

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

House Bill 516
Judiciary

(Delegate Kelley, *et al.*)

Criminal Law - Drug Crimes - Second Offenders - Eligibility for Parole

This bill repeals parole ineligibility for persons serving sentences for certain controlled dangerous substances convictions.

Fiscal Summary

State Effect: Potential annual savings for the Division of Correction (DOC) and some operational and workload difficulties for the Maryland Parole Commission in FY 2005 only. The additional hearings could be handled with existing resources.

Local Effect: Potential indeterminate savings for local correctional facilities. Such savings cannot be reliably projected as to scale.

Small Business Effect: None.

Analysis

Bill Summary: This bill repeals parole ineligibility for persons sentenced to a mandatory minimum sentence for a second offense for: (1) manufacturing, distributing, possessing with intent to distribute, or dispensing controlled dangerous substances; (2) manufacturing, distributing, or possessing equipment to produce controlled dangerous substances; (3) creating or distributing a counterfeit controlled dangerous substance or possessing a counterfeit substance with intent to distribute; (4) keeping a "common nuisance;" or (5) passing, issuing, making, or possessing a false, counterfeit, or altered prescription for a controlled dangerous substance with the intent to distribute.

The bill repeals ineligibility for parole of a person sentenced to a mandatory minimum sentence for a second offense for any of those offenses involving a Schedule I or II narcotic drug or a hallucinogenic substance and for persons sentenced to a mandatory minimum sentence for being a volume dealer or a drug kingpin.

The bill also repeals parole ineligibility for persons sentenced to a five-year minimum sentence for manufacturing, distributing, possessing with intent to distribute, or dispensing controlled dangerous substances in a school vehicle or in, on, or within 1,000 feet of school property.

The bill's provisions are applied retroactively to any prior convictions.

Current Law: A person convicted of: (1) manufacturing, distributing, possessing with intent to distribute, or dispensing controlled dangerous substances; (2) manufacturing, distributing, or possessing equipment to produce controlled dangerous substances; (3) creating or distributing a counterfeit controlled dangerous substance or possessing a counterfeit substance with intent to distribute; (4) keeping a "common nuisance;" or (5) passing, issuing, making or possessing a false, counterfeit, or altered prescription for a controlled dangerous substance with the intent to distribute is guilty of a felony and subject to maximum penalties of imprisonment for five years and/or a fine of \$15,000. With a prior similar conviction, the person is subject to a mandatory minimum, nonsuspendable sentence of two years. The person is not eligible for parole while serving the mandatory minimum sentence.

A person convicted of those offenses involving a Schedule I or II narcotic drug or hallucinogenic drug is guilty of a felony and subject to maximum penalties of imprisonment for 20 years and/or a fine of \$25,000. With certain prior convictions, the person is subject to a maximum fine of \$100,000 and a mandatory minimum, nonsuspendable sentence of 10 years. The person is not eligible for parole while serving the mandatory minimum sentence.

A person convicted of being a volume dealer is subject to a maximum fine of \$100,000 and a mandatory minimum, nonsuspendable sentence of five years. The person is not eligible for parole while serving the mandatory minimum sentence.

A person convicted of being a drug kingpin is guilty of a felony and subject to a mandatory minimum nonsuspendable sentence of 20 years and maximum imprisonment for 40 years without the possibility of parole. The person is also subject to a maximum fine of \$1 million in addition to, or instead of, the imprisonment term. The person is not eligible for parole while serving the mandatory minimum sentence.

A person convicted of manufacturing, distributing, possessing with intent to distribute, or dispensing controlled dangerous substances in a school vehicle or in, on, or within 1,000 feet of school property is guilty of a felony and subject to maximum penalties, for a first violation, of imprisonment for 20 years and/or a fine of \$20,000. For a subsequent offense, the person is subject to a mandatory minimum, nonsuspendable sentence of five years and maximum penalties of imprisonment for 40 years and/or a fine of \$40,000. The person is not eligible for parole while serving the mandatory minimum sentence.

Background: 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.

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 or one-half of the aggregate total sentence. 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.

State Fiscal Effect: DOC estimates that there are 600 inmates in the standing population who are serving a mandatory minimum sentence for the covered offenses under the bill, and who are, as a result, ineligible for parole during the term of the mandatory minimum portion of their sentence. In fiscal 2003, DOC had an intake of 93 persons convicted of drug-related offenses covered under this bill, where the sentence included a nonparolable term. In recent years, the average number of such intakes has been about 100.

Providing parole hearings for the inmates in the standing population who would attain parole eligibility under this bill (600) would cause some operational and workload difficulties for the Parole Commission in fiscal 2005. However, since the commission could handle the additional hearings in future years (100), it is assumed that the bill's requirements could be handled with existing budgeted resources.

While it is not known how many of either the 600 inmates in the standing population or the annual intake of 100 inmates would actually be recommended for parole by the Parole Commission, it is assumed that this bill would generate some unknown number of new parolees.

In any event, general fund expenditures could decrease as a result of the bill's changes to parole eligibility. Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$1,850 per month. This bill alone, however, should not alleviate the need for existing prison facilities. Excluding overhead, the average cost of housing a DOC inmate (including medical care and variable costs) is \$350 per month. Excluding medical care, the average variable costs total \$120 per month.

Currently, about one-third of parole applicants are successful in actually securing parole, annually. If one-third of the standing population covered by the bill were to be successful in securing a parole release, about 200 additional persons would be released from the standing population prior to completion of their (now) mandatory term. Beginning in fiscal 2006, it is assumed that an additional 33 inmates would secure parole under the bill, annually. Assuming the variable inmate costs of \$120 per month, State costs could increase at a rate of \$1,440 per year per inmate, with a bed savings calculated at the monthly or annual rate multiplied by the amount of time left to serve on each inmate's term.

For illustrative purposes only, if 200 persons had five years on their mandatory term to serve when parole is approved, the bed savings would be 1,000 beds (200 beds per year for five years) and the cost savings would be \$288,000 per year ($\$1,440 \times 200$) for five years.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Public Safety and Correctional Services,
Department of Legislative Services

Fiscal Note History: First Reader - February 13, 2004
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