The prohibited conduct varies from criminal violations to institutional infractions, such as killing or attempting to kill another person; inciting or participating in a riot; threat of extortion or blackmail; or, false statements against a VADOC employee.<sup>38</sup> The total number of sentence reduction credits that can be forfeited varies based on the



nature of the violation. For most violations, the number of sentence reduction credits forfeited is based on the seriousness of the violation, the circumstances surrounding the violation, and whether the inmate has prior disciplinary issues.<sup>39</sup> However, for certain violations, the VADOC operating procedures specifically mandate the number of sentence reduction credits that must be forfeited. For example, an attempting to escape violation will result in forfeiture of all sentence reduction credits, while a violation for refusing to provide a DNA sample (1<sup>st</sup> offense) will result in forfeiture of 90 days of sentence reduction credits.<sup>40</sup> Once sentence reduction credits have been forfeited, those credits generally cannot be restored to the inmate.<sup>41</sup>

***VADOC offers a wide variety of programming to SR inmates while incarcerated in state correctional facilities.***

As previously mentioned, SR inmates must participate in programs in order to be awarded certain sentence reduction credits. A number of programs are offered by VADOC to SR inmates housed in state correctional facilities.<sup>42</sup> The specific programs vary by facility, but can include cognitive, treatment, vocational, and educational programming.<sup>43</sup> According to data provided by VADOC, cognitive programs such as anger management, victim impact courses, problem-solving courses, topical seminars, and reentry planning/preparation, were among the programs with the highest rates of completion in CY2019.<sup>44</sup>

***VADOC programs frequently have substantial waitlists.***

According to VADOC, while the wait time for SR inmates to enter a program varies, the combined average wait time for all counseling services, mental health, and educational programs is 15 months.<sup>45</sup> This wait time can be attributed to a variety of factors, such as lack of resources to fund a program, difficulty obtaining personnel to facilitate a program, or lack of physical space to offer a program.

***Time required to complete VADOC programs can range from a few hours to several years.***

The length of a VADOC program can vary from a few hours to several years. For example, orientation programs can last a few hours, substance abuse and cognitive programs can last a few weeks or months, and vocational and educational programs can last several years.<sup>46</sup> Additionally, there are some programs, such as mental health or substance abuse support groups, that are ongoing without an established end date.<sup>47</sup>

***Both VADOC and private entities provide reentry services to inmates upon their release from incarceration.***

Various programs and resources are available to assist recently released inmates with successful reentry into society. VADOC offers a number of post-incarceration programs to individuals placed on community supervision upon release. Some of these programs include Family Reunification Seminars, Employment/Job Counseling, and Thinking for a Change - Peer Support.<sup>48</sup> Additionally, the PAPIS (Pre-release and Post-Incarceration Services) Virginia Reentry Coalition, which consists of nine organizations serving 96 jurisdictions throughout Virginia, provides recently released inmates with evidence-based recidivism reduction services, such as transitional housing, treatment, mentoring, job readiness, and employment placement services.<sup>49</sup> Finally, many localities across Virginia have Reentry Councils, which are comprised of various agencies and organizations working together to provide reentry services ranging from resource navigation to case management.<sup>50</sup>

## **DATA ON VIRGINIA'S STATE RESPONSIBLE INMATE POPULATION**

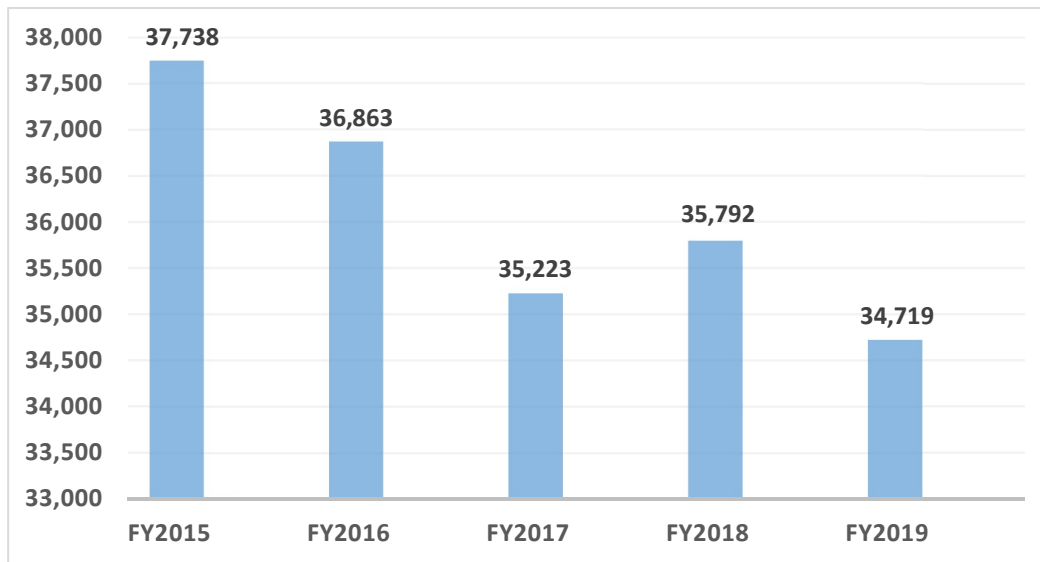
Staff examined both the SR confined inmate population and the population of recently released SR inmates in order to provide a complete picture of Virginia's sentence reduction credit systems. As such, staff requested data from VADOC related to the following:

- Overall SR confined population trends;
- Demographics of SR confined inmates;
- Number of SR inmates held in regional and local jails;
- Number of SR inmates released annually from VADOC;
- Types of sentences served (most serious offense type) among released SR inmates;
- Rates at which released SR inmates were being awarded earned sentence credits; and,
- Recidivism rates among released SR inmates.

***The SR inmate population in Virginia decreased by 8% between FY2015 and FY2019.***

As shown in Table 1, the overall SR inmate population in Virginia declined between FY2015 and FY2019.

**Table 1: Total Virginia DOC State Responsible (SR) Confined Population, FY2015-FY2019**



Source: Virginia Department of Corrections, *State Responsible Offender Population Trends*, FY2015-FY2019. The SR inmate population is based on the total number of SR inmates incarcerated on June 30 of the fiscal year indicated as extracted from VirginiaCORIS. The total includes SR inmates in DOC facilities and SR inmates housed in local and regional jails. Table prepared by Crime Commission staff.

***Individuals who are male, Black, or between the ages of 25 and 44 were overrepresented in Virginia's SR inmate population.***

Data revealed that both males and Black persons were overrepresented in the SR inmate population as compared to their percentage of Virginia's overall general population. Specifically, the U.S. Census Bureau estimated that as of July 1, 2019, Virginia's total population of approximately 8.5 million individuals was comprised of 49% males and 20% Black/African American individuals.<sup>51</sup> However, when examining the demographics of the SR inmate population in Virginia on June 30, 2019, 92% (31,902 of 34,719) of inmates were male and 55% (19,198 of 34,719) of inmates were Black.<sup>52</sup> Similarly, while the U.S. Census Bureau estimated that 27% of Virginia's population in 2019 was between the ages of 25 and 44, this same age group accounted for 60% (20,760 of 34,719) of the SR inmate population.<sup>53</sup>

***The number of SR inmates held in local or regional jails has steadily declined over the past 5 years.***

Table 2 shows the number of SR inmates held in local or regional jails in Virginia at the end of each fiscal year for FY2015 to FY2019.<sup>54</sup> As seen in Table 2, the number of SR

inmates held in local or regional jails at the end of each fiscal year steadily declined over that 5 year time period.

**Table 2: Number of SR Inmates Held in Local or Regional Jails**

	Number of SR Inmates Held in Local or Regional Jails	% of Total SR Inmates Held in Local or Regional Jails	TOTAL SR Confined Population
<b>FY2015</b>	8,362	22%	37,738
<b>FY2016</b>	8,014	22%	36,863
<b>FY2017</b>	7,525	21%	35,223
<b>FY2018</b>	7,206	20%	35,792
<b>FY2019</b>	6,376	18%	34,719

Source: Virginia Department of Corrections, *State Responsible Offender Population Trends*, FY2015-FY2019. The SR inmate population is based on the total number of SR inmates incarcerated on June 30 of the fiscal year indicated as extracted from VirginiaCORIS. Table prepared by Crime Commission staff.

***Over the past decade, an average of 12,400 SR inmates were released from custody annually in Virginia.***

VADOC has released approximately 12,400 SR inmates per year since 2010, with 12,549 being released in CY2019.<sup>55</sup> The SR inmates released in CY2019 served an average total imposed sentence of 58 months (median=28 months).<sup>56</sup> The demographics of the SR inmates released in CY2019 were consistent with the overall SR confined inmate population, as 52% (6,470 of 12,549) of inmates released were White, 48% (6,010 of 12,549) were Black, 86% (10,776 of 12,549) were male, and 63% (7,885 of 12,549) were between the ages of 25 and 44.<sup>57</sup>

***The majority of SR inmates released from custody in CY2019 were serving a sentence for a nonviolent offense as their most serious offense type.***

When looking at the SR inmates released during CY2019, 67% (8,367 of 12,549) were serving a sentence for a nonviolent most serious offense (MSO).<sup>58</sup> Larceny/fraud and drug sales/distribution were the most frequent overall MSO. This trend generally held when comparing the MSO across gender. Specifically, 22% (2,335 of 10,776) of male inmates and 40% (714 of 1,773) of female inmates had a larceny/fraud MSO, and 13% (1,435 of 10,776) of male inmates and 16% (276 of 1,773) of female inmates (16%) had a drug sales/distribution MSO.<sup>59</sup> Felony assault was the most common violent MSO, with 12% (1,322 of 10,776) of male inmates and 10% (178 of 1,773) of female inmates serving a sentence for this type of offense.<sup>60</sup>

***The majority of SR inmates released from custody in CY2019 were awarded sentence reduction credits at the maximum accrual rate (Level I).***

According to VADOC data, 99.7% (12,519 of 12,549) of SR inmates released from custody in CY2019 were eligible to be awarded sentence reduction credits.<sup>61</sup> Of these SR inmates released in CY2019:

- 83% (10,395 of 12,519) were awarded sentence reduction credits at Level I;
- 5% (599 of 12,519) were awarded sentence reduction credits at Level II;
- 4% (455 of 12,519) were awarded sentence reduction credits at Level III; and,
- 9% (1,070 of 12,519) were classified as Level IV, and thus not eligible for sentence reduction credits.<sup>62</sup>

***Research demonstrates a link between certain predictive factors and recidivism among SR inmates released in Virginia.***

Recidivism data is regularly used to measure the effectiveness of policies and programs and can be defined in a number of different ways.<sup>63</sup> Recidivism is generally defined as a person's relapse into criminal activity or behavior.<sup>64</sup> VADOC measures recidivism using the following metrics:<sup>65</sup>

- Re-arrest: any arrest reported in the Virginia State Police criminal history database for a felony or misdemeanor offense, including supervision violations, within the specified time period after release (local ordinance violations are not considered re-arrests);
- Re-conviction: a conviction resulting from a re-arrest that occurred within the specified time period (the actual conviction may occur outside the specified follow-up period); and,
- Re-incarceration: any sentence of incarceration for a felony offense with an imposed sentence of 1 or more years, or for a supervision violation with a sentence of 2 or more years.

