

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 842 (Senator Benson)
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 the person's 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, as discussed below. 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 requests 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 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.

State Expenditures: General fund expenditures for the Department of Public Safety and Correctional Services (DPSCS) may decrease significantly beginning in fiscal 2023 due to reduced incarceration costs. 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.

In 2020, DPSCS advised that 2,204 inmates in Division of Correction (DOC) facilities had served 20 years or more without application of diminution credits; 1,312 inmates had served 25 years or more with application of diminution credits; and 728 inmates met both of these criteria.

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 \$4,700 per month. Excluding overhead, the average cost of housing a new State inmate (including health care costs) is about \$1,233 per month. Excluding all health care (which is a fixed cost under the current contract), the average variable costs total \$289 per month.

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.

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: HB 323 of 2020 received a hearing in the House Judiciary Committee, but no further action was taken. Its cross file, SB 591, a similar bill, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

Designated Cross File: None.

Information Source(s): 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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