

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 575

(Delegate Kramer, *et al.*)

Judiciary

**Correctional Services - Limitation on Total Number of Diminution Credits -
Primary Drug, Violent, and Sexual Offenders**

This bill prohibits a Division of Correction (DOC) inmate from being allowed a total of more than 10 diminution credits per month, rather than 20, if the inmate's term of confinement includes a sentence for a crime of violence, being a volume dealer of controlled dangerous substances (CDS), being a drug kingpin, importing certain quantities of specified CDS, or a conviction for which the inmate is required to register with the State's sexual offender registry.

The bill also repeals the words "consecutive or concurrent" in a provision relating to a reduced diminution credit calculation applicable to an inmate serving a sentence for a crime of violence or certain CDS violations. The change is intended to clarify that the reduced calculation applies to all sentences for those crimes, including consecutive, concurrent, and stand alone sentences.

Fiscal Summary

State Effect: Potential significant additional 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 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, 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 five 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 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.

Crimes of violence include murder, manslaughter, some sexual offenses, robbery, carjacking, kidnapping, assault, and other offenses, as specified in the Criminal Law Article. Maximum imprisonment penalties for some offenses include the possibility of a life sentence.

A volume dealer, as defined by the amount of specified substances, is subject to an enhanced penalty of a maximum fine of \$100,000 and a mandatory minimum nonsuspendable, nonparolable sentence of five years.

A drug kingpin who conspires to manufacture, distribute, dispense, transport in, or bring into the State a controlled dangerous substance in specified amounts is subject to a mandatory minimum nonsuspendable, nonparolable sentence of 20 years and maximum imprisonment for 40 years and/or a maximum fine of \$1 million.

An importer of certain controlled dangerous substances in specified large amounts is subject to 25 years imprisonment and/or a \$50,000 fine. Unless authorized by law to possess the marijuana, a person may not bring into the State more than 5 kilograms but less than 45 kilograms of marijuana. A violator of this importer prohibition is subject to maximum penalties of 10 years imprisonment and/or a \$10,000 fine.

Generally, a person convicted of a sex crime or other specified crime in Maryland, including kidnapping and false imprisonment, is required to register with the State sex offender registry upon release from prison or release from court if the person did not receive a prison sentence. Offenders who are required to register in other states and who come to Maryland are required to register upon entering Maryland. Offenders from other states who may not be required to register in the home state are required to register in Maryland if the crime would have required registration in Maryland if committed in Maryland. Juveniles who are adjudicated as adults and convicted for crimes that require registration are included in the registry. Juveniles who are adjudicated delinquent for these crimes through the juvenile court system are not included in the registry.

Maryland has four categories of persons convicted of sexual offenses: (1) a child sexual offender; (2) an offender; (3) a sexually violent offender; and (4) a sexually violent predator.

“Offender” means a person who is ordered by a court to register and who:

- has been convicted of child kidnapping;
- kidnapping;
- fourth degree sexual offense, if the victim is under 18;
- false imprisonment, if the victim is under 18 and the person is not the victim’s parent;
- a crime that involves soliciting a person under 18 to engage in sexual conduct;
- production or distribution of child pornography;
- prostitution or related criminal prohibitions if the intended prostitute or victim is under 18;
- any crime that involves conduct that by its nature is a sexual offense against a person under 18;
- an attempt to commit any of these offenses; or
- has been convicted in another state or in a federal, military, or Native American tribal court of a crime that, if committed in Maryland, would constitute one of these crimes.

“Child sexual offender” means a person who:

- has been convicted of sexual abuse of a minor;
- has been convicted of first or second degree rape or first, second, or third degree sexual offense involving a child under age 15;

- has been convicted of fourth degree sexual offense involving such a child and has been ordered by the court to register under these provisions; or
- has been convicted in another state or in a federal, military, or Native American tribal court of a crime that, if committed in this State, would constitute one of these crimes.

“Sexually violent predator” means a person who is convicted of a sexually violent offense and who has been determined to be at risk of committing another sexually violent offense. Also included under this definition are persons who are or were required to register every 90 days for life under the laws of another state or a federal, military, or Native American tribal jurisdiction.

“Sexually violent offender” means a person who has been convicted of a sexually violent offense or who has been convicted of an attempt to commit a sexually violent offense.

“Sexually violent offense” is defined as first or second degree rape; first, second, or third degree sexual offense; attempted rape or sexual offense; or assault with intent to commit first or second degree rape or first or second degree sexual offense as prohibited under Maryland’s criminal code on or before September 30, 1996. Also included under this definition are certain crimes that were committed in another state or in a federal, military, or Native American tribal jurisdiction.

Sexual offenders are required to register, every three or six months, with the Crimes Against Children and Sexual Offender Registry for a term of either 10 years or life depending on the offense. Registration must include a photograph, which must be updated at least annually. The registry is operated by the Sexual Offender Registry unit of the Department of Public Safety and Correctional Services. Under the State’s sexual offender registration laws, a State’s Attorney may request that a sexual offender be designated a sexually violent predator. Lifetime registration is required for sexually violent predators; persons convicted of a sexually violent offense; persons convicted of child abuse for commission of a sexual act involving penetration of a child under age 12; and recidivist sexual offenders.

Background: According to DOC, there are about 1,900 intakes per year who would likely be affected by the bill’s changes. These persons receive an average sentence of about 11 years (132 months).

State Expenditures: General fund expenditures may increase as a result of the bill’s incarceration penalty due to more people being committed to DOC facilities for longer periods of time. The bill reduces by half the potential diminution earnings for about 1,900 new inmates annually.

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.

For illustrative purposes, if each person affected by the bill had to serve an additional one to two years, assuming the variable inmate costs of \$164 per month, State correctional costs could increase by between \$2,000 (12 months x \$164) and \$4,000 (24 months x \$164) for each person imprisoned under the bill. If all 1,900 persons were similarly affected, State correctional costs over the course of their full terms would increase by \$3.7 million and \$7.5 million. Because each of the affected 1,900 persons have sentences of varying lengths, this effect could begin to be felt as early as fiscal 2012.

In addition, because each additional year's intake would also be 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 beds, 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 would depend on the design, location, and existing infrastructure.

Additional Information

Prior Introductions: None.

Cross File: None.

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

Fiscal Note History: First Reader - March 5, 2009
ncs/hlb

Analysis by: Guy G. Cherry

Direct Inquiries to:
(410) 946-5510
(301) 970-5510