

Department of Legislative Services
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FISCAL AND POLICY NOTE
First Reader

House Bill 959
Judiciary

(Delegate Metzgar, *et al.*)

Criminal Procedure – Plea Agreements – Crime of Violence

This bill prohibits a person who has been convicted of a crime of violence, as defined under § 14-101 of the Criminal Law Article, from entering into a plea agreement. The bill applies prospectively to crimes committed on or after the bill’s October 1, 2023 effective date.

Fiscal Summary

State Effect: Potential significant increase in general fund expenditures to handle additional trials and sentences imposed. The bill is not expected to materially affect State revenues.

Local Effect: Increase in local government expenditures for State’s Attorneys’ offices, detention centers, and other affected entities. The bill is not expected to materially affect local revenues.

Small Business Effect: None.

Analysis

Current Law:

Plea Agreements: Among other things, Maryland Rule 4-243 authorizes a defendant and a State’s Attorney to submit a plea agreement proposing a particular sentence, disposition, or other judicial action to a judge for consideration. Defense counsel and the State’s Attorney must advise the judge of the terms of the agreement when the defendant enters his/her plea. The judge may accept or reject the plea, and if the plea is accepted, may approve the agreement or defer a decision on approval or rejection of the agreement until

after presentence proceedings and further investigation. The plea agreement is not binding on the court until the judge to whom the agreement was presented approves it. If the judge approves the agreement, the judge must embody the agreed terms in the judgment or, with the consent of the parties, enter a disposition more favorable to the defendant than that provided for in the agreement.

Section 14-101 of the Criminal Law Article

Individuals convicted of a crime of violence under § 14-101 of the Criminal Law Article are eligible for various additional criminal penalties and earn diminution credits at a lower rate than other offenders.

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

Section 14-101(a) of the Criminal Law Article 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 firearm in the commission of a felony or other crime of violence, except possession with intent to distribute a controlled dangerous substance; (13) child abuse in the first degree; (14) sexual abuse of a minor younger than age 13 under specified circumstances; (15) home invasion; (16) felony sex trafficking and forced marriage; (17) an attempt to commit crimes (1) through (16); (18) continuing course of certain sexual conduct with a child; (19) assault in the first degree; and (20) assault with intent to murder, rape, rob, or commit a sexual offense in the first or second degree.

State Expenditures: The bill may result in a significant increase in general fund expenditures to handle additional trials and sentences imposed under the bill. The potential effects on the Judiciary, Office of the Public Defender (OPD), and the Department of Public Safety and Correctional Services (DPSCS) are discussed below.

This estimate assumes that (1) the bill applies only to cases involving charges for subsequent crimes allegedly committed by an individual previously convicted of a crime of violence and (2) individuals not sentenced pursuant to a plea agreement are likely to be found guilty at trial.

In general, Maryland’s sentencing guidelines apply to criminal cases originating in the circuit courts that involve incarcerable offenses. However, prayers for a jury trial in a case originating in the District Court and appeals from the District Court are also eligible for the sentencing guidelines if a presentence investigation is ordered. Reconsiderations of

sentences imposed for crimes of violence and three-judge panel reviews of sentences are also eligible for the guidelines if there is an adjustment to the defendant's active sentence.

According to its 2022 annual report, in fiscal year 2022, the Maryland State Commission on Criminal Sentencing Policy (MSCCSP) received guidelines worksheets for 10,486 sentencing events in the State's circuit courts. Most cases were resolved by either an MSCCSP binding plea agreement (40.3%) or other plea agreement (33.4%). The remaining disposition types were guilty pleas with no agreement (23.2%), jury trials (2.7%), and bench trials (0.5%). MSCCSP received sentencing guidelines worksheets for 1,779 sentencing events involving 2,525 crimes of violence during fiscal 2022. Most crimes of violence were resolved by either an MSCCSP binding plea agreement (46.8%), another plea agreement (27.3%), or a guilty plea with no agreement (16.8%). A binding plea agreement is a plea agreement presented to the court in agreement by an attorney for the government and the defendant's attorney, or the defendant when proceeding *pro se*, that a court has approved relating to a particular sentence and disposition. An MSCCSP binding plea agreement means an agreement to a specific amount of active time (if any), not merely a sentence cap or range. The court has the discretion to accept or reject the plea. The agreement is binding on the court under Maryland Rule 4-243 if the court accepts the plea. An "other plea agreement" is when the disposition resulted from a plea agreement reached by the parties that did not include an agreement to a specific amount of active time (if any) and/or the agreement was not approved by, and thus not binding on, the court.

