

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 100
Judiciary

(The Speaker, *et al.*) (By Request - Administration)

**Criminal Law - Violent Offenders - Penalties (Accountability for Violent
Criminals Act of 2018)**

This emergency Administration bill increases incarceration penalties, alters parole eligibility, and restricts a court from ordering a substance abuse evaluation or commitment for specified violent offenders.

Fiscal Summary

State Effect: Potential significant increase in general fund expenditures for incarceration, minimally offset by a decrease in parole and substance abuse evaluation and treatment expenditures. Revenues are not affected.

Local Effect: Minimal increase in local incarceration expenditures. Revenues are not affected.

Small Business Effect: The Administration has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment.

Analysis

Bill Summary: An inmate sentenced to life imprisonment for a crime committed on or after the effective date of the bill is not eligible for parole consideration until the inmate has served 25 years or its equivalent considering diminution credits and time spent in custody. The bill requires a person convicted for a “crime of violence” committed on or after the effective date of the bill to be sentenced to imprisonment for a nonsuspendable, nonparolable mandatory minimum term of 10 years if the person has been previously

convicted of a crime of violence and served a term of confinement in a correctional facility for that conviction. An offender sentenced to 10 years under these circumstances would not be eligible for parole with the exception of confinement to the Patuxent Institution.

A criminal court is prohibited under the bill from ordering a substance abuse evaluation or commitment for treatment of a defendant charged with, convicted of, or serving a sentence for a crime of violence as defined in § 14-101 of the Criminal Law Article, until the offender is eligible for parole, as specified.

The bill's provisions are severable.

Current Law:

Crime of Violence

Section 14-101(a) defines a "crime of violence" as (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 (including armed carjacking); (11) first- and second-degree sexual offenses; (12) use of a handgun in the commission of a felony or other crime of violence; (13) child abuse in the first degree; (14) sexual abuse of a minor younger than age 13 under specified circumstances; (15) home invasion; (16) an attempt to commit crimes (1) through (15); (17) continuing course of certain sexual conduct with a child; (18) assault in the first degree; or (19) assault with intent to murder, rape, rob, or commit a sexual offense in the first or second degree.

Subsequent offenders sentenced for a crime of violence are generally subject to mandatory sentences. For a conviction for a second time of a crime of violence committed on or after October 1, 1994, a person must be sentenced to a mandatory minimum, nonsuspendable term of 10 years, if the person has been convicted on a prior occasion of a crime of violence, including a conviction for a crime committed before October 1, 1994, and served a term for that conviction confined in a correctional facility.

For a third conviction, a person must be sentenced to a mandatory minimum term of 25 years, if the person has been convicted on two separate occasions of a crime of violence, in which the second or succeeding crime is committed after there has been a charging document filed for the preceding occasion and for which the convictions do not arise from a single incident, and has served at least one term of confinement in a correctional facility as a result of a conviction of a crime of violence.

For a fourth conviction, 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 life imprisonment without the possibility of parole.

Offenders who are at least age 60 and have served at least 15 years of the sentence are eligible to petition for and to be granted parole. This provision does not apply to offenders who are registered or eligible for registration on the sex offender registry.

If the State intends to proceed against a person under any of these provisions, it must comply with the procedures set forth in the Maryland Rules for the indictment and trial of a subsequent offender.

Parole

Parole is a discretionary and conditional release from imprisonment determined after a hearing for an inmate who is eligible to be considered for parole. If parole is granted, the inmate is allowed to serve the remainder of the sentence in the community, subject to the terms and conditions specified in a written parole order.

The Maryland Parole Commission (MPC) has jurisdiction regarding parole for eligible inmates sentenced to State correctional facilities and local detention centers. Inmates in the Patuxent Institution who are eligible for parole are under the jurisdiction of the Patuxent Board of Review.

