

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 562

(Senator Hettleman, *et al.*)

Judicial Proceedings

Correctional Services - Geriatric and Medical Parole

This bill makes various changes to the process for granting parole. Specifically, the bill (1) alters the factors that must be considered by each hearing examiner and commissioner determining whether an inmate is suitable for parole and the Maryland Parole Commission (MPC) before entering into a predetermined parole release agreement and (2) alters the process by which MPC makes a determination regarding whether to grant an inmate medical parole. The bill also (1) establishes a process for MPC to assess and determine suitability for parole for specified inmates who are at least age 60, eligible for parole, and not registered or eligible for sex offender registration; (2) requires MPC to develop a dynamic risk assessment instrument to assist in predicting the risk that such inmates will be convicted of a future offense if released on parole; (3) requires MPC to report specified information relating to the outcomes of parole considerations under the process to the Justice Reinvestment Oversight Board (JROB); and (4) requires savings realized by the Department of Public Safety and Correctional Services (DPSCS) as a result of the process to revert to the department for specified purposes.

Fiscal Summary

State Effect: Although the overall effect cannot be estimated, general fund expenditures increase by \$1.1 million in FY 2023, increasing to \$1.4 million by FY 2027, for MPC staff; this estimate does not reflect any costs to develop the dynamic risk assessment instrument or any potential savings in incarceration costs. Revenues are not directly affected.

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 inmate 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 inmate, there is reasonable probability that the inmate, if released on parole, will *not recidivate* (instead of *remain at liberty without violating the law*) and (2) whether release of the inmate 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 inmate who is so chronically debilitated or incapacitated by a medical or mental health condition, disease, or syndrome as to *require extended medical management that would be better provided by specialized community services* (instead of *being physically incapable of presenting a danger to society*) may be released on medical parole at any time during the term of that inmate's sentence, without regard to specified eligibility standards;
- the requirement for a parolee to be returned to the custody of the Division of Correction (DOC) or the local correctional facility from which the inmate was released (and subsequent hearing requirements) if MPC has reason to believe that a parolee is no longer so debilitated or incapacitated as to be physically incapable or presenting a danger to society is repealed;
- within 30 days after a request on behalf of an inmate for medical parole, the inmate or the inmate's representative may request a meeting with MPC. Within 30 days after receiving the request and before making a final decision whether to grant medical parole, MPC must meet with the inmate, a representative of the inmate, or a member of the inmate's family;
- the requirement that an inmate's medial information considered by MPC include the inmate's score on the Karnofsky Performance Scale Index or similar classification of physical impairment is repealed;
- if a medical evaluation is requested pursuant to current law, MPC must place priority consideration on the findings of the evaluation and any medical condition detailed in the evaluation in considering whether to grant medical parole;

- 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” 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 inmate sentenced to life imprisonment is repealed.

Geriatric Parole: The following provisions apply only to an inmate who is at least age 60, eligible for parole under a specified provision of current law, and not registered or eligible for registration on the State Sex Offender Registry.

The dynamic risk assessment instrument that MPC must develop pursuant to the bill must include a strength-based needs assessment component to assist in determining what, if any, conditions for release should apply if the inmate is released on parole. At least annually, MPC must complete an assessment of such an inmate using that instrument, and within six months after doing so, MPC must conduct a hearing to determine the inmate’s suitability for parole, as specified.

In addition to factors specified under current law for an MPC hearing examiner and commissioner in determining whether an inmate is suitable for parole, each MPC panel determining whether an inmate is suitable for parole must consider and give significant weight to:

- the inmate’s age and the impact that the inmate’s age has on reducing the risk that the inmate will not recidivate;
- the results of the most recent dynamic risk assessment completed; and
- the results of any prior mental health evaluations of the inmate demonstrating that services and treatment may be better provided in the community.

Any savings realized by DPSCS as a result of these provisions must revert to DPSCS to be used for developing the dynamic risk assessment instrument, conducting the required assessments, and providing prerelease and reentry case management and resources for inmates released on parole pursuant to these provisions.

MPC must adopt implementing regulations, as specified.

Current Law: MPC has the exclusive power to authorize the parole of an inmate in State correctional facilities. The Patuxent Board of Review (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 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 inmate is an inpatient in a medical institution not under the control of the correctional system.

State Expenditures: Although the overall effect of the bill cannot be reliably estimated, general fund expenditures for staff at MPC increase by \$1.1 million in fiscal 2023, which accounts for the bill’s October 1, 2022 effective date. This estimate reflects the cost of hiring four parole commissioners, three parole hearing officers, two clinical psychologists, three social workers, two office clerks, one nurse practitioner, and one administrative officer to conduct the required assessments, make determinations, handle additional parole hearings, and submit the required reports. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

- in order to administer the dynamic strength-based needs assessment, MPC needs one social worker for each of three established regions in the State;
- two clinical psychologists are needed to administer mental health evaluations of inmates;
- four parole commissioners are needed to conduct the anticipated increase in parole hearings;
- three parole hearing officers are needed to assist with additional required meetings with inmates requesting medical parole;
- one nurse practitioner is needed to assist in determining placement of inmates in community-based health care;
- two office clerks are needed to handle scheduling of the additional parole hearings and other required notifications relating to parole hearings; and
- one administrative officer is needed to submit the required reports to JROB.

Positions	16.0
Salaries and Fringe Benefits	\$981,616
Operating Expenses	<u>117,488</u>
Total FY 2023 MPC Staff Expenditures	\$1,099,104

Future year expenditures, which total \$1.4 million by fiscal 2027, reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

This estimate does not include any costs for the actual development of the dynamic risk assessment instrument or 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 inmate in a DOC facility, including overhead, is estimated at \$4,700 per month. Excluding overhead, the average cost of housing a State inmate (including health care costs) is about \$1,233 per month. Excluding all health care (which is a fixed cost under the current contract), the average variable costs total \$289 per month.

As noted above, any savings realized by DPSCS must revert to DPSCS to be used for developing the dynamic risk assessment instrument, conducting the required assessments, and providing prerelease and reentry case management and resources for inmates released on parole pursuant to these provisions.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 600 (Delegate Moon) - Judiciary.

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

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