

SENATE BILL 366

E2, E4

5lr0720
CF HB 337

By: **Senators Kelley, Benson, Conway, Currie, Feldman, Gladden, Kagan, Madaleno, McFadden, Miller, Montgomery, Muse, Nathan-Pulliam, Peters, Pinsky, Pugh, Rosapepe, and Young**

Introduced and read first time: February 6, 2015

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Correctional Services – Sentencing Review and Parole Eligibility – Juvenile**
3 **Offenders Sentenced as Adults**

4 FOR the purpose of authorizing parole eligibility for a certain person at a certain time
5 under certain circumstances; authorizing a certain parole hearing at certain times
6 for a certain person not granted parole under certain circumstances; authorizing
7 representation of counsel for a certain person under certain circumstances; requiring
8 a certain hearing officer, a certain member of the Maryland Parole Commission, or
9 the Maryland Parole Commission to consider certain information at a certain parole
10 hearing under certain circumstances; requiring the Commission to adopt certain
11 regulations; prohibiting a court from imposing a sentence of life imprisonment
12 without the possibility of parole on a certain person under certain circumstances;
13 requiring a court to consider certain circumstances when determining a certain
14 sentence for a certain person; authorizing a court to suspend all or any portion of a
15 certain sentence if the defendant was under a certain age at the time of the offense;
16 authorizing a court to allow all or any portion of a sentence to be served with the
17 benefit of parole if the defendant was under a certain age at the time of the offense;
18 altering the number of applications for sentence review that a certain person may
19 file under certain circumstances; requiring a certain review panel to hold a certain
20 hearing for each application for review of sentence filed by a certain person; requiring
21 a certain review panel to consider certain information; authorizing a certain review
22 panel to alter a certain sentence under certain circumstances; prohibiting a certain
23 review panel from altering a certain sentence under certain circumstances; and
24 generally relating to juvenile offenders sentenced as adults.

25 BY repealing and reenacting, with amendments,
26 Article – Correctional Services
27 Section 7–301
28 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2008 Replacement Volume and 2014 Supplement)

2 BY repealing and reenacting, without amendments,
3 Article – Correctional Services
4 Section 7–305
5 Annotated Code of Maryland
6 (2008 Replacement Volume and 2014 Supplement)

7 BY adding to
8 Article – Correctional Services
9 Section 7–310
10 Annotated Code of Maryland
11 (2008 Replacement Volume and 2014 Supplement)

12 BY adding to
13 Article – Criminal Law
14 Section 14–104
15 Annotated Code of Maryland
16 (2012 Replacement Volume and 2014 Supplement)

17 BY adding to
18 Article – Criminal Procedure
19 Section 6–234
20 Annotated Code of Maryland
21 (2008 Replacement Volume and 2014 Supplement)

22 BY repealing and reenacting, with amendments,
23 Article – Criminal Procedure
24 Section 8–102 and 8–105
25 Annotated Code of Maryland
26 (2008 Replacement Volume and 2014 Supplement)

27 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
28 That the Laws of Maryland read as follows:

29 **Article – Correctional Services**

30 7–301.

31 (a) (1) Except as otherwise provided in this section, the Commission shall
32 request that the Division of Parole and Probation make an investigation for inmates in a
33 local correctional facility and the Division of Correction make an investigation for inmates
34 in a State correctional facility that will enable the Commission to determine the
35 advisability of granting parole to an inmate who:

36 (i) has been sentenced under the laws of the State to serve a term
37 of 6 months or more in a correctional facility; and

1 (ii) has served in confinement one-fourth of the inmate's aggregate
2 sentence.

3 (2) Except as provided in paragraph (3) of this subsection, or as otherwise
4 provided by law or in a predetermined parole release agreement, an inmate is not eligible
5 for parole until the inmate has served in confinement one-fourth of the inmate's aggregate
6 sentence.

7 (3) An inmate may be released on parole at any time in order to undergo
8 drug or alcohol treatment, mental health treatment, or to participate in a residential
9 program of treatment in the best interest of an inmate's expected or newborn child if the
10 inmate:

11 (i) is not serving a sentence for a crime of violence, as defined in §
12 14-101 of the Criminal Law Article;

13 (ii) is not serving a sentence for a violation of Title 3, Subtitle 6, §
14 5-608(d), § 5-609(d), § 5-612, § 5-613, § 5-614, § 5-621, § 5-622, or § 5-628 of the Criminal
15 Law Article; and

16 (iii) has been determined to be amenable to treatment.

