

Department of Legislative Services
 Maryland General Assembly
 2011 Session

FISCAL AND POLICY NOTE

House Bill 1248
 Judiciary

(Delegate Bates, *et al.*)

Parole and Probation - Earned Compliance Credits

This bill requires the Division of Parole and Probation (DPP) to record “earned compliance credits” of a supervised individual and recommend to the Maryland Parole Commission or the court that the individual be placed in a nonactive supervision status for the time period awarded with earned compliance credits. The Maryland Parole Commission or the court may adjust the period of a supervised individual’s supervision on the recommendation of DPP for earned compliance credits.

DPP must adopt regulations for the forfeiture of earned compliance credits for supervised individuals who violate conditions of supervision. The bill enumerates the credit forfeiture issues that must be addressed by the regulations.

Fiscal Summary

State Effect: General fund expenditures increase by \$1.2 million in FY 2012. Future years reflect annualization and inflation. This estimate does not include potential savings in monthly supervision costs, or decreased revenue from monthly supervision fees, due to earlier releases from supervision which cannot be reliably estimated at this time.

(in dollars)	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	1,219,600	1,663,000	1,753,000	1,848,400	1,949,500
Net Effect	(\$1,219,600)	(\$1,663,000)	(\$1,753,000)	(\$1,848,400)	(\$1,949,500)

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

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The bill defines an “earned compliance credit” as a 20-day reduction from the period of active supervision of the supervised individual for every month that a supervised individual:

- fulfills the terms of the supervised individual’s case plan;
- has no new arrests; and
- makes scheduled monthly payments for restitution, fines, and fees.

“Case plan” means an individualized accountability and behavior change strategy for supervised individuals that:

- targets and prioritizes the specific criminal risk factors of the supervised individual;
- matches programs to the supervised individual’s individual characteristics, such as gender, culture, motivational stage, developmental stage, and learning style;
- establishes a timetable for achieving specific behavioral goals, including a schedule for payment of victim restitution, child support, and other financial obligations by the supervised individual; and
- specifies positive and negative actions that will be taken in response to the supervised individual’s behaviors.

Current Law: The Maryland Parole Commission has the exclusive power to authorize the parole of an inmate in the Division of Correction (DOC) or a local correctional facility. An inmate serving a sentence is not eligible for parole until the inmate has served in confinement one-fourth of the inmate’s aggregate sentence. A person serving a sentence for a crime of violence is not entitled to a parole hearing until after having served one-half of the term. Certain persons are not eligible for parole while serving a mandatory minimum sentence.

When an inmate’s total number of diminution credits is equal to the remainder of the sentence, including consideration for any losses of credits, the inmate is eligible for mandatory supervision release. 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.

Inmates granted parole or released on mandatory supervision are supervised by DPP. The standard conditions of supervision are the same for both parolees and persons released on mandatory supervision release. The Maryland Parole Commission has the authority to impose any additional conditions of parole or mandatory supervision. Inmates accused of violating the conditions of their supervision have a hearing conducted by a parole commissioner.

The ability to adjust the period of a parole or probation, which is based upon the sentence handed down by a court, is the exclusive jurisdiction of a court. The courts have the authority to place an individual in nonactive supervision status.

The Maryland Parole Commission has an abatement process under which the active supervision of an offender is ended without effect on the legal expiration date of the case or the offender's obligation to obey all laws, report to DPP as instructed, or obtain DPP's written permission before relocating outside of Maryland. A DPP supervision agent may request abatement or early termination of an offender's supervision if the offender has completed two consecutive years of crime-free behavior and the offender, as applicable:

- has paid in full restitution, 2% collection fee, fine, court costs, and public defender fee;
- is current on payment of supervision fee and drug testing fees, as applicable;
- has fulfilled all special conditions;
- is under intermediate or standard supervision; and
- has incurred neither a behavioral nor an actual positive for a drug test administered during the 30 days prior to the submission of the report requesting abatement or early termination.

An offender is not eligible for abatement or early termination if the offender is: (1) serving a life sentence; (2) a sexual offender; or (3) registered or is required to register as a sexual offender.

