

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE
Revised

House Bill 883

(Chair, Judiciary Committee) (By Request –
Departmental – Public Safety and Correctional Services)

Judiciary

Judicial Proceedings

Correctional Services - Eligibility for Parole - Medical Parole

This departmental bill establishes 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.

Fiscal Summary

State Effect: Medicaid expenditures (50% general funds, 50% federal funds) could increase significantly in FY 2009 and subsequent years due to an increase in the number of inmates released from incarceration on a medical parole.

Local Effect: None. The infrequent use of medical paroles should not measurably affect local correctional facilities.

Small Business Effect: The Department of Public Safety and Correctional Services has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary: The bill establishes a means of initiating consideration of the appropriateness of the granting of a medical parole by the Maryland Parole Commission. The bill provides a means for the commission to obtain information relevant to its consideration.

The commission is required to consider specified information before granting a medical parole release. The commission is authorized to impose conditions on a medical parolee. The bill provides for reincarceration of a medical parolee if the parolee's incapacitation ends.

Provisions relating to victim notification, and an opportunity to be heard, apply to medical parole proceedings, although related time limits may be waived in cases of the imminent death of the person considered for medical parole. A medical parole for a person serving a life sentence requires the approval of the Governor.

The commission is required to issue implementary regulations governing medical paroles.

Current Law: The Maryland Parole Commission has the exclusive power to authorize the parole of an inmate in DOC. The Board of Review of the Patuxent Institution has the exclusive power to recommend an inmate for parole to the Secretary of Public Safety and Correctional Services or 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 sentenced to more than one term, including a term during which the person is eligible for parole and a term during which the person is not eligible for parole, cannot be considered for parole unless the person has served the greater of one-fourth of the aggregate term or a period equal to the term during which the inmate is not eligible for parole.

Parole eligibility for persons incarcerated for commission of a violent crime is as follows:

- An inmate who has been sentenced to DOC after being convicted of a violent crime committed on or after October 1, 1994 is not eligible for parole until the inmate has served the greater of one-half of the inmate's aggregate sentence for violent crimes, or one-fourth of the inmate's total aggregate sentence.
- An inmate who has been sentenced to DOC after being convicted of a violent crime committed on or after October 1, 1994 and who has been sentenced to more than one term of imprisonment, including a term during which the inmate is eligible for parole and a term during which the inmate is not eligible for parole, is not eligible for parole until the inmate has served the greater of one-half of the inmate's aggregate sentence for violent crimes; one-fourth of the inmate's total aggregate sentence; or a period equal to the term during which the inmate is not eligible for parole.
- An inmate who is serving a term of imprisonment for a violent crime committed on or after October 1, 1994 must receive an administrative review of the inmate's

progress in the correctional facility after the inmate has served the greater of one-fourth of the inmate's aggregate sentence; or if the inmate is serving a term of imprisonment that includes a mandatory term during which the inmate is not eligible for parole, a period equal to the term during which the inmate is not eligible for parole.

A person sentenced to life imprisonment is not eligible for parole consideration until that person has served 15 years. 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. If eligible for parole, an inmate serving a life term may only be paroled with the approval of the Governor.

A person sentenced for a violent crime may petition for and be granted parole if the person is at least 65 years old and has served at least 15 years of the sentence imposed.

When a victim or victim's representative has made a written request to the Department of Public Safety and Correctional Services (DPSCS) for notification or has filed a notification request form, if a parole release hearing is scheduled for an inmate, the victim or victim's representative has the right to be notified of the hearing and may submit an updated victim impact statement. Before entering into a predetermined parole release agreement with an inmate, the Parole Commission must notify the victim or victim's representative.

Background: DPSCS provides comprehensive medical, dental, and mental health services for all DOC inmates, for pretrial detainees in the Division of Pretrial Detention and Services, and for inmates at the Patuxent Institution. This includes primary, secondary, and chronic care services.

In 2006, the model for the delivery of health care services for inmates was changed to provide that comprehensive health services be delivered to inmates and detainees through six separate contracts with five different providers. The contracts are for the following areas: medical; mental health; dental; pharmacy; electronic patient health record system; and utilization management services. Although the inmate health care provided to those under the supervision and custody of the department is outsourced to various health care contract providers, it is managed and supervised by the department's Office of Treatment Services. The office, developed in 2003 as a part of the Office of the Secretary, is the umbrella entity for all treatment-related services, including inmate health care and services provided at the Patuxent Institution.

