

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 628 (Senator Jacobs, *et al.*)
Judicial Proceedings

Criminal Procedure - Legal Residency Status - Sentencing and Parole
Considerations

This bill authorizes a parole hearing examiner, parole commissioner, and the Parole Commission to consider whether a prisoner is lawfully present in the United States when considering parole or a predetermined parole release agreement. It also authorizes the court to consider whether a defendant is lawfully present in the United States when considering probation.

Fiscal Summary

State Effect: The provisions of the bill could be handled with existing resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: In determining whether an inmate is suitable for parole, each hearing examiner and commissioner is authorized to consider whether the prisoner is lawfully present in the United States under federal law. This authority also applies to the parole commission considerations before entering into a predetermined parole release agreement.

If it is determined that the prisoner is not lawfully present in the United States, the examiner, commissioner, or commission may inquire as to whether the prisoner would be legally subject to deportation from the United States while on parole. If the prisoner

would be subject to deportation, the examiner, commissioner, or commission may

- consider the State's interest in securing certain and complete execution of a judicial sentence in a criminal case;
- consider that deportation may intervene to frustrate the State's interest in complete execution of a sentence if parole is granted; and
- decline to grant parole to further the State interest in completion of the criminal sentence.

A court is authorized to inquire whether a person to be sentenced or placed on probation is lawfully present in the United States when determining whether to suspend all or any part of a sentence that requires confinement or when considering whether to place the defendant on probation. If the court determines that the defendant is not lawfully present in the United States, the court may inquire whether the defendant would be legally subject to deportation from the United States. If the defendant would be legally subject to deportation while on a suspended sentence or on probation, the court may consider the State's interest in securing certain and complete execution of judicial sentences in criminal cases, consider whether deportation could frustrate the State's interest in completion of sentences if a suspended sentence or probation is granted and may decline to suspend a sentence, or grant probation to further the State's interest in certain and complete execution of criminal sentences.

Current Law: Each hearing examiner and commissioner determining whether an inmate is suitable for parole and the Parole Commission before entering into a predetermined parole release agreement must consider 10 factors enumerated in statute. Whether the prisoner is lawfully present in the United States and the impact of parole on the State interest in completion of a criminal sentence when a defendant is subject to deportation is not one of the factors that must be considered.

On entering a judgment of conviction, a court may suspend the imposition or execution of a sentence and place the defendant on probation on the conditions that the court considers proper. A court generally has authority to suspend a sentence for a definite time, pass orders, impose costs or other fees, or impose confinement as a condition of a suspended sentence. The court may impose a sentence of imprisonment as a condition of probation. If the defendant violates the terms of probation, any time served by the individual in custodial confinement must be credited against any sentence of incarceration imposed by the court.

If a defendant pleads guilty or *nolo contendere* or is found guilty, the court may stay the entry of judgment, defer further proceedings, and place the defendant on probation subject to reasonable conditions. The court must find that the best interests of the defendant and the public would be served by placing the defendant on probation before judgment and the defendant must give written consent after determination of guilt or acceptance of a *nolo contendere* plea. A condition of probation may include payment of a monetary penalty, however, the defendant is entitled to notice and hearing to determine

the amount and method of payment. The court may also order the defendant to participate in a rehabilitation, parks, or voluntary hospital program. The court may also order a defendant into custodial confinement or imprisonment as a condition of probation.

Background: According to U.S. Census estimates, the foreign-born population in Maryland is 683,157. The estimated number of those foreign-born residents who are undocumented ranges between 225,000 and 275,000. There are no reliable estimates of the portion of those arrested and detained who are undocumented aliens.

A “criminal alien” is a noncitizen who is residing in the United States legally or illegally and is convicted of a crime. Criminal aliens are eligible for removal from the United States because criminal activity violates immigration law. However, if a criminal alien goes through a trial and receives a sentence, that individual is in the custody of the sentencing jurisdiction until the sentence has been completed.

DPSCS attempts to identify citizenship status for any individual sentenced to the Division of Correction during the intake process at the Maryland Reception, Diagnostic, and Classification Center. Immigration Customs Enforcement (ICE) is notified via fax when foreign birth (not illegal citizenship status) is suspected by way of an inmate’s own admission, criminal history check, and/or interviewer suspicion. Upon notification, ICE agents (1) come to the facility to interview the inmate; (2) indicate, without seeing the inmate, if a detainer will be lodged; or (3) wait to dispose of the case once the inmate is transferred to a designated institution, primarily the Maryland Correctional Institution, Hagerstown for males or the Maryland Correctional Institution for Women in Jessup. DOC attempts to house all criminal aliens at either of these facilities because of the proximity to federal judges responsible for hearings regarding immigration issues. In most cases, ICE lodges a detainer against the undocumented immigrant and, once the inmate’s sentence has been completed or the inmate is paroled, ICE takes custody of the inmate. According to DPSCS, about 3% of the correctional population, or 674 inmates were undocumented immigrants in fiscal 2006 (the latest information available).

The Maryland Parole Commission, the Division of Correction, and ICE are currently developing a program similar to one established in New York in which eligible foreign-born offenders agree to deportation and are granted parole for that purpose. This program was implemented in New York in 1995 with significant savings reported since that time. Only offenders with a final deportation order, serving sentences for nonviolent offenses would be eligible for this proposed program. In addition, the number of alien status checks could increase so that deportable aliens are not released into the community and to increase the likelihood of detention for any aliens who reenter the United States and are arrested again.

State Expenditures: It is anticipated the increase in population that could be detained rather than released under the provisions of this bill could be met with existing resources.

The Maryland Parole Commission advises that inmates identified by ICE have a detainer placed with the correctional facility. Upon release, ICE is notified and the offender is taken into federal custody. Instances have occurred when parole was granted on the assumption that the offender would remain in federal custody until deportation, but the offender was actually released before deportation proceedings. MPC standard practice is to grant parole only to offenders who have already been ordered deported from the United States.

MPC advises that a greater concern than those offenders who are granted parole subject to deportation, are the large number of offenders whose alien status is unknown at the time of a parole hearing or even at the time of release. The large number of foreign nationals that have entered the correctional system in recent times has strained the resources of ICE. If the information about an offender's alien status is not readily available, the practice is for the hearing examiner or parole commissioner to put a decision about release on hold until the information is available. It is also common for the offender to be released on mandatory supervision before alien status is established. The fiscal 2009 annual cost for the Division of Parole and Probation to supervise one offender is \$1,595.

Additional Information

Prior Introductions: None.

Cross File: None.

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