

Department of Legislative Services
 Maryland General Assembly
 2024 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 123

(Senator Carter)

Judicial Proceedings

Judiciary

Criminal Procedure - Petition to Reduce Sentence

This bill allows an individual to file up to two petitions to reduce a sentence if, subject to limited exception, the individual meets specified criteria relating to the amount of time that the individual has been incarcerated and the individual’s age. After consideration of specified factors and a hearing, the court may reduce the petitioner’s sentence if it finds that the individual is not a danger to the public and the interests of justice will be better served by a reduced sentence. There is a rebuttable presumption that a petitioner is not a danger to the public if the petitioner is at least age 60 and has been confined for 30 years or more. A court may not increase the petitioner’s sentence, and the right to seek a sentence reduction may not be waived. The bill establishes additional procedural requirements.

Fiscal Summary

State Effect: General fund expenditures for the Office of the Public Defender (OPD) increase by a *minimum* of \$394,200 in FY 2025. Future years reflect annualization and inflation and account for minimum staffing costs only. General fund expenditures for the Department of Public Safety and Correctional Services (DPSCS) decrease if incarcerated individuals are released from State correctional facilities under the bill. Revenues are not affected.

(in dollars)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	394,200	469,400	490,300	511,700	534,200
Net Effect	(\$394,200)	(\$469,400)	(\$490,300)	(\$511,700)	(\$534,200)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Local expenditures may increase minimally for State’s Attorneys’ offices to handle petitions generated by the bill. Local revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary:

Limits on Petitions

An individual may file no more than two petitions for reducing a sentence. For the individual's first petition, the individual must either (1) have served at least 20 years of the individual's term of confinement *or* (2) be at least age 60. For the individual's second petition, the individual must both (1) have served at least 20 years of the individual's term of confinement *and* (2) be at least age 60 years. An individual may not petition the court to reduce a sentence for first-degree rape (§ 3-303 of the Criminal Law Article).

Hearings on Petitions

A petition must be filed in the sentencing circuit court. The court must hold a hearing on a petition filed by an eligible petitioner or if the State's Attorney files a motion to reduce the sentence of an incarcerated individual who is ineligible to file a petition under the bill. The individual must be present at the hearing unless the individual waives that right. This requirement may be satisfied if the individual elects to be present at the hearing by video conference. The victim or the victim's representative must be notified of the hearing in accordance with existing statutory requirements. The individual and the State may introduce evidence at the hearing.

Factors for Consideration, Court Decisions, etc.

The court's decision on the petition, which must be on the record in open court at the hearing or issued in writing within 90 days after the conclusion of the hearing, must address:

- the individual's age at the time of the offense;
- the nature of the offense and the history and characteristics of the individual;
- whether the individual has substantially complied with the rules of the institution in which the individual has been confined;
- whether the individual has participated in an educational, vocational, or other program;
- whether the individual has demonstrated maturity, rehabilitation, and fitness to reenter society sufficient to justify a sentence reduction;
- any statement offered by a victim or a victim's representative;

- any report of a physical, mental, or behavioral examination of the individual conducted by a health professional;
- the individual's family and community circumstances at the time of the offense, including any history of trauma, abuse, or involvement in the child welfare system;
- the extent of the individual's role in the offense; and
- any other factor the court considers relevant.

An individual's claims of innocence or the limited availability or accessibility of rehabilitative programs may not be construed against the petitioner.

Current Law: A person convicted of a crime who wishes to have their sentence reduced has multiple alternatives. One option is the Juvenile Restoration Act, which is similar to the bill. The Juvenile Restoration Act was enacted in 2021 and provides an opportunity for an individual convicted as an adult for an offense *committed when the individual was a minor* to file a motion with the court to reduce the duration of the individual's sentence.

Among other provisions, the Juvenile Restoration Act (Chapter 61 of 2021) authorizes an individual who was convicted as an adult for an offense committed when the individual was a minor to file a motion with the court to reduce the duration of the individual's sentence if the individual (1) was sentenced for the offense before October 1, 2021, and (2) has been imprisoned for at least 20 years for the offense.

The court must conduct a hearing on the motion. The individual must be present at the hearing, unless he or she waives that right. This requirement may be satisfied if the hearing is conducted by video conference. At the hearing, the individual may introduce evidence in support of the motion, and the State may introduce evidence in support of or in opposition to the motion. The victim or the victim's representative must be given notice of the hearing in accordance with §§ 11-104 and 11-503 of the Criminal Procedure Article.

After a hearing, the court may reduce the duration of a sentence imposed if the court determines that the individual is not a danger to the public, and the interests of justice will be better served by a reduced sentence. The court must consider specified factors when determining whether to reduce the duration of a sentence, including (1) the individual's age at the time of the offense; (2) the nature of the offense and the history and characteristics of the individual; (3) whether the individual has completed an educational, vocational, or other program; (4) whether the individual has demonstrated maturity, rehabilitation, and fitness to reenter society sufficient to justify a sentence reduction; (5) any statement offered by a victim or a victim's representative; (6) the individual's family and community circumstances at the time of the offense, including any history of trauma, abuse, or involvement in the child welfare system; and (7) the diminished

culpability of a juvenile as compared to an adult, including an inability to fully appreciate risks and consequence.