An inmate sentenced to serve less than six months is not eligible for parole. When an inmate serving a sentence of incarceration of six months or more has served one-fourth of the inmate's sentence, the inmate is entitled to be considered for parole, with several significant exceptions. These exceptions are set forth below:

- An inmate serving a term of incarceration that includes a mandatory minimum sentence that a statute specifies is not subject to parole (*e.g.*, use of a handgun in a felony or crime of violence, subsequent violent offenders with more stringent sentences, and subsequent felony drug offenders with more stringent sentences) and who is not eligible for parole until the inmate served that mandatory minimum sentence. Diminution credits may not be applied toward this minimum requirement.
- Any of the following inmates who do not receive a mandatory minimum sentence are required to serve at least one-half of their sentences for violent crimes before becoming eligible for parole: (1) an inmate convicted of a violent crime committed on or after October 1, 1994; (2) an inmate convicted of child abuse in the first degree committed on or after October 1, 2006; and (3) an inmate convicted of sexual abuse of a child younger than age 13 or a continuing course of conduct with a child committed on or after October 1, 2007.

- Chapter 515 of 2016 (also known as the Justice Reinvestment Act) established that an inmate serving a term of imprisonment for a third or subsequent conviction for specified felony drug offenses committed on or after October 1, 2017, is not eligible for parole until the inmate has served one-half of the aggregate sentence.
- An offender sentenced to life imprisonment must serve a minimum of 15 years less diminution credits before becoming eligible for parole, and may be paroled only with approval of the Governor.
- An offender sentenced to life imprisonment for first-degree murder, instead of a sentence of life imprisonment without the possibility of parole, must serve a minimum of 25 years less diminution credits before becoming eligible for parole and may generally be paroled only with approval of the Governor. However, if MPC or the Patuxent Board of Review decides to grant parole to an inmate who has served 25 years without application of diminution credits and the Secretary of Public Safety and Correctional Services approves the decision, the decision must be transmitted to the Governor, who may disapprove the decision in writing within 180 days. If the Governor does not disapprove the decision to grant parole within that timeframe, the decision to grant parole becomes effective.
- Inmates serving a sentence of life without the possibility of parole may not be granted parole unless the Governor commutes the sentence to allow for the possibility of parole or pardons the individual.
- Beginning October 1, 2017, offenders who are age 60 or older and have served at least 15 years of a sentence for a crime of violence may petition for and be granted parole. The provisions do not apply to individuals who are registered or eligible for registration on the sex offender registry.
- Also beginning October 1, 2017, an inmate who is so chronically debilitated or incapacitated by a medical or mental health condition, disease, or syndrome as to be physically incapable of presenting a danger to society may be released on medical parole. If MPC decides to grant medical parole, the decision must be transmitted to the Governor. The Governor is then required to disapprove a recommendation for medical parole within 180 days of the decision by MPC. If the Governor does not disapprove the decision within that timeframe, the decision to grant parole becomes effective.

Substance Abuse Evaluation and Commitment

Under § 8-507 of the Health-General Article, a court is authorized to refer an individual to substance abuse treatment as an alternative to incarceration. A court that finds in a criminal case that a defendant has an alcohol or drug dependency may commit the defendant to the Maryland Department of Health (MDH) for a drug or alcohol treatment program. The commitment may be made as a condition of release, after conviction, or at any other time the defendant voluntarily agrees to participate in treatment. Before committing a defendant

to MDH, the court must (1) offer the defendant the opportunity to receive treatment; (2) obtain the written consent of the defendant to receive treatment and to have information reported back to the court; (3) order an evaluation of the defendant under § 8-505 or § 8-506 of the Health-General Article; (4) consider the report on the defendant's evaluation; and (5) find the treatment that MDH recommends appropriate and necessary.

A court may not order that the defendant be delivered for treatment until (1) MDH gives the court notice that an appropriate treatment program is able to begin treating the defendant; (2) any detainer based on an untried indictment, information, warrant, or complaint for the defendant has been removed; and (3) any incarceration sentence for the defendant is no longer in effect. A commitment must be for at least 72 hours but no more than one year. The court may extend the time period in increments of six months for good cause shown. If the defendant withdraws consent to treatment, MDH must promptly notify the court and have the defendant returned to the court within seven days for further proceedings.

