

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

Senate Bill 336

(Senator Nathan-Pulliam)

Judicial Proceedings

Correctional Services - Elderly Inmates - Compassionate Release

This bill allows an inmate older than age 64 to apply for compassionate release from incarceration if the inmate has served at least 20 years imprisonment. A request for compassionate release 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 compassionate release. The bill details the procedures MPC and the Department of Public Safety and Correctional Services (DPSCS) must follow in response to a request for compassionate release. MPC must issue regulations to implement the bill.

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 and/or general obligation (GO) bond expenditures may increase significantly for DPSCS to segregate inmates who are denied compassionate release. 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: On receipt of a request for compassionate release, MPC must provide for a compassionate release 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 compassionate release on a finding that the inmate has demonstrated significant support from family or others to enable the inmate to live safely and securely in the community.

If MPC grants compassionate release 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 compassionate release to an inmate, the inmate:

- may request an additional compassionate release hearing one year after the denial;
- may not be housed with the general population in a correctional facility;
- must be housed in a separate area of a correctional facility reserved exclusively for the elderly; and
- must be provided with cost-effective services that specifically address the needs of the elderly.

Existing provisions relating to victim notification and opportunity to be heard apply to proceedings relating to compassionate release.

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 233 inmates age 65 and older who have served 181 months or more (more than 15 years) in DPSCS. The number of inmates in this age group that have served 240 months (20 years) or more and are 65 or older is estimated to be nearly 200.

State Fiscal Effect: General fund incarceration expenditures may decrease for DPSCS to the extent inmates are granted parole earlier than they otherwise would be; however, general fund expenditures and/or GO bond expenditures may increase significantly for DPSCS to segregate inmates who are denied compassionate release. General and federal fund expenditures (and federal matching fund revenues) may increase significantly to enroll inmates paroled under the bill in Medicaid.

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. However, 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 100 of the 150 to 200 requests for compassionate release are granted, using variable inmate costs including medical care, DPSCS saves \$924,000 annually from the release of those inmates and increases bed space within the State prison system.

However, the bill also requires that elderly inmates denied parole under the bill (1) may not be housed with the general population in a correctional facility; (2) must be housed in a separate area of a correctional facility reserved exclusively for the elderly; and (3) must be provided with cost-effective services that specifically address the needs of the elderly. These requirements place significant and costly responsibilities on DPSCS. Although DPSCS did not quantify such additional costs, DPSCS advises that the identification of space required to comply with the bill and ensuring that this space is suitable for the population requires significant funding, including costs for additional correctional officers, social workers, case management staff, and other staff. Capital costs for retrofitting current facilities or building new facilities may also accrue. While not likely to occur in the short-term, based on a cost of approximately \$155,000 per bed, the cost of building a new medium-security 1,300-bed prison facility is currently estimated at \$202.0 million. Actual costs depend on the actual size, design, and location of any new facility.

In addition, it is assumed that separate housing and services for elderly inmates, beyond that which is currently offered, likely requires a restructured medical contract with existing or future vendors.

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 earlier as a result of this bill increases Medicaid costs by \$15,640 annually. 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 100 of the anticipated additional 150 to 200 requests for compassionate release are granted, Medicaid costs increase by \$1,564,000 annually (\$782,000 in general funds and \$782,000 in federal funds).

Parole Hearings and Victim Notifications

MPC estimates that the bill results in about 150 to 200 requests for compassionate release. The additional parole hearings resulting from the bill can be handled with existing budgeted resources of MPC, including subsequent hearings one year after a denial of parole. MPS can also handle any increase in victim notifications resulting from the bill with existing resources

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Health and Mental Hygiene, Judiciary (Administrative Office of the Courts), Office of the Public Defender, Department of Public Safety and Correctional Services, Department of Legislative Services

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