

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1177
Judiciary

(Delegate Anderson, *et al.*)

**Correctional Services - Eligibility for Parole - Controlled Dangerous Substance
Felony**

This bill repeals the prohibition on parole eligibility until after an inmate has served one-half of the aggregate sentence for an inmate serving a term of imprisonment for a third or subsequent conviction for specified felony drug offenses committed on or after October 1, 2017. The prohibition on parole eligibility repealed by the bill was created by Section 2 of Chapter 515 of 2016, which has a delayed effective date of October 1, 2017.

Fiscal Summary

State Effect: Potential decrease in general fund incarceration expenditures beginning as early as FY 2024, as discussed below. Revenues are not affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: 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.

An inmate sentenced to serve less than six months is not eligible for parole. When an inmate serving a sentence of incarceration of six months or more has served one-fourth of the inmate's sentence, the inmate is entitled to be considered for parole, with several significant exceptions. These exceptions are set forth below:

- An inmate serving a term of incarceration that includes a mandatory minimum sentence that a statute provides is not subject to parole (*e.g.*, use of a handgun in a felony or crime of violence, subsequent violent offenders with enhanced sentences, and subsequent felony drug offenders with enhanced sentences) and is not eligible for parole until the inmate served that mandatory minimum sentence. Diminution credits may not be applied towards this minimum requirement.
- Any of the following inmates who do not receive a mandatory minimum sentence are required to serve at least one-half of their sentences for violent crimes before becoming eligible for parole: (1) an inmate convicted of a violent crime committed on or after October 1, 1994; (2) an inmate convicted of child abuse in the first degree committed on or after October 1, 2006; and (3) an inmate convicted of sexual abuse of a child younger than age 13 or a continuing course of conduct with a child committed on or after October 1, 2007.
- Chapter 515 of 2016 established that an inmate serving a term of imprisonment for a third or subsequent conviction for specified felony drug offenses committed on or after October 1, 2017, is not eligible for parole until the inmate has served one-half of the aggregate sentence.
- An offender 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 approval of the Governor.
- An offender 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.
- Beginning October 1, 2017, offenders who are age 60 or older and have served at least 15 years of a sentence for a crime of violence may petition for and be granted parole. The provisions do not apply to individuals who are registered or eligible for registration on the sex offender registry.
- Also beginning October 1, 2017, an inmate who is so chronically debilitated or incapacitated by a medical or mental health condition, disease, or syndrome as to be physically incapable of presenting a danger to society may be released on medical parole. If MPC decides to grant medical parole, the decision must be transmitted to the Governor. The Governor is then required to disapprove a recommendation for medical parole within 180 days of the decision by MPC. If the Governor does not disapprove the decision within that timeframe, the decision to grant parole becomes effective.

Justice Reinvestment Act – Changes Effective October 1, 2017

Chapter 515 of 2016 (also known as the Justice Reinvestment Act) altered the criminal penalties associated with the possession, administration, obtainment, and procurement of a controlled dangerous substance (CDS) and related offenses. Effective October 1, 2017, a person who violates these provisions is subject to the following penalties: (1) for a first conviction, imprisonment for up to one year and/or a fine of up to \$5,000; (2) for a second or third conviction, imprisonment for up to 18 months and/or a fine of up to \$5,000; (3) for a fourth or subsequent conviction, imprisonment for up to two years and/or a fine of up to \$5,000. The authorization to double penalties for repeat offenders applies only when the person has also been previously convicted of a crime of violence. Additionally, Chapter 515 reduced the maximum incarceration penalty for the use or possession of 10 grams or more of marijuana from one year to six months.

Further, before imposing a sentence for these offenses, the court is authorized to order the Department of Health and Mental Hygiene (DHMH), or a certified and licensed designee, to conduct an assessment of the defendant for a substance use disorder and determine whether the defendant is in need of and may benefit from drug treatment. DHMH or the designee must conduct an assessment and provide the results, as specified. The court must consider the results of an assessment when imposing the defendant's sentence and, as specified, (1) must suspend the execution of the sentence, order probation, and require DHMH to provide the medically appropriate level of treatment or (2) may impose a term of imprisonment and order the Division of Correction within the Department of Public Safety and Correctional Services or a local correctional facility to facilitate the medically appropriate level of treatment.

For information on crimes involving the *distribution* of CDS, please refer to the **Appendix – Penalties for Distribution of Controlled Dangerous Substances and Related Offenses**.

With the exception of simple possession of a CDS, all of the offenses listed in the Appendix are felony drug offenses to which the bill pertains.

