

Department of Legislative Services  
Maryland General Assembly  
2019 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 988  
Judiciary

(Delegate McComas)

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**Criminal Procedure - Sentencing Guidelines - Review**

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This bill establishes that if a court does not prepare a Maryland sentencing guidelines worksheet in a case, (1) the defendant may request a sentence review hearing in which the judge may modify the sentence and must complete a sentencing guidelines worksheet and (2) if the sentence imposed was 25% or more above the guidelines range, the defendant may request a sentence review by a three-judge panel, which may reduce the sentence to within guidelines range or keep the sentence the same.

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**Fiscal Summary**

**State Effect:** General fund expenditures for incarcerations in State facilities may decrease, as discussed below. Other State agencies may also experience an operational impact. Revenues are not affected.

**Local Effect:** Local expenditures for incarcerations may decrease, as discussed below. State's Attorneys may experience an operational impact. Revenues are not affected.

**Small Business Effect:** None.

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**Analysis**

**Current Law/Background:**

*Sentencing Guidelines:* The Maryland State Commission on Criminal Sentencing Policy (MSCCSP) was created to oversee sentencing policy in Maryland and is primarily responsible for maintaining and monitoring the State's voluntary sentencing guidelines,

which are intended to promote fair and proportional sentencing while eliminating sentencing disparity.

MSCCSP is authorized to adopt sentencing guidelines to be considered by courts when determining the appropriate sentence for a criminal defendant, as well as the collection and automation of sentencing guidelines data. All sentencing guidelines data are provided on the sentencing guidelines worksheet, which is completed to determine the recommended sentencing guidelines outcome and to record sentencing data for offenses prosecuted in circuit court. After a sentencing judge or the judge's designee completes the worksheet, the judge reviews the worksheet for completeness and accuracy and submits a copy of the worksheet (paper or electronic) to MSCCSP. The commission's staff use data collected from these worksheets to analyze sentencing trends, monitor circuit court sentencing compliance, and adopt changes to the guidelines consistent with legislative intent when necessary.

In general, Maryland's sentencing guidelines apply to criminal cases originating in the circuit courts that involve incarcerable offenses. However, prayers for a jury trial in a case originating in the District Court and appeals from the District Court are also eligible for the sentencing guidelines if a presentence investigation is ordered. Reconsiderations of sentences imposed for crimes of violence and three-judge panel reviews of sentences are also eligible for the guidelines if there is an adjustment to the active sentence.

The guidelines recommend whether to incarcerate an offender and an appropriate sentence length range. However, the guidelines may not allow for a sentence exceeding the maximum sentence specified by law or be used in violation of any mandatory minimum sentence required by law. The sentencing guidelines are advisory and judges have the authority to impose a sentence outside the guidelines. However, if a judge chooses to depart from the sentencing guidelines, the judge must document the reason(s) for departure from the guidelines range.

According to MSCCSP's 2018 annual report, the commission and judicial staff identified 13,213 guidelines-eligible cases in fiscal 2018. MSCCSP received worksheets for 12,068 (91.3%) of these cases.

MSCCSP considers a sentence as compliant with the guidelines if:

- the initial sentence (sum of incarceration, credited time, and home detention) is within the guidelines range;
- the judge sentenced the offender to a period of presentence incarceration time with no additional post-sentence incarceration time and the length of credited presentence incarceration exceeds the upper guidelines range for the sentencing event;

- for sentences to corrections options programs, the initial sentence plus any suspended sentence falls within or above the applicable guidelines range and the sentencing event does not include a crime of violence, child sexual abuse, or escape; or
- the sentence was pursuant to an American Bar Association plea agreement (defined as a disposition that resulted from a plea agreement that the court approved relating to a particular sentence, disposition, or other judicial action, and the agreement is binding on the court under Maryland Rule 4-243 (c)).

In fiscal 2018, 4.2% of all sentencing events were above the guidelines range; this figure drops to 2.8% for sentencing events involving single-count convictions. Information is not readily available on the number of cases in which the sentence was 25% or more above the guidelines range. Departures from the guidelines were more often below the guidelines than above. According to MSCCSP's 2018 report, the most commonly cited reason for departures above the guidelines was a recommendation by the State's Attorney or the Division of Parole and Probation.

