

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

House Bill 135

(Delegates Morhaim and Owings)

Judiciary

Criminal Procedure - Power of Governor to Commute a Sentence, Grant a Pardon, or Remit a Sentence - Required Notification

This bill requires that, within 60 days before granting a commutation of sentence, pardon, or remission of sentence, the Governor must notify and request comments about the proposed action from: (1) the victim of the crime of which the defendant was convicted; (2) the State's Attorney who prosecuted the defendant; and (3) the primary law enforcement officer involved in the arrest of the defendant. Victim is defined as an individual who suffers personal physical injury or death as a direct result of a crime or, if the victim is deceased, a designated family member of the victim.

Fiscal Summary

State Effect: The bill's requirements could be handled with existing budgeted resources of the Office of the Governor.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: The Maryland Constitution provides that the Governor has the power to grant reprieves and pardons, except in cases of impeachment or in cases in which he is prohibited by other constitutional provisions. For a pardon the Governor must give notice, in one or more newspapers, of the application for pardon and of when the pardon decision will be given. In every case that such power is exercised, the Governor must

report to either house of the legislature as to the petitions, recommendations, and reasons which influenced the decision.

On giving the notice required by the Constitution, the Governor may: (1) commute or change a sentence of death into a period of confinement that the Governor considers expedient; (2) pardon an individual convicted of a crime subject to any conditions the Governor requires; or (3) remit any part of a sentence of imprisonment subject to any conditions the Governor requires, without the remission operating as a full pardon.

A pardon or commutation of sentence must be evidenced by a written executive order signed by the Governor under the great seal. An order granting a pardon or conditional pardon must clearly indicate on its face whether it is a partial or full pardon. There is a presumption that the grantee of a pardon was lawfully and properly convicted of a crime against the State unless the order granting the pardon states that the grantee has been shown conclusively to have been convicted in error.

Upon request of the Governor, the Maryland Parole Commission must review and make recommendations to the Governor concerning a pardon, commutation of sentence, or other clemency.

Unless the order granting a pardon provides otherwise, the Governor is the sole judge of whether a condition of a conditional pardon has been violated. A determination by the Governor that a condition of a conditional pardon has been violated by the grantee is final and not subject to review by any court of the State.

If the victim made a written request to the Department of Public Safety and Correctional Services (DPSCS) for notification and maintains a current address on file with DPSCS or the victim or the victim's representative filed a certain notification request form, DPSCS must notify the victim or the victim's designated representative in writing that an inmate sentenced to the Division of Correction is being considered for a commutation of sentence, pardon, or remission of sentence.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Office of the Governor, Office of the State's Attorneys' Coordinator, Department of Public Safety and Correctional Services (Parole Commission), Department of Legislative Services

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