

Department of Legislative Services
2010 Session

FISCAL AND POLICY NOTE

House Bill 490
Judiciary

(Delegate O'Donnell, *et al.*)

Child Protection from Predators Act

This bill prohibits the earning of diminution credits to reduce the term of confinement of specified sexual offenders, including child sexual offenders, sentenced to a term of imprisonment in a Division of Correction facility or a local correctional facility. The bill applies the prohibition at a local facility to any period of presentence or postsentence confinement.

The bill's provisions may not be construed to require an inmate to serve a longer sentence of confinement than is authorized by the statute under which the inmate was convicted. The bill's provisions are applied prospectively only.

Fiscal Summary

State Effect: General fund expenditures increase by \$130,000 in FY 2011. Future years reflect annualization and inflation. The bill is not expected to significantly increase State correctional costs.

(in dollars)	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	130,000	176,200	184,600	193,400	202,700
Net Effect	(\$130,000)	(\$176,200)	(\$184,600)	(\$193,400)	(\$202,700)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Minimal. The bill's limitations on diminution earning abilities for a limited number of inmates after October 1, 2010, is not expected to measurably increase local correctional costs.

Small Business Effect: None.

Analysis

Current Law: For Division of Correction (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 5 days per calendar month, which are awarded in advance. 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. These credits are awarded as they are earned. However, the total deduction may not exceed 20 days per calendar month.

When an inmate's total number of diminution credits is equal to the remainder of sentence, including consideration for any losses of credits, the inmate is eligible for release on mandatory supervision.

A deduction may not be allowed for a period during which an inmate does not receive credit for service of the inmate's term of confinement, including a period (1) during which the inmate's sentence is stayed; (2) during which the inmate is not in DOC custody because of escape; or (3) for which the Maryland Parole Commission has declined to grant credit after revocation of parole or mandatory supervision.

Crimes of violence include murder, manslaughter, some sexual offenses, robbery, carjacking, kidnapping, assault, and other offenses, as specified in the Criminal Law Article. Maximum imprisonment penalties for some offenses include the possibility of a life sentence.

For purposes of parole eligibility, a violent crime means all of the cited crimes of violence 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 inmate's aggregate sentence for violent crimes or one-fourth of the inmate's aggregate total sentence. A person serving a term of imprisonment for a violent crime must receive an administrative review after that person has served the greater of one-fourth of the inmate's aggregate sentence 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.

If a parole order is revoked, the inmate must serve the remainder of the sentence originally imposed unless, at the parole commissioner's discretion, the inmate is granted credit for time between the parole release and revocation. An inmate may not receive such credit if (1) the inmate was serving a sentence for a violent crime when the parole was revoked; and (2) the revocation was due to a finding that the inmate committed a violent crime while on parole.

Maryland has four categories of persons convicted of sexual offenses: (1) a child sexual offender; (2) an offender; (3) a sexually violent offender; and (4) a sexually violent predator.

“Offender” means a person who is ordered by a court to register with the State's sexual offender registry and who:

- has been convicted of child kidnapping;
- kidnapping;
- fourth degree sexual offense, if the victim is under 18;
- false imprisonment, if the victim is under 18 and the person is not the victim's parent;
- a crime that involves soliciting a person under 18 to engage in sexual conduct;
- production or distribution of child pornography;
- prostitution or related criminal prohibitions if the intended prostitute or victim is under 18;
- any crime that involves conduct that by its nature is a sexual offense against a person under 18;
- an attempt to commit any of these offenses; or
- has been convicted in another state or in a federal, military, or Native American tribal court of a crime that, if committed in Maryland, would constitute one of these crimes.

“Child sexual offender” means a person who:

- has been convicted of sexual abuse of a minor;
- has been convicted of first or second degree rape or first, second, or third degree sexual offense involving a child under age 15;

- has been convicted of fourth degree sexual offense involving such a child and has been ordered by the court to register under these provisions; or
- has been convicted in another state or in a federal, military, or Native American tribal court of a crime that, if committed in this State, would constitute one of these crimes.

“Sexually violent predator” means a person who is convicted of a sexually violent offense and who has been determined to be at risk of committing another sexually violent offense. Also included under this definition are persons who are or were required to register every 90 days for life under the laws of another state or a federal, military, or Native American tribal jurisdiction.

“Sexually violent offender” means a person who has been convicted of a sexually violent offense or who has been convicted of an attempt to commit a sexually violent offense.

“Sexually violent offense” is defined as first or second degree rape; first, second, or third degree sexual offense; attempted rape or sexual offense; or assault with intent to commit first or second degree rape or first or second degree sexual offense as prohibited under Maryland’s criminal code on or before September 30, 1996. Also included under this definition are certain crimes that were committed in another state or in a federal, military, or Native American tribal jurisdiction.

State Expenditures: General fund expenditures increase by \$130,000 for the Office of the Public Defender in fiscal 2011, which accounts for the bill’s October 1, 2010 effective date. This estimate reflects the cost of hiring two assistant public defenders (APDs) to handle an expected increased trial caseload for an anticipated 3,700 hours of additional attorney time for the affected accused sex offenders. It includes salaries, fringe benefits, and minimal supplies. The information and assumptions used in calculating the estimate are stated below:

- 185 affected cases (10% of the 1,850 annual sex offender caseload);
- 20 hours of trial preparation per case; and
- each APD works 212 days, or 1,378 hours, per year.

Salaries and Fringe Benefits	\$129,683
Supplies	<u>315</u>
Total FY 2011 State Expenditures	\$129,998

Future year expenditures reflect full salaries with 4.4% annual increases and 3% employee turnover; and 1% annual increases in ongoing operating supplies.

Potential Minimal Increase in Corrections and Parole Hearings Costs

General fund expenditures could also increase minimally as a result of the bill's limitation on diminution credit earnings by a limited number of inmates due to people staying in a DOC facility for longer periods of time and increased payments to counties for reimbursement of inmate 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 \$2,750 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 variable medical care and variable operating costs) is \$371 per month. Excluding all medical care, the average variable costs total \$182 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or DOC. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A \$45 per diem grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the Division of Correction but are confined in a local facility. The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

This bill could also minimally increase the demand for parole hearings at local correctional facilities and the supervision caseload of the Division of Parole and Probation. Additional parole hearings across the State would minimally increase travel costs for the Parole Board. Any potential increase in caseloads for the Division of Parole and Probation is also assumed to be minimal.

Local Expenditures: Expenditures may increase minimally as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. A \$45 per diem State grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the Division of Correction

but are confined in a local facility. Per diem operating costs of local detention facilities are expected to range from \$57 to \$157 per inmate in fiscal 2011.

Additional Information

Prior Introductions: HB 1084 of 2009 and HB 252 of 2008 each received an unfavorable report from the House Judiciary Committee.

Cross File: None.

Information Source(s): Allegany, Harford, and Montgomery counties; Baltimore City; Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Public Safety and Correctional Services; State's Attorneys' Association; Department of Legislative Services

Fiscal Note History: First Reader - February 18, 2010
mpc/hlb

Analysis by: Guy G. Cherry

Direct Inquiries to:
(410) 946-5510
(301) 970-5510