Research conducted by VADOC indicated a link between certain predictive factors and recidivism among SR inmates released in Virginia, including.<sup>66</sup>

- Gender: male inmates are more likely to recidivate
- Age: younger inmates are more likely to recidivate
- Previous SR incarceration: inmates with a higher number of previous SR incarcerations are more likely to recidivate

- Crime type of most serious offense: inmates whose most serious offense was a crime against property or public order are more likely to recidivate
- Evidence of mental health impairment: inmates with a mental health impairment are more likely to recidivate
- Location of SR incarceration: inmates who served their entire sentence in a local or regional jail are more likely to recidivate than inmates who served at least a portion of their sentence in a VADOC facility
- Risk assessment scores: inmates who were assessed as “high risk” for general recidivism or violent recidivism are more likely to recidivate
- History of positive drug tests for opioids: inmates with a history of positive drug tests for opioids are more likely to recidivate

### ***Gender and Age***

When examining offender demographics among SR inmates released during FY2015, VADOC data indicated that males and individuals under the age of 30 had the highest re-arrest and re-incarceration rates.<sup>67</sup> This finding was consistent with other criminological research that suggests that the vast majority of criminal offending is limited to adolescence and young adulthood, and that most individuals eventually desist from criminal offending over time.<sup>68</sup> Research has repeatedly demonstrated the link between a person’s age at the time of their first criminal offense and the persistence, frequency, and seriousness of criminal offending over time.<sup>69</sup>

### ***Crime Type of Most Serious Offense***

According to VADOC data, SR inmates released during FY2015 whose most serious offense type was a property or public order offense had the highest re-arrest rates and re-incarceration rates (59% re-arrest rate and 27% re-incarceration rate).<sup>70</sup> This was followed by SR inmates whose most serious offense type was drug-related (49% re-arrest rate and 20% re-incarceration rate), and SR inmates with a crime of violence as their most serious offense type (49% re-arrest rate and 20% re-incarceration rate).<sup>71</sup>

### ***Mental Health Impairment***

According to VADOC, inmates are classified as having a mental health impairment when they are designated with a mental health code in the VirginiaCORIS data system, indicating either a “minimal, mild, moderate, or severe mental health impairment, or diagnosis of a serious mental illness.”<sup>72</sup> Of the SR inmates released during FY2015, 20% (2,434 of 12,385) had evidence of a mental health impairment as defined above. In

general, the recidivism rate of offenders with a mental health impairment is higher than those with no evidence of a mental health impairment.<sup>73</sup>

### ***Location of SR incarceration***

VADOC data showed that SR inmates released during FY2015 who spent their entire SR incarceration period in local or regional jails had a higher re-arrest rate (59%) and re-incarceration rate (26%) as compared to SR inmates who served at least a portion of their sentence in a VADOC facility (50% re-arrest rate and 21% re-incarceration rate).<sup>74</sup> This gap increased when examining SR inmates with a mental health impairment, as 36% of those who served the entire period of SR incarceration in a local or regional jail were re-incarcerated within 3 years, as compared to 24% of SR inmates who served at least a portion of their sentence in a VADOC facility.<sup>75</sup> One possible explanation for this difference in recidivism rates is that various programs, such as cognitive-behavioral programs, counseling, educational courses, and substance abuse treatment, are offered in VADOC facilities, but similar programs may not be commonly available in local or regional jails. Additionally, SR inmates in local and regional jails are typically serving shorter sentences than SR inmates in VADOC facilities. Thus, inmates who serve at least part of their SR incarceration in a VADOC facility may be better prepared to reenter society than those who serve their entire SR incarceration in a local or regional jail.<sup>76</sup>

### ***Risk Assessment Scores***

In Virginia, the COMPAS risk and needs assessment instrument is used to evaluate a SR inmate's risk of engaging in general recidivism and violent recidivism, as well as identifying any needs that must be addressed to reduce an inmate's risk of recidivism.<sup>77</sup> According to VADOC data, SR inmates with the highest three year re-incarceration and re-arrest rates were those who had been assessed as "high risk" for general recidivism (67% re-arrest rate and 29% re-incarceration rate, respectively) and "high risk" for violent recidivism (69% re-arrest rate and 33% re-incarceration rate, respectively).<sup>78</sup>

Risk and needs assessment tools do not indicate whether an offender will recidivate, but specify the probability or risk of future criminal activity.<sup>79</sup> It is important to note that general risk assessment tools are not commonly developed or validated to address specific types of recidivism. As such, a variety of separate risk and needs assessment tools have been developed, some of which are designed to predict one's propensity to engage in general recidivism, while others are focused on specific offending such as violent recidivism, sexual recidivism, or interpersonal violence.<sup>80</sup>

### ***History of Positive Drug Tests for Opioids***

When examining the recidivism rates of SR inmates with a history of positive drug tests released during FY2015, VADOC data showed that inmates with a history of positive opioid tests had a higher re-incarceration rate (35%) when compared to inmates that did not have a history of positive opioid tests (22%).<sup>81</sup> Data also showed that SR inmates with a prior positive opioid test who had served their entire term of incarceration in a regional or local jail had a higher re-incarceration rate (38%) than inmates with a prior positive opioid test who had served at least a portion of their term of incarceration in a VADOC facility (31%).<sup>82</sup>

### ***Virginia's re-incarceration rate is currently one of the lowest in the nation.***

Virginia's re-incarceration rate has consistently been one of the lowest in the nation among the states that report this measure according to specified definitions and metrics.<sup>83</sup> VADOC attributes Virginia's low re-incarceration rate to effective reentry, educational, and treatment programs offered while SR inmates are incarcerated.<sup>84</sup> While re-arrest, re-conviction, or re-incarceration can be measured over any time frame, VADOC studies these measures over a 3 year period.<sup>85</sup> Table 3 illustrates the recidivism rates among SR inmates released during FY2011 through FY2015 as reported by VADOC.

**Table 3: Virginia's 3 Year Follow-up Re-Arrest, Re-Conviction, and Re-Incarceration Rates**

<b>Year of Release</b>	<b>Number of SR Releases in Study</b>	<b>Re-arrest rate</b>	<b>Re-conviction rate</b>	<b>Re-incarceration rate</b>
<b>FY2011</b>	12,263	56%	48%	23%
<b>FY2012</b>	11,496	56%	48%	23%
<b>FY2013</b>	11,575	56%	49%	22%
<b>FY2014</b>	12,021	56%	48%	23%
<b>FY2015</b>	12,385	53%	46%	23%

Source: Virginia Department of Corrections, *Recidivism at a Glance: Releases from State Responsible Incarceration*, May 2019, February 2020, and April 2021.<sup>86</sup> Table prepared by Crime Commission staff.

### **OTHER STATES: STATUTORY ANALYSIS OF SENTENCE REDUCTION CREDIT LAWS**

As part of this study, staff examined the primary sentence reduction credit statutes across all 50 states.<sup>87</sup> The types of sentence reduction credits that can be accrued (earned sentence credits and/or good time credits), the maximum accrual rates, and the eligibility requirements for being awarded such credits are commonly set forth in statute, while the administration of the sentence reduction credit systems are typically governed by rules,



regulations, or department policies. Furthermore, while many sentence reduction credit statutes will specify which inmates are excluded from being awarded sentence reduction credits, additional exclusions or parameters for the accrual of such credits may also be set forth in rules, regulations, department policies, or separate statutes, such as penalty provisions of state law. As previously noted, the following analysis is based on the primary sentence reduction credit statutes of other states and not on the rules, regulations, department policies, or other statutes within those states.

