

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 588

(Senator Brochin, *et al.*)

Judicial Proceedings

Crimes - Murder in the First Degree - Penalties

This bill establishes that in addition to existing statutory requirements, a defendant found guilty of first-degree murder may be sentenced to imprisonment for life without the possibility of parole only if the defendant was (1) a principal in the first degree or (2) a principal in the second degree who willfully, deliberately, and with premeditation intended the death of the victim, was a major participant in the murder, and was actually present at the time and place of the murder.

The bill applies prospectively to crimes committed on or after the bill's October 1, 2016 effective date.

Fiscal Summary

State Effect: Minimal decrease in general fund expenditures for the Department of Public Safety and Correctional Services (DPSCS) if inmates are paroled as a result of the bill. However, any such effect is not experienced until well into the future, as discussed below. Minimal decrease in general fund expenditures for juror per diem costs. Revenues are not affected.

Local Effect: Minimal decrease in local expenditures for juror per diem costs. The bill is not expected to materially affect circuit court caseloads or operations. Revenues are not affected.

Small Business Effect: None.

Analysis

Current Law:

First-degree Murder: A principal in the first degree is the actual perpetrator of a crime. A principal in the second degree is a person who assists another person with the commission of a crime, is present at the time the crime was committed, but did not commit the crime with his/her own hands.

Persons charged with first-degree murder, if found guilty, are subject to penalties of life imprisonment or life imprisonment without the possibility of parole. A defendant convicted of murder in the first degree may be sentenced to life imprisonment without the possibility of parole only if the State gives written notice to the defendant at least 30 days before trial of its intention to seek a sentence of imprisonment for life without the possibility of parole.

If the State gives this notice, the court must conduct a separate sentencing proceeding as soon as practicable after the defendant is found guilty of murder in the first degree to determine whether the defendant must be sentenced to life imprisonment or life imprisonment without the possibility of parole. A determination by a jury to impose a sentence of life imprisonment without the possibility of parole must be unanimous, and the court must sentence the defendant to life without the possibility of parole if the jury makes this determination. The court must impose a sentence of life imprisonment if the jury is unable to unanimously agree to the imposition of a sentence of life imprisonment without the possibility of parole within a reasonable time. A defendant who was convicted after a bench trial is also entitled to this separate jury sentencing proceeding.

The Court of Appeals may adopt rules of procedure to govern the conduct of these sentencing proceedings and forms for a court or jury to use in making written findings and sentence determinations.

Release on Mandatory Supervision: Release on mandatory supervision is a conditional release from confinement that results from the application of diminution credits. 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.

Inmates sentenced to life imprisonment are not eligible for release on mandatory supervision by the accumulation of diminution credits unless the inmate's life sentence is suspended for a term of years (*e.g.*, life imprisonment with all but 60 years suspended).

An inmate convicted of a crime of violence may earn up to five days per month in good conduct credits and may not be allowed a total deduction, including good conduct credit, of more than 20 days per month. An inmate convicted of a violent crime committed on or after October 1, 2009, is not eligible for mandatory supervision release until after the inmate becomes eligible for parole. Inmates released on mandatory supervision are supervised by DPSCS until the expiration of sentence.

Parole – Generally: Parole is a discretionary and conditional release from imprisonment determined after a hearing for an inmate who is eligible to be considered for parole. If parole is granted, the inmate is allowed to serve the remainder of the sentence in the community, subject to the terms and conditions specified in a written parole order.

The Maryland Parole Commission (MPC) has jurisdiction regarding parole for eligible inmates sentenced to State correctional facilities and local detention centers. Inmates in the Patuxent Institution who are eligible for parole are under the jurisdiction of the Patuxent Board of Review.

