

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE

House Bill 609
Judiciary

(Delegate Marriott, *et al.*)

Criminal Procedure - Review of Mandatory Minimum Sentences - Retroactive Effect

This bill allows a person serving a term of confinement that includes a mandatory minimum sentence imposed before July 1, 2001 to apply for and receive one review of the mandatory minimum sentence. Such an application must be made between October 1, 2002 and September 30, 2003.

The provisions of this bill terminate at the end of September 30, 2003.

Fiscal Summary

State Effect: Any increase in review panel hearings and revisions to mandatory minimum sentences as a result of applications made under this bill are not expected to have a significant impact on State operations or finances.

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.

Background: This bill does not alter any existing rules of appellate procedure or review of criminal convictions beyond giving certain inmates a retroactive right of review of their mandatory minimum sentence. 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.

The authority of a review panel to decrease a mandatory minimum sentence was granted under Chapter 648 of 1999. Chapter 648 took effect only prospectively on July 1, 1999; therefore, only inmates sentenced on or after July 1, 1999 could take advantage of the newly-created appellate review procedure for mandatory minimum sentences. A similar bill introduced in the 2000 session (House Bill 380) sought to provide a one-year window in which inmates convicted before July 1, 1999 could apply to a judicial review panel for a reduction of their mandatory minimum sentence. That bill received an unfavorable report from the Judiciary Committee.

In fiscal 2001, there were 121 applications filed for a sentence review. In that year (not all applications are heard in the year they are filed), the review panel decreased five

sentences, increased one 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.

Additional Information

Prior Introductions: A similar bill was introduced in the 2000 session as HB 380. HB 380 received an unfavorable report from the Judiciary Committee.

Cross File: None.

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

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