
By: **Senators Haines, Colburn, Ferguson, Hafer, Harris, Hooper, Jacobs,
Jimeno, Madden, McCabe, Mooney, Munson, and Stoltzfus**

Introduced and read first time: February 2, 2001

Assigned to: Judicial Proceedings

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 amendment,
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 2001)

18 BY repealing and reenacting, with amendments,
19 Article - Criminal Procedure
20 Section 8-107
21 Annotated Code of Maryland
22 (As enacted by Chapter _____(S.B. 1) of the Acts of the General Assembly of 2001)

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

Article 27 - Crimes and Punishments

2 36B.

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

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

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

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

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

20 36H-6.

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

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

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

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

32 (2) For a second or subsequent offense, be sentenced to the Maryland
33 Division of Correction for a term of not less than 10 nor more than 20 years, and it is
34 mandatory upon the court to impose no less than a minimum sentence of 10 years
35 which shall be served consecutively and not concurrently to any other sentence
36 imposed by virtue of the commission of the felony or misdemeanor.

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Article - Criminal Procedure

2 8-105.

3 (a) A review panel consists of three or more Circuit Court judges of the
4 Judicial Circuit in which the sentencing court is located.

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

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

10 (2) A review panel may require the division of parole and probation to
11 make investigations, reports, and recommendations.

12 (3) A review panel:

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

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

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

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

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

26 8-107.

27 (a) Except as provided in subsection (c) of this section, a majority of the
28 members of the review panel is necessary to make a decision.

29 (b) The review panel shall make the decision within 30 days after the filing
30 date of the application for review.

31 (c) (1) [A] SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A review
32 panel may not order a decrease in a mandatory minimum sentence unless the
33 decision of the review panel is unanimous.

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

3 (d) A review panel shall consider time served on the sentence under review to
4 be time served on any sentence that is substituted.

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