

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE

Enrolled - Revised

Senate Bill 1005

(The President)(By Request - Justice Reinvestment
Coordinating Council)

Judicial Proceedings

Judiciary and Health and Government
Operations

Justice Reinvestment Act

This bill generally implements many of the recommendations of the Justice Reinvestment Coordinating Council (JRCC) by altering provisions relating to sentencing, corrections, parole, and the supervision of offenders. In addition, the bill (1) alters provisions relating to criminal gangs; (2) increases maximum penalties for second-degree murder and first-degree child abuse resulting in death; (3) modifies provisions regarding drug treatment; (4) expands expungement provisions; and (5) provides for the reinvestment of savings.

Most of the bill's provisions take effect October 1, 2017.

Fiscal Summary

State Effect: General fund expenditures increase by \$109,700 in FY 2017 for initial staffing; net expenditures increase by at least \$5.3 million in FY 2018, mostly for the Department of Public Safety and Correctional Services (DPSCS), reflecting new costs and some incarceration savings. Future years reflect increasing costs and savings; net savings do not accrue until FY 2026. Special fund revenues/expenditures increase by an estimated \$2.2 million in FY 2019, reflecting specified savings distributed to a new grant fund, and increase through FY 2022. Special fund revenues from the bill's gang-related provisions may be realized as early as FY 2018. Certain costs have not been accounted for, including funding for the expansion of drug treatment services and the bill's expungement provisions. General fund revenues increase beginning in FY 2018 from specified fees and fines.

(in dollars)	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
GF Revenue	\$0	-	-	-	-
SF Revenue	\$0	-	\$2,176,000	\$3,344,900	\$4,107,200
GF Expenditure	\$109,700	\$5,306,400	\$3,801,100	\$3,070,500	\$3,222,300
SF Expenditure	\$0	-	\$2,176,000	\$3,344,900	\$4,107,200
Net Effect	(\$109,700)	(\$5,306,400)	(\$3,801,100)	(\$3,070,500)	(\$3,222,300)

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Beginning in FY 2018, local incarceration expenditures increase, as the bill's changes likely result in additional inmates being committed in local detention facilities; per diem State grants may also increase. Local expenditures may increase significantly to provide specified drug treatment and to handle additional expungements. Local grant revenues from the Performance Incentive Grant Fund increase beginning in FY 2019. Local revenues may increase significantly beginning in FY 2018 from expungement filing fees. Also beginning in FY 2018, local fine revenues may be affected, and local health departments may benefit from additional funding for substance abuse treatment programs.

Small Business Effect: Minimal.

Analysis

Bill Summary: Most of the bill's provisions take effect October 1, 2017. Some of the bill's provisions (those governing the potential transfer of the restitution collection function; intent language regarding funding for drug treatment and programming; establishment of a specified board, commission, and fund; and specified studies, analyses, and reports) take effect October 1, 2016.

Determination and Distribution of Savings from Changes in Incarceration Policy

The bill requires the Justice Reinvestment Oversight Board, in collaboration with DPSCS, to determine the annual savings from the implementation of the recommendations of JRCC based on the difference between the prison population as measured on October 1, 2017, the baseline day, and the prison population as measured on October 1, 2018, the comparison day and the variable cost of incarceration. If the prison population on the comparison day is less than the prison population on the baseline day, the board must determine a savings based on the difference in the prison population multiplied by the variable cost. The board must annually determine the difference between the prison population on October 1, 2017, and the prison population on October 1 of the current year and calculate any savings based on the difference in the prison population multiplied by the variable cost. If a prison population decline causes a correctional unit, wing, or facility to close, the board must conduct an assessment to determine the savings from the closure.

Although the bill does not *require* a specific distribution of the identified savings, the bill requires the board to annually *recommend* that the savings be distributed as follows: (1) up to 50%, to the Performance Incentive Grant Fund for implementation of the JRCC recommendations; and (2) the remaining amount, for additional services identified as reinvestment priorities in JRCC's final report. Thus, the Governor has significant discretion under the bill as to how to use the savings.

Drug Penalties and Treatment

Drug Possession

The bill reduces the maximum criminal penalties for the possession or administration of a controlled dangerous substance (CDS). A violation is a misdemeanor subject to (1) for a first conviction, imprisonment for up to one year and/or a fine of up to \$5,000; (2) for a second or third conviction, imprisonment for up to 18 months and/or a fine of up to \$5,000; and (3) for a fourth or subsequent conviction, imprisonment for up to two years and/or a fine of up to \$5,000. In addition, except when in possession of less than 10 grams of marijuana, penalties are altered to establish that a defendant in possession of marijuana is guilty of a misdemeanor and subject to imprisonment for up to 6 months and/or a fine of up to \$1,000.

Crack Cocaine Volume Dealer Penalties

The bill increases, from 50 to 448 grams, the amount of cocaine base, commonly known as “crack,” required for prosecution as a volume dealer under the prohibitions relating to manufacturing, distributing, dispensing, or possessing CDS.

Drug Distribution and Mandatory Minimum Penalty Repeal

The bill repeals mandatory minimum penalties applicable to a repeat drug offender (or conspirator) convicted of specified felony crimes involving CDS and establishes new maximum penalties. In addition, the authorization to double penalties for specified subsequent drug offenders is made applicable only when the person has also been previously convicted of a crime of violence. **Exhibit 1** shows the altered penalties.

Exhibit 1
Penalties for Distribution of Controlled Dangerous
Substances and Related Offenses

Offense	Current Penalty	New Penalty
CDS (Other than Schedule I or II Narcotic Drugs and Other Specified CDS)		
First-time Offender	Maximum penalty of 5 years imprisonment and/or \$15,000 fine	Maximum penalty of 5 years imprisonment and/or \$15,000 fine
Repeat Offender	2-year mandatory minimum sentence. Maximum penalty of 5 years imprisonment and/or \$15,000 fine	Maximum penalty of 5 years imprisonment and/or \$15,000 fine
CDS (Schedule I or II Narcotic Drug & Specified Drugs)		
First-time Offender	Maximum penalty of 20 years imprisonment and/or \$25,000 fine	Maximum penalty of 20 years imprisonment and/or \$15,000 fine
Second-time Offender	10-year mandatory minimum sentence (20 years maximum imprisonment) and a fine of up to \$100,000	Maximum penalty of 20 years imprisonment and/or \$15,000 fine
Third-time Offender	25-year mandatory minimum sentence and a fine of up to \$100,000	Maximum penalty of 25 years imprisonment and/or a \$25,000 fine (parole eligibility at 50% of sentence)
Fourth-time Offender	40-year mandatory minimum sentence and a fine of up to \$100,000	Maximum penalty of 40 years imprisonment and/or a \$25,000 fine (parole eligibility at 50% of sentence)

Source: Department of Legislative Services

Mandatory Minimum Safety Valve Retroactive Application

The bill authorizes a person serving a term of confinement that includes a mandatory minimum sentence, imposed on or before September 30, 2017, for specified crimes generally involving the manufacture, sale, and distribution of CDS to apply to the court for a modification or reduction of the mandatory minimum sentence, regardless of whether the defendant filed a timely motion for reconsideration or if a motion for reconsideration was denied by the court (the court is authorized to depart from the specified mandatory minimum sentences).

