

Department of Legislative Services
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FISCAL AND POLICY NOTE
First Reader

House Bill 678
Judiciary

(Delegate Buckel, *et al.*)

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

This bill (1) requires that specified subsequent criminal offenders be sentenced to imprisonment for the maximum term allowed by law; (2) prohibits the court from suspending all or part of a mandatory sentence for specified subsequent criminal offenders; (3) establishes that specified subsequent criminal offenders are not eligible for parole or diminution credits; and (4) requires that the State follow specified procedural rules when prosecuting specified subsequent criminal offenders.

Fiscal Summary

State Effect: Potential significant increase in general fund correctional expenditures if individuals serve longer sentences under the bill and individuals are shifted from local facilities to State facilities, 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 2019 only for computer reprogramming. Revenues are not affected.

Local Effect: Potential minimal 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:

Crime of Violence

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) home invasion; (16) an attempt to commit crimes (1) through (15); (17) continuing course of certain sexual conduct with a child; (18) assault in the first degree; or (19) assault with intent to murder, rape, rob, or commit a sexual offense in the first or second degree.

Subsequent offenders sentenced for a crime of violence are generally subject to mandatory sentences. For a conviction for a second time of a crime of violence committed on or after October 1, 1994, a person must be sentenced to a mandatory minimum, nonsuspendable term of 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 for that conviction confined in a correctional facility.

For a third conviction, a person must be sentenced to a mandatory minimum term of 25 years, if the person has been convicted on two separate occasions of a crime of violence, 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 has served at least one term of confinement in a correctional facility as a result of a conviction of a crime of violence.

For a fourth conviction, a person who has served three separate terms of confinement in a correctional facility as a result of three separate convictions of any crime of violence must be sentenced to life imprisonment without the possibility of parole.

Offenders who are at least age 60 and have served at least 15 years of the sentence are eligible to petition for and to be granted parole. This provision does not apply to offenders who are registered or eligible for registration on the sex offender registry.

If the State intends to proceed against a person under any of these provisions, it must comply with the procedures set forth in the Maryland Rules for the indictment and trial of a subsequent offender.

Parole

Parole is a discretionary and conditional release from imprisonment determined after a hearing for an inmate who is eligible to be considered for parole. If parole is granted, the inmate is allowed to serve the remainder of the sentence in the community, subject to the terms and conditions specified in a written parole order.

MPC has jurisdiction regarding parole for eligible inmates sentenced to State correctional facilities and local detention centers. Inmates in the Patuxent Institution who are eligible for parole are under the jurisdiction of the Patuxent Board of Review.

An inmate sentenced to serve less than six months is not eligible for parole. When an inmate serving a sentence of incarceration of six months or more has served one-fourth of the inmate's sentence, the inmate is entitled to be considered for parole, with several significant exceptions. These exceptions are set forth below:

- An inmate serving a term of incarceration that includes a mandatory minimum sentence that a statute specifies is not subject to parole (*e.g.*, use of a handgun in a felony or crime of violence, subsequent violent offenders with more stringent sentences, and subsequent felony drug offenders with more stringent sentences) and who is not eligible for parole until the inmate served that mandatory minimum sentence. Diminution credits may not be applied toward this minimum requirement.

- Any of the following inmates who do not receive a mandatory minimum sentence are required to serve at least one-half of their sentences for violent crimes before becoming eligible for parole: (1) an inmate convicted of a violent crime committed on or after October 1, 1994; (2) an inmate convicted of child abuse in the first degree committed on or after October 1, 2006; and (3) an inmate convicted of sexual abuse of a child younger than age 13 or a continuing course of conduct with a child committed on or after October 1, 2007.
- Chapter 515 of 2016 (also known as the Justice Reinvestment Act) established that an inmate serving a term of imprisonment for a third or subsequent conviction for specified felony drug offenses committed on or after October 1, 2017, is not eligible for parole until the inmate has served one-half of the aggregate sentence.
- An offender sentenced to life imprisonment must serve a minimum of 15 years less diminution credits before becoming eligible for parole and may be paroled only with approval of the Governor.
- An offender sentenced to life imprisonment for first-degree murder, instead of a sentence of life imprisonment without the possibility of parole, must serve a minimum of 25 years less diminution credits before becoming eligible for parole and may generally be paroled only with approval of the Governor. However, if MPC or the Patuxent Board of Review decides to grant parole to an inmate who has served 25 years without application of diminution credits and the Secretary of Public Safety and Correctional Services approves the decision, the decision must be transmitted to the Governor, who may disapprove the decision in writing within 180 days. If the Governor does not disapprove the decision to grant parole within that timeframe, the decision to grant parole becomes effective.
- Inmates serving a sentence of life without the possibility of parole may not be granted parole unless the Governor commutes the sentence to allow for the possibility of parole or pardons the individual.
- Beginning October 1, 2017, offenders who are age 60 or older and have served at least 15 years of a sentence for a crime of violence may petition for and be granted parole. The provisions do not apply to individuals who are registered or eligible for registration on the sex offender registry.

Also beginning October 1, 2017, 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 may be released on medical parole. 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.

State Expenditures: General fund expenditures for the Department of Public Safety and Correctional Services (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 2019 only for computer reprogramming.

DPSCS advises that in fiscal 2017, there were 249 inmates that met the bill's requirements. Under current law, an offender convicted of a violent crime committed on or after October 1, 2009, is not eligible for conditional release (due to the award of diminution credits) until after the offender becomes eligible for parole. An offender convicted of a violent crime committed on or after October 1, 1994, (who did not receive a mandatory minimum sentence) is required to serve at least one-half of the offender's sentence for the violent crime before becoming eligible for parole. As noted above, subsequent offenders sentenced for a crime of violence are generally subject to mandatory sentences.

With the application of diminution credits and eligibility for parole, DPSCS advises that the 249 inmates that meet the bill's requirements are likely to serve approximately two years additional per inmate. Over time, this bill increases the average daily population in State correctional facilities and, to the extent that additional beds, personnel, infrastructure improvements, or a new prison facility are necessary, may increase costs. Based on a cost of approximately \$155,000 per bed, the cost of building a new medium security 1,300-bed prison facility is currently estimated at \$202 million. Actual costs would depend on the design of the facility, the location of the facility, and existing infrastructure.

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 \$3,800 per month. Excluding overhead, the average cost of housing a new State inmate (including health care costs) is about \$870 per month. Excluding all health care (which is a fixed cost under the current contract), the average variable costs total \$210 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. 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 or who receive reentry or other prerelease programming and services from 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 2019, 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: Although most subsequent violent offenders are not incarcerated in local correctional facilities, local expenditures may decrease minimally in the event that the bill shifts some 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 or who receive reentry or other prerelease programming and services from a local facility. Per diem operating costs of local detention facilities have ranged from approximately \$40 to \$170 per inmate in recent years.

Additional Information

Prior Introductions: HB 1173 of 2016 received an unfavorable report from the House Judiciary Committee.

Cross File: None.

Information Source(s): Kent, Montgomery, Washington, and Worcester counties; City of Westminster; Town of Leonardtown; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of Public Safety and Correctional Services; Department of Legislative Services

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