

Department of Legislative Services
 Maryland General Assembly
 2025 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 853
 Judiciary

(Delegate Pasteur, *et al.*)

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

This bill allows an individual to file a petition to reduce a sentence or sentences if the individual has served at least 20 years of the term of confinement and at least 5 years have passed since the court decided any previous petition filed by the individual under the bill. After consideration of specified factors and a hearing, the court may reduce the petitioner’s sentence or sentences if it finds that the individual is not a danger to the public and the interests of justice will be better served by a reduced sentence or sentences. There is a rebuttable presumption that a petitioner is not a danger to the public if the petitioner is at least age 60 and has been confined for 30 years or more. A court may not increase the petitioner’s sentence or sentences, and the right to seek a sentence reduction may not be waived. The bill establishes additional procedural requirements. The bill applies to an individual serving a term of confinement in the State who was sentenced on or before the bill’s effective date and to an individual who will serve a term of confinement in the State who was sentenced after the effective date of the bill.

Fiscal Summary

State Effect: General fund expenditures for the Office of the Public Defender (OPD) increase by a *minimum* of \$538,100 in FY 2026. Future years reflect annualization and inflation and account for minimum staffing costs only. General fund expenditures for the Department of Public Safety and Correctional Services (DPSCS) decrease if incarcerated individuals are released from State correctional facilities under the bill. Revenues are not affected.

(in dollars)	FY 2026	FY 2027	FY 2028	FY 2029	FY 2030
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	538,100	642,100	670,500	700,400	730,300
Net Effect	(\$538,100)	(\$642,100)	(\$670,500)	(\$700,400)	(\$730,300)

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

Local Effect: Local expenditures may increase minimally for State’s Attorneys’ offices to handle petitions generated by the bill. Local revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary:

Waiting Periods and Limits on Petitions

If the court denies or partially grants a petition, the filer of the petition must wait at least five years before filing a subsequent petition to reduce the sentence or sentences. However, an individual may not file more than three petitions to reduce the same sentence or sentences.

Hearings on Petitions

A petition must be filed in the sentencing circuit court. The court must hold a hearing on a petition filed by an eligible petitioner or if the State's Attorney files a motion to reduce the sentence or sentences of an incarcerated individual who is ineligible to file a petition under the bill. The individual may waive the right to be present at a hearing and may elect to be present at the hearing by video conference. The victim or the victim's representative must be notified of the hearing in accordance with existing statutory requirements. The individual and the State may introduce evidence at the hearing. If a petitioner is participating in (or will participate in) certain programs, such as educational programs, the judge may continue the hearing until the person completes the program. On completion of the program, the judge may resume the hearing as if it is the first petition.

Factors for Consideration, Court Decisions, etc.

If a hearing is held, the court must state the reasons for its decision whether or not to reduce the petitioner's sentence or sentences on the record in open court at the hearing or issue its decision in writing within 90 days after the conclusion of the hearing. The court's decision must address:

- the individual's age at the time of the offense, recognizing the diminished culpability of youth and emerging adults, but not using age as an aggravating factor;
- the nature of the offense and the history and characteristics of the individual;
- whether the individual has substantially complied with the rules of the institution in which the individual has been confined;
- whether the individual has participated in an educational, vocational, or other program;

- whether the individual has demonstrated maturity, rehabilitation, and fitness to reenter society sufficient to justify a sentence reduction;
- any statement offered by a victim or a victim's representative;
- any report of a physical, mental, or behavioral examination of the individual conducted by a health professional;
- 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;
- the extent of the individual's role in the offense; and
- any other factor the court considers relevant.

An individual's claims of innocence or the limited availability or accessibility of rehabilitative programs may not be construed against the petitioner.

Current Law: A person convicted of a crime who wishes to have their sentence reduced has multiple alternatives. One option is the Juvenile Restoration Act, which is similar to the bill. The Juvenile Restoration Act 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.

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 five years. If the court denies or grants, in part, a second motion, the individual may not file a third motion for at least five years. With regard to any specific sentence, an individual may not file a fourth motion to reduce the duration of the sentence.

State Expenditures:

Office of the Public Defender

General fund expenditures increase beginning in fiscal 2026 for OPD to implement the bill. OPD advises that based on July 2024 DPSCS data and accounting for various factors, including use of private counsel, eligibility under the Juvenile Restoration Act, and current OPD clients, OPD expects 1,400 new OPD clients under the bill.

