

Department of Legislative Services  
Maryland General Assembly  
2017 Session

FISCAL AND POLICY NOTE  
First Reader

Senate Bill 447

(Senators Waugh and Ready)

Judicial Proceedings

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Correctional Services - Murder - Diminution Credits

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This bill specifies that an inmate serving a sentence in a State or local correctional facility for murder in the first or second degree is prohibited from earning diminution credits. However, the bill may not be construed to require an inmate to serve a longer sentence than is authorized by the statute under which the inmate was convicted.

The bill applies prospectively only.

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Fiscal Summary

**State Effect:** Significant increase in general fund correctional expenditures beginning in FY 2029 and eventually leveling out. Revenues are not affected.

**Local Effect:** Most inmates serving a sentence for first- or second-degree murder are sentenced to State correctional facilities; therefore, the bill is anticipated to have minimal impact on local correctional facilities. Local revenues are not affected.

**Small Business Effect:** None.

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Analysis

**Current Law:** Persons charged with first-degree murder, if found guilty, are subject to penalties of life imprisonment or life imprisonment without the possibility of parole. Persons charged with second-degree murder, if found guilty and sentenced after October 1, 2017, are subject to a maximum penalty of 40 years imprisonment.

Generally, inmates sentenced to a State correctional facility are entitled to earn diminution of confinement credits to reduce the lengths of their incarcerations. The following types of inmates may not earn diminution credits:

- an inmate who is serving a sentence for first- or second-degree rape or sexual offense against a victim younger than 16;
- an inmate who is serving a repeat sentence for third-degree sexual offense against a victim younger than 16; and
- an inmate imprisoned for a lifetime sexual offender supervision violation.

In addition, an inmate whose mandatory supervision release has been revoked may not be awarded any new diminution credits on the term of confinement for which the inmate was on mandatory supervision release.

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 or programs.

*For sentences imposed before October 1, 1992:* Good conduct credits are awarded at a rate of five days per month regardless of the offense.

*For sentences imposed between October 1, 1992, and October 1, 2017:* Good conduct credit is awarded at the rate of 5 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). 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. Such inmates may not be allowed a total deduction, including good conduct credit, of more than 20 days per month.

*For sentences imposed on October 1, 2017, or later:* Chapter 515 of 2016 increased the maximum possible deduction for diminution credits from 20 days to 30 days per calendar month, except for inmates serving a sentence in a State correctional facility for a crime of violence, specified sexual offenses, or specified volume or kingpin drug offenses. Also, except for that same group of inmates, the deduction for special selected work projects or other special programs, including recidivism reduction programming, increases from

10 to 20 days per calendar month. In addition, the maximum deduction for diminution credits increases for an individual who is serving a sentence in a local correctional facility (for a crime other than a crime of violence or specified volume drug offenses) from 5 to 10 days per month.

The Maryland Parole Commission (MPC) has the exclusive power to authorize the parole of a State or local inmate. MPC is required to request that the Department of Public Safety and Correctional Services (DPSCS) make an investigation for inmates in a local correctional facility and make an investigation for inmates in a State correctional facility that will enable the commission to determine the advisability of granting parole to an inmate who has been sentenced to serve a term of six months or more in a correctional facility and has served one-fourth of the inmate's aggregate sentence in confinement.

State inmates must serve either one-quarter or one-half of their sentence to be eligible for parole, depending on the offense. Parole eligibility for inmates sentenced to local detention centers is one-quarter regardless of the offense. Certain persons are not eligible for parole while serving a mandatory minimum sentence. Chapter 361 of 2011 requires DPSCS to complete and deliver a pre-parole investigation of an inmate in a local correctional facility to MPC within 60 days of commitment.

Under § 14-101 of the Criminal Law Article, "crime of violence" means (1) abduction; (2) arson in the first degree; (3) kidnapping; (4) manslaughter, except involuntary manslaughter; (5) mayhem; (6) maiming; (7) murder; (8) rape; (9) robbery; (10) carjacking; (11) armed carjacking; (12) sexual offenses in the first degree; (13) sexual offense in the second degree; (14) use of a handgun in the commission of a felony or other crime of violence; (15) child abuse in the first degree; (16) specified instances of sexual abuse of a minor; (17) an attempt to commit any of the crimes listed above; (18) continuing course of conduct with a child; (19) assault in the first degree; (20) assault with intent to murder; (21) assault with intent to rape; (22) assault with intent to rob; (23) assault with intent to commit a sexual offense in the first degree; and (24) assault with intent to commit a sexual offense in the second degree.