Background: There are currently approximately 67,000 probationers, parolees, and mandatory supervisees in Maryland. Although the costs vary by types of supervisees (such as sex offenders), the average monthly cost of supervision by DPP is about \$1,550 per supervisee.

Chapter 444 of 2005 (Budget Reconciliation and Financing Act of 2005) increased the supervision fee charged to probationers to \$40 per month for five years, making the monthly fee consistent for all supervisees. The supervision fees collected are paid into the general fund. Probationers under supervision before 2005, continue to pay the \$25 monthly fee.

State Fiscal Effect: This bill will have a significant fiscal and operational impact upon DPP, which would have to establish a separate unit to implement the bill's requirements.

In order to award the earned compliance credits, supervision agents and monitors will have to confirm on a monthly basis that the offender: (1) is in compliance with the elements of the case plan; (2) incurs no new arrests; and (3) is current on payments toward fines, costs, restitution, and fees. Similarly, agents and monitors will have to confirm noncompliant behavior in order to authorize the forfeiture of earned credits.

To manage the estimated volume of work accurately and timely, DPP indicates that four regional units would be established. These units are modeled after DOC commitment offices whose duties in calculating diminution credits most closely approximate the work of crediting and deducting earned compliance credits. Each of the regional units will have a compliance records manager, a lead compliance records specialist, and six office services clerks. Legislative Services assumes that regulations for the operation of earned compliance credits can be done with the Department of Public Safety and Correction Service's (DPSCS) existing resources.

Accordingly, general fund expenditures increase by \$1.2 million in fiscal 2012, which accounts for the bill's October 1, 2011 effective date. This estimate reflects the cost of hiring 1 program administrator, 4 compliance records managers, 4 lead compliance records specialists, and 24 office services clerks to operate the earned compliance credit program for DPP. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position(s)	33
Salaries and Fringe Benefits	\$1,202,467
Communications	11,963
Other Operating Expenses	<u>5,198</u>
Total FY 2012 State Expenditures	\$1,219,628

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

In addition, DPSCS will have to build a software program onto to the department's offender-based information system to automate the earned compliance credit calculations. This cost is difficult to assess at this time because DPSCS is in the process of developing a new Offender Case Management System (OCMS), which will not come online for DPP until the summer of 2012. According to DPSCS, an automated tracking system for this

bill cannot be incorporated into DPP's current offender-based information system (OBSCIS II). Until the new case management system is available, DPP advises that manually tracking earned compliance credits, including credit forfeitures, may be beyond the division's capabilities.

During 2010, approximately 45,000 supervision cases were closed with a satisfactory status by DPP. However, during that period, about 26,000 cases resulted in warrants and summons being issued for technical and/or new offense violations. Under the bill, these events would require agents and monitors to review the status of an offender's case to determine whether the forfeiture of earned credits is warranted.

The bill provides that the Maryland Parole Commission or the courts may adjust the period of a supervised individual's supervision. Under current law, this authority is held by the courts, but not by the Maryland Parole Commission. However, DPP notes that the Maryland Parole Commission now has the authority to place an individual in nonactive supervision status through an abatement process. For any additional court proceedings under the bill, DPP would have to send a report concerning earned compliance credit status to the sentencing court before an offender's period of supervision could be adjusted. It is assumed that any additional court proceedings resulting from the bill can be handled by the existing budgeted resources of the Judiciary. While victim notification is required for any proceeding to consider sentence modification, it is unclear whether the courts, DPP, or a State's Attorney's Office would be responsible for the notifications.

Any potential savings in supervision costs (at \$1,550 per month) due to earlier releases from supervision stemming from earned compliance credits or reductions in monthly supervision fees for the same reason cannot be reliably predicted without benefit of actual experience under the bill.

Additional Comments: The Budget Reconciliation and Financing Act of 2011 proposes to increase monthly supervision fees for probationers from \$25 to \$50.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore, Montgomery, and St. Mary's counties; Judiciary (Administrative Office of the Courts); Department of Public Safety and Correctional Services; Department of Legislative Services

Fiscal Note History: First Reader - March 21, 2011
ncs/hlb

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