

Department of Legislative Services
 Maryland General Assembly
 2016 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 122 (Senator Simonaire)
 Judicial Proceedings

Criminal Procedure - Reconsiderations of Sentences - Reporting

This bill alters the reporting requirements of the Maryland State Commission on Criminal Sentencing Policy (MSCCSP) by (1) removing the requirement that MSCCSP review increases in original sentences that have occurred because of reconsiderations of sentences imposed under § 14-101 of the Criminal Law Article; (2) requiring MSCCSP to provide in its annual report specified information on reconsiderations of sentences imposed for crimes listed in § 14-101(a) of the Criminal Law Article; and (3) requiring MSCCSP’s annual report to include a review of each judicial circuit’s compliance with providing data on the number of reconsiderations of sentences imposed under § 14-101 of the Criminal Law Article by offense and with providing data on the additional information required under the bill.

Fiscal Summary

State Effect: General fund expenditures increase by up to \$40,700 in FY 2017 for MSCCSP to implement the bill’s requirements. Future year expenditures for maintenance are minimal. Revenues are not affected.

(in dollars)	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	40,700	100	100	0	0
Net Effect	(\$40,700)	(\$100)	(\$100)	\$0	\$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Circuit courts can implement the bill’s requirements with existing budgeted resources. Local revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary: The bill requires MSSCSP to include in its annual report information on reconsiderations of sentences for crimes listed in § 14-101(a) of the Criminal Law Article, including the crime, the original sentence and sentencing date, the modified sentence and sentencing date, the reason for modification, the judge granting the modification, and the judicial circuit of the sentencing judge.

The bill also requires MSCCSP to include in its annual report a review of each judicial circuit's compliance with providing MSCCSP with data on (1) the number of reconsiderations of sentences in the circuit, categorized by offense as listed in § 14-101 of the Criminal Law Article, and (2) the information discussed above.

Current Law: Section 14-101(a) of the Criminal Law Article specifies offenses classified as crimes of violence. Sections 14-101(b) through (d) impose mandatory sentences for individuals who have prior convictions for these offenses and meet other specified criteria.

Section 14-101(a) defines a "crime of violence" as (1) abduction; (2) arson in the first degree; (3) kidnapping; (4) manslaughter, except involuntary manslaughter; (5) mayhem; (6) maiming; (7) murder; (8) rape; (9) robbery; (10) carjacking (including armed carjacking); (11) first- and second-degree sexual offenses; (12) use of a handgun in the commission of a felony or other crime of violence; (13) child abuse in the first degree; (14) sexual abuse of a minor younger than age 13 under specified circumstances; (15) an attempt to commit crimes (1) through (14); (16) continuing course of conduct with a child; (17) assault in the first degree; or (18) assault with intent to murder, rape, rob, or commit a sexual offense in the first or second degree.

Under Maryland Rule 4-345, the court may correct an illegal sentence at any time and has revisory power over a sentence in cases of fraud, mistake, or irregularity. In general, the court has revisory power over a sentence if a defendant files a motion within 90 days after imposition of the sentence. However, the court may not increase the defendant's sentence and may not revise a sentence after the expiration of five years from the date the sentence was originally imposed on the defendant.

MSCCSP is required to conduct an annual review of sentencing policy and practice and submit a report to the General Assembly by January 31 of each year. The report must (1) include any changes to the sentencing guidelines made during the preceding year; (2) review judicial compliance with the sentencing guidelines, including compliance by crime and by judicial circuit; (3) review reductions or increases in original sentences that have occurred because of reconsiderations of mandatory sentences for crimes of violence; and (4) categorize information on these reconsiderations of sentences by offense and by judicial circuit.

Background: The General Assembly created MSCCSP in 1999, after a study commission recommended the creation of a permanent commission in its final report. MSCCSP consists of 19 members, including members of the Judiciary, members who are active in Maryland's criminal justice system, members of the General Assembly, and public representatives.

MSCCSP was created to oversee sentencing policy in Maryland and is primarily responsible for maintaining and monitoring the State's voluntary sentencing guidelines, which are intended to promote fair and proportional sentencing while eliminating sentencing disparity.

MSCCSP is authorized to adopt sentencing guidelines to be considered by courts when determining the appropriate sentence for a criminal defendant, as well as the collection and automation of sentencing guidelines data. All sentencing guidelines data are provided on the sentencing guidelines worksheet, which is completed to determine the recommended sentencing guidelines outcome and to record sentencing data for offenses prosecuted in circuit court. After completing the worksheet, a sentencing judge reviews the worksheet for completeness and accuracy and submits a copy of the worksheet (paper or electronic) to MSCCSP. The commission's staff enter the data from the worksheet into a database and use the collected data to analyze sentencing trends, monitor circuit court sentencing compliance, and adopt changes to the guidelines consistent with legislative intent when necessary.

Chapter 559 of 2002 required MSCCSP to add the following information to its annual report: (1) a review of the reductions or increases in original sentences that occurred because of reconsiderations of sentences imposed under § 14-101 of the Criminal Law Article; and (2) a categorization of these reconsiderations by offense and judicial circuit. In response to Chapter 559, MSCCSP revised the sentencing guidelines worksheet to capture information on reconsidered sentences. While MSCCSP is required to provide information about reconsidered sentences in its annual report, judges are not statutorily required to report information concerning reconsidered sentences to the commission.

According to MSCCSP, the commission received worksheets on reconsiderations of sentences for crimes of violence for 11 defendants in fiscal 2015. Those 11 defendants had a total of 24 counts of crimes of violence and 4 offenses that were not crimes of violence.

