

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

Senate Bill 569 (Senator King)
Judicial Proceedings

Correctional Services - Limitation on Total Number of Diminution Credits -
Violent Offenders and Sexual Offenders

This bill reduces, from 20 to 10 days per month, the maximum total number of diminution credits that an inmate is allowed if the inmate's term of confinement includes a sentence for a crime of violence or a crime for which the inmate will be subject to lifetime supervision as a sex offender.

Fiscal Summary

State Effect: General fund expenditures for incarceration costs may significantly increase, over time, due to the bill's limitations on diminution credit earning potential for about 1,400 inmates taken into incarceration each year. Under one set of assumptions, the initial additional incarceration costs could be \$5.8 million. These effects will not begin to be incurred until FY 2021, but grow cumulatively from there.

Local Effect: None. It is assumed that a person incarcerated for any of the bill's covered offenses would be remanded to a State correctional facility, rather than to a local detention facility.

Small Business Effect: None.

Analysis

Current Law/Background: Generally, inmates sentenced to the custody of the Division of Correction (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In addition, an inmate whose mandatory supervision release has been revoked may not be awarded any new diminution credits on the term of confinement for which the inmate was on mandatory supervision release.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 5 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 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.).

Under § 14-101 of the Criminal Law Article, "crime of violence" means (1) abduction; (2) arson in the first degree; (3) kidnapping; (4) manslaughter, except involuntary manslaughter; (5) mayhem; (6) maiming; (7) murder; (8) rape; (9) robbery; (10) carjacking; (11) armed carjacking; (12) sexual offenses in the first and second degrees; (13) use of a handgun in the commission of a felony or other crime of violence; (14) child abuse in the first degree; (15) specified instances of sexual abuse of a minor; (16) an attempt to commit any of the crimes listed above; (17) continuing course of conduct with a child; (18) assault in the first degree; (19) assault with intent to murder; (20) assault with intent to rape; (21) assault with intent to rob; and (22) assault with intent to commit a sexual offense in the first or second degree.

Lifetime supervision of the following sexual offenders is required for a crime committed on or after October 1, 2010:

- a sexually violent predator;
- a person convicted of first or second degree rape, first degree sexual offense, or certain circumstances of second degree sexual offense;

- a person convicted of attempted first or second degree rape, first degree sexual offense, or the same form of second degree sexual offense cited above;
- sexual abuse of a minor if the violation involved penetration of a child younger than the age of 12;
- a person required to register with the person's supervising authority because the person was at least 13 years old but not older than 18 years old at the time of the act; or
- a person convicted more than once arising out of separate incidents of a crime that requires registration.

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.

Currently the average sentence for all inmates serving a term in a DOC facility is 45.3 months, with an average actual stay in confinement of about 30.3 months. This represents an average percentage of time served of 67%. This is due to all early releases that occur due to diminution credits, death, parole (including medical parole), and court-ordered releases (including sentence review and new trials). The Department of Public Safety and Correctional Services estimates that an inmate serving a sentence for a crime of violence or drug distribution will serve, on average, approximately 75% of the inmate's sentence before being released on mandatory supervision, assuming the inmate is not granted parole. An inmate who receives 10 good conduct credits per month will serve, on average, 55% to 60% of his or her sentence before being released on mandatory supervision, assuming no parole.

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: In fiscal 2011, DOC received 1,705 inmates, with an average sentence of 174 months, whose most serious offense was a crime of violence. This does not include inmates who may have been sentenced to any form of life sentence for the crime of violence. It includes nearly all inmates who would also fall under the scope of the bill as offenders required to register for lifetime supervision for a sex offense. It does not include (and DOC's automated system cannot identify) offenders required to register for lifetime supervision because of a second or subsequent conviction requiring registration.

Also in fiscal 2011, 1,417 inmates were released into mandatory supervision and who were serving an average sentence of 134 months for a crime of violence. This approximates the inmate population affected under the bill. Their average length of stay was approximately 99 months. That average length of stay reflects the current rules for earning/losing diminution credits.

Under the bill, inmates convicted of a crime of violence or a sentence with lifetime sex offender supervision cannot be awarded more than a total of 10 credits per month. It is unknown how many persons receiving a term for a crime of violence, or one requiring lifetime supervision as a sex offender, may currently be earning on average more than 10 credits per month. Many sex offenders incarcerated and subject to lifetime supervision have committed a crime of violence as their underlying offense.

For illustrative purposes, under the bill's requirements, if 1,417 persons *annually* ended up serving an additional two years in a DOC facility, State incarceration costs would increase in the long term. Assuming the variable inmate costs of \$170 per month, State costs could increase by \$4,080 for each person ($\170×24 months) and by \$5.8 million cumulatively ($\$170 \times 24$ months \times 1,417 persons) for each year of intake for the system. Over time, assuming that a similar number of inmates would be affected annually, this bill would result in significant additional costs for housing DOC inmates over time. However, because persons incarcerated for a crime of violence already serve about 75% of the sentence before being released as a result of diminution credits, these affects will not be felt until fiscal 2021.

DOC also notes that the bill will present some operational difficulties for the new Offender Case Management System (OCMS). In order for OCMS to properly flag affected offenders electronically affected minor reprogramming costs are likely to arise.

Additional Information

Prior Introductions: None.

Cross File: HB 667 (Delegates Kramer and W. Miller) - Judiciary.

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

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