

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 1129
Judiciary

(Delegate Rosenberg)

Correctional Services - Diminution Credits - Educational Programs and Work Tasks

This bill decreases the maximum number of good conduct and special projects diminution credit days per month an inmate in a State correctional facility may earn, while increasing the number of monthly credits available to an inmate for work tasks or education. The bill also increases the educational diminution credits a person may earn per month when confined in a local correctional facility.

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. The Department of Labor, Licensing, and Regulation (DLLR) can handle any additional demand for educational classes in Division of Correction (DOC) facilities with existing budgeted resources.

Local Effect: Potential minimal decrease in local correctional costs. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary: For DOC inmates, the bill specifies that good conduct credits may be awarded at a maximum of 7, rather than 10, days per month. In addition, the bill decreases, from 5 to 2, the number of good conduct credit days that may be earned per month by an inmate serving a term for a crime of violence or specified controlled

dangerous substances (CDS) offenses. The bill adds two such CDS offenses to this limitation: (1) a failure to pay restitution for actual costs reasonably incurred in cleaning up or remediating CDS laboratories or facilities; and (2) importing certain substances in specified amounts.

The bill specifies that an inmate must receive a deduction of 30 days from the inmate's term of confinement if the inmate successfully completes an educational program and obtains: (1) a general educational development (GED) diploma; (2) a high school diploma; or (3) an associate's degree or its equivalent. This deduction may not count toward the maximum current law aggregate deduction of 20 days allowed per calendar month.

The bill also increases the number of work task and education credits that may be earned per calendar month, from 5 to 7, and decreases the number of allowable special projects credits per calendar month from 10 to 7.

The bill eliminates a provision whereby DOC may adopt regulations, applicable to each inmate who is employed in public work under diminution credit provisions, that grant an additional good behavior allowance to the inmate conditioned on the inmate's good deportment and compliance with the regulations adopted by DOC for the management and control of inmates employed in public work.

For persons confined in a local correctional facility, the bill specifies that, in addition to any other allowable deductions, an inmate must receive a deduction of 15 days from the inmate's term of confinement if the inmate successfully completes an educational program and obtains: (1) a general educational development (GED) diploma; (2) a high school diploma; or (3) an associate's degree or its equivalent. This deduction may not count toward a newly created maximum aggregate deduction of 15 days allowed per calendar month.

The bill allows a managing official of a local correctional facility to restore revoked diminution credits.

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 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. 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. Approximately 95% of persons committed to prison in Maryland will eventually be released and about 15,000 inmates are released each year. The vast majority of these releases are due to expiration of sentence, including the calculation of diminution credits.

An inmate in a local correctional facility may receive deductions of 5 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. Per day, there are approximately 4,000 inmates serving post-conviction sentences in local correctional facilities and about 8,500 inmates in pretrial confinement.

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.

Good Conduct Credit

Good conduct credit (sometimes referred to as "good time" credit) is awarded in advance to an inmate at intake, subject to the inmate's future good behavior. They are awarded over the period of the term from the date committed to the custody of the commissioner to the date the latest of all sentences would expire. Although the earning rate changed in 1992, good conduct credit is now awarded at the rate of 5 or 10 days per calendar month and determined by statutorily required offense criteria. Good conduct credit is awarded at the rate of five days per month if the sentence is for a crime of violence or distribution of controlled dangerous substances. It is awarded at the rate of 10 days per month for all other sentences.

Good conduct credits are subject to revocation for violation of institutional rules, though they may be later restored at the discretion of DOC. Upon revocation of a mandatory

supervision release, these credits may be rescinded by the Maryland Parole Commission or as required by statute.

Industrial or Educational Credit

Industrial or educational credits are awarded for job and program participation. They are awarded monthly for the previous month's participation and may not be revoked by DOC. However, upon revocation of mandatory supervision release, they may be rescinded by the Parole Commission or as required by statute.

