



RACIAL EQUITY IMPACT NOTE

DEPARTMENT OF LEGISLATIVE SERVICES
MARYLAND ▪ GENERAL ▪ ASSEMBLY

2023 Session
SB0569

Correctional Services - Murder - Diminution Credits

Bill Summary

This bill prohibits an inmate serving a sentence for the crime of murder in the first degree or murder in the second degree in a State or local correctional facility from earning diminution credits to reduce the term of confinement.

Racial Equity Impact Statement

The bill would add first- and second-degree murder into the existing set of criminal convictions for which the accumulation of diminution credits is prohibited. The bill's provisions directly impact the largely Black or African American incarcerated population in Maryland by prohibiting any use of diminution credits to reduce their terms of incarceration. According to the Department of Public Safety and Correctional Services (DPSCS), the availability of diminution credits is a key rehabilitative component for inmates. The larger equity impacts regarding recidivism, reentry success, and potential adverse effects for juveniles and young adults cannot be estimated without additional data.

Analysis

The bill incorporates first- and second-degree murder amongst the current categories of criminal sentences that prohibit an inmate from accruing diminution credits while confined in a State or local correctional facility, and also prohibits an individual convicted of first- or second-degree murder from accruing diminution credits for any presentence or post sentence time confined in a local correctional facility.

Individuals convicted of first-degree murder in Maryland must be sentenced to life in prison or life in prison without parole. Pursuant to Chapter 30 of the 2021 special session, an inmate sentenced

to life imprisonment for a crime committed on or after October 1, 2021, is not eligible for parole until the inmate has served 20 years, or the equivalent of 20 years with allowances for diminution credits (prior to Chapter 30, a 15-year time period applied to this eligibility). Inmates convicted of first-degree murder must serve 25 years minus diminution credits when life without parole was sought but not imposed by the court.

The bill would ensure that the individuals sentenced to life imprisonment for this offense serve a full 20 years (or 25 years when applicable) without the ability to earn diminution credits to shorten that time. Similarly, those convicted of second-degree murder may be sentenced for up to a maximum of 40 years and the length of time required before parole eligibility could not be shortened with diminution credits.

Diminution Credits Generally

Generally, a convicted individual sentenced to a term of incarceration in the Division of Correction (DOC) is, with specific exceptions, able to earn diminution credits to reduce the term of incarceration. Inmates in both State correctional facilities and local detention centers are eligible for diminution credits. Additionally, convicted individuals may earn diminution credits for any period of presentence or post sentence confinement in a local correctional facility.

Good conduct credit (sometimes referred to as “good time” credit) is advanced to an inmate at intake, subject to the inmate’s future good behavior. These credits are calculated from the first day of commitment to the custody of the Commissioner of Correction through the maximum expiration date of the inmate’s term of confinement. Maryland courts recognize good conduct credits as a behavioral incentive and a means of reducing prison overcrowding. The awarding of diminution credits is automatic, not discretionary.

For sentences imposed on or after October 1, 2017, Chapter 515 of 2016 altered provisions relating to sentencing, corrections, parole, and the supervision of offenders. With regard to diminution credits, Chapter 515 increased the maximum total deduction from 20 to 30 days per calendar month for all State correctional facility inmates except for inmates serving a sentence for a crime of violence, specified sexual offenders, or being a volume drug dealer or drug kingpin. Chapter 515 also increased the maximum deduction for special selected work projects or other special programs from 10 to 20 days per calendar month and expanded the types of programs for which an inmate may earn diminution credits. Individuals sentenced for a “crime of violence” earn diminution credits at a lower rate than other inmates.

According to the National Conference of State Legislatures, as of 2021, Rhode Island is currently the only state that prohibits individuals convicted of first- or second-degree murder from earning good time or earned time credits.

