

Department of Legislative Services
 Maryland General Assembly
 2015 Session

FISCAL AND POLICY NOTE

Senate Bill 366 (Senator Kelley, *et al.*)
 Judicial Proceedings

Correctional Services - Sentencing Review and Parole Eligibility - Juvenile Offenders Sentenced as Adults

This bill makes several changes to provisions pertaining to sentencing review and parole eligibility for juvenile offenders sentenced as adults.

Fiscal Summary

State Effect: General fund expenditures increase by \$130,600 in FY 2016 for the Department of Public Safety and Correctional Services (DPSCS) to accommodate the bill’s requirements; this increase in costs could be offset to the extent that inmates obtain an earlier release from incarceration as a result of the bill’s provisions. Revenues are not affected.

(in dollars)	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	130,600	161,000	140,900	147,600	154,600
Net Effect	(\$130,600)	(\$161,000)	(\$140,900)	(\$147,600)	(\$154,600)

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

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

Small Business Effect: None.

Analysis

Bill Summary:

Parole Eligibility: The bill establishes that, unless subject to earlier parole eligibility, an inmate who has been sentenced for an offense that was committed before the inmate's eighteenth birthday must be eligible for parole when the inmate has served the lesser of 15 years or one-fourth of the inmate's aggregate sentence. An inmate who is not granted parole after becoming eligible under the bill must be granted a rehearing date no later than every three years.

At each parole hearing, the inmate is entitled to be represented by counsel of the inmate's choice or, if eligible, the Office of the Public Defender (OPD). In addition to the factors that must be considered during parole suitability determinations under existing statute, a hearing officer, parole commissioner, or parole commission panel must consider the following factors at each parole hearing when determining whether an inmate subject to the bill's provisions is suitable for parole:

- the diminished culpability of a juvenile as compared to that of an adult;
- the subsequent growth and increased maturity of the inmate during incarceration;
- specified characteristics of the inmate at the time of the offense;
- efforts made toward rehabilitation; and
- any additional mitigating factors at the discretion of the hearing officer, commissioner, or commission panel.

The bill prohibits a court from imposing a sentence of life imprisonment without the possibility of parole on a person who was younger than age 18 at the time the offense was committed.

The bill requires a court to consider the following factors as mitigating factors when determining the appropriate sentence to be imposed on a person who was younger than age 18 at the time of the offense:

- the inmate's age at the time of the offense;
- the nature of the inmate's relationship with or influence of any codefendant in the case;
- past experience of trauma or abuse;
- intellectual capacity and educational history;
- family and community environment;
- ability to appreciate the risk and consequences of the conduct;

- ability to participate meaningfully in the defense; and
- capacity for rehabilitation.

The bill authorizes a court to suspend all or any portion of a mandatory minimum sentence if the defendant was younger than age 18 at the time of the offense. A court may allow all or any portion of a sentence to be served with the benefit of parole if the defendant was younger than age 18 at the time of the offense.

The bill exempts a person who has been sentenced to an aggregate term of incarceration of 15 years or more for an offense that was committed when the person was younger than age 18 from existing statutory restrictions on eligibility for sentence reviews and authorizes such a person to file more than a single application for sentence review after having served 10 years.

A sentence review panel must hold a hearing on each application by the person for a sentence review and consider mitigating factors of the defendant on the record, including the factors listed above that the court must consider in sentencing. After a hearing, the court may order the sentence to remain unchanged or may order a different sentence but may not increase the sentence imposed.

Current Law:

Juvenile Court Jurisdiction: In general, the juvenile court has jurisdiction over a child alleged to be delinquent, in need of supervision, or who has received a citation for a violation. The juvenile court does not have jurisdiction over (1) children at least age 16 alleged to have violated specified boating or traffic laws; (2) children at least age 16 who are alleged to have committed specified violent crimes; (3) children age 14 and older alleged to have committed an act that would be a crime punishable by life imprisonment if committed by an adult; and (4) children who have previously been convicted as an adult of a felony and are subsequently alleged to have committed an act that would be a felony if committed by an adult. These cases are tried in adult criminal court.

However, for items (2) through (4), a circuit court may transfer a case involving such a child to the juvenile court if such a transfer is believed to be in the interests of the child or society (“reverse waiver”). A reverse waiver is not permitted in certain circumstances, such as when the child was previously convicted in an unrelated case excluded from the jurisdiction of the juvenile court or when the alleged crime is murder in the first degree and the accused child was 16 or 17 years of age when the alleged crime was committed.

