

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE

House Bill 703
Judiciary

(Delegate Impallaria, *et al.*)

Criminal Law - Early Release of Inmate Subject to Deportation Order

This bill authorizes the Maryland Parole Commission (MPC) to consider the early release of an inmate who is subject to a final order of deportation under specified circumstances.

Fiscal Summary

State Effect: The bill will not significantly affect incarceration expenditures for the Division of Correction.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: In addition to other criteria that must be considered before releasing an inmate on parole, MPC may consider releasing an inmate at any time after the period of imprisonment has begun if the inmate: (1) is subject to a final order of deportation issued by the U.S. Immigration and Naturalization Service (the predecessor to U.S. Immigration and Customs Enforcement, hereafter referred to as ICE); and (2) has not been convicted of a crime of violence. The parole has to be conditioned specifically on the prompt deportation of the inmate. MPC may make the conditional grant of early parole only when MPC has received an assurance from ICE that an order of deportation will be executed or that deportation proceedings will begin promptly on release of the inmate from the custody of the Department of Public Safety and Correctional Services (DPSCS) and that the inmate will not be released from ICE custody, other than through

deportation, without first providing MPC a reasonable opportunity to arrange for the execution of a warrant for the retaking of an inmate.

An inmate who has been granted parole subject to deportation has to be delivered to ICE custody with the MPC warrant for retaking the inmate if the inmate is released from custody other than by deportation.

If the inmate is not deported, MPC must execute the warrant, effect the inmate's return to DPSCS custody and, within 60 days after return, personally interview the inmate to determine whether the inmate should be paroled if the inmate's minimum period of the sentence has been served. The return of a person to DPSCS who is granted parole subject to deportation is not deemed to be a parole delinquency. The time spent in ICE custody has to be credited against the term of the sentence. However, an inmate granted parole subject to deportation who is subsequently committed to the custody of DPSCS for a felony offense committed after release must serve the remainder of the original sentence and may not receive credit for the time between release from DPSCS custody and the parole revocation caused by the new offense.

Current Law: A "crime of violence" includes:

- abduction;
- first degree arson;
- kidnapping;
- manslaughter, except involuntary manslaughter;
- mayhem;
- maiming;
- murder;
- rape;
- robbery;
- robbery with a dangerous weapon;
- carjacking and armed carjacking;
- first or second degree sexual offense;
- use of a handgun in the commission of a felony;
- first degree child abuse;
- sexual abuse of a minor (under specified circumstances);
- an attempt to commit any of the above crimes;
- continuing course of conduct with a child;

- first degree assault;
- assault with intent to murder, rape, or rob; and
- assault with intent to commit first or second degree sexual offense.

Except as otherwise provided by law, or in a predetermined parole release agreement, an inmate is not eligible for parole until the inmate has served in confinement one-fourth of the inmate's aggregate sentence. MPC must request the Division of Parole and Probation to investigate inmates in local correctional facilities, and the Division of Correction to investigate inmates in State correctional facilities, to determine who has been sentenced to serve at least six months in a correctional facility and served at least one-fourth of the aggregate sentence in confinement. Other provisions apply to inmates who have committed violent crimes, are sentenced to multiple terms, or are sentenced to life imprisonment.

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. Consideration of whether an inmate is lawfully subject to deportation is not required by State law.

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. 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.

The Maryland Parole Commission, the Division of Correction, and ICE are currently developing a memorandum of understanding to implement 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 savings of over \$140 million 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 that whatever resources are required to consider those inmates subject to deportation for early release on parole can be met with existing resources, and that incarceration costs will not be significantly affected.

MPC 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 has advised 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 years 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.

Additional Information

Prior Introductions: HB 1101 of 2008 received an unfavorable report from the House Judiciary Committee.

Cross File: None.

Information Source(s): Department of Public Safety and Correctional Services, U.S. Census Bureau, Department of Legislative Services

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