

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 1086
Judiciary

(Delegates Kramer and W. Miller)

Division of Correction - Revocation of Diminution Credits - Telecommunication Devices

This bill requires the Division of Correction (DOC) to revoke all good conduct diminution credits when an inmate in a State correctional facility violates the applicable rules or statutory prohibitions relating to a telecommunication device in a correctional facility. DOC is prohibited from restoring diminution credits revoked under this provision.

Fiscal Summary

State Effect: Potential significant increase in general fund expenditures relating to extended incarcerations for State inmates. Under one set of assumptions, State expenditures could increase by approximately \$200,000 annually. General fund revenues are not affected.

Local Effect: None. The bill affects State inmates only.

Small Business Effect: None.

Analysis

Current Law/Background: A person detained or confined in a place of confinement may not knowingly possess or receive a telecommunication device. A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for three years and/or a fine of \$1,000.

Under DOC rules, a telecommunication device in the possession of an inmate is considered contraband. Under Rule 122, an inmate may not possess a telecommunication device, SIM card, battery charger, carry case, or other device or article identified with a telecommunication device. Approximately, 350 persons were found guilty of violating Rule 122 in fiscal 2011.

A telecommunication device is a device that is able to transmit telephonic, electronic, digital, cellular, or radio communications or a part of a device that is able to transmit telephonic, electronic, digital, cellular, or radio communications, regardless of whether the part itself is able to transmit. A telecommunication device includes a cellular telephone, digital telephone, picture telephone, and modem-equipped device.

Generally, inmates sentenced to the custody of DOC are entitled to earn diminution of confinement credits to reduce the lengths of their incarcerations. The following types of inmates may not earn diminution credits:

- an inmate who is serving a sentence for first or second degree rape or sexual offense against a victim under age 16;
- an inmate who is serving a repeat sentence for third degree sexual offense against a victim under age 16; and
- an inmate, imprisoned for a lifetime sexual offender supervision violation.

In addition, an inmate whose mandatory supervision release has been revoked may not be awarded any new diminution credits on the term of confinement for which the inmate was on mandatory supervision release.

Diminution credits are deducted from an inmate's "term of confinement," which is defined as (1) the length of the sentence, for a single sentence; or (2) the period from the first day of the sentence that begins first through the last day of the sentence that ends last, for concurrent sentences, partially concurrent sentences, consecutive sentences, or a combination of concurrent and consecutive sentences.

Diminution credits are made for good conduct, work tasks, education, and special projects. Good conduct credit is awarded at the rate of five days per month if the inmate's term of confinement includes a sentence for a crime of violence or distribution of controlled dangerous substances. Good conduct credit is awarded at the rate of 10 days per month for all other inmates (except, of course, for those inmates who are statutorily prohibited from earning diminution credits). (For sentences imposed before October 1, 1992, good conduct credits are awarded at a rate of five days per month regardless of offense.)

A person serving a sentence of longer than 18 months is incarcerated in a DOC facility. A person serving a sentence of one year or less in a jurisdiction other than Baltimore City is sentenced to a local detention facility. For a person 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.

Between 15,000 and 16,000 persons are admitted to and released from DOC facilities annually. During fiscal 2010, 3,711 persons were released as a result of expiration of sentence, while 4,495 persons were released as a mandatory supervision release resulting from diminution credits.

State Fiscal Effect: This bill's fiscal and operational impact on DOC is difficult to quantify, but it has a couple of different implications:

- The impact of the loss of good conduct diminution credits for 350 persons annually could have a significant bed needs impact on the division in the short and long term, depending on the number of credits held by the inmate at the time of the violation.
- The extent to which the potential loss of good conduct and special projects credits, without the possibility of restoration, may reduce the number of annual violations cannot be readily quantified.

In any case, 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 \$2,900 per month. Excluding overhead, the average cost of housing a DOC inmate (including variable medical care and variable operating costs) is about \$385 per month. Excluding all medical care, the average variable costs total \$170 per month.

For illustrative purposes, under the bill's requirements, if 350 persons annually were found in violation of telecommunication prohibitions and, at the time of the violation, had an average of 100 good conduct credits, the average time served would increase by 100 days or about 3.3 months per inmate and 35,000 days or about 1,167 months cumulatively. Assuming the variable inmate costs of \$170 per month, State costs could increase by \$561 for each person ($\170×3.3 months) and by approximately \$200,000 cumulatively ($\$170 \times 1,167$ months). Over time, without a significant reduction in annual violations system-wide, this bill would result in significant additional costs for housing DOC inmates.

Additional Information

Prior Introductions: None.

Cross File: Although identified as a cross file, SB 669 is not identical.

Information Source(s): Department of Public Safety and Correctional Services,
Department of Legislative Services

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