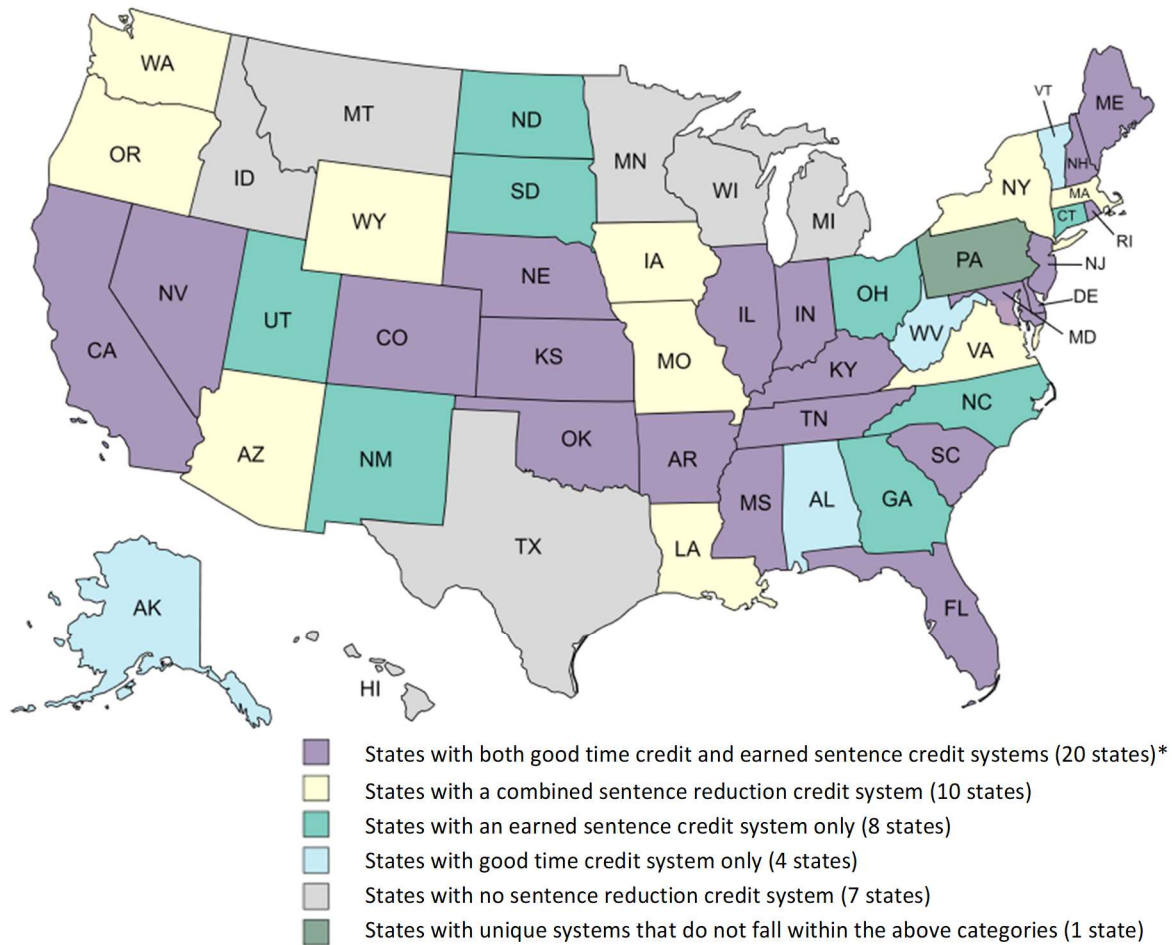
During this analysis, staff discovered that states used varying terminology to describe earned sentence credits and good time credits that are combined into one sentence reduction credit system. For example, some state laws will refer to these systems as an earned sentence credit system, while other state laws will refer to it as a good time credit system. Therefore, for purposes of this analysis, states with one sentence reduction credit system that is contingent on both good behavior and program participation will be categorized as having a combined system.<sup>88</sup> As such, the primary sentence reduction credit statutes across the United States, as of August 2020, fell into five main categories<sup>89</sup>:

- (1) States with both a good time credit system and an earned sentence credit system, with each system acting independently of one another and having separate credit accrual rates;
- (2) States with a combined system, where there is one credit accrual rate that is contingent on both good conduct and program participation;<sup>90</sup>
- (3) States with only a good time credit system, where program participation is not statutorily required;
- (4) States with only an earned sentence credits system, where good behavior is not statutorily required; and,
- (5) States with no sentence reduction credit systems.

***Forty-two states award sentence reduction credits.***

As seen in the following map, 42 states, including Virginia, award some type of sentence reduction credits for good behavior, program participation, or both.

### Type of Sentence Reduction Credits by State



\*The 20 states with both earned sentence credit and good time credit systems have separate accrual rates for each system. Map prepared by Crime Commission staff.

Based on an analysis of the primary sentence reduction credit statutes by state, staff found that:

- 20 states have both good time credit and earned sentence credit systems that allow inmates to earn separate credit accruals for each system. (Arkansas, California, Colorado, Delaware, Florida, Illinois, Indiana, Kansas, Kentucky, Maine, Maryland, Mississippi, Nebraska, Nevada, New Hampshire, New Jersey, Oklahoma, Rhode Island, South Carolina, and Tennessee).
- 10 states have a combined sentence reduction credit system with one accrual rate that is contingent on both good conduct and satisfactory program participation. (Arizona, Iowa, Louisiana,<sup>91</sup> Massachusetts, Missouri, New York, Oregon, Virginia, Washington, and Wyoming).

- 8 states have earned sentence credit systems for program participation, but do not award additional credits for good behavior.<sup>92</sup> (Connecticut, Georgia, New Mexico, North Carolina,<sup>93</sup> North Dakota, Ohio, South Dakota, and Utah).
- 4 states have a good time credit system only, with no statutory requirement for program participation.<sup>94</sup> (Alabama, Alaska, Vermont,<sup>95</sup> and West Virginia).
- 7 states do not have any type of sentence reduction credit system. (Hawaii, Idaho, Michigan, Minnesota, Montana, Texas,<sup>96</sup> and Wisconsin).
- Pennsylvania has a unique system that does not fall within the above categories. This state has a Recidivism Risk Reduction Incentive Program that reduces the sentence of an inmate who completes programming and maintains positive adjustment.<sup>97</sup> The sentencing judge in Pennsylvania determines whether a low-risk nonviolent offender can participate in this program<sup>98</sup> and also imposes the minimum sentence to be served upon completion of the program.<sup>99</sup>

***The maximum accrual rates for sentence reduction credits vary significantly across states.***

Most sentence reduction credit statutes set a maximum limit on the total credits that can be awarded.<sup>100</sup> These maximum limits may be based specifically on the type of sentence reduction credit, such as limits on good time credits or earned sentence credits, or may set an overarching limit on maximum sentence reduction credits in general. When specifically looking at good time credits only, the maximum awardable credits varied greatly, ranging from 3 days per month in Delaware to 75 days for every 30 days served in Alabama.<sup>101</sup> Similarly, when examining earned sentence credits only, the variations between states was even more complex, as some states make a one-time award upon program completion, while other states award credits on a recurring basis for program participation. For example, in Oklahoma, an inmate can be awarded between 90 and 200 earned sentence credits for completing a diploma or degree program, 80 credits for vocational training, or 70 credits upon completion of a treatment program.<sup>102</sup> On the other hand, in North Dakota, inmates can be awarded 5 days of earned sentence credits per month for satisfactory participation in court-ordered or staff recommended programs.<sup>103</sup>

In addition to these variations in maximum sentence reduction credits, states also differ on the maximum reduction of an inmate's overall sentence. For instance, in Nevada, an inmate's total sentence cannot be reduced by more than 58%.<sup>104</sup> Whereas, in Florida, the maximum sentence reduction is limited to 15% of the total sentence.<sup>105</sup> These overall

sentence reduction limitations supersede any maximum limits set on good time credits or earned sentence credits in those states.<sup>106</sup>

***States may award sentence reduction credits at varying rates based upon an inmate's current sentence, prior criminal record, or classification level.***

Some sentence reduction credit statutes specifically limit the total credits that certain inmates can be awarded, meaning that certain inmates are awarded sentence reduction credits at a different rate than other inmates. These varying rates can be based on the type of offense for which an inmate was convicted, sentence imposed, length of incarceration, prior criminal record, classification as determined by the correctional department or institution, number of consecutive years without an infraction, or some combination of these factors. For example, in Arizona, inmates without a prior violent or aggravated felony conviction who are incarcerated for certain drug offenses can be awarded release credits at a rate of 3 days for every 7 days served;<sup>107</sup> whereas, other inmates in Arizona are awarded release credits at a rate of 1 day for every 6 days served.<sup>108</sup> On the other hand, in New Jersey, good time credits increase with each year of continuous good behavior, beginning at 7 days per month during the first year of incarceration and increasing over time to 16 days per month in the thirtieth year.<sup>109</sup>

***Some states specifically exclude certain inmates from being awarded sentence reduction credits.***

Several states specify that inmates serving a life sentence or inmates convicted of violent felonies or felony sex offenses are ineligible for good time credits, earned sentence credits, or both. An analysis of state statutes revealed that:

- At least 21 states prohibit inmates sentenced to life in prison from being awarded sentence reduction credits.<sup>110</sup> (Alabama, Alaska,<sup>111</sup> Arkansas, California, Delaware, Florida, Georgia, Illinois, Iowa, Louisiana, Mississippi, Missouri, New Mexico, New York, Ohio, Rhode Island, South Carolina, South Dakota, Utah, West Virginia, and Wyoming).
- At least 17 states prohibit inmates convicted of certain violent felonies from being awarded sentence reduction credits. (Alabama, Alaska, California, Connecticut, Georgia, Illinois, Indiana, Iowa, Louisiana, Mississippi, Missouri, Nevada, Ohio, Oklahoma, Oregon, South Carolina, and Washington). These states vary in terms of which violent felonies are excluded from sentence reduction credit systems. For example, some states exclude only 1 violent felony, such as murder, while other states

exclude multiple violent felonies. Additionally, some states only exclude inmates who have been convicted multiple times of committing violent offenses.

- At least 14 states prohibit inmates convicted of certain felony sex offenses from being awarded sentence reduction credits. (Alabama, Alaska, California, Connecticut, Georgia, Indiana, Louisiana, Maryland, Mississippi, Missouri, Nevada, Ohio, Oregon, and West Virginia). These states vary in terms of which felony sex offenses are excluded. For example, some states exclude specific sex offenses, such as sexual assault, while other states exclude specific categories of sex offenses, such as sex crimes committed against children. Additionally, some states exclude any inmate who has ever been convicted of a felony sex offense from being awarded any sentence reduction credits, regardless of the underlying offense for their current sentence.
- At least 4 states prohibit inmates convicted of certain violent felonies and certain sex offenses from being awarded earned sentence credits for program participation, but do allow these inmates to be awarded good time credits. (Arkansas, Florida, Maine, and Tennessee).
- At least 1 state, Rhode Island, prohibits inmates convicted of certain violent felonies and certain sex offenses from being awarded credits for good conduct, but allows these inmates to be awarded a limited amount of earned sentence credits.
- At least 10 states do not list any specific prohibitions on the awarding of sentence reduction credits in their primary sentence reduction credit statutes; however, those states may list prohibitions in other rules, regulations, department policies, or statutes. (Colorado, Kansas, Kentucky, Massachusetts, Nebraska, New Hampshire, New Jersey, North Dakota, Vermont, and Virginia).<sup>112</sup>

***Sentence reduction credits can be forfeited or withheld in most states for institutional infractions or new violations of law.***

In most states, earned sentence credits, good time credits, or both, can be forfeited or withheld if an inmate commits a serious institutional infraction or crime while incarcerated.<sup>113</sup> Typically, state statutes specify certain infractions or crimes that can result in forfeiture or withholding of sentence reduction credits, such as escape, attempted escape, participation in a riot, or assault on correctional staff. However, some statutes direct the state correctional department or institution to establish department regulations or policies that set forth which infractions or crimes will result in the forfeiture or withholding of credits. Additionally, some states limit the total amount of sentence reduction credits that can be forfeited or withheld for one incident. For example, in

Illinois, an inmate cannot be penalized more than one year's worth of sentence reduction credits for any one infraction.<sup>114</sup> Once sentence reduction credits have been forfeited, states commonly give either the warden or Director of the state correctional department or some other institutional entity the discretion to restore the forfeited credits.

