

Department of Legislative Services
 Maryland General Assembly
 2016 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 433 (Senator Nathan-Pulliam, *et al.*)
 Judicial Proceedings

Correctional Services - Special Requirements for Elderly, Chronically Ill, and Terminally Ill Inmates

This bill authorizes, notwithstanding any other provision of law, an inmate older than age 64 to apply for, and the Maryland Parole Commission (MPC) to grant, compassionate release from incarceration if the inmate has served at least 15 years imprisonment under specified conditions. Inmates who are denied compassionate release may not be housed with the general population in a correctional facility. The bill also requires each State and local correctional facility to accommodate the special needs of elderly, chronically ill, and terminally ill inmates and detainees in accordance with standards, guidelines, and recommendations issued or endorsed by the National Institute of Corrections (NIC).

Fiscal Summary

State Effect: General obligation (GO) bond expenditures increase by at least \$35.0 million to build a dedicated facility for elderly and ill inmates. As the size of the capital budget is established annually through the capital budget process, any GO funds spent on this project result in fewer funds being available for other projects in the Capital Improvement Program (CIP). General fund incarceration expenditures decrease to the extent inmates are granted parole earlier than they otherwise would be, but these savings are likely offset by increased general fund expenditures for mandated services for elderly and ill inmates. The net effect of the savings and the additional expenditures cannot be reliably determined and are therefore not reflected in the chart below, but they may be significant.

(in dollars)	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	-	-	-	-	-
Bond Exp.	35,000,000	-	-	-	-
Net Effect	(\$35,000,000)	\$0	\$0	\$0	\$0

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

Local Effect: None. Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. As NIC has not developed standards for the care of elderly or ill inmates, local detention centers do not incur any additional costs to comply with the bill.

Small Business Effect: None.

Analysis

Bill Summary: A request for compassionate release must be in writing, articulate the grounds that support the appropriateness of granting the compassionate release, and filed with the MPC by:

- the inmate seeking the compassionate release;
- an attorney;
- a prison official or employee;
- a medical professional;
- a family member; or
- any other person.

On receipt of a request for compassionate release, MPC must provide for a compassionate release hearing. On a determination that an inmate is mentally ill or disabled, MPC must appoint a guardian to represent the best interests of the inmate at the compassionate release hearing.

MPC may grant compassionate release if it finds that the inmate has demonstrated significant support from family or others to enable the inmate to live safely and securely in the community. If MPC grants compassionate release to an inmate, MPC:

- must include as a condition of release the requirement for an individualized assessment of the inmate's need for continued mental health treatment and support services, including residential placement if consistent with the assessment;
- must provide for the enrollment of the inmate in the appropriate medical program, including Medicare or Medicaid, before the release; and
- may provide for any other condition of supervision or treatment determined necessary or appropriate.

If MPC denies compassionate release to an inmate under the bill, the inmate:

- may request an additional compassionate release hearing one year after the denial;
- may not be housed with the general population in a correctional facility;
- must be housed in a separate area of a correctional facility reserved exclusively for the elderly; and
- must be provided with cost-effective services that specifically address the needs of the elderly.

Existing provisions relating to victim notification and opportunity to be heard apply to proceedings relating to compassionate release. MPC must develop regulations to implement these provisions.

The Department of Public Safety and Correctional Services (DPSCS) must designate one site for men and one site for women, separate from the general inmate populations, for the housing of inmates who are older than age 64, chronically ill, and terminally ill. Each site designed for the housing of inmates who are older than age 64, chronically ill, and terminally ill, must be (1) staffed by individuals who are specially trained to care for the elderly, chronically ill, and terminally ill and (2) fully equipped with safety and comfort features designed to accommodate the elderly and the infirm, including handicap grab bars, elevated toilets, wheelchairs, and nonslip shower surfaces.

Current Law: MPC has the exclusive power to authorize the parole of an inmate in State correctional facilities. The Patuxent Board of Review (PBR) has the exclusive power to recommend an inmate of the Patuxent Institution for parole to the Secretary of the Department of Public Safety and Correctional Services or the Governor. The parole of any person serving a parole-eligible term of life in either a State correctional facility or the Patuxent Institution requires the approval of the Governor.

A person sentenced to a term of incarceration of six months or more is entitled to a parole hearing after having served one-fourth of the term or consecutive terms. A person serving a sentence for a crime of violence is not entitled to a parole hearing until after having served one-half of the term. Certain persons are not eligible for parole while serving a mandatory minimum sentence. A person sentenced to life imprisonment is not eligible for parole consideration until that person has served 15 years. Under specified circumstances, a person sentenced to life imprisonment for first-degree murder is not eligible for parole consideration until that person has served 25 years. An inmate sentenced to life imprisonment without the possibility of parole is not eligible for parole consideration and may not be granted parole at any time during the inmate's sentence. This does not restrict the authority of the Governor to pardon or remit any part of a sentence.

