HB 1320

Department of Legislative Services

Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 1320 (Delegate Olszewski)(By Request)
Judiciary

Criminal Procedure - Plea Agreement Terms and the Violence Prevention Initiative Criteria

This bill requires that if a court accepts a plea agreement for a defendant charged with committing a crime of violence, the defendant must serve the entire sentence imposed without reduction by diminution credits, parole, or otherwise. A court or review panel is prohibited from modifying a sentence imposed under a plea agreement in these cases.

The bill also requires that the eligibility criteria for the Division of Parole and Probation's (DPP) Violence Prevention Initiative (VPI) be expanded to include all age groups.

Fiscal Summary

State Effect: Potential significant increase in general fund expenditures for the Department of Public Safety and Correctional Services (DPSCS) from expanded eligibility for VPI and increased incarceration costs. Potential significant increase in general fund expenditures for the Office of the Public Defender (OPD) if defendants opt to pursue trials instead of plea agreements as a result of the bill. Revenues are not affected.

Local Effect: Potential increase in local expenditures for States' Attorneys' offices if the increase in the number of trials generated by the bill results in increased personnel and operating expenditures. Potential increase in circuit court expenditures to accommodate additional trials generated by the bill. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary: The bill defines a "plea agreement" as an agreement between a defendant or a defendant's attorney and a State's Attorney that the defendant will plead guilty to a charge or charges and receive a specified sentence in exchange for the State's Attorney's recommendation to the court that the court accept the plea agreement and impose the agreed upon sentence.

Current Law: A "crime of violence" is (1) abduction; (2) arson in the first degree; (3) kidnapping; (4) manslaughter, except involuntary manslaughter; (5) mayhem; (6) maiming; (7) murder; (8) rape; (9) robbery; (10) carjacking (including armed carjacking); (11) first and second degree sexual offenses; (12) use of a handgun in the commission of a felony or other crime of violence; (13) child abuse in the first degree; (14) sexual abuse of a minor under the age of 13 years under specified circumstances; (15) an attempt to commit crimes (1) through (14); (16) continuing course of conduct with a child; (17) assault in the first degree; or (18) assault with intent to murder, rape, rob, or commit a sexual offense in the first or second degree.

Plea Agreements: Among other things, Maryland Rule 4-243 authorizes a defendant and a State's Attorney to submit a plea agreement proposing a particular sentence, disposition, or other judicial action to a judge for consideration. Defense counsel and the State's Attorney must advise the judge of the terms of the agreement when the defendant enters his/her plea. The judge may accept or reject the plea, and if the plea is accepted, may approve the agreement or defer a decision on approval or rejection of the agreement until after presentence proceedings and further investigation. The plea agreement is not binding on the court until the judge to whom the agreement was presented approves it. If the judge approves the agreement, the judge must embody the agreed terms in the judgment or, with the consent of the parties, enter a disposition more favorable to the defendant than that provided for in the agreement.

Sentence Review and/or Modification: A person convicted of a crime by a circuit court and sentenced to serve a sentence that exceeds two years in a correctional facility is entitled to a single sentence review by a review panel. An application for review must be filed within 30 days of the sentencing. A person is not entitled to (1) a sentence review if the sentence was imposed by more than one circuit court judge; or (2) a review of an order requiring a suspended part of a sentence to be served if the sentence was wholly or partly suspended, the sentence was reviewed, and the suspended sentence or the suspended portion of the sentence was required to be served.

The minimum length of sentence required for review is calculated using the total period of the sentence and any unserved time of a prior or simultaneous sentence, including: (1) a sentence imposed by a circuit court; (2) a requirement by a circuit court that all or

part of a suspended sentence be served; and (3) a prior or simultaneous sentence, suspended or not suspended, that has been imposed by a court or other authority of the State or another jurisdiction.

A panel of three or more trial judges of the judicial circuit in which the sentencing court is located conducts the review. A person has no right to have a sentence reviewed more than once. The judge who sentenced the convicted person may not be one of the members of the panel, but may sit with the panel in an advisory capacity.

If a hearing is held, the panel generally may increase, decrease, or otherwise modify the sentence by majority rule. However, a mandatory minimum sentence may be decreased only by a unanimous vote of the panel. Without holding a hearing, the panel may decide that the sentence under review should remain unchanged. The review panel must file a written decision within 30 days of the application's filing date.

