# Department of Legislative Services

Maryland General Assembly
2019 Session

## FISCAL AND POLICY NOTE
## Enrolled - Revised

Senate Bill 327 (Senator Smith)
Judicial Proceedings Judiciary

**Justice Reinvestment Act - Diminution Credits - Sentencing**

This bill clarifies that changes to the application of diminution credits as a result of Chapter 515 of 2016, also known as the Justice Reinvestment Act (JRA), must be construed prospectively to apply only to inmates who are sentenced or committed to custody on a finding of violation of probation on or after October 1, 2017. The bill may not be construed to result in a recalculated release date for an inmate that is prior to October 1, 2019, or create a cause of action for false imprisonment against the Department of Public Safety and Correctional Services (DPSCS) or a local correctional facility.

## Fiscal Summary

**State Effect:** Potential significant decrease in expenditures for DPSCS, resulting in a potential significant increase in special fund revenues for the Governor's Office of Crime Control and Prevention (GOCCP).

**Local Effect:** Although there is no material direct effect on local governments, to the extent GOCCP receives additional special funds for its Performance Incentive Grant Fund, local grant revenues and expenditures may increase.

**Small Business Effect:** None.

## Analysis

**Current Law:** Chapter 515 of 2016, also known as JRA, altered many provisions relating to sentencing, corrections, parole, and the supervision of offenders. Regarding diminution credits, Chapter 515 increased the maximum possible deduction for diminution credits from 20 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. Furthermore, Chapter 515 expanded the types of programs for which an inmate may earn diminution credits. 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. The provisions were required to be construed prospectively to apply only to *inmates that are sentenced* on or after October 1, 2017.

**State Fiscal Effect:** DPSCS advises that as of January 2019, there were approximately 1,083 inmates committed to the custody of the Division of Correction within DPSCS as a result of a violation of probation. To the extent that additional inmates serve shorter sentences as a result of the bill, incarceration expenditures for DPSCS decrease.

JRA requires the Justice Reinvestment Oversight Board (staffed by GOCCP), in collaboration with DPSCS, to determine the annual savings from the implementation of the recommendations of the Justice Reinvestment Coordinating Council (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 JRA does not require a specific distribution of the identified savings, the Act 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 any savings that might occur. However, to the extent that the State correctional facility population declines as a result of the bill, revenues for the Performance Incentive Grant Fund within GOCCP increase.

GOCCP advises that the office expects to receive approximately $3.7 million in fiscal 2020 as a result of the inmate population decrease in fiscal 2018 due to JRA. While it is not possible to definitively quantify the number of inmates who may qualify for *additional* diminution credits under the bill, based on the number of inmates who could qualify for additional diminution credits and serve shorter sentences, DPSCS general fund expenditures may decrease significantly, which, in turn, may result in a significant increase in special fund revenues for GOCCP.

## Additional Information

**Prior Introductions:** None.

**Cross File:** HB 274 (Delegates Barron and Dumais) - Judiciary.

**Information Source(s):** Anne Arundel, Baltimore, and Garrett counties; 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; Maryland State's Attorneys' Association; Department of Public Safety and Correctional Services; Department of Legislative Services

**Fiscal Note History:** First Reader - February 10, 2019
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