

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 578
Judiciary

(Delegate Kramer, *et al.*)

Division of Correction - Revocation of Diminution Credits - Telecommunication
Devices

This bill requires the Department of Public Safety and Correctional Services (DPSCS) to revoke all good conduct diminution credits when an inmate in a State correctional facility violates the applicable rules or statutory prohibitions relating to a telecommunication device in a correctional facility. DPSCS is prohibited from restoring diminution credits revoked under this provision.

Fiscal Summary

State Effect: Potential significant increase in general fund expenditures relating to extended incarcerations for State inmates. Revenues are not affected.

Local Effect: None. The bill affects State inmates only.

Small Business Effect: None.

Analysis

Current Law: A telecommunication device is considered contraband in a place of detention or confinement. A person may not deliver a telecommunication device to a person detained or confined in a place of confinement with signs posted indicating that such conduct is prohibited. A person may not possess a telecommunication device with the intent to deliver it to a person detained or confined in a place of confinement with signs posted indicating that such conduct is prohibited. A person may not deposit or conceal a telecommunication device in or about a place of confinement with signs posted indicating that such conduct is prohibited or on any land appurtenant to the place of

confinement with the intent that it be obtained by a person detained or confined in the place of confinement. A person detained or confined in a place of confinement may not knowingly possess or receive a telecommunication device.

A violator of any of these misdemeanor contraband offenses is guilty of a misdemeanor and subject to maximum penalties of imprisonment for three years and/or a fine of \$1,000. A sentence imposed for a contraband offense may be imposed as consecutive to or concurrent with a sentence for any crime based on the act establishing the offense. By regulation, the telecommunication device ban includes the device, a SIM card, battery charger, carry case, or any other device or article identified with a telecommunication device.

Generally, inmates sentenced to the custody of DPSCS 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 age 16;
- an inmate who is serving a repeat sentence for third degree sexual offense against a victim younger than age 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, of course, 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.)

A person serving a sentence of longer than 18 months is incarcerated in a State correctional facility. A person serving a sentence of one year or less in a jurisdiction other than Baltimore City is sentenced to a local detention facility. For a person 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 a State correctional facility.

Background: Inmate access to contraband, including cell phones, recently received significant attention with the April 2013 federal indictment of 25 individuals, including inmates and 13 correctional officers employed by DPSCS, with conspiring to run operations of the Black Guerilla Family (BGF) gang inside the Baltimore City Detention Center and related facilities. Charges included racketeering, drug distribution, money laundering, victim and witness retaliation, bribery, and extortion. According to the indictment, correctional officers helped leaders of the BGF smuggle cell phones, drugs, and other contraband into State correctional facilities.

In November 2013, an additional 19 individuals, including 14 former and current DPSCS correctional officers, were charged with conspiring to operate the BGF gang inside correctional facilities. With the November 2013 indictment, 44 individuals, including 27 correctional officers, have been charged in the case.

In response to the April 2013 indictments, the Legislative Policy Committee appointed a Special Joint Commission on Public Safety and Security in State and Local Correctional Facilities. In its December 2013 final report, the commission made several recommendations, including (1) increasing the maximum penalty for telecommunication devices-related offenses to imprisonment for five years and/or a \$3,000 fine; (2) expanding the current statutory prohibitions to include attempting to deliver a telecommunication device to a person detained or confined in a place of confinement if signs are posted indicating that such conduct is prohibited; and (3) requiring that a sentence imposed on an inmate for the commission of a telecommunication devices-related offense be served consecutively to the sentence the inmate is already serving.

The use of telecommunication devices by inmates is a growing problem in prisons throughout the country. Cell phones provide inmates with access to the outside world, and according to prison experts, an opportunity to continue criminal activity while incarcerated. Cell phones also pose an internal threat in facilities, since they allow prison inmates to plan prison assaults, escapes, and riots. Cell phones are a lucrative form of contraband because, unlike drugs, they have significant and perpetual resale and rental potential and value.

Between 15,000 and 16,000 persons are admitted to and released from State correctional facilities annually. In fiscal 2013, there were 11,382 State correctional intakes and

11,500 releases. Of the total releases, 3,647 were due to the application of diminution of confinement credits.

State Fiscal Effect: The bill's fiscal and operational impact on DPSCS is difficult to quantify, but the bill has the following implications:

- The impact of the loss of good conduct diminution credits for 350 persons annually could have a significant impact on the number of beds needed in State correctional facilities depending on the number of credits held by inmates at the time of the violations.
- The extent to which the potential loss of good conduct credits, without the possibility of restoration, reduces the number of violations that occur cannot be readily quantified.

In any case, persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$3,100 per month. Excluding overhead, the average cost of housing a new State inmate (including variable health care costs) is about \$735 per month. Excluding all health care, the average variable costs total \$185 per month.

For illustrative purposes, under the bill's requirements, if 350 persons annually are found in violation of a telecommunication device prohibition and, at the time of the violation, had an average of 100 good conduct credits, the average time served increases by 100 days, or about 3.3 months per inmate, and by 35,000 days, or about 1,167 months, cumulatively. Assuming the variable inmate costs of \$185 per month, State costs could increase by \$611 for each person ($\185×3.3 months) and by approximately \$215,895 cumulatively ($\$185 \times 1,167$ months) each year. Over time, without a significant reduction in annual violations systemwide, the bill results in significant additional costs for housing State inmates.

Additional Comments: Although this bill references the Division of Correction, the Department of Legislative Services notes that DPSCS implemented a major reorganization during fiscal 2012. As a result of the reorganization, the Division of Correction, the Division of Parole and Probation, the Patuxent Institution, and the Division of Pretrial Detention and Services no longer exist within the department by those names as separate budgetary units.

Additional Information

Prior Introductions: HB 1086 of 2012 received an unfavorable report from the House Judiciary Committee. Its cross file, SB 669, received an unfavorable report from the Senate Judicial Proceedings Committee.

Cross File: None.

Information Source(s): Department of Public Safety and Correctional Services,
Department of Legislative Services

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