

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE

House Bill 582
Judiciary

(Delegate Marriott, *et al.*)

Correctional Services - Parole - Substance Addiction Treatment

This bill requires that an inmate who meets certain criteria be granted parole for purposes of participating in an appropriate substance addiction treatment program. Specifically, an inmate must be granted parole if the inmate: (1) is currently incarcerated for a nonviolent crime or a substance addiction related parole violation; (2) has no prior convictions for a violent crime; and (3) has a verified substance addiction. An inmate may not be released unless there is available space in an appropriate treatment program. The bill requires the Division of Correction (DOC) to pay for the cost of the inmate's treatment the equivalent of 50% of the cost of the inmate's remaining sentence in the form of a voucher to the treatment program.

A person convicted under the State's drug kingpin provisions is not eligible for parole under these provisions.

Fiscal Summary

State Effect: Potential savings for DOC that would be largely offset by additional payments for the costs of treatment. A minimal net fiscal impact is anticipated.

Local Effect: None.

Small Business Effect: The extent to which this bill could impact small business substance abuse treatment providers is unknown. Unless current capacities increase, any such effect is assumed to be minimal.

Analysis

Current Law: The Maryland Parole Commission has the power to authorize the parole of an inmate in DOC. The Board of Review has this power for the Patuxent Institution. Currently, the Secretary of Public Safety and Correctional Services must also approve each parole, and seven of the nine members of the Board of Review are required to approve parole for an inmate at Patuxent.

A person sentenced to a term of incarceration of six months or more is entitled to a parole hearing after having served one-fourth of the term or consecutive terms. A person sentenced to more than one term, including a term during which the person is eligible for parole and a term during which the person is not eligible for parole, cannot be considered for parole unless the person has served the greater of one-fourth of the aggregate term or a period equal to the term during which the inmate is not eligible for parole.

A person convicted of a violent crime is not eligible for parole until that person has served the greater of one-half of the aggregate sentence for violent crimes or one-half of the aggregate total sentence. Currently, a person serving a term for a violent crime may receive an administrative review after that person has served one-fourth of the term of confinement or a period equal to any term in which the inmate is not eligible for parole. Further, a person sentenced to life imprisonment is not eligible for parole consideration until that person has served 15 years. A person sentenced to life imprisonment for first degree murder is not eligible for parole consideration until that person has served 25 years.

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, 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. An inmate may also receive deductions calculated at five days per calendar month for work tasks and education and ten days per calendar month for special projects. However, the total deduction may not exceed 20 days per calendar month. 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.

If a court finds that a criminal defendant has an alcohol or drug dependency, the court may commit the defendant to the Department of Health and Mental Hygiene (DHMH) for inpatient, residential, or outpatient treatment as a condition of release, after conviction, or at any other time the defendant voluntarily agrees to treatment.

Background: A formal substance abuse evaluation is not now a component of intake procedures for DOC. The Patuxent Institution, as the only treatment-oriented, correctional facility in the State, serves various correctional populations and functions for the Department of Public Safety and Correctional Services (DPSCS). The Residential Substance Abuse Treatment Program (RSAT) provides intensive services to selected male and female offenders incarcerated with DOC. The program is primarily supported by a federal grant with matching funds provided by DHMH. Treatment services are provided to male offenders at the Central Laundry Facility in Sykesville, Maryland. Female offenders are provided treatment services at Patuxent Institution. The male and female programs have a total standing capacity of 280 offenders each. Offenders who successfully complete the program are referred for additional community based treatment upon their release from DOC.

In May 1994, the Regimented Offender Treatment Center (ROTC) was established at Patuxent Institution in conjunction with the Division of Parole and Probation (DPP). Although no longer grant funded, the ROTC program continues as an alternative to incarceration program which provides intensive evaluation, treatment, and referral services for nonviolent, substance-abusing DOC inmates about to leave the correctional system or for DPP parolees who have returned to using drugs while on parole. Each offender receives a comprehensive psycho-social evaluation focused upon the offender's substance abuse. ROTC is certified as an addictions treatment program by DHMH and, along with ROTC-W (for women), are the only certified addictions treatment programs in a State correctional facility. In fiscal 1999, the ROTC-W for women offenders was relocated to the Patuxent Institution.

State Expenditures: There are several inherent difficulties in assessing the fiscal impact of this bill: (1) the term "verified substance addiction" is not defined; (2) the term "remaining sentence" is not defined; (3) the number of treatment slots available at any given time cannot be reliably quantified; and (4) there are a variety of treatment options. It is also noted that the bill does not address violations of such a parole (for failure to complete a treatment program, commission of a new nonviolent offense, etc.). Thus, the bill's provisions would seem to continue to require an immediate reparole for parole violators at intake, unless a new crime of violence was the basis of the violation.

