

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

House Bill 424
Judiciary

(Delegate McDonough, *et al.*)

**Criminal Procedure - Crimes of Violence Involving Firearms - Diminution
Credits, Parole, and Plea Agreements**

This bill specifies that an inmate serving a sentence in a State or local correctional facility for a crime of violence involving a firearm is prohibited from earning diminution credits and is ineligible for parole. A person convicted of a crime of violence involving a firearm is barred from entering a plea agreement. However, the bill does not restrict the authority of the Governor to pardon or remit any part of a sentence for such an inmate, and the bill may not be construed to require an inmate to serve a longer sentence than is authorized by the statute under which the inmate was convicted.

The bill applies prospectively only.

Fiscal Summary

State Effect: General fund correctional expenditures increase beginning in FY 2016, with a significant impact beginning in FY 2026 and increasing over time. Revenues are not affected.

Local Effect: Adverse operational impact on State's Attorneys' offices, varying in degree by jurisdiction.

Small Business Effect: None.

Analysis

Current Law: Generally, inmates sentenced to a State correctional facility are entitled to earn diminution of confinement credits to reduce the lengths of their incarcerations. The following types of inmates may not earn diminution credits:

- an inmate who is serving a sentence for first or second degree rape or sexual offense against a victim younger than 16;
- an inmate who is serving a repeat sentence for third degree sexual offense against a victim younger than 16; and
- an inmate imprisoned for a lifetime sexual offender supervision violation.

In addition, an inmate whose mandatory supervision release has been revoked may not be awarded any new diminution credits on the term of confinement for which the inmate was on mandatory supervision release.

Diminution credits are deducted from an inmate's "term of confinement," which is defined as (1) the length of the sentence, for a single sentence or (2) the period from the first day of the sentence that begins first through the last day of the sentence that ends last, for concurrent sentences, partially concurrent sentences, consecutive sentences, or a combination of concurrent and consecutive sentences.

Diminution credits are made for good conduct, work tasks, education, and special projects. Good conduct credit is awarded at the rate of five days per month if the inmate's term of confinement includes a sentence for a crime of violence or distribution of controlled dangerous substances. Good conduct credit is awarded at the rate of 10 days per month for all other inmates (except for those inmates who are statutorily prohibited from earning diminution credits). (For sentences imposed before October 1, 1992, good conduct credits are awarded at a rate of five days per month regardless of the offense.)

Credits for work tasks and education may be awarded at the rate of up to five days per month. Special project credit may be awarded at the rate of up to 10 days per month. An inmate may not be allowed a total deduction, including good conduct credit, of more than 20 days per month.

The Maryland Parole Commission (MPC) has the exclusive power to authorize the parole of a State or local inmate. MPC is required to request that the Department of Public Safety and Correctional Services (DPSCS) make an investigation for inmates in a local correctional facility and make an investigation for inmates in a State correctional facility that will enable the commission to determine the advisability of granting parole to an

inmate who has been sentenced to serve a term of six months or more in a correctional facility and has served one-fourth of the inmate's aggregate sentence in confinement.

State inmates must serve either one-quarter or one-half of their sentence to be eligible for parole, depending on the offense. Parole eligibility for inmates sentenced to local detention centers is one-quarter regardless of the offense. Certain persons are not eligible for parole while serving a mandatory minimum sentence. Chapter 361 of 2011 (HB 794) requires DPSCS to complete and deliver a pre-parole investigation of an inmate in a local correctional facility to MPC within 60 days of commitment.

Under § 14-101 of the Criminal Law Article, "crime of violence" means (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; (11) armed carjacking; (12) sexual offenses in the first degree; (13) sexual offense in the second degree; (14) use of a handgun in the commission of a felony or other crime of violence; (15) child abuse in the first degree; (16) specified instances of sexual abuse of a minor; (17) an attempt to commit any of the crimes listed above; (18) continuing course of conduct with a child; (19) assault in the first degree; (20) assault with intent to murder; (21) assault with intent to rape; (22) assault with intent to rob; (23) assault with intent to commit a sexual offense in the first degree; and (24) assault with intent to commit a sexual offense in the second degree.

Upon conviction for a second time of a crime of violence committed on or after October 1, 1994, a person must be sentenced to imprisonment for the term allowed by law, but not less than 10 years, if the person (1) has been convicted on a prior occasion of a crime of violence, including a conviction for a crime committed before October 1, 1994 and (2) served a term of confinement in a correctional facility for that conviction. No part of the 10-year mandatory sentence may be suspended.