## CRIME COMMISSION LEGISLATION

The Crime Commission met on August 31, 2020, and heard a presentation from staff on sentence reduction credits and the use of such credits in Virginia.<sup>115</sup> Staff provided Crime Commission members with draft legislation to modify the maximum amount of earned sentence credits that can be awarded in Virginia. Staff presented several policy options, such as which SR inmates would be eligible to be awarded the increased credits, the maximum amount of credits that could be awarded at each classification level, the initial classification level for SR inmates entering state correctional facilities, whether SR inmates could be awarded credits while incarcerated in local or regional jails, and whether the increased credits would apply retroactively. Ultimately, members voted to endorse draft legislation that was substantially similar to House Bill 1532 (Del. Don L. Scott) as introduced during the 2020 Regular Session of the General Assembly.<sup>116</sup>

Legislation endorsed by the Crime Commission to increase the maximum earned sentence credits for SR inmates was introduced during the 2020 Special Session of the General Assembly (House Bill 5148 - Del. Don L. Scott).<sup>117</sup> The bill underwent numerous amendments during the legislative process before it was passed by the General Assembly and signed into law by the Governor.<sup>118</sup> The bill takes effect on July 1, 2022.

The enacted legislation codifies four classification levels for earned sentence credits and increases the accrual rates in Levels I through III as illustrated in Table 4.

**Table 4: Maximum Earned Sentence Credit Accruals: Current Virginia Law compared with Enacted Legislation (House Bill 5148 - effective 7/1/2022)**

Class Level	Current Rates per 30 days served (DOC Policy)	New Rates under Enacted Legislation per 30 days served (Va. Code § 53.1-202.3)(Effective 7/1/22)
Level I	4.5 days	15 days
Level II	3.0 days	7.5 days
Level III	1.5 days	3.5 days
Level IV	0 days	0 days

Source: Virginia Department of Corrections. *Operating Procedure 830.3, Good Time Awards*; Va. Code § 53.1-202.3 (2020). Table prepared by Crime Commission staff.

The following additional items were also included in the enacted legislation:

- Increases earned sentence credit accruals for some SR inmates, while excluding other SR inmates who are serving sentences for specified offenses from being awarded the increased earned sentence credits;<sup>119</sup>
- Applies the increased earned sentence credit accruals retroactively to an eligible SR inmate's entire sentence;
- Requires an annual review of a SR inmate's classification level, as well as a written explanation as to why a SR inmate's classification level was or was not changed;
- Prohibits any changes to a SR inmate's classification level based on a lack of programming, educational, or employment opportunities at a state correctional facility;
- Allows for an immediate review of a SR inmate's classification level for disciplinary or non-compliance reasons or if that SR inmate is removed from programming;
- Grants SR inmates the right to appeal classification level changes using the VADOC grievance procedure;
- Requires VADOC to have similar educational, vocational, counseling, and substance abuse programs at all state correctional facilities,<sup>120</sup> and to ensure that similar educational, vocational, counseling, substance abuse, and reentry services are available at all state probation and parole offices;
- Mandates that VADOC convene a work group consisting of the Senate Committee on Finance and Appropriations, the House Committee on Appropriations, the Virginia State Crime Commission, and any other stakeholders, to study the impact of the earned sentence credit legislation and report to the Governor and General Assembly by June 1, 2023; and,
- Directs the Virginia Department of Criminal Justice Services to continue to provide grant funding to private entities for assistance with reentry services.

## ACKNOWLEDGEMENTS

*The Virginia State Crime Commission extends its appreciation to the Virginia Department of Corrections for its assistance and cooperation on this study.*



## ENDNOTES

<sup>1</sup> House Bill 1532 (Del. Don L. Scott) is available at <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=201&typ=bil&val=hb1532>.

<sup>2</sup> Virginia Department of Corrections, *State Responsible Offender Population Trends, FY2015-FY2019*. The SR inmate population is based on the total number of SR inmates incarcerated on June 30 of the fiscal year indicated as extracted from VirginiaCORIS. The total includes SR inmates in DOC facilities and SR inmates housed in local and regional jails.

<sup>3</sup> See Virginia State Crime Commission. (Aug. 31, 2020). *Earned Sentence Credits*. Available at <http://vscc.virginia.gov/2020/VSCC%20Presentation%20-20Earned%20Sentence%20Credits.pdf>.

<sup>4</sup> House Bill 5148 is available at <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=202&typ=bil&val=hb5148>.

<sup>5</sup> 2020 Va. Acts, Sp. Sess. I, ch. 50.

<sup>6</sup> Virginia Department of Corrections. (May 2019). *Recidivism at a Glance: Releases from State Responsible Incarceration*. Retrieved from <https://vadoc.virginia.gov/media/1412/vadoc-state-recidivism-report-may-2019.pdf>.

<sup>7</sup> See VA. CODE ANN. § 53.1-202.2(A) (2020).

<sup>8</sup> VA. CODE ANN. § 53.1-196 (2020).

<sup>9</sup> VA. CODE ANN. § 53.1-199 (2020).

<sup>10</sup> VA. CODE ANN. § 53.1-202.2 (2020).

<sup>11</sup> VA. CODE ANN. § 53.1-196 (2020). Inmates serving a sentence for a misdemeanor in any state correctional facility are also eligible to be awarded good conduct time credits.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> VA. CODE ANN. § 53.1-197 (2020). Sentence credits awarded for program participation or rehabilitation progress are referred to as “Extraordinary Good Time” credits in Virginia Department of Corrections Operating Procedures. See Virginia Department of Corrections. (2019). *Operating Procedure 830.3, Good Time Awards*. Retrieved from <https://vadoc.virginia.gov/files/operating-procedures/800/vadoc-op-830-3.pdf> at p.2.

<sup>15</sup> VA. CODE ANN. § 53.1-196 (2020).

<sup>16</sup> VA. CODE ANN. § 53.1-199 (2020). Inmates sentenced to jail for more than 12 months and inmates sentenced for a combination of felony and misdemeanor offenses are also eligible to be awarded good conduct allowance credits.

<sup>17</sup> VA. CODE ANN. § 53.1-198 (2020).

<sup>18</sup> VA. CODE ANN. § 53.1-201 (2020).

<sup>19</sup> VA. CODE ANN. § 53.1-200 (2020).

<sup>20</sup> VA. CODE ANN. § 53.1-201 (2020).

<sup>21</sup> VA. CODE ANN. § 53.1-199 (2020).

<sup>22</sup> VA. CODE ANN. § 53.1-202.2 (2020). Inmates convicted of a felony offense committed on or after January 1, 1995, and sentenced to a term of incarceration in a local correctional facility are also eligible to be awarded earned sentence credits. Additionally, juveniles who were convicted and sentenced as serious offenders may be awarded earned sentence credits for the portions of their sentences served in the Department of Juvenile Justice.

<sup>23</sup> Under truth-in-sentencing in Virginia, a person convicted of a felony offense is not eligible for parole and must serve at least 85% of their sentence. See Virginia Criminal Sentencing



Commission. *A Decade of Truth-In-Sentencing in Virginia*. Retrieved from [http://www.vcsc.virginia.gov/Mar\\_05/TIS\\_Brochure.pdf](http://www.vcsc.virginia.gov/Mar_05/TIS_Brochure.pdf).

<sup>24</sup> VA. CODE ANN. §§ 53.1-202.2 (2020).

<sup>25</sup> VA. CODE ANN. § 53.1-202.3 (2020).

<sup>26</sup> See VA. CODE ANN. § 53.1-32.1(D) (2020). Refusing to accept a program assignment constitutes a violation of rules, and thus the inmate is not eligible to be awarded sentence reduction credits. See also VA. CODE ANN. § 19.2-297.1(C) (2020). Persons sentenced to life in prison are not eligible for good conduct allowance or earned sentence credits.

<sup>27</sup> Virginia Department of Corrections. (2019). *Operating Procedure 830.3, Good Time Awards*. Retrieved from <https://vadoc.virginia.gov/files/operating-procedures/800/vadoc-op-830-3.pdf>.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> Virginia Department of Corrections, personal communication, July 20, 2020.

<sup>32</sup> *Supra* note 27.

<sup>33</sup> *Supra* note 31.

<sup>34</sup> *Supra* note 31.

<sup>35</sup> *Supra* note 27.

<sup>36</sup> VA. CODE ANN. § 53.1-189 (2020). See also Virginia Department of Corrections. (2021). *Operating Procedure 830.1, Institution Classification Management*. Retrieved from <https://vadoc.virginia.gov/files/operating-procedures/800/vadoc-op-830-1.pdf>

<sup>37</sup> Virginia Department of Corrections. (2016). *Operating Procedure 861.1, Offender Discipline, Institutions*. Retrieved from <https://vadoc.virginia.gov/files/operating-procedures/800/vadoc-op-861-1.pdf>. Accumulated sentence credits include Earned Sentence Credits, Good Time Allowance, and Good Conduct Time.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> VA. CODE ANN. §§ 53.1-189(C) and 53.1-202.4 (2020). See also Virginia Department of Corrections. (2016). *Operating Procedure 861.1, Offender Discipline, Institutions*. Retrieved from <https://vadoc.virginia.gov/files/operating-procedures/800/vadoc-op-861-1.pdf>. Generally, inmates cannot request restoration of forfeited sentence reduction credits; however, credits that were forfeited because an inmate refused to participate in preventative or prophylactic therapies related to contagious disease or refused to provide a DNA sample can be reinstated once that inmate complies with these requirements.