Sentence Review: With certain exceptions, a person convicted of a crime by a circuit court and sentenced to a term of imprisonment that exceeds two years in a correctional facility is entitled by statute to have a panel of three circuit court judges of the judicial circuit in

which the sentencing court is located review the appropriateness of the sentence. The sentencing judge may not be a member of the review panel but may sit with the review panel in an advisory capacity. The defendant must file a motion within 30 days after sentencing to exercise this right to review.

After a hearing, the panel may increase, modify, or reduce the sentence. The panel may decide that the sentence should remain unchanged with or without a hearing. A majority of the members of the review panel is necessary to make a decision. The panel has 30 days after the filing date of the motion to render a decision.

Except in one instance, there is no right to appeal a decision made by the review panel. Should the panel increase the sentence, a defendant may then appeal on the limited grounds that the sentence was not within statutory or constitutional limits or that the panel acted from ill will, prejudice, or other impermissible considerations.

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.

The commission is composed of 10 commissioners who are appointed for six-year terms by the Secretary of Public Safety and Correctional Services, with the advice and consent of the Senate. The Secretary, with the approval of the Governor, also appoints the chairperson of the commission. In addition to the commissioners, there are 11 hearing officers.

Parole Eligibility: Inmates sentenced to serve less than six months are not eligible for parole. When inmates serving sentences of incarceration of six months or more have served one-fourth of their sentences, they are entitled to be considered for parole, with several significant exceptions. These exceptions are set forth below:

- An inmate serving a term of incarceration that includes a mandatory minimum sentence that a statute provides is not subject to parole (*e.g.*, use of a handgun in a felony or crime of violence, subsequent violent offenders with enhanced sentences, subsequent felony drug offenders with enhanced sentences) and is not eligible for parole until the inmate served that mandatory minimum sentence. Diminution credits may not be applied towards this minimum requirement.

- Any of the following inmates who do not receive a mandatory minimum sentence are required to serve at least one-half of their sentences for violent crimes before becoming eligible for parole: (1) inmates convicted of violent crimes committed on or after October 1, 1994; (2) inmates convicted of child abuse in the first degree committed on or after October 1, 2006; and (3) inmates convicted of sexual abuse of a child under the age of 13 or a continuing course of conduct with a child committed on or after October 1, 2007.
- Offenders 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 approval of the Governor.
- 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.
- Offenders who are age 65 or older who have served at least 15 years of a sentence for a crime of violence may apply for and be granted parole.
- Inmates who are so debilitated or incapacitated by a medical or mental condition, disease, or syndrome as to be physically incapable of presenting a danger to society may be released on medical parole.

Parole Hearings: If an inmate is eligible for a parole hearing, the parole commission is required to give timely notice to the inmate before the hearing. Generally a parole hearing is held before a single hearing officer or a parole commissioner acting as a hearing officer. However, if the inmate is serving a sentence for homicide or is serving a sentence of life imprisonment or if a victim requested that the hearing be opened to public attendance, a parole hearing is held before a panel of at least two commissioners.

MPC may grant parole, deny parole, or decide to rehear the case at a future date. The hearing officer must verbally inform the inmate of the hearing officer's recommendation immediately after the hearing and submit a written report of findings and recommendations to DPSCS, MPC, and the inmate within 21 days after the hearing. After receiving the recommendation, a parole commissioner is required to review the written recommendations of the hearing officer. The commissioner may either approve or disapprove the hearing officer's recommendation. If the recommendation is approved, the decision is sent to the inmate and to DPSCS. If the recommendation is disapproved, the decision is sent to a two-commissioner panel for the issuance of a final decision.

The inmate and DPSCS have five days after receipt of the hearing officer's written decision to file with MPC a written exception to the hearing officer's recommendations. If an exception is not filed, the recommendation of the hearing officer is adopted. If an exception is filed, MPC or a panel of at least two commissioners assigned by the chairperson of MPC may schedule an appeal hearing. The appeal hearing is on the record, and the decision of MPC or panel is final.

Decisions of a two-commissioner panel must be unanimous. When the members of a two-commissioner panel disagree, the chairperson of MPC must convene a three-member panel to hear the case. Decisions by more than two commissioners are by majority vote.

MPC also reviews cases and makes recommendations to the Governor concerning parole of an inmate serving a sentence of life imprisonment. In addition, MPC reviews cases concerning pardons, commutations, or other clemency at the request of the Governor.

An inmate has a right to see any document in the inmate's file except diagnostic opinions, information obtained on a promise of confidentiality, or other privileged information. On request, MPC has the responsibility to provide the substance of any information withheld from the inmate with an explanation as to the legal basis for that exclusion.

