

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE
Revised

House Bill 34
Judiciary

(Delegate Minnick)

**Violent Crimes and Sexual Offenses - Diminution Credits and Mandatory
Minimum Sentencing**

This bill provides that a Division of Correction (DOC) inmate incarcerated for committing a violent crime is not entitled to any diminution of term credits. An inmate sentenced to a term of imprisonment in a local correctional facility for committing a violent crime is similarly prohibited from entitlement to diminution credits.

The bill also increases, from 25 to 30 years, the mandatory minimum sentence for the crimes of first degree rape and first degree sexual offense when the violator was at least age 18 and the victim of either offense was a child under age 13.

Fiscal Summary

State Effect: The bill's limitations on diminution earning abilities for an inmate sentenced for a violent crime after October 1, 2008 would significantly increase State correctional costs within the next 10 years. Increasing the mandatory minimum sentence for the specified offense would increase State correctional costs by \$8,900 per conviction, but would not begin to be felt until fiscal 2034.

Local Effect: Minimal. The bill's limitations on diminution earning abilities for a limited number of inmates after October 1, 2008 is not expected to significantly increase local correctional costs.

Small Business Effect: None.

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.

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 5 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. Chapter 494 of 2007 made such a sentence for either of those crimes ineligible for parole consideration. A similar five-year minimum sentence is required under the same circumstances for second degree rape or second degree sexual offense. 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.

State Expenditures: According to DOC, about 1,700 persons are admitted to State correctional facilities each year as a result of a conviction for a violent crime. Their average sentence is about 138 months, and they currently tend to serve about 62% of that sentence, or about 86 months, before release on mandatory supervision as a result of diminution credits earned. Under the bill, those persons, beginning in fiscal 2009, would have to be incarcerated in a DOC facility for an additional 52 months. Over time, or in about 10 years, annual growth of these effects would stabilize for this population and the additional bed space needs for DOC would maximize at least 4,400.

Accordingly, general fund expenditures could increase significantly as a result of the bill's limitation on diminution credit earnings of 1,700 persons being committed to DOC facilities for violent crimes and, without a parole or court ordered release, generally serving 100% of their sentence. This provision would also necessitate increased payments to counties for reimbursement of inmate costs. The bill could increase the average daily population in DOC facilities to the extent that additional beds, personnel, infrastructure improvements, or a new prison facility will 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. The 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 \$526 per month. Excluding medical care, the average variable costs total \$148 per month. Under the bills increase of the mandatory minimum sentence for the specified sexual offenses, State correctional

costs would also increase by \$8,880 per conviction (60 months x \$148), but would not begin to be felt until fiscal 2034.

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.

Local Expenditures: Expenditures could also increase significantly as a result of the bill's limitation on diminution credit earnings in local facilities. The number of persons sentenced to a local correctional facility for a violent crime is unknown. 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 \$40 to \$129 per inmate in fiscal 2009.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Public Safety and Correctional Services,
Department of Legislative Services

Fiscal Note History: First Reader - January 14, 2008
ncs/jr Revised - Updated Information - January 15, 2008

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