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## **POSITION ON PROPOSED LEGISLATION**

**BILL: SB0735 — Corr. Servs.— Real Time for Real Crime (Geri's Law)**

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

**POSITION: Unfavorable**

**DATE: February 27, 2025**

**The Maryland Office of the Public Defender urges an unfavorable report on Senate Bill 0735.**

This bill would mandate that a person convicted of murder in the first or second degree is not entitled to diminution credits. The bill also limits diminution credits for any individual serving a crime of violence to no more than 10% of their sentence. Finally, the bill denies pre-trial release for any defendant who has pending charges for a violent crime or who has been convicted of a crime of violence in the last ten years. As shall be explained below, this bill will seriously undermine public safety by discouraging rehabilitation. It will punish those who strive to turn their life around, while rewarding those who do not.

### **What are diminution credits and how do they operate?**

Today, incarcerated individuals serving a term of years sentence can be mandatorily released prior to completing their full executed sentence by earning diminution credits or “dims.” Each dim credit counts as one day towards release. There are four types of credit, Good Conduct Credits, Industrial Credits, Education Credits and Special Project Credits.

Good conduct credit or ‘good time’ credits are calculated and automatically advanced to a person upon intake: these credits are the incarcerated persons to lose. If an incarcerated individual is serving a crime of violence, good conduct credits are awarded at a rate of 5 days per month, or 60 days per year. Good conduct credits are awarded up front, and therefore serve as an important deterrent for incarcerated individuals from committing infractions. Worth noting that an individual serving a crime of violence gets over 10% of his sentence reduced upfront, meaning that under the proposed bill, a person serving a COV would have no incentive, going forward, to engage in any prison programming, as they will have already maxed out their dims.

Credits associated with programming, education, or work are earned as a person participates in the program, education, or work. For violent crimes, these credits are awarded at a rate of 5 diminution credits per month, unless the Division of Corrections has designated the work job or educational program a special project, in which case an incarcerated individual can earn 10 additional credits

prospectively. Because programs are limited, a model incarcerated individual serving a crime of violence, who has actively engaged in programming serving a crime of violence can typically expect to be released after serving approximately two thirds of their sentence. Incarcerated individuals who do not have a model prison record can expect to serve considerably longer—and a number of incarcerated individuals, due to repeated infractions, serve close to their full sentence day for day. Mandatory release does not factor into incarcerated individuals serving either a straight life sentence, or life without parole for first degree murder, so dums have limited effect on those incarcerated individuals.

### **Why is this bill damaging to public safety?**

This bill will likely have several unintended consequences to public safety. While not exhaustive, here are a few of the likely outcomes if this bill passes.

1. Model incarcerated individuals, who have demonstrated rehabilitation, will serve longer sentences. The public defender represents incarcerated individuals, including those serving a sentence for murder, who have taken significant steps to rehabilitate. We also represent incarcerated individuals who have demonstrated through their actions that they are not rehabilitated. We represent the incarcerated individual, serving a 30-year sentence, who has earned his GED, has not received any infractions, has the support of the warden and other key staff, has completed the Alternative to Violence and Thinking for Change Program and worked for several years as an observation aid, ensuring that fellow incarcerated individuals who are going through acute mental health crises receive the care they need. We also represent the incarcerated individual, serving a 30-year sentence, who has not taken advantage of the programs and services that the Division of Correction offers—the person who has multiple infractions for shanks, drugs and assaults. What this bill does is says that both those individuals should be released at the same time.
2. This bill undermines public safety within the Division of Correction. The Public Defender represents both the incarcerated individual who is assaulted in the Division of Correction as well as the person who does the assaulting. The vast majority of the time, the consequence for committing an assault or manufacturing a weapon is loss of diminution credits. But if there are no diminution credits, then there is likely no accountability for crimes and infractions that occur in the Division of Correction. A recent report from the Department of Legislative Services indicates that assaults within the Division of Correction are up more than 50% in the last year. The corrections officer union, AFSME Maryland Council 3, ascribes the rise in assaults to a reduction in staff and programing for prisoners according to reporting from the Baltimore Banner. In response to this data, passing a bill that reduces incentives for prisoners to engage in programming and while simultaneously ending any sort of punishment or accountability for those that commit the assaults seems terribly wrongheaded.
3. There will likely be more jury trials and possibly marginally lower term of years sentences. Diminution credits factor into the plea-bargaining process. Defendants routinely discuss the potential outcome of a plea offer, including the likely time they would serve. The Defendant

who accepts a plea of life suspend all but 24 years, for instance, believing that he could be released after serving 16 years, may turn down that offer in a post-diminution credits world. More jury trials mean more resources that the Office of the Public Defender, the State and the Courts must expend. It also means more victims being dragged through the trauma of the jury trial process. It also means a certain number of individuals, who would have pled guilty under current law, will be acquitted. (When a defendant “rolls the dice”, sometimes they land double sixes.) To be sure, the State in an effort to resolve cases for which the evidence may be weak or uncertain, may offer more favorable plea offers in a post-dims world. As a result, incarcerated individuals who are the least interested rehabilitation may actually see their sentences reduced.

4. Eliminating diminution credits will result in more post-conviction claims. When attorneys misadvise clients regarding a change in the law concerning diminution credits, which happens routinely even regarding changes in law that occurred over a decade ago, clients who acted in reliance on that bad advice are entitled to a new trial. If this law passes, a certain subset of the defense bar will inevitably not get the memo, and misadvise their clients regarding the amount of time they will serve. The result will be more new trials for individuals who pled guilty.
5. This bill will seriously undermine rehabilitative efforts in the Division of Corrections. The prospect of earning diminution credits encourages incarcerated individuals to take steps towards rehabilitation. Consider this person, a 17 year old serving a 30 year sentence for murder, who, as a result of this bill, chooses not to get his GED, because, what’s the point if he is not going get dims. He doesn’t work because, why work if he is not earning dims. He doesn’t learn tradecraft through the MCE shops. He doesn’t take programs like Alternatives to Violence, which teach incarcerated individuals better ways to resolve interpersonal conflict. At age 47, this individual, who has not engaged in any rehabilitation is going to be released back into the community, unsupervised. Is this really a good idea?
6. Continuing to incarcerate someone who is rehabilitated has real costs. From a purely economic standpoint, this policy will cost the State upwards of \$40,000 per year to house individuals who have demonstrated rehabilitation, but more than the pure economic cost, communities, neighborhoods, and ultimately Maryland families suffer. This bill punishes those who are demonstrating they are rehabilitated at great cost to our taxpayers and the community, while rewarding those individuals who have no interest in rehabilitation.

Bottom line, this bill punishes those who want to rehabilitate and rewards those who have no interest in changing their bad life choices. It also undermines judicial discretion by eliminating any pre-trial release for individuals facing charges for a crime of violence, regardless of the circumstances. For instance, someone who is a cooperating witness for the State would potentially be barred from pre-trial release under this statute. This is not a well thought out bill.

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

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