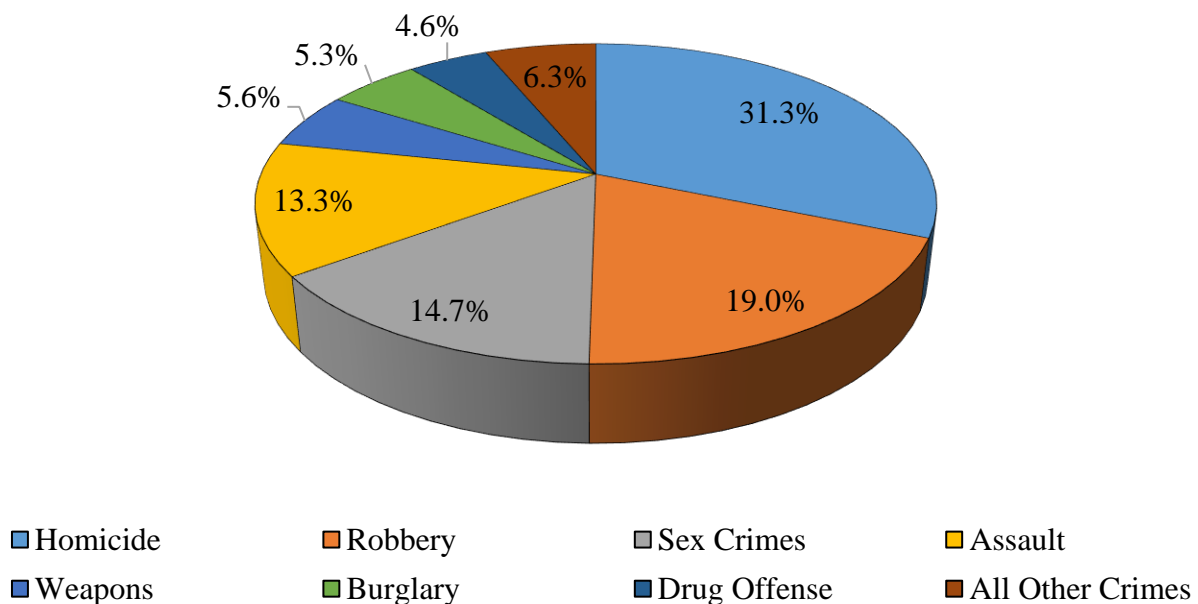
Impact of the Bill

For fiscal 2022, the Maryland State Commission on Criminal Sentencing Policy received information for 106 individuals sentenced to 116 total counts of first-degree murder in circuit court. The DPSCS fiscal 2022 inmate characteristics report shows that out of the nearly 15,000 incarcerated individuals in Maryland, Black or African American inmates comprise 10,719 individuals, or 71% of the total. This data shows that Black or African American individuals are

more than twice as likely to be incarcerated in Maryland compared to their proportion of the State’s population (29%) and are more than five times as likely to be incarcerated compared to white individuals.

More specifically, **Exhibit 1** shows that of the top seven crime categories accounting for 93% of the inmate population, homicide is the largest category comprising just over 31% of the offenses. Additionally, 73% of the total population of incarcerated individuals is serving a sentence of 10 years or more. The DOC data does not provide the racial or ethnic background of the population of inmates that have been convicted for first- or second-degree murder.

Exhibit 1
Division of Correction Inmate Offense Types
Fiscal 2022



Source: Department of Public Safety and Correctional Services

The bill would substantially increase sentence lengths for those incarcerated for murder. By way of example, a person convicted of first-degree murder and sentenced to life imprisonment under existing law must serve 20 years before being eligible for parole or just under 17 years if the person earned 100% of good conduct credits (5 days per month). Parole eligibility can also be further accelerated with additional credits (*i.e.*, education and special project credits) of up to 20 days per month. The extension of incarceration lengths resulting from the bill would work similarly for those convicted of second-degree murder.

DPSCS advises that it uses an inmate’s ability to earn diminution credits as an incentive to encourage good behavior and participation in rehabilitative programs and/or work programs. By eliminating the applicability of diminution credits for inmates serving a life sentence for murder,

DPSCS advises that it loses a key tool for modifying inmate behavior. In addition, DPSCS indicates that the elimination of diminution credits could decrease the number of inmates who are working or participating in prison programming and also could potentially increase institutional violence.

Conclusion

According to DPSCS, prohibiting the use of diminution credits to reduce terms of incarceration would eliminate a key rehabilitative component for inmates. The bill's impact can be measured in years for incarcerated individuals and could potentially work to discourage positive behaviors among inmates currently incarcerated for murder.

The largely Black or African American incarcerated population in Maryland will be impacted by the bill to the greatest extent. Determining the larger equity impacts requires answering questions such as whether increased incarceration time would affect recidivism and reentry success among affected individuals. In addition, there may be significant impacts regarding juveniles or young adults incarcerated for murder. The Department of State Police reports that in 2020, there were 111 arrests for murder (all types) of individuals under age 25 – of these arrests, 88 were Black or African American individuals. National and state data generally acknowledge more adverse effects for juveniles and young adults incarcerated in adult correctional facilities and the bill raises the question of whether spending a substantially longer time in incarceration would impact these individuals to a greater extent. However, there is no reliable data currently available to assess these potential impacts.

Methodologies, Assumptions, and Uncertainties

Although some reports use disparity and disproportionality interchangeably, this racial equity impact note distinguishes them. Disproportionality is the state of being out of proportion. It compares the proportion of one racial or ethnic group of a target population to the proportion of the same racial or ethnic demographic group in the general population. Disparity, however, refers to a state of being unequal. A disparity describes an unequal outcome experienced by one racial or ethnic group of the target population as contrast against a different racial or ethnic group in the target population.

