

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 929
Judiciary

(Delegate Metzgar, *et al.*)

Criminal Procedure - Plea Agreements - Crime of Violence

This bill prohibits a person who has been convicted of a crime of violence under § 14-101 of the Criminal Law Article from entering into a plea agreement. The bill applies prospectively to crimes committed on or after the bill's October 1, 2019 effective date.

Fiscal Summary

State Effect: Potential significant increase in general fund expenditures beginning in FY 2020 to handle additional trials and sentences imposed. The bill is not expected to materially affect State revenues.

Local Effect: Local government expenditures increase beginning in FY 2020. The bill is not expected to materially affect local revenues.

Small Business Effect: None.

Analysis

Current Law:

Plea Agreements: Among other things, Maryland Rule 4-243 authorizes a defendant and a State's Attorney to submit a plea agreement proposing a particular sentence, disposition, or other judicial action to a judge for consideration. Defense counsel and the State's Attorney must advise the judge of the terms of the agreement when the defendant enters his/her plea. The judge may accept or reject the plea, and if the plea is accepted, may approve the agreement or defer a decision on approval or rejection of the agreement until after presentence proceedings and further investigation. The plea agreement is not binding

on the court until the judge to whom the agreement was presented approves it. If the judge approves the agreement, the judge must embody the agreed terms in the judgment or, with the consent of the parties, enter a disposition more favorable to the defendant than that provided for in the agreement.

§ 14-101 of the Criminal Law Article

Individuals convicted of a crime of violence under § 14-101 of the Criminal Law Article are eligible for various additional criminal penalties and earn diminution credits at a lower rate than other offenders.

Section 14-101(a) of the Criminal Law Article specifies offenses classified as crimes of violence. Section 14-101(b) through (d) impose mandatory sentences for individuals who have prior convictions for these offenses and meet other specified criteria.

Section 14-101(a) of the Criminal Law Article 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 firearm in the commission of a felony or other crime of violence, except possession with intent to distribute a controlled dangerous substance; (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; and (19) assault with intent to murder, rape, rob, or commit a sexual offense in the first or second degree.

Background: According to the Judiciary, there were 2,637 guilty dispositions for crimes of violence under § 14-101 during fiscal 2018. According to the Maryland State Sentencing Guidelines Database, the Maryland State Commission on Criminal Sentencing Policy (MSCCSP) received information for 1,931 individuals sentenced to 2,878 counts for offenses defined as crimes of violence under § 14-101 of the Criminal Law Article in the State’s circuit courts during fiscal 2018. Information is not readily available on how many individuals convicted of a crime of violence reoffend.

In general, Maryland’s sentencing guidelines apply to criminal cases originating in the circuit courts that involve incarcerable offenses. However, prayers for a jury trial in a case originating in the District Court and appeals from the District Court are also eligible for the sentencing guidelines if a presentence investigation is ordered. Reconsiderations of sentences imposed for crimes of violence and three-judge panel reviews of sentences are also eligible for the guidelines if there is an adjustment to the active sentence.

According to MSCCSP's 2018 annual report, the commission received sentencing guidelines worksheets for 91.3% of sentencing events eligible for the State's sentencing guidelines. An estimated 43.1% of cases were resolved by an American Bar Association (ABA) plea agreement and 38.3% were resolved through a non-ABA plea agreement, for a combined total of 81.4% of cases being resolved through some type of plea agreement. An ABA plea agreement refers to a disposition that resulted from a plea agreement that the court approved relating to a particular sentence, disposition, or other judicial action, and the agreement is binding on the court under Maryland Rule 4-243 (c). A non-ABA agreement refers to a disposition that resulted from a plea agreement reached by the parties but was not approved by, and is thus not binding on, the court.

State Expenditures: The bill may result in a significant increase in general fund expenditures to handle additional trials and sentences imposed under the bill. The potential effects on the Office of the Public Defender (OPD) and the Department of Public Safety and Correctional Services (DPSCS) are discussed below.

This estimate assumes that (1) the bill applies only to cases involving charges for subsequent crimes allegedly committed by an individual previously convicted of a crime of violence; (2) prosecutors will continue to pursue cases despite the unavailability of plea bargains as an option; and (3) individuals sentenced pursuant to a plea agreement are likely to be found guilty at trial.

Office of the Public Defender: The bill may have a significant impact on OPD. While the bill does not increase the number of defendants in the criminal justice system or the number of OPD cases, it increases the number of trials. Accordingly, additional OPD attorneys may be needed to comply with the additional trials generated by the bill, resulting in a potentially significant increase in general fund expenditures, as noted below.