*Sentence Review:* Under the Review of Criminal Sentences Act (§§ 8-102 through 8-109 of the Criminal Procedure Article), 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 order a different sentence to be imposed or served, including an increased sentence, a decreased sentence, a suspended sentence to be served wholly or partly, or a sentence to be suspended with or without probation. The panel may decide that the sentence should remain unchanged with or without a hearing. In general, 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.

Maryland Rule 4-345 authorizes a court to correct an illegal sentence at any time. The sentencing court has revisory power over a sentence in case of fraud, mistake, or irregularity. Upon a motion filed within 90 days after imposition of a sentence (1) in the District Court, if an appeal has not been perfected or has been dismissed and (2) in a circuit court, whether or not an appeal has been filed, the court has revisory power over the sentence except that it may not revise the sentence after the expiration of five years from the date the sentence originally was imposed on the defendant and it may not increase the sentence.

**State Expenditures:** General fund expenditures for the Department of Public Safety and Correctional Services may decrease if sentence reviews under the bill reduce time spent in incarceration in State facilities for eligible offenders and reduce payments to counties for reimbursement of inmate costs. The extent to which this occurs cannot be reliably determined at this time, as it depends on judicial discretion. The increase in the number of sentence review hearings generated by the bill may result in an operational impact on the Judiciary and the Office of the Public Defender.

As previously noted, MSCCSP received worksheets for 12,068 of the 13,213 identified guidelines-eligible cases in fiscal 2018. *For illustrative purposes only*, using the fiscal 2018 figures, as many as 1,145 sentence review hearings may be held under the bill each year because no worksheet was submitted. However, the actual number of hearings may be lower given that (1) not every defendant may pursue a review of his/her sentence and (2) there are other available options for sentence review under existing statute. Assuming steady case volume, the number of sentence review hearings generated by the bill may decrease if the number of cases in which a sentencing guidelines worksheet is submitted increases. MSCCSP's electronic worksheet submission system, known as the Maryland Automated Guidelines System, is currently in use in 22 of the State's 24 jurisdictions. Anne Arundel County is slated to deploy the system on April 1, 2019, and Baltimore City is expected to deploy the system on October 1, 2019. Also, the availability of additional reviews of sentences based on the fact that a court did not prepare a sentencing guidelines worksheet in a case may increase the frequency with which judges prepare worksheets.

Information is not readily available on the number of sentences that were 25% or more above the guidelines range. As previously noted, according to MSCCSP, 4.2% of all sentencing events during fiscal 2018 were above the guidelines range. Assuming that this 4.2% figure cited above for cases for which worksheets were submitted applies to the 1,145 cases for which worksheets were *not* submitted, up to 48 additional panel review hearings per year may be expected as a result of the bill. Given that unlike panel reviews under the bill, panel reviews under existing statute may increase the defendant's sentence, the panel review offered under the bill may be a more attractive option to eligible defendants.

According to MSCCSP's 2018 annual report, approximately 75% of guidelines-eligible cases resulted in incarceration, and the median length of sentence (excluding suspended time) for offenders in this group was 1.5 years.

Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$3,800 per month. Persons serving a sentence of one-year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or a State correctional facility. The State provides assistance to the counties for locally sentenced inmates and for (1) inmates who are sentenced to and awaiting transfer to the State correctional system; (2) sentenced inmates confined in a local detention center between 12 and 18 months; and (3) inmates who have been sentenced to the custody of the State but are confined in or who receive reentry or other prerelease programming and services from a local facility.

**Local Expenditures:** Local expenditures for incarcerations may decrease if sentence reviews under the bill reduce the amount of time offenders spend in local detention facilities. State's Attorneys' offices may experience an operational impact from an increased volume of sentence review hearings.

Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. Per Diem operating costs of local detention facilities have ranged from approximately \$40 to \$170 per inmate in recent years.

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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; Maryland State's Attorneys' Association; Department of Legislative Services

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