

HOUSE BILL 1172

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HB 992/00 - JUD

2001 Regular Session
11r1627

By: **Delegates O'Donnell, Amedori, Baldwin, Barkley, Bartlett, Bohanan, Boschert, Boutin, Bozman, Burns, Cadden, Conroy, Conway, Cryor, DeCarlo, Edwards, Elliott, Flanagan, Franchot, Getty, Glassman, Greenip, Hutchins, James, J. Kelly, K. Kelly, Kittleman, Klausmeier, Klima, La Vay, Leopold, Love, Malone, McClenahan, McKee, Minnick, Mitchell, Moe, Mohorovic, Murphy, Owings, Parrott, Ports, Redmer, Rosso, Rzepkowski, Shank, Snodgrass, Sophocleus, Stocksdale, Stull, Valderrama, Weir, and Wood**

Introduced and read first time: February 9, 2001
Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure - Review of Sentence - Exception for Handgun and**
3 **Assault Pistol Crimes**

4 FOR the purpose of prohibiting a certain panel of judges, when reviewing a sentence,
5 from decreasing a mandatory minimum sentence imposed for certain crimes
6 involving handguns and assault pistols; and generally relating to reviews of
7 mandatory minimum sentences.

8 BY repealing and reenacting, without amendments,
9 Article 27 - Crimes and Punishments
10 Section 36B(d) and 36H-6(b)
11 Annotated Code of Maryland
12 (1996 Replacement Volume and 2000 Supplement)

13 BY repealing and reenacting, without amendments,
14 Article - Criminal Procedure
15 Section 8-105
16 Annotated Code of Maryland
17 (As enacted by Chapter _____ (S.B. 1) of the Acts of the General Assembly of
18 2001)

19 BY repealing and reenacting, with amendments,
20 Article - Criminal Procedure
21 Section 8-107(c)
22 Annotated Code of Maryland
23 (As enacted by Chapter _____ (S.B. 1) of the Acts of the General Assembly of

1 2001)

2 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
3 MARYLAND, That the Laws of Maryland read as follows:

4 **Article 27 - Crimes and Punishments**

5 36B.

6 (d) Any person who shall use a handgun or an antique firearm capable of
7 being concealed on the person in the commission of any felony or any crime of violence
8 as defined in § 441 of this article, whether operable or inoperable at the time of the
9 offense, shall be guilty of a separate misdemeanor and on conviction thereof shall, in
10 addition to any other sentence imposed by virtue of commission of said felony or
11 misdemeanor:

12 (1) For a first offense, be sentenced to the Maryland Division of
13 Correction for a term of not less than 5 nor more than 20 years, and:

14 (i) It is mandatory upon the court to impose no less than the
15 minimum sentence of 5 years; and

16 (ii) Except as otherwise provided in § 4-305 of the Correctional
17 Services Article, the person is not eligible for parole in less than 5 years; and

18 (2) For a second or subsequent offense, be sentenced to the Maryland
19 Division of Correction for a term of not less than 5 nor more than 20 years, and it is
20 mandatory upon the court to impose no less than a minimum consecutive sentence of
21 5 years which shall be served consecutively and not concurrently to any other
22 sentence imposed by virtue of the commission of said felony or misdemeanor.

23 36H-6.

24 (b) Any person who uses an assault pistol, or a magazine that has a capacity of
25 more than 20 rounds of ammunition, in the commission of any felony or any crime of
26 violence as defined in § 441 of this article shall be guilty of a separate misdemeanor
27 and on conviction thereof shall, in addition to any other sentence imposed by virtue of
28 commission of the felony or misdemeanor:

29 (1) For a first offense, be sentenced to the Maryland Division of
30 Correction for a term of not less than 5 nor more than 20 years, and:

31 (i) It is mandatory upon the court to impose no less than the
32 minimum sentence of 5 years no part of which shall be suspended; and

33 (ii) Except as otherwise provided in § 4-305 of the Correctional
34 Services Article, the person is not eligible for parole in less than 5 years; and

35 (2) For a second or subsequent offense, be sentenced to the Maryland
36 Division of Correction for a term of not less than 10 nor more than 20 years, and it is

1 mandatory upon the court to impose no less than a minimum sentence of 10 years
2 which shall be served consecutively and not concurrently to any other sentence
3 imposed by virtue of the commission of the felony or misdemeanor.

4

Article - Criminal Procedure

5 8-105.

6 (a) A review panel consists of three or more circuit court judges of the judicial
7 circuit in which the sentencing court is located.

8 (b) Notwithstanding any Maryland Rule, the sentencing judge may not be a
9 member of the review panel, but on request of the sentencing judge, the sentencing
10 judge may sit with the review panel only in an advisory capacity.

11 (c) (1) A review panel shall consider each application for review of a
12 sentence.

13 (2) A review panel may require the Division of Parole and Probation to
14 make investigations, reports, and recommendations.

15 (3) A review panel:

16 (i) with or without a hearing, may decide that the sentence under
17 review should remain unchanged; or

18 (ii) after a hearing, may order a different sentence to be imposed or
19 served, including:

- 20 1. an increased sentence;
- 21 2. subject to § 8-107(c) of this title, a decreased sentence;
- 22 3. a suspended sentence to be served wholly or partly; or
- 23 4. a sentence to be suspended with or without probation.

24 (4) In deciding to order a different sentence, the review panel may
25 impose conditions that the review panel considers just and that could have been
26 imposed lawfully by the sentencing court when the sentence was imposed.

27 (d) If the review panel orders a different sentence, the review panel shall
28 resentence and notify the defendant in accordance with the order of the panel.

29 8-107.

30 (c) (1) A review panel may not order a decrease in a mandatory minimum
31 sentence unless the decision of the review panel is unanimous.

32 (2) A REVIEW PANEL MAY NOT DECREASE A MANDATORY MINIMUM
33 SENTENCE UNDER ARTICLE 27, § 36B(D) OR § 36H-6(B) OF THE CODE.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2001.