

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 817

(Senator Waldstreicher, *et al.*)

Judicial Proceedings

Correctional Services - Parole - Life Imprisonment

This bill increases the amount of time that an inmate who has been sentenced to life imprisonment, after being convicted of a crime committed on or after October 1, 2020, must serve before being eligible for parole consideration from 15 to 20 years, or its equivalent considering allowances for diminution credits. The bill also 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: The bill's changes that alter the time period that certain inmates sentenced to life imprisonment must serve before becoming eligible for parole consideration may increase general fund incarceration expenditures in the future. The bill's repeal of provisions that require gubernatorial approval of parole for certain inmates is not anticipated to significantly affect State finances, as discussed below.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law:

Parole

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).

Diminution Credits

Generally, inmates sentenced to a State correctional facility are entitled to earn diminution of confinement credits to reduce the lengths of their incarcerations. The following types of inmates may not earn diminution credits:

- an inmate who is serving a sentence for first- or second-degree rape or sexual offense against a victim younger than 16;
- an inmate who is serving a repeat sentence for third-degree sexual offense against a victim younger than 16; and
- an inmate imprisoned for a lifetime sexual offender supervision violation.

In addition, an inmate whose mandatory supervision release has been revoked may not be awarded any new diminution credits on the term of confinement for which the inmate was on mandatory supervision release.

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.

Diminution credits are made for good conduct, work tasks, education, and special projects or programs.

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. However, a news report in November 2019 stated that Governor Lawrence J. Hogan, Jr., paroled 3 individuals who were given life sentences as juveniles. Additionally, recent information provided by the Governor's Office indicates that Governor Hogan has paroled 16 individuals serving life sentences, whether by approving their parole or allowing parole to go into effect without his approval.

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 supervision until the maximum date of the fixed term. Under the bill, the Governor retains the authority to commute any sentence. With respect to similar legislation introduced in a prior session, MPC previously advised that recommendations for commutations for this set of inmates do not continue.

State Fiscal Effect: The bill's changes that alter the time period that certain inmates sentenced to life imprisonment must serve before becoming eligible for parole consideration may increase general fund incarceration expenditures in the future. The bill's repeal of provisions that require gubernatorial approval of parole for certain inmates is not anticipated to significantly affect State finances, as discussed below.

Increasing Minimum Time Served for Parole Eligibility

The Department of Public Safety and Correctional Services (DPSCS) notes that parole *eligibility* does not necessarily result in a parole *release*, especially for inmates serving life sentences. Under current law, inmates sentenced to life imprisonment must serve 15 years minus diminution credits or 25 years minus diminution credits (for cases in which a life without parole or death sentence was sought but not imposed by the court) to be eligible for parole. According to DPSCS, in fiscal 2019, 35 inmates entered State correctional facilities given a sentence of life that are eligible for parole in 15 years. DPSCS is unable to reliably predict the pace of potential parole approvals by MPC under the bill.

While these provisions have no fiscal impact within the next five years, there may be an increase in incarceration expenditures beginning in 2035 (not taking into account any potential diminution credits), when inmates who otherwise might be released on parole will remain incarcerated for longer periods of time under the bill. In addition, some initial parole hearings may be delayed under these provisions, but any impact on parole hearings is not anticipated to materially affect State expenditures at that time.

Eliminating Governor's Approval for Parole-eligible Inmates

With respect to a bill introduced during a prior session that eliminated gubernatorial approval for these same inmates, MPC advised that the bill's changes would 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.

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 this provision, 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 resulting from this provision, 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: None.

Designated Cross File: HB 1219 (Delegates Clippinger and Queen) - Judiciary.

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

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