

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

House Bill 454
Judiciary

(Delegate Conroy, *et al.*)

Murder - Parole and Diminution Credits - Richard's Law

This bill provides that a person convicted of first or second degree murder is not entitled to any diminution credits for the person's term of confinement with the Division of Correction (DOC) and may not be granted parole at any time during the sentence. The Governor's authority to pardon or remit any part of a sentence is not restricted by these provisions.

Fiscal Summary

State Effect: Significant increase in general fund correctional expenditures due to the bill's provisions, which would not begin until FY 2024.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: A murder is in the first degree if it is: (1) a deliberate, premeditated, and willful killing; (2) committed by lying in wait; (3) committed by poison; or (4) committed in the perpetration of, or an attempt to, perpetrate specified other offenses, including first degree arson, carjacking, rape, or first or second degree sexual offense. A violator is guilty of a felony and must be sentenced to life imprisonment, life imprisonment without the possibility of parole, or death.

A murder that is not first degree murder is considered second degree murder. A violator is guilty of a felony and subject to imprisonment for up to 30 years.

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 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.

The Maryland Constitution provides that the Governor has the power to grant reprieves and pardons, except in cases of impeachment or in cases in which he is prohibited by other constitutional provisions. On giving the notice required by the constitution, the Governor may: (1) commute or change a sentence of death into a period of confinement that the Governor considers expedient; (2) pardon an individual convicted of a crime subject to any conditions the Governor requires; or (3) remit any part of a sentence of imprisonment subject to any conditions the Governor requires, without the remission operating as a full pardon.

There is a presumption that the grantee of a pardon was lawfully and properly convicted of a crime against the State unless the order granting the pardon states that the grantee has been shown conclusively to have been convicted in error.

Upon request of the Governor, the Maryland Parole Commission must review and make recommendations to the Governor concerning a pardon, commutation of sentence, or other clemency. Unless the order granting a pardon provides otherwise, the Governor is the sole judge of whether a condition of a conditional pardon has been violated. A determination by the Governor that a condition of a conditional pardon has been violated by the grantee is final and not subject to review by any court of the State.

State Expenditures: General fund expenditures could increase as a result of the bill's elimination of parole and diminution credit earning ability for persons convicted of first or second degree murder due to people being committed to DOC facilities for longer periods of time.

In fiscal 2003, DOC had 47 intakes for first degree murder, with an average sentence of 408 months, and 90 persons for second degree murder, with an average sentence of 311 months. Currently, a person sentenced to such a term would be expected to serve approximately 75% of the sentence. Elimination of both the possibility of parole and the potential for any earnings of diminution credits would mean that, without intervention by the Governor, such an inmate would serve 100% of the sentence.

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. This bill alone, however, should not create the need for additional 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, the average variable costs total \$120 per month.

For illustrative purposes, assuming that DOC's intake for the covered offenses in fiscal 2003 is typical, under the bill's provisions the average time served for first degree murder would be 408 rather than 306 months and 311 rather than 233 months for second degree

murder. Assuming the variable inmate costs of \$120 per month, State costs could increase by \$12,240 for each person imprisoned for first degree murder and \$9,360 for each person imprisoned for second degree murder under the bill. Total State costs over all affected inmates' full terms would be \$575,280 (47 inmates x \$12,240) for persons sentenced for first degree murder and an additional \$842,400 (90 inmates x \$9,360) for persons sentenced for second degree murder, or a total of \$1,417,680. Such effects would not begin to be felt until fiscal 2024 (or after 233 months).

DOC also notes that this bill could have an additional operational impact in that it introduces another layer of complexity to the division's operations in tracking and managing diminution credits.

Additional Comments: It is unknown whether the bill would affect prosecutorial, defense, or sentencing patterns for first and second degree murder in the State.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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