

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

House Bill 644
Judiciary

(Delegates Shank and Kelly)

**Criminal Procedure - Abuse and Sexual Abuse of a Minor - Diminution Credits
and Parole Eligibility**

This bill decreases, from 10 to 5, the number of days per month that an inmate serving a term of confinement that includes a consecutive or concurrent sentence for a crime of abuse of a minor or sexual abuse of a minor is allowed as a deduction in advance from the inmate's term of confinement. Under provisions applicable to parole eligibility and revocation of parole, the bill includes the crimes of abuse of a minor and sexual abuse of a minor under the definition of "violent crime."

Fiscal Summary

State Effect: Although this bill would tend to have an operational and fiscal impact on the Division of Correction (DOC) and the Division of Parole and Probation, it is assumed that such an impact would be moderate and likely handled with existing resources. Any impact would not occur for several years.

Local Effect: None. It is unlikely that a person convicted of such offenses would be sentenced to a local correctional facility.

Small Business Effect: None.

Analysis

Current Law: The Maryland Parole Commission has the power to authorize the parole of an inmate in DOC. The Board of Review has this power for the Patuxent Institution. Currently, the Secretary of Public Safety and Correctional Services must also approve

each parole, and seven of the nine members of the Board of Review are required to approve parole for an inmate at Patuxent.

For purposes of parole eligibility, a violent crime means all of the crimes of violence cited in the Criminal Law Article as well as first, second, or third degree burglary. A person sentenced to a term of incarceration of six months or more is entitled to a parole hearing after having served one-fourth of the term or consecutive terms. A person sentenced to more than one term, including a term during which the person is eligible for parole and a term during which the person is not eligible for parole, cannot be considered for parole unless the person has served the greater of one-fourth of the aggregate term or a period equal to the term during which the inmate is not eligible for parole.

A person convicted of a violent crime is not eligible for parole until that person has served the greater of one-half of the aggregate sentence for violent crimes, one-half of the aggregate total sentence, or a period equal to the term during which the inmate is not eligible for parole. Currently, a person serving a term for a violent crime may receive an administrative review after that person has served one-fourth of the term of confinement or a period equal to any term in which the inmate is not eligible for parole. Further, a person sentenced to life imprisonment is not eligible for parole consideration until that person has served 15 years. A person sentenced to life imprisonment for first degree murder is not eligible for parole consideration until that person has served 25 years.

For DOC inmates whose terms of confinement include consecutive or concurrent sentences for a crime of violence or a crime involving a controlled dangerous substance, the deduction in the sentence for good conduct is calculated at five days per calendar month. For all other inmates the deduction is calculated at 10 days per calendar month. An inmate may also receive deductions calculated at 5 days per calendar month for work tasks and education and 10 days per calendar month for special projects. However, the total deduction may not exceed 20 days per calendar month. An inmate in a local correctional facility may receive deductions of five days per calendar month for good conduct; industrial, agricultural, or administrative tasks; educational and training courses; work projects; and special programs.

Chapter 167 of 2003 established the crimes of child abuse in the first and second degrees, established terms of imprisonment for those crimes, and increased the maximum term of imprisonment for a person who causes sexual abuse to a minor.

The Act provides that a parent or other person who has permanent or temporary care, custody, or responsibility for the supervision of a minor may not cause abuse resulting in severe physical injury or death to the minor. A violator is guilty of the felony of child abuse in the first degree and on conviction is subject to imprisonment not exceeding 25 years or, if the violation results in the death of the victim, imprisonment not exceeding 30

years. A person who violates the child abuse laws after being convicted of a prior violation of the same provisions is guilty of a felony and is subject to imprisonment for up to 25 years. If the violation results in the death of the victim, the violator is subject to imprisonment for up to 30 years.

Chapter 167 also established that the then existing crime of child abuse is child abuse in the second degree and is subject to a maximum term of imprisonment of 15 years for abuse that does not result in the death of the victim. The Act increased the maximum term of imprisonment for a person who causes sexual abuse to a minor from 15 years to 25 years.

“Abuse” means a physical injury sustained by a minor as a result of cruel or inhumane treatment or as a result of a malicious act under circumstances that indicate the minor’s health or welfare is harmed or threatened. “Sexual abuse” means an act that involves the sexual molestation or exploitation of a minor. It includes incest, rape, sexual offense in any degree, sodomy, and unnatural or perverted sexual practices. “Severe physical injury” means a brain injury or bleeding within the skull, starvation, or physical injury that creates a substantial risk of death or causes permanent or protracted serious disfigurement or loss or impairment of the function of any bodily member or organ.

A sentence imposed for child abuse or child sexual abuse may be separate from and consecutive to or concurrent with a sentence for any crime based on the act that establishes the abuse violation.

Chapter 316 of 2004 repealed a requirement that a new sentence run consecutively to the time to be served on the original term when an individual is convicted of a crime while on parole. A court is now required to determine if such a new sentence is to run concurrently or consecutively, as provided under the Maryland Rules. Under such circumstances, if a new sentence is to run consecutively, the new sentence must begin: (1) if at the time of sentencing parole is revoked, on expiration of the original confinement term; or (2) if parole is not revoked, on the date that the consecutive sentence was imposed. In addition, if such a new sentence is to run consecutively, the reimposition of the original sentence on parole must begin as provided under a specified current law provision governing a revocation of parole.

Background: During fiscal 2004, DOC had an intake of 55 persons convicted of child abuse, with an average sentence of 68 months, and an intake of 11 persons convicted of child sexual abuse, with an average sentence of 75 months. DOC does not know how many of these persons are serving the sentence concurrent with or consecutive to a sentence for another offense.

However, sentencing data based exclusively on information extracted from guidelines worksheets submitted to the Commission on Criminal Sentencing Policy reveals that, in 2004, 13 persons were convicted of abuse of a minor and sentenced to a concurrent sentence for another offense (none with a consecutive sentence), 6 persons convicted of sexual abuse of a minor with a consecutive sentence, and 28 persons convicted of sexual abuse of a minor with a concurrent sentence. Assuming that 2004 is a typical year, this represents a total of 47 persons annually whose incarceration term would be affected under the bill. It would mean that, for those 47 persons, diminution credit earning potential would be cut in half and parole eligibility would not occur until having served one-half of their sentence, rather than one-quarter.

State Expenditures: General fund expenditures could increase minimally as a result of the bill's provisions due to later potential release dates for persons committed to DOC facilities being released on parole or mandatory supervision. Since it is unknown how many of these inmates might also be disqualified from early release for other reasons, including parole release determinations on a case-by-case basis by the Parole Commission, any increased bed impact on the operations of DOC cannot be reliably estimated. It is assumed that such an impact on DOC would be relatively moderate and would not be immediate. Any related impact on the Division of Parole and Probation cannot be reliably estimated and would, in any event, tend to defer rather than alleviate any supervision costs.

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$1,850 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including medical care and variable costs) is \$310 per month. Excluding medical care, the average variable costs total \$120 per month.

For purposes of illustration only, if this resulted in additional incarceration time of 18 months for each person cited above, using variable inmate costs, the additional cost to DOC would be \$101,520 ($\$120 \times 18 \text{ months} \times 47 \text{ persons}$), and would not begin to be felt until fiscal 2009.

This bill would have no fiscal impact on the Maryland Parole Commission.

Additional Information

Prior Introductions: HB 1235 of 2004 received an unfavorable report from the Judiciary Committee.

Cross File: None.

Information Source(s): Commission on Criminal Sentencing Policy, Department of Public Safety and Correctional Services, Department of Legislative Services

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mp/jr

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