

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

House Bill 1482
Judiciary

(Delegate O'Donnell)

Parole Eligibility - Child Abuse in the First Degree - Violent Crime

This bill adds the felony of first degree child abuse to the list of violent crimes under provisions applicable to parole eligibility and crime victim notification, thereby: (1) making a person ineligible for parole until having served one-half, rather than one-quarter, of the sentence; and (2) prohibiting an inmate from receiving credit for time between parole release and parole revocation if the inmate committed the offense while on parole or had been serving a sentence for the offense when the parole was revoked.

Fiscal Summary

State Effect: Minimal. While this bill could result in additional incarceration penalty enhancements (mandatory minimums), more time served before parole eligibility, and longer incarceration terms for certain parole revocations, it is not expected to have a significant impact on overall incarceration costs for the Division of Correction (DOC). Any impact on the Maryland Parole Commission could be handled with existing budgeted resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: The Maryland Parole Commission has the power to authorize the parole of an inmate in DOC. The Board of Review has this power for the Patuxent Institution. Currently, the Secretary of Public Safety and Correctional Services must also approve

each parole, and seven of the nine members of the Board of Review are required to approve parole for an inmate at Patuxent.

For purposes of parole eligibility, a violent crime means all the crimes of violence cited in the Criminal Law Article for the purposes of establishing mandatory sentencing, as well as first, second, or third degree burglary. 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 sentenced to more than one term, including a term during which the person is eligible for parole and a term during which the person is not eligible for parole, cannot be considered for parole unless the person has served the greater of one-fourth of the aggregate term or a period equal to the term during which the inmate is not eligible for parole.

A person convicted of a violent crime is not eligible for parole until that person has served the greater of one-half of the aggregate sentence for violent crimes, one-half of the aggregate total sentence, or a period equal to the term during which the inmate is not eligible for parole. Currently, a person serving a term for a violent crime may receive an administrative review after that person has served one-fourth of the term of confinement or a period equal to any term in which the inmate is not eligible for parole. Further, a person sentenced to life imprisonment is not eligible for parole consideration until that person has served 15 years. A person sentenced to life imprisonment for first degree murder is not eligible for parole consideration until that person has served 25 years.

For DOC inmates whose terms of confinement include consecutive or concurrent sentences for a crime of violence or a crime involving a controlled dangerous substance, the deduction in the sentence for good conduct is calculated at five days per calendar month. For all other inmates the deduction is calculated at 10 days per calendar month. An inmate may also receive deductions calculated at five days per calendar month for work tasks and education and 10 days per calendar month for special projects. However, the total deduction may not exceed 20 days per calendar month. An inmate in a local correctional facility may receive deductions of five days per calendar month for good conduct; industrial, agricultural, or administrative tasks; educational and training courses; work projects; and special programs.

Chapter 167 of 2003 established the crimes of child abuse in the first and second degrees, established terms of imprisonment for those crimes, and increased the maximum term of imprisonment for a person who causes sexual abuse to a minor. The Act provides that a parent or other person who has permanent or temporary care, custody, or responsibility for the supervision of a minor may not cause abuse resulting in severe physical injury or death to the minor. A violator is guilty of the felony of child abuse in the first degree and on conviction is subject to imprisonment not exceeding 25 years or, if the violation

results in the death of the victim, imprisonment not exceeding 30 years. A person who violates the child abuse laws after being convicted of a prior violation of the same provisions is guilty of a felony and is subject to imprisonment for up to 25 years. If the violation results in the death of the victim, the violator is subject to imprisonment for up to 30 years.

Chapter 167 also established that the then existing crime of child abuse is child abuse in the second degree and is subject to a maximum term of imprisonment of 15 years for abuse that does not result in the death of the victim. The Act increased the maximum term of imprisonment for a person who causes sexual abuse to a minor from 15 years to 25 years.

“Abuse” means a physical injury sustained by a minor as a result of cruel or inhumane treatment or as a result of a malicious act under circumstances that indicate the minor’s health or welfare is harmed or threatened. “Sexual abuse” means an act that involves the sexual molestation or exploitation of a minor. It includes incest, rape, sexual offense in any degree, sodomy, and unnatural or perverted sexual practices. “Severe physical injury” means a brain injury or bleeding within the skull, starvation, or physical injury that creates a substantial risk of death or causes permanent or protracted serious disfigurement or loss or impairment of the function of any bodily member or organ.

A sentence imposed for child abuse or child sexual abuse may be separate from and consecutive to or concurrent with a sentence for any crime based on the act that establishes the abuse violation.

Background: In fiscal 2003, DOC had an intake of 49 persons convicted of child abuse. The average sentence for the persons convicted of child abuse was 74 months.

Additional Information

Prior Introductions: None.

Cross File: SB 118 (Senators Brochin and Stone) – Judicial Proceedings.

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

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