

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 323
Judiciary

(Delegate Barron, *et al.*)

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 the person has served the greater of 20 years of the sentence term without application of diminution credits or 25 years of the sentence term with application of diminution credits. A person may file a petition once every five 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, partially offset by an increase in general fund expenditures of at least \$89,700 in FY 2021 and annually thereafter 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: 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.

State Expenditures: General fund expenditures for DPSCS may decrease significantly beginning in fiscal 2021 due to reduced incarceration costs. This general fund expenditure decrease is partially offset by an increase in general fund expenditures of \$89,672 in fiscal 2021 and similar amounts annually thereafter 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 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

MPC advises that many inmates will have reached parole eligibility, had hearings and received parole decisions before reaching the completion of 20 years or 25 years with application of diminution credits of their terms of confinement. 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 believes that because of the number of inmates eligible to file petitions under the bill, it will receive 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. MPC anticipates needing four additional staff to facilitate the handling of additional reconsideration requests and hearings. Although the Department of Legislative Services (DLS) advises that without actual experience under the bill, a reliable estimate of the number of sentences that will be modified by the court is not feasible, it is assumed that there will be enough modifications to affect MPC's workload (particularly in the initial years when defendants who have already served the applicable number of years have the first opportunity to initiate a petition under the bill's provisions). However, DLS estimates that this additional workload can be handled with the addition of two staff. Accordingly, general fund expenditures for MPC increase by \$89,672 in fiscal 2021, which accounts for the bill's October 1, 2020 effective date. This estimate reflects the cost of hiring one office clerk and one assistant to assist with additional reconsiderations of parole decisions. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2
Salaries and Fringe Benefits	\$78,939
Operating Expenses	10,733
Total FY 2021 MPC Expenditures	\$89,672

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses. As previously noted, MPC’s workload is dependent on the number of sentences modified by the court. Should courts opt to modify a larger number of sentences in response to petitions, the need for additional MPC personnel may increase further. According to MPC’s *Fiscal Year 2018 Annual Report*, the commission conducted 6,460 parole hearings for DOC inmates during fiscal 2018.

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: SB 591 (Senator West, *et al.*) - Judicial Proceedings.

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

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mr/jkb

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