

**Department of Legislative Services**  
Maryland General Assembly  
2005 Session

**FISCAL AND POLICY NOTE**

House Bill 35  
Judiciary

(Delegate Arnick)

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

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This bill allows a person serving a term of confinement that includes a mandatory minimum sentence imposed before July 1, 1999 to apply for and receive one review of the mandatory minimum sentence. Such an application must be made by September 30, 2006.

The bill takes effect October 1, 2005 and terminates September 30, 2006.

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**Fiscal Summary**

**State Effect:** Potential minimal increase or decrease in incarceration expenditures. The actual impact depends on the number of requests for sentence review filed and whether sentences are reduced or lengthened.

**Local Effect:** None.

**Small Business Effect:** None.

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**Analysis**

**Current Law:** Every person convicted of a crime by a circuit court and sentenced to serve more than two years imprisonment by a judge is entitled to apply for and have a single review of that sentence. An application for review must be filed within 30 days of the sentencing.

A panel of three or more trial judges of the judicial circuit in which the sentencing court is located conducts the review. A person has no right to have a sentence reviewed more than once. The judge who sentenced the convicted person shall not be one of the members of the panel, but may sit with the panel in an advisory capacity.

If a hearing is held, the panel generally may increase, decrease, or otherwise modify the sentence by majority rule. However, a mandatory minimum sentence may be decreased only by a unanimous vote of the panel. Without holding a hearing, the panel may decide that the sentence under review should remain unchanged. The review panel must file a written decision within 30 days of the application's filing date.

In addition, the Maryland Rules provide that a court has revisory power and control over a sentence upon a motion filed within 90 days after its imposition: (1) in the District Court, if an appeal has not been perfected; and (2) in a circuit court, whether or not an appeal has been filed. Thereafter, the court has revisory power and control over the sentence in case of fraud, mistake, or irregularity, or as otherwise provided in the Maryland Rules in cases concerning desertion and nonsupport of spouse, children, or destitute parents. The court may not increase a sentence after the sentence has been imposed, except that it may correct an evident mistake in the announcement of a sentence if the correction is made on the record before the defendant leaves the courtroom following the sentencing proceeding. The court may correct an illegal sentence at any time.

As shown in **Appendix 1**, there are 23 offenses that carry mandatory minimum sentences per the Maryland Sentencing Guidelines.

**Background:** In *Cox v. State* (134 Md. App. 466), the Court of Special Appeals held that there was no retroactive right to a sentence review. The defendant was convicted of housebreaking in 1992 and received a mandatory minimum sentence of 25 years. After several appeals, the defendant applied for a review of sentence by a three-judge panel. The statute allowing panel review had an effective date of July 1, 1999 and there was no provision in the statute allowing for retroactive review. His request was denied by the circuit court and the defendant appealed. The Court of Special Appeals held that there was no right to retroactive review of sentence due to the presumption against retroactivity and the General Assembly's rejection of a bill that would have allowed review of sentences imposed prior to July 1, 1999.

**State Fiscal Effect:** Data is not readily available on the number of people sentenced to mandatory minimum jail terms prior to July 1, 1999. General fund expenditures could increase or decrease minimally as a result of changes to inmates' sentences as provided by the review panels due to inmates having their sentences lengthened or reduced. The

number of people who would have their sentence changed cannot be reliably predicted, but is assumed to be small.

Currently, the average total cost per inmate, including overhead, is estimated at \$1,850 per month. Excluding overhead, the average cost of housing a new DOC inmate (including medical care and variable costs) is \$310 per month. Excluding medical care, the average variable costs total \$120 per month.

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### **Additional Information**

**Prior Introductions:** HB 331 of 2004, a similar bill, would have authorized a person serving a mandatory minimum sentence for housebreaking to apply for and receive a review of the mandatory minimum sentence. That bill received an unfavorable report from the Judiciary Committee. An identical bill, HB 380 of 2000, received an unfavorable report from the Judiciary Committee.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts), Office of the Public Defender, Department of Public Safety and Correctional Services, Department of Legislative Services

**Fiscal Note History:** First Reader - January 20, 2005  
mam/jr

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**Appendix 1**  
**Offenses with Mandatory Minimum Sentences**

