

Department of Legislative Services  
 Maryland General Assembly  
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FISCAL AND POLICY NOTE  
 First Reader

House Bill 43 (Delegate Metzgar)  
 Judiciary

Criminal Procedure – Plea Agreement Terms and the Violence Prevention Initiative Criteria

This bill requires that if a court accepts a plea agreement for a defendant charged with committing a crime of violence, the defendant must serve the entire sentence imposed without reduction by diminution credits, parole, or otherwise. A court or review panel is prohibited from modifying a sentence imposed under a plea agreement in these cases. The bill also requires that the eligibility criteria for the Division of Parole and Probation’s (DPP) Violence Prevention Initiative (VPI) be expanded to include all age groups.

Fiscal Summary

**State Effect:** General fund expenditures increase by a *minimum* of \$3.4 million in FY 2021. Future years reflect annualization and ongoing costs. Revenues are not affected.

(\$ in millions)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	3.4	4.0	4.0	4.2	4.3
Net Effect	(\$3.4)	(\$4.0)	(\$4.0)	(\$4.2)	(\$4.3)

*Note: ( ) = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease*

**Local Effect:** Potential significant increase in local expenditures, as discussed below. Revenues are not affected.

**Small Business Effect:** None.

## Analysis

**Bill Summary:** A “plea agreement” is as an agreement between a defendant or a defendant’s attorney and a State’s Attorney that the defendant will plead guilty to a charge or charges and receive a specified sentence in exchange for the State’s Attorney’s recommendation to the court that the court accept the plea agreement and impose the agreed-upon sentence.

### **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 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.

#### *Section 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) felony sex trafficking and forced marriage; (17) an attempt to commit crimes (1) through (16); (18) continuing course of certain sexual

conduct with a child; (19) assault in the first degree; and (20) assault with intent to murder, rape, rob, or commit a sexual offense in the first or second degree.

### *Mandatory Sentences for Crimes of Violence*

Subsequent offenders sentenced for a crime of violence under § 14-101 of the Criminal Law Article are generally subject to mandatory sentences. For a second conviction of a crime of violence committed on or after October 1, 2018, a person must be sentenced to a mandatory minimum, nonsuspendable and nonparolable 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, 2018, and served a term of confinement in a correctional facility for that conviction.

For a third conviction, a person must be sentenced to a mandatory minimum, nonsuspendable and nonparolable term of 25 years, if the person has been convicted on two prior 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.

### *Sentence Review*

Under the Review of Criminal Sentences Act (§§ 8-102 through 8-109 of the Criminal Procedure Article), with certain exceptions, a person convicted of a crime by a circuit court and sentenced to a term of imprisonment that exceeds two years in a correctional facility is entitled to have a panel of three circuit court judges of the judicial circuit in which the sentencing court is located review the appropriateness of the sentence. The sentencing judge may not be a member of the review panel but may sit with the review panel in an advisory capacity. The defendant must file a motion within 30 days after sentencing to exercise this right to review.

After a hearing, the panel may order a different sentence to be imposed or served, including an increased sentence, a decreased sentence, a suspended sentence to be served wholly or partly, or a sentence to be suspended with or without probation. The panel may decide that the sentence should remain unchanged with or without a hearing. In general, a majority of the members of the review panel is necessary to render a decision. The panel has 30 days after the filing date of the motion to make a decision.

Should the panel increase the sentence, a defendant may then appeal on the limited grounds that the sentence was not within statutory or constitutional limits or that the panel acted from ill will, prejudice, or other impermissible considerations. Otherwise, there is no right to appeal a decision made by the review panel.

A person is not entitled to this sentence review if the person's sentence was imposed by more than one judge. A person is not entitled to a review of an order requiring a suspended part of a sentence to be served if the sentence originally was wholly or partly suspended, the sentence was reviewed, and the suspended sentence or suspended part of that sentence later was required to be served.

Pursuant to Maryland Rule 4-345, a court may correct an illegal sentence at any time and has revisory power over a sentence in case of fraud, mistake, or irregularity. The court also has revisory power over the sentence upon a motion filed after imposition of the sentence, as specified; however, it may not revise the sentence after the expiration of five years from the date the sentence originally was imposed on the defendant and it may not increase the sentence.

### *Diminution Credits*

Generally, inmates sentenced to a State correctional facility are entitled to earn diminution of confinement credits to reduce the lengths of their incarcerations. Specified sexual offenders are not eligible to earn diminution credits. 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. With respect to sentences imposed on or after October 1, 2017, Chapter 515 of 2016 increased the maximum possible deduction for diminution credits from 20 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, increased from 10 to 20 days per calendar month. In addition, the maximum deduction for diminution credits increased 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.

