

# 2024 Earned Sentence Credits Fact Sheet



## What is Expanded Earned Sentence Credits (EESC)?

Earned sentence credits was a system first installed as the (greatly reduced) method of earning good time in VA in the mid-90s, part of the push for harsh punishments that also abolished parole and added many mandatory minimums. It capped earning at 4.5 days for every 30 served, which meant the best that anyone in VADOC could earn was 13% off their sentences. In 2019, newly elected Don Scott first adopted The Humanization Project's bill to expand earned sentence credits, followed by many copatrons. An imperfect version of progress passed in 2020, providing most people behind bars the chance to earn up to 33% off part or all of their sentence (up to 15 days for every 30 served, now called ESC-2 eligibility). Just before its July 2022 enactment, a clause was added to the state budget to temporarily eliminate that eligibility from anyone with any time for ineligible (often "violent," but not that simple) convictions. Despite this tragic theft of their freedom (earned by law), over 10,000 people have since earned earlier release, and Virginia has led the nation in decarceration, with VADOC population down 4,000 and four prisons closing permanently. Recently, two things happened that allowed thousands more to be retroactively eligible for EESC for at least part of their sentences.

## What has changed for EESC in 2024?

1. **"Mixed charges" are now included in EESC**— This time, the final budget (signed May 13, 2024) eliminated the governor's amendment that would have again entirely DQ'd from all EESC those folks with some eligible and some ineligible convictions. Since the previous DQ in the 2022 budget agreement expires June 30, 2024, the ability to earn on all eligible convictions will extend to everyone thereafter, even people who also have some convictions that are not eligible. Over 8,000 people currently behind bars will now be eligible to earn ESC-2-level credits (max of 15 days on 30 served, 66.7% of sentence) for any time served entirely for eligible convictions (those not listed on 53.1-202.3(A)).
  - a. **Retroactive**- These new earning levels apply retroactively. All time served on eligible convictions, in the past, present, or future, will be adjusted. Many people will therefore be retroactively eligible for release on July 1, 2024.
  - b. **Mixed Charges Must Be Consecutive Sentences to Qualify**- To be eligible, time must be served only on eligible convictions. For example, if someone has convictions for drug possession (18.2-250, eligible) and robbery (18.2-58, ineligible) being served consecutively (one after the other), all the time for possession is eligible after the time for robbery is served. But if the same two are served concurrently (sentences running at the same time), then the ineligible one (robbery) makes that time ineligible overall.
  - c. **Eligibility timing**- Most people affected by the change will have to serve ineligible time at the lower ESC-1 rate first, then be eligible for extra time on all of their ESC-2-eligible convictions. Occasionally it's a different order, depending which charge is controlling.
  - d. **Limitations**- Unfortunately, this does not yet expand the EESC eligibility to all convictions, but it does mean that most of those in VADOC will be able to earn at least some extra time off their sentences, usually at least 1-3 years, often much more.
2. **All inchoate offense convictions will now be eligible for EESC**-- The recent *Garcia Vasquez v. Dotson* ruling and follow up "inchoate offenses" (meaning crimes that are not completed, "anticipatory or preparatory of a future act") memo from DOC created confusion about who is now eligible for Expanded Earned Sentence Credits (EESCs). The new policy will also apply to related rulings on slightly different convictions in the *Prease* and *Puryear* cases. Based on the wording of the memo issued by DOC and the budget agreement to qualify mixed charges (the details of both still needing to be specified further on their end), this will expand new ESC-2 (66.7%) eligibility (as of July 1, 2024) to those who have ONLY the convictions listed below **or** have these convictions being served consecutively (separately) from any ineligible convictions (based on the list in 53.1-202.3(A)). If they are being served concurrently (at the same time) as ineligible convictions, that time will unfortunately still not be eligible.
  - a. If this applies to you, these code sections will be listed on your Legal Update Sheet:
    - § 18.2-22. Conspiracy to commit felony.
    - § 18.2-23. Conspiring to trespass or commit larceny.
    - § 18.2-25. Attempts to commit Class 1 felony offenses.
    - § 18.2-26. Attempts to commit felonies other than Class 1 felony offenses.
    - § 18.2-27. Attempts to commit misdemeanors.
    - § 18.2-29. Criminal solicitation-- OTHER THAN HOMICIDE. Convictions of solicitation to commit homicide are explicitly disqualified in 53.1-202.3(A).

