

Department of Legislative Services  
Maryland General Assembly  
2017 Session

FISCAL AND POLICY NOTE  
First Reader

Senate Bill 1066

(Senator Simonaire)

Judicial Proceedings

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Criminal Procedure - Modification of Sentences

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This emergency bill authorizes the State to appeal to a three-judge review panel a modification of a sentence for a “crime of violence” when the court reduces the sentence below the minimum sentence recommended by the sentencing guidelines. The bill applies procedures for the review of a sentence by a three-judge panel to the review of an appeal of a modification of sentence.

The bill applies retroactively to affect any person convicted before, on, or after the effective date of the bill.

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Fiscal Summary

**State Effect:** Potential minimal increase in general fund expenditures for the Judiciary and the Office of the Public Defender if the bill results in additional applications/hearings. The number of motions filed or hearings held as a result of the bill cannot be reliably estimated at this time. The Department of Public Safety and Correctional Services (DPSCS) and the Maryland State Commission on Criminal Sentencing Policy (MSCCSP) can handle the bill’s requirements with existing resources. Revenues are not affected.

**Local Effect:** Potential minimal increase in expenditures for the circuit courts if the bill results in an increase in applications/hearings. The number of motions filed or hearings held as a result of the bill cannot be reliably estimated at this time. It is anticipated that the State’s Attorneys can handle the bill’s requirements with existing resources. Local revenues are not affected.

**Small Business Effect:** None.

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## Analysis

**Bill Summary:** A review panel must consider each application for review of a modification of sentence for a crime of violence when the court reduces the sentence below the minimum sentence recommended by the sentencing guidelines. The review panel may, without or without a hearing, keep the sentence or sentence modification unchanged. The review panel may order a different sentence after a hearing. If the review panel that is reviewing a sentence modification chooses to increase the sentence being reviewed, the sentence may not exceed the sentence that corresponds with the minimum sentence recommended by the sentencing guidelines for the crime in effect at the time of the original sentence.

In deciding to order a different sentence, the review panel may impose conditions that the review panel considers just and that could have been imposed lawfully by the sentencing court when the sentence modification was imposed. If the review panel orders a different sentence, the review panel must resentence and notify the defendant and the State in accordance with the order of the panel.

**Current Law:** Generally, a person convicted of a crime by a circuit court and sentenced to serve a sentence that exceeds two years in a correctional facility is entitled to a single sentence review by a review panel. A person is not entitled to (1) a sentence review if the sentence was imposed by more than one circuit court judge or (2) 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.

A person entitled to file an application for a sentence review has the right to be represented by counsel to determine whether to seek a sentence review and to file an application for a sentence review.

The filing of an application for sentence review does not stay the execution of the sentence, affect the time allowed to file an appeal or a motion for a new trial, or affect the power of the sentencing judge to change the sentence to the extent allowed by the Maryland Rules. After an application is filed, the sentencing judge may grant a stay of the execution of the sentence as specified.

A review panel consists of three or more circuit court judges of the judicial circuit in which the sentencing court is located. The sentencing judge may not be a member of the review panel, but on request of the sentencing judge, the sentencing judge may sit with the review panel only in an advisory capacity. A review panel must consider each application for review of a sentence and may require the Division of Parole and Probation within DPSCS to make investigations, reports, and recommendations.

A review panel, with or without a hearing, may decide that the sentence under review should remain unchanged, or after a hearing, may order a different sentence to be imposed or served, as specified. In deciding to order a different sentence, the review panel may impose conditions that the review panel considers just and that could have been imposed lawfully by the sentencing court when the sentence was imposed. If the review panel orders a different sentence, the review panel must resentence and notify the defendant in accordance with the order of the panel.

A review panel may increase, modify, or reduce a sentence only after notice to each party and notice to any victim or victim's representative, as specified. Before changing a sentence, a review panel must allow each party to be heard at the hearing and the victim or victim's representative to attend the hearing and to address the review panel, as specified.

*Crime of Violence:* Section 14-101(a) of the Criminal Law Article defines a "crime of violence" as (1) abduction; (2) arson in the first degree; (3) kidnapping; (4) manslaughter, except involuntary manslaughter; (5) mayhem; (6) maiming; (7) murder; (8) rape; (9) robbery; (10) carjacking (including armed carjacking); (11) first- and second-degree sexual offenses; (12) use of a handgun in the commission of a felony or other crime of violence; (13) child abuse in the first degree; (14) sexual abuse of a minor younger than age 13 under specified circumstances; (15) an attempt to commit crimes (1) through (14); (16) continuing course of conduct with a child; (17) assault in the first degree; or (18) assault with intent to murder, rape, rob, or commit a sexual offense in the first or second degree.

*Sentencing Guidelines:* MSCCSP must adopt sentencing guidelines that it may change. The sentencing guidelines must include sentencing guidelines for ordinary sentences and sentencing guidelines for corrections options. The sentencing guidelines for ordinary sentences must call for sentences within the limits set by law and must set forth:

- the range of sentences for crimes of a given degree of seriousness;
- a range of increased severity for defendants previously convicted of or adjudicated delinquent for a previous crime; and
- a list of aggravating and mitigating circumstances.

The sentencing guidelines for corrections options must be designed to identify defendants qualified for corrections options programs.

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## **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; Department of Legislative Services

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