

**Department of Legislative Services**  
 Maryland General Assembly  
 2023 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

Senate Bill 771 (Senator Benson, *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 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:** Using one set of assumptions, as discussed below, general fund expenditures for the Office of the Public Defender (OPD) increase by as much as \$1.2 million in FY 2024 for staff. Future years reflect inflation and annualization. General fund incarceration expenditures may decrease significantly, as discussed below. The bill is not expected to materially affect general fund expenditures for the Judiciary. Revenues are not affected.

(in dollars)	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	1,183,800	1,432,700	1,496,400	1,562,200	1,644,100
Net Effect	(\$1,183,800)	(\$1,432,700)	(\$1,496,400)	(\$1,562,200)	(\$1,644,100)

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

**Local Effect:** The bill may have an operational impact on and may increase expenditures for State’s Attorneys’ offices, as discussed below. The bill’s effect on circuit court workloads is not expected to materially affect local finances.

**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 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 Appellate Court of Maryland for leave to appeal the order in accordance with Maryland Rule 8-204.

**Current Law:** A person convicted of a crime has multiple alternatives for seeking review of a sentence. Summarized below are some of these options, as well as the Juvenile Restoration Act, which was enacted in 2021 and provides an opportunity for an individual convicted as an adult for an offense committed when the individual was a minor to file a motion with the court to reduce the duration of the individual's sentence.

### *Maryland Rule 4-345*

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.

### *Uniform Postconviction Procedure Act*

Any person convicted of a crime in the District Court or a circuit court has a right to institute a proceeding for postconviction relief in a circuit court to set aside or correct a verdict. This right extends to a sentence of parole or probation, as well as confinement. A postconviction proceeding is not an inquiry into guilt or innocence; the trial and appellate review are where that issue is determined. Postconviction proceedings focus on whether (1) the sentence or judgment imposed is in violation of the U.S. Constitution or the constitution or laws of the State; (2) the sentencing court lacked jurisdiction to impose the sentence; (3) the sentence exceeds the maximum allowed by law; or (4) the sentence is otherwise subject to collateral attack on a ground of alleged error that would otherwise be available under a writ of *habeas corpus*, writ of *coram nobis*, or other common law or statutory remedy. The postconviction court may not, however, grant relief based on an allegation of a particular error if the petitioner has finally litigated or waived the error.

Unless extraordinary cause is shown, a petition for postconviction relief must be filed within 10 years of the sentencing. The petition must be filed in the circuit court for the county where the conviction took place. A person may only file one petition arising out of each trial or sentence. A defendant is entitled to a hearing on the merits and the assignment of counsel. A person aggrieved by the postconviction court's order, including the Attorney General and a State's Attorney, may apply for leave to appeal the order. In the interests of justice, a court may reopen a postconviction proceeding that was previously decided. The most common reason for seeking postconviction relief is a claim of ineffective assistance of counsel. Prosecutorial misconduct is another basis.

### *Juvenile Restoration Act*

Among other provisions, the Juvenile Restoration Act (Chapter 61 of 2021) authorizes an individual who was convicted as an adult for an offense committed when the individual was a minor to file a motion with the court to reduce the duration of the individual's sentence if the individual (1) was sentenced for the offense before October 1, 2021, and (2) has been imprisoned for at least 20 years for the offense.

The court must conduct a hearing on the motion. The individual must be present at the hearing, unless he or she waives that right. This requirement may be satisfied if the hearing is conducted by video conference. At the hearing, the individual may introduce evidence in support of the motion, and the State may introduce evidence in support of or in opposition to the motion. The victim or the victim's representative must be given notice of the hearing in accordance with §§ 11-104 and 11-503 of the Criminal Procedure Article.

After a hearing, the court may reduce the duration of a sentence imposed if the court determines that the individual is not a danger to the public, and the interests of justice will be better served by a reduced sentence. The court must consider specified factors when determining whether to reduce the duration of a sentence, including (1) the individual's age at the time of the offense; (2) the nature of the offense and the history and characteristics of the individual; (3) whether the individual has completed an educational, vocational, or other program; (4) whether the individual has demonstrated maturity, rehabilitation, and fitness to reenter society sufficient to justify a sentence reduction; (5) any statement offered by a victim or a victim's representative; (6) the individual's family and community circumstances at the time of the offense, including any history of trauma, abuse, or involvement in the child welfare system; and (7) the diminished culpability of a juvenile as compared to an adult, including an inability to fully appreciate risks and consequence.

The court must issue a written decision that addresses the specified factors. If the court denies or grants, in part, a motion to reduce the duration of the sentence, the individual may not file a second motion for at least three years. If the court denies or grants, in part, a second motion, the individual may not file a third motion for at least three years. With regard to any specific sentence, an individual may not file a fourth motion to reduce the duration of the sentence.

## **State Expenditures:**

### *State Incarceration Expenditures*

In 2020, the Department of Public Safety and Correctional Services (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.

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 potential 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 \$4,970 per month. Excluding overhead, the average cost of housing a new State inmate

(including health care costs) is about \$1,219 per month. Excluding all health care (which is a fixed cost under the current contract), the average variable costs total \$282 per month.

*Office of the Public Defender*

OPD does not know the total number of individuals eligible for sentence reviews under the bill. However, OPD advises that based on data it received from DPSCS and factoring in existing OPD clientele and the potential for some eligible individuals opting for private counsel, as many as 900 individuals could be immediately eligible for OPD representation under the bill.

*Using these assumptions*, applying appellate caseload standards, and incorporating *pro bono* representation, general fund expenditures for OPD increase by as much as \$1,183,833 in fiscal 2024, which accounts for the bill’s October 1, 2023 effective date. This estimate reflects the cost of hiring eight attorneys, two clerks, and two social workers to implement the bill’s provisions. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	12.0
Salaries and Fringe Benefits	\$1,094,925
Operating Expenses	<u>88,908</u>
<b>Total OPD FY 2024 State Expenditures</b>	<b>\$1,183,833</b>

The estimate does not reflect additional costs that are incurred to the extent that panel attorneys are used for representation in some cases and does not account for fluctuations in representation under the process proposed in the bill.

**Local Fiscal Effect:** The bill may have an operational effect on State’s Attorneys’ offices, which, depending on existing resources, may result in increased expenditures. Any increase in expenditures for circuit courts to accommodate additional hearings is not anticipated to materially affect local finances.

---

### **Additional Information**

**Prior Introductions:** Similar legislation has been introduced during the last three years. See SB 842 of 2022 and SB 591 and HB 323 of 2020.

**Designated Cross File:** HB 1263 (Delegate Acevero) - Rules and Executive Nominations.

**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

**Fiscal Note History:** First Reader - March 14, 2023  
js/jkb

---

Analysis by: Amy A. Devadas

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