

Department of Legislative Services
2010 Session

FISCAL AND POLICY NOTE

House Bill 864
Judiciary

(Delegate McDonough)

Jessica's Law Part II - Truth in Sentencing

This bill prohibits the earning of diminution credits by a person serving a sentence in a State or local correctional facility for first or second degree rape, or first or second degree sexual offence, if the person was at least age 18 at the time of the offense and the victim was under age 13.

Fiscal Summary

State Effect: Minimal. The bill's limitations on diminution earning abilities for a limited number of inmates after October 1, 2010, is not expected to measurably increase State correctional costs.

Local Effect: Minimal. The bill's limitations on diminution earning abilities for a limited number of inmates after October 1, 2010, is not expected to measurably increase local correctional costs.

Small Business Effect: None.

Analysis

Current Law: When the victim is under age 13, a mandatory minimum, nonsuspendable and nonparolable 25-year sentence is required for a person at least 18 years old convicted of first degree rape or first degree sexual offense. A similar 5-year minimum sentence is required under the same circumstances for second degree rape or second degree sexual offense. The State is required to provide at least 30 days notice when seeking such a mandatory minimum sentence for any of these offenses. The mandatory minimum sentence may not apply if the State fails to do so.

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.

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 release on mandatory supervision.

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.

Background: Currently, approximately 27,000 persons are serving a prison sentence in State correctional facilities. DOC does not track intake or standing population data to reflect the age of the victim. The number of offenders convicted under the circumstances covered by the bill is believed to be few and is expected to remain that way. According to the State Commission on Criminal Sentencing Policy, in fiscal 2007 and 2008, there were no convictions in the circuit courts statewide for any of the bill's covered offenses.

Local Fiscal Effect: Although Baltimore and Somerset counties report that this bill could theoretically increase incarceration costs, Legislative Services advises that, with no convictions for the covered offenses in recent years, the realization of such additional costs in any jurisdiction is not likely.

Additional Information

Prior Introductions: HB 695 of 2009 and HB 619 of 2008 each received an unfavorable report from the House Judiciary Committee.

Cross File: None.

Information Source(s): Baltimore, Charles, Frederick, and Somerset counties; Department of Public Safety and Correctional Services; Department of Legislative Services

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