

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE

Senate Bill 213
Judicial Proceedings

(Senator Colburn, *et al.*)

Corrections - First Degree Murder - Minimum Sentence

This bill, by repealing allowances for diminution credits, requires a person convicted of first degree murder and sentenced to life imprisonment to serve a minimum of 25 years incarceration before being eligible for parole consideration. The bill also prohibits an inmate serving a concurrent or consecutive sentence for first degree murder from receiving diminution credits for good conduct in advance until having served 25 years.

The bill is applied prospectively only.

Fiscal Summary

State Effect: Potential increases in incarceration costs beginning in FY 2024. Although additional mandatory minimum sentencing provisions generally result in additional contested hearings in the courts, it is assumed that any such increase resulting from this bill could be handled with existing resources of the Office of the Public Defender. It is unknown how this bill might affect plea bargain processes or actual sentencing practices.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: First degree murder is a felony and a violator must be sentenced to life imprisonment, life imprisonment without the possibility of parole, or death. Attempted first degree murder is a felony that subjects the violator to life imprisonment. A murder that is not first degree murder is considered second degree murder. A violator is guilty of

a felony and subject to imprisonment for up to 30 years. Attempted second degree murder is a felony that subjects the violator to maximum imprisonment for 30 years.

A person sentenced to life imprisonment is not eligible for parole consideration until that person has served 15 years, or the equivalent of 15 years when considering allowances for diminution credits. A person sentenced to life imprisonment for first degree murder is not eligible for parole consideration until that person has served 25 years, or the equivalent of 25 years when considering allowances for diminution credits. 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. If eligible for parole, an inmate serving a life term may only be paroled with the approval of the Governor.

For the Division of Correction (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. When an inmate's total number of diminution credits is equal to the remainder of sentence, including consideration for any losses of credits, the inmate is eligible for mandatory supervision release.

A deduction may not be allowed for a period during which an inmate does not receive credit for service of the inmate's term of confinement, including a period: (1) during which the inmate's sentence is stayed; (2) during which the inmate is not in DOC custody because of escape; or (3) for which the Maryland Parole Commission has declined to grant credit after revocation of parole or mandatory supervision.

The Maryland Parole Commission has the power to authorize the parole of an inmate in DOC. The Secretary of Public Safety and Correctional Services must also approve each parole.

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.

Parole eligibility for persons incarcerated for commission of a violent crime is as follows:

- an inmate who has been sentenced to DOC after being convicted of a violent crime committed on or after October 1, 1994 is not eligible for parole until the inmate has served the greater of one-half of the inmate's aggregate sentence for violent crimes, or one-fourth of the inmate's total aggregate sentence;
- an inmate who has been sentenced to DOC after being convicted of a violent crime committed on or after October 1, 1994 and who has been sentenced to more than one term of imprisonment, including a term during which the inmate is eligible for parole and a term during which the inmate is not eligible for parole, is not eligible for parole until the inmate has served the greater of one-half of the inmate's aggregate sentence for violent crimes; one-fourth of the inmate's total aggregate sentence; or a period equal to the term during which the inmate is not eligible for parole;
- an inmate who is serving a term of imprisonment for a violent crime committed on or after October 1, 1994 must receive an administrative review of the inmate's progress in the correctional facility after the inmate has served the greater of one-fourth of the inmate's aggregate sentence; or if the inmate is serving a term of imprisonment that includes a mandatory term during which the inmate is not eligible for parole, a period equal to the term during which the inmate is not eligible for parole.

For purposes of parole eligibility for a violent crime, a crime of violence means:

- abduction;
- first degree arson;
- first or second degree assault;
- first, second, or third degree burglary;
- carjacking and armed carjacking;
- first degree escape;
- kidnapping;
- voluntary manslaughter;
- maiming;
- mayhem;
- first or second degree murder;
- first or second degree rape;
- robbery;
- robbery with a dangerous weapon;
- first, second, or third degree sexual offense;

- an attempt to commit any of the above crimes; or
- assault with intent to commit any of the above crimes or a crime punishable by imprisonment for more than one year.

Background: According to the DOC database, 77 persons are currently serving a sentence for first degree murder. Of that total, 53 are serving a sentence of life without the possibility of parole, or death. The remaining 24 are serving an average sentence of about 32 years. In 2006, DOC's intake for this crime was 24 persons.

State Expenditures: General fund expenditures could increase minimally as a result of the bill's incarceration penalty due to people convicted of first degree murder being committed to DOC facilities for longer periods of time. The number of people sentenced under the provisions of the bill is expected to be relatively small.

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 \$2,300 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including medical care and variable costs) is \$465 per month. Excluding medical care, the average variable costs total \$134 per month.

Additional Information

Prior Introductions: In 2006, SB 37 and HB 639 received a hearing before the Senate Judicial Proceedings Committee and the House Judiciary Committee, respectively, and had no further action taken on them.

Cross File: None.

Information Source(s): Office of the Public Defender, Commission on Criminal Sentencing Policy, Department of Public Safety and Correctional Services, Department of Legislative Services

Fiscal Note History: First Reader - March 11, 2007
ncs/jr

Analysis by: Guy G. Cherry

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