Special Project Credit

There are different types of special project credits:

Job or Program Assignment

These are awarded for specific job and program participation not included under any of other cited credits. By regulation, DOC may award up to 5 such credits per month for qualifying job or program assignments, as designated by the commissioner and approved by the Secretary of Public Safety and Correctional Services. These credits are subject to revocation for violation of institutional rules, though they may be restored at the discretion of DOC. Upon revocation of mandatory supervision release, they may be rescinded by the Parole Commission or as required by statute.

Housing Assignment

By regulation, eligibility for this category of credit is determined by offense criteria. Such credit is subject to revocation for violation of institutional rules. Revoked special project credits may be restored at the discretion of DOC. Upon revocation of mandatory supervision release, credit may be rescinded by the Parole Commission or automatically rescinded by statute, based on the date of the applicable offense.

State Fiscal Effect: Maryland's State standing inmate population is about 26,000 persons. Because good conduct credits are awarded in advance, the bill's reduction of such credits will only impact new intakes after the bill's October 1, 2009 effective date.

DOC has an annual average intake of about 15,000 persons. Of that number, about 10,800 are persons convicted of a new offense. The remainder are persons who have been sent back to prison as a result of a violation of the terms of their parole or other supervised release. Of the 10,800 persons convicted of a new offense, about 5,000 are persons who have been sent to a State facility for 18 months or less.

DOC estimates that, because not all inmate sentences currently end up being reduced by the full 10 or 5 days allowed for good conduct, the bill's potential impact is that all inmates would end up serving an additional 2 days per month. The following table shows the net effect of this additional time served:

	Nonviolent or Nondrug	Drug Crimes	Crimes of Violence
Cases	4,200	4,900	1,700
Average Sentence	30.4 months	34.7 months	132.5 months
Estimated DOC Time (% of sentence)	12 months (56%)	14.8 months (57%)	93.1 months (74%)
Additional Time Under HB 1129 (% of sentence)	0.8 months (59%)	1.0 months (60%)	6.1 months (79%)
Additional Beds Needed	294	392	850

Accordingly, the bill's reduction in good conduct credit earning potential is expected to generate the need for an additional 1,536 beds for each year's intake.

This impact will be offset to some degree by increased earning potential for education and work task credits available to the standing population, as well as new intakes. While it is certain that these components of the bill will reduce the bed impact substantially, DOC cannot accurately estimate the educational or work task completion rates for new intakes. In addition, of the 10,800 new inmates each year, over 5,000 have sentences of 18 months or less. These inmates are generally not incarcerated long enough for educational or work task programming to take place. Additionally, another group of admissions already have a GED or high school diploma and would only be eligible for more advance degrees which DOC or DLLR has less resources to provide.

Because all sentence lengths are impacted by this bill, the impact will begin soon after the bill becomes effective, but will take many years to be fully realized at the point when long sentenced inmates begin to serve additional time. In any event, general fund expenditures increase as a result of the bill's changes due to people being committed to DOC facilities for longer periods of time.

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.

Local Fiscal Effect: Because the bill increases educational diminution credit earning potential at local correctional facilities, inmates stays and correctional costs decrease. Such an impact cannot be reliably estimated without any direct experience under the bill. In any case, because the potential increase in credits occurs only for successful completion of a program, with attainment of a GED diploma, high school diploma, or associate's degree, it is assumed that the overall statewide impact will not be significant.

Additional Comments: Chapter 134 of 2008 required the transfer of correctional education from the Maryland State Department of Education to DLLR. The Workforce Creation and Adult Education Transition Council was created to oversee the transition. The council developed a report with 22 recommendations specific to correctional education. The recommendations require significant oversight by the Department of Public Safety and Correctional Services (DPSCS) and close coordination between DPSCS and DLLR to improve service provision.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland State Department of Education; Department of Labor, Licensing, and Regulation; Department of Public Safety and Correctional Services; Department of Legislative Services

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mcp/hlb

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