State Expenditures: As a result of Chapter 515 of 2016, a person sentenced for a third or subsequent felony drug offense committed on or after October 1, 2017, will no longer be subject to a mandatory minimum penalty. In combination with the bill’s repeal of the requirement for the person to serve one-half of the aggregate sentence, a person sentenced for a third or subsequent felony drug offense committed on or after October 1, 2017, will be entitled to be considered for parole after having served one-fourth of the sentence imposed. *For illustrative purposes only*, if a person is sentenced to the maximum sentence of 25 years for a third felony drug offense committed on or after October 1, 2017, the person is entitled to be considered for parole after having served 6.25 years. Thus, as a result of both Chapter 515 and the bill, there is a potential reduction in incarceration expenditures beginning as early as fiscal 2024, when the first inmates sentenced after October 1, 2017, for offenses covered under the bill’s provisions could become eligible for parole.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Public Safety and Correctional Services; Department of Legislative Services

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mm/lgc

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Appendix – Penalties for Distribution of Controlled Dangerous Substances and Related Offenses

Under Title 5, Subtitle 6 of the Criminal Law Article, a person may not:

- distribute, dispense, or possess with the intent to distribute a controlled dangerous substance (CDS);
- manufacture a CDS or manufacture, distribute, or possess a machine, equipment, or device that is adapted to produce a CDS with the intent to use it to produce, sell, or dispense a CDS;
- create, distribute, or possess with the intent to distribute a counterfeit substance;
- manufacture, distribute, or possess equipment designed to render a counterfeit substance;
- keep a common nuisance (any place resorted to for the purpose of illegally administering CDS or where such substances or controlled paraphernalia are illegally manufactured, distributed, dispensed, stored, or concealed); or
- pass, issue, make, or possess a false, counterfeit, or altered prescription for a CDS with the intent to distribute the CDS.

Exhibit 1 shows the applicable sentences for these crimes under current law, and under Chapter 515 of 2016 (also known as the “Justice Reinvestment Act”), which repealed mandatory minimum penalties applicable to a repeat drug offender (or conspirator) convicted of distribution of CDS and related offenses and established new maximum penalties. The changes take effect October 1, 2017.

Exhibit 1
Penalties for Distribution of Controlled Dangerous Substances and Related Offenses

Offense	Current Penalty ¹	New Penalty ²
CDS (Other than Schedule I or II Narcotic Drugs and Other Specified CDS)		
First-time Offender	Maximum penalty of 5 years imprisonment and/or \$15,000 fine	Maximum penalty of 5 years imprisonment and/or \$15,000 fine
Repeat Offender	2-year mandatory minimum sentence. Maximum penalty of 5 years imprisonment and/or \$15,000 fine	Maximum penalty of 5 years imprisonment and/or \$15,000 fine
CDS (Schedule I or II Narcotic Drug & Specified Drugs)		
First-time Offender	Maximum penalty of 20 years imprisonment and/or \$25,000 fine	Maximum penalty of 20 years imprisonment and/or \$15,000 fine
Second-time Offender	10-year mandatory minimum sentence (20 years maximum imprisonment) and a fine of up to \$100,000	Maximum penalty of 20 years imprisonment and/or \$15,000 fine
Third-time Offender	25-year mandatory minimum sentence and a fine of up to \$100,000	Maximum penalty of 25 years imprisonment and/or a \$25,000 fine (parole eligibility at 50% of sentence)
Fourth-time Offender	40-year mandatory minimum sentence and a fine of up to \$100,000	Maximum penalty of 40 years imprisonment and/or a \$25,000 fine (parole eligibility at 50% of sentence)

CDS: controlled dangerous substance

¹Repeat offenders are subject to twice the term of imprisonment and/or fines that are otherwise authorized. All mandatory minimum sentences listed in the exhibit are nonsuspendable and nonparolable. Pursuant to Chapter 490 of 2015, a court may depart from the listed mandatory minimum sentences under specified circumstances.

²Under Chapter 515 of 2016, effective October 1, 2017, the authorization to double penalties for repeat offenders is made applicable only when the person has also been previously convicted of a crime of violence. Additionally, a person serving a term of confinement that includes a mandatory minimum sentence, imposed on or before September 30, 2017, for specified crimes generally involving the manufacture, sale, and distribution of CDS may apply to the court for a modification or reduction of the mandatory minimum sentence, regardless of whether the defendant filed a timely motion for reconsideration or if a motion for reconsideration was denied by the court (the court is authorized to depart from the specified mandatory minimum sentences).

Source: Department of Legislative Services