

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

House Bill 621
Judiciary

(Delegate McDonough, *et al.*)

Truth in Sentencing Act

This bill prohibits the earning of diminution credits by inmates confined in State or local correctional facilities if their term of confinement includes a consecutive or concurrent sentence for first or second degree murder, first or second degree rape, or a second or subsequent commission of a crime of violence.

Fiscal Summary

State Effect: Eventual significant increase in expenditures for additional inmate bed space beginning in FY 2012. Revenues would not be affected.

Local Effect: Minimal. Inmates serving postconviction sentences for the covered crimes would tend to be incarcerated in a State facility. Presentence incarcerations in local detention facilities are not expected to be significantly affected.

Small Business Effect: None.

Analysis

Current Law: First degree murder is a felony and a violator 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 conviction for first degree rape subjects the violator to a maximum imprisonment of life without the possibility of parole. Second degree rape subjects a violator to a maximum term of 20 years.

For a conviction for a second time of a crime of violence committed on or after October 1, 1994, a person must be sentenced to a mandatory minimum, nonsuspendable term of 10 years, if the person has been convicted on a prior occasion of a crime of violence, including a conviction for a crime committed before October 1, 1994, and served a correctional facility confinement term for that conviction.

For a third conviction, a person must be sentenced to a mandatory minimum term of 25 years, if the person has been convicted on two separate occasions of a crime of violence, in which the second or succeeding crime is committed after there has been a charging document filed for the preceding occasion and for which the convictions do not arise from a single incident, and has served at least one term of confinement in a correctional facility as a result of a conviction of a crime of violence.

For a fourth conviction, a person who has served three separate terms of confinement in a correctional facility as a result of three separate convictions of any crime of violence must be sentenced to life imprisonment without the possibility of parole.

A person sentenced under these provisions may petition for and be granted parole if the person is at least 65 years old and has served at least 15 years of the sentence imposed.

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.

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 10 days per calendar month. 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.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or DOC. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2007 are estimated to range from \$17 to \$65 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

A violent crime means abduction, arson, burglary, continuing course of conduct with a child, kidnapping, manslaughter (except involuntary manslaughter), mayhem, maiming, murder, rape, robbery, carjacking, armed carjacking, sexual offense in the first and second degrees, sexual abuse of a minor (under certain circumstances), the use of a handgun in a felony or violent crime, child abuse in the first degree, the attempt to commit any of the aforementioned offenses, and specified assault offenses.

Chapter 4 of the 2006 special session requires, when the victim is under age 13, a mandatory minimum, a nonsuspendable 25-year sentence for a person at least age 18 convicted of first degree rape or first degree sexual offense. A similar five-year minimum sentence is required under the same circumstances for second degree rape or second degree sexual offense. Chapter 494 of 2007 made such a sentence for either of those crimes ineligible for parole consideration. The State is required to provide at least 30 days notice when seeking such a mandatory minimum sentence for any of these offenses. The mandatory minimum sentence may not apply if the State fails to do so.

The Maryland Parole Commission has the exclusive power to authorize the parole of an inmate in DOC. The Board of Review of the Patuxent Institution has the exclusive power to recommend an inmate for parole to the Secretary of Public Safety and Correctional Services or the Governor.

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.

Parole eligibility for persons incarcerated for commission of a violent crime is as follows:

- An inmate who has been sentenced to DOC after being convicted of a violent crime committed on or after October 1, 1994 is not eligible for parole until the inmate has served the greater of one-half of the inmate's aggregate sentence for violent crimes, or one-fourth of the inmate's total aggregate sentence.
- An inmate who has been sentenced to DOC after being convicted of a violent crime committed on or after October 1, 1994 and who has been sentenced to more than one term of imprisonment, including a term during which the inmate is eligible for parole and a term during which the inmate is not eligible for parole, is not eligible for parole until the inmate has served the greater of one-half of the inmate's aggregate sentence for violent crimes; one-fourth of the inmate's total aggregate sentence; or a period equal to the term during which the inmate is not eligible for parole.
- An inmate who is serving a term of imprisonment for a violent crime committed on or after October 1, 1994 must receive an administrative review of the inmate's progress in the correctional facility after the inmate has served the greater of one-fourth of the inmate's aggregate sentence; or if the inmate is serving a term of imprisonment that includes a mandatory term during which the inmate is not eligible for parole, a period equal to the term during which the inmate is not eligible for parole.

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. An inmate sentenced to life imprisonment without the possibility of parole is not eligible for parole consideration and may not be granted parole at any time during the inmate's sentence. This does not restrict the authority of the Governor to pardon or remit any part of a sentence. If eligible for parole, an inmate serving a life term may only be paroled with the approval of the Governor.

State Expenditures: DOC estimates that persons serving terms for the covered offenses now tend to serve about 65% of their terms, largely due to mandatory releases as a result of diminution credits earned. For instance, there was an intake of 401 persons in fiscal

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2007 for the crimes of first and second degree murder, and first and second degree rape – all are violent crimes. Their average sentence was about 273 months. At 65% of sentence, these inmates are each expected to serve about 177 months.

Another 1,363 persons were incarcerated in State facilities in fiscal 2007 for other identified violent crimes. Although it is unknown how many of that intake involved a second or subsequent violent offense, it is estimated that 265 cases likely did. The average sentence for this subgroup was about 154 months. At 65% of sentence, these inmates are each expected to serve about 100 months.

The bill is expected to increase the average percentage of term served from 65% to between 85-95%. This is due to releases that would still occur due to death, parole (including medical parole), court-ordered releases (including sentence review and new trials). This could increase the time served for these inmates by between 31 months and 82 months. This translates to a need for additional beds that would begin to be felt as early as fiscal 2012.

Accordingly, general fund expenditures could increase significantly as a result of the bill's provisions due to people serving a term in DOC facilities for longer periods of time and increased payments to counties for reimbursement of inmate costs. This bill could increase the average daily population in DOC facilities to the extent that additional beds, personnel, infrastructure improvements, or a new prison facility would be necessary. Based on a cost of approximately \$155,000 per bed, the cost of building a new medium security 1,300-bed prison facility is currently estimated at \$202 million. Actual costs would depend on the design, location, and existing infrastructure.

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 \$2,600 per month. Excluding overhead, the average cost of housing a new DOC inmate (including medical care and variable costs) is \$526 per month. Excluding medical care, the average variable costs total \$148 per month.

For illustrative purposes, under the bill's elimination of diminution credits for some offenders, the actual time served would increase by between 31 and 82 months per person. Assuming the variable inmate costs of \$148 per month, State costs could increase by between \$4,588 and \$12,136, over time, for each person imprisoned under the bill. If, at intake each year, the bill affects the terms of 401 inmates for the cited crimes and an additional 265 inmates for other violent crimes (when there was a prior violent offense), the cost of time served for an estimated 666 new inmates each year would increase by between \$3.06 and \$8.08 million. It would begin to be felt in fiscal 2012 and increase significantly annually thereafter.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or DOC. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2009 are estimated to range from \$19 to \$71 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Montgomery County, Prince George's County, Garrett County, Anne Arundel County, Department of Public Safety and Correctional Services, Department of Legislative Services

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