

Department of Legislative Services
Maryland General Assembly

FISCAL NOTE

House Bill 546 (Delegate Fulton)

Appropriations

**Department of Public Safety and Correctional Services - Inmate Work Program -
Costs of Confinement**

This bill establishes an inmate work program in the Division of Correction (DOC), and eliminates DOC's current work-release program.

Fiscal Summary

State Effect: Indeterminate significant effect on revenues and expenditures for the Division of Correction.

Local Effect: None.

Small Business Effect: None.

Fiscal Analysis

Bill Summary: The bill requires the Commissioner of Correction to establish the inmate work program for all inmates sentenced to the jurisdiction of DOC. Under the program inmates must work at private or public employment, or participate in on-the-job training, for 40 hours per week. The bill specifies the conditions under which the commissioner may exempt an inmate or reduce the number of required hours in the program. Inmates are exempted if they are: (1) physically or mentally disabled; or (2) too dangerous to society to participate in the program.

All hours of authorized leave relating to employment, community treatment programs, or educational programs must be credited toward the 40-hour requirement. Current law provisions prohibiting the Department of Public Safety and Correctional Services (DPSCS) from assessing a fee for certain health care services are eliminated.

The amount of compensation received by an inmate in the program must be determined by the commissioner. Unless required by federal law, an inmate's compensation in the program is not subject to minimum or prevailing wage laws or unemployment compensation taxes. The warden or facility administrator is required to collect all inmates' earnings, less payroll deductions, and use the earnings to make certain prioritized payments for the inmate, including reimbursement to the State for the costs of rehabilitation, housing, health care, and living costs. Any balance must be credited to the inmate's account and paid to the inmate on release.

In addition, the bill requires the Secretary of DPSCS to seek inmate reimbursement for the costs that DOC incurs while an inmate is in its jurisdiction. These reimbursements include the costs: (1) of food, clothing, housing, and other living expenses; (2) of health care expenses; and (3) associated with participation in the inmate work program. The bill specifies that an inmate is required to pay amounts based on the actual per diem costs of confinement. An inmate is also required to submit a specified financial statement to DPSCS.

An inmate is allowed to attach a supplementary statement to the financial statement that explains why all or part of the inmate's assets should not be used to pay the costs of confinement.

If a conviction is reversed, all funds collected under these provisions must be refunded. If an inmate fails to pay the costs of confinement within one year of release, DPSCS is authorized to bring a civil action for collection. A crime victim or any other person is not precluded from obtaining or executing on a civil judgment against an inmate.

The Commissioner of Correction and the Secretary of DPSCS are required to adopt regulations to implement these provisions. Other State units are required to cooperate with the DOC to implement the inmate work program.

State Effect: Under the current DOC work-release program, an inmate must be in prerelease security in order to be eligible for the program. That status can only be attained if the inmate is deemed not to pose a community danger through participation in the program. Accordingly, it is assumed that although the bill requires all inmates to participate in the new work program only those who currently meet the work-release standard would qualify for outside work.

Inmates in work release are currently required to reimburse DOC for confinement costs and to pay court-ordered restitution, child support, and other costs. In fiscal 1997, there was a monthly average of 400 inmates in the work-release program. Based on a schedule approved by the commissioner, wardens collected approximately \$1.5 million in reimbursements from work-release inmates in fiscal 1997. An additional 600 inmates participated in DOC's work-crew program for public works programs under the aegis of the State Highway Administration and local jurisdictions. Work crew inmates average \$45 per month at \$2.25 per day earnings. Reimbursements for the costs of confinement are not collected from work crew participants. Both work-release and work-crew inmates earn diminution credits.

In any event, since the bill repeals the statutory authority for leave and other elements that allow inmates to work outside of the confinement facility, it must be assumed that the inmate work program created by this bill would only involve work by inmates that could be performed within each incarceration facility operated by DOC. It is unclear if there is sufficient public and/or private work suitable to be done within existing correctional institutions to accommodate all or most of DOC's 22,000 inmates with 40 hours of work weekly. It is not clear if the bill assumes that leave authority could be granted under the agency's regulatory authority. It is also unclear how other State agencies, including the Department of Labor, Licensing, and Regulation; the Department of Human Resources; and the Division of Parole and Probation would contribute to the implementation of the inmate work program.

While it is unknown how the current education programs would be affected by the new inmate work program, the bill does provide that participation in education programs would be counted toward the 40-hour work requirement. However, if a mandatory inmate work program and the current educational program had to compete for space within an institution, it is possible that the current educational programs might have to be reduced in size and scope. The Correctional Education Program (CEP) believes that such a situation could put \$500,000 to \$1 million of federal education funding at risk. Since it is always difficult (at best) to know how programmatic changes in the State might be viewed by federal funding sources, this risk cannot be reliably assessed at this time.

The bill's broader requirement that DPSCS seek inmate reimbursement for the costs of confinement beyond income earned in the work program poses some additional problems in determining fiscal impact, including:

- the population of the prisons has historically not been inclined to meet financial responsibilities, and generally do not hold substantial assets;
- DOC believes that most inmates would require methodical and tedious assistance from staff to complete detailed financial statements, perhaps beyond

the capacity of current staffing levels;

- the bill does not provide the basis for determining whether or when an inmate's supplemental financial statement would allow an exemption from the use of assets to pay confinement costs; and
- the authority to seek payment via civil action within one year of release may not be significantly effective in generating actual collections, and would involve substantial legal resources to bring and pursue such cases beyond the department's present capacities.

If the collection of confinement costs by DPSCS is predicated on the vast majority of inmates participating in the inmate work program, and work is limited to that which can be performed within the institution, there may not be a significant increase in inmates with an ability to pay beyond the number of inmates that now participate in the work-release program and those who otherwise hold measurable assets. Even if the ability of an inmate to leave an institution for work were to be restored by statute or regulation, the number of persons deemed not to be exempt from the 40-hour work requirement is unknown. DOC believes that the dangerousness standard alone would limit participation in the new inmate work program to levels similar to those now participating in work release.

Accordingly, it is assumed that this bill would significantly increase general fund expenditures for DPSCS. The increased costs to the DOC alone are assumed to be substantial. Actual costs will depend upon whether: (1) inmates in the new work program will be able to participate in work, and other authorized programs outside of DOC facilities; (2) a sufficient number of inmates would be eligible for the work program to generate additional revenue from reimbursements; (3) current prison education programs will be affected, especially regarding federal funding levels; (4) DPSCS would be reasonably successful in securing the costs of care and confinement via a collection methodology that includes determinations of per diem costs, inmate financial statement disclosures, and civil action; and (5) other State agencies might cooperate with the implementation of these provisions and impact their effectiveness.

Information Source(s): Department of Public Safety and Correctional Services (Division of Correction, Division of Parole and Probation); Department of Labor, Licensing, and Regulation; Department of Human Resources; Maryland Department of Education (Correctional Education Program); Department of Legislative Services

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