<sup>42</sup> A list of programs available in state correctional facilities can be found at <https://vadoc.virginia.gov/offender-resources/incoming-offenders/facility-programs/>. These VADOC programs are not available to SR inmates confined in local or regional jails.

<sup>43</sup> Virginia Department of Corrections, personal communication, August 12, 2020.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* Per VADOC, wait times vary significantly amongst individual programs and locations, and this average wait time does not count SR inmates who are able to access programs immediately without being placed on a waitlist.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> Information on programs available to inmates under VADOC community supervision can be found at <https://vadoc.virginia.gov/offender-resources/offenders-under-community-supervision/community-supervision-programs/>.

<sup>49</sup> Virginia Department of Criminal Justice Services. (2016). *PAPIS: Virginia Re-entry Coalition. Summary of Programs in Virginia FY 2016*. Retrieved from <https://www.dcjs.virginia.gov/sites/dcjs.virginia.gov/files/publications/corrections/papis-virginia-re-entry-coalition-summary-programs-virginia-fy2016.pdf>

<sup>50</sup> *Supra* note 31.

<sup>51</sup> United States Census Bureau (2021). *Quickfacts: Virginia*. Retrieved from <https://www.census.gov/quickfacts/VA>.

<sup>52</sup> Virginia Department of Corrections. (2020). *State Responsible Offender Demographic Profile FY 2019*. Retrieved from <https://vadoc.virginia.gov/media/1472/vadoc-research-state-responsible-demographic-report-2019.pdf>. See also United States Census Bureau. *American Community Survey 1-Year Estimates, Table S0101*. Generated by Crime Commission staff on June 7, 2021, using <https://data.census.gov/cedsci/>.

<sup>53</sup> *Id.*

<sup>54</sup> Virginia Department of Corrections. (2020). *State Responsible Offender Population Trends FY2015 – FY2019*. Retrieved from <https://vadoc.virginia.gov/media/1473/vadoc-offender-population-trend-report-2015-2019.pdf>

<sup>55</sup> Virginia Department of Corrections, personal communication, August 6, 2020.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* Per VADOC, the crime type for 1% of inmates released in CY2019 had not been reported.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> It should be noted that there are multiple ways in which recidivism can be measured. Recidivism can be defined as a re-arrest, re-conviction, re-incarceration, or an individual's self-admission to re-engaging in certain behaviors. The length of time in which recidivism measures are tracked also varies. There are several limitations of recidivism research that should be considered. For instance, many crimes go undetected or do not fully enter the system due to law enforcement, prosecutorial, or judicial discretion; thus, actual recidivism (regardless of how it is measured) is likely higher than the data suggests. Further, due to inconsistencies in the criminal justice system, similar crimes may be charged and/or sentenced differently. One person, for example, may be given a term of incarceration in a jail or prison, while another individual, who committed the same offense, may receive a probation-only term. While both individuals committed new crimes, only one would be counted in re-incarceration data. Finally, caution should be taken when comparing recidivism data between states, even if states use the same measure when reporting on recidivism. Population differences, available resources, and varying laws and policies are a few of the factors that can impact a state's recidivism data.

<sup>64</sup> Merriam-Webster. (Accessed June 14, 2021). *Recidivism*. Retrieved from <https://www.merriam-webster.com/dictionary/recidivism>.

- <sup>65</sup> Virginia Department of Corrections. (2019). *Recidivism at a Glance: Releases from State Responsible Incarceration*. Retrieved from <https://vadoc.virginia.gov/media/1412/vadoc-state-recidivism-report-may-2019.pdf>.
- <sup>66</sup> Virginia Department of Corrections. (2020). *VADOC Recidivism*. Retrieved from <https://vadoc.virginia.gov/media/1575/vadoc-recidivism-report-2020-08.pdf>.
- <sup>67</sup> Virginia Department of Corrections. (2020). *Re-Incarceration and Re-Arrest Rates of VADOC SR Releases FY2015*. Retrieved from <https://vadoc.virginia.gov/media/1576/vadoc-recidivism-and-rearrest-report-2015.pdf>.
- <sup>68</sup> See, e.g., Sampson, R.J., & Laub, J.H. (2003). Life-course desisters? Trajectories of crime among delinquent boys followed to age 70. *Criminology*, 41, 555-592; Piquero, A.R. Farrington, D.P., & Blumstein, A. (2003). The criminal career paradigm. In M. Tonry (ed.), *Crime and justice: A review of research*, pp. 359-506.
- <sup>69</sup> See, e.g., Moffitt, T.E. (1993). Adolescence-limited and life-course-persistent antisocial behavior: A developmental taxonomy. *Psychological Review*, 100, 674-701.
- <sup>70</sup> *Supra* note 67.
- <sup>71</sup> *Id.*
- <sup>72</sup> Virginia Department of Corrections. (2020). *VADOC Recidivism*. Retrieved from <https://vadoc.virginia.gov/media/1575/vadoc-recidivism-report-2020-08.pdf> at p.3.
- <sup>73</sup> *Supra* note 67.
- <sup>74</sup> *Supra* note 67.
- <sup>75</sup> *Supra* note 66.
- <sup>76</sup> *Supra* note 66.
- <sup>77</sup> Virginia Department of Corrections. (2020). *Re-Incarceration and Re-Arrest Rates of VADOC FY2015 SR Releases*. Retrieved from <https://vadoc.virginia.gov/media/1576/vadoc-recidivism-and-rearrest-report-2015.pdf>.
- <sup>78</sup> *Id.*
- <sup>79</sup> See, e.g., Casey, P. M., Elek, J. K., Warren, R. K., Cheesman, F., Kleiman, M., & Ostrom, B. (2014). *Offender risk & needs assessment instruments: A primer for courts*. Williamsburg, VA: National Center for State Courts. Retrieved from [https://www.ncsc.org/\\_data/assets/pdf\\_file/0018/26226/bja-rna-final-report\\_combined-files-8-22-14.pdf](https://www.ncsc.org/_data/assets/pdf_file/0018/26226/bja-rna-final-report_combined-files-8-22-14.pdf).
- <sup>80</sup> *Id.*; See also Serin, R. C., & Lowenkamp, C. T. (2015). *Selecting and using risk and needs assessments*. Alexandria, VA: National Drug Court Institute. Retrieved from <https://www.ndci.org/wp-content/uploads/Fact%20Sheet%20Risk%20Assessment.pdf>.
- <sup>81</sup> *Supra* note 66.
- <sup>82</sup> *Supra* note 66.
- <sup>83</sup> See Virginia Department of Corrections. (2020). *VADOC Recidivism*. Retrieved from <https://vadoc.virginia.gov/media/1575/vadoc-recidivism-report-2020-08.pdf>.
- <sup>84</sup> Virginia Department of Corrections. (2020). *State Recidivism Comparison*. Retrieved from <https://vadoc.virginia.gov/media/1485/vadoc-state-recidivism-comparison-report-2020-02.pdf>.
- <sup>85</sup> *Id.*

<sup>86</sup> Virginia Department of Corrections. (2019). *Recidivism at a glance: Releases from State Responsible Incarceration*. Retrieved from <https://vadoc.virginia.gov/media/1412/vadoc-state-recidivism-report-may-2019.pdf>. See also Virginia Department of Corrections. (2020). *Recidivism at a Glance: Releases from State Responsible Incarceration*. Retrieved from <https://vadoc.virginia.gov/media/1484/vadoc-state-recidivism-report-2020-02.pdf>.

<sup>87</sup> See Appendix A for a list of the sentence reduction credit statutes by state.

<sup>88</sup> Staff did not conduct a review of other state's rules, regulations, department policies, or other statutes that may impact sentence reduction credits, such as sentencing statutes.

<sup>89</sup> The legal analysis conducted by staff was based on state laws as of August 2020.

<sup>90</sup> States vary on whether combined sentence reduction credit systems are called good time credits or earned sentence credits; however, all of these combined systems function similarly in that there is one credit accrual rate that is contingent upon both good behavior and program participation.

<sup>91</sup> See LA. STAT. ANN. § 15:828 (2020). Louisiana allows inmates to earn credits for program participation; however, these credits are used to reduce the inmate's projected good time parole supervision date. Therefore, this system was not considered in staff's analysis because the credits do not directly reduce the inmate's overall sentence.

<sup>92</sup> For these 8 states, program participation was the only requirement specifically listed in the sentence reduction credit statutes; however, good conduct may be a separate requirement set forth in rules, regulations, or department policies.

<sup>93</sup> See N.C. GEN. STAT. § 148-13 (2020). North Carolina awards good time credits to inmates convicted of driving under the influence; however, these inmates are not eligible for earned sentence credits.

<sup>94</sup> For these 4 states, good conduct was the only requirement listed in the sentence reduction credit statutes; however, program participation may be a separate requirement set forth in rules, regulations, or department policies.

<sup>95</sup> VT. STAT. ANN. tit. 28, § 811 (2020). Vermont has a narrow good time credit system where inmates confined in work camps can be awarded credits for consistent or meritorious participation.

<sup>96</sup> See TEX. GOV'T CODE ANN. § 498.003 (West 2020). Texas has a good conduct time system; however, credits can only be applied to reduce an inmate's eligibility for parole or mandatory supervision. Therefore, this system was not considered in staff's analysis because the credits do not directly reduce the inmate's overall sentence.

<sup>97</sup> 61 PA. CONS. STAT. § 4506 (2020).

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> Institutions can develop classification systems for inmates that are based on criteria set forth in department policies.

<sup>101</sup> DEL. CODE ANN. tit. 11, §4381 (2020). ALA. CODE § 14-9-41 (LexisNexis 2020).

<sup>102</sup> OKLA. STAT. tit. 57, § 138 (2020).

<sup>103</sup> N.D. CENT. CODE § 12-54.1-01 (2020).

<sup>104</sup> NEV. REV. STAT. ANN. 209.4465 (LexisNexis 2020).

<sup>105</sup> FLA. STAT. ANN. § 944.275 (LexisNexis 2020).