The information provided in this note is drawn from quantitative data analysis of available statistical datasets on crime and criminal justice collected by entities at the national and state level. Moreover, the information includes scholarly literature on racial and ethnic disparities in the U.S. criminal justice system.

Information Sources: National Conference of State Legislatures; Department of Public Safety and Correctional Services; Department of State Police; Maryland State Commission on Criminal Sentencing Policy; Department of Legislative Services

Analysis by: Rafael Regales

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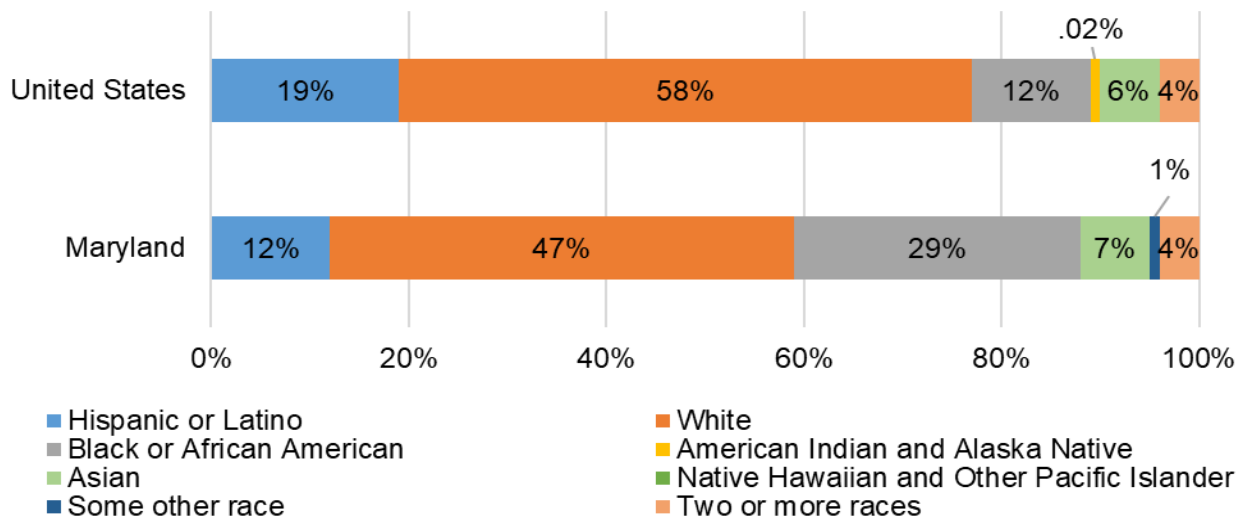
Appendix – Maryland Demographics

Race and Ethnicity of the Maryland Population

Maryland’s 2020 census population is 6,177,244, a 7% increase from the 2010 census count and approximately 2% higher than the 2019 census population estimates. In addition to an increase in population, Maryland’s racial demographics have become more diverse. Maryland is now a state in which racial minorities make up a majority of its total population. Notable changes relevant to this shift are the increase in groups who identify as “other” and “multiracial” (*i.e.*, two or more racial identities), which total 5% of the State’s population. Additionally, the change in demographics is due to the decrease in the number of individuals who only report “white” as their racial group. Despite this decrease, non-Hispanic whites remain the largest single race demographic group in the State of Maryland comprising 47% of the State’s population.

Compared to the U.S. population overall, Maryland’s population of individuals who identify as a single race is more diverse. Maryland is ranked as the fourth most diverse state by the U.S. Census Bureau’s [Diversity Index](#). As shown in **Exhibit 1**, in Maryland, 47% identify as white alone compared to 58% of the national population. Similarly, 51% of the population identify as non-white or multi-racial compared to 38% of the national population. In both the State and national population, the largest shares of the non-white population are individuals who are Black or African American, with 29% of the State population identifying only as Black or African American and another 2.5% identifying as Black in combination with some other race. Maryland’s Asian population is 7%, which is slightly higher than the Asian share of the national population of 6%. The State’s overall population by ethnicity, however, is slightly less diverse than the U.S. population; 12% of the State’s population identified as Hispanic or Latino compared to 19% of the U.S. population.

Exhibit 1
U.S. and Maryland Population by Race and Ethnicity
2020



Source: U.S. Census Bureau, 2020 Census Redistricting Data (Public Law 94-171), Table ID P2, HISPANIC OR LATINO, AND NOT HISPANIC OR LATINO BY RACE.