In fiscal 2022, 81.2% of sentencing events were within the guidelines. Compliance was most likely in cases adjudicated by a plea agreement and least likely in cases adjudicated by a bench trial. (However, it should be noted that MSCCSP binding plea agreements are considered guidelines-compliant by definition.) Departures from the guidelines were more often below the guidelines than above. The most cited reason for departures below the guidelines was that the parties reached a plea agreement that called for a reduced sentence. The most cited reason for departures above the guidelines was the State's Attorney or Division of Parole and Probation's recommendation. According to the fiscal 2022 data, sentencing events resulting from pleas without an agreement had the highest percentage of departures below the guidelines (27.6%) and dispositions after jury trials had the highest percentage of departures above the guidelines (14.4%).

Judiciary: The Judiciary advises that any increase in bench or jury trials results in additional judge, clerical, and court time. Increases in jury trials may result in increases in jury summonses and corresponding daily juror pay, which the Judiciary cannot reliably determine at this time and are dependent on the number of "not guilty" pleas generated by the bill. According to the Judiciary, the bill may have a significant operational and fiscal impact on the courts if it results in a dramatic increase in not guilty pleas.

Office of the Public Defender: The bill may have a significant impact on OPD. While the bill does not increase the number of defendants in the criminal justice system or the number of OPD cases, it increases the number of trials. Accordingly, additional OPD attorneys and staff will be needed to comply with the additional trials generated by the bill, resulting in a potentially significant increase in general fund expenditures. OPD advises that the resources needed for all cases involving an individual who was previously convicted of a crime of violence to go to full trial on any subsequent charge would be substantial. OPD estimates costs of at least 300% of its current budget for adult criminal representation but did not provide information as to how it developed that estimate.

Department of Public Safety and Correctional Services:

General fund expenditures for DPSCS increase to the extent that people are committed to State correctional facilities for longer periods of time. If a defendant who enters into a plea agreement is likely to receive a shorter sentence than the defendant would have received after a trial, the bill may increase general fund expenditures for DPSCS from lengthier sentences in State correctional facilities or the shifting of inmates from local facilities to State facilities. Though potentially significant cumulatively, the magnitude of the bill's impact on DPSCS expenditures cannot be reliably determined at this time and can only be determined with actual experience under the bill.

DPSCS reports that since fiscal 2015, the Division of Correction (DOC) has received 5,993 inmates that had one or more offenses that qualified as a crime of violence under § 14-101 of the Criminal Law Article. DPSCS further advises that eliminating plea agreements may result in longer terms of confinement for inmates previously convicted of a crime of violence. According to a November 2022 recidivism report submitted by DPSCS pursuant to the *2022 Joint Chairmen's Report*, 12.24% of individuals who left State correctional facilities during fiscal 2019 had a new offense resulting in commitment to DOC at any time in the following three years.

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 \$4,970 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 (1) inmates who are sentenced to and awaiting transfer to the State correctional system; (2) sentenced inmates confined in a local detention center between 12 and 18 months; and (3) 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.

Local Expenditures: The bill may have a meaningful impact on local State’s Attorneys’ offices. Local detention centers may incur an increase in expenditures if the bill lengthens local detention times and pretrial detentions for defendants awaiting trial, offset in whole or in part, by the shifting of inmates from local facilities to State facilities (as discussed above). Local expenditures for juror pay may also increase if the bill increases the number of jury trials. Local governments initially pay juror State *per diems*, which are later reimbursed by the Administrative Office of the Courts. However, local governments may provide a county supplement to the State per diem in order to increase the total payment for jurors.

Queen Anne’s County advises that the bill may result in expenditures exceeding \$200,000 annually for additional State’s Attorneys’ office and courtroom security personnel.

The Carroll County State’s Attorney’s Office advises that it requires several additional attorneys to prepare and try the increased caseload under the bill.

Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. *Per diem* operating costs of local detention facilities have ranged from approximately \$90 to \$300 per inmate in recent years.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Cross File: None.

Information Source(s): Carroll and Queen Anne’s counties; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Public Safety and Correctional Services; Department of Legislative Services

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