

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE

House Bill 1192
Judiciary

(Delegate Smigiel, *et al.*)

Correctional Services - Diminution Credits - Use of a Firearm in Commission of a
Crime

This bill prohibits the earning of diminution credits to reduce the term of confinement for an inmate in a State or local correctional facility if the inmate is serving a sentence for a crime committed under circumstances in which a firearm was used in the commission of the crime. The prohibition may not be construed to require an inmate to serve a longer sentence of confinement than is authorized by the statute under which the inmate was convicted. The prohibitions are applied prospectively only.

Fiscal Summary

State Effect: General fund correctional expenditures increase beginning in FY 2016, with a significant impact beginning in FY 2020 and increasing over time. Revenues are not affected.

Local Effect: Additional costs for local detention facilities in most or all jurisdictions. The costs vary depending on the number of persons incarcerated for one of the covered offenses.

Small Business Effect: None.

Analysis

Bill Summary: The term “firearm” means (1) a weapon that expels, is designed to expel, or may readily be converted to expel a projectile by the action of an explosive or (2) the frame or receiver of such a weapon. It includes a starter gun.

Current Law: Generally, inmates sentenced to a State correctional facility 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 younger than 16;
- an inmate who is serving a repeat sentence for third degree sexual offense against a victim younger than 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In addition, an inmate whose mandatory supervision release has been revoked may not be awarded any new diminution credits on the term of confinement for which the inmate was on mandatory supervision release.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 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 the offense.)

Credits for work tasks and education may be awarded at the rate of up to five days per month. Special project credit may be awarded at the rate of up to 10 days per month. An inmate may not be allowed a total deduction, including good conduct credit, of more than 20 days per month.

An inmate in a local correctional facility may receive deductions of five days per calendar month for (1) good conduct; (2) industrial, agricultural, or administrative tasks; (3) educational and training courses; (4) work projects; and (5) special programs. Inmates are allowed a deduction in advance from the term of confinement. If an inmate violates a rule of discipline, however, diminution credits may be revoked. An inmate is awarded five days credit for each month of presentence confinement as long as the inmate does not violate the disciplinary rules and works when the opportunity to work is available.

As in the State system, a local inmate serving a sentence for first or second degree rape or sexual offense against a victim younger than age 16, or a second or subsequent conviction of third degree sexual offense against a victim younger than age 16 may not earn diminution credits. Diminution credits awarded to an inmate of a local correctional facility who is later transferred to a State facility must be applied to the inmate's term of confinement.

A person may not use a firearm in the commission of certain crimes of violence, or any felony, whether the firearm is operable or inoperable at the time of the crime. A violator is guilty of a misdemeanor and, in addition to any other penalty imposed for the crime of violence or felony, must be sentenced to a mandatory minimum imprisonment of five years and a maximum imprisonment of 20 years. The person is also not eligible for parole in less than five years. For each subsequent violation, the sentence must be consecutive to and not concurrent with any other sentence imposed for the crime of violence or felony.

State Fiscal Effect: In fiscal 2012, DPSCS received 395 inmates who would be covered under this bill. Of that number, 322 were sentenced for a crime of violence in which a handgun was used (with an average sentence of 75 months), 37 for the use of a firearm in a controlled dangerous substance (CDS) distribution offense (with an average sentence of 125 months), and 36 for other violations involving the use of a weapon (with an average sentence of 16 months).

According to DPSCS, this bill adds 5 or 10 days to the length of stay for each affected offender, depending on the specific offense. DPSCS estimates that the bill:

- increases the stay of a person convicted of a crime of violence with a handgun by 25 months;
- increases the stay of a person convicted of the use of a firearm in a CDS distribution offense by 42 months; and
- increases the stay of a person convicted of other weapon violations by five months.

Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$2,900 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new State inmate (including variable medical care and variable operating costs) is about \$370 per month. Excluding all medical care, the average variable costs total \$180 per month.

Assuming the variable inmate costs, including medical care, of \$370 per month, State correctional costs could increase by \$9,250 for each person convicted of a covered crime of violence with a handgun; \$15,540 for each person convicted of a covered CDS offense; and \$1,850 for each other person covered under the bill. Based on intakes from fiscal 2012, the cumulative additional State correctional costs for all 395 affected persons totals \$3.6 million over the total length of their incarceration. However, because the bill does not take effect until October 1, 2013, and the sentencing of offenders under its provisions does not start until approximately 9 to 12 months later, the actual impact is not felt by DPSCS until sometime in fiscal 2016 at the earliest.

Although some inmates could be affected as early as fiscal 2016, based on the average length of sentences described above, the bill begins to significantly impact correctional expenditures in fiscal 2020 and grows exponentially for a limited period of time. In addition, although the bill delays initial parole hearings for the affected inmates, any potential effect on the operations of the Maryland Parole Commission is expected to be negligible.

Local Fiscal Effect: Because the bill's elimination of diminution credits for some offenders also extends to local correctional facilities, local costs for an unknown number of inmates also increases. Any impact on local expenditures cannot be readily quantified.

Additional Information

Prior Introductions: HB 382 of 2011 received a hearing by the House Judiciary Committee, but no further action was taken.

Cross File: None.

Information Source(s): Maryland State Commission on Criminal Sentencing Policy, Department of Public Safety and Correctional Services, Department of Legislative Services

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Analysis by: Guy G. Cherry

Direct Inquiries to:
(410) 946-5510
(301) 970-5510