Drug Treatment Assessment

Before imposing a sentence for a violation of laws prohibiting the possession of CDS or 10 grams or more of marijuana, the court is authorized to order the Department of Health and Mental Hygiene (DHMH), or a certified and licensed designee, to conduct an assessment of the defendant for a substance use disorder and determine whether the defendant is in need of and may benefit from drug treatment. DHMH or the designee must conduct an assessment and provide the results, as specified. The court must consider the results of an assessment when imposing the defendant's sentence and, as specified, (1) must suspend the execution of the sentence, order probation, and require DHMH to provide the medically appropriate level of treatment or (2) may impose a term of imprisonment and order the Division of Correction (DOC) within DPSCS or a local correctional facility to facilitate the medically appropriate level of treatment.

Residential Drug Treatment

When ordered by a court, DHMH must (1) conduct an assessment regarding whether, by reason of drug or alcohol abuse, a defendant is in need of and may benefit from treatment, as specified and (2) provide the name of a program *immediately* able to provide the recommended treatment to the defendant. The requirement that appropriate funding be provided regarding such requirements is repealed.

In addition, DHMH must facilitate the *immediate* treatment of a defendant following a court order committing the defendant, under § 8-507 of the Health-General Article, to substance abuse treatment as an alternative to incarceration. If the court finds exigent circumstances, the court may delay a commitment order to DHMH for no longer than 30 days. If a defendant is not placed in treatment within 21 days of the order, the court may order DHMH to appear to explain the reason for the lack of placement. The requirement that appropriate funding be provided regarding such requirements is also repealed.

Parole and Probation Supervision

Validated Screening Tool and Risk and Needs Assessment

The Division of Parole and Probation (DPP) within DPSCS must administer a validated screening tool on each individual on parole or mandatory supervision. DPP must also administer a risk and needs assessment and develop an individualized case plan for each individual who has been screened as moderate or high risk to reoffend. DPP must supervise the individual based on the results of the validated screening tool or the assessment.

Graduated Sanctions for Violations of Parole and Probation

DPSCS must establish a program to implement the use of “graduated sanctions” in response to “technical violations” of conditions of supervision and adopt policies and procedures to implement the program and ensure that specified due process protections and supervisory guidelines are in place. DPP must provide notice to the court and the Maryland Parole Commission (MPC) regarding a technical violation and any graduated sanctions imposed as a result. The court and MPC may impose specified maximum sentences for a revocation due to a “technical violation,” but may depart from the limits if adhering to the limits would create a risk to public safety or to a victim or witness. The court may also depart from the specified limits if the court commits the probationer or defendant to DHMH under § 8-507 of the Health-General Article for substance abuse treatment as an alternative to incarceration.

“Technical violation” means a violation of a condition of probation, parole, or mandatory supervision that does not involve an arrest or a summons issued by a District Court Commissioner on a statement of charges filed by a law enforcement officer, a violation of a criminal prohibition other than a minor traffic offense, a violation of a no-contact or stay-away order, or “absconding.” “Absconding” means willfully evading supervision. “Absconding” does not include missing a single appointment with a supervising authority.

Evidence-based Standards for Supervision Practices

DPP must use practicable and suitable methods that are consistent with evidence-based programs and practices and innovative programs and practices to aid and encourage a probationer or parolee to improve conduct and to reduce the risk of recidivism. In addition, DPP must have an independent validation study conducted every three years on the risk and needs assessment tool.

Earned Compliance Credits Program

DPP must place specified individuals on probation, parole, or mandatory supervision on abatement when a combination of time served on probation, parole, or mandatory supervision and earned compliance credits satisfy the specified individual's active term of supervision. The definition of "supervised individual" for the purpose of eligibility for earned compliance credits is expanded to include individuals convicted of specified CDS offenses.

DPP must develop an automated application for the tracking and awarding of earned compliance credits. Further, a supervised individual who is placed on abatement is not required to regularly report to a parole or probation agent or pay a supervision fee.

Twenty-five percent of the savings realized by DPSCS as a result of the application of earned compliance credits must revert to the department, and any remaining savings must be allocated to the Performance Incentive Grant Fund established under the bill, as specified.

Certificate of Rehabilitation

DPSCS must issue a certificate of rehabilitation to specified individuals. A licensing board may not deny an occupational license or certificate to an applicant who has been issued a certificate of rehabilitation solely on the basis that the applicant has previously been convicted of the crime that is the subject of the certificate of rehabilitation, unless the licensing board makes a specified determination. An individual may receive only one certificate of rehabilitation per lifetime. DPSCS must adopt regulations establishing an application and review process for a certificate of rehabilitation that allows the State's Attorney and the victim to object to the issuance of the certificate.

Prison and Reentry

Per Diem County Grants

The bill establishes that, for each day that an inmate who has been sentenced to the jurisdiction of DOC has received reentry or other pre-release programming and services from a local correctional facility during the second preceding fiscal year, the State must provide each county a grant equal to at least \$45 per diem.

Risk and Needs Assessment

DOC must conduct a risk and needs assessment of an inmate as soon as feasible after the individual is sentenced to DOC. Based on the assessment, DOC must develop a case plan

to guide an inmate's rehabilitation while under DOC custody. The case plan must include programming and treatment recommendations, required conduct in accordance with the rules and policies of DOC, and a payment plan for restitution (if applicable).

Diminution Credits

Except for inmates serving a sentence in a State correctional facility for a crime of violence, specified sexual offenses, or specified volume or kingpin drug offenses, the maximum possible deduction for diminution credits increases from 20 to 30 days per calendar month. Also, except for that same group of inmates, the deduction for special selected work projects or other special programs, including recidivism reduction programming, increases from 10 to 20 days per calendar month. Furthermore, the types of programs for which an inmate may earn diminution credits is expanded. In addition, the maximum deduction for diminution credits increases for an individual who is serving a sentence in a local correctional facility (for a crime other than a crime of violence or specified volume drug offenses) from 5 to 10 days per month. These provisions must be construed prospectively to apply only to inmates that are sentenced on or after October 1, 2017.

Restitution

For an inmate who is subject to an unsatisfied judgment of restitution, the bill requires withholding of up to 25% of the inmate's earnings for compensation for victims of crime, until the judgment is satisfied.

Administrative Release

An "administrative release" process is created for an eligible inmate who has served one-fourth of the inmate's sentence and meets specified requirements, with specified authorization by MPC.

Expand Eligibility for Geriatric Parole

The bill authorizes offenders who are at least age 60 and have served at least 15 years of the sentence to petition for parole. The provisions do not apply to individuals who are registered or eligible for registration on the sex offender registry.

Medical Parole

Medical parole is limited to an inmate who is so *chronically* debilitated or incapacitated by a medical or mental health condition, disease, or syndrome as to be physically incapable of presenting a danger to society. In addition, the petition for medical parole, regardless of the petitioner, must include a recommendation by the medical professional treating the

inmate under contract with DOC or local correctional facility or if requested, as specified, one medical evaluation conducted at no cost to the inmate by a medical professional who is independent from DOC or the local correctional facility. Finally, the requirement that the Governor approve medical parole for a person serving a life sentence is repealed; instead, if MPC decides to grant medical parole, the decision must be transmitted to the Governor. The Governor is then required to disapprove a recommendation for medical parole within 180 days of the decision by MPC. If the Governor does not disapprove the decision within that timeframe, the decision to grant parole becomes effective.

