

Department of Legislative Services
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FISCAL AND POLICY NOTE
First Reader

House Bill 757
Judiciary

(Delegate Rosenberg, *et al.*)

Criminal Law - Life Without the Possibility of Parole - First Degree Murder

This bill makes several changes to the conditions under which a person may be sentenced to life imprisonment without the possibility of parole and the procedural requirements for the imposition of such a sentence.

The bill takes effect October 1, 2016, but applies to any murder committed on or after October 1, 2013.

Fiscal Summary

State Effect: Minimal decrease in general fund expenditures for the Department of Public Safety and Correctional Services (DPSCS), which is likely not experienced until well into the future, if inmates are paroled or are released on mandatory supervision as a result of the bill. Potential minimal decrease in general fund expenditures for juror per diem costs.

Local Effect: Potential minimal decrease in local expenditures for juror per diem costs.

Small Business Effect: None.

Analysis

Bill Summary: The bill alters the circumstances under which a person who is found guilty of murder in the first degree may be sentenced to life without the possibility of a parole. A defendant found guilty of murder in the first degree may be sentenced to life without the possibility of parole only if:

- at least 30 days before trial, the State gave written notice of the State’s intention to seek a sentence of life without the possibility of parole and each aggravating circumstance on which the State intends to rely on;
- the defendant was a principal in the first degree or a law enforcement officer was murdered and the defendant was a principal in the first degree or the defendant was a principal in the second degree who (1) willfully, deliberately, and with premeditation intended the death of the law enforcement officer; (2) was a major participant in the murder; and (3) was actually present at the time and place of the murder; and
- the State presents the court with at least one of the following pieces of evidence: (1) biological evidence or DNA evidence that links defendant to the murder; (2) a videotaped voluntary interrogation and confession; or (3) a video recording that conclusively links defendant to the murder.

A defendant cannot be sentenced to life without the possibility of parole if the defendant was younger than age 18 at the time of the murder or proved by a preponderance of evidence that at the time of the murder the defendant was “intellectually disabled” as defined under the bill. Also, a defendant may not be sentenced to life without the possibility of parole but must be sentenced to life imprisonment if the State relies solely on evidence provided by eyewitnesses.

If the State provided notice, a separate sentencing proceeding must be held as soon as practicable after a defendant is found guilty of murder in the first degree. The sentencing proceeding must occur before the jury that determined the defendant’s guilt unless there needs to be an impaneled jury as a result of specified circumstances.

At this sentencing proceeding, evidence relating to mitigating and aggravating circumstances may be presented and both the State and the defendant may present arguments and evidence for or against the sentence of life without the possibility of parole.

In determining a sentence, the court or jury should not determine a sentence of life without the possibility of parole, unless one or more of the following aggravating factors is present: (1) murder of a law enforcement officer while on duty; (2) the defendant committed the murder while confined in a correctional facility; (3) the defendant committed the murder in furtherance of an escape or to evade an arrest; (4) the victim was taken in an abduction or kidnapping; (5) the victim was an abducted child; (6) the murder occurred under an agreement or contract; (7) the defendant employed or engaged another to commit the murder under an agreement or contract; (8) the murder occurred while the defendant was under sentence of imprisonment for life or life without the possibility of parole; (9) the defendant committed more than one murder in the first degree out of same incident; or (10) the defendant committed the murder while committing or attempting to commit specified crimes.

The court or jury must determine if these aggravating factors outweigh any mitigating factors. If the jury is unable to agree to a sentence of life without the possibility of parole, the court must impose a life sentence.

