

Department of Legislative Services
 Maryland General Assembly
 2024 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 128 (Senator Hettleman)
 Judicial Proceedings

Correctional Services - Geriatric and Medical Parole

This bill makes various changes to the process for granting parole. The bill alters (1) the factors that must be considered by each hearing examiner and commissioner in determining whether an individual is suitable for parole, and the Maryland Parole Commission (MPC) before entering into a predetermined parole release agreement, and (2) the process by which MPC makes a determination regarding whether to grant an individual medical parole. The bill also (1) establishes a process for MPC to determine and assess eligibility for parole for specified individuals who are at least age 60 and meet other specified conditions; (2) requires MPC to report specified information relating to the outcomes of such parole considerations to the Justice Reinvestment Oversight Board (JROB); and (3) requires savings realized by the Department of Public Safety and Correctional Services (DPSCS) as a result of the process to revert to DPSCS and be used for specified purposes.

Fiscal Summary

State Effect: General fund expenditures increase by \$64,300 in FY 2025 for MPC staff; this estimate does not reflect any potential savings in incarceration costs, as discussed below. Future year estimates are annualized and reflect inflation. Revenues are not directly affected.

(in dollars)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	64,300	75,100	78,500	81,900	85,500
Net Effect	(\$64,300)	(\$75,100)	(\$78,500)	(\$81,900)	(\$85,500)

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

Local Effect: The bill does not materially affect local operations or finances.

Small Business Effect: None.

Analysis

Bill Summary:

Parole: Among other considerations, each hearing examiner and commissioner determining whether an incarcerated individual is suitable for parole, and MPC before entering into a predetermined parole release agreement, must consider (1) whether, *taking into account the totality of the circumstances including the age of the incarcerated individual*, there is reasonable probability that the incarcerated individual, if released on parole, will *not recidivate* (instead of *remain at liberty without violating the law*) and (2) whether release of the incarcerated individual on parole is compatible with *public safety* (instead of *the welfare of society*).

Medical Parole: The bill makes the following changes to the medical parole process:

- an incarcerated individual may be released on medical parole at any time during the term of that incarcerated individual's sentence, without regard to specified eligibility standards, if a licensed medical professional has made specified determinations regarding the incarcerated individual's health;
- if a medical evaluation is requested pursuant to current law, the evaluation must consist of an in-person examination of the incarcerated individual, and MPC must give equal consideration to the findings of the evaluation and any medical condition detailed in the evaluation in considering whether to grant medical parole;
- the incarcerated individual or the incarcerated individual's representative may request a meeting with MPC, and MPC must grant the request for a meeting for any incarcerated individual (1) housed in an infirmary of a correctional facility; (2) currently hospitalized outside a correctional facility; or (3) who has been frequently housed in an infirmary of a correctional facility or hospitalized outside a correctional facility in the preceding six months. However, MPC may, at its discretion, grant the request for a meeting for any incarcerated individual who does not meet these requirements;
- MPC may require as a condition of release on medical parole that the parolee agree to placement for a definite or indefinite period of time *under the care of a medical provider*, as specified (instead of *in a hospital or hospice*);
- "imminent death," as it pertains to provisions of current law regarding victim notification and opportunity to be heard, is defined to mean death that is likely to occur within six months; and
- the requirement for MPC to transmit to the Governor a decision to grant medical parole to an incarcerated individual sentenced to life imprisonment is repealed.

Geriatric Parole: The following provisions apply only to an incarcerated individual who is at least age 60, has served at least 15 years of the sentence imposed, is not registered or eligible for registration on the State Sex Offender Registry, and is sentenced to a term of incarceration for which all sentences being served (including any life sentence) are with the possibility of parole. An incarcerated individual considered for parole under these provisions must have a hearing every two years.

In addition to factors specified under current law for an MPC hearing examiner and commissioner in determining whether an incarcerated individual is suitable for parole, each MPC panel determining whether an incarcerated individual is suitable for parole must consider and give significant weight to the incarcerated individual's age and the impact that the incarcerated individual's age has on reducing the risk that the incarcerated individual will not recidivate.

