

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 44

(Senator Folden, *et al.*)

Judicial Proceedings

Safe Communities Act of 2024

This bill prohibits (1) the earning of diminution credits to reduce the term of confinement of an incarcerated individual who is serving a sentence for first- or second-degree murder in a State or local correctional facility (pre-sentence or post-sentence) and (2) the application of diminution credits that equal more than 10% of an incarcerated individual's aggregate sentence for crimes of violence. The bill also prohibits a judicial officer from authorizing the pretrial release of a defendant who is charged with a crime of violence if the defendant (1) has a pending charge for a crime of violence in Maryland (or a crime in another jurisdiction that would be a crime of violence if committed in Maryland) or (2) within the previous 10 years, was convicted in Maryland of a crime of violence (or in any other jurisdiction of a crime that would be a crime of violence if committed in Maryland). The bill's provisions apply prospectively only.

Fiscal Summary

State Effect: The bill does not materially affect State finances in the near term. In the future, general fund expenditures increase, potentially significantly, for the Department of Public Safety and Correctional Services as individuals serve longer sentences under the bill, as discussed below. Revenues are not affected.

Local Effect: Local finances are not anticipated to be materially affected, as discussed below.

Small Business Effect: None.

Analysis

Current Law:

Diminution Credits: Generally, incarcerated individuals sentenced to a State correctional facility are entitled to earn diminution of confinement credits to reduce the lengths of their incarcerations. Individuals sentenced for a “crime of violence” earn diminution credits at a lower rate than other incarcerated individuals. The following types of incarcerated individuals may not earn diminution credits:

- an incarcerated individual who is serving a sentence for first- or second-degree rape against a victim younger than 16;
- an incarcerated individual 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 incarcerated individual who is serving a sentence for a subsequent conviction of third-degree sexual offense against a victim younger than 16; and
- an incarcerated individual imprisoned for a lifetime sexual offender supervision violation.

Diminution credits are deducted from an incarcerated individual’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 additional information on diminution credits, see the [Maryland Diminution Credit System](#) report published by the Department of Legislative Services in December 2020.

Pretrial Release: Under Maryland Rule 4-102, a “judicial officer” means a judge or a District Court commissioner.

In most cases, pretrial release determinations are made at a defendant’s initial appearance before a District Court commissioner. A commissioner may not, however, authorize the release of certain defendants. Pretrial release of such defendants may be authorized only by a judge, and only on suitable bail, on any other conditions that will reasonably ensure that the defendant will not flee or pose a danger to others, or on both bail and such other conditions. In most instances, there is a rebuttable presumption that these defendants will flee and pose a danger to another person or the community.

In particular, a District Court commissioner may not authorize the pretrial release of a defendant charged with a crime of violence (as defined under § 14-101 of the Criminal Law Article), if the defendant has been previously convicted of a crime of violence under the laws of this State, has been convicted under the laws of another state of a crime classified as a crime of violence in Maryland, or has been convicted of specified weapons-related offenses. Also, a District Court commissioner may not authorize the pretrial release of a defendant charged with committing a crime of violence while the defendant was released on bail or personal recognizance for a pending prior charge of committing a crime of violence.

A defendant who is denied pretrial release by a District Court commissioner or who for any reason remains in custody after a District Court commissioner has determined conditions of release under the Maryland Rules must be presented to a District Court judge immediately if the court is in session or, if the court is not in session, at the next session of the court.

Crime of Violence: 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 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/Local Fiscal Effect: Although the bill does not materially affect State finances over the five-year period covered by this fiscal and policy note, general fund incarceration expenditures increase, potentially significantly, in the future as individuals serve longer sentences due to the bill’s changes. Offenders sentenced for violent crimes typically are not sentenced to local correctional facilities; therefore, local finances are not anticipated to be materially affected.

Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per incarcerated individual, including overhead, is estimated at \$5,110 per month. Excluding overhead, the average cost of housing a new State incarcerated individual (including health care costs) is about \$1,244 per month. Excluding all health care (which is a fixed cost under the current contract), the average variable costs total \$336 per month.

Murder Offenses: During fiscal 2023, the Division of Correction (DOC) reports receiving 127 incarcerated individuals convicted of first- or second-degree murder offenses. Forty-six were sentenced to life, 81 were sentenced to fixed-length terms, and none were sentenced to life without parole. *For illustrative purposes only*, for each incarcerated individual that remains incarcerated for 10 additional years as a result of the bill, based on the current average variable costs of \$336 per month (excluding health care), State incarceration costs increase by approximately \$40,320. Although a reliable estimate of the total increase in incarceration costs cannot be made, the impact may eventually be significant considering the cumulative impact over time.

Crimes of Violence: During fiscal 2023, DOC reports receiving 1,274 incarcerated individuals with one or more offenses that qualify as a crime of violence. Seventy were sentenced to life-concurrent or life-consecutive sentences and would not be eligible for diminution credits under the bill. The remaining 1,204 incarcerated individuals have 1,412 fixed term sentences for at least one crime of violence conviction. According to DOC, approximately 51% of the DOC population is serving a sentence for one or more offenses designated as a crime of violence and it is not possible to calculate 10% of a sentence when many incarcerated individuals are serving sentences that are concurrent or consecutive with other sentences. Accordingly, a reliable estimate of any increase in incarceration expenditures due to the prohibition on the application of diminution credits that equal more than 10% of an incarcerated individual's aggregate sentence for crimes of violence cannot be made at this time.

Pretrial Release: Given the nature of the criteria defendants must meet in order to be prohibited from being released before trial by a judicial officer under the bill and the existing statutory restrictions on pretrial release of these defendants, this estimate assumes that defendants affected by the bill are not released before trial on a frequent basis. Thus, the bill's prohibitions relating to pretrial release are not expected to materially affect State or local finances or operations, including pretrial detention costs.

Additional Information

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

Designated Cross File: HB 310 (Delegate Buckel, *et al.*) - Judiciary.

Information Source(s): Allegany, Harford, and Montgomery counties; 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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