<sup>106</sup> See Appendix B for a list of the maximum allowances for good time credits and earned sentence credits across the United States.

<sup>107</sup> ARIZ. REV. STAT. § 41-1604.07 (LexisNexis 2020).

<sup>108</sup> *Id.*

<sup>109</sup> N.J. REV. STAT. § 30:4-140 (2020).

<sup>110</sup> States may have provisions in other statutes, such as a sentencing statute, which exclude inmates who were sentenced to life imprisonment from being awarded sentence reduction credits. For example, in Virginia, inmates serving life in prison are excluded from being awarded sentence reduction credits. VA. CODE ANN. § 19.2-297.1(C) (2020). Staff did not conduct a review of statutes outside of the primary sentence reduction statutes in other states. Additionally, this list does not include sentences of life imprisonment without parole, as staff assumed in its analysis that these inmates would not be eligible for any type of sentence reduction credits.

<sup>111</sup> Alaska law does not provide for a life sentence as punishment; however, Alaska law does include a mandatory 99-year term of incarceration.

<sup>112</sup> See VA. CODE ANN. § 19.2-297.1(C) (2020). See also VA. CODE ANN. § 53.1-202.2 *et. seq.* (2020). While Virginia excludes inmates sentenced to life imprisonment from being awarded sentence reduction credits in a sentencing statute and in VADOC policy, there are no exclusions specifically listed in Virginia's sentence reduction credit statutes.

<sup>113</sup> A due process hearing is generally required to determine guilt before sentence reduction credits can be forfeited or withheld.

<sup>114</sup> 730 ILL. COMP. STAT. ANN. 5/3-6-3 (LexisNexis 2020).

<sup>115</sup> See Virginia State Crime Commission. (Aug. 31, 2020). *Earned Sentence Credits*. Available at <http://vsc.virginia.gov/2020/VSCC%20Presentation%20-%20Earned%20Sentence%20Credits.pdf>.

<sup>115</sup> House Bill 5148 is available at <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=202&typ=bil&val=hb5148>.

<sup>116</sup> House Bill 1532 is available at <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=201&typ=bil&val=hb1532>.

<sup>117</sup> House Bill 5148 is available at <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=202&typ=bil&val=hb5148>.

<sup>118</sup> 2020 Va. Acts, Sp. Sess. I, ch. 50.

<sup>119</sup> See VA. CODE ANN. § 53.1-202.3(A) (2021) for a list of offenses which are excluded from accruing earned sentence credits at the new increased rates.

<sup>120</sup> This enactment clause led to the creation of VA. CODE ANN. § 53.1-202.5 (2021).

## APPENDIX A: Sentence Reduction Credit Statutes

STATE	GOOD TIME CREDIT STATUTE	EARNED SENTENCE CREDIT STATUTE
Alabama	ALA. CODE § 14-9-41 <i>et. seq.</i>	None
Alaska	ALASKA STAT. § 33.20.010	None
Arizona*	ARIZ. REV. STAT. § 41-1604.06 ARIZ. REV. STAT. § 41-1604.07	ARIZ. REV. STAT. § 41-1604.06 ARIZ. REV. STAT. § 41-1604.07
Arkansas	ARK. CODE ANN. § 12-29-204	ARK. CODE ANN. § 12-29-202
California	CAL. PENAL CODE § 2931 CAL. CODE REGS. tit. 15, § 3043.2	CAL. PENAL CODE § 2931 CAL. PENAL CODE § 2933 <i>et. seq.</i> CAL. CODE REGS. tit. 15, § 3043.3 <i>et. seq.</i>
Colorado	COLO. REV. STAT. § 17-22.5-301	COLO. REV. STAT. § 17-22.5-302 COLO. REV. STAT. § 17-22.5-405
Connecticut	None	CONN. GEN. STAT. § 18-98e
Delaware	DEL. CODE ANN. tit. 11, § 4381	DEL. CODE ANN. tit. 11, § 4381
Florida	FLA. STAT. § 944.275	FLA. STAT. § 944.275
Georgia	None	GA. CODE ANN. § 42-5-101
Hawaii	None	None
Idaho	None	IDAHO CODE § 20-101D
Illinois	730 ILL. COMP. STAT. 5/3-6-3	730 ILL. COMP. STAT. 5/3-6-3
Indiana	IND. CODE § 35-50-6-3.1	IND. CODE § 35-50-6-3.3
Iowa*	IOWA CODE § 903A.2	IOWA CODE § 903A.2
Kansas	KAN. STAT. ANN. § 21-6821	KAN. STAT. ANN. § 21-6821
Kentucky	KY. REV. STAT. ANN. § 197.045	KY. REV. STAT. ANN. § 197.045
Louisiana*	LA. STAT. ANN. § 15:571.3	LA. STAT. ANN. § 15:571.3
Maine	ME. STAT. tit. 17, § 2307 ME. STAT. tit. 17, § 2308	ME. STAT. tit. 17, § 2307
Maryland	MD. CODE ANN., CORR. SERVS. § 3-704 MD. CODE ANN., CORR. SERVS. § 3-708	MD. CODE ANN., CORR. SERVS. § 3-705 MD. CODE ANN., CORR. SERVS. § 3-706
Massachusetts*	MASS. GEN. LAWS ch. 127, § 129D	MASS. GEN. LAWS ch. 127, § 129D
Michigan	None	None
Minnesota	None	None
Mississippi	MISS. CODE ANN. § 47-5-138	MISS. CODE ANN. § 47-5-142
Missouri*	MO. CODE REGS. ANN. tit. 14, § 10-5.010	MO. CODE REGS. ANN. tit. 14, § 10-5.010
Montana	None	None
Nebraska	NEB. REV. STAT. § 83-1,107	NEB. REV. STAT. § 83-1,107

STATE	GOOD TIME CREDIT STATUTE	EARNED SENTENCE CREDIT STATUTE
<b>Nevada</b>	NEV. REV. STAT. ANN. § 209.4465	NEV. REV. STAT. ANN. § 209.4465 NEV. REV. STAT. ANN. § 209.448 NEV. REV. STAT. ANN. § 209.449
<b>New Hampshire</b>	N.H. REV. STAT. ANN. § 651-A:22	N.H. REV. STAT. ANN. § 651-A:22-a
<b>New Jersey</b>	N.J. STAT. ANN. § 30:4-140	N.J. STAT. ANN. § 30:4-92
<b>New Mexico</b>	None	N.M. STAT. ANN. § 33-2-34
<b>New York*</b>	N.Y. CORRECT. LAW § 803	N.Y. CORRECT. LAW § 803
<b>North Carolina</b>	None	N.C. GEN. STAT. § 148-13 N.C. GEN. STAT. § 15A-1340.13 N.C. GEN. STAT. § 15A-1340.20
<b>North Dakota</b>	None	N.D. CENT. CODE § 12-54.1
<b>Ohio</b>	None	OHIO REV. CODE ANN. § 2967.193
<b>Oklahoma</b>	OKLA. STAT. tit. 57, § 57-138	OKLA. STAT. tit. 57, § 57-138
<b>Oregon*</b>	OR. REV. STAT. § 421.121	OR. REV. STAT. § 421.121
<b>Pennsylvania</b>	None	None
<b>Rhode Island</b>	R.I. GEN. LAWS § 42-56-24	42 R.I. GEN. LAWS § 42-56-24
<b>South Carolina</b>	S.C. CODE ANN. § 24-13-210	S.C. CODE ANN. § 24-13-230
<b>South Dakota</b>	None	S.D. CODIFIED LAWS § 24-15A-50.1
<b>Tennessee</b>	TENN. CODE ANN. § 41-21-236	TENN. CODE ANN. § 41-21-236
<b>Texas</b>	None	None
<b>Utah</b>	None	UTAH CODE ANN. § 77-27-5.4
<b>Vermont</b>	VT. STAT. ANN. tit. 28, § 818	None
<b>Virginia*</b>	VA. CODE ANN. § 53.1-196 (GCT) VA. CODE ANN. § 53.1-199 <i>et. seq.</i> (GCA) VA. CODE ANN. § 53.1-202.2 <i>et. seq.</i> (ESC)	VA. CODE ANN. § 53.1-197 (GCT) VA. CODE ANN. § 53.1-199 <i>et. seq.</i> (GCA) VA. CODE ANN. § 53.1-202.2 <i>et. seq.</i> (ESC)
<b>Washington*</b>	WASH. REV. CODE § 9.94A.729	WASH. REV. CODE § 9.94A.729
<b>West Virginia</b>	W. VA. CODE § 15A-4-17	None
<b>Wisconsin</b>	None	None
<b>Wyoming*</b>	WYO. STAT. ANN. § 7-13-420 001-0 WYO. CODE R. § 4	WYO. STAT. ANN. § 7-13-420 001-0 WYO. CODE R. § 4

\* States that have a sentence credit reduction system with a single accrual rate that requires inmates to demonstrate both good conduct and satisfactory participation in institutional programming.

