

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

House Bill 38 (Delegate Schulz)
Judiciary

Crimes - Use of a Firearm in the Commission of a Crime - Diminution Credits
and Sentencing

This bill prohibits the earning of diminution credits to reduce the term of confinement of an inmate committed to a State or local correctional facility who is serving a sentence for the use of a “firearm” in the commission of a crime of violence or any felony. The bill also specifies that a court must impose a mandatory minimum sentence of five years for a violation of using a firearm in the commission of a crime, which may not be suspended. The bill eliminates a certain five-year ineligibility for parole for a person convicted of the firearm offense.

The bill applies prospectively only.

Fiscal Summary

State Effect: General fund expenditures increase potentially significantly over time due to the bill’s elimination of diminution credit earnings for certain inmates. However, such new costs are not likely to begin to be experienced until FY 2028 and beyond. Revenues are not affected.

Local Effect: Minimal.

Small Business Effect: None.

Analysis

Current Law: A person may not use a firearm in the commission of a crime of violence or any felony, whether the firearm is operable or inoperable at the time of the crime. A violator is guilty of a misdemeanor and, in addition to any other penalty imposed for the

crime of violence or felony, must be sentenced to imprisonment for at least 5 years and up to 20 years.

The court may not impose less than the minimum sentence of five years and, with certain exceptions applicable to the Patuxent Institution, the person is not eligible for parole in less than five years. For each subsequent violation, the sentence must be consecutive to and not concurrent with any other sentence imposed for the crime of violence or felony.

A “firearm” means (1) a weapon that expels, is designed to expel, or may readily be converted to expel a projectile by the action of an explosive or (2) the frame or receiver of such a weapon. It includes an antique firearm, handgun, rifle, shotgun, short-barreled rifle, short-barreled shotgun, starter gun, or any other firearm, whether loaded or unloaded.

Diminution credits are deducted from an inmate’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. Good conduct credit is awarded at the rate of five days per month if the inmate’s term of confinement includes a sentence for a crime of violence or distribution of controlled dangerous substances. Good conduct credit is awarded at the rate of 10 days per month for all other inmates (except for those inmates who are statutorily prohibited from earning diminution credits). (For sentences imposed before October 1, 1992, good conduct credits are awarded at a rate of five days per month regardless of the offense.)

Credits for work tasks and education may be awarded at the rate of up to 5 days per month. Special project credit may be awarded at the rate of up to 10 days per month. An inmate may not be allowed a total deduction, including good conduct credit, of more than 20 days per month.

An inmate in a local correctional facility may receive deductions of five days per calendar month for (1) good conduct; (2) industrial, agricultural, or administrative tasks; (3) educational and training courses; (4) work projects; and (5) special programs. Inmates are allowed a deduction in advance from the term of confinement. If an inmate violates a rule of discipline, however, diminution credits may be revoked. An inmate is awarded five days credit for each month of presentence confinement as long as the inmate does not violate the disciplinary rules and works when the opportunity to work is available.

As in the State system, a local inmate serving a sentence for first or second degree rape or sexual offense against a victim younger than age 16, or a second or subsequent conviction

of third degree sexual offense against a victim younger than age 16, may not earn diminution credits. Diminution credits awarded to an inmate of a local correctional facility who is later transferred to a State facility must be applied to the inmate's term of confinement.

Background: The Administrative Office of the Courts (AOC) reports that, in calendar 2014, there were 1,969 charges for the use of a firearm in the commission of a crime of violence or a felony in the District Court, of which 759 were in Baltimore City. For that same period in the circuit courts, there were 1,716 violations, of which 703 were in Baltimore City. This does not include caseloads from Montgomery or Prince George's counties. The Maryland State Commission on Criminal Sentencing Policy reports that there were 302 convictions for this offense in the circuit courts in fiscal 2014.

