

Department of Legislative Services  
Maryland General Assembly  
2016 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 1305  
Judiciary

(Delegate McDonough)

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

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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.

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**Fiscal Summary**

**State Effect:** General fund correctional expenditures increase beginning in FY 2017, with a significant impact beginning in FY 2030 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.

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## 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In addition, an inmate whose mandatory supervision release has been revoked may not be awarded any new diminution credits on the term of confinement for which the inmate was on mandatory supervision release.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 5 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 5 days per month regardless of the offense.)

Credits for work tasks and education may be awarded at the rate of up to 5 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 5 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:** DPSCS advises 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 2015, DPSCS received 2,256 offenders to serve a sentence for at least one crime of violence. Of the 2,256 persons, 612 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 612 offenders was 204 months (approximately 17 years). Under the bill, those offenders have to serve 100% of their sentence, rather than the 75% of sentence that is the average for other inmates not affected by the bill. This results in an increased stay of 51 months for each affected offender and a total of 31,212 months for all of the 612 offenders. Assuming the current variable inmate costs, including medical care, of \$770 per month, State costs could increase by \$39,270 for each person imprisoned under the bill and approximately \$24 million for all 612 persons to serve the additional 51 months.

Although some inmates could be affected as early as fiscal 2017, based on the average length of sentences described above, the bill begins to significantly impact correctional expenditures in fiscal 2030 and grows exponentially over time. The bill’s bar on plea

bargaining also likely lengthens sentences meted out by the courts, which, in turn, adds to the eventual length of a sentence for each affected offender.

DPSCS advises that, over time, the bill could result in the need to build at least one additional State correctional facility.

The Office of the Public Defender advises that the imposition of enhanced penalties and the inability to resolve cases without trial litigation increases the number of cases that go to trial. This results in an increase in workload for assistant public defenders and likely requires additional staff. The exact impact cannot be estimated at this time.

**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.

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### **Additional Information**

**Prior Introductions:** HB 424 of 2013 received a hearing in the House Judiciary Committee, but no further action was taken on the bill. Its cross file, SB 786, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken on the bill.

**Cross File:** None.

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

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