17 (4) The Division of Parole and Probation shall complete and submit to the
18 Commission each investigation of an inmate in a local correctional facility required under
19 paragraph (1) of this subsection within 60 days of commitment.

20 (b) Except as provided in subsection (c) of this section, if an inmate has been
21 sentenced to a term of imprisonment during which the inmate is eligible for parole and a
22 term of imprisonment during which the inmate is not eligible for parole, the inmate is not
23 eligible for parole consideration under subsection (a) of this section until the inmate has
24 served the greater of:

25 (1) one-fourth of the inmate's aggregate sentence; or

26 (2) a period equal to the term during which the inmate is not eligible for
27 parole.

28 (c) (1) (i) Except as provided in subparagraph (ii) of this paragraph, an
29 inmate who has been sentenced to the Division of Correction after being convicted of a
30 violent crime committed on or after October 1, 1994, is not eligible for parole until the
31 inmate has served the greater of:

32 1. one-half of the inmate's aggregate sentence for violent
33 crimes; or

34 2. one-fourth of the inmate's total aggregate sentence.

1 (ii) An inmate who has been sentenced to the Division of Correction
2 after being convicted of a violent crime committed on or after October 1, 1994, and who has
3 been sentenced to more than one term of imprisonment, including a term during which the
4 inmate is eligible for parole and a term during which the inmate is not eligible for parole,
5 is not eligible for parole until the inmate has served the greater of:

6 1. one-half of the inmate's aggregate sentence for violent
7 crimes;

8 2. one-fourth of the inmate's total aggregate sentence; or

9 3. a period equal to the term during which the inmate is not
10 eligible for parole.

11 (2) An inmate who is serving a term of imprisonment for a violent crime
12 committed on or after October 1, 1994, shall receive an administrative review of the
13 inmate's progress in the correctional facility after the inmate has served the greater of:

14 (i) one-fourth of the inmate's aggregate sentence; or

15 (ii) if the inmate is serving a term of imprisonment that includes a
16 mandatory term during which the inmate is not eligible for parole, a period equal to the
17 term during which the inmate is not eligible for parole.

18 (d) (1) Except as provided in paragraphs (2) and (3) of this subsection, an
19 inmate who has been sentenced to life imprisonment is not eligible for parole consideration
20 until the inmate has served 15 years or the equivalent of 15 years considering the
21 allowances for diminution of the inmate's term of confinement under § 6-218 of the
22 Criminal Procedure Article and Title 3, Subtitle 7 of this article.

23 (2) An inmate who has been sentenced to life imprisonment as a result of
24 a proceeding under former § 2-303 or § 2-304 of the Criminal Law Article is not eligible for
25 parole consideration until the inmate has served 25 years or the equivalent of 25 years
26 considering the allowances for diminution of the inmate's term of confinement under §
27 6-218 of the Criminal Procedure Article and Title 3, Subtitle 7 of this article.

28 (3) (i) If an inmate has been sentenced to imprisonment for life without
29 the possibility of parole under § 2-203 or § 2-304 of the Criminal Law Article, the inmate
30 is not eligible for parole consideration and may not be granted parole at any time during
31 the inmate's sentence.

32 (ii) This paragraph does not restrict the authority of the Governor to
33 pardon or remit any part of a sentence under § 7-601 of this title.

1 (4) Subject to paragraph (5) of this subsection, if eligible for parole under
2 this subsection, an inmate serving a term of life imprisonment may only be paroled with
3 the approval of the Governor.

4 (5) (i) If the Commission decides to grant parole to an inmate sentenced
5 to life imprisonment who has served 25 years without application of diminution of
6 confinement credits, the decision shall be transmitted to the Governor.

7 (ii) The Governor may disapprove the decision by written
8 transmittal to the Commission.

9 (iii) If the Governor does not disapprove the decision within 180 days
10 after receipt, the decision becomes effective.

11 **(E) (1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, UNLESS**
12 **SUBJECT TO EARLIER PAROLE ELIGIBILITY, AN INMATE WHO HAS BEEN SENTENCED**
13 **FOR AN OFFENSE THAT WAS COMMITTED BEFORE THE INMATE'S 18TH BIRTHDAY**
14 **SHALL BE ELIGIBLE FOR PAROLE WHEN THE INMATE HAS SERVED THE LESSER OF:**

15 **(I) 15 YEARS; OR**

16 **(II) ONE-FOURTH OF THE INMATE'S AGGREGATE SENTENCE.**

17 **(2) AN INMATE WHO IS NOT GRANTED PAROLE AFTER BECOMING**
18 **ELIGIBLE UNDER THIS SUBSECTION SHALL BE GRANTED A REHEARING DATE NO**
19 **LATER THAN EVERY 3 YEARS.**

20 7-305.

