

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 604

(Senator Nathan-Pulliam)

Judicial Proceedings

Correctional Services - Elderly Inmates - Compassionate Release

This bill allows an inmate older than age 60 to apply for compassionate release from incarceration if the inmate has served at least 30 years imprisonment or has a chronic disease or condition. A request for compassionate release must be filed in writing with the Maryland Parole Commission (MPC) by any person, as specified. The request must articulate the grounds that support the appropriateness of granting the compassionate release. The bill details the procedures MPC and the Department of Public Safety and Correctional Services (DPSCS) must follow in response to a request for compassionate release. MPC must issue regulations to implement the bill.

Fiscal Summary

State Effect: General fund incarceration expenditures decrease for DPSCS to the extent inmates are granted parole earlier than they otherwise would be; however, general fund expenditures may increase significantly for DPSCS to segregate inmates who are denied compassionate release. In addition, general fund expenditures for MPC increase by \$311,000 in FY 2020 and by at least \$576,000 annually thereafter to handle additional parole hearings. General and federal fund expenditures (and federal matching fund revenues) may increase significantly to enroll inmates paroled under the bill in Medicaid.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: On receipt of a request for compassionate release, MPC must provide for a compassionate release hearing. Upon 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 hearing. MPC may grant compassionate release on a finding 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, the commission:

- 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 release; and
- may provide for any other condition of supervision or treatment determined necessary or appropriate.

If MPC denies compassionate release to an inmate, 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.

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 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 certain 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. Chapter 515 of 2016 requires that, beginning October 1, 2017, 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.

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 \$3,800 per month. Excluding overhead, the average cost of housing a new State inmate (including health care costs) is about \$895 per month. Excluding all health care (which is a fixed cost under the current contract), the average variable costs total \$199 per month.

According to DPSCS, there are currently about 1,090 inmates older than age 60. There are 327 inmates age 60 and older who have served 30 years or more in DPSCS. The number

of inmates who are older than age 60 and have a chronic disease or condition is unknown but could be significant.

State Fiscal Effect: General fund incarceration expenditures may decrease for DPSCS to the extent inmates are granted parole earlier than they otherwise would be; however, general fund expenditures may increase significantly for DPSCS to segregate inmates who are denied compassionate release. In addition, general fund expenditures for MPC increase by \$311,032 in fiscal 2020, which accounts for the bill's October 1, 2019 effective date; future year expenditures reflect annualization and increasing costs. General and federal fund expenditures (and federal matching fund revenues) may increase significantly to enroll inmates paroled under the bill in Medicaid.

Department of Public Safety and Correctional Services – State Correctional Costs

Persons released on parole under this bill would likely be released at some later date, even in the absence of this bill. However, the bill may accelerate the actual release date for certain inmates. The number of inmates who would be granted parole earlier as a result of the bill cannot be reliably estimated. However, *for purposes of illustration only*, for every 100 inmates granted compassionate release, using variable inmate costs including medical care, DPSCS saves approximately \$1.0 million annually from the release of those inmates and increases bed space within the State prison system.

However, the bill also specifies that elderly inmates denied parole under the bill (1) may not be housed with the general population in a correctional facility; (2) must be housed in a separate area of a correctional facility reserved exclusively for the elderly; and (3) must be provided with cost-effective services that specifically address the needs of the elderly. These requirements place significant and costly responsibilities on DPSCS. Costs for additional correctional officers, social workers, case management staff, and other staff likely exceed \$20 million annually. In addition, the identification of space required to comply with the bill and ensuring that this space is suitable for the population requires significant funding. Capital costs for retrofitting current facilities or building new facilities may also accrue. While not likely to occur in the short term, based on a cost of approximately \$155,000 per bed, the cost of building a new medium-security 1,300-bed prison facility is currently estimated at \$202.0 million. Actual costs depend on the actual size, design, and location of any new facility. (Although the bill has no effect on total capital spending, which is established annually by the Governor and the General Assembly through the capital budget process, funding for other capital projects is reduced due to any capital expenditures incurred as a result of the bill.)

In addition, it is assumed that separate housing and services for elderly inmates, beyond that which is currently offered, likely requires a restructured medical contract with existing or future vendors.

Maryland Parole Commission Hearings and Victim Notifications

Because MPC must hold a hearing on receipt of a request for compassionate release, the bill is anticipated to result in a significant increase in the number of hearings that MPC must conduct. As a result, general fund expenditures increase by \$311,032 in fiscal 2020, which accounts for the bill’s October 1, 2019 effective date. This estimate reflects the cost of hiring eight clerical positions to (1) handle the additional scheduling of hearings; (2) handle additional victim notifications; and (3) process inmate release orders. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	8
Salaries and Fringe Benefits	\$268,162
Operating Expenses	<u>42,870</u>
FY 2020 MPC Expenditures	\$311,032

Future year expenditures for MPC (which range from \$576,000 in fiscal 2021 to \$700,300 in fiscal 2024) reflect annual increases and employee turnover and ongoing operating expenses and assume that MPC hires two additional parole commissioners in fiscal 2021. (Parole commissioners are appointed by the Secretary of Public Safety and Correctional Services in consultation with the Governor and confirmed by the Senate. This analysis assumes that the process to appoint the additional commissioners needed by MPC under the bill is likely not complete until fiscal 2021.)

Medicaid Costs

Currently, DPSCS shares inmate data with Medicaid, and individuals enrolled in a managed care organization are automatically disenrolled upon incarceration and their fee-for-service eligibility remains open. The Medicaid program covers inpatient hospitalization services for Medicaid-eligible DPSCS inmates. Although procedures vary slightly depending on whether the admission is planned, due to an emergency, or the continuation of inpatient services when a patient has been committed to DPSCS during his/her hospital stay, hospitals must check the Medicaid Eligibility Verification System to determine if an inmate is eligible for Medicaid coverage. If the inmate has coverage, the hospital is responsible for following the appropriate utilization review process to ensure coverage of the care. DPSCS already seeks out reimbursement for eligible costs from Medicaid, which are minimal.

Persons granted compassionate release as a result of this bill are generally assumed to be eligible for Medicare, by age (if they are older than age 65), and Medicaid, by impoverishment. Medicaid payments are paid with both federal funds and general funds. Each Medicaid-eligible inmate released earlier as a result of the bill increases Medicaid costs by an estimated \$8,743 annually. Accordingly, *for illustrative purposes only*, for

every 100 Medicaid-eligible inmates released due to the bill, Medicaid costs increase by \$874,300 annually (\$800,000 in federal funds and \$74,300 in general funds). To the extent an inmate granted compassionate release requires nursing facility services, annual Medicaid costs per inmate increase to approximately \$78,500 annually.

Additional Information

Prior Introductions: SB 336 of 2015, a similar bill, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

Cross File: None.

Information Source(s): Maryland Department of Health; Department of Public Safety and Correctional Services; Department of Legislative Services

Fiscal Note History: First Reader - February 20, 2019
mm/lgc

Analysis by: Shirleen M. E. Pilgrim

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