

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 579
Judiciary

(Delegate McComas, *et al.*)

Correctional Services - Murder - Diminution Credits

This bill specifies that an inmate serving a sentence in a State or local correctional facility for murder in the first or second degree is prohibited from earning diminution credits. However, 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: Although the bill is not anticipated to materially affect State operations or finances in the near term, general fund incarceration expenditures increase significantly in the future, as discussed below. Revenues are not affected.

Local Effect: Most inmates serving a sentence for first- or second-degree murder are sentenced to State correctional facilities; therefore, the bill is anticipated to have minimal impact on local correctional facilities. Local revenues are not affected.

Small Business Effect: None.

Analysis

Current Law: Persons charged with first-degree murder, if found guilty, are subject to penalties of life imprisonment or life imprisonment without the possibility of parole. Persons charged with second-degree murder, if found guilty and sentenced after October 1, 2017, are subject to a maximum penalty of 40 years imprisonment.

Diminution Credits

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In addition, an inmate whose mandatory supervision release has been revoked may not be awarded any new diminution credits on the term of confinement for which the inmate was on mandatory supervision release.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

For sentences imposed before October 1, 1992: Good conduct credits are awarded at a rate of five days per month regardless of the offense.

For sentences imposed between October 1, 1992, and October 1, 2017: Good conduct credits are awarded at the rate of 5 days per month if the inmate's term of confinement includes a sentence for a crime of violence (including murder) or distribution of controlled dangerous substances. Good conduct credits are 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). Credits for work tasks and education may be awarded at the rate of up to 5 days per month. Special project credits may be awarded at the rate of up to 10 days per month. Such inmates may not be allowed a total deduction, including good conduct credits, of more than 20 days per month.

For sentences imposed on October 1, 2017, or later: Chapter 515 of 2016 increased the maximum possible deduction for diminution credits from 20 days to 30 days per calendar month, except for inmates serving a sentence in a State correctional facility for a crime of violence (including murder), specified sexual offenses, or specified volume or kingpin drug

offenses. Also, except for that same group of inmates, the deduction for special selected work projects or other special programs, including recidivism reduction programming, increased from 10 to 20 days per calendar month. In addition, the maximum deduction for diminution credits increased for an individual who is serving a sentence in a local correctional facility (for a crime other than a crime of violence or specified volume drug offenses) from 5 to 10 days per month.

Parole

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 requires the Department of Public Safety and Correctional Services (DPSCS) to complete and deliver a pre-parole investigation of an inmate in a local correctional facility to the Maryland Parole Commission (MPC) within 60 days of commitment.

MPC has the exclusive power to authorize the parole of a State or local inmate. MPC is required to request that 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.

If eligible for parole, an inmate serving a life term may only be paroled with the approval of the Governor. Chapter 623 of 2011 provided that if MPC decides to grant parole to an inmate sentenced to life imprisonment who has served 25 years without application of diminution of confinement credits, the decision must be transmitted to the Governor, who may disapprove the decision in writing within 180 days. However, if the Governor does not disapprove the decision within that timeframe, the decision to grant parole becomes effective. Chapter 623 retained provisions requiring gubernatorial approval for parole of an eligible person or inmate serving a term of life imprisonment who has served 15 years considering allowances for diminution credits. Governors have generally denied parole for all persons serving terms of life imprisonment.

Chapter 299 of 2008 established medical parole as a form of release from incarceration in a State or local correctional facility for incapacitated inmates who, as a result of a medical or mental health condition, disease, or syndrome, pose no danger to public safety. Chapter 515 of 2016 requires that, beginning October 1, 2017, if MPC decides to grant medical parole, the decision be transmitted to the Governor. The Governor is then required to disapprove a recommendation for medical parole within 180 days of the decision by

MPC. If the Governor does not disapprove the decision within that timeframe, the decision to grant parole becomes effective.

State Expenditures: Under current law, inmates convicted of first-degree murder must serve 15 years minus diminution credits or 25 years minus diminution credits (for cases in which a life without parole or death sentence was sought but not imposed by the court) to be eligible for parole. DPSCS advises that an inmate reaches parole eligibility, on average, after 11 years and six months or 18 years and six months, respectively. Under the bill, an inmate convicted of first-degree murder serves either the full 15 years or the full 25 years before being eligible for parole.

Parole eligibility for a split sentence with life (split-life sentence) or a life sentence with all but a fixed term suspended sentence also occurs after 15 years minus diminution credits. An inmate serving a split-life sentence who has not been granted parole is eligible for release from incarceration by operation of law due to the accumulation of diminution credits. An inmate released by operation of law is under supervision until the maximum expiration date of the unsuspended portion of the sentence. Under the bill, an inmate serving a split-life sentence for first-degree murder is also required to serve 15 years, regardless of the unsuspended portion of the sentence. If the fixed term portion of the sentence is greater than 15 years, then actual confinement time served increases due to the lack of diminution credits.

According to DPSCS, in fiscal 2017, 63 inmates entered State correctional facilities for convictions for first-degree murder. Of these intakes, 28 were sentenced to life and the remaining 35 were sentenced to an average of 86 years. *For illustrative purposes only*, assuming that, under the bill, the inmates sentenced to fixed terms serve 90% of their sentences before being released on mandatory supervision, the average time served is 77.4 years. If such an inmate could otherwise earn 15 diminution credits per month (total of 42.4 years in credit for an 86-year sentence), an inmate sentenced to a term of confinement other than life could be released after approximately 43.6 years. Applying these figures to the bill's proposed prohibition on the earning of diminution credits results in an increase in average time served of 33.8 years. Excluding health care, which is a fixed cost under the current contract, the average variable costs per inmate total about \$210 per month; thus, *under this illustrative example*, incarceration expenditures increase by \$85,176 per inmate for additional time served. Under this scenario, any increase in expenditures from additional time served is not realized until fiscal 2062, when the first inmates sentenced under the bill for first-degree murder begin to serve additional time. The *actual* increase in incarceration costs resulting from the bill and the timing of such an increase cannot be reliably estimated due to variations in sentencing.

Under the bill, an inmate convicted of second-degree murder, and *not granted parole*, is required to serve the entire sentence imposed and would be released by expiration of

sentence. Parole eligibility for a sentence related to second-degree murder does not change because parole eligibility is based on the sentence imposed by the court *without application of diminution credits*. In fiscal 2017, there were no intakes for second-degree murder. Because the number of inmates sentenced for second-degree murder who will be denied parole and required to serve the entire sentence imposed absent the application of diminution credits under the bill is unknown, the increase in general fund expenditures cannot be reliably estimated. However, any increase in general fund expenditures is not anticipated to be significant, as the number of Division of Correction intakes for second-degree murder has been low historically.

Additional Comments: DPSCS advises that it uses an inmate's ability to earn diminution credits as an incentive to encourage good behavior and participate in rehabilitative programs and/or work programs. By eliminating the applicability of diminution credits for inmates serving a life sentence, DPSCS advises that it loses the ability to modify inmate behavior. In addition, DPSCS advises that the elimination of diminution credits could decrease the number of inmates who are working or participating in programming and increase institutional violence.

Additional Information

Prior Introductions: SB 447 of 2017 received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. Its cross file, HB 520, received a hearing in the House Judiciary Committee, but no further action was taken.

Cross File: SB 210 (Senator Waugh, *et al.*) - Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Public Safety and Correctional Services; Department of State Police; Department of Legislative Services

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