MSCCSP collects information on reconsidered sentences for crimes of violence, not just reconsiderations of the mandatory sentences imposed for crimes of violence under Criminal Law Article, § 14-101. **Exhibit 1** provides information on the number of submissions of reconsidered sentences MSCCSP received from fiscal 2010 through 2015.

Exhibit 1
Information on Reconsiderations of Sentences
Imposed for Crimes of Violence Received by MSCCSP
Fiscal 2010 through 2015

<u>Fiscal Year</u>	<u>Number of Submissions of Reconsidered Sentences</u>
2010	15 offenders, 36 offenses
2011	12 offenders, 22 offenses
2012	5 offenders, 10 offenses
2013	6 offenders, 9 offenses
2014	8 offenders, 17 offenses
2015	11 offenders, 24 offenses

Source: Maryland State Commission on Criminal Sentencing Policy

The Judiciary advises that reopened dispositions that are eligible for the sentencing guidelines represent a small percentage of guidelines-eligible cases. According to the Judiciary, of the 1,146 guidelines-eligible dispositions in the Circuit Court for Montgomery County during fiscal 2015, approximately 3% (or about 34) were reopened dispositions that were eligible for the sentencing guidelines.

State Expenditures: General fund expenditures increase by as much as \$40,676 in fiscal 2017 for MSCCSP to implement the bill's requirements. This estimate reflects the need for MSCCSP to develop a new reconsiderations worksheet, reprogram its electronic worksheet submission system, and print and distribute paper copies of the new worksheet. Future year expenditures, which are minimal and are only incurred through fiscal 2020, reflect ongoing maintenance.

MSCCSP advises that it is in the process of completing the statewide implementation of its electronic worksheet submission system, known as the Maryland Automated Guidelines System (MAGS). Circuit courts in seven counties (Calvert, Cecil, Charles, Frederick, Montgomery, Prince George's, and St. Mary's) currently use MAGS, and the commission is implementing the system on a county-by-county basis. Three additional counties (Caroline, Harford, and Kent) are expected to be using MAGS by the bill's effective date.

According to the commission, MAGS does not contain a reconsidered sentence's original sentence, original sentencing date, the reason for modification, or the judge granting the modification. The paper version of the worksheet contains a space for the judge's name but does not contain any of the other items.

MSCCSP advises that to include the information required under the bill, MAGS needs to be reprogrammed to create an additional worksheet and connect it with the existing application. Because MSCCSP does not have an internal computer programmer, the commission needs to employ a contractor to handle the computer reprogramming. Based on estimates for a project of similar scope in 2014, the computer reprogramming required to implement this bill requires up to 200 hours of reprogramming work at a rate of \$200 per hour, for a total cost of up to \$40,000 in fiscal 2017. Costs for future maintenance programming are negligible.

Because MSCCSP expects that as of the bill's effective date, circuit courts for 10 counties will be using MAGS, the commission does not anticipate sending paper guidelines worksheets to those circuit courts. However, the remaining 14 jurisdictions need to receive paper copies of the new reconsiderations worksheet. MSCCSP sends worksheet packets to jurisdictions on an as-needed basis. Circuit court judges in counties that have MAGS may submit paper worksheets under extenuating circumstances. Paper copies of sentencing guidelines worksheets are printed on a six-carbon-copy form. Based on current and projected printing and postage needs, the cost to print and mail the revised reconsideration worksheet is estimated at \$676 in fiscal 2017 and \$81 in fiscal 2018. Printing and postage costs continue to decrease until they phase out completely in fiscal 2020, reflecting statewide implementation of MAGS by the end of calendar 2020 as well as the commission's assessment that the initial printing of the new worksheet should accommodate some, if not most, of the paper copy needs of judicial circuits in future fiscal years.

MSCCSP advises that it has interpreted the requirement that it review reconsiderations of sentences imposed *under* § 14-101 of the Criminal Law Article for a crime of violence as reconsideration of an active (*i.e.*, incarceration) sentence imposed for a crime of violence. The commission currently receives sentencing guidelines worksheets for reconsiderations of any active (*i.e.*, incarceration) sentence imposed for a crime of violence, not just the mandatory sentences for crimes of violence that it is required to review under existing statute. However, as noted previously, MSCCSP receives a small number of worksheets for these reconsiderations each year. MSCCSP is unable to determine whether this is due to judges not submitting reconsideration worksheets to the commission or if only a few of these types of reconsiderations occur each year.

MSCCSP currently obtains its data through submitted worksheets and data files from the Judicial Information System containing information on cases eligible for the sentencing guidelines. However, because each circuit court codes things differently, the commission advises that it has been difficult to determine how many of these reconsiderations occur statewide each year. Furthermore, the data files MSCCSP receives do not indicate how a sentence was modified as a result of the reconsideration and do not identify

reconsiderations in Baltimore City. Thus, it may be difficult for the commission to determine compliance rates as required under the bill.

MSCCSP advises that it relies on the Judiciary to submit sentencing information and does not have the staff or resources to travel to each individual circuit court and collect data.

The Judiciary advises that the bill may require additional education or training across the courts. Any additional training or education resulting from the bill can be implemented using existing budgeted resources.

Local Expenditures: Circuit court judges can accommodate the bill's requirements using existing budgeted resources. Circuit court judges currently complete and submit sentencing guidelines worksheets for reconsiderations of sentences affected by the bill.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland State Commission on Criminal Sentencing Policy, Judiciary (Administrative Office of the Courts), Department of Legislative Services

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md/kdm

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