

Department of Legislative Services
Maryland General Assembly
2026 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 138
(Senator Henson)
Judicial Proceedings

**Criminal Procedure - Sentencing - Domestic Violence as a Mitigating Factor
(Providing Alternatives Through Healing for Justice-Involved Individuals
(PATH) Act)**

This bill authorizes the introduction of evidence that a defendant was the victim of domestic violence, and that the domestic violence was a significant contributing factor to the commission of the crime for which the defendant was convicted. A court may impose a reduced sentence, as specified, if the court finds that domestic violence was a significant contributing factor to the defendant's commission of the crime. The bill limits applicability to a defendant convicted of certain crimes and may not be construed to (1) create a separate crime; (2) authorize a court to impose a sentence that exceeds the maximum sentence provided by law; (3) establish a defense to prosecution; (4) diminish the rights of victims of crime; or (5) prohibit a court from considering evidence of domestic violence under any other applicable provision of law.

Fiscal Summary

State Effect: General fund expenditures for the Maryland State Commission on Criminal Sentencing Policy increase by \$8,750 in FY 2027 only for one-time programming costs. Otherwise, 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 government finances or operations.

Small Business Effect: None.

Analysis

Bill Summary: Evidence may be introduced as a mitigating factor in a prosecution of specified offenses at sentencing or, if a motion to modify a sentence or reduce the duration of a sentence is filed within five years of the date of the original sentencing, at a hearing on the motion for modification or reduction of the sentence. The defendant has the burden to establish, by a preponderance of the evidence, that domestic violence was a significant contributing factor to the defendant's commission of the crime. The State may introduce evidence to rebut any evidence offered by the defendant.

Evidence introduced may include records, reports, or testimony from the defendant, the defendant's family members or friends, law enforcement officers, medical professionals, counselors, advocates, social workers, or any other source the court considers relevant.

Applicability

The bill applies only to defendants convicted of the following crimes, as further specified and defined under statute:

- a crime of violence, as defined in § 14-101 of the Criminal Law Article, except (1) murder; (2) sexual crimes; or (3) abuse and other offensive conduct, as specified;
- a violation of Title 5 of the Criminal Law Article (Controlled Dangerous Substances, Prescriptions, and Other Substances) when the defendant was compelled to distribute, transport, or possess a controlled dangerous substance on behalf of a perpetrator;
- a violation of Title 11, Subtitle 3 (Prostitution and Related Crimes) or Title 3, Subtitle 11 (Human Trafficking) of the Criminal Law Article when the violation resulted from coercion, domination, or compulsion by a perpetrator; and
- when committed in whole or in part by coercion, control, economic abuse, or other circumstances arising from domestic violence (1) extortion and other threats; (2) burglary and related crimes or trespassing; (3) theft and related crimes; or (4) bad checks, credit card crimes, identity fraud, or counterfeiting and related crimes; and
- an attempt, conspiracy, or solicitation to commit any offense listed above.

Court Findings

If the court finds that domestic violence was a significant contributing factor to a defendant's commission of the crime, the court *must* treat the domestic violence as a mitigating factor in sentencing and consider whether it is warranted to depart from a mandatory minimum sentence or the sentencing guidelines. The court then *may* impose a

sentence that is (1) less than the mandatory minimum sentence required by law; (2) below the sentencing guidelines, or (3) otherwise just and appropriate in light of the circumstances. The court must state on the record the reasons for its decision, including whether domestic violence was found to be a mitigating factor.

Definitions

“Domestic violence” means any of the following acts committed against a victim: (1) an act that causes serious bodily harm; (2) an act that places the victim in fear of imminent serious bodily harm; (3) assault in any degree; (4) rape or sexual offense under § 3-303, § 3-304, § 3-307, or § 3-308 of the Criminal Law Article or attempted rape or sexual offense in any degree; (5) false imprisonment; (6) stalking under § 3-802 of the Criminal Law Article; or (7) revenge porn under § 3-809 of the Criminal Law Article.

“Perpetrator” means a person alleged to have committed domestic violence.

“Victim” means (1) a current or former spouse of a perpetrator; (2) a cohabitant of a perpetrator; (3) a person related to a perpetrator by blood, marriage, or adoption; (4) a parent, stepparent, child, or stepchild of a perpetrator or perpetrator’s spouse or former spouse who resided with the perpetrator or spouse for at least 90 days within one year before the filing of the petition; (5) an individual who has a child in common with a perpetrator; or (6) an individual who has had a sexual relationship with a perpetrator within one year before the filing of the petition.

Current Law: Generally, a circuit court must *consider* the sentencing guidelines for (1) ordinary sentences in deciding on the proper sentence and (2) corrections options in deciding whether to sentence a defendant to a corrections options program or to impose an ordinary sentence. The sentencing guidelines may not allow for a sentence *exceeding* the maximum sentence provided by law or be used in violation of any mandatory minimum sentence required by law. (The Department of Legislative Services (DLS) notes that sentencing guidelines are not mandatory, and judges may depart from them, by issuing a reduced or shortened sentence, for any reason.)

Statute does not specifically address the consideration of an individual’s status as a victim of domestic violence during a criminal proceeding against the individual. Statute does, however, set forth a limitation on criminal/juvenile proceedings in other circumstances based on an individual’s status as a victim of child sex trafficking. Under these provisions, a minor may not be criminally prosecuted or subject to certain juvenile proceedings based on specified offenses if the minor committed the underlying act as a direct result of being a victim of sex trafficking or a being a victim of human trafficking.

State/Local Expenditures: The Office of the Public Defender (OPD) advises that it requires one additional social worker to handle an increased workload generated by the bill. DLS disagrees that OPD's workload is significantly changed solely by the provisions of the bill, as it is assumed that OPD would expend a similar level of effort as part of client representation even absent the bill when representing victims of domestic violence. Thus, DLS advises that OPD can likely address workloads resulting from the bill with existing budgeted resources.

Any potential minimal decrease in incarceration costs directly attributable to the bill is unlikely to be material.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 84 (Delegate Smith) - Judiciary.

Information Source(s): Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Legislative Services

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jg/jkb

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