

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

House Bill 94
Judiciary

(Delegates Anderson and Marriott)

Corrections - Diminution of Confinement Credits - Controlled Dangerous Substances Offenses, Drug Treatment, and Local Correctional Facilities

This bill increases certain State and local inmate earning potential for diminution of confinement credits.

Fiscal Summary

State Effect: This bill would decrease operating costs for the Division of Correction (DOC) and increase operating costs for the Division of Parole and Probation. In FY 2007, net savings for the Department of Public Safety and Correctional Services (DPSCS) would range between \$45,200 to \$621,200, increasing to between \$46,400 to \$1.3 million, annually beginning in FY 2009.

Local Effect: Significant savings for local correctional facilities, depending on a jurisdiction's average daily populations and current levels of diminution credits earned and applied.

Small Business Effect: None.

Analysis

Bill Summary: This bill:

- increases, from 5 to 10 days per month, the number of diminution credits (for good conduct or special projects) that an inmate with a term of confinement that includes a sentence for a conviction of certain controlled dangerous substances offenses is entitled to receive. The diminution credit earning potential for a third

time offender for narcotic drugs or selected Schedule I and II hallucinogenic substances, or volume dealers or drug kingpins is not changed;

- under provisions relating only to special projects credits, provides that an inmate may be allowed a deduction of 5 days per month during which the inmate manifests satisfactory progress in a drug treatment program. A deduction for all special projects credits, including drug treatment or “other special program,” must be calculated from the first day of assignment to the program or project and on a prorated basis for any portion of the calendar month during which the inmate participates in the program or project or a drug treatment;
- increases, from 5 to 10 days per month, the deduction that an inmate of a local correctional facility must be allowed from the inmate’s term of confinement for each month of presentence confinement during which the inmate meets current law obligations relating to discipline and labor; and
- increases, from 5 to 10 days per month, the initial deduction that a local correctional facility inmate must be allowed from the inmate’s term of confinement for each month of postsentence confinement to a local facility, unless the inmate’s term of commitment includes a consecutive or concurrent sentence for a crime of violence or for a third time offense for narcotic drugs or selected Schedule I and II hallucinogenic substances, or for being a volume dealer or drug kingpin.

The bills provisions are applied prospectively only for offenses committed on or after October 1, 2005.

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 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 re-offended 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: State general fund expenditures would affect DOC and the Division of Parole and Probation in the following manner.

Division of Correction

Because the bill is applied only to an offense committed on or after October 1, 2005, there would be no expected impact on the existing inmate population convicted and

sentenced for the specified drug crimes prior to fiscal 2007. Until inmates sentenced for crimes committed on or after October 1, 2005 have had a time of confinement reduced under the provisions of this bill, the standing population of DOC is not affected.

DOC currently receives approximately 2,600 inmates per year with a drug offense and no disqualifying crime of violence. These inmates receive an average sentence of about four years.

Under this bill, these 2,600 inmates would now be eligible to earn and receive an additional five days good time credit per month. With an average sentence of 48 months, these inmates would now receive an additional 240 days good time credits on average (48 months x 5 additional credits per month). If all 2,600 inmates were to be released under mandatory supervision 240 days (8 months) early, DOC would save approximately 1,700 beds per year. Assuming that only 1,600 of these inmates are 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 1,000 beds per year. However, the full effect of this impact would not be realized until fiscal 2009. It is estimated that the bed savings impact from this provision of the bill in fiscal 2007 would range between 300 to 500 beds, and in fiscal 2008 would range from between 500 to 1,000 beds.

The bill also provides that affected inmates satisfactorily progressing in a “drug treatment” program may be allowed an additional five days sentence diminution credits per month. Although “drug treatment” is not defined under the bill, DPSCS asserts that over 1,000 sentenced inmates currently receive drug abuse services on a daily basis in DOC. If 600 of these inmates were eligible to earn an additional 5 days per month, the bed savings could be an additional 100 beds per year (600 inmates on average per month at 5 additional days per month x 12 months).

In addition, an unknown portion of approximately 12,000 inmates received each year with new 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 presentence confinement. DPSCS estimates that from 6,000 to 8,500 of these inmates could earn approximately 15 additional days of diminution credit for time spent in pretrial custody (5 additional days per month x an average of 3 months in pretrial custody). This could decrease the average length of stay for these inmates, causing an additional reduction of 200 to 400 DOC beds each year.

In summary, although the limiting of total credits earned by sentenced inmates to 20 days per month may affect the above estimates, the overall impact of this bill could result in a significant reduction of beds needed by DOC.

