

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 1229
Judiciary

(Delegate Beidle, *et al.*)

Truth in Sentencing - Criminal Gangs and Gun Crimes

This bill prohibits the earning of diminution credits by an inmate who is serving a sentence for participation in criminal gang activity if the inmate's term includes a consecutive or concurrent sentence for (1) wearing, carrying, or transporting a handgun; (2) use of a handgun or antique firearm in the commission of a crime; (3) violating provisions relating to assault pistols; (4) use of a machine gun in the commission of a crime of violence; (5) use of a machine gun for an aggressive purpose; (6) use of a weapon as a separate crime; (7) illegal possession of a regulated firearm; or (8) transporting a regulated firearm for an unlawful sale or trafficking.

Fiscal Summary

State Effect: Because of the limited number of offenders believed to be affected, the bill's provisions can be handled with existing budgeted resources of the Division of Correction (DOC).

Local Effect: None. The bill does not address diminution credits in local correctional facilities.

Small Business Effect: None.

Analysis

Current Law: 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 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.

The covered offenses include misdemeanors and felonies with penalties ranging from a minimum imprisonment for 90 days to a maximum imprisonment for 20 years. Under certain circumstances, the offense may also subject the violator to a 5-year mandatory minimum nonparolable, nonsuspendable sentence. Some offenses may also be subject to fines of up to \$25,000.

“Criminal gang” is defined as a group or ongoing association of three or more persons whose members:

- individually or collectively engage in a pattern of criminal gang activity;
- have as one of their primary objectives or activities the commission of one or more underlying crimes; and
- have in common an identifying sign, symbol, name, leader, or purpose.

An underlying crime includes all “crimes of violence” as defined in State law and felony violations of specified crimes.

A person is prohibited from (1) participating in a criminal gang knowing that the members of the gang engage in an ongoing pattern of criminal gang activity; or (2) knowingly and willfully directing or participating in the commission of an underlying crime (or act by a juvenile that would be an underlying crime if committed by an adult) committed for the benefit of, at the direction of, or in association with a criminal gang. A violator is guilty of a felony and subject to maximum penalties of 10 years imprisonment or 20 years if death to a victim occurs, and/or a \$100,000 fine. A sentence imposed under this section may run consecutive to or concurrently with a sentence for any underlying crime that was used to establish participation in criminal gang activity. A person may be charged with a violation of this section only by indictment, criminal information, or petition alleging a delinquent act.

Background: According to the Maryland Sentencing Guidelines Database, in fiscal 2009, there was one conviction in the State's circuit courts for participation as a member of a criminal gang in the commission of a crime resulting in the death of a victim. There were four convictions for gang participation in the commission of a crime that did not result in the death of a victim. The number of these convictions that also included a sentence for one of the covered gun offenses is unknown.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Kent and Montgomery counties, Baltimore City, Commission on Criminal Sentencing Policy, Judiciary (Administrative Office of the Courts), State's Attorneys' Association, Department of Legislative Services

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