In addition, Maryland Rules specify that upon a motion filed within 90 days after its imposition: (1) in the District Court, if an appeal has not been perfected or has been dismissed; and (2) in a circuit court, whether or not an appeal has been filed, a court has revisory power and control over a sentence, except that it may not revise the sentence after five years from the date the sentence was originally imposed and the court may not increase the sentence.

The court may correct an illegal sentence at any time. The court also has revisory power over a sentence in the case of fraud, mistake, or irregularity. In addition, the court may correct an evident mistake in the announcement of a sentence if the correction is made on the record before the defendant leaves the courtroom following the sentencing proceeding.

A review panel may increase, modify, or reduce a sentence only after notifying each party and the victim or the victim's representative. Before changing a sentence, the review panel must allow each party to be heard at the hearing and must allow the victim or the victim's representative to attend the hearing and address the panel. Under Maryland Rules, the court may modify, reduce, correct, or vacate a sentence only on the record in open court after hearing from the defendant, the State, and from each victim or victim's representative who requests an opportunity to be heard. The defendant may waive the right to be present. No hearing may be held on a motion to modify or reduce the sentence until the court has determined that the statutory victim notification requirement has been met. If the court grants the motion, it must prepare or dictate into the record a statement of the reasons on which the ruling is based.

Release from Incarceration: An inmate may be released from imprisonment by one of the following methods: (1) expiration of sentence; (2) release on mandatory supervision; (3) parole; or (4) gubernatorial pardon or commutation of sentence.

An inmate may be released on expiration of the inmate's sentence. Release of an inmate on expiration of sentence is mandatory and not subject to discretion. Unlike release on mandatory supervision or parole, release on expiration of sentence is not subject to any condition or supervision.

Release on mandatory supervision is a conditional release from confinement that results from the application of diminution credits, discussed below, and applies only to Division of Correction (DOC) inmates sentenced to a term of confinement exceeding 18 months. DOC inmates serving a term of 18 months or less and inmates in local detention centers may also earn credits, but they are not subject to mandatory supervision on release. There is no discretion involved in release on mandatory supervision.

The entire sentence imposed by a trial court often is not actually served before expiration of sentence because diminution credits that may be awarded to an inmate shorten the time required to be served by the inmate. Diminution credits are days of credit either granted or earned on a monthly basis. Inmates in both DOC and local correctional facilities are eligible for diminution credits.

State law establishes the types of diminution credits that an inmate may be allowed. These are commonly called "good time" credits, although there are a variety of other credits in addition to good conduct credits that may be allowed based on an inmate's participation in work, educational programs, and special projects. The purpose of these credits is to encourage good inmate behavior and promote an interest in activities that will occupy an inmate's time while confined and prove useful after release. Inmates serving sentences for crimes of violence or drug distribution are awarded good conduct credits at the rate of 5 days per month and may earn up to 10 days of other credits, for a maximum of 15 days per month. Other inmates are awarded good conduct credits at the rate of 10 days per month and may earn up to 10 days of other credits, for a maximum of 20 days per month. Credits may be forfeited or restricted through misbehavior in the institution.

As a result of legislation enacted in 2010, an inmate serving a sentence in a State or local correctional facility for the following offenses is prohibited from earning diminution credits: (1) first or second degree rape or sexual offense against a victim younger than 16 years of age; and (2) third degree sexual offense committed against a child younger than the age of 16 by a person previously convicted of that offense.

Individuals on mandatory supervision are supervised by DPP until the end of the sentence and are subject to the same terms and conditions as inmates released on parole.

If an inmate is sentenced to imprisonment for a crime of violence committed between June 1, 2002, and October 1, 2003, or any crime after October 1, 2003, while on mandatory supervision, and the mandatory supervision is then revoked, the inmate will automatically lose all diminution credits awarded before the inmate's release on mandatory supervision, and the inmate is not eligible for any new diminution credits on that term of confinement. An inmate convicted of a crime of violence committed on or after October 1, 2009, may not be released by expiration of sentence or placed on mandatory supervision with the application of credits before the inmate is eligible for parole.

Parole is a discretionary and conditional release from imprisonment determined after a hearing for an inmate who is eligible to be considered for parole. If parole is granted, the inmate is allowed to serve the remainder of the sentence in the community, subject to the terms and conditions specified in a written parole order.

