

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

House Bill 622
Judiciary

(Delegate Moon, *et al.*)

Correctional Services - Eligibility for Parole - Conditional Parole

This bill allows an inmate older than age 64 to apply to be released on conditional parole under specified circumstances. A request for conditional parole must be filed in writing with the Maryland Parole Commission (MPC) by any person, including the inmate, an attorney, a prison official or employee, a medical professional, or a family member. The request must articulate the grounds that support the appropriateness of granting the conditional parole. The bill details the procedures MPC and the Department of Public Safety and Correctional Services (DPSCS) must follow in response to a request for a conditional parole. MPC must issue regulations to implement the bill. Reporting requirements are established.

Fiscal Summary

State Effect: General fund incarceration expenditures decrease for DPSCS to the extent inmates are granted parole earlier than they otherwise would be; however, general fund expenditures for MPC increase by \$73,100 in FY 2016, \$79,500 in FY 2017, and \$20,700 in FY 2018 for contractual employees to provide clerical assistance. General and federal fund expenditures (and federal matching fund revenues) may increase significantly to enroll inmates paroled under the bill in Medicaid.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: Unless eligible for release at an earlier date, an inmate older than age 64 may be released on conditional parole if the inmate has served in actual custody the lesser of (1) 10 years imprisonment or (2) one-third of the inmate's aggregate sentence. The bill applies to an inmate older than age 64 who is sentenced to a term of incarceration for which all sentences being served, including any life sentence, are with the possibility of parole.

On receipt of a request for conditional parole, MPC must provide for a conditional parole hearing. Upon a determination that an inmate is mentally ill or disabled, MPC must appoint a guardian to represent the best interests of the inmate at the hearing. MPC may grant conditional parole on a finding that:

- the inmate is incapacitated with a permanent medical or mental health condition, including dementia or Alzheimer's disease, that renders the inmate unable to perform basic daily living activities and requires continual medical care at the expense of the State;
- the inmate can live and remain in society with minimal risk to public safety; and
- the public interest in retributive justice and rehabilitation has been vindicated.

If MPC grants conditional parole to an inmate, the commission:

- must include as a condition of release, the requirement for an individualized assessment of the inmate's need for continued mental health treatment and support services, including residential placement if consistent with the assessment;
- must provide for the enrollment of the inmate in the appropriate medical program, including Medicare or Medicaid, before release; and
- may provide for any other condition of supervision or treatment determined necessary or appropriate.

If MPC denies conditional parole to an inmate under the bill, the inmate may request an additional conditional parole hearing one year after the denial. Existing provisions relating to victim notification and opportunity to be heard apply to proceedings relating to conditional parole.

MPC must submit an annual report to the General Assembly by July 1 of each year, beginning in 2016, on (1) the number of individuals released on conditional parole and (2) the annual cost savings to the State as a result of the conditional parole of inmates older than age 64, including health care cost savings due to their enrollment in programs with federal funding.

Current Law: MPC has the exclusive power to authorize the parole of an inmate in State correctional facilities. The Patuxent Board of Review (PBR) has the exclusive power to recommend an inmate of the Patuxent Institution for parole to the Secretary of Public Safety and Correctional Services or the Governor. The parole of any person serving a parole-eligible term of life in either a State correctional facility or the Patuxent Institution requires the approval of 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. Under certain circumstances, 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 MPC or PBR 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 was pending approval by the Governor on October 1, 2011, and who had served 25 years without consideration for diminution credits, the Governor had 180 days after that date to disapprove the recommendation or the parole became 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).

Background: Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$3,100 per month. Excluding overhead, the average cost of housing a new State inmate (including variable health care costs) is about \$770 per month, or \$9,240 per year. Excluding all health care, the average variable costs total \$200 per month.

According to DPSCS, there are currently about 780 inmates older than age 60 and about 420 inmates age 65 and older. The average sentence for State inmates, across all facilities, is about 16 years, though the average actual time served is about 6.25 years. As of January 1, 2015, there were about 260 inmates age 65 and older who have served at least 10 years on a fixed term and/or a parole-eligible life term in State correctional facilities. DPSCS does not have data on the number of inmates who are incapacitated and who would meet the bill's other qualifications for conditional parole. However, MPC advises that it expects at least 400 requests for conditional parole under the bill.

