

Department of Legislative Services
2010 Session

FISCAL AND POLICY NOTE

House Bill 790
Judiciary

(Delegate Kramer, *et al.*)

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: General fund expenditures increase by \$130,000 in FY 2011 for the Office of the Public Defender (OPD). Future years reflect annualization and inflation. 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.

(in dollars)	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	130,000	176,200	184,600	193,400	202,700
Net Effect	(\$130,000)	(\$176,200)	(\$184,600)	(\$193,400)	(\$202,700)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

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 and 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 and 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.

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 increase by \$130,000 for the Office of the Public Defender in fiscal 2011, which accounts for the bill's October 1, 2010 effective date. This estimate reflects the cost of hiring two assistant public defenders to handle an expected increased trial caseload for anticipated 3,700 hours of additional attorney time for the affected accused persons. It includes salaries, fringe benefits, and minimal supplies.

Salaries and Fringe Benefits	\$129,683
Supplies	<u>315</u>
Total FY 2011 State Expenditures	\$129,998

Future year expenditures reflect full salaries with 4.4% annual increases and 3% employee turnover; and 1% annual increases in ongoing operating supplies.

General fund expenditures may also 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 \$2,750 per month. Excluding overhead, the average cost of housing a new DOC inmate (including variable medical care and variable operating costs) is \$371 per month. Excluding all medical care, the average variable costs total \$182 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 \$182 per month, State correctional costs could increase by between \$2,200 (12 months x \$182) and \$4,400 (24 months x \$182) 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 \$4.2 million and \$8.4 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 2013.

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: HB 575 of 2009 received a hearing in the House Judiciary Committee and had no further action taken on it.

Cross File: SB 890 (Senator King) - Rules.

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

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