### *Parole and Mandatory Supervision*

In general, a State inmate who is serving a sentence of six months or more is not eligible for parole until the inmate has served one-quarter of the inmate's sentence. A sentence for a violent crime does not become parole-eligible until the inmate has served one-half of the sentence. An inmate serving a term of incarceration that includes a mandatory minimum sentence that is not subject to parole by statute is not eligible for parole until the inmate has served that mandatory minimum sentence.

As previously noted, a person convicted for the fourth time of a crime of violence must be sentenced to life imprisonment without the possibility of parole. In general, a sentence for a third crime of violence or a second crime of violence committed on or after October 1, 2018, is not eligible for parole. However, with specified exceptions, beginning October 1, 2017, a person serving a mandatory sentence 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.

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.

### **Background:**

#### *Crimes of Violence*

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.

According to MSCCSP, 896 (46.4%) of these individuals were adjudicated through a plea agreement, as defined by the American Bar Association (ABA); 571 (29.6%) individuals were adjudicated through a non-ABA 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.

The Department of Public Safety and Correctional Services (DPSCS) does not receive information indicating whether or not a sentence was based on a plea agreement. However, DPSCS advises that it conducted intake on 1,508 inmates for crimes of violence in fiscal 2018. DPSCS further advises that at the end of fiscal 2019, approximately 61.4% of the standing population in State correctional facilities were sentenced for one or more crimes of violence. Additionally, 1,170 inmates who were sentenced on one or more crimes of violence were released in fiscal 2019 (792 by mandatory release and 378 by parole).

### *Violence Prevention Initiative*

VPI was implemented in 2007 in response to a finding that approximately 30% of all homicides in Baltimore City involved individuals under adult parole or probation supervision. VPI has since expanded to a statewide initiative.

The initiative focuses DPP's resources on (1) the accurate identification of those offenders with the greatest potential for violent re-offense and (2) the intensive, containment-model approach to the management of these potentially dangerous individuals. DPP uses validated risk and needs screening instruments to classify individuals under supervision upon intake and to determine the appropriate level of supervision to provide for each case. DPP's screening instrument considers criminal history, age, and previous arrests for weapons. First among the factors considered is that the present age of the offender is younger than age 30. Offenders with the highest risk of re-offending are placed into the VPI caseload.

Approximately 1,234 individuals are currently under active VPI supervision. The containment-model approach to supervising VPI offenders involves increased contacts between the offender and agent in conjunction with immediate and consistent responses to violations of the conditions of supervision. In order to accomplish this, DPP has established the VPI caseload size at 30 active cases to 1 agent (30:1). The caseload size for general DPP cases is approximately 90:1.

**State Expenditures:** General fund expenditures increase by a *minimum* of \$3,433,755 in fiscal 2021, which accounts for the bill's October 1, 2020 effective date. This estimate reflects the cost of hiring 59 positions within DPP to handle increased VPI caseloads, as discussed in greater detail below, and for one-time computer programming costs for the Judiciary. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	59
Salaries and Fringe Benefits	\$3,043,494
Judiciary Programming Expenditures	73,652
Operating Expenses	316,609
<b>Minimum FY 2021 State Expenditures</b>	<b>\$3,433,755</b>

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses. The above estimate does not account for additional, potentially significant expenditures that are associated with (1) extended incarcerations if the bill’s restrictions on plea agreements result in lengthier sentences and (2) additional criminal trials. The extent to which expenditures increase further cannot be reliably determined at this time, as it depends on trends in VPI eligibility and the number of applicable defendants who still opt for plea agreements and sentences imposed in violent crime cases as a result of the bill, as discussed below.

*DPSCS – Violence Prevention Initiative*

Currently, there are approximately 1,234 participants in VPI. DPP advises that absent a case-by-case screening of the division’s other 37,000 cases, DPP cannot predict how many additional offenders would be eligible for VPI based on removal of the age restriction alone. However, according to DPP’s *Regional and National Caseload Report (November 2019)*, as of the end of fiscal 2018, 4,530 offenders were classified as “high-risk.” Assuming that an offender who is currently excluded from VPI solely because of the offender’s age is likely to be a high-risk offender, then the bill may add as many as 4,500 offenders to VPI. However, given the criteria incorporated into VPI screening, it is likely that a portion of the offenders classified as high-risk did not qualify for VPI for reasons other than or in addition to age.

