

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 691

(Senator Shank, *et al.*)

Judicial Proceedings

Judiciary

Earned Compliance Credit and Reinvestment Act of 2012

This bill requires the Department of Public Safety and Correctional Services (DPSCS) to establish a program to implement earned compliance credits, which create a reduction in the period of active supervision for a “supervised individual” and to develop policies and procedures for the implementation of the program. The bill’s provisions are applied prospectively only.

The bill takes effect January 1, 2013.

Fiscal Summary

State Effect: The bill’s requirements can mostly be handled with the existing budgeted resources of DPSCS, including the Maryland Parole Commission and the Division of Parole and Probation. However, one-time computer reprogramming costs of about \$50,000 are likely to arise in connection with the development of a new case management system for the agency.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: Under the bill, the term “supervised individual” means an individual placed on probation by a court or serving a period of parole or mandatory release supervision after release from a correctional facility. It does not include a person:

- incarcerated, on probation, or convicted in Maryland for a crime of violence, a sex offense, homicide by motor vehicle or vessel, or a specified drug offense;
- registered or eligible for registration as a sex offender;
- convicted in any other jurisdiction of a crime and the person's supervision was transferred to this State; or
- convicted in Maryland of a crime and the person's supervision was transferred to another state.

The term "earned compliance credit" means a 20-day reduction from the period of active supervision of the supervised individual for every month that a supervised individual:

- exhibits full compliance with the conditions, goals, and treatment as part of probation, parole, or mandatory release supervision, as determined by DPSCS;
- has no new arrests;
- has not violated any conditions of no contact requirements;
- is current on court ordered payments for restitution, fines, and fees relating to the offense for which earned compliance credits are being accrued; and
- is current in completing any community supervision requirements included in the conditions of the supervised individual's probation, parole, or mandatory release supervision.

The term "abatement" means an end to active supervision of a supervised individual without effect on the legal expiration date of the case or the supervised individual's obligation to obey all laws, report as instructed, and obtain written permission from the Division of Parole and Probation (DPP) before relocating residence outside the state.

DPSCS is required to establish the program to implement earned compliance credits and adopt policies and procedures to implement the program. 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 accrued under the program.

A supervised individual whose period of active supervision has been completely reduced as a result of earned compliance credits must remain on "abatement" until the expiration of the individual's sentence, unless consenting to continued active supervision or unless violating a condition of probation, parole, or mandatory release supervision including failure to pay a required payment of restitution. If a supervised individual violates a condition of probation while on abatement, a court may order the person to be returned to active supervision.

Twenty-five percent of the savings realized by DPSCS as a result of the application of earned compliance credits must revert to the department. Any remaining savings are required to revert to the general fund.

The bill's provisions may not be construed to limit the authority of a court or the Parole Commission to extend probation, parole, or mandatory release supervision under existing law.

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: A major reorganization of DPSCS is already underway and expected to be accomplished over the course of the next 6 to 12 months. The department announced the reorganization at the end of calendar 2011. The reorganization is expected to be completed by the end of September 2012.

The focus of the reorganization is on successful offender re-entry and lower recidivism, achieved by eliminating the Division of Correction, the Division of Pretrial Detention and Services, and the Division of Parole and Probation. Under the reorganization plan, the functions of these divisions will be integrated into three regions across the State. The North Region will include corrections and community supervision functions in Garrett, Allegany, Washington, Frederick, Carroll, Howard, Montgomery, Harford, and Cecil counties. The Central Region will include corrections, community supervision, and detention functions in Baltimore City and Baltimore County. The Southern Region will include corrections and community supervision functions in Anne Arundel, Prince George's, Calvert, Charles, St. Mary's, Kent, Queen Anne's, Caroline, Talbot, Dorchester, Wicomico, Somerset, and Worcester counties.

According to DPSCS, the current structure yielded rigid and inflexible divisions and redundant efforts between agencies. DPSCS also advises that providing inmates with adequate access and exposure to community providers and parole and probation agents prior to release from prison has been an ongoing problem for years.

Operationally, DPSCS will try to keep offenders within the region from which they originate, unless need dictates they be housed at a facility elsewhere in the State. All female offenders will be located in the Southern Region, as the State only has one female correctional facility. DPSCS believes the structure will integrate all operations across the department, improving the match between offender needs and programmatic resources. The department also suggests that, although job responsibilities for field staff will not

change, these employees will be able to develop a better understanding of and gain exposure to the complete correctional and supervision processes.