21 Each hearing examiner and commissioner determining whether an inmate is
22 suitable for parole, and the Commission before entering into a predetermined parole release
23 agreement, shall consider:

24 (1) the circumstances surrounding the crime;

25 (2) the physical, mental, and moral qualifications of the inmate;

26 (3) the progress of the inmate during confinement, including the academic
27 progress of the inmate in the mandatory education program required under § 22-102 of the
28 Education Article;

29 (4) a report on a drug or alcohol evaluation that has been conducted on the
30 inmate, including any recommendations concerning the inmate's amenability for treatment
31 and the availability of an appropriate treatment program;

1 (5) whether there is reasonable probability that the inmate, if released on
2 parole, will remain at liberty without violating the law;

3 (6) whether release of the inmate on parole is compatible with the welfare
4 of society;

5 (7) an updated victim impact statement or recommendation prepared
6 under § 7–801 of this title;

7 (8) any recommendation made by the sentencing judge at the time of
8 sentencing;

9 (9) any information that is presented to a commissioner at a meeting with
10 the victim; and

11 (10) any testimony presented to the Commission by the victim or the victim's
12 designated representative under § 7–801 of this title.

13 **7–310.**

14 **(A) THIS SECTION APPLIES ONLY TO AN INMATE WHO:**

15 **(1) HAS BEEN SENTENCED FOR AN OFFENSE THAT WAS COMMITTED**
16 **BEFORE THE INMATE'S 18TH BIRTHDAY; AND**

17 **(2) IS ELIGIBLE FOR PAROLE UNDER § 7–301(E) OF THIS SUBTITLE.**

18 **(B) FOR EACH PAROLE HEARING, AN INMATE IS ENTITLED TO BE**
19 **REPRESENTED BY COUNSEL OF THE INMATE'S CHOICE OR, IF ELIGIBLE, COUNSEL**
20 **PROVIDED BY THE PUBLIC DEFENDER'S OFFICE.**

21 **(C) IN ADDITION TO THE PROVISIONS PROVIDED IN § 7–305 OF THIS**
22 **SUBTITLE, FOR EACH PAROLE HEARING, THE HEARING OFFICER, COMMISSIONER,**
23 **OR COMMISSION PANEL DETERMINING WHETHER AN INMATE IS SUITABLE FOR**
24 **PAROLE SHALL CONSIDER:**

25 **(1) THE DIMINISHED CULPABILITY OF A JUVENILE AS COMPARED TO**
26 **THAT OF AN ADULT;**

27 **(2) THE SUBSEQUENT GROWTH AND INCREASED MATURITY OF THE**
28 **INMATE DURING INCARCERATION;**

29 **(3) CHARACTERISTICS OF THE INMATE AT THE TIME OF THE**
30 **OFFENSE, INCLUDING:**

1 **(2) NATURE OF THE RELATIONSHIP WITH OR INFLUENCE OF ANY**
2 **CODEFENDANT IN THE CASE;**

3 **(3) PAST EXPERIENCES OF TRAUMA OR ABUSE;**

4 **(4) INTELLECTUAL CAPACITY AND EDUCATIONAL HISTORY;**

5 **(5) FAMILY AND COMMUNITY ENVIRONMENT;**

6 **(6) ABILITY TO APPRECIATE THE RISK AND CONSEQUENCES OF THE**
7 **CONDUCT;**

8 **(7) ABILITY TO PARTICIPATE MEANINGFULLY IN THE DEFENSE; AND**

9 **(8) CAPACITY FOR REHABILITATION.**

10 **(B) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A COURT MAY**
11 **SUSPEND ALL OR ANY PORTION OF A MANDATORY MINIMUM SENTENCE IF THE**
12 **DEFENDANT WAS UNDER THE AGE OF 18 YEARS AT THE TIME OF THE OFFENSE.**

13 **(C) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A COURT MAY**
14 **ALLOW ALL OR ANY PORTION OF A SENTENCE TO BE SERVED WITH THE BENEFIT OF**
15 **PAROLE IF THE DEFENDANT WAS UNDER THE AGE OF 18 YEARS AT THE TIME OF THE**
16 **OFFENSE.**

17 8–102.

18 (a) Except as provided in [subsection (b)] **SUBSECTIONS (B) AND (D)** of this
19 section, a person convicted of a crime by a circuit court and sentenced to serve a sentence
20 that exceeds 2 years in a correctional facility is entitled to a single sentence review by a
21 review panel.