Upon conviction for a second time of a crime of violence committed on or after October 1, 1994, a person must be sentenced to imprisonment for the term allowed by law, but not less than 10 years, if the person (1) has been convicted on a prior occasion of a crime of violence, including a conviction for a crime committed before October 1, 1994, and (2) served a term of confinement in a correctional facility for that conviction. No part of the 10-year mandatory sentence may be suspended.

Upon conviction for a third time of a crime of violence, a person must be sentenced to imprisonment for the term allowed by law but not less than 25 years, if the person has been convicted of a crime of violence on two prior separate occasions (1) in which the second

or succeeding crime is committed after there has been a charging document filed for the preceding occasion and (2) for which the convictions do not arise from a single incident and the person has served at least one term of confinement in a correctional facility as a result of a conviction of a crime of violence. No part of a 25-year mandatory sentence may be suspended.

Upon conviction for a fourth time of a crime of violence, a person who has served three separate terms of confinement in a correctional facility as a result of three separate convictions of any crime of violence must be sentenced to a mandatory life-imprisonment sentence without the possibility of parole.

Generally, a person convicted of a violent crime committed on or after October 1, 2009, is not eligible for release on mandatory supervision until after the person becomes eligible for parole. Usually, a person sentenced to a mandatory sentence for a crime of violence is not eligible for parole. However, with specified exceptions, beginning October 1, 2017, a person sentenced for a crime of violence may petition for, and be granted, parole if the person (1) is at least age 60 and (2) has served at least 15 years of the sentence imposed.

A person may not use a firearm in the commission of certain crimes 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 a mandatory minimum imprisonment of 5 years and a maximum imprisonment of 20 years. The person is also not eligible for parole in less than 5 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.

**State Expenditures:** Under current law, inmates convicted of first-degree murder must serve 15 years minus diminution credit or 25 years minus diminution credit (for cases in which a life without parole or death sentence was sought, but not imposed by the court) to be eligible for parole. DPSCS advises that an inmate reaches parole eligibility, on average, after 11 years and six months or 18 years and six months, respectively. Under the bill, an inmate convicted of first-degree murder serves either the full 15 years or the full 25 years before being eligible for parole.

Parole eligibility for a split sentence with life (split-life sentence) or a life sentence with all but a fixed term suspended sentence also occurs after 15 years minus diminution credit. An inmate serving a split-life sentence who has not been granted parole is eligible for release from incarceration by operation of law due to the accumulation of diminution of confinement credits. An inmate released by operation of law is under supervision until the maximum expiration date of the unsuspended portion of the sentence. Under the bill, an inmate serving a split-life sentence for first-degree murder is also required to serve 15 years, regardless of the unsuspended portion of the sentence. If the fixed term portion

of the sentence is greater than 15 years, then actual confinement time served increases due to the lack of diminution of confinement credits.

According to DPSCS, in fiscal 2016, 43 inmates entered State correctional facilities for convictions for first- and second-degree murder with an average sentence of 24 years. *For illustrative purposes only*, assuming that, under the bill, these inmates serve 90% of their sentences before being released on mandatory supervision release, the average time served is 21.6 years. If such an inmate could otherwise earn 15 diminution credits per month (total of 11.8 years in credit for a 24-year sentence), an inmate sentenced to a term of confinement other than life could be released after approximately 12.2 years. Applying these figures to the bill's proposed prohibition on the earning of diminution of confinement credits results in an increase in average time served of 9.4 years. Excluding overhead, the average cost of housing a new State inmate (including variable health care costs) is about \$9,600 per year, which results in additional expenditures of \$90,240 per inmate for additional time served. Any increase in expenditures from additional time served is not realized until fiscal 2029, when the first inmates sentenced under the bill begin to serve additional time.

Under the bill, an inmate convicted of second-degree murder, and *not granted parole*, is required to serve the entire sentence imposed and would be released by expiration of sentence. Parole eligibility for a sentence related to second-degree murder does not change because parole eligibility is based on the sentence imposed by the court and diminution of confinement credits do not apply.

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### Additional Information

**Prior Introductions:** None.

**Cross File:** HB 520 (Delegate B. Wilson, *et al.*) - Judiciary.

**Information Source(s):** Baltimore City; Harford, Montgomery, and Talbot counties; Department of Public Safety and Correctional Services; Department of Legislative Services

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