

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

House Bill 27
Judiciary

(Delegate Cluster)

Correctional Services - Child Pornography Offenders - Diminution Credits and Parole

This bill prohibits an inmate serving a sentence in a State or local correctional facility for a child pornography offense from earning diminution credits, being released on parole in order to receive certain treatments, or being eligible for parole consideration.

Fiscal Summary

State Effect: Minimal increase in general fund expenditures due to the bill's limitations on diminution credit earning potential and parole for a limited number of inmates. Because this bill affects the sentences of only an estimated 5 to 10 inmates per year, it is not expected to have a significant effect on overall State correctional costs. General fund revenues are not affected.

Local Effect: Minimal increase in local correctional expenditures due to the bill's limitations on diminution credit earning potential and parole for a limited number of inmates. Revenues are not affected.

Small Business Effect: None.

Analysis

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In addition, an inmate whose mandatory supervision release has been revoked may not be awarded any new diminution credits on the term of confinement for which the inmate was on mandatory supervision release.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

The Maryland Parole Commission (MPC) has the exclusive power to authorize the parole of a State or local inmate. MPC is required to request that the Department of Public Safety and Correctional Services (DPSCS) make an investigation for inmates in a local correctional facility and make an investigation for inmates in a State correctional facility that will enable the commission to determine the advisability of granting parole to an inmate who has been sentenced to serve a term of six months or more in a correctional facility and has served one-fourth of the inmate's aggregate sentence in confinement.

State inmates must serve either one-quarter or one-half of their sentence to be eligible for parole depending on the offense. Parole eligibility for inmates sentenced to local detention centers is one-quarter regardless of the offense. Certain persons are not eligible for parole while serving a mandatory minimum sentence. Chapter 361 of 2011 (HB 794)

requires DPSCS to complete and deliver a pre-parole investigation of an inmate in a local correctional facility to MPC within 60 days of commitment.

A violator of Maryland's prohibition against production and distribution of child pornography and related activities is guilty of a felony and subject to: (1) for a first violation, imprisonment for up to 10 years and/or a fine of up to \$25,000; and (2) for each subsequent violation, imprisonment for up to 20 years and/or a fine of up to \$50,000.

A violator of the prohibition against possessing child pornography is guilty of a misdemeanor and subject to: (1) for a first violation, imprisonment for up to 5 years and/or a fine of up to \$2,500; and (2) for each subsequent violation, imprisonment for up to 10 years and/or a fine of up to \$10,000.

Background: The State Commission on Criminal Sentencing Policy reports that in fiscal 2011 and 2012 combined, there were 32 individuals sentenced for 65 violations of the covered child pornography offenses. Based on current sentences, DPSCS reports that State correctional facilities have an intake of about 5 to 10 individuals per year for the covered offenses.

State Expenditures: General fund expenditures increase minimally as a result of the bill's limitations on diminution credit earning potential and parole due to a small number of State inmates serving longer periods of time before release. The number of people affected by the bill's limitations on diminution credits and parole is expected to be minimal.

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.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons 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 a State correctional facility. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A \$45 per diem grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention

center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the State but are confined in a local facility. The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in State correctional facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Local Expenditures: Expenditures increase minimally as a result of the bill's limitations on diminution credit earning potential and parole. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. A \$45 per diem State grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the State but are confined in a local facility. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Howard, Montgomery, and Prince George's counties; Baltimore City; 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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