

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

House Bill 160
Judiciary

(Delegate Arnick)

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, 1999 to apply for and receive one review of the mandatory minimum sentence. Such an application must be made by September 30, 2007.

The bill takes effect October 1, 2006 and terminates September 30, 2007.

Fiscal Summary

State Effect: Potential minimal increase or decrease in incarceration expenditures. The actual impact depends on the number of requests for sentence review filed and whether sentences are reduced or lengthened.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: Every person convicted of a crime by a circuit court 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 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 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 not revise a sentence if more than five years have passed since the sentence was originally imposed. The court may correct an illegal sentence at any time.

Appendix 1 lists offenses that carry mandatory minimum sentences.

Background: The Justice Policy Institute reports that in fiscal 2001, sentence review panels in Maryland decreased 5 sentences, increased 1 sentence, and left 97 sentences unchanged.

In *Cox v. State*, 134 Md. App. 465 (2000), 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 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 sentences changed cannot be reliably predicted, but is assumed to be small.

Currently, the Division of Correction (DOC) average total cost per inmate, including overhead, is estimated at \$1,974 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including medical care and variable costs) is \$341 per month.

Additional Information

Prior Introductions: HB 35 of 2005 and HB 380 of 2000, both identical bills, received unfavorable reports from the Judiciary Committee.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Public Safety and Correctional Services; Maryland State Commission on Criminal Sentencing Policy; *Cutting Correctly in Maryland*, Justice Policy Institute, February 20, 2003; Department of Legislative Services

Fiscal Note History: First Reader - February 6, 2006
mll/jr

Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

Appendix 1
Offenses with Mandatory Minimum Sentences

<u>Offense</u>	<u>Source</u>	<u>Level</u>	<u>Maximum</u>	<u>Minimum</u>
<i>Weapons</i>				
Use of assault pistol or magazine with a capacity of more than 20 rounds in the commission of a felony or crime of violence, first offense	CR, § 4-306(b)(2)	Misdemeanor	20 years	5 years
Use of assault pistol or magazine with a capacity of more than 20 rounds in the commission of a felony or crime of violence, subsequent	CR, § 4-306(b)(3)	Misdemeanor	20 years	10 years
Wearing, carrying, or transporting a handgun	CR, § 4-203	Misdemeanor	Various – 3 years	Various – 30 days
Use of handgun or antique firearm in commission of felony or crime of violence	CR, § 4-204(b)(1)	Misdemeanor	20 years	5 years
Illegal possession of a firearm after having been convicted of a crime of violence or certain drug crimes	PS, § 5-133(c)	Felony	5 years	5 years
<i>CDS</i>				
Drug kingpin	CR, § 5-613	Felony	40 years	20 years

<u>Offense</u>	<u>Source</u>	<u>Level</u>	<u>Maximum</u>	<u>Minimum</u>
Unlawful manufacture, distribution, etc.; counterfeiting, etc. of certain equipment for illegal use; keeping common nuisance, schedule I or II narcotics (e.g., PCP, heroin, cocaine, and LSD), subsequent	CR, § 5-608(b), (c), (d)	Felony	2 nd = 20 years	2 nd = 10 years 3 rd = 25 years 4 th = 40 years
Volume Dealer	CR, § 5-612(c)	Felony		5 years
Unlawful manufacture, distribution, etc.; counterfeiting, etc. of certain equipment for illegal use; keeping common nuisance, schedule III through V non-narcotics (e.g., amphetamines, marijuana, diazepam, and Valium), subsequent	CR, § 5-607(b)	Felony	5 years	2 years
Use of weapon in relation to a drug trafficking crime, first offense	CR, § 5-621(c)	Felony	20 years	5 years
Use of weapon with a silencer in relation to a drug trafficking crime, first offense	CR, § 5-621(d)	Felony	20 years	10 years
Use of weapon in relation to a drug trafficking crime, subsequent	CR, § 5-621(c)	Felony	20 years	10 years
Use of weapon with a silencer in relation to a drug trafficking crime, subsequent	CR, § 5-621(d)	Felony	20 years	20 years
<i>Murder</i>				
First degree, generally	CR, §2-201(a)	Felony	Death	Life