Excluding overhead, the average cost of housing a new DOC inmate (including medical care and variable costs) is \$3,720 per year (\$310/month). Excluding medical care, the average variable costs total \$1,440 per year (\$120/month). Since the bed savings from all of the bill's provisions would not all be realized in the first year after enactment of the law, it is estimated that the bed savings from increased diminution credit earning might be phased in as shown in **Exhibit 1** and remain constant beyond fiscal 2008 if intakes remain stable.

Exhibit 1
DOC Bed Savings

	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009 (and beyond)</u>
High Impact	1,000 beds (\$1,440,000)	1,500 (\$2,160,000)	2,200 (\$3,168,000)
Low Impact	600 beds (\$864,000)	800 (\$1,152,000)	1,300 (\$1,872,000)

Although the number of inmates sentenced annually to local jails with terms of confinement is not known, the average daily population of local jails statewide is approximately 4,000 postsentence inmates and approximately 8,000 pretrial confinements. Since current law requires the State to partially reimburse operating costs for certain inmates sentenced to local correctional facilities, an 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 and future jail construction.

Since the awarding of diminution credits and the calculation of diminution credit release is supported by DOC's automated system (OBSCIS I), DPSCS advises that a potentially substantial cost for reprogramming this information system can be anticipated based on the new provisions of this bill. However, the Department of Legislative Services (DLS) advises that if other legislation is passed requiring computer reprogramming changes, economies of scale could be realized. Accordingly, any such additional costs attributable to this bill for DOC cannot be reliably projected at this time.

Division of Parole and Probation

Based on the departmental data maintained on the number of offenders entering and leaving DOC facilities for drug offenses for which the offender may earn 10 days diminution credits per month under the bill, the division estimates that in fiscal 2007 approximately 400 offenders would be released to mandatory supervision up to 240 days earlier due to good time credits.

As a result, these offenders would be under the supervision of the division approximately eight months sooner (and, therefore, under the supervision of the division for a longer period of time). The fiscal 2006 estimated annual cost of supervising an offender under criminal supervision is \$1,236, or approximately \$100 per month. This figure includes the cost of personnel, leases, supplies, transportation, communications, etc. Under this assumption, the cost of this bill for the division attributed to the bill's changes involving good time credits would be approximately \$320,000 (400 offenders x \$800). The division estimates that the number of additional releases would increase to 750 offenders in fiscal 2008 at cost of \$600,000, and 1,350 offenders in fiscal 2009 and beyond at an annual cost of \$1,080,000.

Under the provision of the bill that allows offenders to earn an additional five days credits per month for satisfactory participation in a "drug treatment" program, the division estimates an additional 100 offenders per year would require division supervision. At an annual cost per offender of \$1,236 per year, the estimated cost of this provision is estimated to be \$123,600.

While it is difficult to estimate the number of offenders who may be eligible to receive diminution credits for a term of presentence confinement in a local correctional facility for each calendar month of good conduct, the current data indicate that this could result in an additional 200 to 400 offenders under the division's supervision. Assuming an average of 300, the cost to the division would be \$370,000, annually. The resulting additional general fund costs to the division attributable to 800 additional offenders being released to the supervision of the division would be \$703,600 in fiscal 2007; \$1,093,600 in fiscal 2008; and \$1,573,600 in fiscal 2009 and beyond.

In addition, beginning in fiscal 2007, the bill could result in the administration of a significant number of additional drug tests. The schedule now in place for urinalysis for offender populations is twice a week for 8 weeks (16 tests), once a week for 8 weeks (8 tests), and once a month for 8 months (8 tests) for a total of 32 scheduled tests for the first year, and randomly thereafter. Accordingly, at a cost of \$4.50 per test, additional expenditures for such tests would increase by \$115,200 in fiscal 2007, \$165,600 in fiscal 2008, and \$252,000 in fiscal 2009 and beyond.

Overall, general fund expenditures for the Division of Parole and Probation would increase as follows:

- \$818,800 in fiscal 2007;
- \$1.3 million in fiscal 2008; and
- \$1.8 million in fiscal 2009 and beyond.

Net State Effect

The net effect on general fund expenditures for DPSCS would be as follows:

- fiscal 2007 – a savings of \$45,200 to \$621,200;
- fiscal 2008 – additional costs of \$107,200 to a savings of \$900,800; and
- fiscal 2009 (and beyond) – a savings of \$46,400 to \$1,342,400.

Local Fiscal Effect: This bill would increase the allowed good time deduction of five days a month to 10 days per month from a presentence or postsentence confinement term in a local correctional facility. 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. Such an impact cannot be reliably predicted at this time, though the savings to a local correctional facility, depending on average daily populations, could be significant.

Additional Comments: DLS notes that the Governor's fiscal 2006 budget allowance cuts 23 full-time field operator positions from the operating budget of the Division of Parole and Probation. All 23 positions are vacant.

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

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