When deciding whether to grant parole, MPC must consider:

- the circumstances surrounding the crime;
- the physical, mental, and moral qualifications of the inmate;
- a report on a drug or alcohol evaluation that has been conducted on the inmate, including any recommendation concerning the inmate's amenability for treatment and the availability of an appropriate treatment program;
- the likelihood that the inmate will commit additional crimes if released;

- whether release of the inmate is compatible with the welfare of society;
- the progress of the inmate during confinement, including academic progress in mandatory education programs;
- any recommendation made by the trial judge at the time of sentencing; and
- an updated victim impact statement or recommendation and any information or testimony presented to MPC by the victim or the victim's designated representative.

When making its decision, MPC also examines the offender's criminal and juvenile record, employment plans, substance abuse problems, family status and stability, and emotional maturity.

If MPC grants parole, the individual must have a verified and approved home plan and generally must have employment. Conditions of parole include required reporting to a parole agent, working regularly, getting permission from a parole agent before changing a job or home or leaving the State, and no involvement with drugs or weapons. Other terms may be imposed, if appropriate, in an individual case.

For offenders who meet certain criteria, MPC may negotiate a Mutual Agreement Program contract. The contract sets out an individualized program of goals, such as education or job training that must be met according to a detailed timetable. Offenders who are able to meet the contract requirements are guaranteed a future parole release date. If the contract is canceled before the release date, or if the offender fails to meet the contract requirements, the offender's parole status reverts to the normal parole hearing schedule.

Background: According to the Sentencing Project, more than 2,500 individuals in the United States are serving a life sentence without the possibility of parole, for crimes they committed as children. In *Graham v. Florida*, 130 S.Ct. 2011 (2010), the Supreme Court held that it is unconstitutional to sentence a juvenile offender to life without the possibility of parole for nonhomicide crimes. In *Miller v. Alabama*, 132 S. Ct. 2455 (2012) and *Jackson v. Hobbs*, 567 U. S. ____ (2012), the U.S. Supreme Court held that a *mandatory* sentence of life without the possibility of parole may not be imposed on a juvenile offender. Courts may still impose life without the possibility of parole on a juvenile offender after considering mitigating factors.

State Expenditures: General fund expenditures for DPSCS increase by \$130,640 in fiscal 2016, which accounts for the bill's October 1, 2015 effective date. This estimate reflects the cost of hiring one full-time psychologist, one full-time administrative clerk, and one full-time contractual administrative clerk for MPC to implement the provisions of the bill. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Regular Positions	2
Contractual Position	1
Salaries and Fringe Benefits	\$97,721
Operating Expenses	<u>32,919</u>
Total FY 2016 State Expenditures	\$130,640

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

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 requires MPC to consider several mitigating factors when making parole determinations for juveniles sentenced as adults. Many of these factors are different from the factors MPC currently uses when making these determinations and are of a psychological/social work nature. MPC advises that it does not have a psychologist on staff. Thus, MPC needs one psychologist to conduct the evaluations needed for MPC to consider specified mitigating factors under the bill.

The bill’s parole determination requirements appear to apply retrospectively to inmates currently incarcerated. MPC advises that there were 875 inmates who were juveniles at the time they committed a crime or at the time they were admitted to a DPSCS facility in fiscal 2014. Of these inmates, 22 are serving life without the possibility of parole, 339 are serving sentences of life or split-life sentences, and 514 are serving sentences with a fixed term of years. Since the Patuxent Institution has its own paroling authority, the provisions of the bill do not apply to juvenile inmates in the therapeutic program at that facility.

If the bill applies to inmates already incarcerated, MPC needs to reevaluate these inmates to determine their status under the timeline for parole hearings prescribed under the bill. Some of these inmates, particularly inmates who have been incarcerated for more than 15 years, must be immediately scheduled for a hearing with consideration of the mitigating factors listed under the bill. Other inmates need to have their hearing schedules altered to comply with the bill’s timeline. Regardless, MPC experiences an immediate increase in parole hearings.

Furthermore, the bill authorizes a juvenile inmate sentenced as an adult to be represented by legal counsel at his/her parole hearing. Pursuant to the Code of Maryland Regulations, parole hearings are informal interviews. Attorneys are not allowed to make presentations at parole hearings. An inmate is given the opportunity to freely express views and feelings relating to the case, and the rules of evidence do not apply. However, attorneys for inmates can make an appointment to meet with a parole commissioner before the hearing to present

information about the inmate or the case. This information is included in the file for consideration at the hearing.