The Maryland Parole Commission has jurisdiction regarding parole for eligible inmates sentenced to the DOC and local correctional facilities. Inmates in the Patuxent Institution who are eligible for parole are under the jurisdiction of the Patuxent Board of Review.

Inmates sentenced to less than six months are not eligible for parole. When inmates serving sentences of incarceration of six months or more have served one-fourth of their sentences, they are entitled to be considered for parole, with several significant exceptions. These exceptions are set forth below:

- Inmates serving a term of incarceration that includes a mandatory minimum sentence that a statute provides is not subject to parole (*e.g.*, use of a handgun in a felony or crime of violence, subsequent violent offenders with enhanced sentences, subsequent felony drug offenders with enhanced sentences) are not eligible for parole until they have served that mandatory minimum sentence. Diminution credits, discussed above, may not be applied towards this minimum requirement.

- Any of the following inmates who do not receive a mandatory minimum sentence are required to serve at least one-half of their sentences for crimes of violence before becoming eligible for parole: (1) inmates convicted of crimes of violence committed on or after October 1, 1994; (2) inmates convicted of child abuse in the first degree committed on or after October 1, 2006; and (3) inmates convicted of sexual abuse of a child under the age of 13 or a continuing course of conduct with a child committed on or after October 1, 2007.

- Offenders sentenced to life imprisonment must serve a minimum of 15 years, less diminution credits before becoming eligible for parole, and may be paroled only with approval of the Governor.

- Offenders sentenced to life imprisonment for first degree murder, instead of a sentence of death or a sentence of life imprisonment without the possibility of parole, must serve a minimum of 25 years less diminution credits before becoming eligible for parole and may be paroled only with approval of the Governor.

- Inmates serving a sentence of life without the possibility of parole may not be granted parole unless the Governor commutes the sentence to allow for the possibility of parole or pardons the individual.

- Offenders who are age 65 or older who have served at least 15 years of a sentence for a crime of violence may apply for and be granted parole.

- Inmates who are so debilitated or incapacitated by a medical or mental condition, disease, or syndrome as to be physically incapable of presenting a danger to society may be released on medical parole.

An inmate released on parole or under mandatory supervision is assigned to a DPP agent.

Based on an assessment of an offender's risk to the community and other factors, which is updated periodically, offenders are actively supervised at one of four levels of supervision: high, moderate, low-moderate, and low. Additionally, based on specific risk assessment factors, certain offenders are supervised within the containment supervision model for sexual offenders and the VPI containment model of intensive supervision.

Background: According to the State Commission on Criminal Sentencing Policy, there were 2,802 convictions in the State's circuit courts for crimes of violence in fiscal 2010. Valid data regarding the method of adjudication is available for 2,298 of these convictions. Of the 2,298 convictions, 1,834 (79.8%) were adjudicated through a plea agreement. DOC advises that it conducted intake for 1,547 individuals convicted of crimes of violence in fiscal 2010. The average sentence for these individuals was 134 months. This figure does not include offenders sentenced to life imprisonment for a crime of violence.

As of June 2010, approximately 669 parole and probation agents were responsible for the supervision of approximately 68,900 offenders. Of these offenders, 43,651 are under probation supervision; 15,474 offenders are monitored by the Drinking Driving Monitor

Program; 4,625 are under mandatory release supervision; and 4,977 are under parole supervision.

VPI was implemented in 2007 in response to a finding that approximately 30% of all homicides in Baltimore City involved individuals under adult parole or probation supervision. VPI has since expanded to a statewide initiative. To be eligible for VPI, an offender must (1) be younger than age 29; (2) have at least 13 prior arrests, including at least one firearm offense; (3) have at least three juvenile complaints, including at least one firearm complaint; and (4) have high-ranking gang status. Additional factors taken into consideration are (1) whether the offender was a shooting victim within the last three years; (2) prior assaults on staff or inmates and Administrative Segregation commitments while incarcerated; and (3) recommendations by police departments, State's Attorneys' offices, DOC, DPP and the Parole Commission.

