

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE

House Bill 166
Judiciary

(Delegate C. Davis)

Criminal Procedure - Life Imprisonment - Grant of Parole

This bill provides that inmates serving life sentences with the possibility of parole may be paroled if they have earned at least 1,500 diminution credits and the parole is granted by a majority of the Maryland Parole Commission or the Board of Review for the Patuxent Institution. The bill repeals a provision requiring that the approval of the Governor be obtained before inmates serving life imprisonment may be paroled.

Fiscal Summary

State Effect: The extent to which this bill could lead to the parole of more persons is unknown. However, since the number of persons who are granted parole, even without the imposition of a life sentence, is relatively small, this bill would not be expected to have a significant effect on the operations and finances of the Division of Correction (DOC), the Patuxent Institution, the Maryland Parole Commission, or the Division of Parole and Probation.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: The Board of Review has the power to authorize the parole of an inmate in the Patuxent Institution. The Maryland Parole Commission has this authority for inmates in DOC. The Governor must approve parole for an inmate serving a life sentence. An inmate serving a life sentence is not eligible for parole consideration until

having served 15 years or the equivalent of 15 years after the diminution of a sentence. An inmate serving a life sentence for first degree murder in a case in which the State sought the death penalty is not eligible for parole consideration until having served 25 years or the equivalent of 25 years after the diminution of a sentence. An allowance for diminution may include credit for time served before a verdict, credit for time served for a concurrent sentence in a foreign jurisdiction, or diminution credits for good behavior, employment, education, or special projects. The Parole Commission may not grant parole to an inmate serving a life sentence without the possibility of parole.

Currently, seven of the nine members of the Board of Review are required to approve parole for an inmate at Patuxent. In addition, the Secretary of Public Safety and Correctional Services must also approve each parole.

Background: On September 1, 1995, the Governor stated that he would approve parole for inmates sentenced to life imprisonment only if the inmates were very old or terminally ill. The Governor directed the Parole Commission not to recommend parole for inmates serving life sentences. In 1999, Maryland's Commission on Criminal Sentencing Policy, then a study commission, recommended an end to that policy.

In *Walter E. Lomax v. Warden, Maryland Correctional Training Center* (1998) it was alleged that the policy of the Governor constituted an impermissible ex post facto law, essentially converting the sentences of life imprisonment to sentences of life imprisonment without the possibility of parole. In an opinion filed November 9, 1999, the Court of Appeals held that the Governor's statement was no more than "an announcement of guidelines as to how the Governor would exercise the discretion which he has under the law." Since the statement did not carry the force of law and did not bind the Governor from employing different guidelines if he chose, the court ruled that the statement did not constitute an impermissible ex post facto provision.

On February 19, 2002 the U.S. Supreme Court declined to hear a convicted rapist's challenge to the Governor's policy of not granting parole to violent criminals serving life terms.

There are currently about 1,950 persons serving a life sentence in DOC facilities (not including those serving a sentence of life without parole).

Additional Information

Prior Introductions: In 2002, a similar bill, HB 1293, received an unfavorable report from the House Judiciary Committee.

Cross File: None.

Information Source(s): Department of Public Safety and Correctional Services (Maryland Parole Commission, Division of Correction, Patuxent Institution), Department of Legislative Services

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