

Department of Legislative Services
 Maryland General Assembly
 2010 Session

FISCAL AND POLICY NOTE

House Bill 253 (Delegates Schuh and Smigiel)
 Judiciary

**Correctional Services - Diminution Credits - Inmate Serving Sentence for Rape of
 Minor or First- or Second-Degree Sexual Offense Against Minor**

This bill prohibits the earning of diminution credits to reduce the term of confinement of an inmate who is serving a sentence in a State or local correctional facility for committing rape or first or second degree sexual offense against a minor.

Fiscal Summary

State Effect: General fund expenditures increase by \$130,000 in FY 2011. Future years reflect annualization and inflation. The bill is not expected to significantly increase State correctional costs.

(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: The bill's limitations on diminution earning abilities for a limited number of inmates after October 1, 2010, is not expected to significantly increase local correctional costs. Any potential increase in costs will vary by jurisdiction year to year.

Small Business Effect: None.

Analysis

Current Law: A conviction for first degree rape or first degree sexual offense carries a maximum penalty of life imprisonment. A conviction for child kidnapping along with

first degree rape or first degree sexual offense, where the victim is a child under age 16, carries a maximum penalty of life imprisonment without the possibility of parole. A person who commits first degree rape or first degree sexual offense with a previous conviction for first degree rape or first degree sexual offense is also subject to life imprisonment without the possibility of parole. A person convicted of second degree rape or second degree sexual offense is subject to a maximum imprisonment of 20 years.

When the victim is under age 13, a person convicted of first degree rape or first degree sexual offense is subject to a mandatory minimum, nonsuspendable and nonparolable 25-year sentence if the violator is at least 18 years old. A similar five-year minimum sentence is required under the same circumstances for second degree rape or second degree sexual offense.

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.

State Expenditures: General fund expenditures increase by \$130,000 for the Office of the Public Defender (OPD) 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 (APDs) to handle an expected increased trial caseload for an anticipated 3,700 hours of additional attorney time for the affected accused sex offenders. It includes salaries, fringe benefits, and minimal supplies. The information and assumptions used in calculating the estimate are stated below:

- 185 affected cases (10% of the 1,850 annual sex offender caseload);
- 20 hours of trial preparation per case; and

- each APD works 212 days, or 1,378 hours, per year.

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.

Potential Minimal Increase in Corrections and Parole Hearings Costs

General fund expenditures could also increase minimally as a result of the bill's limitation on diminution credit earnings by a limited number of inmates due to people staying in a DOC facility for longer periods of time and increased payments to counties for reimbursement of inmate costs.

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. This 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 variable medical care and variable operating costs) is \$371 per month. Excluding all medical care, the average variable costs total \$182 per month.

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. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A \$45 per diem grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the Division of Correction but are confined in a local facility. The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

This bill could also minimally increase the demand for parole hearings at local correctional facilities and the supervision caseload of the Division of Parole and Probation. Additional parole hearings across the State would minimally increase travel

costs for the Parole Board. Any potential increase in caseloads for the Division of Parole and Probation is also assumed to be minimal.

Local Expenditures: Expenditures may increase minimally as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. A \$45 per diem State grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the Division of Correction but are confined in a local facility. Per diem operating costs of local detention facilities are expected to range from \$57 to \$157 per inmate in fiscal 2011.

Howard County reports that five inmates in the county detention center's fiscal 2009 standing population would not have received diminution credits totaling 585 bed days. At a per diem cost of \$98.70 per day, including overhead, the county estimates additional costs under the bill of about \$57,700, annually. However, Legislative Services advises that variable inmate costs, without overhead, would make actual additional annual inmate costs in Howard County resulting from the bill much lower.

Caroline County estimates that the terms of one to three inmates could be affected annually. Montgomery and Prince George's counties report that this bill would not have an impact on local correctional operations or costs.

Additional Information

Prior Introductions: None.

Cross File: SB 395 (Senator Brochin, *et al.*) - Judicial Proceedings.

Information Source(s): Caroline, Howard, Montgomery, and Prince George's counties; Baltimore City; 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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