

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 571

(Senators Shank and Getty)

Judicial Proceedings

Criminal Procedure - Certificate of Rehabilitation

This bill establishes that it is the policy of the State to encourage the employment and reintegration into society of nonviolent ex-offenders who have rehabilitated themselves. The bill authorizes the Maryland Parole Commission (MPC) to issue a certificate of rehabilitation to an “eligible offender” establishing that the offender has been rehabilitated from his or her previous criminal involvement. MPC must consider several factors before issuing a certificate, may conduct an investigation to determine whether to issue a certificate, and may revoke a certificate under specified conditions. A criminal penalty is established for knowingly using a revoked certificate.

Fiscal Summary

State Effect: General fund expenditures increase by \$1.3 million in FY 2014. Out-year costs reflect annualization and inflation. Revenues are not affected.

(in dollars)	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	1,328,100	1,691,300	1,771,000	1,854,600	1,942,300
Net Effect	(\$1,328,100)	(\$1,691,300)	(\$1,771,000)	(\$1,854,600)	(\$1,942,300)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None. The criminal penalty provisions of this bill do not have a material impact on local finances or operations.

Small Business Effect: None.

Analysis

Bill Summary: Under the bill, an “eligible offender” is a person who has been convicted of a crime that is not a violent crime or a sexual offense. The bill specifies that a certificate of rehabilitation may be issued to an eligible offender who:

- was committed to the jurisdiction of DPSCS;
- was released from a correctional institution under conditions of parole, probation, or mandatory supervision; and
- has successfully completed the term of supervision, including paying all required restitution, fines, fees, and other financial obligations.

MPC must consider the following factors before issuing a certificate of rehabilitation:

- the nature of each conviction and number of convictions;
- the length of time that has passed since the conviction or convictions;
- whether the offender has met all child and spousal support obligations;
- whether the offender has timely paid all State, federal, and local income taxes;
- whether the offender has maintained a residence for a substantial period;
- whether the offender has maintained gainful employment or demonstrated other acceptable means of meeting the financial needs of the offender and any dependents;
- evidence that the offender has adequately addressed any drug or alcohol abuse or addiction;
- letters of reference; and
- documentation of the offender’s service to the community or specific individuals in need.

MPC may conduct an investigation to determine whether to issue a certificate. MPC may revoke a certificate if the offender is subsequently convicted of any crime except a nonincarcerable traffic offense. Granting or revoking a certificate by MPC must be made by majority vote of the members authorized to grant or revoke parole.

A person may not knowingly use or attempt to use a revoked certificate of rehabilitation. A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for 90 days and/or a fine of \$500.

Current Law/Background: MPC has the exclusive power to authorize the parole of an inmate in State correctional facilities, excluding the Patuxent Institution, or a local

correctional facility. An inmate serving a sentence is not eligible for parole until the inmate has served in confinement one-fourth of the inmate's aggregate sentence. 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.

When an inmate's total number of diminution credits is equal to the remainder of the 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 State correctional custody because of escape; or (3) for which MPC has declined to grant credit after revocation of parole or mandatory supervision.

Inmates granted parole or released on mandatory supervision are supervised by DPSCS. The standard conditions of supervision are the same for both parolees and persons released on mandatory supervision release. MPC has the authority to impose any additional conditions of parole or mandatory supervision. Inmates accused of violating the conditions of their supervision have a hearing conducted by a parole commissioner.

The ability to adjust the period of a parole or probation, which is based upon the sentence handed down by a court, is the exclusive jurisdiction of a court. The courts have the authority to place an individual in nonactive supervision status.

MPC has an abatement process under which the active supervision of an offender is ended without effect on the legal expiration date of the case or the offender's obligation to obey all laws, report to DPSCS as instructed, or obtain written permission before relocating outside of Maryland. A supervision agent may request abatement or early termination of an offender's supervision if the offender has completed two consecutive years of crime-free behavior and the offender, as applicable:

- has paid in full restitution, 2% collection fee, fine, court costs, and public defender fee;
- is current on payment of supervision fee and drug testing fees, as applicable;
- has fulfilled all special conditions;
- is under intermediate or standard supervision; and
- has incurred neither a behavioral nor an actual positive for a drug test administered during the 30 days prior to the submission of the report requesting abatement or early termination.

An offender is not eligible for abatement or early termination if the offender is (1) serving a life sentence; (2) a sexual offender; or (3) registered or is required to register as a sexual offender.

