

Department of Legislative Services

Maryland General Assembly

2002 Session

FISCAL NOTE

House Bill 1021

(Delegate O'Donnell, *et al.*)

Judiciary

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

This bill prohibits a judicial sentence review panel from decreasing the mandatory minimum sentence for a person convicted of using any of the following in the commission of a felony or a crime of violence: (1) an antique firearm capable of being concealed; (2) a handgun; (3) an assault pistol; or (4) a magazine that has a capacity of more than 20 rounds of ammunition.

Fiscal Summary

State Effect: This bill is not expected to have any significant impact on governmental operations or finances, since review panels currently decrease very few sentences.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: Every person convicted of a crime by a trial court of the State and sentenced to serve more than two years imprisonment by one judge is entitled to apply for and have a single review of that sentence. An application for review must be filed within 30 days of the sentencing.

A panel of three or more trial judges of the judicial circuit in which the sentencing court is located conducts the review. A person has no right to have a sentence reviewed more

than once. The judge who sentenced the convicted person shall not be one of the members of the panel but may sit with the panel in an advisory capacity.

If a hearing is held, the panel generally may increase, decrease, or otherwise modify the sentence by majority rule. However, a mandatory minimum sentence may be decreased only by a unanimous vote of the panel. Without holding a hearing, the panel may decide that the sentence under review should remain unchanged. The review panel must file a written decision within 30 days of the application's filing date.

In addition, the Maryland Rules provide that a court has revisory power and control over a sentence upon a motion filed within 90 days after its imposition: (1) in the District Court of Maryland if an appeal has not been perfected; and (2) in a circuit court whether or not an appeal has been filed. Thereafter, the court has revisory power and control over the sentence in case of fraud, mistake, or irregularity, or as otherwise provided in the Maryland Rules in cases concerning desertion and non-support of spouse, children, or destitute parents. The court may not increase a sentence after the sentence has been imposed, except that it may correct an evident mistake in the announcement of a sentence if the correction is made on the record before the defendant leaves the courtroom following the sentencing proceeding. The court may correct an illegal sentence at any time.

Under the State's law relating to regulated firearms, a crime of violence means:

- abduction;
- arson in the first degree;
- assault in the first or second degree;
- burglary in the first, second, or third degree;
- carjacking and armed carjacking;
- escape in the first degree;
- kidnapping;
- voluntary manslaughter;
- maiming;
- mayhem;
- murder in the first or second degree;
- rape in the first or second degree;
- robbery and robbery with a dangerous or deadly weapon;
- sexual offense in the first, second, or third degree;

- an attempt to commit any of the above offenses; or
- assault with intent to commit any of the above offenses or any offense punishable by imprisonment for more than one year.

Background: The authority of a review panel to decrease a mandatory minimum sentence was granted under Chapter 648 of 1999. Mandatory minimum penalties apply to first degree murder (minimum life imprisonment, although the sentence is subject to suspension and life without parole), some firearms crimes, repeat drug distribution crimes, and repeat violent crimes.

In fiscal 2001, there were 121 applications filed for a sentence review. Of the cases that were heard that year (not all applications are heard in the year they are filed), the review panel decreased 5 sentences, increased 1 sentence, and made no changes to 97 sentences. Six petitions were withdrawn. In fiscal 2000, there were 110 applications filed for a sentence review. In that year, the review panel decreased 6 sentences and made no changes to 97 sentences (same as 2001). The panel did not increase any sentences, and 12 applications were withdrawn. It is unknown how many reviewed sentences in these years, if any, involved mandatory minimum sentences for handgun or assault pistol offenses.

Additional Information

Prior Introductions: A similar bill was introduced in the 2001 session as HB 1172. It received an unfavorable report from the Judiciary Committee. A similar bill was also introduced in the 2000 session as HB 992. The Judiciary Committee held a hearing on HB 992, but no further action was taken.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Public Safety and Correctional Services, Department of Legislative Services

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