

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 591

(Senator West, *et al.*)

Judicial Proceedings

Criminal Procedure - Petition to Modify or Reduce Sentence (Maryland Second
Look Act)

This bill allows a person serving a term of confinement to file a petition to modify or reduce his or her sentence, if (1) with respect to a person serving a sentence imposed for a crime committed when the person was a minor, the person has served the greater of at least 20 years of the term of confinement without application of diminution credits or 25 years of the term of confinement with application of diminution credits or (2) for a sentence imposed for a crime committed when the person was age 18 or older, the person is at least age 55 and has served at least 25 years of the term of confinement. A person may file a petition once every 5 years and may file a petition regardless of whether the petitioner previously filed a motion for reconsideration under Maryland Rule 4-345 or whether a prior motion filed under the bill was denied by the court. A court may not increase the length of the petitioner's sentence. The bill also establishes requirements related to notification, hearings, and the right to representation.

Fiscal Summary

State Effect: Potential significant decrease in general fund incarceration expenditures, which may be at least partially offset by an increase in general fund expenditures for staffing costs for the Maryland Parole Commission (MPC). Revenues are not affected.

Local Effect: The bill is not expected to materially affect local finances, as discussed below.

Small Business Effect: None.

Analysis

Bill Summary: The court must hold a hearing on a petition if the petitioner meets the eligibility criteria and the State's Attorney has met the victim notification requirements specified in the bill. A court may not hold a hearing if the petitioner is not eligible to file a petition. A victim or the victim's representative may attend and testify at the hearing. The hearing and the court's decision regarding the petitioner's sentence must be on the record and in open court. The court must state the reasons for its decision on the petition.

A petitioner may waive the right to be present at the hearing. Eligible petitioners are entitled to counsel at the hearing, and indigent petitioners are entitled to representation by the Office of the Public Defender (OPD).

If the petitioner committed the offense at issue when the petitioner was a minor, the court must modify the sentence in a manner reasonably calculated to release the petitioner within three years if the court finds that the petitioner has matured and rehabilitated such that retention of the sentence is no longer necessary for the protection of the public. If the petitioner was an adult when the offense was committed, the court may modify the sentence if retention of the sentence is no longer necessary for public safety.

A court may not modify or reduce a sentence unless the State's Attorney and each victim or victim's representative who request an opportunity to be heard has been given the opportunity to object to the petition.

Within 30 days after the court passes an order on the petition, the petitioner or the State may apply to the Court of Special Appeals for leave to appeal the order in accordance with the Maryland Rule 8-204.

Current Law: Pursuant to Maryland Rule 4-345, a court may correct an illegal sentence at any time and has revisory power over a sentence in case of fraud, mistake, or irregularity. The court also has revisory power over the sentence upon a motion filed after imposition of the sentence, as specified; however, it may not revise the sentence after the expiration of five years from the date the sentence originally was imposed on the defendant and it may not increase the sentence.

Under the Review of Criminal Sentences Act (§§ 8-102 through 8-109 of the Criminal Procedure Article), with certain exceptions, a person convicted of a crime by a circuit court and sentenced to a term of imprisonment that exceeds two years in a correctional facility is entitled to have a panel of three circuit court judges of the judicial circuit in which the sentencing court is located review the appropriateness of the sentence. The sentencing judge may not be a member of the review panel but may sit with

the review panel in an advisory capacity. The defendant must file a motion within 30 days after sentencing to exercise this right to review.

After a hearing, the panel may order a different sentence to be imposed or served, including an increased sentence, a decreased sentence, a suspended sentence to be served wholly or partly, or a sentence to be suspended with or without probation. The panel may decide that the sentence should remain unchanged with or without a hearing. In general, a majority of the members of the review panel is necessary to render a decision. The panel has 30 days after the filing date of the motion to make a decision.

Should the panel increase the sentence, a defendant may then appeal on the limited grounds that the sentence was not within statutory or constitutional limits or that the panel acted from ill will, prejudice, or other impermissible considerations. Otherwise, there is no right to appeal a decision made by the review panel.

