

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1323
Judiciary

(Delegate Folden, *et al.*)

Criminal Procedure - Sentencing Review - Juvenile Offenders Sentenced as
Adults

This bill exempts a person who has been sentenced to an aggregate term of incarceration of 20 years or more for an offense that was committed when the person was younger than age 18 from existing statutory restrictions on eligibility for sentence reviews and authorizes such a person to file an application for sentence review after having served 15 years. Unless the State consents to the filing of an application, a person who files such an application for sentence review may not file another application for sentence review until at least five years have passed since the applicant's most recent application.

A sentence review panel must hold a hearing on an application by the person for a sentence review and consider specified mitigating factors of the defendant on the record. The review panel, by majority vote, may (1) decide that the sentence under review should remain unchanged or (2) order a different sentence to be imposed or served, including a decreased sentence, a wholly or partly suspended sentence, or a suspended sentence with or without probation. However, the review panel may not increase the sentence under review, including imposition of a suspended sentence.

Fiscal Summary

State Effect: Potential decrease in general fund expenditures if inmates obtain an earlier release from incarceration as a result of a sentence review under the bill. General fund expenditures for the Office of the Public Defender (OPD) increase depending on the bill's overall impact on OPD caseloads, as discussed below.

Local Effect: The bill is not expected to materially affect local finances.

Small Business Effect: None.

Analysis

Current Law:

Juvenile Court Jurisdiction: In general, the juvenile court has jurisdiction over a child alleged to be delinquent, in need of supervision, or who has received a citation for a violation. The juvenile court does not have jurisdiction over (1) children at least age 16 alleged to have violated specified boating or traffic laws; (2) children at least age 16 who are alleged to have committed specified violent crimes; (3) children age 14 and older alleged to have committed an act that would be a crime punishable by life imprisonment if committed by an adult; and (4) children who have previously been convicted as an adult of a felony and are subsequently alleged to have committed an act that would be a felony if committed by an adult. These cases are tried in adult criminal court.

However, for items (2) through (4), a circuit court may transfer a case involving such a child to the juvenile court if such a transfer is believed to be in the interests of the child or society (“reverse waiver”). A reverse waiver is not permitted in certain circumstances, such as when the child was previously convicted in an unrelated case excluded from the jurisdiction of the juvenile court or when the alleged crime is murder in the first degree and the accused child was 16 or 17 years of age when the alleged crime was committed.

Sentence Review: With certain exceptions, a person convicted of a crime by a circuit court and sentenced to a term of imprisonment that exceeds two years in a correctional facility is entitled by statute to have a panel of three circuit court judges of the judicial circuit in which the sentencing court is located review the appropriateness of the sentence. The sentencing judge may not be a member of the review panel but may sit with the review panel in an advisory capacity. The defendant must file a motion within 30 days after sentencing to exercise this right to review.

After a hearing, the panel may increase, modify, or reduce the sentence. The panel may decide that the sentence should remain unchanged with or without a hearing. A majority of the members of the review panel is necessary to make a decision. The panel has 30 days after the filing date of the motion to render a decision.

Except in one instance, there is no right to appeal a decision made by the review panel. Should the panel increase the sentence, a defendant may then appeal on the limited grounds that the sentence was not within statutory or constitutional limits or that the panel acted from ill will, prejudice, or other impermissible considerations.

A person is not entitled to this sentence review if the person’s sentence was imposed by more than one judge. A person is not entitled to a review of an order requiring a suspended part of a sentence to be served if the sentence originally was wholly or partly suspended, the sentence was reviewed, and the suspended sentence or suspended part of that sentence later was required to be served.

State Expenditures:

Office of Public Defender: OPD advises that the bill significantly increases agency workloads and requires OPD to spend a significant amount of time investigating prior cases to assure that eligible individuals apply for additional sentence reviews under the bill. To address the increased workload, OPD advises that it requires one additional attorney and one additional support staff employee. However, OPD provided no information as to expected caseloads/workloads under the bill.

The Department of Legislative Services advises that, while the average caseload for an attorney in the Post Conviction Defenders Division was estimated at 150 cases in fiscal 2015, the precise impact of the bill on OPD caseloads cannot be readily determined at this time. Furthermore, while the bill results in an increase in sentence review hearings for OPD clients eligible under the bill, individuals are generally not entitled to a subsequent sentence review until five years have passed since their previous sentence review. *For illustrative purposes only*, the cost associated with hiring one assistant public defender is \$70,692 in fiscal 2017 and \$88,847 in fiscal 2018.

Department of Public Safety and Correctional Services: General fund expenditures for the Department of Public Safety and Correctional Services (DPSCS) may decrease to the extent that an inmate has his or her sentence reduced by a sentence review panel as a result of the bill's provisions. Any potential impact is not expected to be significant.

In 2015, the Maryland Parole Commission advised that there were 875 inmates who were juveniles at the time they committed a crime or at the time they were admitted to a DPSCS facility in fiscal 2014. Of these inmates, 22 are serving a sentence of life without the possibility of parole, 339 were serving sentences of life or split-life sentences, and 514 were serving sentences with a fixed term of years.

Information is not readily available as to how many of the 514 inmates serving sentences with a fixed term of years in fiscal 2014 are eligible for additional sentence reviews under the bill, since eligibility is triggered after a person has served 15 years of a sentence of at least 20 years. However, this analysis assumes that most of these individuals do not meet the time-served threshold under the bill. Based on data from the Department of Juvenile Services' *Youth Charged As Adults – Overview of Available Data (December 2015)*, of the 160 juveniles charged as adults and sentenced to jail/prison time only (the cohort under the study with the longest average sentence) from 2009 through 2014, the average sentence was 10.8 years, the median sentence was 5 years, and the twenty-fifth to seventy-fifth percentile sentences were 2 years and 11 years, respectively.

Local Expenditures: Given the amount of time served that triggers an inmate's eligibility for a sentence review under the bill, individuals affected by the bill are incarcerated in State correctional facilities rather than local detention facilities.

The bill is not expected to materially affect circuit court operations/local finances. The Judiciary advises that it has no data to suggest that the bill has a significant fiscal or operational impact on the trial courts.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland State Commission on Criminal Sentencing Policy, Judiciary (Administrative Office of the Courts), Office of the Public Defender, State's Attorneys' Association, Department of Public Safety and Correctional Services, *Youth Charged As Adults – Overview of Available Data (December 2015)* - Department of Juvenile Services, Department of Legislative Services

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