HB 295

Department of Legislative Services

Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 295 (Delegate Queen, *et al.*)
Judiciary

Correctional Services - Diminution Credits - Education

This bill authorizes a one-time diminution credit to reduce the term of confinement of an inmate who successfully obtains a certificate of completion of a specified technical or vocational training program, a State High School Diploma by Examination, a high school diploma, an associate degree, or a bachelor's degree. The diminution credit allowed is in addition to any other deductions allowed and may not be less than 60 days or more than 730 days. The Commissioner of the Division of Correction (DOC) must establish a uniform system of deductions and participation criteria allowed for the diminution credit.

Fiscal Summary

State Effect: Potential significant increase in special fund expenditures. While general fund incarceration expenditures decrease, general fund expenditures may increase to the extent that the Department of Public Safety and Correctional Services (DPSCS) is subject to higher State Insurance Trust Fund (SITF) assessments. Revenues are not affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law:

Diminution Credits

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 against a victim younger than 16;
- an inmate who is serving a sentence for first- or second-degree sexual offense, as the offenses existed before October 1, 2017, 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In addition, an inmate whose mandatory supervision release has been revoked may not be awarded any new diminution credits on the term of confinement for which the inmate was on mandatory supervision release.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 or programs.

For sentences imposed before October 1, 1992: Good conduct credits are awarded at a rate of five days per month regardless of the offense.

For sentences imposed between October 1, 1992, and October 1, 2017: Good conduct credits are awarded at the rate of 5 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 credits are 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). Credits for work tasks and education may be awarded at the rate of up to 5 days per month. Special project credits may be awarded at the rate of up to 10 days per month.

Such inmates may not be allowed a total deduction, including good conduct credits, of more than 20 days per month.

For sentences imposed on October 1, 2017, or later: Chapter 515 of 2016 increased the maximum possible deduction for diminution credits from 20 days to 30 days per calendar month, 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. Also, except for that same group of inmates, the deduction for special selected work projects or other special programs, including recidivism reduction programming, increased from 10 to 20 days per calendar month. In addition, the maximum deduction for diminution credits increased 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.

Maryland Tort Claims Act

In general, the State is immune from tort liability for the acts of its employees and cannot be sued in tort without its consent. Under the Maryland Tort Claims Act (MTCA), the State statutorily waives its own common law (sovereign) immunity on a limited basis. MTCA applies to tortious acts or omissions, including State constitutional torts, by "State personnel" performed in the course of their official duties, so long as the acts or omissions are made without malice or gross negligence. Under MTCA, the State essentially "…waives sovereign or governmental immunity and substitutes the liability of the State for the liability of the state employee committing the tort." Lee v. Cline, 384 Md. 245, 262 (2004).

However, MTCA limits State liability to $400,000 to a single claimant for injuries arising from a single incident. (Chapter 132 of 2015 increased the liability limit under MTCA from $200,000 to $400,000 for causes of action arising on or after October 1, 2015.) Attorney's fees are included in the liability cap under MTCA. Under MTCA, attorneys may not charge or receive a fee that exceeds 20% of a settlement or 25% of a judgment. MTCA claims are typically paid out of SITF, which is administered by the State Treasurer. The liability for an MTCA tort claim may not exceed the insurance coverage granted to units of State government under the State Insurance Program/SITF.

In actions involving malice or gross negligence or actions outside of the scope of the public duties of the State employee, the State employee is not shielded by the State's color of authority or sovereign immunity and may be held personally liable.

State Expenditures: General fund incarceration expenditures for DPSCS decrease as a result of the advancement of release dates for inmates who qualify for the additional award of diminution credits. At the same time, general fund expenditures increase to the extent that DPSCS is subject to higher SITF assessments due to SITF losses from MTCA payments because of inmate claims made as a result of the bill. The bill may result in a significant increase in special fund expenditures if the bill results in payments from SITF for claims filed under MTCA or litigation of MTCA cases.

The required award of diminution credits under the bill is not restricted to inmates who successfully complete programs after the effective date of the bill. Therefore, inmates *currently* serving sentences who have completed such programs are also eligible for the award of diminution credits under the bill. Retroactively awarding diminution credits of between 60 and 730 days significantly advances the release date for many inmates. While many inmates will be eligible for release early, it may also mean that for some inmates the required release date would have already passed. Significantly advanced release dates leaves DOC with little or no time to prepare the inmate for release. An inmate incarcerated longer than allowed may have a civil cause of action for illegal confinement.

Additional Comments: The bill may result in an award of credits that exceeds the statutory limit for credits due to educational or vocational programming. Education and vocational programming credits are awarded at a rate of 5 days per month. The statutory limit on the total allowed deduction due to diminution credits is 20 to 30 days depending on the offense for which the inmate is serving.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Labor, Licensing, and Regulation; Department of Public Safety and Correctional Services; Department of Legislative Services

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md/lgc

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