<u>Offense</u>	<u>Source</u>	<u>Level</u>	<u>Maximum</u>	<u>Minimum</u>
<b><i>Assault Pistols</i></b>				
Use of assault pistol; magazine with a capacity of more than 20 rounds in the commission of a felony or crime of violence, first offense	CR, § 4-306(b)(2)	Misdemeanor	20 years	5 years
Use of assault pistol; magazine with a capacity of more than 20 rounds in the commission of a felony or crime of violence, subsequent	CR, § 4-306(b)(3)	Misdemeanor	20 years	10 years
<b><i>CDS and Paraphernalia – Distribution</i></b>				
Drug kingpin	CR, § 5-613	Felony	40 years	20 years
Unlawful manufacture, distribution, etc.; counterfeiting, etc. of certain equipment for illegal use; keeping common nuisance, schedule I or II narcotics (e.g., PCP, heroin, cocaine, and LSD), subsequent	CR, § 5-608(b), (c), (d)	Felony	1st = 20 years 2nd = 25 years 3rd = 40 years	1st = 10 years 2nd = 25 years 3rd = 40 years
Unlawful manufacture, distribution, etc.; counterfeiting, etc. of certain equipment for illegal use; keeping common nuisance, schedule I or II narcotics (e.g., PCP, heroin, cocaine, and LSD), large amounts	CR, § 5-612(a)	Felony	20 years	5 years
Unlawful manufacture, distribution, etc.; counterfeiting, etc. of certain equipment for illegal use; keeping common nuisance, schedule I through V non-narcotics (e.g., amphetamines, marijuana, diazepam, and Valium), subsequent	CR, § 5-607(b)	Felony	5 years	2 years

<b><u>Offense</u></b>	<b><u>Source</u></b>	<b><u>Level</u></b>	<b><u>Maximum</u></b>	<b><u>Minimum</u></b>
Unlawful manufacture, distribution, etc.; counterfeiting, etc. of certain equipment for illegal use; keeping common nuisance, schedule I through V non-narcotics ( <i>e.g.</i> , amphetamines, marijuana, diazepam, and Valium), large amounts	CR, § 5-612(a)	Felony	5 years	5 years
<b><i>Handguns, In General</i></b>				
Carrying, etc., with deliberate purpose to injure or kill	CR, § 4-203(c)(4)(i)(2)(b)	Misdemeanor	5 years	5 years
Unlawful use in commission of felony or crime of violence, first offense	CR, § 4-203(c)(3)(i)(1)	Misdemeanor	20 years	5 years
Unlawful use in commission of felony or crime of violence, subsequent	CR, § 4-204(b)(1)	Misdemeanor	20 years	5 years
Unlawful wearing, carrying, etc., second weapon offense, generally	CR, § 4-203(c)(3)(i)(1)	Misdemeanor	10 years	1 year
Unlawful wearing, carrying, etc., more than two prior weapon offenses, generally	CR, § 4-203(c)(4)(i)(2)(a)	Misdemeanor	10 years	3 years
Unlawful wearing, carrying on school property, etc., second weapon offense	CR, § 4-203(c)(3)(i)(2)	Misdemeanor	10 years	3 years
Unlawful wearing, carrying on school property, etc., more than two prior weapon offenses	CR, § 4-203(c)(4)(i)(2)(a)	Misdemeanor	10 years	5 years
<b><i>Murder</i></b>				
First degree, generally	CR, § 2-201(a)	Felony	Life	Life
First degree, during rape, etc.	CR, § 2-201(a)	Felony	Life	Life
First degree, perpetration of arson	CR, § 2-201(a)	Felony	Life	Life
First degree, burning barn, tobacco house, etc.	CR, § 2-201(a)	Felony	Life	Life

<b><u>Offense</u></b>	<b><u>Source</u></b>	<b><u>Level</u></b>	<b><u>Maximum</u></b>	<b><u>Minimum</u></b>
<b><i>Weapons Crimes, In General</i></b>				
Use, etc., of a weapon in a drug offense, first offense	CR, § 281A(b)	Felony	20 years	5 years
Use, etc., of a weapon in a drug offense, first offense (only for certain weapons)	CR, § 5-621(b)	Felony	20 years	10 years
Use, etc., of a weapon in a drug offense, subsequent	CR, § 5-621(b)	Felony	20 years	10 years
Use, etc., of a weapon in a drug offense, subsequent (only for certain weapons)	CR, § 5-621(d)	Felony	20 years	20 years
Illegal possession of a firearm after having been convicted of a crime of violence or certain drug crimes	CR, § 449(e)	Felony	5 years	5 years

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