3. **Pretrial detention (aka, “jail time”) earning has not changed... yet—** Properly applying full earning to jail time, as the law already stated, did not happen. HB45, which would have forced this retroactively, made it all the way to the governor’s desk with enthusiastic, often bipartisan support from many legislators before he vetoed it. For now, expanding to that time is only possible through litigation, a future bill in another Session, or the Attorney General (now or in the future) properly applying the law that already exists.

### **How do I know if I qualify for EESC?**

To determine eligibility, you must know the specific statutes for all convictions (i.e., robbery is 18.2-58, and use of a firearm in commission of a felony is 18.2-53.1). Compare that to the list in 53.1-202.3(A) (see list and link below). Anything NOT on that list IS eligible for EESC and the higher ESC-2 earning levels. Anything on that list is ineligible, sometimes only after the second conviction.

- To obtain this information, ask counselor/Court & Legal Services to print you a “full Legal Update Sheet.” Be sure to specifically ask for a version that includes all convictions, sentencing information, dates, and GCA earning levels.
- Note: When the list says “et seq.” after a statute number, it means “and the following.” Thus, it DQs anything that meets that overall description in that whole section of possible violations. For example, “Any malicious felonious assault or malicious bodily wounding under Article 4 (§ [18.2-51](#) et seq.) of Chapter 4 of Title 18.2” means that any conviction with ‘malicious’ in the title under Article 4 is DQ’d (like 18.2-51.2, malicious wounding), but other convictions under Article 4 that don’t have that terminology (like 18.2-57, assault and battery) will now be eligible.

### **How much better is my sentence going to get if I qualify for EESC?**

For any time that is newly eligible, people will be able to earn up to 1/3 off the sentence (66.7% must be served). This means serving 2 out of every 3 years. With old earning levels, at least 87% of that time had to be served (it’s 87%, not 85%, because of their calculation process based on the statute’s wording), which amounts to 2 years, 7 months, and about 10 days out of every 3 years. Thus, while earning at level 1 GCA (the best good time), sentences can be reduced by almost 7.5 months for every 3 years of newly eligible time. This is the amount better than what the best earning on that sentence was previously.

- For example, someone with 8 years of consecutive sentences for 18.2-53.1 (use of firearm in commission of a felony) after a robbery sentence could earn up to 2 years, 8 months off that time (serving 5 years, 4 months). Previously, the max time to earn off that was almost exactly 1 year. Thus, the new date on that sentence could be up to 1 year, 8 months earlier than even the best good time on that stretch before.

### **What do I need to do to ensure I get the proper credit?**

For now, we encourage everyone to first obtain their full Legal Update Sheet so all necessary information is available to determine eligibility and grieve any mistakes. VADOC officials have said that they are already recalculating everyone’s eligibility and time. Those who are eligible for immediate release will be eligible for release on July 1 will be prioritized, so that list and logistics of that will be done first. After that, they will be finalizing and sending notifications with new estimated release dates for everyone else newly eligible.

- Note: Be proactive, especially if you believe you are set to get out July 1. Track others at your facility getting new dates. If you have not heard anything official by mid-June and think July 1 is your date, double check the calculations then ask counselors politely for meetings to discuss. Reach out to The Humanization Project ([taj@thehumanizationproject.org](mailto:taj@thehumanizationproject.org)) if you are unsure on calculations.

## **FAQ**

### **What does mixed charges mean?**

“Mixed charges” means someone has some convictions that are eligible for EESC and some that aren’t. Previously, the governor included an amendment in the budget that DQ’d people with mixed charges from earning on even their eligible time, but that was temporary and will end July 1, 2024.

### **What is the process if ESC is not correctly calculated?**

1. If you believe a GCA earning level was wrong based on your behavior, you can appeal it. Make sure to file a grievance as soon as you find an error, as there is only a month to appeal (and we all know things must be filed way earlier to be officially received by the deadline).
2. If you believe an old GCA earning was wrong long ago that affects your time now, unfortunately it cannot be corrected after 30 days within current DOC procedures. It would require a habeas corpus petition in court.

- If you believe that you are not receiving proper ESC-2 eligibility for part of your sentence, also start with a grievance. Since the notifications of revised estimated release dates (as of July 1) will be coming in the form of revised Legal Update Sheets, officially from Court & Legal Services (who does the calculations), you should grieve that document. There is also a form to appeal credits to that office (obtained from counselor/law library), which you can submit. Be sure to also include a letter referencing the exact statute number of your convictions, where they are eligible on 53.1-202.3, and a copy of that Legal Update Sheet. Expect slow replies, so file quickly.

