

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

Senate Bill 492

(Senator Gladden)

Judicial Proceedings

Inmates - Life Imprisonment - Parole Approval - Felony Murder Accomplice

This bill provides that a person eligible for parole, who is serving a term of life imprisonment for first degree murder involving specified circumstances in which the person was not a principal in the first degree to the crime, may be paroled without the approval of the Governor. The Maryland Parole Commission or the Patuxent Board of Review, as appropriate, must make the determination of whether the eligible person was not a principal in the first degree to the crime by the preponderance of the evidence.

Fiscal Summary

State Effect: Although the bill will cause some operational difficulties for the Parole Commission, the bill's requirements can be handled with the existing budgeted resources of the Department of Public Safety and Correctional Services (DPSCS).

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: The Maryland Parole Commission has the exclusive power to authorize the parole of an inmate in the Division of Correction (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

serving a sentence for a crime of violence is not entitled to a parole hearing until after having served one-half of the term. Certain persons are not eligible for parole while serving a mandatory minimum sentence. 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. 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.

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. A medical parole for a person serving a life sentence requires the approval of the Governor.

Chapter 623 of 2011 provided that, if the Parole Commission or the Patuxent Institution's Board of Review decides to grant parole to an inmate sentenced to life imprisonment who has served 25 years without application of diminution of confinement credits, the decision must be transmitted to the Governor, who may disapprove the decision in writing within 180 days. However, if the Governor does not disapprove the decision within that timeframe, the decision to grant parole becomes effective. For individuals whose parole recommendation is pending approval by the Governor on October 1, 2011, and who have served 25 years without consideration for diminution credits, the Governor has 180 days after that date to disapprove the recommendation or the parole becomes effective.

Chapter 623 retained provisions requiring gubernatorial approval for parole of an eligible person or inmate serving a term of life imprisonment who has served 15 years considering allowances for diminution credits (or 25 years in the case of a person whose case started as a death penalty proceeding).

The circumstances of first degree murder covered under the bill are murders committed in the perpetration of or an attempt to perpetrate:

- first degree arson;
- burning a barn, stable, tobacco house, warehouse, or other outbuilding that is not parcel to a dwelling and contains cattle, goods, wares, merchandise, horses, grain, hay, or tobacco;
- first, second, or third degree burglary;
- carjacking or armed carjacking;

- first degree escape from a State or local correctional facility;
- kidnapping or child kidnapping;
- mayhem;
- rape;
- robbery or robbery with a dangerous weapon;
- first or second degree sexual offense;
- sodomy; or
- a violation concerning the manufacture or possession of a destructive device.

Background: There are approximately 2,700 inmates in DOC facilities serving life sentences for first degree murder who are eligible for parole. DOC's automated system does not distinguish among the types of first degree murder and does not identify co-defendants convicted of the same crime. The parole eligibility dates for these 2,700 persons are currently unknown. At Patuxent, there are 6 inmates with a straight life sentence and 55 who have a life sentence suspended to a term of years. Of the total of 61, 48 were convicted of first degree murder or attempted first degree murder.

Currently, eight Parole Commission recommendations to commute a life sentence are under consideration by the Governor. None of these inmates are at Patuxent.

State Fiscal Effect: Under the bill, the Parole Commission would have to undertake a case-by-case review of the 2,700 persons to identify inmates convicted under the circumstances covered under the bill. In addition, because current parole hearings are conducted as relatively informal interviews of inmates, the commission believes that the bill would require the adoption and use of more formal rules of evidence and proceedings at which prosecutors and defense attorneys would be permitted to submit information relating to the role of the inmate in the underlying murder. Formal presentations by attorneys are not currently permitted at the hearings.

Such a change in operations would alter the nature of the subject parole reviews and likely increase the duration of these reviews. The degree that such factors would have on the overall operations of the commission cannot be readily quantified at this time. The bill would likely result in the parole of more persons from DOC facilities – or the same number of persons at an earlier date. Any additional persons released to the supervision of the Division of Parole and Probation can be handled with existing budgeted resources. Accordingly, it is assumed that the bill's requirements can be handled with the existing budgeted resources of DPSCS.

Additional Information

Prior Introductions: None.

Cross File: None.

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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