Upon conviction for a third time of a crime of violence, a person must be sentenced to imprisonment for the term allowed by law but not less than 25 years, if the person has been convicted of a crime of violence on two prior separate occasions (1) in which the second or succeeding crime is committed after there has been a charging document filed for the preceding occasion and (2) for which the convictions do not arise from a single incident and the person has served at least one term of confinement in a correctional facility as a result of a conviction of a crime of violence. No part of a 25-year mandatory sentence may be suspended.

Upon conviction for a fourth time of a crime of violence, a person who has served three separate terms of confinement in a correctional facility as a result of three separate convictions of any crime of violence must be sentenced to a mandatory life-imprisonment sentence without the possibility of parole.

Generally, a person sentenced to a mandatory sentence for a crime of violence is not eligible for parole. However, a person sentenced for a crime of violence may petition for and be granted parole if the person (1) is at least 65 years old and (2) has served at least 15 years of the sentence imposed.

A person may not use a firearm in the commission of certain crimes of violence, or any felony, whether the firearm is operable or inoperable at the time of the crime. A violator is guilty of a misdemeanor and, in addition to any other penalty imposed for the crime of violence or felony, must be sentenced to a mandatory minimum imprisonment of 5 years and a maximum imprisonment of 20 years. The person is also not eligible for parole in less than five years. For each subsequent violation, the sentence must be consecutive to and not concurrent with any other sentence imposed for the crime of violence or felony.

State Expenditures: The Administrative Office of the Courts and DPSCS advise that it is not clear how “involvement” of a firearm in a crime of violence may be interpreted. Persons convicted of a crime of violence with the use of a firearm are not necessarily convicted separately of that use.

In any case, under the bill, once DPSCS (including MPC) determines that a firearm is “involved” in the crime of violence, the offender must serve the sentence without benefit of parole and to the maximum expiration of sentence because of the inability to earn diminution credits.

In fiscal 2012, DPSCS received 1,796 offenders to serve a sentence for at least one crime of violence – out of a total intake of 8,627 persons. Of the 1,796 persons, 407 had at least one crime of violence offense *and* some gun-related offense that may or may not have been related to the other underlying offense. DPSCS data and intake tracking do not currently reflect a more exact count of potentially affected offenders. In fact, DPSCS advises that these numbers may be somewhat low in attempting to assess the bill’s full impact.

Nevertheless, the average length of sentence for the 407 offenders was 221 months (approximately 18.4 years). Under the bill, those offenders would have to serve 100% of their sentence. However, because court-ordered releases and deaths can always intervene in the service of any sentence, it is assumed that, on average, these 407 inmates would serve 90% of their sentence, rather than the 65% of sentence that is the average for other inmates not affected by the bill. This would result in an increased stay of 55 months for each affected offender (199 months, rather than 144 months each), and a total of 22,385 months for all of the 407 offenders. Assuming the current variable inmate costs, including medical care, of \$370 per month, State costs could increase by \$20,350 for each person imprisoned under the bill, and \$8,282,450 for all 407 persons to serve the additional 55 months.

Although some inmates could be affected as early as fiscal 2016, based on the average length of sentences described above, the bill begins to significantly impact correctional expenditures in fiscal 2026 and grows exponentially over time. The bill's bar on plea bargaining would also very likely lengthen sentences meted out by the courts, which would, in turn, add to the eventual length of a sentence for each affected offender.

Local Fiscal Effect: According to the State's Attorneys' Association, the bill's prohibition against plea bargaining has an adverse impact on the operations of prosecutors' offices. Although such an effect cannot be readily quantified, the prohibition affects jurisdictions with the highest incidence of violent crime. Local correctional costs are unlikely to be affected, since crimes of violence, including firearms-related offenses, typically draw sentences greater than 18 months, which are served in State correctional facilities.

Additional Information

Prior Introductions: None.

Cross File: SB 786 (Senator Pipkin) - Judicial Proceedings.

Information Source(s): Garrett and Montgomery counties, Judiciary (Administrative Office of the Courts), Maryland State Commission on Criminal Sentencing Policy, Department of Public Safety and Correctional Services, State's Attorneys' Association, Department of Legislative Services

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