In fiscal 2002, DOC had an annual intake of 11,068 persons. Of that number, about 8,500 commitments were for nonviolent offenses.

It is assumed that verification of substance addiction would be performed by DOC at intake for nonviolent offenders and parole violators with substance addictions. In fiscal 2002, DOC applied a limited addiction evaluation to 3,973 new inmates (a Modified Addiction Severity Index, or MASI). Of that number, 2,456 persons (64%) indicated an addiction problem in need of treatment. It is assumed that a similar percentage of the

8,500 new annual inmates would also show similar evaluation results. Accordingly, this bill could produce 5,440 additional inmates annually who would qualify for immediate parole ($8,500 \times .64 = 5,440$).

It is noted that a similar process is used by the Patuxent Institution, but with several additional screening indicators. MASI results alone may not be a complete enough true test to “verify” substance addiction. The MASI is a screening device only. It is administered in a group setting, about six inmates at a time. It takes about 30 to 45 minutes, but cannot reliably determine if a person has a “verified substance addiction.”

The bill requires DOC to pay for the cost of a qualifying inmate’s treatment in an amount equal to 50% of the cost of the inmate’s remaining sentence in the form of a voucher to the treatment provider. However, a nonviolent offender is normally expected to actually serve about 50% of his or her sentence. In fact, so-called good time diminution credits are awarded to an inmate upon admission and based on full credit earning potential for the length of the sentence.

Assessing the number of treatment slots available annually is also difficult. For fiscal 2004, the budget allowance for the Alcohol and Drug Abuse Administration (ADAA) in DHMH is \$135.5 million, most of which is used to pay alcohol and drug treatment providers. ADAA estimates the client participation per treatment modality to be as follows:

- outpatient – 27,000;
- residential – 6,000;
- correctional – 1,100;
- halfway house – 570; and
- methadone – 7,000.

In addition, the Governor’s 2004 budget allowance estimates \$12 million in general funds for the Substance Abuse Treatment Outcomes Partnership (STOP) Program operated by ADAA. This represents an increase of about \$4.8 million over fiscal 2002 general fund allocations. It is, as yet, unclear as to how these funds will be distributed to the various treatment modalities. The impact of these additional funds on available inpatient or outpatient treatment slots cannot be reliably evaluated. Although current demand for treatment exceeds current private or public capacities and has created statewide waiting lists, ADAA does not believe that this bill would require the agency to create any additional dedicated treatment services or capacities.

ADAA also advises that placement responsibilities under this bill would fall to DOC. However, the ability of DOC to successfully place and pay for an inmate eligible for

parole under this bill cannot be reliably measured. The cost of treatment via the different modalities varies widely. Inpatient drug treatment is about \$13,500 per bed, annually. ADAA advises that the costs associated with this bill would be handled directly (by voucher) between DPSCS and treatment providers, and would not directly impact ADAA's budget resources.

In any case, this bill would tend to decrease correctional costs for DOC while also increasing treatment costs for DOC in the form of provider vouchers. Legislative Services advises that these cost savings and cost increases would likely offset one another, thereby creating no net impact.

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$1,850 per month, or \$22,200 per year. Because parole release under this bill is tied directly to available treatment slots, this bill alone, should not create the need to eliminate beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including medical care and variable costs) is \$350 per month. Excluding medical care, average variable costs total \$120 per month per inmate, or \$1,460 per year.

For purposes of illustration, assuming a nonviolent inmate receives a sentence of four years and is remanded to the custody of DOC, under this bill the following could occur:

- an addiction evaluation would be done by DOC as a part of the intake processes and a substance addiction is "verified;"
- a determination by DOC would be made that "remaining sentence" would equal four years;
- a calculation of the cost of remaining sentence would be done by multiplying average monthly or daily costs by the full four-year term; and
- a placement search would begin and, if an appropriate slot is found, a voucher would be prepared equal to 50% of the cost of the remaining sentence.

However, since such an inmate would actually be expected to serve 50% of sentence, any savings for DOC would tend to be equal to the amount of the voucher. Any actual savings for DOC under this bill would likely be offset by potential additional costs associated with operational changes made to perform additional substance abuse evaluations at intake. Even if few treatment placements are available at any given time, this bill would only tend to increase intake operations. DPP advises that the requirements of this bill could be handled with existing budgeted resources.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Health and Mental Hygiene, 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 23, 2003
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