

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE
Revised

House Bill 110

(Delegate Anderson, *et al.*)

Judiciary

Judicial Proceedings

**Corrections - Diminution of Confinement Credits - Controlled Dangerous
Substances Offenses**

This bill increases, from five credits per month to ten credits per month, the number of diminution credits for good conduct that an inmate with a term of confinement that includes a sentence for certain controlled dangerous substances offenses is entitled to receive. Specifically, the bill is applied to a sentence for a crime of manufacturing, distributing, dispensing, or possessing a controlled dangerous substance. The bill's provisions are not applied to third and subsequent time offenders, high volume dealers, or drug kingpins.

Fiscal Summary

State Effect: Potential general fund net expenditure savings of between \$1,111,900 and \$1,403,900 for the Department of Public Safety and Correctional Services (DPSCS) in FY 2004, involving both the Division of Correction (DOC) and the Division of Parole and Probation. Out-year savings would peak in FY 2006 at between \$1,412,400 and \$2,872,400, and gradually diminish to a point of no budgetary savings after FY 2014.

Local Effect: None. An inmate in a local correctional facility may receive deductions of five days per calendar month only.

Small Business Effect: None.

Analysis

Current Law: For DOC inmates whose terms of confinement include consecutive or concurrent sentences for a crime of violence or a crime involving a controlled dangerous substance as defined in the law, the deduction in the sentence for good conduct is calculated at five days per calendar month. For all other inmates the deduction is calculated at ten days per calendar month. Good conduct credits are awarded to an inmate at intake, calculated based upon how many credits could be earned for serving out a full term. Good conduct credits are deducted in advance, subject to the inmate's future good behavior. One diminution credit is equal to one day of confinement. DOC may revoke or restore any earned credits.

An inmate may also receive deductions calculated at 5 days per calendar month for work tasks and education and 10 days per calendar month for special projects; however, the total deduction may not exceed 20 days per calendar month. These credits are awarded as they are earned. When an inmate's total number of diminution credits is equal to the remainder of sentence, including consideration for any losses of credits, the inmate is eligible for mandatory supervision release.

A deduction may not be allowed for a period during which an inmate does not receive credit for service of the inmate's term of confinement, including a period: (1) during which the inmate's sentence is stayed; (2) during which the inmate is not in DOC custody because of escape; or (3) for which the Maryland Parole Commission has declined to grant credit after revocation of parole or mandatory supervision.

An inmate in a local correctional facility may receive deductions of five days per calendar month for: good conduct; industrial, agricultural, or administrative tasks; educational and training courses; work projects; and special programs. The use of diminution credits to reduce an inmate's term of incarceration is a means of recognizing an inmate's good behavior. Inmates are allowed a deduction in advance from the term of confinement. If an inmate violates a rule of discipline, however, diminution credits may be revoked.

Background: Mandatory supervision is a nondiscretionary release from prison required by law after a criminal offender has served his or her sentence less diminution of confinement credits earned.

Chapter 485 of 2002 required, in part, the Secretary of Public Safety and Correctional Services and the Chairman of the Maryland Parole Commission to establish a workgroup to study and make recommendations on issues relating to diminution credits, sentences, and mandatory supervision. A report from the workgroup was due by December 1, 2002.

That report with recommendations, while addressing issues related to mandatory release, does not have a direct impact on this bill.

As of December 2002, of the 24,267 inmates in the custody of DPSCS, 8,004 of them were convicted of drug-related crimes without a concurrent conviction of a crime of violence. Although this represents approximately 33% of the total incarcerated population, most are not minor drug users and almost none are first-time, simple drug possession offenders.

State Expenditures: DOC currently receives approximately 2,800 inmates per year with a drug offense, and no crime of violence, that disqualifies them from receiving ten days diminution credit per month. These inmates receive an average sentence of four years.

Under this bill, inmates received on or after October 1, 2003 would receive an additional 240 days diminution credits on average (48 months x 5 additional credits per month). If all 2,800 inmates were to be released under mandatory supervision 240 days early, DOC would save approximately 1,800 beds per year. However, if it were assumed that only 1,800 of these inmates were to be released under mandatory supervision, with the other 1,000 inmates released on parole or in some other manner not using the additional diminution credits, DOC would save approximately 1,200 beds per year. Therefore, this bill could yield a bed savings ranging from 1,200 to 1,800 beds per year for all such intakes beginning October 1, 2003.

Since the bed savings would not all be realized in the first year after enactment of the law, it is estimated that the bed savings might be phased in as follows and remain constant beyond fiscal 2008 if intakes remain stable:

	<u>FY 2004</u>	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>
High Impact	600	1,200	1,800	1,800	1,800
Low Impact	400	800	1,200	1,200	1,200

Excluding overhead, the average cost of housing a new DOC inmate (including medical care and variable costs) is \$4,200 per year. The existing contract for inmate medical care is a fixed price contract. The variable cost per inmate at DOC and Patuxent is approximately \$1,460 per year, which includes \$174 for inmate wages, \$55 for contractual services (such as laundry and trash removal), \$996 for food, and \$235 for nonfood materials and supplies.

