

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 300
Judiciary

(Delegate Proctor, *et al.*)

Inmates - Life Imprisonment - Parole Reform

This bill requires the parole of a person who has served 30 years, without the application of diminution of confinement credits, of a parole-eligible life sentence in a State correctional facility or the Patuxent Institution, subsequent to a recommendation for parole by the Maryland Parole Commission (MPC) or the Patuxent Board of Review (PBR), without the approval of the Governor.

Fiscal Summary

State Effect: Potential significant decrease in general fund incarceration expenditures, as discussed below. Revenues are not affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: MPC has the exclusive power to authorize the parole of an inmate in State correctional facilities. 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 third or subsequent felony drug crime committed on or after

October 1, 2017, or 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. Chapter 515 of 2016 requires that, if MPC decides to grant medical parole, the decision 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.

If eligible for parole, an inmate serving a life term may only be paroled with 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: Generally, Governors have denied parole to all persons serving a life term. MPC has recommended that the Governor commute the life sentence rather than grant parole. However, a news report in November 2019 stated that Governor Lawrence J. Hogan, Jr., paroled 3 individuals who were given life sentences as juveniles. Additionally, recent information provided by the Governor's Office indicates that Governor Hogan has paroled 16 individuals serving life sentences, whether by approving their parole or allowing parole to go into effect without his approval.

Commuting a life sentence to a term of years permits an inmate to take advantage of department programs unavailable to inmates serving a life term and allows MPC, in its discretion, to later parole the inmate from the term of years. Once released, an offender remains under supervision by the Department of Public Safety and Correctional Services (DPSCS) until the maximum date of the fixed term. Under the bill, the Governor retains the authority to commute any sentence.

For identical legislation introduced during the 2019 session, MPC advised that the bill would not alter other parole eligibility considerations or how parole hearings are conducted. MPC hearings are conducted by two parole commissioners. By regulation, the decision of the commissioners must be unanimous, and there is no appeal. In life cases, if the commissioners feel that the case warrants further consideration, their decision is deferred and the inmate is referred for a psychological risk assessment. These assessments are prepared by an MPC psychologist. The risk assessment is reviewed by the commissioners conducting the hearing, and if both feel the case still warrants favorable consideration, the case must be presented to MPC for *en banc* review.

State Expenditures: General fund incarceration expenditures may decrease significantly as a result of the bill's changes. DPSCS is unable to reliably predict the pace of potential parole approvals by either MPC or PBR resulting from the bill. 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 \$3,700 per month. Excluding overhead, the average cost of housing a new State inmate (including health care costs) is about \$1,050 per month. Excluding all health care (which is a fixed cost under the current contract), the average variable costs total \$191 per month. DPSCS advises that there are currently 680 inmates sentenced to life or life without parole who have served 30 or more years. *For illustrative purposes only*, assuming that 100 inmates are granted parole each year as a result of the bill, with the variable inmate costs of \$191 per month excluding health care, State incarceration costs could decrease by \$229,200 annually.

DPSCS advises that in order to implement the bill, it needs to hire one clinical psychologist and three investigators at a cost of \$278,400 in fiscal 2021, increasing to \$364,400 by fiscal 2025. DPSCS advises that the psychologist is needed to relieve the backlog of psychological assessments that currently exist and to address the possible increase in assessments resulting from the bill. DPSCS further advises that the investigators are needed to make final determinations regarding parole under the bill. The Department of Legislative Services disagrees; DPSCS is already required to perform these functions under current law.

Additional Information

Prior Introductions: HB 443 of 2019 received a hearing in the House Judiciary Committee, but no further action was taken. Its cross file, SB 121, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

Designated Cross File: None.

Information Source(s): Governor's Office; Department of Public Safety and Correctional Services; Department of Legislative Services

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mm/lgc

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