

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

Senate Bill 190 (Senators Brochin and Stone)
Judicial Proceedings

Criminal Law - Repeat Violent Offenders - Sentencing

This bill specifies that an inmate who has been convicted of a crime of violence while paroled from a State or local correctional facility for a previous conviction of a crime of violence, must serve the full sentence for both crimes consecutively with no entitlement to diminution credits or eligibility for parole for either sentence. No part of either sentence may be suspended by the court.

The bill also prohibits a person from committing a crime of violence while on probation, parole, or mandatory release (or other reduction of sentence not resulting from an appeal) for a previous conviction for a crime of violence. A violator is subject to a nonsuspendable, nonparolable mandatory minimum sentence of 3 years and a maximum sentence of 10 years, which must be consecutive to, and not concurrent with, the sentence for the underlying crime of violence.

Fiscal Summary

State Effect: Potential significant increase in State correctional costs over time, which may eventually lead to the need for additional beds, personnel, or facilities. Revenues are not affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: For purposes of parole eligibility for a violent crime, a crime of violence means:

- abduction;
- first degree arson;
- kidnapping;
- manslaughter, except involuntary manslaughter;
- mayhem;
- maiming;
- murder;
- rape;
- robbery;
- robbery with a dangerous weapon;
- carjacking and armed carjacking;
- first or second degree sexual offense;
- use of a handgun in the commission of a felony;
- first degree child abuse;
- sexual abuse of a minor (under specified circumstances);
- an attempt to commit any of the above crimes;
- continuing course of conduct with a child;
- first degree assault;
- assault with intent to murder, rape, or rob;
- assault with intent to commit first or second degree sexual offense; and
- first, second, or third degree burglary.

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, the deduction in the sentence for good conduct is calculated at 5 days per calendar month, which are awarded in advance. 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. These credits are awarded as they are earned. However, the total deduction may not exceed 20 days per calendar month.

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 release on mandatory supervision.

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.

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 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. A person sentenced for a violent crime 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.

State Fiscal Effect: Using data provided by the Division of Parole and Probation, the number of individuals under supervision for violent offenses who were arrested for a new violent offense in fiscal 2008 was as follows:

Parolees	9
Mandatory Supervision Releases	88
Probationers	<u>94</u>
Total	191

The conviction rate for these arrests is unknown. For parole and mandatory release cases, these offenders will be required to serve all of the combined sentences, instead of about 70% of term now being served on average. For these same cases, the total imprisonment term yet to be served for the first crime of violence at the time of release violation was 171.9 months for parole cases and 160.3 months for mandatory release cases. Probationers did not receive a sentence for imprisonment.

It is estimated that, under the bill, if convicted of the new offense, affected parolees will serve an additional 73.7 months (6.1 years); affected mandatory release persons will serve an additional 68.7 months (5.7 years); and affected probationers will serve at least 36 months (3 years).

This calculation assumes that the parolees and the mandatory release persons are subject to the bill's consecutive sentencing provisions for both offenses, as well as the additional mandatory minimum sentence of 3 years, with the possibility of a total of 10 years being added. Probationers are also subject to the mandatory minimum sentence of 3 years, with the possibility of a total of 10 years being added.

In any event, general fund expenditures increase as a result of the bill's changes due to more people being committed to DOC facilities for longer periods of time. Assuming a conviction rate of between 60% and 100% for the new crime of violence for all three categories of supervised persons, the bill creates an eventual need (over the course of the additional time served by each affected offender) for additional beds. At a conviction rate of 60%, the bed space need is estimated at 505 beds over time for additional intakes resulting from the bill. A conviction rate of 100% for these same 191 persons increases that estimate to 841 beds.

In addition, because each additional year's intake is also similarly affected, the cumulative effect on correctional costs over time is likely to be significant. Accordingly, this bill may, over time, increase the average daily population in DOC facilities to the extent that additional personnel, infrastructure improvements, or a new prison facility are 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 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 variable medical care and variable operating costs) is \$342 per month. Excluding all medical care, the average variable costs total \$164 per month.

Because the bill eliminates the possibility of probation for the later violent offense, some of the bill's impact occurs as early as fiscal 2010. However, because the bill largely impacts offenders who likely are already subject to a lengthy term of imprisonment for the later violation, the bill's cumulative and significant impacts are not immediate.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Commission on Criminal Sentencing Policy, Judiciary (Administrative Office of the Courts), Office of the Public Defender, Department of Public Safety and Correctional Services, State's Attorneys' Association, Department of Legislative Services

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