## APPENDIX B: Sentence Reduction Credit System Comparison by State<sup>1</sup>

STATE	MAXIMUM GOOD TIME CREDITS (GTC) <sup>2</sup>	MAXIMUM EARNED SENTENCE CREDITS (ESC) <sup>3</sup>	STATUTORY EXCLUSIONS BASED ON CONVICTION <sup>4</sup>	STATUTORY EXCLUSIONS BASED ON SENTENCE <sup>5</sup>
<b>Alabama</b>	75 days for every 30 days served	N/A	<ul style="list-style-type: none"> <li>Class A felony</li> <li>Sex offense involving a child</li> </ul>	<ul style="list-style-type: none"> <li>Life in prison</li> <li>Term of 15+ years</li> </ul>
<b>Alaska</b>	1/3 of sentence	N/A	<ul style="list-style-type: none"> <li>Felony Sex Offense</li> <li>Unclassified felony (1<sup>st</sup> or 2<sup>nd</sup> degree murder)</li> </ul>	<ul style="list-style-type: none"> <li>Mandatory 99-year term</li> <li>Definite term</li> </ul>
<b>Arizona*</b>	1 day for every 6 days served <sup>6</sup>	Combined with GTC	<i>None listed in the sentence credit statute</i>	<ul style="list-style-type: none"> <li>Court ordered to serve full term</li> </ul>
<b>Arkansas</b>	30 days per month	360 days	<b>EARNED SENTENCE CREDITS EXCLUSIONS:</b> <ul style="list-style-type: none"> <li>Murder</li> <li>Kidnapping</li> <li>Aggravated robbery</li> <li>Rape</li> <li>Trafficking</li> </ul>	<b>GOOD TIME EXCLUSIONS:</b> <ul style="list-style-type: none"> <li>Disciplinary sentences</li> </ul> <b>MERITORIOUS GOOD TIME (ESC) EXCLUSIONS:</b> <ul style="list-style-type: none"> <li>Life in prison</li> </ul>
<b>California</b>	1 day for every 2 days served <sup>7</sup>	Varies by program	<ul style="list-style-type: none"> <li>Convicted two or more previous times for a violent felony</li> </ul>	<ul style="list-style-type: none"> <li>Life in prison</li> </ul>
<b>Colorado</b>	15 days per month	12 days per month; 60 days for program completion	<i>None listed in the sentence credit statute</i>	<i>None listed in the sentence credit statute</i>
<b>Connecticut</b>	N/A	5 days per month	<ul style="list-style-type: none"> <li>Murder; Manslaughter (1<sup>st</sup> degree with firearm); Aggravated sexual assault of a minor; home invasion</li> <li>Persistent dangerous felony offenders</li> <li>Persistent dangerous sexual offenders</li> </ul>	<ul style="list-style-type: none"> <li>Offenders serving a period of special probation</li> </ul>
<b>Delaware</b>	3 days per month <i>Note: Combined GTC and ESC accruals cannot exceed 160 days per year.</i>	5 days per month	<i>None listed in the sentence credit statute</i>	<ul style="list-style-type: none"> <li>Life in prison</li> <li>Court ordered to serve full sentence or to serve at a Level V</li> </ul>
<b>Florida</b>	10 days per month <i>Note: Combined GTC and ESC accruals cannot reduce sentence by more than 15%</i>	10 days per month; 60 days upon completion of high school equivalency diploma or vocation certificate	<b>EARNED SENTENCE CREDITS EXCLUSIONS:</b> <ul style="list-style-type: none"> <li>Sentenced after October 1, 2014, for: <ul style="list-style-type: none"> <li>Murder</li> <li>Kidnapping</li> <li>False Imprisonment</li> <li>Sexual Battery</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Life in prison</li> </ul>



STATE	MAXIMUM GOOD TIME CREDITS (GTC) <sup>2</sup>	MAXIMUM EARNED SENTENCE CREDITS (ESC) <sup>3</sup>	STATUTORY EXCLUSIONS BASED ON CONVICTION <sup>4</sup>	STATUTORY EXCLUSIONS BASED ON SENTENCE <sup>5</sup>
<b>Georgia</b>	N/A	1 day per 1 day worked	<ul style="list-style-type: none"> <li>Offenses that are not eligible for parole</li> </ul>	<ul style="list-style-type: none"> <li>Life in prison</li> <li>Mandatory minimum sentences</li> <li>Certain sentences where an offender is required to serve 90% of the sentence</li> <li>Sentences of less than 2 years</li> </ul>
<b>Hawaii</b>	N/A	N/A	N/A	N/A
<b>Idaho</b>	N/A	N/A	N/A	N/A
<b>Illinois</b>	1 day per 1 day served	1.5x good time credits; lump sum credits for program completion vary	<ul style="list-style-type: none"> <li>1st degree murder</li> <li>Terrorism</li> </ul>	<ul style="list-style-type: none"> <li>Life in prison</li> <li>Court ordered to serve 100% of sentence or a mandatory minimum</li> </ul>
<b>Indiana</b>	1 day per 1 day served	2 years or 1/3 of applicable credit time (whichever is less)	<ul style="list-style-type: none"> <li>Class D classifications: <ul style="list-style-type: none"> <li>Child molestation of a victim under age of 12</li> <li>Murder during a sex crime</li> <li>Murder of a witness in a prosecution for a sex crime</li> </ul> </li> </ul>	<i>None listed in the sentence credit statute</i>
<b>Iowa*</b>	1 and 2/10 of a day for each 1 day served	Combined with GTC	<ul style="list-style-type: none"> <li>Attempted Murder</li> </ul>	<ul style="list-style-type: none"> <li>Life in prison</li> </ul>
<b>Kansas</b>	20%	120 days	<i>None listed in the sentence credit statute</i>	<i>None listed in the sentence credit statute</i>
<b>Kentucky</b>	10 days per month	90 days per program	<i>None listed in the sentence credit statute</i>  <i>Note: Offenders convicted of sex offenses cannot earn credits until successful completion of the sex offender treatment program</i>	<i>None listed in the sentence credit statute</i>

STATE	MAXIMUM GOOD TIME CREDITS (GTC) <sup>2</sup>	MAXIMUM EARNED SENTENCE CREDITS (ESC) <sup>3</sup>	STATUTORY EXCLUSIONS BASED ON CONVICTION <sup>4</sup>	STATUTORY EXCLUSIONS BASED ON SENTENCE <sup>5</sup>
<b>Louisiana*</b>	30 days for every 30 days served	Combined with GTC	<b>GOOD TIME AND EARNED TIME EXCLUSIONS:</b> <ul style="list-style-type: none"> <li>Person convicted a second time for of a crime of violence</li> </ul> <b>EARNED TIME EXCLUSIONS:</b> <ul style="list-style-type: none"> <li>Certain sex offenses (listed in LA. STAT. ANN. § 15:541)</li> <li>Offenders with more than one prior conviction for a violent crime or sex crime</li> </ul>	<ul style="list-style-type: none"> <li>Life in prison</li> <li>Sentenced to imprisonment with hard labor</li> </ul>
<b>Maine</b>	4 days per month <sup>8</sup>	5 days per month	<b>EARNED SENTENCE CREDITS EXCLUSIONS:</b> <ul style="list-style-type: none"> <li>Murder</li> <li>Sexual assaults/sex crimes</li> <li>Incest</li> <li>Indecent conduct</li> <li>Crimes between family members.</li> <li>The following crime against a family or household member: violent crimes, kidnapping, criminal restraint, forced labor, child endangerment, endanger dependent, violation of protective order, and obstructing report of crime</li> </ul>	<i>None listed in the sentence credit statute</i>
<b>Maryland</b>	10 days per month <i>Note: Combined GTC and ESC accruals cannot exceed 30 days per month for most inmates (certain inmates are limited to a maximum of 20 days per month)</i>	5 days per month per program	<ul style="list-style-type: none"> <li>Rape involving a child under 16</li> <li>Sexual assault involving a child under 16</li> <li>Sexual offense in the 3<sup>rd</sup> degree if the inmate was previously convicted of sexual assault of a child under 16</li> </ul>	<i>NOTE: The parole board can decline to grant sentence credits after revocation of parole or mandatory supervision</i>
<b>Massachusetts*</b>	10 days per month <sup>9</sup>	Combined with GTC	<i>None listed in the sentence credit statute</i>	<i>None listed in the sentence credit statute</i>
<b>Michigan</b>	N/A	N/A	N/A	N/A
<b>Minnesota</b>	N/A	N/A	N/A	N/A

STATE	MAXIMUM GOOD TIME CREDITS (GTC) <sup>2</sup>	MAXIMUM EARNED SENTENCE CREDITS (ESC) <sup>3</sup>	STATUTORY EXCLUSIONS BASED ON CONVICTION <sup>4</sup>	STATUTORY EXCLUSIONS BASED ON SENTENCE <sup>5</sup>
<b>Mississippi</b>	4.5 days per 30 days served	TBD by Commissioner	<ul style="list-style-type: none"> <li>Habitual offender (convicted under MISS. CODE ANN. §§ 99-19-81 through 99-19-87)</li> <li>Sex crimes</li> </ul>	<ul style="list-style-type: none"> <li>Mandatory minimum sentence</li> <li>Life in prison</li> </ul>
<b>Missouri*</b>	2 months each year	Combined with GTC	<ul style="list-style-type: none"> <li>Tampering with a victim or witness</li> <li>Drug sales or possession, if the inmate has a prior drug offense conviction</li> <li>Inmates whose conditional release has been extended to maximum release due to disciplinary issues</li> <li>Persistent sexual offender</li> <li>Class X-offender</li> </ul>	<ul style="list-style-type: none"> <li>Life in prison</li> <li>Inmates required to serve minimum sentence</li> <li>Inmates sentenced as a dangerous or persistent offender</li> </ul>
<b>Montana</b>	N/A	N/A	N/A	N/A
<b>Nebraska</b>	3 days per month (after the first year)	6 months per year	<i>None listed in the sentence credit statute</i>	<i>None listed in the sentence credit statute</i>
<b>Nevada</b>	20 days per month	10 days per month at the Director's discretion; lump sum of 60-120 days after program completion (varies by program)	<ul style="list-style-type: none"> <li>Felony involving the use or threat of force or violence</li> <li>Felony sexual offense</li> <li>Certain violations of work zone regulations</li> <li>DUIs that result in bodily harm or death</li> </ul> <p><i>NOTE: Inmates sentenced for category A or B felonies may only be awarded credits that are deducted from their maximum sentences</i></p>	<i>None listed in the sentence credit statute</i>
<b>New Hampshire</b>	12.5 days per month	21 months off sentence	<i>None listed in the sentence credit statute</i>	<i>None listed in the sentence credit statute</i>
<b>New Jersey</b>	16 days per month (after 30 <sup>th</sup> year of continuous good behavior)	1 day for each 5 days of productive occupation <sup>10</sup>	<i>None listed in the sentence credit statute</i>	<i>None listed in the sentence credit statute</i>
<b>New Mexico</b>	N/A	30 days per month	<i>None listed in the sentence credit statute</i>	<ul style="list-style-type: none"> <li>Life in prison</li> </ul>