Other Crimes

Theft Offenses

The maximum property value for misdemeanor theft is increased from less than \$1,000 to less than \$1,500, and a person is subject to increased penalties after one prior conviction and again after four or more prior convictions. The property value and penalties for theft crimes are expanded and altered as follows:

Value of Property and/or Services

Maximum Penalty

At least \$100 but less than \$1,500

First offense: 6 months imprisonment and/or a \$500 fine

Second, third, or fourth offense: 1 year imprisonment and/or a \$500 fine

Fifth and subsequent offense: 5 years imprisonment and/or a \$5,000 fine

At least \$1,500 but less than \$25,000

5 years imprisonment and/or a \$10,000 fine

At least \$25,000 but less than \$100,000

10 years imprisonment and/or \$15,000 fine

\$100,000 or more

20 years imprisonment and/or a \$25,000 fine

With the exception of subsequent offender penalties for misdemeanor theft offenses, similar changes to property value and penalties are applied to provisions relating to obtaining property or services by bad checks or credit cards, identity fraud, Medicaid fraud, counterfeiting, and exploitation of vulnerable adults.

Criminal Gangs

The bill makes several changes to the criminal gang statute, including (1) increasing penalties for gang offenses; (2) expanding the prohibitions on gang activities; and (3) authorizing a court, following a conviction for a specified gang offense, to order a divestiture of property under specified circumstances. Among other things, the bill authorizes a court to order (1) a person or criminal gang to be divested of an interest in an enterprise or real property and (2) that an enterprise be dissolved or reorganized. The bill establishes an Addiction Treatment Divestiture Fund within DHMH to support addiction treatment services to persons with substance-related disorders, funded by revenues from the divested assets connected to criminal gang offense that accrue under the bill.

The bill increases the general penalty for participation in a criminal gang under § 9-804 of the Criminal Law Article from imprisonment for up to 10 years and/or a \$100,000 maximum fine to imprisonment for up to 15 years and/or a \$1 million maximum fine. The bill also increases the penalty when the gang offense results in the death of a victim from imprisonment for up to 20 years and/or a \$100,000 maximum fine to imprisonment for up to 25 years and/or a \$5 million maximum fine.

The bill defines an “enterprise” to include (1) a sole proprietorship, partnership, corporation, business trust, or other legal entity or (2) any group of individuals associated in fact although not a legal entity. In addition, the bill expands the definition of “underlying crime” under the gang statute to include a felony violation of § 5-604(b) of the Criminal Law Article (creating or possessing a counterfeit substance) and § 5-606 of the Criminal Law Article (false prescription).

Second-degree Murder

The maximum penalty for the offense of second-degree murder is increased from 30 to 40 years imprisonment.

Child Abuse Resulting in Death

The maximum penalty for first-degree child abuse resulting in the death of a victim younger than age 13 is increased from 40 years imprisonment to imprisonment for life. The maximum penalty for a subsequent conviction for child abuse resulting in the death of a victim is also increased from 40 years imprisonment to imprisonment for life.

Traffic Offenses

For specified violations involving driving with a suspended license, the incarceration penalty is repealed and the maximum penalty of a \$500 fine is retained; however, a person receiving a citation for such an offense must appear in court and may not prepay the fine.

Expungement

A person is authorized to file a petition listing relevant facts for expungement of a police, court, or other record if the person is convicted of specified misdemeanors. A petition for expungement may not be filed earlier than 10 years (or 15 years in the case of second-degree assault or a domestically related offense) after the person satisfied the sentence or sentences imposed for all convictions for which expungement is requested, including parole, probation, or mandatory supervision. If the person is convicted of a new crime during the waiting period, the original conviction or convictions are not eligible for expungement unless the new conviction becomes eligible. A person is not eligible for expungement if the person is a defendant in a pending criminal proceeding or if one conviction in a unit is not eligible for expungement. In general, a person must file a petition for expungement in the court in which the proceeding began. However, the bill specifies procedures for situations involving transfers to another court or the juvenile court. In addition, the bill specifies procedural requirements regarding objections to a petition, hearings, and appeals.

Performance Incentive Grant Program

The bill establishes a Performance Incentive Grant Fund in the Governor's Office of Crime Control and Prevention (GOCCP) to make use of the savings from the implementation of the recommendations of JRCC. In addition, the bill details the use of the fund for grants to implement specified programs and services, including implementing recidivism reduction programming, implementing reentry programs, and ensuring that the rights of crime victims are protected and enhanced, among other purposes.

Justice Reinvestment Oversight

The bill repeals JRCC and establishes the Justice Reinvestment Oversight Board and the membership, terms, chair, staff, and duties of the board. In addition, the bill establishes the Local Government Justice Reinvestment Commission and the membership, terms, appointment of the chair, staff, and duties of the commission. GOCCP staffs the board and the commission.

Alternative Dispute Resolutions

The Maryland Mediation and Conflict Resolution Office must study and identify best practices for criminal referrals to mediation, based on experiences across the State and research. By January 1, 2017, the office must submit a report of its findings and recommendations to the board, the Governor, and the General Assembly.

Restitution Function Transfer

GOCCP must study the restitution process and make recommendations concerning that process, including determining which State unit should assume the duties currently undertaken by DPP regarding collection of restitution. Among other things, the study must include a determination of whether the Criminal Injuries Compensation Board and any other victim services should be transferred to another entity to minimize fragmentation. By December 1, 2016, GOCCP must submit a report of its findings and recommendations to the Governor and the General Assembly. The Governor must order the transfer of the collection of restitution function from DPP to another State unit under specified conditions.

Intent Language Regarding Funding

Effective October 1, 2016, the bill establishes the intent of the General Assembly that the Governor provide funding annually in the budget bill for (1) DHMH to expand the use of drug treatment under § 8-507 of the Health-General Article; (2) DOC and DPP to expand treatment and programming for substance abuse treatment, mental health treatment, cognitive-behavioral programming, and other evidence-based interventions for offenders; and (3) the State unit responsible for the improvement of the collection of restitution.

Other Required Reports

GOCCP, in coordination with DPSCS, DHMH, the Judiciary, public health and treatment professionals, and local corrections authorities, must conduct an analysis to determine the gap between offender treatment needs and available treatment services in the State, including a feasibility study of local jail and service provider capacity for substance use and mental health disorder and related treatment. GOCCP must report the results of the analysis with recommendations to the General Assembly by December 31, 2016.

By March 1 on an annual basis, the Administrative Office of the Courts is required to report to the Governor and the General Assembly on the numbers of substance abuse disorder assessments ordered by the courts in criminal cases during the previous calendar year.

The Maryland State Commission on Criminal Sentencing Policy (MSCCSP) must study and report to the board, the Governor, and the General Assembly by January 1, 2018,

regarding how more alternatives to incarceration may be included in the sentencing guidelines.

DHMH, the Department of Labor, Licensing and Regulation (DLLR), and DPSCS must make recommendations that generally relate to employment opportunities for low-income and low-skill individuals and those with criminal records, among others.

Local correctional facilities, in coordination with DHMH and local health departments, must conduct an analysis to determine the budgetary requirements of the bill and report a plan for meeting the budgetary requirements to the General Assembly by December 31, 2016.

Further, by January 1, 2017, the board must report to the Governor and the General Assembly on the status of the progress toward the bill's implementation and the projected financial impact of the bill's implementation on local jurisdictions and correctional facilities.

Current Law:

Controlled Dangerous Substances

CDS are listed on one of five schedules (Schedules I through V) set forth in statute depending on their potential for abuse and acceptance for medical use.

A person may not possess or administer a CDS unless the CDS is obtained directly or by prescription or order from an authorized provider acting in the course of professional practice. A person may also not obtain or attempt to obtain a CDS, or procure or attempt to procure the administration of a CDS, by specified methods, including by fraud, counterfeit prescription, or concealment of fact. A person who violates these provisions is guilty of a misdemeanor and on conviction is subject to imprisonment for up to four years and/or a fine of up to \$25,000.

