

**Maryland General Assembly  
Department of Legislative Services**

**Emergency/Proposed Regulations  
Department of Public Safety and Correctional Services**  
(DLS Control No. 16-123)

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## **Overview and Legal and Fiscal Impact**

These regulations update the requirements for the review of parole hearing files of the Maryland Parole Commission by an inmate or the inmate’s representative and expand the factors considered by the commission when determining whether an inmate who was incarcerated while still a minor is suitable for release on parole.

The regulations present no legal issues of concern.

There is no fiscal impact on State or local agencies.

## **Regulations of COMAR Affected**

### **Department of Public Safety and Correctional Services:**

Parole Commission: General Regulations: COMAR 12.08.01.17 and .18

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## **Legal Analysis**

### **Background**

The Supreme Court of the United States has handed down two landmark rulings relating to individuals incarcerated while under the age of majority-*Miller v. Alabama*, 132 S. Ct. 2455 (2012), and most recently, *Montgomery v. Louisiana*, 136 S. Ct. 718 (Jan. 25, 2016). In *Miller*, the court held that mandatory life sentences without the possibility of parole for individuals who commit crimes as juveniles violate the Eighth Amendment. In *Montgomery*, the court ruled that the holding of *Miller* applied retroactively to individuals sentenced prior to the issuance of the *Miller* opinion. The basis of the holdings is the Court’s determination that “‘children are constitutionally different from adults,’” due to “‘children’s ‘diminished culpability and greater prospects for reform.’” *Montgomery*, 136 U.S. at 733 (citing *Miller*, 132 S. Ct. at 2464).

### **Summary of Regulations**

These regulations provide for the review of commission files by an inmate or the inmate’s representative. The regulations specifically reference pertinent provisions in the Correctional Services Article that limit access to certain types of files, including privileged medical opinions and treatment files, and require the redaction of the address and telephone information of a victim.

The regulations also require the commission to consider certain factors when determining whether an inmate who was incarcerated as a juvenile is suitable for parole. The regulations require the commission to consider the “three primary ways” identified by the Supreme Court in *Miller* in which children differ from adults, among other factors, when the commission considers a parole application of an inmate sentenced for a crime committed as a juvenile.

## **Legal Issues**

The regulations present no legal issues of concern.

## **Statutory Authority and Legislative Intent**

The department cites § 7-207 of the Correctional Services Article as statutory authority for the regulations. Section 7-207 provides for the commission’s general rule making authority.

Although not cited by the department, § 7-303 of the Correctional Services Article is also pertinent. Section 7-303(a) requires the commission to provide an inmate with timely written notice of a parole hearing. Section 7-303(b) requires that the notice inform the inmate that the inmate or the inmate’s representative may examine any document that the commission or hearing examiner will use in determining whether the inmate is suitable for parole. Section 7-303(b) also provides that certain types of files and information may be withheld from the inmate or the inmate’s representative and requires that contact information for a victim or a victim’s designated representative be redacted from review by the inmate or the inmate’s representative. The department indicates that it will include this citation in its final publication.

With the addition of § 7-303, this authority is correct and complete. The regulations comply with the legislative intent of the law.

## **Emergency Status**

The department requests emergency status beginning Wednesday, June 1, 2016, and expiring Tuesday, November 1, 2016. This emergency period is within the normal time frames approved by the Joint Committee on Administrative, Executive, and Legislative Review. The department indicates the emergency status is necessary to address constitutional issues arising in parole cases for offenders who are now adults but were juveniles at the time of incarceration.

## **Fiscal Analysis**

There is no fiscal impact on State or local agencies.

## **Agency Estimate of Projected Fiscal Impact**

The department advises that the regulations are procedural in nature and reflect current practice. Thus, they have no fiscal impact. The Department of Legislative Services concurs.

## **Impact on Budget**

There is no impact on the State operating or capital budget.

## **Agency Estimate of Projected Small Business Impact**

The department advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

## **Contact Information**

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