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FISCAL AND POLICY NOTE
First Reader

House Bill 1173
Judiciary

(Delegate Buckel, *et al.*)

Criminal Law - Sentencing - Subsequent Offenders (Career Criminal Truth in Sentencing Act)

This bill requires that specified subsequent criminal offenders be sentenced to imprisonment for the maximum term allowed by law; prohibits the court from suspending all or part of a mandatory sentence for specified subsequent criminal offenders; establishes that specified subsequent criminal offenders are not eligible for parole or diminution credits; and requires that the State follow specified procedural rules when prosecuting specified subsequent criminal offenders.

Fiscal Summary

State Effect: Potential significant increase in general fund expenditures for the Department of Public Safety and Correctional Services (DPSCS) if individuals serve longer sentences under the bill and individuals are shifted from local facilities to State facilities as a result of the bill's provisions, partially offset by reduced expenditures for the Maryland Parole Commission (MPC). General fund expenditures for the Maryland State Commission on Criminal Sentencing Policy (MSCCSP) increase by \$5,000 in FY 2017 only for computer reprogramming. Revenues are not affected.

Local Effect: Potential significant decrease in local expenditures if the bill shifts individuals from local detention facilities to State correctional facilities. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary: Except as specified in §14-101 of the Criminal Law Article, a person must be sentenced to the maximum term of imprisonment allowed by law if (1) within the last 15 years the person has been convicted of at least three other crimes arising out of separate acts or circumstances and (2) at least two of the person's convictions are felonies. The court may not suspend all or part of the mandatory sentence, and a person is not eligible for parole during the mandatory sentence. If a person was previously sentenced under the bill's provisions to imprisonment for the maximum term allowed by law, the person must be sentenced to imprisonment for the maximum term allowed by law. The court may not suspend all or part of this mandatory sentence, and a person is not eligible for parole during this mandatory sentence.

An inmate who is serving the maximum term of imprisonment allowed by law under the bill is not entitled to earn diminution credits.

If the State intends to proceed against a person as a subsequent offender under the bill, the State must comply with the procedures set forth under the Maryland Rules for the indictment and trial of a subsequent offender.

Current Law: Section 14-101(a) of the Criminal Law Article specifies offenses classified as crimes of violence. Sections 14-101(b) through (d) impose mandatory sentences for individuals who have prior convictions for these offenses and meet other specified criteria.

Section 14-101(a) defines a "crime of violence" as (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 (including armed carjacking); (11) first- and second-degree sexual offenses; (12) use of a handgun in the commission of a felony or other crime of violence; (13) child abuse in the first degree; (14) sexual abuse of a minor younger than age 13 under specified circumstances; (15) an attempt to commit crimes (1) through (14); (16) continuing course of conduct with a child; (17) assault in the first degree; or (18) assault with intent to murder, rape, rob, or commit a sexual offense in the first or second degree.

Section 14-101 required that subsequent offenders meeting specified criteria be subject to specified mandatory sentences.

A person must be sentenced to life without the possibility of parole if the person is convicted for the fourth time of a crime of violence and the person has served three separate terms of confinement in a correctional facility as a result of three separate convictions of any crime of violence.

A person must be sentenced to imprisonment for the term allowed by law, but no less than 25 years, if the person is convicted for the third time of a crime of violence and the person (1) has been convicted of a crime of violence on two prior separate occasions in which the second or succeeding crime is committed after there has been a charging document filed for the preceding occasion and for which the convictions do not arise from a single incident and (2) has served at least one term of confinement in a correctional facility as a result of a conviction of a crime of violence.

The court may not suspend all or part of the mandatory 25-year sentence. A person sentenced under these provisions is not eligible for parole except in accordance with the provisions pertaining to parole at the Patuxent Institution.

A person convicted for a second time of a crime of violence committed on or after October 1, 1994, must be sentenced to imprisonment for the term allowed by law, but not less than 10 years, if the person has been convicted on a prior occasion of a crime of violence, including a conviction for a crime committed before October 1, 1994, and served a term of confinement in a correctional facility for that conviction.

The court may not suspend all or part of the mandatory 10-year sentence.

A person sentenced as a subsequent offender under § 14-101 of the Criminal Law Article may petition for and be granted parole if the person is at least 65 years old and has served at least 15 years of the sentence imposed.

State Expenditures: General fund expenditures for DPSCS may increase significantly if individuals serve longer sentences under the bill and individuals are shifted from local facilities to State facilities as a result of the bill's provisions, partially offset by reduced expenditures for MPC due to fewer parole hearings. General fund expenditures for MSCCSP increase by \$5,000 in fiscal 2017 only for computer reprogramming.

Information is not available on the number of individuals who, during a 15-year time period, have been convicted of at least three crimes (of any type) arising from separate acts, at least two of which are felonies (of any nature). These individuals, upon conviction of another crime, are subject to imprisonment for the maximum term allowed by law, which is nonsuspendable and nonparolable under the bill (for the pending offense and any future convictions). These individuals are also ineligible for diminution credits.

DPSCS advises that with diminution credits, inmates typically serve 65% to 70% of their sentences. Under the bill, these individuals must serve every day of their sentence in incarceration. DPSCS advises that 56.5% of the department's fiscal 2015 intake (3,888 offenders) had at least one felony conviction.

Since the bill requires certain individuals to receive the maximum incarceration sentence allowable under law, regardless of the offense, some individuals may be shifted from local detention facilities to State correctional facilities.

The extent of the bill's impact is dependent on the number of individuals who meet the criteria for a subsequent offender under the bill, which cannot be reliably determined at this time.

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 \$3,300 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 health care costs) is about \$770 per month. Excluding all health care, the average variable costs total \$200 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 had 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 Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

The Maryland Automated Guidelines System (MAGS) allows circuit court judges to electronically fill out and submit sentencing guidelines worksheets to MSCCSP. MSCCSP advises that it needs to reprogram MAGS, at a cost of \$5,000 in fiscal 2017, to allow someone convicted under the bill to be identified and to adjust the guidelines. Programming costs in future years are negligible.

The Office of the Public Defender (OPD) advises that the bill results in additional trial litigation. However, according to OPD, because the increase in trial preparation under the bill is dependent on individual factors, the overall effect of the bill on OPD is speculative.

Local Expenditures: Local expenditures may decrease significantly if the bill shifts a sizeable number of individuals from local detention facilities to State correctional facilities.

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): Maryland State Commission on Criminal Sentencing Policy, Judiciary (Administrative Office of the Courts), Office of the Public Defender, State's Attorneys' Association, Department of Public Safety and Correctional Services, Department of Legislative Services

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