

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 402 (Senator Waugh)
Judicial Proceedings

Criminal Law - First Degree Murder - Sentencing (Geraldine's Law)

This bill requires a court to impose lifetime supervision on a person sentenced to imprisonment for life with the possibility of parole for first-degree murder. The bill establishes misdemeanor penalties for a person who knowingly or willfully violates the conditions of the lifetime supervision.

Fiscal Summary

State Effect: Minimal increase in general fund revenues beginning in FY 2032 from fines imposed for the proposed misdemeanor crime from cases heard in the District Court. Minimal initial increase in general fund expenditures for the Department of Public Safety and Correctional Services (DPSCS) beginning in FY 2032, at the earliest, to implement lifetime supervision under the bill. Cumulative expenditures may be significant, as discussed below. Minimal increase in general fund expenditures for incarcerations for violations of lifetime supervision.

Local Effect: Minimal increase in local revenues and expenditures beginning in FY 2032 due to the bill's misdemeanor penalty provisions.

Small Business Effect: None.

Analysis

Bill Summary: A person subject to lifetime supervision is subject to the following after release from imprisonment or custodial confinement: (1) at least five years of supervised probation; (2) electronic monitoring for life; and (3) any other conditions that the court deems appropriate.

A person may not knowingly or willfully violate the conditions of his/her lifetime supervision. A person who does so is guilty of a misdemeanor, punishable by imprisonment for up to five years and/or a \$5,000 maximum fine. A violation does not discharge a person from lifetime supervision, and a person remains on lifetime supervision on release from any sentence imposed for the violation.

During the period of lifetime supervision, the court may remand the person to a correctional facility or release the person with or without bail pending the hearing or determination of a charge of a violation of lifetime supervision. If the court finds that a person violated the conditions of lifetime supervision, the court may impose a sentence in accordance with the penalties listed above.

A person may petition the court for discharge from lifetime supervision after serving at least five years of supervision. The sentencing court must hear and adjudicate petitions for discharge and may not deny a petition without a hearing. The court may not discharge a person from lifetime supervision unless the court makes a finding on the record that the person is no longer a danger to others. A person whose petition is denied may not renew his/her petition for at least one year. The judge who originally imposed lifetime supervision must act on the petition for discharge unless the judge has been removed from office, has died, has resigned, or is otherwise incapacitated.

Current Law: Persons charged with first-degree murder, if found guilty, are subject to penalties of life imprisonment or life imprisonment without the possibility of parole.

Release on Mandatory Supervision: Release on mandatory supervision is a conditional release from confinement that results from the application of diminution credits. 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.

Inmates sentenced to life imprisonment are not eligible for release on mandatory supervision by the accumulation of diminution credits unless the inmate's life sentence is suspended for a term of years (*e.g.*, life imprisonment with all but 60 years suspended). An inmate convicted of a crime of violence may earn up to five days per month in good conduct credits and may not be allowed a total deduction, including good conduct credit, of more than 20 days per month. An inmate convicted of a violent crime committed on or after October 1, 2009, is not eligible for mandatory supervision release until after the inmate becomes eligible for parole. Inmates released on mandatory supervision are supervised by DPSCS until the expiration of sentence.

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.

State Revenues: Beginning in fiscal 2032, general fund revenues increase minimally from fines imposed in the District Court for violations of lifetime supervision.

State Expenditures: General fund expenditures increase minimally initially for DPSCS to comply with the bill's requirements. However, any such increase is not experienced until fiscal 2032 at the earliest, when the first group of inmates subject to lifetime supervision under the bill are eligible for parole. While the initial fiscal impact of the bill is expected to be minimal, the cumulative impact of the bill may be significant, as discussed below.

The magnitude of the fiscal impact on DPSCS depends on (1) the number of inmates subject to lifetime supervision who are released from incarceration; (2) the post-incarceration lifespans of supervised inmates; (3) the number of inmates discharged

from lifetime supervision; and (4) the amount of time individuals are subject to lifetime supervision before being discharged by a court.

Since an inmate sentenced to life imprisonment suspended to a defined term of years is subject to mandatory supervision by DPSCS until the expiration of his/her sentence, this estimate assumes that an offender's lifetime supervision commences once his/her mandatory supervision is complete.

DPSCS advises that in fiscal 2015, 45 offenders received life sentences for first-degree murder. Information was not provided as to whether any of these life sentences were suspended to definite terms. The Maryland State Commission on Criminal Sentencing Policy is also unable to discern how many of the life sentences imposed in the State's circuit courts during fiscal 2015 contained suspended terms from the information in its database.

According to DPSCS, no inmate serving a life sentence for first-degree murder has been paroled by the Governor on the recommendation of MPC for at least 20 years.

DPSCS advises that the number of individuals subject to lifetime supervision is not a significant consideration so much as the bill's requirement that an individual be electronically monitored for life. According to DPSCS, the cumulative impact of those caseloads may increase to the point that additional agents are needed. The cost associated with hiring one agent is \$68,569 in fiscal 2018, which includes a salary, fringe benefits, and equipment.

According to DPSCS, active electronic monitoring costs \$3.80 per day. *For illustrative purposes only*, if a person is sentenced to life imprisonment with all but 40 years suspended, is on mandatory supervision until his/her 40-year sentence expires, and is then monitored electronically for 10 years, the cost associated with that monitoring is \$13,870.

General fund expenditures increase minimally beginning in fiscal 2032 as a result of the bill's misdemeanor incarceration penalty due to more people being committed to State correctional facilities and increased payments to counties for reimbursement of inmate costs. The number of people convicted of the proposed misdemeanor crime is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$3,300 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new State inmate (including variable health care costs) is about \$770 per month. Excluding all health care, the average variable costs total \$200 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or a State correctional facility. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person had served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A \$45 per diem grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the State but are confined in a local facility. The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in State correctional facilities. The Baltimore Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

Local Revenues: Beginning in fiscal 2032, revenues increase minimally as a result of the bill's monetary penalty provision from cases for the proposed misdemeanor penalty that are heard in the circuit courts.

Local Expenditures: Beginning in fiscal 2032, expenditures increase minimally as a result of the bill's incarceration penalty for the proposed misdemeanor. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. A \$45 per diem State grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the State but are confined in a local facility. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland State Commission on Criminal Sentencing Policy, Judiciary (Administrative Office of the Courts), State's Attorneys' Association, Department of Public Safety and Correctional Services, Department of Legislative Services

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Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510