No distinction is made in State law regarding the illegal possession of any CDS, regardless of which schedule it is on, with the exception of marijuana. In general, a defendant in possession of marijuana is guilty of a misdemeanor and subject to imprisonment for up to one year and/or a fine of up to \$1,000. However, pursuant to Chapter 158 of 2014, possession of less than 10 grams of marijuana is a civil offense punishable by specified fines. If a person commits a third or subsequent violation, or is younger than age 21, the court must summon the person for trial upon issuance of a citation. Additionally, the court must order a person who (1) commits a third or subsequent violation or (2) is younger than age 21 and commits a first violation to attend a drug education program approved by

DHMH and refer the person to an assessment for a substance abuse disorder. After the assessment, the court must refer the person to substance abuse treatment, if necessary.

Crack vs. Cocaine: A person is prohibited from manufacturing, distributing, dispensing, or possessing specified amounts of CDS, including 448 grams or more of cocaine or 50 grams or more of cocaine base, commonly known as “crack.” Upon conviction, a person must receive a mandatory minimum sentence of five years and is subject to a maximum fine of \$100,000.

A “drug kingpin” is an organizer, supervisor, financier, or manager who acts as a coconspirator in a conspiracy to manufacture, distribute, dispense, transport in, or bring into the State a CDS. A drug kingpin who conspires to do one of these activities regarding specified amounts of CDS, including 448 grams or more of cocaine or 50 grams or more of cocaine base/”crack,” must receive a mandatory minimum sentence of 20 years and is subject to imprisonment for up to 40 years without the possibility of parole and/or a fine of \$1.0 million.

Criminal Gangs

Title 9, Subtitle 8 of the Criminal Law Article prohibits a variety of activities related to criminal gangs. The offenses vary based on the level of an individual’s involvement in a gang, the nature of the gang activity, or the location of the gang activity. Gang offense may be classified as misdemeanors or felonies depending on severity. Maximum criminal penalties range from two years imprisonment and/or a fine of \$1,000 up to 20 years imprisonment and/or a fine of \$100,000.

A “criminal gang” is defined as a group or association of three or more persons whose members (1) individually or collectively engage in a pattern of criminal gang activity; (2) have as one of their primary objectives or activities the commission of one or more underlying crimes, including acts by juveniles that would be underlying crimes if committed by adults; and (3) have in common an overt or covert organizational or command structure.

A “pattern of criminal gang activity” is defined as the commission of, attempted commission of, conspiracy to commit, or solicitation of two or more underlying crimes or acts by a juvenile that would be an underlying crime if committed by an adult, if the crimes or acts were not part of the same incident.

Theft Crimes

A person may not, under specified circumstances, (1) willfully or knowingly obtain or exert unauthorized control over property; (2) obtain control over property by willfully or

knowingly using deception; (3) possess stolen property knowing that it has been stolen or believing that it probably has been stolen; or (4) obtain control over property knowing that the property was lost, mislaid, or delivered under a mistake as to the identity of the recipient or nature or amount of the property. A violator is required to restore the owner's property or pay the owner the value of the property or services and is subject to the penalties listed below:

Value of Property and/or Services

Maximum Penalty

Less than \$100

Misdemeanor – 90 days imprisonment and/or \$500 fine

Less than \$1,000

Misdemeanor – 18 months imprisonment and/or \$500 fine

Less than \$1,000 (two or more prior convictions)

Misdemeanor – 5 years imprisonment and/or \$5,000 fine

At least \$1,000 but less than \$10,000

Felony – 10 years imprisonment and/or \$10,000 fine

At least \$10,000 but less than \$100,000

Felony – 15 years imprisonment and/or \$15,000 fine

\$100,000 or more

Felony – 25 years imprisonment and/or \$25,000 fine

Driving Offenses

Driving with a license that is suspended as a result of one of the following violations is a misdemeanor that carries a maximum penalty of \$500 and/or two months imprisonment: (1) driving with a lapse in required security (generally, auto insurance) for a vehicle; (2) failing to comply with a State traffic citation (including a notice to appear in court); (3) failing to comply with a notice to appear in court under a federal traffic citation or a citation issued by another state; or (4) failing to pay a fine under the Maryland Vehicle Law, a federal traffic law, or the traffic laws of another state.

Additionally, a violation for driving without a license is a misdemeanor that carries a maximum penalty of \$500 and/or 60 days imprisonment for a first offense and \$500 and/or one year imprisonment for a second or subsequent offense.

A violation of most provisions of the Maryland Vehicle Law is a misdemeanor with a maximum penalty of \$500 and no incarceration penalty.

Sentencing

Generally, there are specified circumstances under which the court may not suspend mandatory minimum sentences. Chapter 490 of 2015 authorizes a court to depart from SB 1005/ Page 15

specified mandatory minimum sentences for repeat offenders of specified crimes generally involving the manufacture, sale, and distribution of CDS if the court finds (and states on the record) that, giving due regard to the nature of the crime, the history and character of the defendant, and the defendant's chances of successful rehabilitation (1) imposing the mandatory minimum sentence would result in substantial injustice to the defendant and (2) the mandatory minimum sentence is unnecessary for public protection. Savings realized as a result of the mandatory minimum sentencing provisions must revert to the general fund to fund drug treatment programs.

Probation

Probation is a disposition that allows an offender to remain in the community. A court has broad authority to impose reasonable conditions to fit each case. A judge may also order "custodial confinement," which usually refers to home detention or inpatient drug or alcohol treatment but can also include other forms of confinement short of imprisonment.

If an offender is alleged to have violated a condition of probation, the offender is returned to court for a violation of probation hearing. If the court finds that a violation occurred, it may revoke the probation and impose a sentence allowed by law. The court may alternately choose to continue the offender on probation subject to any additional conditions it chooses to impose. Probation may either be probation before judgment (commonly known as "PBJ") or probation following judgment. A court may also impose nonsupervised or supervised probation, as authorized by law. A longer term of probation may be ordered for the purpose of making restitution or for commitment to DHMH for substance abuse treatment. Under the Health-General Article, § 8-507, a court is authorized to refer an individual to substance abuse treatment as an alternative to incarceration. A court that finds in a criminal case that a defendant has an alcohol or drug dependency may commit the defendant to a drug or alcohol treatment program. The commitment can be made as a condition of release, after conviction, or at any other time the defendant voluntarily agrees to participate in treatment.

Earned Compliance Credit Program

Chapters 564 and 565 of 2012 require DPSCS to (1) establish a program of earned compliance credits to create a reduction in the period of active supervision for a "supervised individual" and (2) develop policies and procedures for implementation. With certain exceptions, a "supervised individual" means an individual placed on probation by a court or one who is serving a period of parole or mandatory release supervision after release from a correctional facility. An "earned compliance credit" is a 20-day reduction from the period of active supervision of the supervised individual for every month that a supervised individual meets specified conditions.

Certificate of Completion

DPSCS may issue a certificate of completion to an offender who (1) was under its supervision under conditions of parole, probation, or mandatory release; (2) has completed all special and general conditions of supervision, including payment of all required restitution, fines, fees, and other payment obligations; and (3) is no longer under the jurisdiction of DPSCS.

Release from Division of Correction

An inmate may be released from imprisonment by one of the following methods: (1) expiration of sentence; (2) release on mandatory supervision; (3) parole; or (4) gubernatorial pardon or commutation of sentence. An inmate may also be released from imprisonment on probation (discussed above).

Expiration of Sentence

An inmate may be released on expiration of the inmate's sentence. Release of an inmate on expiration of sentence is mandatory and not subject to discretion. Unlike release on mandatory supervision or parole, release on expiration of sentence is not subject to any condition or supervision.

