

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 401
Judiciary

(Delegate Anderson, *et al.*)

Criminal Procedure - Life Without Parole - Imposition

This bill prohibits a court from imposing a sentence of life without the possibility of parole on an individual who was younger than age 18 at the time that the offense was committed.

Fiscal Summary

State Effect: Potential minimal decrease in general fund expenditures for the Department of Public Safety and Correctional Services (DPSCS) if individuals are paroled as a result of the bill's provisions. Any such decrease is not experienced until well into the future when individuals sentenced under the bill are eligible for parole. Revenues are not affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: Individuals convicted of the following offenses may be subject to imprisonment for life without the possibility of parole: (1) murder in the first degree; and (2) specified instances of rape in the first degree or sexual offense in the first degree (defendant was previously convicted of first-degree rape or first-degree sexual offense, offense was committed in conjunction with kidnapping a child younger than age 16, or adult offender with victim younger than age 13).

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 age 16 or 17 when the alleged crime was committed.

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.

Parole Eligibility: In general, a person 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 the approval of the Governor. However, 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.

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, 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. However, courts may still impose life imprisonment without the possibility of parole on a juvenile offender after considering mitigating factors. In *Montgomery v. Louisiana*, 577 U.S. ___ (2016) the court held that *Miller* applies retroactively and that states may remedy sentences that are in violation of *Miller* by extending parole eligibility to, rather than resentencing, offenders mandatorily sentenced to life without the possibility of parole for crimes they committed as juveniles.

DPSCS advises that no juveniles were sentenced to life imprisonment without the possibility of parole in fiscal 2015 or 2016. One juvenile was sentenced to life imprisonment without the possibility of parole in fiscal 2014. According to news reports during 2016, 16 individuals in Maryland are serving sentences of life without the possibility of parole for crimes they committed as juveniles.

According to the National Conference of State Legislatures, as of April 2016, 17 states and the District of Columbia have banned the imposition of life sentences without the possibility of parole for juvenile offenders.

Parole-eligible Life Sentences for Juveniles: While the bill addresses life imprisonment without the possibility of parole for juvenile offenders, recent activity in the State has challenged parole-eligible life sentences imposed on juvenile offenders in the State. In April 2016, the American Civil Liberties Union filed a federal lawsuit against the State alleging that Maryland's parole system is unconstitutional because juvenile offenders sentenced to life imprisonment do not have a realistic chance of being released, thereby imposing *de facto* life without parole sentences.

Arguments in the case were heard on January 4, 2017, with the State arguing that the lawsuit should be dismissed because recent U.S. Supreme Court decisions apply to sentences of life imprisonment without the possibility of parole, not parole-eligible life sentences that allegedly have a low probability of resulting in parole. The State also argued that the lawsuit is moot because the State plans to hold parole hearings within the next year for approximately 270 individuals serving life sentences for crimes they committed as juveniles. Also, recent regulations require MPC to consider several additional factors when determining whether a prisoner who committed a crime as a juvenile is suitable for release on parole. These factors are (1) the individual's age at the time the crime was committed; (2) the individual's maturity level and sense of responsibility at the time the crime was

committed; (3) whether influence or pressure from other individuals contributed to the commission of the crime; (4) whether the individual's character has developed since the time of the crime in a manner that indicates the prisoner will comply with the conditions of release; (5) the individual's home environment and family relationships at the time the crime was committed; (6) the individual's educational background and achievement at the time the crime was committed; and (7) other factors or circumstances unique to prisoners who committed crimes at the time the individual was a juvenile that a member of MPC determines to be relevant.

State Expenditures: General fund expenditures for DPSCS may decrease minimally if individuals who would otherwise be sentenced to life without the possibility of parole are sentenced to life imprisonment and are granted parole. However, any such decrease is not realized until well into the future, since the bill does not apply retroactively, and inmates sentenced to life imprisonment are generally required to serve at least 15 years, considering allowances for diminution credits, before becoming eligible for parole. Given the number of juvenile offenders sentenced to life imprisonment without the possibility of parole in fiscal 2014 through 2016, this bill applies to a small number of cases.

Additional Information

Prior Introductions: SB 259 of 2016 received an unfavorable report from the Senate Judicial Proceedings Committee. Its cross file, HB 518, received an unfavorable report from the House Judiciary Committee.

Cross File: SB 196 (Senator Kelley, *et al.*) - Judicial Proceedings.

Information Source(s): Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Department of Juvenile Services; Department of Public Safety and Correctional Services; Office of the Public Defender; The Sentencing Project; National Conference of State Legislatures; nbcnews.com; *The Daily Record*; *The Washington Post*; *The Baltimore Sun*; Department of Legislative Services

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