After a sentence of life without the possibility of parole is imposed, the Court of Appeals must review the sentence on the record and consolidate an appeal from the verdict with the sentence review. The Court of Appeals must determine whether (1) the imposition of the sentence of life without the possibility of parole was influenced by passion, prejudice, or any other arbitrary factor; (2) the evidence supports the finding by the court or jury of an aggravating circumstance; and (3) the evidence supports a finding by the court or jury that the aggravating circumstances outweigh the mitigating circumstances. In addition to its review of any direct appeal, the Court of Appeals must (1) affirm the sentence of life without the possibility of parole; (2) set the sentence of life without the possibility of parole aside and remand the case for a new sentencing proceeding; or (3) set the sentence of life without the possibility of parole aside and remand the case for modification of the sentence to imprisonment for life. The Court of Appeals may adopt rules of procedure for the expedited review of sentences of life without the possibility of parole.

Current Law: A principal in the first degree is the actual perpetrator of a crime. A principal in the second degree is a person who helped the perpetrator at the time of the crime, but did not commit the crime with his/her own hands.

First-degree Murder: A person charged with first-degree murder, if found guilty, is subject to penalties of life imprisonment or life imprisonment without the possibility of parole. A defendant convicted of murder in the first degree may be sentenced to life imprisonment without the possibility of parole only if the State gives written notice to the defendant at least 30 days before trial of its intention to seek a sentence of imprisonment for life without the possibility of parole.

If the State gives this notice, the court must conduct a separate sentencing proceeding as soon as practicable after the defendant is found guilty of murder in the first degree to determine whether the defendant must be sentenced to life imprisonment or life imprisonment without the possibility of parole. A determination by a jury to impose a sentence of life imprisonment without the possibility of parole must be unanimous, and the court must sentence the defendant to life without the possibility of parole if the jury makes this determination. The court must impose a sentence of life imprisonment if the jury is unable to unanimously agree to the imposition of a sentence of life imprisonment without the possibility of parole within a reasonable time. A defendant who was convicted after a bench trial is also entitled to this separate jury sentencing proceeding.

The Court of Appeals may adopt rules of procedure to govern the conduct of these sentencing proceedings and forms for a court or jury to use in making written findings and sentence determinations.

Release on Mandatory Supervision: Release on mandatory supervision is a conditional release from confinement that results from the application of diminution credits. Diminution credits are deducted from an inmate's "term of confinement," which is defined as (1) the length of the sentence, for a single sentence, or (2) the period from the first day of the sentence that begins first through the last day of the sentence that ends last, for concurrent sentences, partially concurrent sentences, consecutive sentences, or a combination of concurrent and consecutive sentences.

Inmates sentenced to life imprisonment are not eligible for release on mandatory supervision by the accumulation of diminution credits unless the inmate's life sentence is suspended for a term of years (*e.g.*, life imprisonment with all but 60 years suspended). An inmate convicted of a crime of violence may earn up to 5 days per month in good conduct credits and may not be allowed a total deduction, including good conduct credit, of more than 20 days per month. An inmate convicted of a violent crime committed on or after October 1, 2009, is not eligible for mandatory supervision release until after the inmate becomes eligible for parole. Inmates released on mandatory supervision are supervised by DPSCS until the expiration of sentence.

Parole – Generally: Parole is a discretionary and conditional release from imprisonment determined after a hearing for an inmate who is eligible to be considered for parole. If parole is granted, the inmate is allowed to serve the remainder of the sentence in the community, subject to the terms and conditions specified in a written parole order.

The Maryland Parole Commission (MPC) has jurisdiction regarding parole for eligible inmates sentenced to State correctional facilities and local detention centers. Inmates in the Patuxent Institution who are eligible for parole are under the jurisdiction of the Patuxent Board of Review.

Parole Eligibility: In general, a person sentenced to life imprisonment must serve a minimum of 15 years, less diminution credits, before becoming eligible for parole and may be paroled only with the approval of the Governor. However, offenders sentenced to life imprisonment for first-degree murder, instead of a sentence of life imprisonment without the possibility of parole, must serve a minimum of 25 years less diminution credits before becoming eligible for parole and may generally be paroled only with approval of the Governor. However, pursuant to legislation enacted in 2011, if MPC or the Patuxent Board of Review decides to grant parole to an inmate who has served 25 years *without* application of diminution credits and the Secretary of Public Safety and Correctional Services approves the decision, the decision must be transmitted to the Governor, who may disapprove the

decision in writing within 180 days. If the Governor does not disapprove the decision to grant parole within that timeframe, the decision to grant parole becomes effective.