**If someone has both ineligible (“violent”) and eligible (“non-violent”) charges, does eligibility still apply to non-violent convictions?**

Yes, for any portion of a sentence where the time is served entirely for eligible convictions, ESC-2 eligibility will now be applied on July 1, 2024. Even for people who also have separate time for ineligible convictions. .

**Can the Governor issue an executive order blocking EESC before it takes effect?**

Understandable fear, but we are confident that there is nothing that the governor or attorney general can do to change it themselves at this point. Virginia governors’ authority does not allow long term actions (beyond 45 days) without legislative approval. Because the statute says (and has said since 2020) that people with mixed charges would be eligible for EESC on time served for eligible convictions, his authority won’t override that. The Special Session and approval of at least some Democrats to specifically disqualify mixed charges eligibility that would be necessary is VERY UNLIKELY to happen on Speaker Scott’s first signature bill.

**What does it mean to have a conviction on the list (53.1-202.3(A))?**

Those are the convictions that are ineligible (still, sadly) for expanded ESC. Expanding growth incentives and eligibility to all convictions is a goal of the movement, but it cannot happen until we show how good this expansion is for public safety and communities and families and then vote for people who will expand it further in the future.

**Eligibility List**

The link to § 53.1-202.3. (ESC law): <https://law.lis.virginia.gov/vacode/title53.1/chapter6/section53.1-202.3/>

<ol style="list-style-type: none"> <li>A Class 1 felony;</li> <li>Solicitation to commit murder under § 18.2-29 or any violation of § 18.2-32, 18.2-32.1, 18.2-32.2, or 18.2-33;</li> <li>Any violation of § 18.2-40 or 18.2-45;</li> <li>Any violation of subsection A of § 18.2-46.5, of subsection D of § 18.2-46.5 if the death of any person results from providing any material support, or of subsection A of § 18.2-46.6;</li> <li>Any kidnapping or abduction felony under Article 3 (§ 18.2-47 et seq.) of Chapter 4 of Title 18.2;</li> <li>Any malicious felonious assault or malicious bodily wounding under Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2, any violation of § 18.2-51.6 or 18.2-51.7, or any felony violation of § 18.2-57.2;</li> <li>Any felony violation of § 18.2-60.3;</li> <li>Any felony violation of § 16.1-253.2 or 18.2-60.4;</li> <li>Robbery under § 18.2-58 or carjacking under § 18.2-58.1;</li> <li>Criminal sexual assault punishable as a felony under Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2;</li> <li>Any violation of § 18.2-90;</li> <li>Any violation of § 18.2-289 or subsection A of § 18.2-300;</li> <li>Any felony offense in Article 3 (§ 18.2-346 et seq.) of Chapter 8 of Title 18.2;</li> <li>Any felony offense in Article 4 (§ 18.2-362 et seq.) of Chapter 8 of Title 18.2, except for a violation of § 18.2-362 or subsection B of § 18.2-371.1;</li> <li>Any felony offense in Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2, except for a violation of subsection A of § 18.2-374.1:1;</li> </ol>	<ol style="list-style-type: none"> <li>Any violation of subsection F of § 3.2-6570, any felony violation of § 18.2-128, or any violation of § 18.2-481, 37.2-917, 37.2-918, 40.1-100.2, or 40.1-103; or</li> <li>A second or subsequent violation of the following offenses, in any combination, when such offenses were not part of a common act, transaction, or scheme and such person has been at liberty as defined in § 53.1-151 between each conviction:             <ol style="list-style-type: none"> <li>Any felony violation of § 3.2-6571;</li> <li>Voluntary manslaughter under Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2;</li> <li>Any violation of § 18.2-41 or felony violation of § 18.2-42.1;</li> <li>Any violation of subsection B, C, or D of § 18.2-46.5 or § 18.2-46.7;</li> <li>Any violation of § 18.2-51 when done unlawfully but not maliciously, § 18.2-51.1 when done unlawfully but not maliciously, or § 18.2-54.1 or 18.2-54.2;</li> <li>Arson in violation of § 18.2-77 when the structure burned was occupied or a Class 3 felony violation of § 18.2-79;</li> <li>Any violation of § 18.2-89 or 18.2-92;</li> <li>Any violation of subsection A of § 18.2-374.1:1;</li> <li>Any violation of § 18.2-423, 18.2-423.01, 18.2-423.1, 18.2-423.2, or 18.2-433.2; or</li> <li>Any violation of subdivision E 2 of § 40.1-29.</li> </ol> </li> </ol>
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[taj@thehumanizationproject.org](mailto:taj@thehumanizationproject.org)

[contact@prisonersrightsclinic.org](mailto:contact@prisonersrightsclinic.org)