Any savings realized by DPSCS as a result of these provisions must revert to DPSCS and must be used for conducting the required parole hearings every two years and providing prerelease and reentry case management and resources for incarcerated individuals released on parole pursuant to these provisions.

Every year, MPC must report to JROB on the outcomes of parole considerations made under these provisions, including (1) the number of incarcerated individuals who are subject to these provisions who are denied parole and released on parole; (2) the reason for each decision to release an incarcerated individual on parole; (3) the reason for each decision to deny parole to an incarcerated individual; (4) of the number of incarcerated individuals who are released on parole, the number of individuals who are convicted of an offense committed after release; (5) the average time between when an incarcerated individual becomes eligible for parole consideration under these provisions and when the incarcerated individual receives the first required parole hearing; and (6) the average time between parole hearings for incarcerated individuals subject to these provisions.

MPC must adopt implementing regulations, as specified.

Current Law: Each hearing examiner and commissioner determining whether an incarcerated individual is suitable for parole, and MPC before entering into a predetermined parole release agreement, must consider several specified factors, including, among others, (1) the circumstances surrounding the crime; (2) the physical, mental, and moral qualifications of the incarcerated individual; (3) the progress of the incarcerated individual during confinement, as specified; (4) whether there is reasonable probability that the incarcerated individual, if released on parole, will remain at liberty without violating the law; and (5) whether release of the incarcerated individual on parole is compatible with the welfare of society.

MPC has the exclusive power to authorize the parole of an incarcerated individual in State correctional facilities. The Patuxent Board of Review (PBR) has the exclusive power to recommend an incarcerated individual 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 incarcerated individual 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 incarcerated individual'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 incarcerated individuals 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 incarcerated individual 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 30 of 2021 eliminated the 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 MPC or PBR, be approved by the Governor.

Medicaid may reimburse covered health care costs for parolees who are moved to hospitals or nursing facilities. However, among other requirements, such individuals must be placed in medical institutions that are generally available to the public and not operated primarily or exclusively to care for those involved with the criminal justice system. Residents must be free from physical restraint imposed solely for the purposes of discipline or convenience, free to choose visitors, live in an unlocked unit unless otherwise necessary for medical reasons, and be able to conduct private telephone conversations. Medicaid payment is only available when an incarcerated individual is an inpatient in a medical institution not under the control of the correctional system.

State Expenditures: General fund expenditures increase by \$64,267 in fiscal 2025, which accounts for the bill’s October 1, 2024 effective date. This estimate reflects the cost of hiring one administrative officer to submit the required reports to JROB. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses. Given the complexity of the required reports, existing staff cannot handle the additional workload.

Position	1.0
Salary and Fringe Benefits	\$57,011
Operating Expenses	<u>7,256</u>
Total FY 2025 State Expenditures	\$64,267

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

This estimate does not include any potential savings that may be realized as of result of the bill; reliable estimates regarding those effects cannot be made at this time. For contextual purposes, however, currently, the average total cost to house a State incarcerated individual in a Division of Correction facility, including overhead, is estimated at \$5,110 per month. Excluding overhead, the average cost of housing a State incarcerated individual (including health care costs) is about \$1,244 per month. Excluding all health care (which is a fixed cost under the current contract), the average variable costs total \$336 per month.

As noted above, any savings realized by DPSCS due to the bill’s provisions relating to geriatric parole must revert to DPSCS and be used for conducting the required parole hearings every two years and providing prerelease and reentry case management and resources for incarcerated individuals released on parole pursuant to these provisions.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See HB 157 and SB 98 of 2023; and SB 562 and HB 600 of 2022.

Designated Cross File: HB 118 (Delegate Bartlett) - Judiciary.

Information Source(s): Anne Arundel, Baltimore, Charles, Garrett, and Howard counties; Governor's Office; Maryland Department of Health; Department of Public Safety and Correctional Services; Department of Legislative Services

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