

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1245
Judiciary

(Delegate Hill)

Correctional Services - Inmates - Labor, Job Training, and Educational Courses

This bill prohibits the compensation rate for inmate labor in Maryland Correctional Enterprises (MCE) from being less than the federal Fair Labor Standards Act (FLSA) minimum wage. The bill also requires the Division of Correction (DOC) to offer, subject to safety and security concerns, job training and educational courses to all inmates, as specified. Annually, by March 1, the Department of Public Safety and Correctional Services (DPSCS) must report to the Governor and the General Assembly on the job training and educational courses offered by DOC, as specified. The Maryland Department of Labor (MDL) must (1) partner with specified entities to develop the job training programs to be offered; (2) on an ongoing basis, evaluate the job training and educational courses offered by DOC; and (3) by December 31 every three years beginning December 31, 2023, report specified information regarding the courses to the Governor and the General Assembly. MDL must consider the footprint, physical structure, and staffing of DOC facilities in making any recommendations for new or modified programming.

Fiscal Summary

State Effect: Based on information provided by DPSCS, general fund expenditures may increase by an estimated \$16.5 million in FY 2023 and by \$22.0 million annually thereafter due to the minimum wage provision; the Department of Legislative Services (DLS) cannot verify this estimate without additional information, but generally concurs with the magnitude of it. Additional costs are likely incurred to offer job training and educational courses, but any such impact cannot be reliably estimated. Revenues are not affected.

Local Effect: None. The bill does not affect local government operations or finances.

Small Business Effect: None.

Analysis

Current Law:

Maryland Correctional Enterprises

MCE (formerly State Use Industries) provides work and job training for inmates incarcerated in State correctional facilities. MCE produces goods and supplies services at a cost that does not exceed the prevailing average market price. These goods and services are used by local, State, and federal agencies. These goods are also available for use by charitable, civic, educational, fraternal, or religious organizations.

The Commissioner of Correction and the Chief Executive Officer of Maryland Correctional Enterprises must establish the compensation rate for inmate labor in MCE, taking into consideration other wage payments and incentives in other programs. Inmate wages are standard throughout State correctional facilities. The starting pay scale is based on skill category, with wages ranging from \$2.16 daily for unskilled positions up to approximately \$12.50 per hour for MCE work release positions.

Management of Inmate Earnings, Generally

DPSCS must collect an inmate's earnings and (1) if required, reimburse the county or State for the cost of providing food, lodging, and clothing to the inmate; (2) pay court-ordered payments for support of dependents; (3) pay court-ordered payments for restitution; and (4) pay compensation for victims of crime, as specified. For an inmate participating in the Private Sector/Prison Industry Enhancement Certification Program of the U.S. Department of Justice (Bureau of Justice Assistance), DPSCS must withhold 20% of the inmate's earnings for compensation to victims of crime, in accordance with the requirements of the program. DPSCS must withhold 25% of an inmate's earnings for compensation to victims of crime until the judgment is satisfied, if the inmate is subject to an unsatisfied judgment of restitution but not a participant in the certification program.

Maryland Wage and Hour Law, Generally

FLSA contains federal minimum wage provisions. Effective since July 24, 2009, the federal minimum wage is \$7.25 per hour. The Maryland Wage and Hour Law is the State complement to FLSA and specifies minimum wage and overtime requirements for employers and employees in the State. Chapters 10 and 11 of 2019 increased the State minimum wage rate for employers with 15 or more employees in six increments until the full phase-in of \$15.00 per hour on January 1, 2025. The Acts specify that, unless the federal minimum wage is set at a higher rate, the State minimum wage for employers with 15 or more employees is as follows:

- \$11.00 per hour as of January 1, 2020;
- \$11.75 per hour as of January 1, 2021;
- \$12.50 per hour as of January 1, 2022;
- \$13.25 per hour as of January 1, 2023;
- \$14.00 per hour as of January 1, 2024; and
- \$15.00 per hour as of January 1, 2025.

State Expenditures: As a result of COVID-19, DPSCS advises that MCE operations have been reduced in order to mitigate the spread of the virus within its facilities. As such, this analysis uses data from fiscal 2019, prior to the effects of COVID-19 on DPSCS operations and finances.

Inmate Wages

DPSCS advises that, based on the average daily working hours throughout the 26 business units within MCE at the close of fiscal 2019, the workforce accumulated approximately 2.4 million hours of training and employment in fiscal 2019. Assuming the number of hours returns to pre-pandemic levels and remains constant over time, DPSCS estimates that general fund expenditures for inmate wages increase by approximately \$16.5 million in fiscal 2023 (due to the bill's October 1, 2022 effective date) and by at least \$22.0 million annually thereafter. This assumes that, in the absence of the bill, DPSCS would otherwise incur \$2.4 million annually in costs for inmate wages. DLS does not have sufficient information at this time to independently verify this estimate, given the interplay between the federal minimum wage rate and the State minimum wage rate. However, DLS generally concurs with the magnitude of the estimate.

Job Training by the Maryland Department of Labor

MDL administers correctional education in DOC facilities to a portion of the inmate population, including occupational and transitional courses. In fiscal 2019, MDL served 5,234 inmates through occupational and transitional programs with 59 staff. As of January 2022, approximately 17,300 individuals were in DOC custody. Thus, MDL advises that in order to meet the bill's requirement to offer job training and educational courses to *all* inmates who wish to participate in such programming, subject to safety and security concerns, additional staff and space are needed. While this requirement likely results in increased costs for MDL and DPSCS, DLS does not have sufficient information at this time to reliably estimate any increase in general fund expenditures.

Educational Courses by the Division of Correction

As noted above, MDL (not DOC) currently administers correctional education in DOC facilities. MDL offers classes in financial literacy with components related to investing and civics education. DPSCS also partners with several post-secondary education institutions to provide college level courses to inmates who qualify. In order for DOC to offer educational offerings that must include courses above GED level, financial literacy, investing, and civics, additional staff are needed, resulting in significant increased costs for DOC; however, DLS does not have sufficient information at this time to reliably estimate any increase in general fund expenditures. To the extent that DOC provides additional educational resources, expenditures for MDL likely decrease.

Annual Report

DPSCS does not electronically collect the information required for the annual report; therefore, the Offender Case Management System needs to be updated. Computer programming costs are estimated at \$40,000 in fiscal 2023 only.

MDL can complete the required annual report on job training and educational programming with existing resources. The latest annual report on Correctional Education Council Activity, which was submitted by MDL and DPSCS and that addresses much of the information required under the bill, can be found [here](#).

Additional Information

Prior Introductions: HB 102 of 2021, a similar bill, received a hearing in the House Judiciary Committee, but no further action was taken. Its cross file, SB 194, received a hearing in the Senate Finance Committee but was subsequently withdrawn.

Cross File: SB 964 (Senator Benson) - Rules.

Information Source(s): Charles, Frederick, and Montgomery counties; Governor's Office of Crime Prevention, Youth, and Victim Services; Department of Budget and Management; Maryland Department of Labor; Department of Public Safety and Correctional Services; Department of Legislative Services

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