Chapters 564 and 565 of 2012 (SB 691/HB 670) require DPSCS to establish a program to implement earned compliance credits which create a reduction of up to 20 days in the period of active supervision for a “supervised individual” and to develop policies and procedures for the implementation of the program. MPC or the court may adjust the period of a supervised individual’s supervision on the recommendation of DPSCS for earned compliance credits accrued under the program.

A supervised individual whose period of active supervision has been completely reduced as a result of earned compliance credits must remain on “abatement” until the expiration of the individual’s sentence, unless consenting to continued active supervision or unless violating a condition of probation, parole, or mandatory release supervision including failure to pay a required payment of restitution.

According to the National Conference of State Legislatures, the following ten states currently offer certificates of rehabilitation or the equivalent: Arkansas, California, Illinois, Massachusetts, Minnesota, Montana, New Jersey, New York, North Carolina, and Ohio.

In addition, North Dakota prohibits any state agency, board, commission, or department from disqualifying a person from an occupation, trade, or profession requiring a license, permit, certificate, or registration solely on the basis of a prior conviction if there is evidence that the person has been sufficiently rehabilitated.

State Expenditures: This bill has a significant fiscal impact on DPSCS. While the bill authorizes MPC to conduct investigations pursuant to a certificate of rehabilitation, it has been standard practice and policy that Community Supervision (CS, formerly known as the Division of Parole and Probation) conducts investigations at the request of MPC. CS advises that, under the bill, the factors that MPC must take into consideration for a certificate most closely approximate the elements of an Executive Clemency investigation. The Executive Clemency process requires the individual to complete a standard application and submit all of the necessary documentation to MPC. Once received, the application is reviewed for completeness and a determination of eligibility is made.

In fiscal 2012, MPC received 500 Executive Clemency applications. Currently, one DPSCS employee is assigned full-time to review pardon applications for completeness and returning incomplete applications. Assuming the ex-offender is eligible for clemency, the request for investigation is forwarded to CS, and an agent

conducts the investigation and returns the completed investigation report to MPC. In fiscal 2012, CS completed 185 Executive Clemency investigations.

On average, it takes an agent 10 hours to complete one Executive Clemency investigation. Similarly, DPSCS estimates that it would take this same amount of time to complete one investigation for a certificate of rehabilitation under the bill. Accordingly, one agent would be expected to complete approximately 12 such investigations per month.

Under the bill, the potential certificate applicant pool includes any offender who has completed his/her supervision obligation under parole, probation, or mandatory release supervision. In fiscal 2012, 7,021 offenders completed supervision in a satisfactory status that would allow them to apply to MPC for a certificate. It is assumed that persons who completed supervision prior to October 1, 2013, would not also be eligible to apply.

Based on the data from fiscal 2012, DPSCS assumes that about 30% of about 7,000 persons apply for a certificate annually under the bill. That means that about 2,100 certificate applications are received per year. Accordingly, general fund expenditures increase by \$1,328,087 in fiscal 2014, which accounts for the bill's October 1, 2013 effective date. This estimate reflects the cost of hiring 3 administrators, 3 field supervisors, 15 CS agents, and 4 office secretaries to receive and process applications for certificates of rehabilitation on behalf of MPC. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

- 3 new administrative officers are needed to review the annual certificate applications for completeness and to ensure that the applicant meets the underlying eligibility requirements; and
- 1 field agent can handle and complete 144 investigations annually.

Positions	25
Salaries and Fringe Benefits	\$1,205,268
Additional Equipment	111,915
Other Operating Expenses	<u>10,904</u>
Total FY 2014 State Expenditures	\$1,328,087

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

MPC is currently transitioning from traditional records to the Offender Case Management System (OCMS). MPC is required to maintain records on offenders released on parole or mandatory supervision for five years after supervision has expired. Eventually, all MPC

records will be maintained in OCMS, but the transition from traditional records to digital will take several years. Under the bill, MPC needs to create a record for applicants sentenced to less than six months, which it does not now do. MPC advises that, at some future date, if the number of applications submitted for certificates is significant, the bill may require the development of a separate system independent of OCMS. MPC is slated to receive four high-volume scanners in anticipation of OCMS. MPC advises that this bill may eventually require the purchase of an additional scanner, additional employees, and additional hearing facilities. However, such an eventuality cannot be reliably estimated without some direct experience under the bill. Thus, the above estimate does not include any cost related to those possibilities.

Additional Information

Prior Introductions: None.

Cross File: HB 541 (Delegate Hough, *et al.*) - Judiciary.

Information Source(s): Department of Legislative Services

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