For purposes of this fiscal and policy note, it is assumed that *at least* 50% of the high-risk population becomes eligible for VPI supervision as a result of the bill, and a *minimum* of 2,250 offenders are added to VPI caseloads. Even if caseloads can be adjusted to facilitate the agents currently supervising these offenders to transition instead to a VPI caseload, an additional 50 agents are necessary to maintain current VPI caseload requirements. Based on available supervisory ratio information from DPP, the addition of 50 DPP-VPI agents also requires the addition of at least 9 supervisors. Expenditures associated with these positions exceeds \$3.3 million in fiscal 2021, as shown above, and increase to \$4.3 million in fiscal 2025.

*Judiciary and Office of the Public Defender*

The bill’s restrictions on sentences imposed as a result of a plea agreement make it less appealing for a defendant to enter into a plea agreement. Thus, the bill likely results in a

decrease in the number of plea agreements and an increase in the number of trials, which impacts the Judiciary and the Office of the Public Defender (OPD). Although the number of additional trials that may occur is not possible to reliably predict, as indicated above, approximately 46.4% of the individuals convicted for crimes of violence during fiscal 2018 had dispositions that were resolved through a plea agreement (using the ABA definition). If this percentage is applied to the 1,508 offenders who entered Division of Correction facilities in fiscal 2018 for crimes of violence, the bill could result in approximately 700 defendants opting for trials instead of plea agreements each year. This figure increases to 1,146 defendants if both ABA and non-ABA plea agreements are considered. The number of OPD clients included in this pool of defendants cannot be reliably determined at this time.

According to the *Maryland Judiciary Statistical Abstract 2018*, there were 60,722 criminal filings in the State's circuit courts during fiscal 2018. Because trials necessitate greater resources than plea agreements, such as increased court/clerical time and jury-related expenses, any increase in the number of trials has the potential to significantly impact the operations and finances of the Judiciary, particularly in jurisdictions that handle a higher number of cases involving violent crime. As noted above, general fund expenditures for the Judiciary also increase by \$73,652 in fiscal 2021 for computer reprogramming to create notices for detention and correctional facilities that a defendant was sentenced for a crime of violence as a result of plea agreement.

While the bill does not result in additional OPD clients, it increases the number of hours devoted to existing OPD clients. Pursuant to the Case Weighting Study by the National Center for State Courts in 2005, each Maryland assistant public defender works 1,378 hours per year on case-related tasks. Depending on the number of additional hours of trial work generated by the bill, general fund expenditures for OPD likely increase to hire additional public defenders and support staff. *For illustrative purposes only*, the cost of hiring one assistant public defender is \$72,513 in fiscal 2021, which accounts for the bill's October 1, 2020 effective date and includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses. By fiscal 2025, the cost increases to \$95,149.

#### *DPSCS – Extended Incarcerations*

Should the bill result in a defendant opting not to pursue a plea agreement and receiving a lengthier sentence from the court or agreeing to a plea agreement but spending additional time in incarceration due to restrictions under the bill, then general fund expenditures for DPSCS incarcerations increase in the out-years as inmates spend additional time in State facilities. The extent to which this occurs cannot be reliably determined at this time.

Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. However, as previously stated, 46.4% of the individuals convicted for crimes of

violence during fiscal 2018 had dispositions that were resolved through a plea agreement. Applying this percentage to the 1,170 inmates released by mandatory supervision or parole during fiscal 2019 results in 543 inmates remaining in State correctional facilities as a result of the bill. Excluding overhead, the average cost of housing a new State inmate (including health care costs) is about \$1,015 per month. Excluding all health care (which is a fixed cost under the current contract), the average variable costs total \$191 per month. *For illustrative purposes only*, using the variable inmate costs of \$191 per month excluding health care, State costs could increase by approximately \$1.2 million per year for this group of inmates alone. The effect is compounded over time, as additional cohorts of inmates are subjected to lengthier incarcerations.

**Local Expenditures:** Local expenditures for State’s Attorneys’ offices and circuit courts, particularly in jurisdictions with a higher number of violent crime cases, may increase significantly to the extent that the additional case workload generated by the bill results in increased personnel and operating expenditures.

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### **Additional Information**

**Prior Introductions:** SB 575 of 2019 was referred to the Senate Judicial Proceedings Committee but was later withdrawn. HB 1320 of 2011 received an unfavorable report from the House Judiciary Committee.

**Cross File:** None.

**Information Source(s):** 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

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