

**Department of Legislative Services**  
Maryland General Assembly  
2021 Session

**FISCAL AND POLICY NOTE**  
**Third Reader - Revised**

House Bill 89  
Judiciary

(Delegate Wilkins)

Judicial Proceedings

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**Correctional Services - Diminution Credits - Education**

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This bill authorizes diminution credits to reduce the term of confinement of an inmate who successfully obtains (1) an intermediate high academic certificate; (2) no more than one certificate of completion of a technical or vocational training program, as specified; (3) a State High School Diploma by Examination; (4) a high school diploma; (5) no more than one associate degree; or (6) no more than one bachelor's degree. In general, the deduction allowed is 60 days per program completed and is in addition to any other deduction awarded. However, for an inmate serving a sentence for a crime of violence, the deduction may not exceed 40 days per program completed. Further, an inmate serving a sentence for murder in the first degree or a sexual offence requiring registration on the Maryland Sex Offender Registry is not entitled to the diminution credits provided under the bill. The Commissioner of Correction must establish a uniform system of deductions and participation criteria allowed under the bill. The bill applies prospectively and may not be applied or interpreted to have any effect on or application to any award of diminution credit before the bill's October 1, 2021 effective date.

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**Fiscal Summary**

**State Effect:** Minimal decrease in incarceration expenditures for the Department of Public Safety and Correctional Services (DPSCS). Revenues are not affected.

**Local Effect:** None.

**Small Business Effect:** None.

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## Analysis

### Current Law:

#### *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. The following types of inmates may not earn diminution credits:

- an inmate who is serving a sentence for first- or second-degree rape against a victim younger than 16;
- an inmate who is serving a sentence for first- or second-degree sexual offense, as the offenses existed before October 1, 2017, against a victim younger than 16;
- an inmate who is serving a sentence for a subsequent conviction of third-degree sexual offense against a victim younger than 16; and
- an inmate imprisoned for a lifetime sexual offender supervision violation.

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. Inmates convicted of crimes of violence (including first-degree murder) are limited to 5 diminution credits per month for good conduct, in addition to 20 diminution credits for participating in specified programs. In addition, inmates convicted of a crime requiring registration on the Maryland Sex Offender Registry are limited to 10 diminution credits per month for good conduct, in addition to 20 diminution credits for participating in specified programs.

For additional information on diminution credits, see the [Maryland Diminution Credit System](#) report published by the Department of Legislative Services (DLS) in December 2020.

#### *Crimes of Violence Under § 14-101 of the Criminal Law Article*

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.

### *Murder in the First Degree*

A murder is in the first degree if it is (1) a deliberate, premeditated, and willful killing; (2) committed by lying in wait; (3) committed by poison; or (4) committed in the perpetration of or an attempt to perpetrate specified offenses, including first-degree arson; first-, second-, and third-degree burglary; kidnapping; carjacking; and rape. A violator is guilty of a felony, punishable by imprisonment for life, with or without the possibility of parole. A sentence of imprisonment for life without the possibility of parole may not be imposed unless specified statutory and procedural requirements are met.

Under the common law theory of felony murder, a homicide arising in the perpetration of, or in the attempt to perpetrate, a felony is murder whether death was intended or not. Under this theory, the commission of or attempt to commit the underlying felony is sufficient to supply the element of malice required for a charge of murder.

### *Sex Offender Registry*

Generally, a person convicted of a sex crime or other specified crime in Maryland, including kidnapping and false imprisonment under specified circumstances, is required to register with the Maryland Sex Offender Registry upon release from prison or release from court if the person did not receive a prison sentence. Offenders who are required to register in other states and who come to Maryland are required to register upon entering Maryland. Offenders from other states who may not be required to register in the home state are required to register in Maryland if the crime would have required registration in Maryland if committed in Maryland. The registry is maintained by DPSCS.

A Tier I sex offender must register every six months for 15 years, a Tier II sex offender must register every six months for 25 years, and a Tier III sex offender must register every three months for life. If a Tier I sex offender meets specified requirements, the registration term may be reduced to 10 years.

**State Expenditures:** DPSCS advises that an inmate is generally enrolled in a qualifying program for between one to three years. However, it is unlikely that a significant number

of inmates who complete a qualifying program would be eligible for the additional diminution credits multiple times during a period of incarceration. Thus, it is also unlikely that a significant number of inmates receive the maximum of 60 diminution credits more than once. As a result, general fund expenditures likely decrease minimally.

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 \$3,900 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 (1) inmates who are sentenced to and awaiting transfer to the State correctional system; (2) sentenced inmates confined in a local detention center between 12 and 18 months; and (3) 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.

DPSCS reports that in order to monitor and track the earning of diminution credits pursuant to the bill, it needs to (1) hire eight commitment records specialists (at a cost of approximately \$500,000 annually) or (2) update its database to automate the process, at a cost of approximately \$100,000 in fiscal 2022 only. DLS advises that it is unclear at this time that the bill's changes require new staff or an updated database. For similar legislation introduced in 2019, DPSCS advised that it could use existing resources to implement the bill.

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### **Additional Information**

**Prior Introductions:** HB 812 of 2020, a similar bill, received a favorable report by the House Judiciary Committee but was recommitted. Its cross file, SB 922, passed the Senate with amendments and was referred to the House Judiciary Committee, but no further action was taken. HB 294 of 2019, a similar bill, received a hearing in the House Judiciary Committee, but no further action was taken. Its cross file, SB 621, a similar bill, passed the Senate with amendments and received a hearing in the House Judiciary Committee, but no further action was taken. In addition, similar bills were introduced in the 2018 session.

**Designated Cross File:** SB 397 (Senator Carter) - Judicial Proceedings.

**Information Source(s):** Department of Public Safety and Correctional Services;  
Department of Legislative Services

**Fiscal Note History:** First Reader - January 14, 2021  
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