Release on Mandatory Supervision

Release on mandatory supervision is a conditional release from confinement that results from the application of diminution credits (discussed below) and applies only to inmates in State correctional facilities sentenced to a term of confinement exceeding 18 months. Inmates in State correctional facilities serving a term of 18 months or less and inmates in local detention centers may also earn credits, but they are not subject to mandatory supervision on release. There is no discretion involved in release on mandatory supervision.

Diminution Credits

Diminution credits are days of credit either granted or earned on a monthly basis. Inmates in State correctional facilities and local detention centers are eligible for diminution credits.

State law establishes the types of diminution credits that an inmate may be allowed. These are commonly called "good time" credits, although a variety of other credits in addition to good conduct credits may be allowed based on an inmate's participation in work, educational programs, and special projects. The purpose of these credits is to encourage good inmate behavior and promote an interest in activities that will occupy an inmate's

time while confined and prove useful after release. An inmate may earn a maximum of 20 days total diminution credits per month. Credits may be forfeited or restricted through misbehavior in the institution.

State law also prohibits the application of diminution credits to violent offenders who commit crimes while on mandatory supervision, as specified.

Parole

A person sentenced to a term of incarceration of six months or more is entitled to a parole hearing after having served one-fourth of the term or consecutive terms. A person serving a sentence for a crime of violence is not entitled to a parole hearing until after having served one-half of the term. Certain persons are not eligible for parole while serving a mandatory minimum sentence. A person sentenced to life imprisonment is not eligible for parole consideration until that person has served 15 years. Under specified circumstances, a person sentenced to life imprisonment for first-degree murder is not eligible for parole consideration until that person has served 25 years. An inmate sentenced to life imprisonment without the possibility of parole is not eligible for parole consideration and may not be granted parole at any time during the inmate's sentence. This does not restrict the authority of the Governor to pardon or remit any part of a sentence. Offenders who are age 65 or older who have served at least 15 years of a sentence for a crime of violence may apply for and be granted parole. Inmates who are so debilitated or incapacitated by a medical or mental condition, disease, or syndrome as to be physically incapable of presenting a danger to society may be released on medical parole.

Parole Hearings

If an inmate is eligible for a parole hearing, the parole commission is required to give timely notice to the inmate before the hearing. The commission may grant parole, deny parole, or decide to rehear the case at a future date. The hearing officer must verbally inform the inmate of the hearing officer's recommendation immediately after the hearing and submit a written report of findings and recommendations to DPSCS, MPC, and the inmate within 21 days after the hearing. After receiving the recommendation, a parole commissioner is required to review the written recommendations of the hearing officer. The commissioner may either approve or disapprove the hearing officer's recommendation. If the recommendation is approved, the decision is sent to the inmate and to the department. If the recommendation is disapproved, the decision is sent to a two-commissioner panel for the issuance of a final decision.

Supervision after Release

An inmate released on parole, supervised probation (see above for a discussion of probation), or under mandatory supervision is assigned to a community supervision agent within DPP.

Based on an assessment of an offender's risk to the community and other factors, which is updated periodically, an offender is actively supervised at one of four levels of supervision: high, moderate, low-moderate, and low. Additionally, based on specific risk assessment factors, certain offenders are supervised within the containment supervision model for sexual offenders and the Violence Prevention Initiative containment model of intensive supervision. An offender is required to pay a monthly supervision fee of \$50 to DPSCS unless exempted by the sentencing court or MPC. DPSCS and the local detention center must notify an individual orally and in writing about how to apply for an exemption from the supervision fee and the criteria used in determining whether to grant an exemption.

Chapters 554 and 555 of 2011 created the Swift and Certain Sanctions Pilot Program, under which DPSCS was required to develop, by October 1, 2012, a pilot program in two counties that creates a system of graduated administrative sanctions for violations of conditions of parole by releases from the department. Beginning in 2013, by October 1 of each year, the department must report to the General Assembly on the status of the pilot program, the percentage of departmental programs that use evidence-based practices, and the number of individuals incarcerated for technical violations and new offenses while on parole. Under Chapter 182 of 2014, the program is scheduled to terminate on September 30, 2017. Chapter 182 also expanded the program to include Baltimore City and individuals under mandatory release.

DPSCS is authorized to issue a certificate of completion to an individual supervised by the department under conditions of parole, probation, or mandatory supervision on or after July 1, 2014, so long as the individual (1) has completed all special and general conditions, including payment of all required restitution, fines, fees, and other payment obligations and (2) is no longer under the jurisdiction of the department.

Revocation of Parole

Any violation of a condition of release may result in revocation of parole. A violation is classified as either a "technical" violation that is not a crime (*e.g.*, failure to attend a required meeting or failing to be employed) or a commission of a new crime. If a violation is alleged, MPC or DPSCS (if this power is delegated to the department in a particular case) must decide whether to issue a subpoena or a retake warrant for purposes of a parole revocation hearing. A subpoena is requested from MPC if the parole agent believes that the offender is not a public safety threat and that the offender will not flee. Otherwise, a

parole agent must request a retake warrant, which subjects the individual to arrest, and submit a written report to the commission on the alleged violation. The decision on whether to issue a subpoena or warrant is within the sole discretion of MPC.

If MPC finds by a preponderance of the evidence that the individual has committed a violation, it may continue the individual on release, subject to any new conditions that it may impose, or revoke parole. If parole is revoked, the commission may order the violator to serve the remainder of the original term of incarceration. MPC may also set a date for a hearing to reconsider parole. The violator may seek judicial review of a decision to revoke parole in a circuit court within 30 days of receiving the commission's written decision. The circuit court decides the case on the record made before MPC.

Expungement

Under the Criminal Procedure Article, a person who has been charged with the commission of a crime may file a petition for expungement listing the relevant facts of a police record, court record, or other record maintained by the State or a political subdivision of the State, under various circumstances listed in the statute. These grounds include acquittal, dismissal of charges, entry of probation before judgment, entry of *nolle prosequi*, stet of charge, and gubernatorial pardon. Individuals convicted of a crime that is no longer a crime or convicted or found not criminally responsible of specified public nuisance crimes are also eligible for expungement of the associated criminal records under certain circumstances.

Expungement of a court record means removal from public inspection:

- by obliteration;
- by removal to a separate secure area to which persons who do not have a legitimate reason for access are denied access; and
- if access to a court record or police record can be obtained only by reference to another such record, by the expungement of that record, or the part of it that provides access.

Background: Chapter 42 of 2015 established JRCC in GOCCP. The council was required to (1) using a data-driven approach, develop a statewide policy framework of sentencing and corrections policies to further reduce the State's incarcerated population, reduce spending on corrections, and reinvest in strategies to increase public safety and reduce recidivism and (2) request technical assistance from the Council of State Governments Justice Center and the Public Safety Performance Project of the Pew Center on the States to develop the policy framework. The council met numerous times in 2015 to analyze criminal justice data and review relevant research. Pursuant to additional requirements of Chapter 42, the council also convened stakeholder groups and hosted roundtable

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discussions in multiple regions of the State to seek input from the public, including crime victims and survivors, faith-based groups, civil rights advocates, and community mediation organizations.

