

Racial and Ethnic Impact Statement 2022 General Assembly Session

Bill number: HB 735 (Introduced); Repeals four-level classification system for the awarding and calculation of earned sentence credits that is scheduled to go into effect on July 1, 2022.

Review requested by: Co-Chairman Deeds; Senate Judiciary Committee

Date: February 22, 2022

JLARC Staff Assessment of Potential for Disproportionate Impact

HB 735 would repeal enactment of a new classification system that would allow some state responsible (SR) inmates to earn sentence credits at a higher rate. The bill would repeal legislation that created a new four-level classification system for calculating and awarding earned sentence credits (ESC) that is scheduled to go into effect July 1, 2022. Approximately one-third of SR inmates will be eligible for the new system unless repealed by HB 735.

JLARC staff estimate that HB 735 would have disproportionate racial impacts. Repeal of the new ESC system would disproportionately impact Black inmates relative to the general population because a higher proportion of inmates who would no longer have access to a new ESC system are Black relative to Black persons' proportion of Virginia's adult population. Black inmates are 2.4 times more likely to be impacted by the repeal of the new ESC system relative to their share of Virginia's general population age 18 years and older.

However, HB 735 would have a relatively small disproportionate impact on white inmates if only the state responsible, and not the general, population is considered because a higher proportion of inmates who would no longer have access to a new ESC system are white relative to white persons' proportion of Virginia's state responsible population. This appears to be related to the fact that white inmates are less likely than Black inmates to have been convicted of violent crimes that would make them ineligible for the new ESC system.

An explanation of the JLARC staff review is included on the pages that follow.

Bill summary

HB 735 would repeal legislation that established the new four-level classification system for calculating and awarding earned sentence credits (ESC) for state responsible (SR) inmates that is scheduled to go into effect on July 1, 2022. (State responsible inmates in Virginia have been sentenced to incarceration for one year or longer for a felony conviction.) Legislation enacting the new four-level system was passed in the 2020 Special Session I. The legislation codified the four-level ESC system that the Virginia Department of Corrections (VADOC) was using and increased the ESC rates.

Under current law, inmates may earn a maximum of 4.5 days (credits) for every 30 days served. The new classification system that goes into effect July 1, 2022 keeps the maximum 4.5 day ESC rate for inmates convicted of Class 1 felonies and other specified felonies, such as offenses like crimes against persons, criminal sexual assault, and stalking (§53.1-202.3.A). However, under the new system, inmates who were not convicted of an excluding offense under §53.1-202.3.A will be able to earn sentence credits at a higher rate. Inmates in Level I will be able to earn up to 15 days of sentence credits for every 30 days served. According to VADOC data, about 80 percent of inmates who are eligible for the new ESC rates would be in Level I. (An inmate's classification level depends on VADOC's assessment of whether he is complying with institutional rules, cooperating with VADOC programs, has correctional infractions, or requires improvement in areas identified by VADOC.)

The enhanced ESCs will be lower for inmates in Levels II and III, but still higher than under the current system. Inmates at Level IV are not eligible for ESCs under the current system or the new system that goes into effect on July 1, 2022. Inmates at this level are identified as willfully not cooperating with VADOC programs or causing substantial security or operational problems at VADOC.

HB 735 would repeal the new four-level ESC classification system, and all SR inmates eligible to earn sentence credits could only earn a maximum of 4.5 days for every 30 days served.

Impact on aggregate criminal justice outcomes

HB 735 would repeal the legislation that created the new four-level ESC classification system that is scheduled to go into effect on July 1, 2022. More than 10,000 SR inmates (about one-third of the SR population) will be eligible for higher credits under the new system. These inmates would not have access to these higher credits if HB 735 repeals the new system. About 20,000 SR inmates (two-thirds of the SR population) are not eligible for the new system and would not be impacted by its repeal. Most SR inmates

who are not impacted by HB 735 have an excluding offense under §53.1202.3.A. Parole system offenders and inmates serving a life sentence are also ineligible to earn credits under either the old or the new ESC system.

Evidence of disproportionate impacts on racial or ethnic subgroups

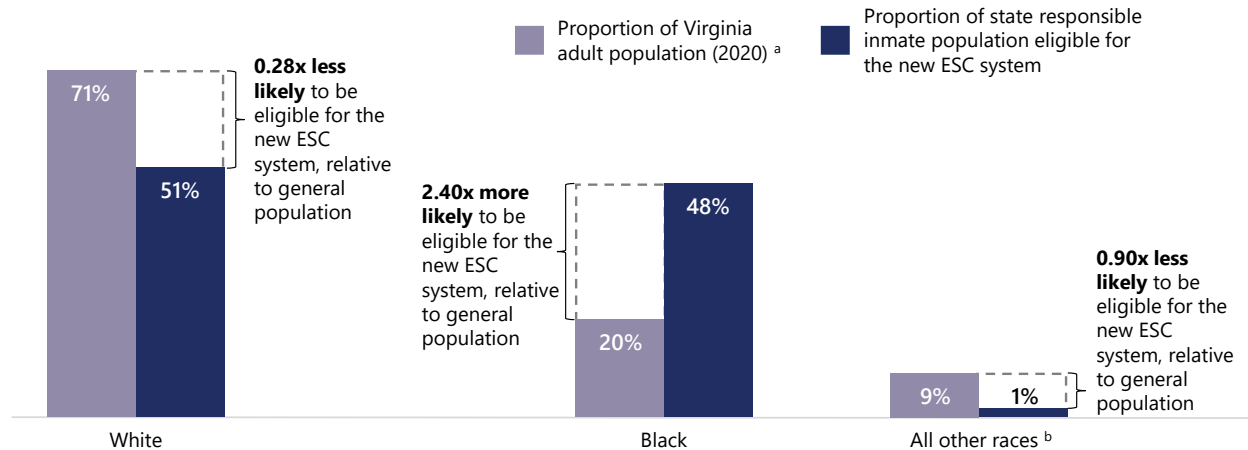
To estimate whether there would be disproportionate racial impacts if HB 735 were enacted, JLARC staff compared (1) the racial composition of inmates who would be impacted by HB 735 to the racial composition of Virginia's population age 18 and older, and (2) the racial composition of inmates who would be impacted by HB 735 to the racial composition of all SR inmates.