There are currently approximately 63,800 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 \$1,600 per supervisee.

DPP does not currently have statutorily mandated caseload levels. However, maintaining manageable caseload ratios remains an important issue for the agency because larger caseloads can limit an agent's ability to detect violations and intervene effectively. Maryland supervises offenders based on risk level, dividing the population into three categories: violence prevention initiative (VPI), sex offenders, and general cases.

The ideal average caseload ratio is 30:1 for VPI, 30-40:1 for sex offenders, and 100:1 for general cases. DPP does well managing VPI and sex offender caseloads; however, the agency has had between 16 and 18 jurisdictions operating every month for the past 15 months with general caseload ratios in excess of the 100:1 target. Further complicating the issue is the significant disparity among jurisdictions in terms of the number of specialized cases and access to services. The result can be blended caseloads and jurisdictions where agents have to provide more services because community resources are not available, which skews what an appropriate caseload size might be. There are currently 339 parole and probation agents statewide assigned to the general caseload.

DPP is currently working with union representatives to discern the appropriate general caseload average. Legislative Services has recommended that DPP submit the findings of a caseload study to the legislative budget committees, along with recommendations for acceptable agent caseload standards. In examining the issue, Legislative Services also recommends that DPP explore acceptable caseload ratios for urban, rural, and suburban jurisdictions, as well as by offender risk level and case type.

A key component of the mission for DPP is to keep Maryland communities safe by providing comprehensive case management and intervention strategies in order to help offenders maintain compliance and successfully transition to living in the community. DPP aims to have at least 31.0% of offenders employed, 46.0% having completed substance abuse treatment, and 77.0% in satisfactory status at the time of case closing. Although DPP was in reach of achieving these goals, the division was ultimately unable to meet all three targets in fiscal 2011. In addition, the agency was unable to meet its target of having 3.1% or less of cases under supervision closed due to revocation for a new offense. Fiscal 2011 saw a notable increase in revocations for all types of cases. Parole revocations increased from 2.0% to 3.1%, the highest percentage of new offense

revocations since prior to fiscal 2002. Probation revocations also spiked in fiscal 2011, from 3.4% to 3.7%. The percent of mandatory supervision release cases revoked for new offenses, reflects the majority of revocations and also increased by more than one percentage point between fiscal 2010 and 2011, from 3.8% to 4.9%.

State Fiscal Effect: During 2011, approximately 45,000 supervision cases were closed with a satisfactory status by DPP. However, during that period, about 26,700 cases resulted in warrants and summons being issued for technical and/or new offense violations.

DPSCS will have to build a software program onto the department's offender-based information system to automate the earned compliance credit calculations. Although this cost is difficult to assess because the new Offender Case Management System (OCMS) will not come online for the department until the summer of 2012, DPSCS estimates these adjustments to OCMS to cost about \$50,000.

Other than these one-time computer costs, DPSCS advises that the bill's requirements can be handled with existing budgeted resources of DPP and the Parole Commission.

The Administrative Office of the Courts and the Maryland District Court are concerned that, under the earned compliance credit program, there will be an increase in caseloads for a court to receive recommendations from DPP to make required adjustments to a supervisee's period of active supervision, and to hear cases relating to violations of abatement. Legislative Services assumes that such an increase in hearings may be offset by fewer hearings associated with violations of supervision in general, since the supervised persons will be under DPP's active supervision for shorter periods of time. Quantifications of such likely prospects cannot be reliably estimated without some direct experience under the bill. In any case, fewer hearings resulting from fewer violations of supervisions would also decrease caseloads for the Office of the Public Defender.

The bill's requirement that 25% of the savings realized by DPSCS as a result of the program revert to the department, and that any remaining savings must revert to the general fund, cannot be reliably estimated and would not occur in the near term. Legislative Services advises that any initial savings would be in the form of reduced caseloads. If at some future time, DPP's overall caseload levels decrease to the extent that fewer agents and/or supervisors are needed, some indeterminate monetary savings would result from the bill. Such an eventuality cannot be reliably predicted or quantified.

Additional Information

Prior Introductions: None.

Cross File: HB 670 (Delegate Hough, *et al.*) - Judiciary.

Information Source(s): Kent, Washington, and Worcester counties; Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Department of Public Safety and Correctional Services; Department of Legislative Services

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