

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE
Revised

House Bill 596

(Delegate Marriott, *et al.*)

Judiciary

Judicial Proceedings

Burglary and Daytime Housebreaking - Mandatory Sentences - Retroactive Effect

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. The panel may strike the restriction against parole, but may not reduce the length of the sentence. An application for review must be filed on or before September 30, 2006.

The bill takes effect October 1, 2005 and terminates September 30, 2006.

Fiscal Summary

State Effect: Potential increase or decrease in general fund expenditures for incarceration. The actual impact depends on the number of requests for sentence review filed and whether the sentences are reduced or lengthened. 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 the operations or finances of the Judiciary or the Department of Public Safety and Correctional Services.

Local Effect: Minimal – see above.

Small Business Effect: None.

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.

In *Cox v. State* (134 Md. App. 466), the Court of Special Appeals held that there was no retroactive right to a sentence review. The defendant was convicted of housebreaking in 1992 and received a mandatory minimum sentence of 25 years. After several appeals, the defendant applied for a review of sentence by a three-judge panel. The statute allowing panel review had an effective date of July 1, 1999 and there was no provision in the statute allowing for retroactive review. His request was denied by the circuit court and the defendant appealed. The Court of Special Appeals held that there was no right to retroactive review of sentence due to the presumption against retroactivity and the General Assembly's rejection of a bill that would have allowed review of sentences imposed prior to July 1, 1999.

State Fiscal Effect: Data is not readily available on the number of people sentenced to mandatory minimum jail terms for burglary or daytime housebreaking prior to July 1, 1999. General fund expenditures could increase or decrease minimally as a result of changes to inmates' sentences as provided by the review panels due to inmates having their sentences lengthened or reduced. The number of people who would have their sentence changed cannot be reliably predicted, but is assumed to be small.

The Administrative Office of the Courts advises, by way of illustration, that in fiscal 2001, there were 121 applications filed for review of sentence. In that year, 6 petitions were withdrawn; 5 sentences were decreased; 1 sentence was increased; and 97 sentences were unchanged (not all applications are heard in the year they are filed). It is unknown how many of these sentences, if any, involved mandatory minimum sentences.

Currently, the average total cost per inmate, including overhead, is estimated at \$1,850 per month. Excluding overhead, the average cost of housing a new Division of Correction inmate (including medical care and variable costs) is \$310 per month. Excluding medical care, the average variable costs total \$120 per month.

Additional Information

Prior Introductions: HB 331 of 2004, an identical bill, received an unfavorable report from the Judiciary Committee.

Cross File: None.

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

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