

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 723
Judiciary

(Delegate Queen, *et al.*)

Judicial Proceedings

Inmates - Life Imprisonment - Parole Reform

This bill eliminates a requirement that the parole of a person serving a parole-eligible life sentence in a State correctional facility or the Patuxent Institution, subsequent to a recommendation for that parole by the Maryland Parole Commission (MPC) or the Patuxent Board of Review (PBR), be approved by the Governor.

Fiscal Summary

State Effect: State finances are not anticipated to be significantly affected, as discussed below. The bill's changes can be accommodated 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: MPC has the exclusive power to authorize the parole of an inmate in State correctional facilities. 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 specified 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. Chapter 515 of 2016 requires that, beginning October 1, 2017, if MPC decides to grant medical parole, the decision be transmitted to the Governor. The Governor is then required to disapprove a recommendation for medical parole within 180 days of the decision by MPC. If the Governor does not disapprove the decision within that timeframe, the decision to grant parole becomes effective.

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: Under the bill, parole-eligible life sentences include inmates serving a life sentence, inmates serving a life sentence all suspended but a fixed number of years, and inmates serving a life sentence together with a parole-eligible concurrent or consecutive sentence of a fixed term of years.

Generally, previous administrations have denied parole to all persons serving a life term. MPC has recommended that the Governor commute the life sentence rather than grant parole. Commuting a life sentence to a term of years permits an inmate to take advantage of department programs unavailable to inmates serving a life term and allows MPC, in its

discretion, to later parole the inmate from the term of years. Once released, an offender remains on DPSCS supervision until the maximum date of the fixed term. Under the bill, the Governor retains the authority to commute any sentence. MPC advises that, under the bill, recommendations for commutations for this set of inmates do not continue.

MPC also advises that the bill does not alter other parole eligibility considerations or how parole hearings are conducted. MPC hearings are conducted by two parole commissioners. By regulation, the decision of the commissioners must be unanimous, and there is no appeal. In life cases, if the commissioners feel that the case warrants further consideration, their decision is deferred and the inmate is referred for a psychological risk assessment. These assessments are prepared by a MPC psychologist. The risk assessment is reviewed by the commissioners conducting the hearing, and if both feel the case still warrants favorable consideration, the case must be presented to MPC for *en banc* review. The last time a case, other than a life case, received such a full commission review was in 1999.

State Expenditures: DPSCS notes that parole *eligibility* does not necessarily result in a parole *release*, especially for inmates serving life sentences. Under the bill, inmates who are granted parole from life sentences would be on departmental supervision for the rest of their lives. Violations of parole could cause such offenders to have their parole revoked and be returned to serve the remainder of their sentence in confinement. In any case, the bill likely results in the parole of more persons from State correctional facilities – or the same number of persons at an earlier date. To the extent additional inmates are paroled as a result of the bill, or paroled earlier than they otherwise would be, general fund incarceration expenditures decrease. Any additional persons released to the Community Supervision Unit within DPSCS can be handled with existing budgeted resources.

Although DPSCS is unable to reliably predict the pace of potential parole approvals by either MPC or PBR under the bill, it is assumed that the bill's requirements can be handled with the existing budgeted resources of DPSCS and that State finances are not significantly affected.

Additional Information

Prior Introductions: HB 882 of 2016, a similar bill, received a hearing in the House Judiciary Committee, but no further action was taken. Its cross file, SB531, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. HB 303 of 2015, a similar bill, received a hearing in the House Judiciary Committee, but no further action was taken. Its cross file, SB 111, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

Cross File: SB 694 (Senator McFadden, *et al.*) - Judicial Proceedings.

Information Source(s): Governor's Office; Department of Public Safety and Correctional Services; Department of Legislative Services

Fiscal Note History: First Reader - February 10, 2017
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