

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

Senate Bill 901 (Senator McFadden)
Judicial Proceedings

Inmates - Life Imprisonment - Parole Approval and In Banc Review

This bill repeals the requirement that a person serving a term of life imprisonment, who is otherwise eligible for parole, may only be paroled with the approval of the Governor. The bill authorizes an individual serving a term of life imprisonment with the possibility of parole to have a judgment or determination of any point or question relating to the individual's conviction or sentence reviewed by a three-judge panel sitting in banc, as long as the in banc review is authorized by the Maryland Constitution. The person seeking review may file a notice for in banc review any time after having served at least 20 continuous years of imprisonment without being released on parole.

Fiscal Summary

State Effect: Potential minimal increase in expenditures in FY 2011 only for the Judiciary to provide training to judges on review of parole determinations. Revenues are not affected.

Local Effect: Any increase in circuit court proceedings as a result of the bill can be handled with existing local budgeted resources.

Small Business Effect: None.

Analysis

Current Law: 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. Under these circumstances, the person may only be paroled with the approval of the Governor.

In general, Article IV, § 22, of the Maryland Constitution allows a party in a circuit court trial conducted by less than three judges of the circuit to have a judgment or determination of any point or question reviewed by three judges of the circuit, who constitute a court in banc. The party requesting the in banc review must make a timely motion to do so. The decision of the court in banc is considered final against the party who requested the in banc review.

Article IV, § 22 does not apply to: (1) circuit court trials that are appeals from judgments of the District Court; or (2) misdemeanors not punishable by confinement in the penitentiary.

Background: After an offender becomes eligible for parole, several hearings may be conducted before a recommendation to parole is forwarded to the Governor. Parole hearings are not formal evidentiary hearings, but are conducted more like interviews. Attorneys are not permitted to make formal presentations at parole hearings. This is not the case for hearings conducted by three-judge panels. At these hearings, attorneys are allowed to make formal presentations and the rules of evidence apply.

On September 21, 1995, Governor Glendening announced that he would not approve parole for any inmate sentenced to a term of life imprisonment unless the inmate was very old or terminally ill. The Governor also stated that he had “directed the Parole [Commission] not to even recommend – to not even send to [his] desk – a request for parole for murderers and rapists.” The Parole Commission was subsequently sued by an inmate serving a life sentence who was denied parole. In 1999, the Court of Appeals ruled that the Governor has full discretion with regards to a decision on a recommendation for parole, but the Parole Commission is statutorily obligated to forward files to the Governor. See *Walter E. Lomax v. Warden, Maryland Correctional Training Center*, 356 Md. 469, 741 A.2d 476 (1998). The ruling as it pertained to the Parole Commission was consistent with circuit court decisions and concessions by the Attorney General and the Parole Commission.

According to the Maryland Parole Commission, there are approximately 2,330 inmates serving life sentences in Division of Correction facilities. No inmate serving a term of life imprisonment has been paroled outright since 1995. However, five inmates serving life sentences have had their sentences commuted and seven have been granted medical paroles due to terminal illnesses.

State Fiscal Effect: Since the bill authorizes a three-judge panel to perform the function of making a parole determination, it is assumed that the Court of Appeals will have to promulgate rules for the procedures used by three-judge panels. General fund expenditures may increase minimally in fiscal 2011 only for the Judiciary to provide training on this function. In future years this training can be provided with existing resources.

Additional Comments: The Parole Commission advises that it is common for inmates serving life sentences to be subject to multiple sentences that must be served consecutively. Currently, an inmate must be eligible for parole on *all* of his/her sentences in order to be considered for parole.

Additional Information

Prior Introductions: SB 900 of 2009, a similar bill, received a hearing in the Senate Judicial Proceedings Committee but no further action was taken.

Cross File: HB 940 (Delegate Anderson, *et al.*) - Judiciary.

Information Source(s): Commission on Criminal Sentencing Policy, Governor's Office, Judiciary (Administrative Office of the Courts), Department of Public Safety and Correctional Services, Department of Legislative Services

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