Chapter 515 of 2016 requires that, effective October 1, 2017, before imposing a sentence for a violation of laws prohibiting the possession of a controlled dangerous substance or 10 grams or more of marijuana, a court is authorized to order MDH, or a certified and licensed designee, to conduct an assessment of the defendant for a substance use disorder and determine whether the defendant is in need of and may benefit from drug treatment. MDH or the designee must conduct an assessment and provide the results, as specified. The court must consider the results of an assessment when imposing the defendant's sentence and, as specified, (1) must suspend the execution of the sentence, order probation, and require MDH to provide the medically appropriate level of treatment or (2) may impose a term of imprisonment and order the Division of Correction within the Department of Public Safety and Correctional Services (DPSCS) or a local correctional facility to facilitate the medically appropriate level of treatment.

When ordered by a court, MDH must (1) conduct an assessment regarding whether, by reason of drug or alcohol abuse, a defendant is in need of and may benefit from treatment, as specified and (2) provide the name of a program *immediately* able to provide the recommended treatment to the defendant.

In addition, MDH must facilitate the *immediate* treatment of a defendant following a court order committing the defendant, under § 8-507 of the Health-General Article, to substance abuse treatment as an alternative to incarceration. If the court finds exigent circumstances, the court may delay a commitment order to MDH for no longer than 30 days. If a defendant is not placed in treatment within 21 days of the order, the court may order MDH to appear to explain the reason for the lack of placement.

Background: In August 2017, prompted by the increase in homicides and other violent crime in Baltimore City, Governor Lawrence J. Hogan, Jr. expressed concern that violent, repeat offenders are not receiving sufficiently long prison sentences and that judges are inappropriately opting for probation or suspended sentences rather than incarceration for individuals with violent criminal histories. The Governor then announced plans to introduce truth in sentencing legislation as part of a criminal justice package during the 2018 legislative session.

Truth in sentencing laws gained popularity in the mid-1990s following enactment of the federal Violent Crime Control and Law Enforcement Act of 1994 (1994 Crime Act). Among other provisions, the 1994 Crime Act established the Violent Offender Incarceration and Truth in Sentencing (VOI/TIS) Incentive Grant Program. The VOI/TIS program authorized the U.S. Department of Justice (DOJ) to provide approximately \$9.7 billion in grants between 1996 and 2001 for states to build prisons or jails to increase secure confinement space for offenders convicted of violent crimes. Some grants were available to states that implemented laws requiring a person convicted of a violent crime to serve at least 85% of the person's imposed sentence. The 1994 Crime Act defined "violent crime" as murder, nonnegligent manslaughter, forcible rape, robbery, and aggravated assault. According to DOJ, approximately \$2.7 billion in VOI/TIS grants were awarded to states between fiscal 1996 and 2001 for the construction, expansion, or renovation of correctional facilities.

Five states (Delaware, Minnesota, Tennessee, Utah, and Washington) enacted truth in sentencing laws prior to the 1994 Crime Act. By 1999, 41 states and the District of Columbia had truth in sentencing laws, but the forms varied. Overall, 28 states and the District of Columbia required offenders to serve 85% of the imposed sentence as required under the 1994 Crime Act. Maryland was not among these states.

State Expenditures: General fund expenditures for DPSCS may increase significantly if individuals serve longer sentences under the bill. This increase is minimally offset by a decrease in general fund expenditures for MPC due to fewer parole hearings and a decrease in general fund expenditures for MDH related to substance abuse treatment evaluations.

DPSCS Incarceration Costs

The overall impact of the bill depends on the number of offenders who meet the criteria for a subsequent offender under the bill or who would otherwise be released to treatment in the absence of the bill, which cannot be reliably determined at this time. However, the bill may increase the average daily population in State correctional facilities and, to the extent that additional beds, personnel, infrastructure improvements, or a new prison facility are necessary, may increase costs. Based on a cost of approximately \$155,000 per bed, the cost of building a new medium security 1,300-bed prison facility is currently estimated at

\$202 million. Actual costs would depend on the design of the new facility, the location of the facility, and existing infrastructure.