Chapter 299 of 2008 established medical parole as a form of release from incarceration in a State or local correctional facility for incapacitated inmates who, as a result of a medical or mental health condition, disease, or syndrome, pose no danger to public safety. A medical parole for a person serving a life sentence requires the approval of the Governor.

Chapter 623 of 2011 provided that, if MPC or PBR decides to grant parole to an inmate sentenced to life imprisonment who has served 25 years without application of diminution of confinement credits, the decision must be transmitted to the Governor, who may disapprove the decision in writing within 180 days. However, if the Governor does not disapprove the decision within that timeframe, the decision to grant parole becomes effective. For individuals whose parole recommendation was pending approval by the Governor on October 1, 2011, and who had served 25 years without consideration for diminution credits, the Governor had 180 days after that date to disapprove the recommendation or the parole became effective. Chapter 623 retained provisions requiring gubernatorial approval for parole of an eligible person or inmate serving a term of life imprisonment who has served 15 years, considering allowances for diminution credits (or 25 years in the case of a person whose case started as a death penalty proceeding).

Background: 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 \$3,300 per month. Excluding overhead, the average cost of housing a new State inmate (including variable health care costs) is about \$770 per month, or \$9,240 per year. Excluding all health care, the average variable costs total \$200 per month.

According to DPSCS, there are currently 736 inmates older than age 60. The average sentence for State inmates, across all facilities, is about 16.65 years, though the average actual time served is about 6.41 years. As of February 1, 2016, there were 274 inmates (270 male, 4 female) older than age 64 who have served at least 15 years in State correctional facilities. All 274 inmates are serving a sentence for a crime of violence. DPSCS does not have data on the number of inmates who are incapacitated and who meet the bill's other qualifications for compassionate release. However, MPC advises that it expects at least 400 requests for conditional parole under the bill.

NIC is an agency within the U.S. Department of Justice, Federal Bureau of Prisons that provides training, technical assistance, information services, and policy/program development assistance to federal, state, and local corrections agencies. NIC also provides leadership to influence correctional policies, practices, and operations nationwide in areas of emerging interest and concern to correctional executives and practitioners as well as public policy makers. A 16-member advisory board, appointed by the U.S. Attorney General, provides policy direction to the Institute.

State Fiscal Effect: DPSCS advises that, given the number of inmates older than age 64, it does not have the capacity in existing facilities to establish separate areas for elderly or chronically/terminally ill inmates or inmates denied compassionate release under the bill. Thus, this analysis assumes that DPSCS elects to build a new facility.

GO bond expenditures by DPSCS increase by \$35.0 million to construct a dedicated facility for the population described under the bill. After a site is chosen and the renovations begin, the entire facility has to be brought up to the current Americans with Disabilities Act prison accessibility requirements. These requirements extend well beyond the inmate's cell and tier; the requirements also extend to the programs and services offered to the inmate. This analysis does not reflect the additional costs related to the modification of the medical, mental health, dental, pharmacy, and substance abuse provider contracts.

The Department of Legislative Services notes that, in fact, GO bond expenditures do not increase, as the total size of the capital budget is established annually by the Governor and General Assembly through the capital budget process. Construction of a new facility required by the bill is likely spread over several years; however, for the purpose of this analysis, the cost is shown in a single year. Given the fixed nature of the capital budget, construction of the facility likely reduces funding available for other projects currently in the CIP, resulting in the delay or cancellation of those projects.

Persons released under this bill are likely released at some later date even in the absence of this bill, perhaps on a medical parole release. However, the bill may accelerate the actual release date for certain inmates. The number of inmates who are granted release earlier as a result of the bill cannot be reliably estimated. However, *for illustrative purposes only*, if 100 requests for compassionate release are granted, using variable inmate costs, including medical care, DPSCS saves \$924,000 annually from the release of those inmates and increases bed space within the State prison system.

This analysis does not reflect any impact on Medicaid. To the extent any inmates are granted compassionate release under the bill, Medicaid expenditures (50% general funds/50% federal funds) increase significantly to cover medical expenses. Federal fund revenues increase correspondingly.

Additional Information

Prior Introductions: None.

Cross File: HB 906 (Delegate Sydnor) - Judiciary.

Information Source(s): Baltimore City; Kent, Montgomery, and Washington counties; Maryland Association of Counties; Department of Public Safety and Correctional Services; National Institute of Corrections; Department of Legislative Services

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