

Department of Legislative Services
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FISCAL AND POLICY NOTE
Revised

House Bill 193
Judiciary

(Delegate Anderson, *et al.*)

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

This bill increases, from five credits to 10 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. The bill is applied to a sentence for crimes generally involving 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 decrease of between \$1,182,600 and \$1,474,600 for the Department of Public Safety and Correctional Services (DPSCS) in FY 2005, involving both the Division of Correction (DOC) and the Division of Parole and Probation. Out-year savings would peak in FY 2007 at between \$1,655,000 and \$2,969,000, and gradually diminish to a point of no budgetary savings after FY 2015.

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 10 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.

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

In a typical year, 20,000 offenders are placed under the supervision of DPSCS by the courts for drug convictions, with over 75% of those offenders being granted probation rather than incarceration. Those receiving terms of incarceration, rather than probation, are often repeat offenders who are often also involved in other serious offenses.

Many of the inmates who are currently incarcerated for a drug-related crime without a concurrent conviction for a crime of violence have long histories of drug dealing. DPSCS receives over 100 inmates per year serving sentences of at least 10 years imprisonment without eligibility for parole under various Maryland repeat drug dealer statutes. Many of these inmates are individuals who have been given an opportunity to return to the community but who have reoffended through new drug offenses or other types of criminal activity and have returned to prison to serve sentences for probation or parole violation.

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 10 days diminution credit per month. These inmates receive an average sentence of four years.

Future Intake Bed Impact

Under this bill, inmates received on or after October 1, 2004 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, 2004.

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 shown in **Exhibit 1** and remain constant beyond fiscal 2008 if intakes remain stable:

Exhibit 1					
Future Intake Bed Savings					
	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</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 2005 of between \$584,000 and \$876,000; between \$1,168,000 and \$1,752,000 in fiscal 2006; and between \$1,752,000 and \$2,628,000 in fiscal 2007 and beyond.

Existing Inmate Bed Impact

It is estimated that approximately 5,700 inmates sentenced after October 1, 1992 with a drug offense that disqualifies them from receiving 10 days diminution credit per month will be in a State correctional facility on October 1, 2004. 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 1,000 of these 5,700 inmates and most of the remainder would be released over the next five years. Almost all these inmates would be released within 10 years. Using the same methodology as is employed above for new intakes, it is estimated that the bed savings on the existing population might occur as shown in **Exhibit 2** (dropping significantly after fiscal 2009 until all 5,700 inmates have been released).

Exhibit 2
Existing Inmate Bed Savings

	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>
High Impact	1,100	1,100	1,100	1,000	1,000
Low Impact	1,100	900	800	500	500

Accordingly, if the bill’s provisions are applied to the existing inmate population on the bill’s effective date (October 1, 2004), this bill could produce a savings for DOC in fiscal 2005 of \$1,606,000; between \$1,314,000 and \$1,606,000 in fiscal 2006 and 2007; and between \$730,000 and \$1,460,000 in fiscal 2008 and 2009. 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, 2004, the total impact of this bill would be as shown in **Exhibit 3**.

Exhibit 3
Combined Bed Savings

	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>
High Impact	1,700	2,300	2,900	2,800	2,800
Low Impact	1,500	1,700	2,000	1,700	1,700

Accordingly, this bill could produce a total savings for DOC of between \$2,190,000 and \$2,482,000 in fiscal 2005; between \$2,482,000 and \$3,358,000 in fiscal 2006; between \$2,920,000 and \$4,234,000 in fiscal 2007; and between \$2,482,000 and \$4,088,000 in fiscal 2008 and 2009.

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 1,000 inmates from the standing population in October 2004, an additional 400 to 600 over the rest of fiscal 2005, 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 650 of the 1,000 offenders released in October 2004 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 20,000 additional urinalysis tests could be required to be administered annually, with an additional cost to the division of \$90,000

Accordingly, general fund expenditures could increase by an estimated \$1,007,421 in fiscal 2005, which accounts for the bill's October 1, 2004 effective date. This estimate reflects the cost of hiring 15 agents, 3 field supervisors, and 5 office secretaries. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Salaries and Fringe Benefits	\$739,451
Urinalysis Testing Costs	90,000
One-time Office Equipment	106,270
Other Operating Expenses	<u>71,700</u>
Total FY 2005 State Expenditures	\$1,007,421

Future year expenditures reflect: (1) full salaries with 4.6% 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 Information

Prior Introductions: In 2003, an identical bill, HB 110, passed the House and received an unfavorable report from the Senate Judicial Proceedings Committee.

Cross File: None.

Information Source(s): Commission on Criminal Sentencing Policy, Department of Public Safety and Correctional Services (Division of Correction, Division of Parole and Probation, Maryland Parole Commission), Department of Legislative Services

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