

Department of Legislative Services
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FISCAL AND POLICY NOTE
First Reader

Senate Bill 575 (Senator Salling)
Judicial Proceedings

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, as discussed below. Revenues are not affected.

Local Effect: Potential increase in local expenditures, as discussed below. 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:

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.

§ 14-101 of the Criminal Law Article

Individuals convicted of a crime of violence under § 14-101 of the Criminal Law Article are eligible for various additional criminal penalties and earn diminution credits at a lower rate than other offenders.

Section 14-101(a) of the Criminal Law Article specifies offenses classified as crimes of violence. Section 14-101(b) through (d) impose mandatory sentences for individuals who have prior convictions for these offenses and meet other specified criteria.

Section 14-101(a) of the Criminal Law Article defines a "crime of violence" as (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 firearm in the commission of a felony or other crime of violence, except possession with intent to distribute a controlled dangerous substance; (13) child abuse in the first degree; (14) sexual abuse of a minor younger than age 13 under specified circumstances; (15) home invasion; (16) an attempt to commit crimes (1) through (15); (17) continuing course of certain sexual conduct with a child; (18) assault in the first degree; and (19) assault with intent to murder, rape, rob, or commit a sexual offense in the first or second degree.

Mandatory Sentences for Crimes of Violence

Subsequent offenders sentenced for a crime of violence under § 14-101 of the Criminal Law Article are generally subject to mandatory sentences. For a second conviction of a crime of violence committed on or after October 1, 2018, a person must be sentenced to a mandatory minimum, nonsuspendable and nonparolable term of 10 years, if the person has

been convicted on a prior occasion of a crime of violence, including a conviction for a crime committed before October 1, 2018, and served a term of confinement in a correctional facility for that conviction.

For a third conviction, a person must be sentenced to a mandatory minimum, nonsuspendable and nonparolable term of 25 years, if the person has been convicted on two prior separate occasions of a crime of violence, in which the second or succeeding crime is committed after there has been a charging document filed for the preceding occasion and for which the convictions do not arise from a single incident, and has served at least one term of confinement in a correctional facility as a result of a conviction of a crime of violence.

For a fourth conviction, 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 life imprisonment without the possibility of parole.

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. Specified sexual offenders are not eligible to earn diminution credits. 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, as follows:

- *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 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 to 30 days per calendar month, except for inmates serving a sentence in a State correctional facility for a crime of violence, 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 and Mandatory Supervision

In general, a State inmate who is serving a sentence of six months or more is not eligible for parole until the inmate has served one-quarter of the inmate's sentence. A sentence for a violent crime does not become parole-eligible until the inmate has served one-half of the sentence. An inmate serving a term of incarceration that includes a mandatory minimum sentence that is not subject to parole by statute is not eligible for parole until the inmate has served that mandatory minimum sentence.

As previously noted, a person convicted for the fourth time of a crime of violence must be sentenced to life imprisonment without the possibility of parole. In general, a sentence for a third crime of violence or a second crime of violence committed on or after October 1, 2018, is not eligible for parole. However, with specified exceptions, beginning October 1, 2017, a person serving a mandatory sentence for a crime of violence may petition for, and be granted, parole if the person (1) is at least age 60 and (2) has served at least 15 years of the sentence imposed.

Generally, a person convicted of a violent crime committed on or after October 1, 2009, is not eligible for release on mandatory supervision until after the person becomes eligible for parole.

Background: According to the Judiciary, there were 2,637 guilty dispositions for crimes of violence under § 14-101 during fiscal 2018. According to the Maryland State Sentencing Guidelines Database, the Maryland State Commission on Criminal Sentencing Policy (MSCCSP) received information for 1,931 individuals sentenced to 2,878 counts for

offenses defined as crimes of violence under § 14-101 of the Criminal Law Article in the State's circuit courts during fiscal 2018.

According to MSCCSP, 896 (46.4%) of these individuals and 1,246 (43.3%) of these convictions were adjudicated through a plea agreement, as defined by the American Bar Association (ABA); 571 (29.6%) individuals and 728 (25.3%) convictions were adjudicated through a non-ABA plea agreement. An ABA plea agreement refers to a disposition that resulted from a plea agreement that the court approved relating to a particular sentence, disposition, or other judicial action, and the agreement is binding on the court under Maryland Rule 4-243 (c). A non-ABA agreement refers to a disposition that resulted from a plea agreement reached by the parties but was not approved by, and is thus not binding on, the court.

The Department of Public Safety and Correctional Services (DPSCS) advises that it conducted intake on 1,508 inmates for crimes of violence in fiscal 2018. Of these inmates, 34 are serving life sentences; the remaining 1,474 inmates have an average offense sentence of 9.47 years and total years of confinement average of 14.18 years. Information is not available on how many of these inmates entered into plea deals.

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.

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 age 30. Other factors include the number of 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 1,880 individuals are under active VPI supervision. 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. In order to accomplish this, DPP has established the VPI caseload size at 30 active cases to 1 agent (30:1).

State Expenditures: General fund expenditures may 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 the Office of the Public Defender (OPD) to litigate cases that would otherwise be resolved through plea agreements. The extent to which expenditures increase cannot be determined at this time, but depends 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 greater portion of individuals under supervision. 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 1,880 participants in VPI. If the program is expanded pursuant to the bill, DPP may have to employ additional agents. While DPP cannot determine the number of additional agents needed as a result of the bill, the cost of employing an additional probation agent in fiscal 2020 is \$54,423, which accounts for the bill's October 1, 2019 effective date, and includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses, but excludes any additional equipment costs. By fiscal 2024, the cost increases to \$73,075.

Should the bill result in a defendant opting not to pursue a plea agreement and receiving a lengthier sentence from the court or agreeing to a plea agreement but spending additional time in incarceration due to restrictions under the bill, then general fund expenditures for DPSCS incarcerations increase in the out-years as inmates spend additional time in State facilities. The extent to which this occurs cannot be reliably determined at this time. 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 \$3,800 per month. Excluding overhead, the average cost of housing a new State inmate (including health care costs) is about \$895 per month. Excluding all health care (which is a fixed cost under the current contract), the average variable costs total \$199 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 results in a decrease in the number of plea agreements and an increase in the number of trials. If the ABA definition of a plea agreement is the definition most similar to the bill's definition, approximately 46.4% of the individuals convicted for crimes of violence during

fiscal 2018 had dispositions that were resolved through a plea agreement. If this percentage is applied to the 1,508 offenders who entered Division of Correction facilities in fiscal 2018 for crimes of violence, the bill could result in approximately 700 defendants opting for trials instead of plea agreements. This figure increases to 1,146 defendants if both ABA and non-ABA plea agreements are considered. The number of clients of OPD included in this pool of defendants cannot be reliably determined at this time.

While the bill does not result in additional OPD clients, it increases 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 increase and may necessitate the hiring of additional public defenders.

Local Expenditures: Local expenditures for State's Attorneys' offices may increase to the extent that the additional workload generated by the bill results in increased personnel and operating expenditures.

Additional Information

Prior Introductions: HB 1320 of 2011 received an unfavorable report from the House Judiciary Committee.

Cross File: None.

Information Source(s): Carroll, Harford, and Queen Anne's counties; Maryland Association of Counties; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of Public Safety and Correctional Services; Department of Legislative Services

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Analysis by: Amy A. Devadas

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