

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 295

(Senator Sydnor)

Judicial Proceedings

Criminal Procedure - Postconviction Review - Motion for Reduction of Sentence

This bill authorizes a State's Attorney to file a motion to reduce the sentence of a person serving a sentence of incarceration at any time during the period of active incarceration if it is in the interest of justice. The bill establishes related procedures, including required notice, responses to a motion, hearings on a motion, and decisions on a motion.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State finances or operations, as discussed below.

Local Effect: The bill is not anticipated to materially affect local finances or operations.

Small Business Effect: None.

Analysis

Bill Summary: The incarcerated individual may file a response with additional information for the court's consideration within 60 days after the State's Attorney files the motion to reduce the individual's sentence.

The court must hold a timely hearing on the motion, and the victim or the victim's representative must be notified of the hearing in accordance with specified statutes. The incarcerated individual must be present at the hearing unless the individual waives the right to be present. The individual may appear at the hearing through video conference.

The court may consider the following factors when determining whether to reduce a sentence: (1) the inmate's disciplinary record and record of rehabilitation and maturity while incarcerated; (2) evidence that reflects whether age, time served, or diminished physical condition has reduced the inmate's risk for future violence; and (3) evidence reflecting a change in circumstances since the original conviction and sentencing such that the inmate's continued incarceration is no longer in the interest of justice.

After a hearing on the motion, the court may reduce the duration of the sentence if the court determines that the interests of justice will be better served by a reduced sentence. The court must explain the basis for its decision to grant or deny the motion in open court or in a written opinion. If the court denies the motion, the State's Attorney may not file a subsequent motion for at least three years.

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.

Review of Criminal Sentences Act

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.

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 Fiscal Effect: The Office of the Public Defender (OPD) acknowledges that the majority of people to whom the bill applies are likely OPD clients, and the bill may resolve their post-conviction claims. Regardless, it also estimates that negotiations with State's Attorneys to use the authority established under the bill and the representation required at the sentence modification hearings require four additional employees

(two attorneys, one social worker, and one administrative employee), at a cost of \$364,602 in fiscal 2024 and increasing to \$504,030 by fiscal 2028.

The Department of Legislative Services disagrees with the estimate and advises that any impact solely attributable to the bill is not likely to necessitate the hiring of additional staff. Reconsiderations of sentences under the bill are at the initiation of the State's Attorney, the entity that originally prosecuted the case and advocated for a particular sentence to be imposed, which limits the reconsiderations likely to occur under the bill. Furthermore, the activities OPD would need to engage in to negotiate with State's Attorneys to make these reconsideration motions and representing clients at subsequent court hearings are within the normal functions of the office's Post Conviction Division.

Additional Information

Prior Introductions: Prior legislation has been introduced within the last three years. See SB 976 and HB 958 of 2022.

Designated Cross File: HB 330 (Delegate Williams) - Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of Legislative Services

Fiscal Note History: First Reader - February 5, 2023
js/jkb

Analysis by: Amy A. Devadas

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