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## **POSITION ON PROPOSED LEGISLATION**

**BILL: SB1098 — Corr. Servs.— Diminution Credits — Sexual Offenses**

**FROM: Maryland Office of the Public Defender**

**POSITION: Unfavorable**

**DATE: 02/27/2024**

The Maryland Office of the Public Defender urges an unfavorable report on Senate Bill 1098.

This bill would mandate that a person convicted of first-degree rape is not entitled to diminution credits and is not allowed deductions for any pre-sentence or post-sentence confinement in a local correctional facility. This significant departure from current law would mean that a person serving a sentence for first-degree rape is ineligible for diminution credits, regardless of any demonstrated rehabilitation while incarcerated.

Currently, an incarcerated person is ineligible for diminution credits if they are serving a sentence:

- (1) for first- or second-degree rape of a person under 16 (Corr. Servs. § 3-702(b));
- (2) for a subsequent conviction of third-degree sexual offense against a person under 16 (Corr. Servs. § 3-702(c))’
- (3) for a violation of lifetime sexual offender supervision (Crim. Proc. § 11-724(c)).

“Diminution credits reduce the incarceration period, not the length of a sentence or term of confinement.”<sup>1</sup> There are several types of diminution credits: good conduct, work tasks, education, and special programs or projects. *Id.*

Good conduct credit or ‘good time’ credits are calculated and automatically advanced to a person upon intake: these credits are the incarcerated person’s to lose. Depending on the date the sentence was imposed, whether the sentence is for a crime of violence as defined in Crim. L. § 14-101, or whether a

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<sup>1</sup> Dept. of Legislative Servs. Off. of Policy Analysis, *Maryland Diminution Credit System* (Dec. 2020), available at: <https://dls.maryland.gov/pubs/prod/CourtCrimCivil/Maryland-Diminution-Credit-System.pdf>.



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person is statutorily prohibited from earning diminution credits, good conduct credits are awarded at a rate of either 5 or 10 days per month. Corr. Sevs. § 3-704.

Credits associated with programming, education, or work are earned as a person participates in the program, education, or work. Corr. Servs. §§ 3-705 through 3-707. These credits can allow for deductions of anywhere between 5 and 20 days per month, depending on the type.

A person's total diminution credits may be limited. A person serving a sentence for a crime of violence, sexual offense, or being a volume drug dealer or kingpin is limited to a total deduction of 20 days per month. For all others, the maximum deduction is 30 days per month. Corr. Servs. § 3-708. Further restrictions may exist for sentences imposed between 1992 and 2017 and before 1992.

These credits serve several purposes: as a behavioral incentive and to reduce prison overcrowding. *Stouffer v. Staton*, 152 Md. App. 586, 592 (2003). Moreover, there are already offense-based limitations on earning such credits. Crucially, the Division of Correction can revoke some types of credits. Diminution credits for good conduct or special projects may be deducted if a person commits infractions in the Division of Correction. Corr. Servs. § 3-709. These deductions serve as a way to both encourage rehabilitative behavior and discourage poor adjustment.

The diminution credit system as it currently exists can be individualized to address the good or poor adjustment of an individual incarcerated person. Further blanket restriction of the diminution credit system does not serve the public's interest in rehabilitation or community safety. We urge an unfavorable report.

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**Submitted by: Maryland Office of the Public Defender, Government Relations Division**

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