

HOUSE BILL 1021

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HB 1172/01 - JUD

2002 Regular Session
2lr1560

By: **Delegates O'Donnell, Amedori, Baldwin, Bartlett, Boschert, Boutin, Brinkley, Cryor, Eckardt, Edwards, Elliott, Flanagan, Getty, Glassman, Greenip, Hutchins, Kach, Klima, La Vay, Leopold, McClenahan, McKee, Parrott, Pielke, Ports, Redmer, Rzepkowski, Schisler, Shank, Snodgrass, Stocksdale, Stull, Walkup, and Bates**

Introduced and read first time: February 8, 2002
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 - Criminal Law
10 Section 4-204 and 4-306(b)
11 Annotated Code of Maryland
12 (As enacted by Chapter ____ (H.B. 11) of the Acts of the General Assembly of
13 2002)

14 BY repealing and reenacting, without amendments,
15 Article - Criminal Procedure
16 Section 8-105
17 Annotated Code of Maryland
18 (2001 Volume)

19 BY repealing and reenacting, with amendments,
20 Article - Criminal Procedure
21 Section 8-107(c)
22 Annotated Code of Maryland
23 (2001 Volume)

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

Article - Criminal Law

1
2 4-204.

3 (a) A person may not use an antique firearm capable of being concealed on the
4 person or any handgun in the commission of a crime of violence, as defined in Article
5 27, § 441 of the Code, or any felony, whether the antique firearm or handgun is
6 operable or inoperable at the time of the crime.

7 (b) (1) (i) A person who violates this section is guilty of a misdemeanor
8 and, in addition to any other penalty imposed for the crime of violence or felony, shall
9 be sentenced to imprisonment for not less than 5 years and not exceeding 20 years.

10 (ii) The court may not impose less than the minimum sentence of 5
11 years and, except as otherwise provided in § 4-305 of the Correctional Services
12 Article, the person is not eligible for parole in less than 5 years.

13 (2) For each subsequent violation, the sentence shall be consecutive to
14 and not concurrent with any other sentence imposed for the crime of violence or
15 felony.

16 4-306.

17 (b) (1) A person who uses an assault pistol, or a magazine that has a
18 capacity of more than 20 rounds of ammunition, in the commission of a felony or a
19 crime of violence as defined in Article 27, § 441 of the Code is guilty of a misdemeanor
20 and on conviction, in addition to any other sentence imposed for the felony or crime of
21 violence, shall be sentenced under this subsection.

22 (2) (i) For a first violation, the person shall be sentenced to
23 imprisonment for not less than 5 and not exceeding 20 years.

24 (ii) The court may not impose less than the minimum sentence of 5
25 years.

26 (iii) The mandatory minimum sentence of 5 years may not be
27 suspended.

28 (iv) Except as otherwise provided in § 4-305 of the Correctional
29 Services Article, the person is not eligible for parole in less than 5 years.

30 (3) (i) For each subsequent violation, the person shall be sentenced to
31 imprisonment for not less than 10 and not exceeding 20 years.

32 (ii) The court may not impose less than the minimum sentence of
33 10 years.

34 (iii) A sentence imposed under this paragraph shall be consecutive
35 to and not concurrent with any other sentence imposed for the felony or crime of
36 violence.

1

Article - Criminal Procedure

2 8-105.

3 (a) A review panel consists of three or more circuit court judges of the judicial
4 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 subtitle, 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 (c) (1) A review panel may not order a decrease in a mandatory minimum
28 sentence unless the decision of the review panel is unanimous.

29 (2) A REVIEW PANEL MAY NOT DECREASE A MANDATORY MINIMUM
30 SENTENCE UNDER § 4-204 OR § 4-306(B) OF THE CRIMINAL LAW ARTICLE.

31 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
32 October 1, 2002.