The initiative focuses DPP's resources on (1) the accurate identification of those offenders with the greatest potential for violent re-offense; and (2) the intensive, containment-model approach to the management of these potentially dangerous individuals. DPP has developed, with assistance of outside experts, a tailored VPI screening instrument which utilizes risk factors closely correlated with an increased potential for gun violence. First among the factors considered is that the present age of the offender is younger than 30 years of age. Other factors include the number or adult and juvenile arrests, whether prior offenses included firearm offenses, whether the offender has been the victim of a gun offense in the past three years, and high-ranking gang status.

Approximately 2,000 individuals are being actively supervised on a daily basis by 70 VPI agents in DPP. The containment-model approach to supervising VPI offenders involves increased contacts between the offender and agent in conjunction with immediate and consistent responses to violations of the conditions of supervision. To accomplish this, DPP has established the VPI caseload size at 30 active cases to 1 agent (30:1).

State Expenditures: General fund expenditures increase significantly for DPSCS due to increased administrative, operating, and personnel costs for DPP to expand VPI eligibility and increased periods of incarceration if the bill's restrictions on plea agreements result in lengthier sentences. General fund expenditures increase for OPD to litigate cases that would otherwise be resolved through plea agreements. The extent to which expenditures will increase cannot be determined at this time, but will depend on the decrease in the number of defendants opting for plea agreements as a result of the bill.

The VPI eligibility criteria are tailored to identify a segment of the overall offender population that can be impacted most by the VPI containment-model supervision

strategy. The eligibility criteria were determined following an extensive analysis of offender populations and related data.

DPP conducts a lengthy investigation of an offender's juvenile and criminal records to determine VPI eligibility. Currently, DPP only has to conduct this examination for offenders younger than age 29. If VPI no longer has an age limit, DPP will have to conduct this analysis on a significantly greater portion of individuals under supervision. DPP currently supervises over 66,000 individuals. DPP cannot predict how many additional offenders would otherwise qualify for VPI if age is removed as a factor.

Because of its intensive level of supervision, VPI maintains a 30:1 caseload to agent ratio. Currently, there are approximately 70 agents and 2,000 participants in VPI. If the program is expanded pursuant to the bill, DPP would have to employ additional agents. Since senior agents are assigned to VPI, DPP would likely have to shift senior agents to VPI and employ entry level agents to fill the vacancies resulting from the transfers. While DPP cannot determine the number of additional agents needed as a result of the bill, the cost of employing an additional entry level agent in fiscal 2012 is $46,365, which accounts for the bill's October 1, 2011 effective date, and includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Should the bill result in a defendant opting not to pursue a plea agreement and receiving a lengthier sentence from the court, then general fund expenditures for DPSCS would increase. The extent to which this would occur cannot be reliably determined at this time. 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 $2,920 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 about $390 per month. Excluding all medical care, the average variable costs total $170 per month.

The bill's restrictions on sentences imposed as a result of a plea agreement make it less appealing for a defendant to enter into a plea agreement. Thus, the bill will result in a decrease in the number of plea agreements and an increase in the number of trials. As previously mentioned, approximately 79.8% of the convictions for crimes of violence for which adjudication data is available were resolved through a plea agreement. If this percentage is applied to the 1,547 offenders who entered DOC facilities in fiscal 2010 for crimes of violence, the bill could result in approximately 1,235 defendants opting for trials instead of plea agreements. The number of clients of OPD included in this pool of defendants cannot be reliably determined at this time.

In 2010, OPD advised that the average caseload standard for circuit court public defenders is 163. While the bill will not result in additional OPD clients, it will increase the number of hours devoted to existing OPD clients. Pursuant to the Case Weighting Study by the National Center for State Courts in 2005, each Maryland assistant public defender works 1,378 hours per year on case-related tasks. Depending on the number of additional hours of trial work generated by the bill, general fund expenditures for OPD will increase and may necessitate the hiring of additional public defenders. The cost of employing an additional assistant public defender in fiscal 2012 is $72,252, which accounts for the bill's October 1, 2011 effective date, and includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Local Expenditures: Local expenditures for State's Attorneys' offices will increase to the extent that number of additional generated by the bill result in increased personnel and operating expenditures.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Garrett and Montgomery counties, Commission on Criminal Sentencing Policy, Governor's Office of Crime Control and Prevention, Department of State Police, 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 - March 21, 2011
mc/kdm

Analysis by: Amy A. Devadas

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