The court must issue a written decision that addresses the specified factors. If the court denies or grants, in part, a motion to reduce the duration of the sentence, the individual may not file a second motion for at least three years. If the court denies or grants, in part, a second motion, the individual may not file a third motion for at least three years. With regard to any specific sentence, an individual may not file a fourth motion to reduce the duration of the sentence.

State Expenditures:

Office of the Public Defender

General fund expenditures increase beginning in fiscal 2025 for OPD to implement the bill. OPD advises that it does not know the total number of people who may be eligible. However, based on data OPD received from DPSCS, approximately 1,245 people incarcerated in 2021 served at least 20 years of their sentence and are serving that sentence for a crime committed when they were a young adult (18 to 25 years old) or are older than age 60. Relying solely on this figure and assuming that approximately 10% would retain private counsel results in approximately 1,100 anticipated OPD clients. OPD further estimates that 200 of these individuals are already OPD clients whose motions under the bill would be incorporated into their current representation.

Because of its existing high caseloads and backlogged jury trial cases during the pandemic, OPD recruited dozens of *pro bono* attorneys and sought assistance from law schools to provide representation to eligible individuals under the Juvenile Restoration Act. Based on OPD's experience with the Juvenile Restoration Act, the office anticipates varying the representation to account for conflicts of interest, maximize cost efficiency, and ensure best practices. After accounting for clients that will be represented by panel attorneys or law school clinics, the staffing needs estimated by OPD for representing 700 new anticipated OPD clients are as follows: eight attorneys to provide legal representation (using appellate caseload standards), two social workers to assist with the mitigation and release planning, and two administrative employees to provide clerical support. The cost associated with these positions is \$1.0 million in fiscal 2025 and increases to \$1.4 million by fiscal 2029.

Without experience under the bill, the Department of Legislative Services (DLS) is unable to verify that staffing of the magnitude indicated by OPD is required. However, DLS agrees that the bill creates additional work for OPD that cannot be absorbed within existing resources. Accordingly, *at a minimum*, general fund expenditures increase by \$394,243 in fiscal 2025, which accounts for the bill's October 1, 2024 effective date. This estimate reflects the cost of hiring two attorneys, two social workers, and one administrative

employee. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	5.0
Salaries and Fringe Benefits	\$357,963
Operating Expenses	<u>36,280</u>
Minimum FY 2025 OPD Expenditures	\$394,243

Additional legal representation will be provided by panel attorneys, law school clinics, and volunteer private attorneys. However, OPD advises that it cannot estimate projected costs for panel attorneys at this time, therefore, such costs are not included in the estimate above.

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses. To the extent that the staffing levels represented above prove insufficient for actual implementation of the bill, OPD can request additional resources through the annual budget process.

Initial workloads are likely to be heavy as OPD identifies eligible incarcerated individuals within the existing Division of Correction population, compiles and evaluates their casefiles, prepares their petitions, and presents their petitions at court hearings. Future workloads will likely stabilize over time and will involve newly eligible incarcerated individuals and repeat petitions for previous petitioners.

For reference, OPD's Post-Conviction Defenders Unit has 21 attorneys and 3 attorney vacancies; the unit has 6.5 additional staff, including 1 paralegal and administrative employees. OPD's Appellate Division has 26 attorneys and 4 attorney vacancies; the unit has 7.5 additional staff, including 2 paralegals and administrative employees.

Department of Public Safety and Correctional Services

DPSCS did not provide statistics on the number of currently incarcerated individuals affected by the bill. Regardless, general fund expenditures for DPSCS decrease if the bill shortens incarcerations. The extent to which to this occurs depends on judicial decisions on filed petitions and can only be determined with actual experience under the bill. Many of the factors judges must consider under the bill are natural considerations during the parole process. Excluding all health care (which is a fixed cost under the current contract), the average variable costs in State correctional facilities total \$336 per month.

For context, according to OPD's report on its efforts in the first year of the Juvenile Restoration Act, courts decided 36 motions during the first year of the Act. The following is a summary of the outcomes in those 36 cases:

- 23 cases (63.9%) – motion granted and defendant released from prison;
- 4 cases – court granted the motion in part and reduced the remaining incarceration time the petitioner must serve prior to release;
- 7 cases – court reached the merits but denied the petition;
- 1 case – court denied the motion without a hearing due to ineligibility; and
- 1 case – the individual was released on parole after the motion was filed but before the hearing (the court modified the sentence to place the individual on probation with conditions designed to maximize his chances of success).

As noted above, the Juvenile Restoration Act is limited to individuals who were convicted as adults for crimes *they committed as minors*. It is not clear at this time if the population eligible to file a petition under the bill will experience similar judicial outcomes as individuals who filed motions under the Juvenile Restoration Act.

Judiciary

The Judiciary advises that it does not anticipate a significant operational impact from the bill.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 724 (Delegate Pasteur, *et al.*) - Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State’s Attorneys’ Association; Department of Public Safety and Correctional Services; Department of Legislative Services

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