The most recent State recidivism data is from September 2013, when DPSCS announced that the rate of ex-inmates returning to prison or community supervision within three years of release was 40.5% in 2012. Information is not available on the rate at which individuals previously convicted of a crime of violence reoffend. Given the potential sentences for crimes of violence, the recidivism rate for this population may be lower due to the age of an offender upon release from incarceration for the crime of violence. *For illustrative purposes only*, assuming that 20% of the 1,931 individuals sentenced in the State's circuit courts in fiscal 2018 for crimes of violence recidivate, 386 individuals in the fiscal 2018 cohort would not be able to enter into future plea agreements. If 81.4% of these individuals were sentenced pursuant to some type of plea agreement under existing statute (using fiscal 2018 MSCCSP data), the bill has the potential to result in approximately 314 additional trials that may not have taken place otherwise for the fiscal 2018 population alone.

The bill applies to any criminal case involving an individual previously convicted of a crime of violence, which can result in additional bench trials in the District Court and additional bench and jury trials in the circuit courts. As previously noted, the bill does not change the number of OPD cases or clients; however, trials require more attorney work hours than cases resolved via plea bargains. Depending on the effect of additional work hours on caseloads, the temporal and geographical distribution of cases, and the ability of OPD to shift personnel to accommodate additional workloads, the bill may result in the need for additional OPD attorneys.

The caseload standards for OPD circuit court attorneys are 156, 191, and 140 for urban, rural, and suburban circuit court attorneys, respectively. In calendar 2018, 7 of OPD's 12 districts (Baltimore City; the Lower Eastern Shore; Frederick and Washington counties; Harford County; Howard and Carroll counties; Prince George's County; and Montgomery County) met the circuit caseload standards. The caseload standards for District Court attorneys are 728, 630, and 705 per attorney for urban, rural, and suburban District Court attorneys, respectively. In calendar 2018, 5 of 12 districts (Baltimore City; Frederick and Washington counties; Howard and Carroll counties; Southern Maryland; and Western Maryland) met the District Court caseload standards. *For illustrative purposes only*, accounting for the bill's October 1, 2019 effective date, the cost associated with hiring one assistant public defender is \$73,058 in fiscal 2020 and increases to \$100,342 in fiscal 2024.

Department of Public Safety and Correctional Services: According to MSCCSP's 2018 annual report, in fiscal 2018, 80.6% of sentencing events were within the guidelines, 15.1% were below the guidelines, and 4.2% were above the guidelines. However, it should be noted that ABA plea agreements are considered guidelines-compliant by nature. The most commonly cited reason for sentencing events that were below the guidelines was a plea agreement between the parties that called for a reduced sentence, followed by a recommendation of the State's Attorney or the Division of Parole and Probation. According to the fiscal 2018 data, sentencing events resulting from pleas without an agreement had the highest percentage of departures below the guidelines (28.2%) and dispositions after jury trials had the highest percentage of departures above the guidelines (17.6%).

General fund expenditures for DPSCS increase to the extent that more people are committed to State correctional facilities for longer periods of time. If a defendant who enters into a plea agreement is likely to receive a shorter sentence than the defendant would have received after a trial, the bill may increase general fund expenditures for DPSCS from lengthier sentences in State correctional facilities or the shifting of inmates from local facilities to State facilities. Given the lack of recidivism data (including the offenses individuals previously convicted of a crime of violence subsequently commit), the magnitude of the bill's impact on DPSCS expenditures cannot be reliably determined at this time and can only be determined with actual experience under the bill.

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 \$895 per month. Excluding all health care (which is a fixed cost under the current contract), the average variable costs total \$199 per month.

Persons serving a sentence of one-year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or a State correctional facility. The State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A \$45 per diem 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.

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.

Judiciary: The Judiciary advises that while the bill increases the number of trials, it does not foresee a significant fiscal or operational impact from the bill.

Local Expenditures: The bill may have a meaningful impact on local State's Attorneys' offices. Local detention centers may incur an increase in expenditures if the bill lengthens local detention times, offset in whole or in part, by the shifting of inmates from local facilities to State facilities (as discussed above).

Montgomery County advises that given the frequency of plea agreements, the bill has a significant fiscal impact on its State's Attorney's office. The Maryland State's Attorneys' Association has advised, however, that it does not foresee a fiscal or operational impact on prosecutors from the bill.

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.

Additional Information

Prior Introductions: None.

Cross File: None.

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

Fiscal Note History: First Reader - March 12, 2019
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