

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

House Bill 365
Judiciary

(Delegate C. Davis)

Criminal Procedure - Life Imprisonment - Grant of Parole

This bill provides that inmates serving life sentences with the possibility of parole may be paroled if they have earned at least 1,500 diminution credits and the parole is granted by a majority of the Maryland Parole Commission or the Board of Review for the Patuxent Institution. The bill repeals the requirement that such an inmate may only be paroled with the approval of the Governor.

Fiscal Summary

State Effect: The extent to which this bill could lead to the parole of more persons is unknown. However, since the number of persons who are granted parole, even without the imposition of a life sentence, is relatively small, this bill would not be expected to have a significant effect on the operations and finances of the Division of Correction (DOC), the Patuxent Institution, the Maryland Parole Commission, or the Division of Parole and Probation.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: The Maryland Parole Commission has the authority over the parole of inmates held by DOC. The Board of Review has this power with respect to an inmate in the Patuxent Institution. The Governor must approve parole for an inmate serving a life sentence. An inmate serving a life sentence is not eligible for parole consideration until

having served 15 years or the equivalent of 15 years after the diminution of a sentence. An inmate serving a life sentence for first degree murder in a case in which the State sought the death penalty is not eligible for parole consideration until having served 25 years or the equivalent of 25 years after the diminution of a sentence. An allowance for diminution may include credit for time served before a verdict, credit for time served for a concurrent sentence in a foreign jurisdiction, or diminution credits for good behavior, employment, education, or special projects. The Parole Commission may not grant parole to an inmate serving a life sentence without the possibility of parole.

The Board of Review may approve parole for offenders serving a non-life sentence if the offender's crime was committed on or before March 20, 1989. If the crime was committed after that date, the board may recommend parole, but must have the approval of the Secretary. Currently, seven of the nine members of the Board of Review are required to approve parole for an inmate at Patuxent. The Secretary must also approve each parole.

Background: On September 1, 1995, Governor Glendenning stated that he would approve parole for inmates sentenced to life imprisonment only if the inmates were very old or terminally ill. The Governor directed the Parole Commission not to recommend parole for inmates serving life sentences. In 1999, Maryland's Commission on Criminal Sentencing Policy, then a study commission, recommended an end to that policy.

In *Walter E. Lomax v. Warden, Maryland Correctional Training Center* (1998) it was alleged that the policy of the Governor constituted an impermissible *ex post facto* law, essentially converting the sentences of life imprisonment to sentences of life imprisonment without the possibility of parole. In an opinion filed November 9, 1999, the Court of Appeals held that the Governor's statement was no more than "an announcement of guidelines as to how the Governor would exercise the discretion which he has under the law." Since the statement did not carry the force of law and did not bind the Governor from employing different guidelines if he chose, the court ruled that the statement did not constitute an impermissible *ex post facto* provision.

On February 19, 2002 the U.S. Supreme Court declined to hear a convicted rapist's challenge to the Governor's policy of not granting parole to violent criminals serving life terms.

There are currently about 1,950 persons serving a life sentence in DOC facilities (not including those serving a sentence of life without parole). In fiscal 2004, DOC had an intake of about 60 persons with such a life sentence.

Additional Information

Prior Introductions: Similar bills were introduced in 2002 and 2003. HB 1293 of 2002 and HB 166 of 2003 each received an unfavorable report from the House Judiciary Committee.

Cross File: None.

Information Source(s): Department of Public Safety and Correctional Services (Maryland Parole Commission, Division of Correction, Patuxent Institution), Department of Legislative Services

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Analysis by: Guy G. Cherry

Direct Inquiries to:
(410) 946-5510
(301) 970-5510