The council was required to submit its findings and recommendations by December 31, 2015. In its report, the council noted that, while the overall number of offenders admitted to prison has declined by almost 20% in the last decade, more than half of prison admissions had underlying nonviolent offenses. Almost 60% of all prison admissions represent failures of probation, parole, or mandatory release supervision; many of these stem from technical violations, such as missing an appointment or failing a drug test. Offenders in the State are also spending longer periods of time in incarceration. Factors contributing to longer stays include an increase of 25% in the average sentence length for new prisoners and a 29% increase in sentence lengths for probation revocations. Parole release rates also remain low. These factors may contribute to why, compared to the national average, the State has a larger share of its offender population incarcerated than other states. Specifically, of the State's offender population, 41% are incarcerated and 59% are supervised in the community, as compared to the national average of 30% and 70%, respectively. The council also found that community supervision resources are not sufficiently focused on offenders who are most likely to recidivate, as 70% of offenders on probation and 65% of offenders on parole and mandatory supervision are classified as having a moderate or low risk of reoffending. Additional findings can be found in the [complete report](#) of the council.

Based on its findings, the council developed a comprehensive set of recommendations that are intended to focus prison resources on serious and violent offenders, strengthen community supervision efforts, improve and enhance release and reentry practices, support local corrections systems, and ensure oversight and accountability.

The Justice Reinvestment Initiative (JRI) provides technical assistance and financial support to states, counties, cities, and tribal authorities that seek to reform their criminal justice systems using a data-driven approach. Phase I involves engaging leaders and key stakeholders, conducting a comprehensive analysis of criminal justice data to identify the key factors that contribute to the corrections population growth, and developing policy proposals to reduce costs and improve public safety. Phase II supports the implementation of policy proposals identified in Phase I. This includes helping relevant agencies implement the policies and providing limited funding and technical assistance to advance the jurisdiction's goals and desired outcomes. It also includes measuring the fiscal and public safety impact of the policies implemented.

State Fiscal Effect:

Overview

General fund expenditures increase by \$109,664 in fiscal 2017 for GOCCP to hire one contractual employee for one year to conduct restitution and treatment availability research and one permanent employee to staff the Justice Reinvestment Oversight Board, among other duties. Beginning in fiscal 2018, *net* general fund expenditures increase by at least \$5.3 million, which reflects the October 1, 2017 effective date of many of the bill's provisions and resulting increased costs for DPSCS and GOCCP, and some incarceration savings that begin to accrue under the bill; future year estimates reflect the net impact of increasing costs and increasing savings. Special fund revenues and expenditures increase by an estimated \$2.2 million in fiscal 2019, as 50% of the savings identified through the bill's formula are intended to be distributed to the Performance Incentive Grant Fund (with the other 50% available for additional services identified by JRCC as reinvestment priorities). Amounts available to the special fund increase for the first four years and then begin to decline as the formula savings decrease. Special fund revenues and expenditures for DHMH may increase significantly beginning in fiscal 2018 as a result of the establishment of the Addiction Treatment Divestiture Fund. General fund revenues may increase significantly beginning in fiscal 2018 from expungement filing fees. In addition, general fund revenues from fines imposed in the District Court may be affected. These impacts are described in more detail below.

This analysis does not account for several of the bill's provisions that cannot be reliably estimated at this time. Among other things, the analysis does not reflect (1) costs to the State to provide additional per diem State grants to counties; (2) any costs incurred by DHMH to provide additional drug treatment; (3) any JRI grants the State may eventually receive; (4) any costs for medical evaluations related to medical parole determinations; (5) any savings generated as a result of the application of earned compliance credits that revert to the Performance Incentive Grant Fund; (6) any costs incurred by DPSCS and the courts to process expungements under the bill; and (7) the bill's impact on any capital costs. The analysis also does not reflect any actions the Governor may take to address the bill's intent language regarding funding.

Net Impact of the Bill on DPSCS

The net impact of the bill on DPSCS is shown in **Exhibit 2**.

The bill's changes are expected to result in a decrease in incarceration costs beginning in fiscal 2018. The formula established by the bill to identify savings for budgetary purposes does not recognize savings until fiscal 2019 and captures only a portion of the total savings. The formula does not capture the full savings from this bill because the

incarcerated population under current law is anticipated to grow annually and exceed the baseline used for the formula. The additional savings are reflected in this analysis, and it is assumed they are available for reinvestment.

Up to 50% of the savings resulting from the formula (“formula savings”) is intended to be directed to the Performance Incentive Grant Fund in GOCCP, while the remaining amount of the formula savings is intended to be reinvested in other JRCC priorities. For purposes of this fiscal and policy note, it is assumed that 50% of the formula savings is directed to the fund and the other 50% is available for other priorities, including to offset new costs incurred by DPSCS due to the bill, as those activities are generally consistent with the JRCC recommendations.

Thus, net general fund expenditures for DPSCS *increase* by at least \$5,209,519 in fiscal 2018, which reflects \$6,281,359 in new costs incurred by DPSCS to implement the bill’s various requirements and \$1,071,840 in incarceration savings that would have been incurred in the absence of the bill in that year. Over time, even though the new costs incurred by DPSCS continue to increase, the savings also grow. However, the new costs are projected to be greater than the savings until fiscal 2026, when the savings available to offset new costs in DPSCS are projected to be greater than the new costs incurred by DPSCS.

The savings and new costs are described in more detail below.

Exhibit 2
Projected Incarceration Savings and New Costs for DPSCS
Fiscal 2018-2026

	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>
Incarceration Savings –									
Recognized in Formula	4,352,040	6,689,760	8,214,360	8,463,840	7,623,000	6,033,720	4,065,600	1,653,960	
50% of Savings to Special Fund	2,176,020	3,344,880	4,107,180	4,231,920	3,811,500	3,016,860	2,032,800	826,980	
50% of Savings for Other JRCC									
Priorities	2,176,020	3,344,880	4,107,180	4,231,920	3,811,500	3,016,860	2,032,800	826,980	
 Total Incarceration Savings									
Due to the Bill	1,071,840	6,320,160	8,537,760	9,480,240	9,794,400	10,210,200	10,552,080	10,838,520	11,032,560
 DPSCS Required New									
General Fund Spending	6,281,359	7,945,192	8,263,369	8,595,330	8,853,190	9,118,786	9,392,349	9,674,120	9,964,343
Savings Available to Offset									
DPSCS New Costs*	1,071,840	4,144,140	5,192,880	5,373,060	5,562,480	6,398,700	7,535,220	8,805,720	10,205,580
Net Impact on DPSCS Spending	5,209,519	3,801,052	3,070,489	3,222,270	3,290,710	2,720,086	1,857,129	868,400	-241,237

*Reflects total incarceration savings due to the bill less the amount directed to the special fund.

Source: Department of Legislative Services

Projected Savings in Incarceration Costs

Many of the bill's provisions are expected to reduce the number of inmates incarcerated in State correctional facilities. **Exhibit 3** shows the projected savings resulting from the formula that the board must use to identify savings; it is these savings that the board must recommend to be distributed to the new fund and to be used for other JRCC priorities. As shown in the exhibit, based on the formula, general fund incarceration expenditures for DPSCS decrease by an estimated \$4,352,040 in fiscal 2019. Under the formula, there is no projected savings in fiscal 2018 because the first calculation of savings occurs during fiscal 2019. While the number of beds reduced under the formula increases for the first four years, over time, the number of beds reduced declines. Thus, while the formula savings is anticipated to increase to approximately \$8.5 million in fiscal 2022, by fiscal 2026, the formula savings decreases to an estimated \$1.7 million.

