

**Department of Legislative Services**  
Maryland General Assembly  
2010 Session

**FISCAL AND POLICY NOTE**

Senate Bill 909 (Senator Stone)

Judicial Proceedings

**Correctional Services - Repeat Violent Offenders - Diminution Credits and Parole Eligibility**

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 correctional facility for a conviction of a second or subsequent crime of violence. The bill also prohibits the granting of parole to an inmate who is serving a sentence in a State or local correctional facility for a conviction for a second or subsequent crime of violence committed on or after October 1, 2010. The parole ineligibility provision does not restrict the authority of the Governor to pardon or remit any part of a sentence.

**Fiscal Summary**

**State Effect:** General fund expenditures increase by \$391,100 in FY 2011 for the Office of the Public Defender. 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	391,100	530,000	555,300	581,900	609,800
Net Effect	(\$391,100)	(\$530,000)	(\$555,300)	(\$581,900)	(\$609,800)

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

**Local Effect:** Minimal

**Small Business Effect:** None.

## Analysis

**Current Law:** 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 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.

The Maryland Parole Commission has the exclusive power to authorize the parole of an inmate in DOC. The Board of Review of the Patuxent Institution has the exclusive power to recommend an inmate for parole to the Secretary of Public Safety and Correctional Services or the Governor.

A person sentenced to a term of incarceration of six months or more is entitled to a parole hearing after having served one-fourth of the term or consecutive terms. A person sentenced to more than one term, including a term during which the person is eligible for parole and a term during which the person is not eligible for parole, cannot be considered for parole unless the person has served the greater of one-fourth of the aggregate term or a period equal to the term during which the inmate is not eligible for parole.

Parole eligibility for persons incarcerated for commission of a violent crime is as follows:

- An inmate who has been sentenced to DOC after being convicted of a violent crime committed on or after October 1, 1994, is not eligible for parole until the inmate has served the greater of one-half of the inmate's aggregate sentence for violent crimes, or one-fourth of the inmate's total aggregate sentence.
- An inmate who has been sentenced to DOC after being convicted of a violent crime committed on or after October 1, 1994, and who has been sentenced to more

than one term of imprisonment, including a term during which the inmate is eligible for parole and a term during which the inmate is not eligible for parole, is not eligible for parole until the inmate has served the greater of one-half of the inmate's aggregate sentence for violent crimes; one-fourth of the inmate's total aggregate sentence; or a period equal to the term during which the inmate is not eligible for parole.

- An inmate who is serving a term of imprisonment for a violent crime committed on or after October 1, 1994, must receive an administrative review of the inmate's progress in the correctional facility after the inmate has served the greater of one-fourth of the inmate's aggregate sentence; or if the inmate is serving a term of imprisonment that includes a mandatory term during which the inmate is not eligible for parole, a period equal to the term during which the inmate is not eligible for parole.

A person sentenced to life imprisonment is not eligible for parole consideration until that person has served 15 years. A person sentenced to life imprisonment for first degree murder is not eligible for parole consideration until that person has served 25 years. An inmate sentenced to life imprisonment without the possibility of parole is not eligible for parole consideration and may not be granted parole at any time during the inmate's sentence. This does not restrict the authority of the Governor to pardon or remit any part of a sentence. If eligible for parole, an inmate serving a life term may only be paroled with the approval of the Governor.

A person sentenced for a violent crime may petition for and be granted parole if the person is at least 65 years old and has served at least 15 years of the sentence imposed.

A circuit court judge is required to state in open court, at the time of imposition of sentence for a violent crime (including burglary), the minimum time that must be served for parole eligibility.

For purposes of parole eligibility for a violent crime, the term "crime of violence" means:

- abduction;
- first degree arson;
- kidnapping;
- manslaughter, except involuntary manslaughter;
- mayhem;
- maiming;
- murder;
- rape;

- robbery;
- robbery with a dangerous weapon;
- carjacking and armed carjacking;
- first or second degree sexual offense;
- use of a handgun in the commission of a felony;
- first degree child abuse;
- sexual abuse of a minor (under specified circumstances);
- an attempt to commit any of the above crimes;
- continuing course of conduct with a child;
- first degree assault;
- assault with intent to murder, rape, or rob;
- assault with intent to commit first or second degree sexual offense; and
- first, second, or third degree burglary.

**Background:** In fiscal 2009, DOC had an intake of 1,678 violent offenders, of whom 70 were sentenced to a term of life imprisonment and the remaining 1,608 were sentenced to an average term of about 139 months (11.6 years). While DOC and the State's Commission on Criminal Sentencing Policy do not know how many of these offenders may have had a prior conviction for a crime of violence, it is assumed that a significant percentage may have had a prior conviction.

**State Fiscal Effect:** Under the bill, all inmates sentenced for a second or subsequent crime of violence committed after October 1, 2010, are required to serve their sentence without the ability for an early release from diminution credit earnings or parole. According to existing DOC data, persons sentenced for these crimes currently serve between 70% and 77% of their term. However, because the number of intakes each year who may have had a conviction at any time in the past for a crime of violence, the fiscal impact of this bill is difficult to measure or quantify.

In any case, the affected intake each year, beginning in fiscal 2011, will serve 100% rather than 75% of their term. This would mean that those intakes, each year, would serve additional incarceration time of about 34.8 months (2.9 years) – the full 139 months, rather than 104.3 months (75%). *For illustration purposes only*, if 500 of the affected inmate intake per year are subject to the bill's requirements, this would create an additional bed space need for DOC of 1,450 over time. This estimate is based on a calculation of the number of affected inmates times the additional incarceration time to be served.

In addition, because each additional year's intake is also 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 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 depend on the design, location, and existing infrastructure.

However, despite the overall typical high sentence lengths for this group of inmates, about 350 inmates with crimes of violence offenses are sentenced each year to sentences of three years or less. This will cause some impact from this legislation to begin in the near term, perhaps within two years.

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.

General fund expenditures also increase by \$391,125 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 six assistant public defenders (APDs) to handle an expected increased trial caseload for an anticipated 8,860 hours of additional attorney time for the affected violent offenders. It includes salaries, fringe benefits, and minimal supplies. The information and assumptions used in calculating the estimate are stated below:

- 443 affected cases (10% of the 4,430 annual violent felonies caseload);
- 20 hours of trial preparation per case; and
- each APD works 212 days, or 1,378 hours, per year.

Salaries and Fringe Benefits	\$389,048
Supplies	<u>2,077</u>
<b>Total Fiscal 2011 State Expenditures</b>	<b>\$391,125</b>

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

The bill also minimally decreases the demand for parole hearings and the parolee supervision caseload of the Division of Parole and Probation.

**Local Fiscal Effect:** For local correctional facilities, because the vast majority of violent offenders are sentenced to a State correctional facility, it is assumed any potential impact from this bill will be minimal.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Commission on Criminal Sentencing Policy, Judiciary (Administrative Office of the Courts), Montgomery County, Office of the Public Defender, Department of Public Safety and Correctional Services, State's Attorneys' Association, Department of Legislative Services

**Fiscal Note History:** First Reader - March 23, 2010  
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