

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE
Revised

House Bill 289

(Delegate Smigiel, *et al.*)

Judiciary

Judicial Proceedings

Correctional Services - Child Sexual Offenders - Diminution Credits

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 first or second degree rape or first or second degree sexual offense against a victim under 16 years of age.

Fiscal Summary

State Effect: Minimal. The bill's limitations on diminution credit 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: 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 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 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 Fiscal Effect: General fund expenditures could 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 DOC 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.

Additional Information

Prior Introductions: None.

Cross File: SB 620 (Senator Jacobs) - Judicial Proceedings.

Information Source(s): 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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