Exhibit 3 Projected Bed Savings under the Bill's Formula Fiscal 2018-2026

<u>Fiscal</u>	<u>No. of Beds Reduced</u>	<u>Projected Annual Savings</u>
2018	0	\$0
2019	471	4,352,040
2020	724	6,689,760
2021	889	8,214,360
2022	916	8,463,840
2023	825	7,623,000
2024	653	6,033,720
2025	440	4,065,600
2026	179	1,653,960
Total		\$47,096,280

Source: Pew Center on the States; Department of Legislative Services

The formula savings is based on projections reported by the Pew Center on the States regarding a reduction in the number of needed prison beds compared to the prison population for March 2016 as a baseline (although the board will use a baseline day of October 1, 2017). This analysis uses those projections and assumes a savings of \$9,240 per inmate per year (excluding overhead, the average cost of housing a new State inmate, including variable health care costs, is about \$770 per month). As noted above, the bill requires the board, in collaboration with DPSCS, to determine the annual savings from the implementation of the JRCC recommendations based on the difference between the prison

population as measured on October 1, 2017 (the baseline day) and every October 1 thereafter. The board must annually recommend that the savings identified through that process be distributed as follows each year: (1) up to 50%, to the Performance Incentive Grant Fund for implementation of the JRCC recommendations; and (2) the remaining amount for additional services identified as reinvestment priorities in JRCC's final report.

As noted above, the formula does not take into account the expected growth in the prison population under current law or any other future changes in law that may impact the incarcerated population. To the extent that the projected reduction in beds is greater than or less than what is anticipated, the savings and recommended distributions to the fund and other JRCC priorities change accordingly.

The new costs for DPSCS are described below.

New Costs for DPSCS

General fund expenditures increase by *at least* \$6,281,359 in fiscal 2018 for DPSCS, which accounts for the delayed effective date (October 1, 2017) of relevant provisions. This estimate reflects the cost of 109 new positions to implement the bill. It includes salaries, fringe benefits, one-time start-up costs, ongoing operating expenses, and the purchase of necessary instruments. The information and assumptions used in calculating the estimate for DPSCS are stated below:

- In order to implement the bill's provisions relating to the risk and needs assessment on each inmate at intake, creation of an Individual Case Plan at intake and throughout an inmate's incarceration, identification of each inmate's academic needs, and increased programming and treatment for each inmate, DOC advises that 107 additional staff are necessary. However, given that inmate intakes are likely reduced under the bill, the Department of Legislative Services (DLS) assumes that the bill's requirements can likely be implemented with 84 additional staff across all State correctional facilities.
- DOC needs to purchase a risk and needs assessment instrument at a one-time cost of \$29,600 and Tests of Adult Basic Education Locator instrument at a one-time cost of \$20,920.
- In order to implement the bill's alterations regarding the earning of diminution credits by inmates, DOC also must make changes to the Offender Case Management System at a one-time cost of approximately \$31,500.
- In order to implement the bill's provisions relating to issuing certificates of rehabilitation, DPP advises that 27 additional staff are necessary. DLS disagrees and advises that, while supervision functions may increase, these provisions can be

implemented by DPP with a total of 14 new positions. As caseloads are reduced, the staffing requirements are likely reduced over time.

- In order to implement the bill's provisions regarding administrative release orders, MPC likely requires an additional 11 positions.

New Positions	109.0
Salaries and Fringe Benefits	\$5,680,429
Contractual Services	80,020
Supplies/Other Operating Costs	49,706
Equipment	<u>471,204</u>
New DPSCS FY 2018 Expenditures	\$6,281,359

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses. DLS notes, however, that over time, it is assumed that the bill should result in a reduction in intakes for DOC and DPP and parole hearings by MPC; thus, at some point in the future, some of these new positions can likely be eliminated.

DLS notes that the Correctional Services Article requires the State to pay at least 50% of eligible costs for construction or expansion of local detention centers. To the extent that local correctional systems determine existing facilities are inadequate to support the bill's changes, the Local Jails and Detention Centers Capital Grant Program could see an increase in funding requests. Any such impact has not been accounted for in this analysis.

Likewise, this analysis does not assume that the bill has any impact on the number of State correctional facilities needed. As a result of the declining offender population over the past decade, the focus of DPSCS's capital plan is not on increasing capacity, but rather on improving services and support space as well as replacing aging and inefficient facilities and infrastructure.

In addition to the costs described above, general fund expenditures for DPSCS may also increase significantly as a result of additional expungement orders generated by the bill. The Maryland Criminal Justice Information System (CJIS) within DPSCS advises that it needs to hire one additional expungement clerk for every additional 2,500 expungements generated by the bill. The number of additional clerks needed cannot be reliably determined at this time and depends on the number of expungement orders granted by courts under the bill. Several positions in the expungement unit at CJIS have been frozen or have remained vacant in recent years. The cost associated with hiring one expungement clerk is \$42,225 in fiscal 2018, which reflects the provision's October 1, 2017 effective date, and \$52,613 in fiscal 2019. CJIS does not charge a fee for expungements.

Governor's Office of Crime Control and Prevention

General fund expenditures increase by \$109,664 in fiscal 2017, which accounts for the relevant provisions' October 1, 2016 effective date. This estimate reflects the cost of hiring one permanent employee to staff the Justice Reinvestment Oversight Board and the Local Government Justice Reinvestment Commission and to administer the Performance Incentive Grant Fund. It also reflects the cost to hire one contractual employee for one year to conduct restitution and treatment availability research. The estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Future year expenditures reflect a full salary (for the permanent employee only) with annual increases and employee turnover as well as annual increases in ongoing operating expenses. Beginning in fiscal 2019, this analysis assumes that the position is supported with special funds from the Performance Incentive Grant Fund, as the bill authorizes GOCCP to use money in the fund to cover its costs of administering the special fund.

Beginning in fiscal 2019, special fund revenues and expenditures for GOCCP are estimated to increase as a result of the establishment of the Performance Incentive Grant Fund. The purpose of the fund is to make use of the savings from the implementation of the JRCC recommendations and provide funds to counties for specified purposes. The Executive Director of the Governor's Office of Crime Control and Prevention may approve or disapprove any grants from the fund. Assuming that 50% of the savings identified through the formula are invested in the fund, savings begin to accrue beginning in fiscal 2019. Based on the estimated formula savings, it is assumed that in fiscal 2019, special fund revenues and expenditures increase by \$2,176,020. This assumes that those revenues are brought into the budget in that year by budget amendment, as the operating budget for fiscal 2019 will have already been finalized. The amount distributed into the fund in future years is anticipated to increase through fiscal 2022, but then decrease as the formula savings decreases. In fiscal 2022, special fund revenues and expenditures are estimated to increase by approximately \$4.2 million; however, in fiscal 2026, the increase in special fund revenues and expenditures decreases to an estimated \$826,980.

Maryland State Commission on Criminal Sentencing Policy

Any impacts on MSCCSP related to revising the guidelines are anticipated to be minimal and absorbable within existing resources, as this is a routine function for MSCCSP. However, due to the limited specific information contained within the bill regarding additional duties for MSCCSP, it is difficult to quantify costs for several additional requirements that have a direct impact on MSCCSP. Provisions that may result in additional operating and fiscal impacts that are not reflected in this analysis include (1) the requirement for MSCCSP to study and report on how additional alternatives to incarceration may be included in the sentencing guidelines; (2) the requirement for

MSCCSP and other agencies to collaborate with the Justice Reinvestment Oversight Board to create performance measures to track and assess the outcomes of the laws related to the recommendations of JRCC; and (3) the requirement for MSCCSP to semiannually collect and report data to the Justice Reinvestment Oversight Board in order for the board to perform its duties.

