

Department of Legislative Services
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FISCAL AND POLICY NOTE
Revised

House Bill 312

(Chair, Judiciary Committee)(By Request - Maryland
Judicial Conference)

Judiciary

Judicial Proceedings

Courts - Sentence Review - Review Panel

This bill makes several changes to criminal sentence review panels and procedures.

Fiscal Summary

State Effect: The bill is technical/procedural in nature and is not expected to have a material effect on State finances.

Local Effect: The bill is technical/procedural in nature and is not expected to have a material effect on local finances.

Small Business Effect: None.

Analysis

Bill Summary:

Composition of Criminal Sentence Review Panels: The bill alters the composition of criminal sentence review panels by specifying that a panel consists of three circuit court judges from the judicial circuit in which the sentencing court is located.

Participation of Sentencing Judge in Review Proceedings: The bill removes the current statutory authorization for a sentencing judge to sit with a review panel in an advisory capacity. The bill expressly prohibits a sentencing judge from serving on the panel and prohibits the review panel from conferring with the sentencing judge.

Eligibility for Judicial Review of a Criminal Sentence: The bill alters the eligibility requirements for judicial review of a criminal sentence. Under the bill, a person who is convicted of a crime or found in violation of probation by a circuit court and sentenced to serve a sentence of more than two years in a correctional facility is eligible for one review of the sentence or the violation of probation, but not both. The bill removes current statutory language regarding computation of the length of a sentence for purposes of sentence review, and instead, clarifies that the total period of the person's sentence, including any suspended portion, is to be used when determining whether a person is eligible for sentence review.

Actions Taken by Sentence Review Panels and Subsequent Jurisdiction: The bill clarifies that when deciding to order a different sentence, a review panel may impose any lawful conditions that the review panel considers just. Currently, panels may only consider lawful conditions that could have been imposed by the sentencing court when the sentence was imposed. If the review panel decides that the sentence should remain unchanged, the sentencing judge retains jurisdiction over the defendant's case and may rule on a motion for sentence modification filed under the Maryland Rules. However, if the review panel orders a different sentence, the sentencing judge is prohibited from taking any further action regarding the case of the defendant. After a person has been resentenced by a review panel: (1) any further action in the case, including any violation of probation, must be taken by the review panel member designated by the panel; and (2) the defendant may file a motion for modification of the new sentence under the Maryland Rules even if the defendant filed a motion for modification of the original sentence.

Procedures at Sentence Review Hearings: Currently, a review panel must allow each party to be heard at a sentence review hearing prior to changing a sentence. The bill amends this requirement by specifying that a review panel must allow the State, the defendant, and the defendant's counsel to be heard at a hearing for a review of a sentence.

Current Law: A person convicted of a crime by a circuit court and sentenced to serve a sentence that exceeds two years in a correctional facility is entitled to a single sentence review by a review panel. An application for review must be filed within 30 days of the sentencing. A person is not entitled to (1) a sentence review if the sentence was imposed by more than one circuit court judge; or (2) a review of an order requiring a suspended part of a sentence to be served if the sentence was wholly or partly suspended, the sentence was reviewed, and the suspended sentence or the suspended portion of the sentence was required to be served.

The minimum length of sentence required for review is calculated using the total period of the sentence and any unserved time of a prior or simultaneous sentence, including: (1) a sentence imposed by a circuit court; (2) a requirement by a circuit court that all or

part of a suspended sentence be served; and (3) a prior or simultaneous sentence, suspended or not suspended, that has been imposed by a court or other authority of the State or another jurisdiction.

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 may 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, Maryland Rules specify that upon a motion filed within 90 days after its imposition: (1) in the District Court, if an appeal has not been perfected or has been dismissed; and (2) in a circuit court, whether or not an appeal has been filed, a court has revisory power and control over a sentence, except that it may not revise the sentence after five years from the date the sentence was originally imposed and the court may not increase the sentence.

The court may correct an illegal sentence at any time. The court also has revisory power over a sentence in the case of fraud, mistake, or irregularity. In addition, the court 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.

A review panel may increase, modify, or reduce a sentence only after notifying each party and the victim or the victim's representative. Before changing a sentence, the review panel must allow each party to be heard at the hearing and must allow the victim or the victim's representative to attend the hearing and address the panel. Under Maryland Rules, the court may modify, reduce, correct, or vacate a sentence only on the record in open court after hearing from the defendant, the State, and from each victim or victim's representative who requests an opportunity to be heard. The defendant may waive the right to be present. No hearing may be held on a motion to modify or reduce the sentence until the court has determined that the statutory victim notification requirement has been met. If the court grants the motion, it must prepare or dictate into the record a statement of the reasons on which the ruling is based.

Background: According to the Administrative Office of the Courts (AOC) and the Office of the Public Defender (OPD), individuals who have violated probation and meet

the other eligibility requirements for sentence review are currently having their violations of probation reviewed by a three-judge panel, even if the original sentence on which the probation violation is based had been previously reviewed by a three-judge panel. According to AOC, the bill codifies case law, which already states that a person may have his or her sentence or subsequent violation of probation reviewed by a three-judge panel, but not both. AOC further contends that the bill is an attempt to prevent redundant reviews by three-judge panels, since some judges are unaware of the case law limitations on sentence review.

Individuals who have been found in violation of probation in the circuit court may appeal the violation of probation to the Court of Special Appeals. However, unlike most appeals to the Court of Special Appeals, these appeals are discretionary rather than a matter of right. As a result, a person who wishes to appeal a violation of probation to the Court of Special Appeals must file an Application for Leave to Appeal. In fiscal 2009, the Court of Special Appeals received 75 Applications for Leave to Appeal for violations of probation. None of the applications were granted, 42 were denied, 33 were dismissed or transferred, and none were remanded.

State Fiscal Effect: While the opportunity to appeal a violation of probation is not affected by the bill, the bill may result in the shifting of sentence reviews from three-judge panels in the circuit courts to Applications for Leave to Appeal in the Court of Special Appeals, since that will be the only remaining avenue for review of a violation of probation finding in the circuit court. Regardless, any shifting of cases from the circuit courts to the Court of Special Appeals is unlikely to have a material effect on State expenditures, and both AOC and OPD advise that the bill is unlikely to have a material effect on caseloads.

Local Fiscal Effect: See above. Any shifting of sentence reviews from the circuit courts to the Court of Special Appeals is unlikely to have to material effect on local expenditures for circuit courts.

Additional Information

Prior Introductions: None.

Cross File: SB 17 (Chair, Judicial Proceedings Committee)(By Request - Maryland Judicial Conference) - Judicial Proceedings.

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

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