A medical copayment requirement enacted in 1994 promotes inmate/detainee responsibility for participation in health care. It reduces the misuse of sick call without restricting access to health care. Inmates who are indigent are exempt from medical copayment. The medical copayment is applied only when an inmate requests a sick call. Inmates who are referred to medical services by staff are not charged, nor are there copayment requirements for any other health service.

Social workers provide comprehensive release planning services for offenders who have serious medical or mental health needs. These services include prerelease counseling and group therapy to engage the offenders to look at past behaviors and attitudes that impacted their involvement with the criminal justice system. The department has agreements with the Department of Human Resources, the Department of Health and Mental Hygiene, and the Social Security Administration. These agreements allow social workers to apply, prior to release, for benefits for offenders who qualify. This ensures that offenders will be able to continue their medications and medical or mental health treatment upon release.

The department currently participates in a medical parole program that affords early release for inmates with serious irreversible terminal illness who no longer present a risk to public safety. Under this nonstatutory program, DOC recommends inmates with terminal conditions to the Parole Commission for evaluation. In the pretrial facilities, compassionate releases are arranged for offenders who have not yet been adjudicated and who are terminally ill with less than six months to live. The social work office assists individuals who have special needs and require continuity of care in community health care facilities. **Exhibit 1** sets forth medical parole requests for calendar 2005-2007.

Exhibit 1
Medical Paroles
Calendar 2005-2007

| <u>Activity</u> | <u>2005</u> | <u>2006</u> | <u>2007</u> |
|-----------------------------|-------------|-------------|-------------|
| Requests | 76 | 59 | 61 |
| Parole Commission Approvals | 13 | 11 | 9 |
| Parole Commission Denials | 18 | 13 | 7 |
| DOC Denials | 21 | 17 | 20 |
| Inmate Deaths | 14 | 13 | 10 |
| Other Types of Release | 4 | 4 | 3 |
| Requests Rescinded* | 6 | 1 | 2 |
| Active Cases | 0 | 0 | 10 |
| Totals | 76 | 59 | 61 |

*By regional medical directors.

Inmates who are not approved for medical parole that have terminal illnesses are medically managed through the department's Palliative Care Unit. Regional staff has been trained in alliance with the Joseph Richey Hospice to provide care for terminally ill inmates. The hospice staff visits the institution's four-bed unit on a regular basis to consult on hospice care issues.

The Governor's fiscal 2009 allowance provides about \$149.0 million for inmate medical contracts departmentwide out of a total DPSCS budget of about \$831.3 million. This represents an \$8.0 million increase over the fiscal 2008 working appropriation, due primarily to inflation and expanded HIV testing. About \$6.5 million of that increase applies to contracts for inmate medical services in DOC facilities.

It is noted that DOC received an increase of \$39.7 million from eight deficiency appropriations in fiscal 2007. The majority of this increase was due to increased spending for the inmate medical contract, which required a deficiency appropriation totaling approximately \$18.7 million last year.

State Expenditures: DPSCS advises that this bill could increase requests for medical parole by 10-20% and that parole approvals, under the bill, would only tend to increase releases for an additional 10-15 persons over those already expected to be released due to an irreversible terminal illness. DPSCS also advises that persons released on medical parole would likely qualify for Medicaid coverage, so that 50% of health care costs for these persons would be covered by general funds and 50% by federal matching funds.

The current estimate to cover a nondisabled adult with some medical conditions under Medicaid in fiscal 2009 is about \$7,500 per person. However, according to DHMH, persons with more serious medical needs (such as those for inmates covered under this bill) could have annual costs of \$13,300. In addition, medical costs for individual inmates released under this bill could in some instances involve more intensive long-term care or nursing home costs in excess of \$50,000 per year, depending on a number of factors including the actual medical condition and age of the person.

In any case, assuming that this bill would lead to the release of an additional 10-15 incapacitated inmates per year on a medical parole release, this bill would increase Medicaid expenditures (50% general funds, 50% federal funds) by varying amounts for each individual released annually, beginning in fiscal 2009. A reliable estimate of such additional Medicaid expenditures cannot be made, but could range between \$133,000 (10 persons x \$13,300) and \$750,000 (15 persons x \$50,000) in total funds. In future years, Medicaid expenditures are expected to grow by 5.0% annually.

DPSCS would experience some modest cost savings (mainly related to medications not covered under the current contracts) and some potentially significant operational efficiencies relating to infirmary bed space.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Health and Mental Hygiene, Department of Public Safety and Correctional Services, Department of Legislative Services

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