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 \$3,800 per month. Excluding overhead, the average cost of housing a new State inmate (including health care costs) is about \$870 per month. Excluding all health care (which is a fixed cost under the current contract), the average variable costs total \$210 per month.

The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in State correctional facilities. The Baltimore Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

Most offenders sentenced for crimes of violence are sentenced to State correctional facilities.

Parole Eligibility Limited for Subsequent Offenders – Crimes of Violence

Subsequent offenders sentenced after the effective date of the bill for a crime of violence under § 14-101 of the Criminal Law Article have limited parole eligibility. DPSCS advises that, excluding offenders sentenced to life or nonparolable terms, there were 351 offenders sentenced to a term of confinement for one or more crimes of violence in fiscal 2017. Of that total, 212 offenders were sentenced to a term of 10 years or more and 139 offenders were sentenced to a term of less than 10 years. The average sentence per offender sentenced to a term of less than 10 years is 5.62 years. If the 139 offenders were sentenced to a minimum nonparolable 10 year term, as required under the bill, DPSCS advises that each offender's time in custody increases by an average of 4.4 years. Thus, general fund incarceration expenditures increase. *For illustrative purposes only*, under the bill's incarceration penalty for a subsequent crime of violence, the average time served would be 120 months (an increase of 51 months from the current average). Assuming the variable inmate costs of \$210 per month excluding health care, State costs could increase by \$10,710 for each person subjected to longer imprisonment under the bill. During the same period, offenders are not eligible for parole; thus, MPC expenditures decrease minimally due to fewer parole hearings.

Substance Abuse Evaluation and Commitment

Offenders charged with, convicted of, or serving a sentence for a crime of violence under § 14-101 of the Criminal Law Article are not eligible for evaluation or commitment to MDH for treatment and generally must serve every day of their sentences in incarceration under the bill. DPSCS advises that 346 offenders received court ordered releases to

treatment under § 8-507 of the Health-General Article in fiscal 2017. Of these offenders, 152 were serving sentences for qualifying crimes of violence. On average, such offenders were released 3.74 years before their projected mandatory release dates, having served sentences ranging from 1.5 to 15 years. As a result of the bill, general fund incarceration expenditures for DPSCS increase, while general fund expenditures for MDH decrease minimally due to fewer substance abuse evaluations conducted and treatment provided for offenders.

Life Sentences

The bill's provisions relating to eligibility for parole for offenders sentenced to life imprisonment are not anticipated to materially affect State incarceration costs. Under current law, Governors have generally denied parole to all persons serving terms of life imprisonment.

Judiciary

The Judiciary advises that there may be an increase in jury trials and appeals filed due to the bill's increased penalties. While the number of additional trials and appeals filed as a result of the bill is unknown, the bill is not expected to have a significant impact on the Judiciary's caseload.

Local Expenditures: Local government incarceration expenditures increase minimally to the extent that offenders remain detained but would otherwise be released to substance abuse treatment.

Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. A \$45 per diem State grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the State but are confined in or who receive reentry or other prerelease programming and services from a local facility. Per diem operating costs of local detention facilities have ranged from approximately \$40 to \$170 per inmate in recent years.

Most offenders sentenced for crimes of violence are sentenced to State correctional facilities.

Additional Information

Prior Introductions: None.

Cross File: SB 199 (The President, *et al.*) (By Request - Administration) - Judicial Proceedings.

Information Source(s): Governor's Office of Crime Control and Prevention; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland Department of Health; Department of Public Safety and Correctional Services; U.S. Department of Justice; Department of Legislative Services

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md/kdm

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Criminal Law – Violent Offenders – Penalties (Accountability for Violent Criminals Act of 2018)

BILL NUMBER: SB0199/HB0100

PREPARED BY: Melissa Ross

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS