

Department of Legislative Services
Maryland General Assembly
1999 Session

FISCAL NOTE
Revised

Senate Bill 388 (Senator McCabe. *et al.*)
(Maryland Commission on Criminal Sentencing Policy)

Judicial Proceedings

Criminal Procedure - Commission on Criminal Sentencing Policy - Sentencing and Parole

This bill establishes a 19-member State Commission on Criminal Sentencing Policy as a permanent State commission, and specifies changes applicable to current criminal sentencing practices and parole.

This bill is effective July 1, 1999.

Fiscal Summary

State Effect: General fund expenditures increase by as much as \$326,000 beginning in FY 2000. The bill also has some indeterminate costs associated with judicial panel reviews of mandatory minimum sentences. Revenues would not be affected.

Local Effect: Expenditures could increase due to the additional panel reviews, since staff for circuit court judges are provided by the local subdivisions. Local costs could also increase due to increased use of correctional options at the local level. Any increases in costs cannot be reliably estimated at this time. Revenues would not be affected.

Small Business Effect: None.

Fiscal Analysis

Bill Summary: This bill establishes a permanent Criminal Sentencing Policy Commission that is different than the current study commission. The bill specifies the duties, procedures, reporting requirements, membership, and terms of the commission. The commission is required to meet at least quarterly, and may make changes to the sentencing guidelines only by a majority vote of the commission's full membership. The commission is required to hold its first meeting no later than July 15, 1999. The commission may require State and local units of government to provide information to the commission. Clerks of the circuit courts are required to send certain sentencing records to the commission.

In addition, the bill: (1) requires circuit court judges to state in open court, at the time of imposition of sentence for a violent crime, minimum parole eligibility; (2) establishes that inmates are not parole eligible until they have served one-fourth of a sentence; (3) requires circuit courts to make use of sentencing guidelines, worksheets, and departure forms; (4) allows a sentence to a correctional options program that falls within a certain matrix to constitute a sentence in compliance with the guidelines; and (5) authorizes a criminal sentence review panel to order an increase or decrease in a mandatory minimum sentence. A review panel is prohibited from ordering a decrease in a mandatory minimum sentence unless the panel's decision is unanimous.

The current guidelines of the Judiciary are adopted under this bill. The bill specifies that the failure of a court to comply with certain sentencing requirements does not affect the legality or efficacy of the sentence imposed. The bill specifies that it is voluntary for a court to sentence within the guidelines.

The commission is authorized to employ staff in accordance with the State budget. The commission is required to undertake an annual review of sentencing policy and practice and report, as specified, to the General Assembly by December 1 of each year. In addition, the commission is required to: (1) periodically conduct training and orientation for trial court judges, attorneys, probation officers, and other interested parties; (2) consult with the General Assembly on implementation, management, maintenance, and operations of the sentencing guidelines system; and (3) prepare statements containing fiscal and statistical information on proposed legislation affecting sentencing and corrections practices.

The commission shall adopt any sentencing guidelines and any changes to those guidelines as regulations subject to the Administrative Procedure Act. Any guidelines are effective on the effective date of the regulation. A court is not required to adopt or impose any guidelines.

Background: In 1996 the Maryland Commission on Criminal Sentencing Policy was

established to provide “truth in sentencing” for Maryland. Specifically, the commission is charged with evaluating the State's sentencing and correctional laws and policies and making recommendations to the Governor and the General Assembly regarding: (1) the efficacy of existing sentencing guidelines and the option of adopting a new guideline system; (2) the retention or elimination of parole; (3) whether to increase the amount of time required to be served before parole eligibility; (4) the amendment or elimination of diminution of confinement credits (“good time”); and (5) the expansion of alternatives to incarceration, known as correctional options, for nonviolent offenders.

The commission was required to study a variety of issues relating to the sentencing and correctional process, including truth in sentencing. Among the commission’s other objectives are reserving incarceration for career and violent offenders, reducing disparity in sentencing for similar crimes, and preserving judicial discretion in sentencing.

Currently, Maryland law authorizes, but does not mandate, the use of judicial guidelines in setting sentences. The current guidelines are descriptive, that is, they are based on the actual sentences imposed by judges. Judges are free to sentence outside the guidelines, and are merely required to state their reasons for doing so on a worksheet prepared for the current judicially established Guidelines Advisory Board.

The original reporting date and termination date for the commission was established as July 1, 1997. However, the commission’s reporting date was extended to December 31, 1998, and the commission’s report was timely issued. The termination date of the commission was extended to July 1, 1999. The commission’s grant funding was extended until December 31, 1999 by the Governor’s Commission on Crime Control and Prevention.

State Expenditures: The current study commission operates primarily on U.S. Justice Department Byrne Grant monies provided for the 1999 calendar year through the Governor’s Commission on Crime Control and Prevention. Of the study commission’s \$200,000 calendar 1999 budget, \$150,000 is federal money (Byrne funds) and \$50,000 is provided by State general funds. This is the same funding level, and source of funds, that was provided for fiscal 1998. The current grant extends until December 31, 1999.

As a permanent and different entity, the commission expects to need a more comprehensive staff, and tentatively expects to need an executive director, one research director, one administrative assistant, one information systems specialist, and one field operative to perform the duties required by this bill. Together with operating expenses the commission estimates a budgetary need of approximately \$326,000 for fiscal 2000. Future year expenditures would include (1) salaries with 3.5% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses. The Governor has not

included funds in the proposed fiscal 2000 budget for the commission as a permanent agency.

Under current practice, the sentencing guidelines unit of the Judiciary is staffed by an administrator, eight full-time clerks, a contractual clerk, a one-time automation upgrade, and continuing automation support expenditures at a cost of approximately \$305,000 for fiscal 2000. Out-year expenditures from fiscal 2001 - 2004 are expected to grow from \$230,000 to \$255,000. However, under this bill, it is unclear whether the creation of the new commission would eliminate all costs for the Judiciary related to sentencing guidelines implementation and operation. It is clear that the commission created by this bill is intended to fully supplant any sentencing guidelines authority currently operated by the Judiciary.

In any event, to the extent that responsibilities and duties would be transferrable, the Judiciary's current sentencing guidelines unit could be transferred to the new commission and augmented with available grant monies or additional general or special fund support. The cost attached to this methodology would, of course, depend on the extent to which the new commission's funding needs might exceed such a transfer of resources.

For purposes of illustration, under this bill, if the Judiciary's sentencing guidelines unit were fully transferred to the new commission, general fund expenditures for the commission could increase by the difference in cost for the unit and the anticipated additional costs for the new commission. For fiscal 2000, based on projected spending by the commission and current costs for the Judiciary cited above, this could amount to an additional general fund need of \$19,000 (\$326,000 for the commission less \$305,000 for the current Judiciary unit). Of course, there would also be a savings experienced by the Governor's Commission on Crime Control and Prevention in available grant monies consisting of the unexpended portion of the grant slated for the study commission in calendar 1999.

Commission members would be reimbursed for expenses under the standard State travel regulations. Any such expenditures would depend upon the time, location, and frequency of the commission's meetings. These expenses are assumed to be minimal and able to be handled with existing resources of the entities represented on the commission.

Provisions of the bill relating to requiring court sentencing statements on parole eligibility, the use of sentencing guidelines instruments, or allowing sentences correctional options programs to count toward guidelines compliance would not have any discernable fiscal impact on the Judiciary or other units of government. The statutory requirement for inmates to serve one-fourth of their sentence before parole eligibility largely codifies existing practice and should have no measurable impact on correctional or parole practices or costs.

However, the extent to which the bill's changes relating to criminal sentence review panels

could affect State spending is less clear. This is especially the case in view of the bill's authorization for criminal sentence review panels to change, up or down, mandatory minimum sentences. There is currently no reporting mechanism by which to determine the rate at which mandatory minimum sentences are meted out.

Currently, a sentence review panel may not review or change mandatory minimum sentences. Accordingly, general fund expenditures could increase or decrease from those individuals currently serving a mandatory minimum sentence who have the sentence changed by a panel review. Persons serving a sentence longer than one year are incarcerated in a Division of Correction facility. In fiscal 2000 the average monthly cost per inmate, including overhead, is estimated at \$1,600. Any change in expenditures for the division is dependent on the number of individuals who apply for a panel review and the actual change in sentences ordered by the panel. In fiscal 1998, when mandatory minimum sentences were not subject to review, there were 205 panel reviews, of which seven resulted in a decrease of sentence and one resulted in an increase.

Expenditures could increase as the panels have the authority to order the Division of Parole and Probation to perform investigations and report to the panel. Any increase depends on the number of additional reviews requested by panels; any such costs should be able to be absorbed within the existing resources of the division.

In addition, allowing for review of mandatory minimum sentences would likely serve as a catalyst, at least initially, for significantly greater numbers of defense motions for review. Even with the necessity of unanimity for a mandatory minimum sentence to be reduced, it is assumed that this change would be viewed as a greater opportunity for reduction of a sentence rather than as potential for an increased sentence. Accordingly, it is probable that motions for review would measurably increase, perhaps substantially. However, if the initial experience does not tend to show any greater opportunity for reduced sentence, it is likely that the numbers of motions for review would subside. In any event, it is assumed that the requirements of this bill relating to criminal review panels can, at present, be handled with the currently budgeted resources of the Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts), Maryland Commission on Criminal Sentencing Policy, Department of Budget and Management, Department of Legislative Services

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