A person is not entitled to this sentence review if the person's sentence was imposed by more than one judge. A person is not entitled to a review of an order requiring a suspended part of a sentence to be served if the sentence originally was wholly or partly suspended, the sentence was reviewed, and the suspended sentence or suspended part of that sentence later was required to be served.

Background: Data is not readily available on the number of inmates eligible to file petitions under the bill. However, according to the Department of Public Safety and Correctional Services (DPSCS):

- 2,204 inmates in Division of Correction (DOC) facilities have served 20 years or more without application of diminution credits;
- 1,312 inmates have served 25 years or more with application of diminution credits; and
- 728 inmates meet both of these criteria.

The above information does not take into account the age of the inmates or the age at which the inmates committed the crimes for which they are incarcerated.

State Expenditures: General fund expenditures for DPSCS may decrease significantly beginning in fiscal 2021 due to reduced incarceration costs. This general fund expenditure decrease may be partially offset by an increase in general fund expenditures for MPC to handle additional reconsiderations of parole decisions. General fund expenditures for OPD may increase minimally depending on the overall workload generated by the bill.

Any potential minimal increase in expenditures to handle the bill's requirements does not materially affect the finances of the Judiciary.

State Incarceration Expenditures

General fund expenditures for DPSCS may decrease significantly, depending on judicial discretion. The magnitude of the bill's impact on State incarceration expenditures, which cannot be reliably quantified at this time, depends on (1) the number of instances in which courts decide to reduce or modify a petitioner's sentence and (2) the amount of time eliminated from a petitioner's sentence or the nature of any modification to a sentence. Given the number of DOC inmates potentially eligible to file a petition and the bill's "public safety" standard, there is the potential for a significant reduction in the amount of time this population spends in a correctional facility.

Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$3,700 per month. Excluding overhead, the average cost of housing a new State inmate (including health care costs) is about \$1,015 per month. Excluding all health care (which is a fixed cost under the current contract), the average variable costs total \$191 per month.

Maryland Parole Commission

Based on information received from MPC about the effect of similar legislation, it is assumed that many inmates will have reached parole eligibility, had hearings, and received parole decisions before meeting the eligibility criteria for petitions as set forth in the bill. When a modification of an inmate's term of confinement has been made after the parole hearing process has been completed, MPC may review or reconsider the inmate's previous parole decision. The review is made at MPC's discretion and is often granted if it is believed an inmate's altered sentence structure might have bearing on a final parole decision. Thus, MPC's workload will be affected by the bill depending on the number of sentences modified by the court.

MPC was unable to assess the bill's impact on MPC workloads in time for the preparation of this fiscal and policy note. However, with respect to similar legislation, MPC anticipated receiving a significant number of requests for reconsideration or review of parole decisions. Reconsiderations of parole decisions can result in the granting of a new hearing or the favorable altering of a previous delayed release decision. To the extent that a significant number of additional reconsideration requests and hearings are generated, MPC may need additional staff to facilitate an increased workload. *For illustrative purposes only*, if MPC requires one additional office clerk and one assistant to assist with additional

reconsiderations of parole decisions, general fund expenditures increase by a minimum of \$89,000 annually.

Office of the Public Defender

General fund expenditures for OPD may increase minimally, depending on the bill's effect on overall OPD workloads and the ability of existing staff to absorb the additional workload. Most of the petitioners under the bill will likely be eligible for OPD representation. While the bill increases OPD's workload, part of that increase may be offset by a reduction in workload for other divisions within OPD, such as the Post Conviction Defenders Division or challenges for denial of parole.

According to OPD's *Annual Report 2018*, the Post Conviction Defenders Division was assigned 177 sentence modifications and 1,398 post conviction petitions in 2017. The division had 20 attorneys and supervisors, with an actual caseload of 109 cases per attorney. The caseload standard for the division is 71 cases per attorney.

Local Fiscal Effect: Any potential minimal increase in expenditures for circuit courts and state's attorneys' offices to accommodate additional hearings is not anticipated to materially affect local finances.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 323 (Delegate Barron, *et al.*) - Judiciary.

Information Source(s): Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of Public Safety and Correctional Services; Department of Legislative Services

Fiscal Note History: First Reader - February 3, 2020
an/jkb

Analysis by: Amy A. Devadas

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