

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

Senate Bill 865

(Senator Zirkin)

Judicial Proceedings

Correctional Services - Good Conduct Credits - Firearm Related Crime

This bill specifies that if a defendant is convicted of or receives a probation before judgment disposition for a crime, on request of the State's Attorney, the court must make a finding of fact, based on evidence presented at trial, as to whether the crime is a "firearm related crime." If a finding is made by the court that the offense was a firearm related crime, that finding must become part of the court record for purposes of reporting to the Criminal Justice Information System Central Repository.

A inmate serving a sentence for a second or subsequent conviction of a firearm related crime, subsequent to a finding of fact for the first offense by a court, is not eligible to earn diminution credits for good conduct while serving that sentence in a State correctional facility or while serving a presentence term of confinement in a local correctional facility.

The bill applies prospectively only.

Fiscal Summary

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

Local Effect: The bill is not expected to materially affect local operations or finances.

Small Business Effect: None.

Analysis

Bill Summary: “Firearm related crime” means a crime committed by a defendant while displaying, brandishing, or using a firearm.

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.

The State has the burden of proving by a preponderance of the evidence that the crime is a firearm related crime.

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.

Background: While the bill's prohibition against the earning of good conduct credits by a person after a second or subsequent conviction for the commission of any criminal offense in which the defendant displayed, brandished, or used a firearm could be applied to any criminal offense, for purposes of providing some context, the following fiscal 2012 intake data for State correctional facilities was provided by the Department of Public Safety and Correctional Services (DPSCS):

- 549 offenders convicted of one or more robbery offenses involving the use of a deadly weapon, of which 503 were received with this as the most serious offense at intake (with an average sentence of 113.5 months);

- 322 offenders convicted of one or more handgun use violations, of which 15 were received with this as the most serious offense (with an average sentence of 74.9 months);
- 93 offenders convicted of one or more offenses involving the illegal possession of a deadly weapon, of which 23 were received with this as the most serious offense (with an average sentence of 22.0 months);
- 288 offenders convicted of one or more offenses involving the illegal possession of a handgun, of which 159 were received with this as the most serious offense (with an average sentence of 37.0 months);
- 37 offenders convicted of one or more offenses involving the illegal possession of a firearm and a distribution of illegal drugs, of which 29 were received with this as the most serious offense (with an average sentence of 125.2 months);
- 34 offenders convicted of one or more offenses for the felony possession of regulated firearms, of which 34 were received with this as the most serious offense (with an average sentence of 61.2 months);
- 362 offenders convicted of one or more offenses involving the illegal possession of a regulated firearm, of which 209 were received with this as the most serious offense (with an average sentence of 51.1 months);
- 22 offenders convicted of one or more offenses involving the illegal possession of a shotgun, of which 9 were received with this as the most serious offense (with an average sentence of 31.1 months);
- 5 offenders convicted of one or more offenses involving attempts to disarm a law enforcement officer, of which 2 were received with this as the most serious offense (with an average sentence of 36.0 months);
- 36 offenders convicted of one or more offenses involving other weapons, of which 15 were received with this as the most serious offense (with an average sentence of 16.0 months).

State Fiscal Effect: There are several inherent difficulties in assessing the potential fiscal impact of this bill. First, it is unknown how often prosecutors will seek a finding for a firearm related offense after a first conviction. (Such an action by a prosecutor may become involved in plea bargaining processes.) Second, the crimes for which such a finding is sought will also likely vary by jurisdiction. Finally, it is difficult to know how often a second or subsequent firearm related offense will occur for the same offender.

In any case, in fiscal 2012, DPSCS received 395 inmates who would most likely be subject to a finding of a firearm related offense 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). The Department of Legislative Services advises that this group of offenders, if committing a second similar offense, would likely be the offenders for whom a finding of firearm related offense would be sought.

DPSCS advises that, because of the number of unknowns cited above, a reliable estimate of any future fiscal impact cannot be made. However, *for purposes of illustration only*, assuming that the 395 offenders mentioned above would be the offenders most likely subject to the bill's prohibition on earning good conduct credits, this bill adds 5 or 10 days to the overall length of stay for each affected offender, depending on the specific offense, and only after a second or subsequent conviction. Under that set of assumptions, it is estimated 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's prohibition against the earning of good conduct credits does not take effect until after a subsequent conviction, and the sentencing of offenders for the subsequent conviction would not occur until some unknown future date, the actual impact is not felt by DPSCS until a future year that cannot be readily predicted.

Taking into consideration that the first offenders subject to the bill's prohibition on earning good conduct credits would not be affected until having served a term of

incarceration or while on probation for a first offense committed after October 1, 2013, some inmates could be affected as early as fiscal 2016. The bill may begin to significantly impact correctional expenditures in fiscal 2020 and grow exponentially for a 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.

Additional Information

Prior Introductions: None.

Cross File: HB 1057 (Delegate Clippinger, *et al.*) - Judiciary.

Information Source(s): Baltimore, Carroll, Harford, Montgomery, Queen Anne's, and St. Mary's counties; Department of Public Safety and Correctional Services; Maryland State's Attorneys' Association; Department of Legislative Services

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