Parole Eligibility: In general, a person sentenced to life imprisonment must serve a minimum of 15 years, less diminution credits, before becoming eligible for parole and may be paroled only with the approval of the Governor. However, offenders sentenced to life imprisonment for first-degree murder, instead of a sentence of life imprisonment without the possibility of parole, must serve a minimum of 25 years less diminution credits before becoming eligible for parole and may generally be paroled only with approval of the Governor. However, pursuant to legislation enacted in 2011, if MPC or the Patuxent Board of Review decides to grant parole to an inmate who has served 25 years *without* application of diminution credits and the Secretary of Public Safety and Correctional Services approves the decision, the decision must be transmitted to the Governor, who may disapprove the decision in writing within 180 days. If the Governor does not disapprove the decision to grant parole within that timeframe, the decision to grant parole becomes effective.

Inmates serving a sentence of life without the possibility of parole may not be granted parole unless the Governor commutes the sentence to allow for the possibility of parole or pardons the individual.

Background: According to DPSCS, 367 offenders are currently serving sentences of life imprisonment without the possibility of parole. DPSCS advises that in fiscal 2015, 45 offenders received life sentences for first-degree murder. Information was not provided as to whether any of these life sentences were without the possibility of parole or suspended to definite terms. The Maryland State Sentencing Guidelines do not distinguish between life imprisonment and life imprisonment without the possibility of parole and the Sentencing Guidelines Database is unable to discern how many of the life sentences

imposed in the State's circuit courts during fiscal 2015 contained suspended terms from the information in its database.

According to DPSCS, no inmate serving a life sentence for first-degree murder has been paroled by the Governor on the recommendation of MPC for at least 20 years.

State Expenditures: General fund expenditures for DPSCS decrease minimally beginning in fiscal 2028 to the extent that defendants who would otherwise receive a sentence of life imprisonment without the possibility of parole are paroled. Any such decrease in expenditures is unlikely to occur until well into the future, when defendants sentenced under the bill are eligible for parole. General fund expenditures for the Judiciary decrease beginning in fiscal 2017 if the bill reduces juror reimbursement expenditures for the separate sentencing proceeding in first-degree murder cases for the imposition of life imprisonment without the possibility of parole.

Given the narrow set of circumstances under which a defendant is not a principal in the first or second degree to first-degree murder but still receives a sentence of life imprisonment without the possibility of parole, the bill applies to a small subset of defendants.

As previously noted, a defendant sentenced to life imprisonment must serve a minimum of 15 years, less diminution credits, before becoming eligible for parole and may be paroled only with the approval of the Governor. However, given that no inmate serving a life sentence for first-degree murder has been paroled by the Governor on the recommendation of MPC for at least 20 years, this scenario is unlikely to occur.

This analysis assumes that a defendant who would otherwise receive a sentence of life imprisonment without the possibility of parole under existing statute is unlikely to receive a sentence of life imprisonment suspended to a definite term of years under the bill. Thus, the effect of inmates sentenced under the bill and released on mandatory supervision is not incorporated into this fiscal and policy note.

The State reimburses counties for juror per diem costs at a rate of \$15 per juror per day for the first five days and then \$50 per day for each day served thereafter. According to the Judiciary, from fiscal 2010 through 2014, there were an average of 67 sentencing hearings per year for defendants facing a sentence of life imprisonment without the possibility of parole. Information is not readily available as to how many of these defendants were not a principal in the first or second degree.

Local Expenditures: Local expenditures for juror per diem costs decrease minimally as a result of the bill's repeal of separate jury sentencing hearings in first-degree murder cases. As previously mentioned, the State reimburses counties for juror per diem costs at a rate

of \$15 per juror per day for the first five days of service and \$50 per juror per day for each day thereafter. Counties are authorized to supplement this amount. According to the Judiciary, juror reimbursement rates for the first five days of service range from \$15 to \$30 per day, depending on the jurisdiction.

The bill may reduce the workloads of prosecutors. However, it is assumed that any reduction in workloads resulting from the bill is redirected to other responsibilities of State's Attorneys and does not result in staffing reductions.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland State Commission on Criminal Sentencing Policy, Judiciary (Administrative Office of the Courts), State's Attorneys' Association, Department of Public Safety and Correctional Services, *Encyclopaedia Britannica*, Department of Legislative Services

Fiscal Note History: First Reader - February 29, 2016
md/kdm

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