

Department of Legislative Services
2010 Session

FISCAL AND POLICY NOTE

Senate Bill 742

(Senator Colburn)

Judicial Proceedings

Correctional Services - 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 after FY 2025. Although additional mandatory minimum sentencing provisions generally result in additional contested hearings in the courts, any such increase resulting from this bill can 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. Any increase in administrative reviews of sentences by the Maryland Parole Commission can be handled with existing budgeted resources.

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.

For 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, which are awarded in advance. For all other inmates, the deduction is calculated at 10 days per calendar month. An inmate may also receive deductions calculated at 5 days per calendar month for work tasks and education and 10 days per calendar month for special projects. These credits are awarded as they are earned. However, the total deduction may not exceed 20 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 commission has the exclusive power to authorize the parole of an inmate in DOC. The Board of Review of the Patuxent Institution has the exclusive power to recommend an inmate for parole to the Secretary of Public Safety and Correctional Services or the Governor.

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.

If an inmate has been sentenced to imprisonment for life without the possibility of parole, the inmate 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 imprisonment term may only be paroled with the approval of the Governor.

A person sentenced for a violent crime may petition for and be granted parole if the person is at least 65 years old and has served at least 15 years of the sentence imposed. Chapter 299 of 2008 established medical parole as a form of release from incarceration in a State or local correctional facility for incapacitated inmates who, as a result of a medical or mental health condition, disease, or syndrome, pose no danger to public safety.

Background: In 2009, DOC's intake for first degree murder was 85 persons, with 70 receiving a life sentence.

State Expenditures: According to the Maryland Parole Commission, the bill's requirements would generally eliminate any possibility of parole or mandatory supervision release for offenders whose circumstances of conviction and sentencing are covered under the bill. These offenders would never have had a parole hearing before the expiration of 25 years of their term and they would not have been eligible for good conduct diminution credit during that time. The Parole Commission believes that the bill would increase the number of administrative reviews required on the covered sentences. Administrative reviews are file reviews, done by hearing officers in the office and are scheduled every five years until parole eligibility is reached. Typically, 15 administrative reviews can be completed in half a day.

In any event, 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 whose parole consideration and/or diminution earning potential is affected under 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 \$2,750 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 variable medical care and variable operating costs) is \$371 per month. Excluding all medical care, the average variable costs total \$182 per month.

Additional Information

Prior Introductions: SB 322 of 2009, SB 152 of 2008, SB 213 of 2007, and SB 37 of 2006 each received a hearing before the Senate Judicial Proceedings Committee and had no further action taken on them. HB 639 of 2006 received a hearing before the House Judiciary Committee and had no further action taken on it.

Cross File: None.

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

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