Inmates serving a sentence of life without the possibility of parole may not be granted parole unless the Governor commutes the sentence to allow for the possibility of parole or pardons the individual.

Background: According to DPSCS, 331 offenders are serving sentences of life imprisonment without the possibility of parole; two of these offenders were sentenced for first-degree murder and have an offense date of on or after October 1, 2013. Also, 1,852 inmates are serving parole eligible life sentences. Information was not provided as to how many of these individuals received their sentences for first-degree murder (there are other offenses/circumstances under the Maryland Code punishable by life imprisonment without the possibility of parole). However, DPSCS advises that in fiscal 2015, 45 offenders received life sentences for first-degree murder. Information was not provided as to whether any of these life sentences were without the possibility of parole or suspended to definite terms.

The Maryland State Sentencing Guidelines do not distinguish between life imprisonment and life imprisonment without the possibility of parole and the Sentencing Guidelines Database is unable to discern how many of the life sentences imposed in the State's circuit courts during fiscal 2015 contained suspended terms from the information in its database.

According to DPSCS, no inmate serving a life sentence for first-degree murder has been paroled by the Governor on the recommendation of MPC for at least 20 years.

State Expenditures: General fund expenditures for DPSCS decrease minimally to the extent that defendants who would otherwise receive a sentence of life imprisonment without the possibility of parole are paroled or released on mandatory supervision. Any such decrease in expenditures is unlikely to occur until well into the future, when defendants sentenced under the bill are eligible for parole or mandatory supervision. General fund expenditures for the Judiciary decrease if the bill reduces juror reimbursement expenditures for the separate sentencing proceeding in first-degree murder cases for the imposition of life imprisonment without the possibility of parole.

As previously noted, a defendant sentenced to life imprisonment must serve a minimum of 15 years, less diminution credits, before becoming eligible for parole and may be paroled only with the approval of the Governor. However, given that no inmate serving a life sentence for first-degree murder has been paroled by the Governor on the recommendation of MPC for at least 20 years, this scenario is unlikely to occur.

DPSCS has historically advised that inmates convicted of a crime of violence serve approximately 75% of their sentences after application of diminution credits.

DPSCS advises that it does not expect a fiscal or operational impact from the bill on State correctional facilities. MPC advises that the slight increase in parole eligible sentences expected under the bill does not impact MPC operations.

General fund expenditures for the Judiciary decrease minimally if the bill reduces the frequency with which prosecutors pursue sentences of life imprisonment without the possibility of parole. The State reimburses counties for juror per diem costs at a rate of \$15 per juror per day for the first five days and then \$50 per day for each day served thereafter. According to the Judiciary, from fiscal 2010 through 2014, there were an average of 67 sentencing hearings per year for defendants facing a sentence of life imprisonment without the possibility of parole. The Judiciary advises that it does not expect a significant fiscal or operational impact.

Local Expenditures: Should the bill reduce the number of instances in which the State pursues a sentence of life imprisonment without the possibility of parole, then local expenditures for juror per diem costs may decrease minimally if fewer separate jury sentencing hearings are conducted in first-degree murder cases. As previously mentioned, the State reimburses counties for juror per diem costs at a rate of \$15 per juror per day for the first five days of service and \$50 per juror per day for each day thereafter. Counties are authorized to supplement this amount. According to the Judiciary, juror reimbursement rates for the first five days of service range from \$15 to \$30 per day, depending on the jurisdiction.

The bill may (1) reduce prosecutorial workloads if it reduces the frequency with which prosecutors pursue life imprisonment without the possibility of parole sentences and (2) increase prosecutorial workloads through the procedural and evidentiary requirements. Regardless, this analysis assumes that the net impact of these factors does not materially affect local finances.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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