STATE	MAXIMUM GOOD TIME CREDITS (GTC) <sup>2</sup>	MAXIMUM EARNED SENTENCE CREDITS (ESC) <sup>3</sup>	STATUTORY EXCLUSIONS BASED ON CONVICTION <sup>4</sup>	STATUTORY EXCLUSIONS BASED ON SENTENCE <sup>5</sup>
<b>New York*</b>	1/3 of indeterminate sentence; 1/7 of determinate sentence	Combined with GTC	<i>None listed in the sentence credit statute</i>	<ul style="list-style-type: none"> <li>Life in prison</li> </ul>
<b>North Carolina</b>	N/A	Misdemeanors: 4 days per month Felonies: maximum credits set by the Secretary of Public Safety	<i>None listed in the sentence credit statute</i>  <i>Note: The Secretary of Public Safety may issue regulations in regard to deductions for inmates serving sentences for impaired driving offenses</i>	<i>None listed in the sentence credit statute</i>
<b>North Dakota</b>	N/A	5 days per month	<i>None listed in the sentence credit statute</i>	<ul style="list-style-type: none"> <li>Inmates convicted of offenses listed under N.D. CENT. CODE § 12-54.1-01 must serve 85% of their sentence</li> </ul>
<b>Ohio</b>	N/A	8% of term	<ul style="list-style-type: none"> <li>Aggravated murder</li> <li>Murder</li> <li>Conspiracy or attempt to commit murder</li> <li>Complicity in committing aggravated murder or murder</li> <li>Sexually orientated offenses committed after September 30, 2011.</li> </ul>	<ul style="list-style-type: none"> <li>Life in prison</li> </ul>
<b>Oklahoma</b>	60 credits per month	Varies by program	<ul style="list-style-type: none"> <li>Crime which resulted in the death of a law enforcement officer, an employee of the DOC, or an employee of a private prison contractor while the victim was acting within the scope of their employment</li> <li>Violating any of the terms and conditions of probation and referred to an intermediate revocation facility</li> </ul>	<i>None listed in the sentence credit statute</i>
<b>Oregon*</b>	20%	Combined with GTC	<ul style="list-style-type: none"> <li>Murder</li> <li>Certain violent felonies</li> </ul>	<ul style="list-style-type: none"> <li>Determinate sentence (violent felonies)</li> <li>Mandatory Minimum</li> </ul>
<b>Pennsylvania</b>	N/A	N/A	N/A	N/A

STATE	MAXIMUM GOOD TIME CREDITS (GTC) <sup>2</sup>	MAXIMUM EARNED SENTENCE CREDITS (ESC) <sup>3</sup>	STATUTORY EXCLUSIONS BASED ON CONVICTION <sup>4</sup>	STATUTORY EXCLUSIONS BASED ON SENTENCE <sup>5</sup>
<b>Rhode Island</b>	10 days per month	<ul style="list-style-type: none"> <li>• 5 days per month for programs</li> <li>• 2 days per month for institutional industries</li> <li>• 30 days may be awarded upon completion of a program</li> </ul>	<b>GOOD TIME CREDIT EXCLUSIONS:</b> <ul style="list-style-type: none"> <li>• Sexual assault</li> <li>• Intent to commit 1<sup>st</sup> degree sexual assault</li> <li>• Child pornography</li> <li>• Murder</li> <li>• Kidnapping a minor</li> </ul>	<ul style="list-style-type: none"> <li>• Life in prison</li> <li>• A sentence of less than 6 months</li> </ul>
<b>South Carolina</b>	20 days per month	180 days annually	<ul style="list-style-type: none"> <li>• Murder (those sentenced to 30 years only)</li> </ul>	<ul style="list-style-type: none"> <li>• Life in prison</li> <li>• Mandatory minimum of 30 years</li> </ul>
<b>South Dakota</b>	N/A	Varies based on program (most are 90 days)	<i>None listed in the sentence credit statute</i>	<ul style="list-style-type: none"> <li>• Life in prison</li> </ul>
<b>Tennessee</b>	8 days per month	<ul style="list-style-type: none"> <li>• 8 days per month</li> <li>• 60 days for program completion (max of one 60 day credit)</li> </ul>	<b>EARNED SENTENCE CREDITS EXCLUSIONS</b> <ul style="list-style-type: none"> <li>• Inmates convicted of certain violent felonies must serve 85% of their sentence</li> <li>• Inmates convicted of certain sex offenses must serve 100% of their sentence</li> </ul>	<i>None listed in the sentence credit statute</i>
<b>Texas</b>	N/A	N/A	N/A	N/A
<b>Utah</b>	N/A	No maximum (no less than 4 months for two programs completed)	<i>None listed in the sentence credit statute</i>	<ul style="list-style-type: none"> <li>• Ordered to serve life by the parole board</li> <li>• Inmates without a release date</li> <li>• Inmates that have not met a contingency requirement for release by parole board</li> </ul>
<b>Vermont</b>	7 days per month	N/A	<b>GOOD CONDUCT TIME EXCLUSIONS:</b> <ul style="list-style-type: none"> <li>• Incarcerated for a violation of release conditions</li> </ul>	<ul style="list-style-type: none"> <li>• Inmates ordered to serve an uninterrupted sentence</li> </ul>
<b>Virginia*</b>	4.5 days per 30 days served <sup>11</sup>	Combined with GTC	<i>None listed in the sentence credit statute</i>	<i>None listed in the sentence credit statute</i>
<b>Washington*</b>	1/3 of sentence	Combined with GTC	<ul style="list-style-type: none"> <li>• Felony after July 23, 1995, that involved deadly weapon enhancements</li> </ul>	<i>None listed in the sentence credit statute</i>

STATE	MAXIMUM GOOD TIME CREDITS (GTC) <sup>2</sup>	MAXIMUM EARNED SENTENCE CREDITS (ESC) <sup>3</sup>	STATUTORY EXCLUSIONS BASED ON CONVICTION <sup>4</sup>	STATUTORY EXCLUSIONS BASED ON SENTENCE <sup>5</sup>
<b>West Virginia</b>	1 day for every 1 day served	N/A	<ul style="list-style-type: none"> <li>Certain sex offenders listed under W. VA. CODE § 62-12-26</li> </ul>	<ul style="list-style-type: none"> <li>Life in prison</li> </ul>
<b>Wisconsin</b>	N/A	N/A	N/A	N/A
<b>Wyoming*</b>	15 days per month	Combined with GTC	None listed in the sentence credit statute	<ul style="list-style-type: none"> <li>Life in prison</li> </ul>

\*States that have a program participation requirement in order to be awarded good time credits.

## APPENDIX B FOOTNOTES

<sup>1</sup> Staff only analyzed sentence reduction credit systems where the awarded credits can be used to reduce an inmate's total term of confinement. Staff did not analyze sentence reduction credit systems that reduce other terms, such as an inmate's parole eligibility or length of supervision.

<sup>2</sup> The maximum accrual rates for good time credits can be based on a variety of factors, such as: type of offense, type of sentence, and/or offender classification. Therefore, not all inmates will accrue good time credits at the maximum rates listed.

<sup>3</sup> Similar to good time credits, states may place certain limitations on the number of earned sentence credits that can be awarded. Therefore, not all inmates will accrue earned sentence credits at the maximum rates listed. Some states award additional earned sentence credits for meritorious conduct, such as acts of heroism or performing duties of outstanding importance. Because earned sentence credits for meritorious conduct are only awarded in limited circumstances, staff did not include these credits in this analysis.

<sup>4</sup> Inmates convicted of offenses listed in the "statutory exclusions based on conviction" column are prohibited from earning good time credits, earned sentence credits, or both. Staff only examined the sentence reduction credit statutes in other states, and did not review rules, regulations, department policies, or other statutes, such as penalty statutes. Therefore, this list may not encompass all conviction-based exclusions in a particular state.

<sup>5</sup> The "statutory exclusions based on sentence" column only lists exclusions that are specified in the state's sentence reduction credit statutes. Additional exclusions based on an inmate's sentence may be listed in a state's rules, regulations, department policies, or other statutes, such as penalty statutes. Some state's sentence reduction credit statutes specify that inmates sentenced to life without parole or death are excluded from being awarded sentence reduction credits, unless that inmate's sentence is commuted; however, not all states list these specific exclusions in statute. As such, staff did not include sentences of life without parole or death in this analysis, regardless of whether or not such exclusions were listed in a state's sentence reduction credit statutes.

<sup>6</sup> See ARIZ. REV. STAT. § 41-1604.07 (LexisNexis 2020). Inmates serving a sentence for certain drug offenses (possession or use of: narcotics, dangerous drug, narcotic drug, or drug paraphernalia) who have not previously been convicted of a violent or aggravated felony, and who have successfully complete a drug treatment program, can be awarded good time credits of 3 days for every 7 days served.

<sup>7</sup> See CAL. CODE REGS. tit. 15, § 3043.2 (2020). The maximum accrual for good time credits will increase to 1 day for each 1 day served (or 50% of the sentence) on May 1, 2021, for certain inmates not serving a sentence for a violent felony.

<sup>8</sup> See ME. STAT. tit. 17, § 2308 (2020). In Maine, inmates convicted of certain violent crimes (crimes listed in the “statutory exclusions based on conviction” column) can be awarded a maximum of 5 days of good time credits per month; however, those inmates cannot be awarded earned sentence credits.

<sup>9</sup> See MASS. GEN. LAWS ch. 127, § 129D (2020). Inmates working in state hospitals or schools can be awarded a maximum of 15 days per month in good time credits.

<sup>10</sup> See N.J. STAT. ANN. § 30:4-92 (West 2020). Productive occupation includes all education, workforce skills, or vocational training programs. An inmate can earn cash (at inmate wage rates) or a deduction of time from their total sentence, or both.

<sup>11</sup> See VA. CODE ANN. § 53.1-202.2 *et. seq.* (2020). These maximum accruals are for Virginia’s most recent sentence reduction credit system (earned sentence credits). See *also* VA. CODE ANN. §§ 53.1-196 and 53.1-197 (2020). Inmates incarcerated under the good conduct time system (convicted on or before June 30, 1981) may be eligible to be awarded up to 10 days per 20 days served for good conduct and 5 days per month for program participation. See *also* VA. CODE ANN. § 53.1-199 *et. seq.* (2020). Inmates incarcerated under the good conduct allowance system (convicted on or after July 1, 1981, but before January 1, 1995) may be eligible to be awarded up to 30 days per 30 days served for good conduct and performance of their assignments.