State Expenditures: In fiscal 2014, the Department of Public Safety and Correctional Services (DPSCS) received 343 inmates whose term of confinement included a conviction for use of a firearm in the commission of a crime of violence or felony. Of that number, only 13 were received where the conviction for this offense was the most serious offense. The average sentence received was about 115.6 months, or 9.6 years. In theory, each of these 13 inmates is eligible for 1,156 days of good conduct credits, but could not be released on a mandatory supervision release until after having served 5 years due to the current ineligibility for parole consideration. However, while the bill prohibits a suspended sentence for any portion of the mandatory minimum 5-year sentence, it also eliminates the no-parole provision for these offenders. This means that these inmates would be eligible for parole consideration and could in fact be paroled at some point prior to serving the entirety of their minimum sentence. It is assumed that these inmates were convicted of the use of a firearm in the commission of a felony and not a crime of violence.

The remaining 330 new inmates in fiscal 2014 were presumably also convicted of a more serious offense, which would likely be a crime of violence (such as murder, rape, arson, burglary, *etc.*). These inmates are also likely to have total sentences well beyond the five-year mandatory minimum. Accordingly, under the bill, these inmates are ineligible for diminution credit earning during their entire period of confinement – regardless of which portion was attributable to the use of a firearm in the commission of a crime of violence or felony. This means that these inmates are probably serving total terms of confinements that in many cases are considerably longer than five years.

General fund expenditures increase as a result of the bill's restrictions on diminution credit earning due to people being incarcerated in State correctional facilities for longer periods of time.

Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per inmate, including overhead, is estimated at

\$3,100 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new State inmate (including variable health care costs) is about \$770 per month. Excluding all health care, the average variable costs total \$200 per month.

For illustrative purposes, under the bill's provisions, the average time served could increase by 72 to 96 months (6 to 8 years for affected persons with a total sentence of 240 months (20 years). Assuming the variable inmate costs of \$200 per month excluding health care, State costs could increase by \$14,400 to \$19,200 for each affected person imprisoned under the bill. If applied to all 343 persons cited above, additional annual costs for this group alone totals \$823,200 ($\$200 \times 12 \text{ months} \times 343 \text{ persons}$). However, DPSCS anticipates that these new costs are not incurred until at least fiscal 2028 and become cumulative from that point forward.

If health care costs are applied, the range of additional costs for each affected inmate is \$55,440 to \$73,920. If these costs are applied to 343 new inmates per year, the total additional incarceration costs for DPSCS are significantly higher. The bill's parole eligibility for these same persons may mitigate the full impact of these costs, but such an effect is dependent on the success rate in actually achieving parole, which cannot be reliably estimated. Most would likely not be considered suitable candidates for parole approval.

The bill's elimination of diminution credit eligibility during any presentence time of incarceration only minimally impacts overall correctional costs. The bill is not expected to have a significant impact on community supervision costs.

AOC advises that, while the bill may spur more jury trials in the circuit courts, it is not expected to have a significant effect on trial courts overall. The Office of the Public Defender (OPD) agrees with the AOC assessment that the bill will result in fewer plea bargains and more jury trials, but cannot quantify the impact on agency resources. It is assumed that such impacts can be handled with the existing budgeted resources of the courts, OPD, and State's Attorneys' offices.

Additional Comments: Although this bill references the Commissioner of Correction, the Department of Legislative Services notes that DPSCS implemented a major reorganization during fiscal 2012. As a result of the reorganization, the Division of Correction (including the Commissioner of Correction), the Patuxent Institution, and the Division of Pretrial Detention and Services no longer exist within the department by those names as separate budgetary units.

Additional Information

Prior Introductions: HB 712 of 2014 received a hearing in the House Judiciary Committee, but no further action taken. Its cross file, SB 164, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

Cross File: Although not designated as a cross file, SB 136 (Senator Brochin – Judicial Proceedings) is identical.

Information Source(s): Maryland State Commission on Criminal Sentencing Policy, Judiciary (Administrative Office of the Courts), Office of the Public Defender, Department of Public Safety and Correctional Services, State’s Attorneys’ Association, Department of Legislative Services

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