

**Department of Legislative Services**  
Maryland General Assembly  
2005 Session

**FISCAL AND POLICY NOTE**

House Bill 843  
Judiciary

(Delegates Kelley and Vallario)

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**Local Correctional Facilities - Diminution Credits - Good Conduct**

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This bill increases, from 5 to 10 days per month, the pre-sentence and post-sentence good conduct diminution credit earning calculations for an inmate at a local correctional facility. The bill also provides that, for post-sentence good conduct diminution credit calculations, if the inmate's term of confinement is for a crime of violence or a charge involving certain controlled dangerous substances offenses, the credits must be calculated at a rate of five days per month. The bill provisions must be applied prospectively from October 1, 2005.

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**Fiscal Summary**

**State Effect:** Potential annual savings beginning in FY 2006 for the Department of Public Safety and Correctional Services (DPSCS) of as much as \$3.5 million arising from both a reduction in post-conviction inmate costs and a decrease in local jail reimbursements.

**Local Effect:** Potential overall savings in annual pretrial and post-conviction inmate costs may be offset by decreases in local jail reimbursements from the State.

**Small Business Effect:** None.

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**Analysis**

**Current Law:** 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:** For Division of Correction (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.

**State Fiscal Effect:** This bill would result in a reduction in costs for housing inmates in DOC facilities. An unknown portion of the approximately 12,000 inmates received each year with commitments to DOC would now have the opportunity to earn a deduction of an additional five days each month from their terms of confinement for good conduct while in pre-sentence confinement. It is estimated that from 6,000 to 8,500 of these 12,000 inmates could earn approximately 15 additional days of diminution credit for time spent in pretrial custody (5 additional days per month times an average of 3 months in pretrial custody). This could decrease the average length of stay for these inmates, causing an annual bed need reduction for DOC of 200 – 400 beds.

Although the number of inmates sentenced annually to local jails with terms of confinement is not known, on average each day approximately 4,000 inmates are serving sentences in local correctional facilities and 8,000 inmates are held in pretrial

confinement in local correctional facilities. Since inmates sentenced to local jails would receive additional sentence diminution credits under this bill, a similar bed reduction impact would affect local correctional facilities but to an unknown degree.

Accordingly, general fund expenditures could decrease by as much as \$3.5 million annually beginning in fiscal 2006 due to an increased earning opportunity of people being committed to DOC facilities from pretrial detention in local detention facilities and decreased payments to counties for reimbursement of inmate costs.

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. Excluding overhead, the average cost of housing a new DOC inmate (including medical care and variable costs) is \$310 per month. Excluding medical care, the average variable costs total \$120 per month. Assuming these variable costs, an annual bed need reduction for DOC of 200 – 400 would result in an annual savings of between \$288,000 and \$576,000.

Moreover, since current law requires the State to partially reimburse operating costs for inmates sentenced to local correctional facilities, this anticipated reduction in the length of stay for sentenced prisoners in local facilities could also provide an unknown reduction in State costs for reimbursement of local jail expenses. If Frederick County's projections on reimbursement decreases (see below) prove to be typical, this bill could result in an annual savings in local jail reimbursements for DPSCS of about \$3 million, statewide.

**Local Fiscal Effect:** Counties pay the full cost of incarceration for people in their facilities for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$33 to \$119 per inmate in fiscal 2006.

This bill would result in an overall cost saving for local detention facilities that would vary by jurisdiction and may or may not be significant for any jurisdiction. Specifically, the bill would impact local correctional facilities in two ways:

- double the potential monthly good conduct earning ability of each inmate would, depending on each inmate's projected length of stay and propensity for not losing such credits due to administrative or criminal infractions, lessen the time before an inmate had to be released on mandatory supervision; and
- decrease the amount of State reimbursements for inmate costs, calculated annually and paid in estimated quarterly installments.

For instance, Frederick County reports that, based on an average daily population of 466 inmates, this bill could result in a decrease of \$170,000 annually in operating expenses for the detention facility (including food, laundry supplies, uniforms, and medical supplies), and a decrease in annual State reimbursements of a similar amount (\$172,900), representing a 13.3% annual decrease in those payments. Actual overall changes in operating expenses for any local correctional facility cannot be reliably measured without direct experience under the bill.

Montgomery County also reports that this bill would have no overall fiscal impact because resulting reduced inmate populations would be offset by reduced State reimbursements.

**Additional Comments:** DPSCS pays local jail reimbursements via estimated payments for each quarter during the fiscal year. At the conclusion of each fiscal year, DPSCS audits local detention facility records to determine actual State liability for these payments. DPSCS must reimburse the local jurisdictions for any unpaid liability by September following the close of the fiscal year.

Chapter 430 of 2004 (Budget Reconciliation and Financing Act of 2004) provided that, if the September payment does not fully compensate a county for the actual required reimbursement for the prior fiscal year, or if the September payment totals more than one-fourth the total appropriation for the previous fiscal year, the Governor must: (1) include in the budget bill for the next fiscal year a deficiency appropriation to provide the additional funds needed to fully reimburse the counties for the previous fiscal year; and (2) review the expenditure trends and other factors affecting the reimbursement payments for the two most recent fiscal years and include in the annual budget for the next fiscal year an appropriation sufficient to cover a good faith estimate of the expected costs for the next year.

Because DPSCS's appropriation for reimbursements has been insufficient to meet liabilities in recent years (leading to deficits), the Governor's fiscal 2006 budget bill allowance provides for a deficiency appropriation, for fiscal 2005, of \$21.3 million (which includes \$14.6 million to pay the accumulated shortfall through fiscal 2004). In addition, the 2006 allowance provides \$22.9 for these payments for fiscal 2006.

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### **Additional Information**

**Prior Introductions:** HB 832 of 2004, a similar bill, was withdrawn.

**Cross File:** None.

**Information Source(s):** Montgomery County, Judiciary (Administrative Office of the Courts), Frederick County, Department of Public Safety and Correctional Services, Department of Legislative Services

**Fiscal Note History:** First Reader - February 25, 2005  
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