Judiciary

While the bill's requirements likely result in an increase in caseloads for the District Court, as well as significant fiscal and operational impacts, the exact fiscal impact cannot be reliably estimated. The Judiciary advises that it needs 4 District Court clerks (1 for each of the larger districts) and 10 circuit court clerks (1 for each circuit and 2 "floater" positions) to implement the bill's requirements regarding expungement, at a cost of \$45,789 per clerk in fiscal 2018 and \$58,336 per clerk in fiscal 2019. However, the actual need for personnel depends on the volume, timing, and geographical distribution of petitions filed under the bill, which can only be determined with actual experience under the bill.

General fund revenues may increase significantly from filing fees for expungement petitions filed as a result of the bill. The District Court charges a \$30 filing fee for expungement petitions. In addition, general fund revenues may be affected by the bill's various changes to monetary penalty provisions; however, the overall impact is unknown.

The Judiciary does not currently collect or maintain information regarding admission of inmates to State and local correctional facilities, length of time being served by inmates, recidivism, population of community supervision, or any information about inmate population as required to be reported by the bill. Therefore, operational changes are necessary that likely result in additional expenditures for data collection and computer programming.

In addition, in order to comply with the bill's required substance abuse assessment without additional delay in case processing, assessors likely need a physical location in each courthouse, including office space, security, and equipment. Many courthouses may be unable to accommodate the additional space needs or may need to build out and furnish these spaces. Any increase in resulting costs is not accounted for in this analysis.

The bill's reporting requirement relating to the number of substance abuse disorder assessments ordered by the courts can be handled with existing resources.

Department of Health and Mental Hygiene

Placements under § 8-507 of the Health-General Article and Assessments

The bill requires DHMH, beginning October 1, 2017, to facilitate the *immediate* treatment of a defendant unless the court finds exigent circumstances to delay commitment for treatment for no longer than 30 days. The fiscal 2017 budget for DHMH includes \$345 million for drug treatment programs, including \$3 million associated with the Heroin and Opioid Emergency Task Force. This total includes \$9 million for DHMH to treat defendants referred by State courts under § 8-507 of the Health-General Article. The \$9 million in funding, an increase of \$3 million over prior years, allows DHMH to provide 180 beds for a 120-day treatment program, which enables 540 individuals to receive treatment each year. At the most recent count, 88 individuals had been referred to DHMH under § 8-507 who were awaiting placement, with an estimated wait time of four to five months. Based on current demand, DHMH advises that there is sufficient treatment capacity among substance use disorder providers to accommodate additional court-ordered referrals *within the current 30-day timeframe*. However, DHMH further advises that, even given sufficient funding and treatment capacity, there may be circumstances outside of the department's oversight that may delay the placement of a defendant in an approved placement under § 8-507 within 21 days of the court order, as required under the bill. Thus, DHMH may be unable to meet the 21-day timeframe and, pursuant to the bill, may be required to appear before the court often to explain the reason for the lack of placement.

In addition, the bill authorizes the court to order DHMH (or a designee) to conduct an assessment of a specified defendant for substance use disorder and determine whether the defendant is in need of and may benefit from drug treatment. DHMH likely requires additional staffing to meet the requirement. However, the actual need for personnel depends on the volume, timing, and geographical distribution of assessments resulting from the bill.

The Secretary of Health and Mental Hygiene must report, at each meeting of the Justice Reinvestment Oversight Board, on (1) the number of individuals committed to DHMH for treatment under § 8-507 of the Health-General Article in the previous three months, including the number of days it took to place each individual and where each individual was placed; (2) the number of such individuals who are waiting for treatment but cannot be placed due to a lack of capacity; and (3) the number of individuals assessed for substance use disorder in the previous three months under § 5-601 of the Criminal Law Article and whether each individual was placed into treatment as a result of the assessment. DHMH currently keeps some of this data and can modify current reports to meet these requirements within existing budgeted resources.

Addiction Treatment Divestiture Fund

Beginning in fiscal 2018, special fund revenues for DHMH increase, perhaps significantly, from assets divested under the bill's criminal gangs-related provisions. The bill requires revenues from divested assets in cases involving a conviction under § 9-804 of the Criminal Law Article derived from specified controlled dangerous substances crimes to be deposited in the Addiction Treatment Divestiture Fund. The magnitude of the increase in special fund revenues depends on the frequency with which courts order divestiture of assets and the value of the assets divested, which will vary by year and cannot be reliably determined at this time.

Special fund expenditures for addiction treatment services to persons with substance-related disorders increase beginning in fiscal 2018, perhaps significantly, depending on the revenues collected from divested assets. DHMH can administer the new fund with existing staff.

Office of the Public Defender

The Office of the Public Defender (OPD) advises that the bill's provisions likely decrease the number of parole hearings handled by the agency and, therefore, reduce the workload for public defenders within OPD. As parole hearings represent a small percentage of OPD's workload, the reduction in cases is only anticipated to have a marginal impact on caseloads and does not result in a fiscal impact.

Local Fiscal Effect:

Performance Incentive Grant Fund

County grant revenues may increase significantly, beginning in fiscal 2019, as a result of the establishment of the Performance Incentive Grant Fund in GOCCP, as discussed above. Counties may receive significant additional funding for various specified programs, including to (1) ensure that the rights of crime victims are protected and enhanced; (2) provide for pretrial risk assessments; (3) provide for services to reduce pretrial detention; (4) provide for diversion programs; (5) provide for recidivism reduction programming; (6) provide for evidence-based practices and policies; (7) provide for specialty courts; (8) provide for reentry programs; (9) provide for substance use disorder and mental health service programs; and (10) provide for any other program or service that furthers the purposes of the fund. The grants must be used to supplement, but not supplant, funds received from other sources. Based on the anticipated savings that may accrue to the fund, the amount available from the fund for grants could total approximately \$2.1 million in fiscal 2019; this amount increases significantly through fiscal 2022 as the formula savings increases. By fiscal 2022, an estimated \$4.1 million may be available for grants. Beginning in fiscal 2023, however, the amount available for grants is estimated to decrease

as the formula savings begins to decrease. It should be noted, however, that the bill does not limit eligibility for grants from the fund to counties; thus, it is unclear what percentage of grants are provided to counties versus other entities.

Addiction Treatment Divestiture Fund

To the extent that the Addiction Treatment Divestiture Fund in DHMH provides funding to local health departments, local health departments benefit from additional substance use treatment funding.

Alteration of Criminal Incarceration Penalties and Per Diem State Grants

Local expenditures increase, potentially significantly, beginning in fiscal 2018 as a result of the bill's reduced and altered incarceration penalties and more individuals being committed to local detention 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.

The bill establishes a \$45 per diem State grant for each day that an inmate who has been sentenced to the jurisdiction of DOC received reentry or other pre-release programming and services from a local correctional facility.

Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years.

Expungement

Beginning in fiscal 2018, local revenues from expungement petition filing fees may increase significantly. The circuit courts charge a \$30 filing fee for expungement petitions.

Also beginning in fiscal 2018, local expenditures may increase significantly for local jurisdictions to comply with the bill's expungement requirements.

Analysis of Budgetary Requirements

Local expenditures may increase minimally for local correctional facilities, in coordination with DHMH and local health departments, to conduct an analysis to determine the budgetary requirements of the bill and to report to the General Assembly.

Additional Information

Prior Introductions: None.

Cross File: HB 1312 (The Speaker)(By Request - Justice Reinvestment Coordinating Council) - Judiciary and Health and Government Operations.

Information Source(s): Baltimore City; Montgomery, Washington, and Worcester counties; Maryland Association of Counties; Office of the Attorney General; Governor's Office of Crime Control and Prevention; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; State's Attorneys' Association; Department of Budget and Management; Department of Health and Mental Hygiene; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Department of Legislative Services

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