HB 735 would disproportionately impact Black inmates because a higher proportion of inmates who would no longer have access to a new ESC system are Black relative to Black persons' proportion of Virginia's adult population

Black individuals are 2.4 times (140 percent) more likely to be eligible for the new ESC system relative to their proportion of Virginia's adult population because 48 percent of SR inmates who would be eligible for the new ESC system are Black, and 20 percent of Virginia adults are Black. Consequently, repeal of the ESC system would disproportionately impact Black inmates because a higher proportion of inmates who would no longer have access to a new ESC system are Black relative to Black persons' proportion of the general population (Figure 1). Conversely, 51 percent of SR inmates who would no longer have access to a new ESC system are white, and 71 percent of Virginia adults are white, so white inmates are 0.28 times (28 percent) less likely to not have access to a new system than would be expected by their share of Virginia's adult population.

FIGURE 1

Black inmates are 2.4 times more likely to be impacted by HB 735’s repeal of the new ESC system relative to Virginia’s population age 18 and older



SOURCE: JLARC analysis of VADOC inmate data and CORIS early release calculations as of June 30, 2021.

NOTE: ^a Population data from Virginia 2020 Census estimates of adult population over 18 years of age. ^b Accounts for the combination of American Indian or Alaskan Native, Asian or Pacific Islander, or unknown race SR inmates in DOC facilities.

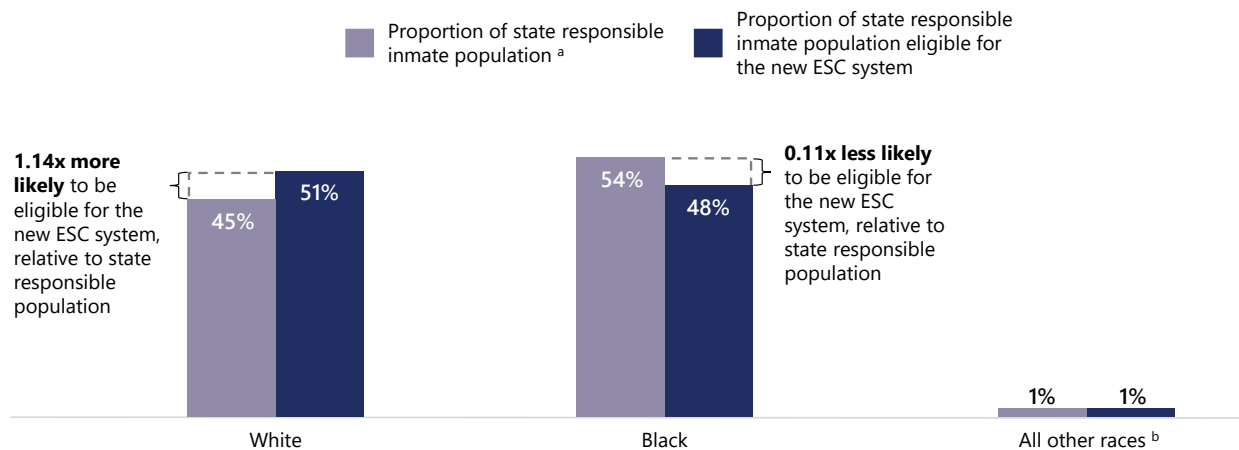
HB 735 would have a relatively small disproportionate impact on white inmates if only the state responsible population is considered because a higher proportion of inmates who would not have access to a new ESC system are white relative to white inmates’ proportion of the SR population

JLARC staff also compared the racial composition of inmates estimated to be eligible for the new ESC system to the racial composition of all SR inmates (Figure 2). White individuals are 1.14 times (14 percent) more likely to be eligible for the new ESC system relative to their proportion of the SR population because 51 percent of inmates eligible for the new system are white, and 45 percent of all SR inmates are white. Consequently, repeal of the ESC system would have a relatively small disproportionate impact on white inmates because a higher proportion of inmates who would not have access to a new ESC system are white than would be expected based on their share of the overall SR population. Conversely, 48 percent of inmates who are estimated to be eligible for the new ESC system are Black, and 54 percent of SR inmates are Black, so Black inmates are 0.11 times (11 percent) less likely to not have access to a new system than would be expected by their share of the SR population.

According to VADOC data, white inmates are more likely to be eligible for the new ESC system, and therefore more impacted by its repeal, because they are less likely than

Black inmates to have been convicted of violent crimes that would make them ineligible for the new system.

FIGURE 2
White inmates 1.14 times more likely to be impacted by the repeal of the new ESC system under HB 735 within the VADOC state responsible population



SOURCE: JLARC analysis of VADOC inmate data and CORIS early release calculations as of June 30, 2021.

NOTE: ^a VADOC population as of June 30, 2021. ^b Accounts for the combination of American Indian or Alaskan Native, Asian or Pacific Islander, or unknown race SR inmates in DOC facilities.

Patron: Delegate Bell

Prepared by: Mitchell Parry, Erik Beecroft, Brittany Utz, Kimberly Sarte

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