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POSITION ON PROPOSED LEGISLATION

BILL: SB1098 – Correction Services. – Diminution Credits – Sexual Offenses

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: 3/26/24

My name is Benoit Tshiwala, paralegal with the Office of the Public Defender. I am also a formerly incarcerated person who served 21 years in Maryland. I am urging a unfavorable report on Senate Bill 1098 to prohibit the earning of diminution credits for reducing the term of confinement of persons serving a sentence for first degree rape in a State and local correctional facility.

Incarcerated persons generally have been entitled, under long-standing Maryland law, to diminution credits *that serve to reduce the length of incarceration*. Such credits may be earned through good behavior, work, and educational program assignments.¹ Good behavior credits encourage good institutional behavior, while also mitigating overcrowding by promoting early release of nonviolent and non-felony drug offenders. SB1098 undermines every policy interest underlying the diminution credits.

First, it disincentivizes good institutional behavior by incarcerated persons. On a personal note, I recall beginning my lengthy sentence in 1998 by getting infractions for fights, insulting officers and being disruptive. Around 2001, the prospect of losing some of my “good time”

¹ See Correctional Services Article (“CS”), § 3-700 through 711. Diminution Credits

compelled me change my behavior and focus on my rehabilitation and education. Although at the time, it was likely I could spend the rest of my life in prison, retaining and earning diminution credits helped to keep me focused. I did not catch another infraction for the next 18 years. I have also witnessed many fellow incarcerated men be more deliberative before deciding to act detrimentally, for fear of losing diminution credits. I also found my interactions with staff to be more cordial, as my respect for authority improved. This bill, on the other hand, will only exacerbate an already violent work environment for correctional staff and the general population at state correctional facilities. As a fiscal matter, passing this bill admittedly will result in “general fund expenditures increase, potentially significantly over time, for the [D.P.S.C.S] as individuals serve longer sentences”. It simply makes no fiscal sense.

Secondly, the bill’s restrictions on first-degree rape are unnecessary, given existing statutory restrictions. Current law bars a person for certain violent or drug crimes (including rape) from earning more than 5 days a month on a sentence. Also, as of October 1st of 2009, person convicted of a violent crime committed on or after that date would not be eligible for mandatory supervision resulting from diminution of confinement “until after the inmate becomes eligible for parole [.]” See CS§ 7-501. Release on mandatory supervision This remains the law today.

Several regulatory barriers erected by both DPSCS and DOC render it extremely difficult for such persons to earn diminution credits. For instance, prior to 2007, it may have been possible for a prisoner serving a sentence for a violent crime to reach 20 diminution credits a month when the D.O.C. awarded special project credits for housing, but that special project was eliminated effective July 1, 2007. See C.O.M.A.R. 12.O2.O6.05F(3)(a)(xiii). Further, D.O.C. directives make it extremely difficult for an inmate to earn enough credits for mandatory release. For instance,

inmates cannot “stack” diminution credits by working and attending school concurrently. See D.O.C. 100.0002 Case Management Manual. Section 5(G) (8).

Finally, while it targets persons convicted of first-degree rape, this Bill will create a slippery slope towards elimination of all diminution credits for persons convicted of violent crimes generally. For instance, HB0310 would bar earning of such credits to reduce a term of confinement of a person convicted of murder, as well as a general restriction on diminution credits to not more than 10% for all sentences served for violent crimes.

For a number of reasons, we urge an unfavorable report.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue a unfavorable report on SB 1098.

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