

**Department of Legislative Services**  
Maryland General Assembly  
2004 Session

**FISCAL AND POLICY NOTE**

House Bill 331  
Judiciary

(Delegate Marriott, *et al.*)

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**Burglary and Daytime Housebreaking – Mandatory Sentences – Retroactive Effect**

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This bill allows a person serving a term of confinement for burglary or daytime housebreaking that includes a mandatory minimum sentence imposed before October 1, 1994 to apply for and receive one review of the mandatory minimum sentence. Such an application must be made on or before September 30, 2005.

The bill takes effect October 1, 2004 and terminates September 30, 2005.

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**Fiscal Summary**

**State Effect:** While this bill could lead to an increase in review panel hearings and revisions to mandatory minimum sentences, it is not expected to have a significant impact on State operations or finances.

**Local Effect:** Minimal – see above.

**Small Business Effect:** None.

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**Analysis**

**Current Law:** Every person convicted of a crime by a circuit court of the State and sentenced to serve more than two years imprisonment by a 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, 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 nonsupport 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.

A person who has served two separate terms of confinement after conviction for a crime of violence who is convicted of a third crime of violence is subject to a mandatory minimum sentence of 25 years imprisonment. If the person is subsequently convicted of a fourth crime of violence, the mandatory sentence is life imprisonment without parole.

Under common law and former statutes, an element of the felony of burglary was that it take place in the nighttime. The former statutory felony of daytime housebreaking prohibited breaking into and entering a dwelling house in the daytime.

Current law provides penalties for first, second, third, and fourth degree burglary. There is no reference in any of these statutes to the time of day at which the activity occurs.

**Background:** Prior to the enactment of Chapter 712 of 1994, burglary and daytime housebreaking were considered crimes of violence that triggered these mandatory sentences. Daytime housebreaking was defined as breaking into a dwelling house in the daytime, with intent to commit murder or a felony, or to steal or take away personal goods or anything of value. Chapter 712, which deleted these crimes from the list of

violent crimes to which mandatory minimum sentences apply, took effect on October 1, 1994.

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### **Additional Information**

**Prior Introductions:** This bill was introduced in the 2003 session as HB 516. It failed on third reader in the House.

**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

**Fiscal Note History:** First Reader - February 5, 2004  
mam/jr

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