Accordingly, this bill could produce a savings for DOC in fiscal 2004 of between \$584,000 and \$876,000; between \$1,168,000 and \$1,752,000 in fiscal 2005; and between \$1,752,000 and \$2,628,000 in fiscal 2006 and beyond.

Existing Inmate Bed Impact

It is estimated that approximately 6,000 inmates (sentenced after October 1, 1992 with a drug offense that disqualifies them from receiving ten days diminution credit per month) will be in a State correctional facility on October 1, 2003. These inmates are serving an average sentence of eight years. If the provisions of this bill are determined to apply retroactively to these inmates, they would immediately be eligible to receive an additional 480 days diminution credits on average (96 months x 5 additional credits per month). This would result in the immediate release of approximately 1,200 of these 6,000 inmates and most of the remainder would be released over the next five years. Almost all of these inmates would be released within ten years. Using the same methodology as is employed above for new intakes, it is estimated that the bed saving on the existing population might occur as follows (dropping significantly after fiscal 2008 until all 6,000 inmates have been released):

	<u>FY 2004</u>	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>
High Impact	1,200	1,200	1,200	1,000	1,000
Low Impact	1,200	800	800	500	500

Accordingly, if the bill’s provisions are applied to the existing inmate population on the bill’s effective date (October 1, 2003), this bill could produce a savings for DOC in fiscal 2004 of \$1,752,000; between \$1,168,000 and \$1,752,000 in fiscal 2005 and 2006; and between \$730,000 and \$1,460,000 in fiscal 2007 and 2008. Within five more years, all savings relating to this population will have been depleted.

Combined Inmate Bed Impact

Assuming this bill is applicable to both the current DOC population, as well as to intakes on or after October 1, 2003, the total impact of this bill would be as follows

	<u>FY 2004</u>	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>
High Impact	1,800	2,400	3,000	2,800	2,800
Low Impact	1,600	1,600	2,000	1,700	1,700

Accordingly, this bill could produce a total savings for DOC of between \$2,336,000 and \$2,628,000 in fiscal 2004; between \$2,336,000 and \$3,504,000 in fiscal 2005; between \$2,920,000 and \$4,380,000 in fiscal 2006; and between \$2,482,000 and \$4,088,000 in fiscal 2007 and 2008.

Though producing the savings in variable and medical costs for DOC, this bill is not necessarily expected to result in any immediate savings relating to correctional officer positions or facility closings, or in general overhead costs for any existing facility.

Division of Parole and Probation

Based on data provided by DOC (cited above), and assuming that this bill would apply to both DOC's standing population as well as future intakes, the Division of Parole and Probation expects this bill to result in the immediate release of about 1,200 inmates from the standing population in October 2003, an additional 400 to 600 over the rest of fiscal 2004, and the remainder of the qualifying current inmates plus additional intake under the new diminution credit earning potential over the out-years. Even though these inmates would likely be released to the supervision of the division at some later date anyway, the division believes that this bill would tax their current resources by moving up their expected release date by an estimated 240 days, or eight months.

Approximately 65% of DOC inmates are from Baltimore City. Accordingly, under application of the bill's provisions to the DOC standing population, approximately 780 of the 1,200 offenders released in October 2003 would be released to the division's Guilford Avenue office (with similar numbers phased in over the next five years). The remainder would be supervised by other division offices, statewide, having an effect on agent-to-offender caseload ratios, as well as on available drug testing and treatment services.

It is likely that the majority of inmates released under the accelerated diminution credit earnings provided under this bill could have drug testing conditions attached to their mandatory supervision release. If so, an estimated 24,960 additional urinalysis tests could be required to be administered annually, with an additional cost to the division of \$112,320.

Accordingly, general fund expenditures could increase by an estimated \$1,224,093 in fiscal 2004, which accounts for the bill's October 1, 2003 effective date. This estimate reflects the cost of hiring 18 agents, 4 field supervisors, and 6 office secretaries. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Salaries and Fringe Benefits	\$875,993
Urinalysis Testing Costs	112,320
One-time Office Equipment	120,100
Other Operating Expenses	<u>115,680</u>
Total FY 2004 State Expenditures	\$1,224,093

Future year expenditures reflect: (1) full salaries with 4.5% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

It is noted that a greater influx of released offenders with treatment needs, especially in Baltimore City, would likely increase the number of persons on waiting lists for the limited number of treatment slots in the city.

Additional Comments: It should be noted that the variable cost per inmate is higher at the Baltimore City Detention Center, a State-operated facility (i.e., approximately \$1,930 per year).

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Public Safety and Correctional Services (Division of Correction, Division of Parole and Probation), Department of Legislative Services

Fiscal Note History: First Reader - February 4, 2003
mam/cer Revised - House Third Reader - March 20, 2003

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