Because of its existing high caseloads and backlogged jury trial cases during the pandemic, OPD recruited dozens of *pro bono* attorneys and sought assistance from law schools to provide representation to eligible individuals under the Juvenile Restoration Act. Based on OPD's experience with the Juvenile Restoration Act, the office anticipates varying the representation to maximize cost efficiency and ensure best practices. After accounting for clients that will be represented by panel attorneys or law school clinics, the staffing needs estimated by OPD for representing 1,100 new anticipated OPD clients are as follows: 12 attorneys to provide legal representation (using appellate caseload standards); 1.5 social workers to assist with the mitigation and release planning; and 3 administrative employees to provide clerical support. The approximate cost associated with these positions is \$1.5 million in fiscal 2026 and increases to \$2.2 million by fiscal 2030.

Without experience under the bill, the Department of Legislative Services (DLS) is unable to verify that staffing of the magnitude indicated by OPD is required. However, DLS agrees that the bill creates additional work for OPD that cannot be absorbed within existing resources. Accordingly, *at a minimum*, general fund expenditures increase by \$538,061 in fiscal 2026, which accounts for the bill's October 1, 2025 effective date. This estimate reflects the cost of hiring four attorneys, one social worker, and one administrative employee. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	6.0
Salaries and Fringe Benefits	\$493,848
Operating Expenses	<u>44,213</u>
Minimum FY 2026 OPD Expenditures	\$538,061

Additional legal representation will be provided by panel attorneys, law school clinics, and volunteer private attorneys. However, OPD advises that it cannot estimate projected costs for panel attorneys at this time; therefore, such costs are not included in the estimate above.

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses. To the extent that the staffing levels represented above prove insufficient for actual implementation of the bill, OPD can request additional resources through the annual budget process.

As noted above, the bill establishes a five-year waiting period between petitions and a three-petition limit per sentence. Initial workloads are likely to be heavy as OPD identifies eligible incarcerated individuals within the existing Division of Correction population, compiles and evaluates their casefiles, prepares their petitions, and presents their petitions at court hearings. Future workloads will likely stabilize over time and will involve newly eligible incarcerated individuals and repeat petitions for previous petitioners.

For reference, OPD’s Post-Conviction Defenders Unit has 24 attorneys (26 by August 2025) and 1 unfilled attorney vacancy; the unit has 7 additional staff, including 1 paralegal and administrative employees. OPD’s Appellate Division currently has 32 attorneys (33 by August 2025); the unit has 7 additional staff, including 2 paralegals (1 of whom is a contractual employee) and administrative employees.

Department of Public Safety and Correctional Services

DPSCS advises that as of January 2025, there were 1,738 sentenced individuals who have served 20 or more years of their sentence. Of this group, 1,303 are serving life sentences and 331 are serving life sentences without the possibility of parole.

General fund expenditures for DPSCS decrease if the bill shortens incarcerations. The extent to which to this occurs depends on judicial decisions on filed petitions and can only be determined with actual experience under the bill. Many of the factors judges must consider under the bill are natural considerations during the parole process. Excluding overhead and all health care (which is a fixed cost under the current contract), the average variable costs total \$312 per month.

For context, according to OPD’s report on its efforts in the first year of the Juvenile Restoration Act, courts decided 36 motions during the first year of the Act. The following is a summary of the outcomes in those 36 cases:

- 23 cases (63.9%) – motion granted and defendant released from prison;
- 4 cases – court granted the motion in part and reduced the remaining incarceration time the petitioner must serve prior to release;
- 7 cases – court reached the merits but denied the petition;
- 1 case – court denied the motion without a hearing due to ineligibility; and
- 1 case – the individual was released on parole after the motion was filed but before the hearing (the court modified the sentence to place the individual on probation with conditions designed to maximize his chances of success).

As noted above, the Juvenile Restoration Act is limited to individuals who were convicted as adults for crimes *they committed as minors*. It is not clear at this time if the population eligible to file a petition under the bill will experience similar judicial outcomes as individuals who filed motions under the Juvenile Restoration Act.

Judiciary

The Judiciary advises that it does not anticipate a significant operational impact from the bill.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See SB 123 and HB 724 of 2024.

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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