22 (b) **[A] EXCEPT AS PROVIDED IN SUBSECTION (D),** A person is not entitled:

23 (1) to a sentence review if the sentence was imposed by more than one
24 circuit court judge; or

25 (2) to a review of an order requiring a suspended part of a sentence to be
26 served if:

27 (i) the sentence originally was wholly or partly suspended;

28 (ii) the sentence was reviewed; and

1 (iii) the suspended sentence or suspended part of that sentence later
2 was required to be served.

3 (c) For purposes of this subtitle, a sentence that exceeds 2 years is a sentence in
4 which the total period of the sentence and any unserved time of a prior or simultaneous
5 sentence exceeds 2 years, including:

6 (1) a sentence imposed by a circuit court;

7 (2) a requirement by a circuit court that all or part of a suspended sentence
8 be served; and

9 (3) a prior or simultaneous sentence, suspended or not suspended, that has
10 been imposed by a court or other authority of the State or of another jurisdiction.

11 **(D) A PERSON WHO HAS BEEN SENTENCED TO AN AGGREGATE TERM OF**
12 **INCARCERATION OF 15 YEARS OR MORE FOR AN OFFENSE THAT WAS COMMITTED**
13 **BEFORE THE PERSON REACHED THE AGE OF 18 YEARS MAY FILE MORE THAN A**
14 **SINGLE APPLICATION FOR SENTENCE REVIEW AFTER HAVING SERVED 10 YEARS.**

15 8–105.

16 (a) A review panel consists of three or more circuit court judges of the judicial
17 circuit in which the sentencing court is located.

18 (b) Notwithstanding any Maryland Rule, the sentencing judge may not be a
19 member of the review panel, but on request of the sentencing judge, the sentencing judge
20 may sit with the review panel only in an advisory capacity.

21 (c) (1) A review panel shall consider each application for review of a sentence.

22 (2) A review panel may require the Division of Parole and Probation to
23 make investigations, reports, and recommendations.

24 (3) **[A] EXCEPT AS PROVIDED IN PARAGRAPH (4) OF THIS**
25 **SUBSECTION, A review panel:**

26 (i) with or without a hearing, may decide that the sentence under
27 review should remain unchanged; or

28 (ii) after a hearing, may order a different sentence to be imposed or
29 served, including:

30 1. an increased sentence;

31 2. subject to § 8–107(c) of this subtitle, a decreased sentence;

1 3. a suspended sentence to be served wholly or partly; or

2 4. a sentence to be suspended with or without probation.

3 **(4) FOR A PERSON SENTENCED TO AN AGGREGATE TERM OF**
4 **INCARCERATION OF 15 YEARS OR MORE FOR AN OFFENSE THAT WAS COMMITTED**
5 **BEFORE THE PERSON REACHED THE AGE OF 18 YEARS, A REVIEW PANEL:**

6 **(I) SHALL HOLD A HEARING ON EACH APPLICATION FOR**
7 **REVIEW OF SENTENCE FILED;**

8 **(II) SHALL CONSIDER, ON THE RECORD, MITIGATING FACTORS**
9 **OF THE DEFENDANT, INCLUDING:**

10 1. AGE AT THE TIME OF THE OFFENSE;

11 2. NATURE OF THE RELATIONSHIP WITH OR INFLUENCE
12 OF ANY CODEFENDANT IN THE CASE;

13 3. PAST EXPERIENCES OF TRAUMA OR ABUSE;

14 4. INTELLECTUAL CAPACITY AND EDUCATIONAL
15 HISTORY;

16 5. FAMILY AND COMMUNITY ENVIRONMENT;

17 6. ABILITY TO APPRECIATE THE RISK AND
18 CONSEQUENCES OF THE CONDUCT;

19 7. ABILITY TO PARTICIPATE MEANINGFULLY IN THE
20 DEFENSE; AND

21 8. CAPACITY FOR REHABILITATION.

22 **(III) AFTER A HEARING, MAY ORDER THE SENTENCE TO REMAIN**
23 **UNCHANGED OR MAY ORDER A DIFFERENT SENTENCE, BUT MAY NOT INCREASE THE**
24 **SENTENCE IMPOSED.**

25 **[(4)] (5)** In deciding to order a different sentence, the review panel may
26 impose conditions that the review panel considers just and that could have been imposed
27 lawfully by the sentencing court when the sentence was imposed.

1 (d) If the review panel orders a different sentence, the review panel shall
2 resentence and notify the defendant in accordance with the order of the panel.

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 October 1, 2015.