

(PRE-FILED)

By: **Delegate Arnick**
 Requested: July 13, 2004
 Introduced and read first time: January 12, 2005
 Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure - Review of Mandatory Minimum Sentences -**
 3 **Retroactive Effect**

4 FOR the purpose of authorizing a person who is serving a term of confinement that
 5 includes a mandatory minimum sentence imposed before a certain date to apply
 6 for and receive a review of the mandatory minimum sentence under certain
 7 circumstances; providing for the termination of this Act; and generally relating
 8 to review of criminal sentences.

9 BY repealing and reenacting, without amendments,
 10 Article - Criminal Procedure
 11 Section 8-101 through 8-109
 12 Annotated Code of Maryland
 13 (2001 Volume and 2004 Supplement)

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

16 **Article - Criminal Procedure**

17 8-101.

18 (a) In this subtitle the following terms have the meanings indicated.

19 (b) "Review panel" means a group of three or more circuit court judges who
 20 conduct a review proceeding in connection with an application for a review of a
 21 sentence under this subtitle.

22 (c) "Sentencing court" means the court in which the sentencing judge imposed
 23 the sentence or required that a sentence that was wholly or partly suspended be
 24 served.

25 (d) "Sentencing judge" means the judge who imposed a sentence or who
 26 required that a sentence that was wholly or partly suspended be served.

1 8-102.

2 (a) Except as provided in subsection (b) of this section, a person convicted of a
3 crime by a circuit court and sentenced to serve a sentence that exceeds 2 years in a
4 correctional facility is entitled to a single sentence review by a review panel.

5 (b) A person is not entitled:

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

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

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

11 (ii) the sentence was reviewed; and

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

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

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

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

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

22 8-103.

23 (a) A person entitled to file an application for a sentence review under this
24 subtitle has the right to be represented by counsel:

25 (1) to determine whether to seek a sentence review; and

26 (2) to file an application for a sentence review.

27 (b) The counsel representing a person for a sentence review may be:

28 (1) retained by a person who is entitled to file an application for review
29 under this subtitle;

30 (2) appointed by the sentencing judge; or

31 (3) provided under Article 27A of the Code.

1 8-104.

2 (a) The filing of an application for sentence review under this subtitle does
3 not:

4 (1) stay the execution of the sentence;

5 (2) affect the time allowed to file an appeal or a motion for a new trial; or

6 (3) affect the power of the sentencing judge to change the sentence to the
7 extent allowed by the Maryland Rules.

8 (b) After an application is filed, the sentencing judge may grant a stay of the
9 execution of the sentence pending a decision under this subtitle.

10 8-105.

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

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

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

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

20 (3) A review panel:

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

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

25 1. an increased sentence;

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

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

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

29 (4) In deciding to order a different sentence, the review panel may
30 impose conditions that the review panel considers just and that could have been
31 imposed 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 8-106.

4 (a) A review panel may increase, modify, or reduce a sentence only after notice
5 to each party and notice to any victim or victim's representative as provided under §
6 11-104 or § 11-503 of this article.

7 (b) Before changing a sentence, a review panel shall allow:

8 (1) each party to be heard at the hearing; and

9 (2) the victim or victim's representative to attend the hearing, as
10 provided by § 11-102 of this article, and to address the review panel, as provided by §
11 11-403 of this article.

12 8-107.

13 (a) Except as provided in subsection (c) of this section, a majority of the
14 members of the review panel is necessary to make a decision.

15 (b) The review panel shall make the decision within 30 days after the filing
16 date of the application for review.

17 (c) A review panel may not order a decrease in a mandatory minimum
18 sentence unless the decision of the review panel is unanimous.

19 (d) A review panel shall consider time served on the sentence under review to
20 be time served on any sentence that is substituted.

21 8-108.

22 (a) The review of a sentence of death is governed by Title 2, Subtitle 4 of the
23 Criminal Law Article.

24 (b) A review panel may not increase a sentence to the sentence of death.

25 8-109.

26 The Court of Appeals shall adopt rules to carry out this subtitle.

27 SECTION 2. AND BE IT FURTHER ENACTED, That, notwithstanding any
28 other law to the contrary, a person who is serving a term of confinement that includes
29 a mandatory minimum sentence imposed before July 1, 1999, may apply for and
30 receive one review of the mandatory minimum sentence as provided in Title 8,
31 Subtitle 1 of the Criminal Procedure Article of the Annotated Code of Maryland,
32 provided that the application for review is filed on or before September 30, 2006.

33 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
34 October 1, 2005. It shall remain effective for a period of 1 year and, at the end of

- 1 September 30, 2006, with no further action required by the General Assembly, this
- 2 Act shall be abrogated and of no further force and effect.