State Fiscal Effect: General fund incarceration expenditures decrease for DPSCS to the extent inmates are granted parole earlier than they otherwise would be; however, general fund expenditures for MPC increase from fiscal 2016 through 2018 only to hire contractual employees to provide clerical assistance. General and federal fund expenditures (and federal matching fund revenues) may increase significantly to enroll inmates paroled under the bill in Medicaid.

Maryland Parole Commission

MPC reports that this bill likely creates the need for at least 400 additional parole hearings, which can be handled with existing budgeted resources, including subsequent hearings one year after a denial of parole. However, general fund expenditures for MPC increase by \$73,054 in fiscal 2016, which accounts for the bill's October 1, 2015 effective date. This estimate reflects the cost of hiring three contractual office clerks to provide the additional scheduling and victim notification requirements resulting from the bill. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Contractual Positions	3
Salaries and Fringe Benefits	\$61,523
Additional Equipment	10,215
Other Operating Expenses	<u>1,316</u>
Total FY 2016 MPC Expenditures	\$73,054

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses. The need for the contractual assistance is not expected to go beyond fiscal 2018. The need for contractual employees is largely based on the significant number of anticipated requests for conditional parole resulting from the bill.

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State's implementation of the federal Patient Protection and Affordable Care Act.

The bill's reporting requirements can be handled with existing budgeted resources.

State Correctional Costs

Persons released on parole under this bill would likely be released at some later date even in the absence of this bill, perhaps on a medical parole release. However, the bill may accelerate the actual release date for certain inmates. The number of inmates who would be granted parole earlier as a result of the bill cannot be reliably estimated. However, *for purposes of illustration only*, if 200 requests for conditional parole are granted, using variable inmate costs including medical care, DPSCS saves \$1,848,000 annually from the release of those inmates and increases bed space within the State prison system.

Medicaid Costs

On November 7, 2011, DPSCS and the Department of Human Resources (DHR) jointly submitted the *Joint Chairmen's Report on Medicaid-eligible Inmate Population*. DPSCS was able to determine, through review of federal Medicaid laws and regulations, that inmates in a public institution are ineligible for Medicaid care, except when the patient is in a medical institution. Currently, all inmate medical care is handled through a systemwide contract with Wexford Health Sources, Inc. For inmates being released, DPSCS has about 70 Certified Application Counselors who work to enroll clients in medical assistance prior to release. DPSCS also assists with the funding of two positions at DHR to assist released inmates with other needed benefits, such as food stamps.

Currently, DPSCS shares inmate data with Medicaid, and individuals enrolled in a managed care organization are automatically disenrolled upon incarceration and their for-service eligibility remains open. The Medicaid program covers inpatient hospitalization services for Medicaid-eligible DPSCS inmates. Although procedures vary slightly depending on whether the admission is planned, due to an emergency, or the continuation of inpatient services when a patient has been committed to DPSCS during his/her hospital stay, hospitals must check the Medicaid Eligibility Verification System to determine if an inmate is eligible for Medicaid coverage. If the inmate has coverage, the hospital is responsible for following the appropriate utilization review process to ensure coverage of the care. DPSCS already seeks out reimbursement for eligible costs from Medicaid, which are minimal.

Persons released on parole as a result of this bill are generally assumed to be dually eligible for Medicare, by age, and Medicaid, by impoverishment. Medicaid payments are paid 50% with general funds and 50% with federal funds.

The Department of Health and Mental Hygiene estimates that each inmate released on parole under this bill increases Medicaid costs by \$38,100 annually, which accounts for dual eligibility but also considers the disablement of the inmate qualifying for the conditional parole. It is noted that some of these persons would likely be eligible for home- and community-based services waivers at a significantly greater cost. *For purposes of illustration only*, if 200 requests for conditional parole are granted, State Medicaid costs increase by \$7,620,000 annually (\$3,810,000 in general funds and \$3,810,000 in federal funds).

Additional Information

Prior Introductions: None.

Cross File: SB 603 (Senator Raskin, *et al.*) - Judicial Proceedings.

Information Source(s): Department of Health and Mental Hygiene, Department of Public Safety and Correctional Services, Department of Legislative Services

Fiscal Note History: First Reader - February 25, 2015
min/lgc

Analysis by: Guy G. Cherry

Direct Inquiries to:
(410) 946-5510
(301) 970-5510