If the bill's authorization for legal representation means that attorneys must be allowed to present at the actual hearing, then a new, adversarial proceeding for hearings for the inmates affected by the bill needs to be established. MPC advises that a typical docket consists of 15 hearings. Given the additional time that an adversarial proceeding requires, MPC cannot maintain that capacity for a docket involving juvenile inmates sentenced as adults. Also, an adversarial hearing requires additional scheduling. For closed parole hearings, MPC's scheduling clerks only need to coordinate between commissioners and facilities. For open parole hearings, clerks need to coordinate between commissioners, facilities, the victim(s), and other interested parties. For the adversarial hearing under the bill, clerks need to coordinate between these individuals/entities as well as defense counsel and State's Attorneys (should they decide to attend).

According to MPC, permitting attorneys or OPD adds additional steps in the scheduling of these cases. Prior to scheduling any parole hearing, MPC is required to give an inmate notice of the hearing. The notice gives the date and location of the hearing, the factors to be considered, and the inmate's right to review his or her file prior to the hearing. In these cases, MPC also has to notify the inmate of his or her right to be represented by an attorney. MPC needs to find out if the inmate is going to be represented by a private attorney or be represented by OPD. MPC then has to either wait for a private attorney to submit a notice of appearance or contact OPD. Legal counsel requires time to prepare for the hearing and be afforded the opportunity to review MPC's files. Any disputes regarding information contained in the file has to be resolved prior to conducting a hearing. Parole hearings are conducted either on site at correctional facilities or by teleconferencing. Under the bill, these hearings must be scheduled to accommodate an attorney's schedule as well.

Parole is discretionary. There is a limited appeal process that applies only to those hearings conducted by a hearing examiner. Appeals are reviewed by two parole commissioners. The appellate panel reviews the file and the reasons for the appeal. There is no hearing. The decision of the appellate panel is final. It is assumed that if an inmate is represented by an attorney at the hearing, representation continues through any appeal. MPC advises that it is likely that appeals submitted by attorneys on behalf of these inmates are more complicated and require more time to review.

MPC advises that it needs three clerks in order to accommodate this additional scheduling, especially given the initial increase in hearings due to the bill's potentially retrospective application. However, the Department of Legislative Services (DLS) advises that while the bill likely results in a concentrated increase in hearings during the early phases of implementation, subsequent hearings can be staggered according to an inmate's individual eligibility timeline and can be incorporated into MPC's scheduling routine. Thus, DLS

advises that MPC can accommodate its scheduling needs under the bill with one full-time regular clerk and one full-time contractual scheduling clerk, with the contractual clerk working only for the first two fiscal years of the bill's implementation to assist with the initial caseload. MPC currently holds approximately 9,800 hearings with five scheduling clerks.

General fund expenditures for DPSCS may decrease to the extent that an inmate receives parole, receives an earlier parole, or has his or her sentence reduced by a sentence review panel as a result of the bill's provisions. However, it should be noted that parole is *discretionary*, and an individual who receives a parole hearing is not guaranteed parole.

The bill's impact on State incarceration expenditures depends on whether individuals are released from incarceration earlier because of a decreased sentence by a sentence review panel or parole by MPC due to the bill's provisions, and not another method of release from incarceration (*e.g.*, mandatory release through the application of diminution credits). Inmates on parole remain on supervision for the duration of their sentences. Excluding overhead, the average annual cost of housing a new State inmate, including variable health care costs, is approximately \$9,240 (approximately \$2,400 excluding health care costs). The cost of supervising an inmate on parole is approximately \$1,707 per year.

Given the low number of inmates who are in DPSCS facilities serving sentences of life without the possibility of parole for crimes they committed as juveniles (22 in fiscal 2014), this estimate assumes that the bill's prohibition on life without the possibility of parole for juvenile offenders does not materially affect State finances, though it can be expected that the population fitting this category will decline in the future.

However, given the low number of individuals sentenced to life with the possibility of parole who have been granted parole in recent years by the Governor, it is unclear what kind of reductions in general fund expenditures could be realized if individuals in this group are sentenced to life with the possibility of parole instead of life without the possibility of parole.

The Judiciary and OPD advise that they can handle the bill's requirements with existing budgeted resources.

Local Fiscal Effect: Given the seriousness of offenses for which juveniles are sentenced as adults, these individuals are likely to be incarcerated in State correctional facilities rather than local detention facilities. Thus, the bill does not materially affect local finances.

Additional Information

Prior Introductions: None.

Cross File: HB 337 (Delegate Carter, *et al.*) - Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Juvenile Services, Office of the Public Defender, Department of Public Safety and Correctional Services, State's Attorneys' Association, Sentencing Project, SCOTUSBlog, Department of Legislative Services

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