



RACIAL EQUITY IMPACT NOTE

DEPARTMENT OF LEGISLATIVE SERVICES
MARYLAND ▪ GENERAL ▪ ASSEMBLY

2023 Session
SB0295

Criminal Procedure - Postconviction Review - Motion for Reduction of Sentence

Bill Summary

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.

Racial Equity Impact Statement

The bill would allow a State's Attorney to petition the court to reduce a convicted individuals' sentence post-conviction in several specified circumstances. The impact of the bill's provisions depends greatly on the individual policy decisions of State's Attorneys. Data on historical sentence reduction activity by the courts would assist in estimating the bill's impact but is not readily available. The State's disproportionately high incarceration rate for Black or African American individuals does suggest however, that the bill will *potentially* impact these individuals to the greatest extent.

Analysis

This bill allows for a State's Attorney to file a motion for reconsideration of a convicted individual's sentence when the State's Attorney believes it would be in the interest of justice. The court must hold a timely hearing on the motion, and 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.

As of 2021 California, Washington, Oregon, and Illinois, have statutorily granted state's or district attorneys, or some other named representative of the state, the authority to file a motion in the courts to consider post-conviction resentencing. The procedural provisions of those statutes are similar to the bill.

Existing Maryland law allows a variety of options for a person convicted of a crime to have their sentence reviewed but except for instances of an illegal sentence, fraud, mistake, or other irregularity, most opportunities to revise a post-conviction sentence expire after a specified time period has elapsed and authorize only the convicted individual to initiate:

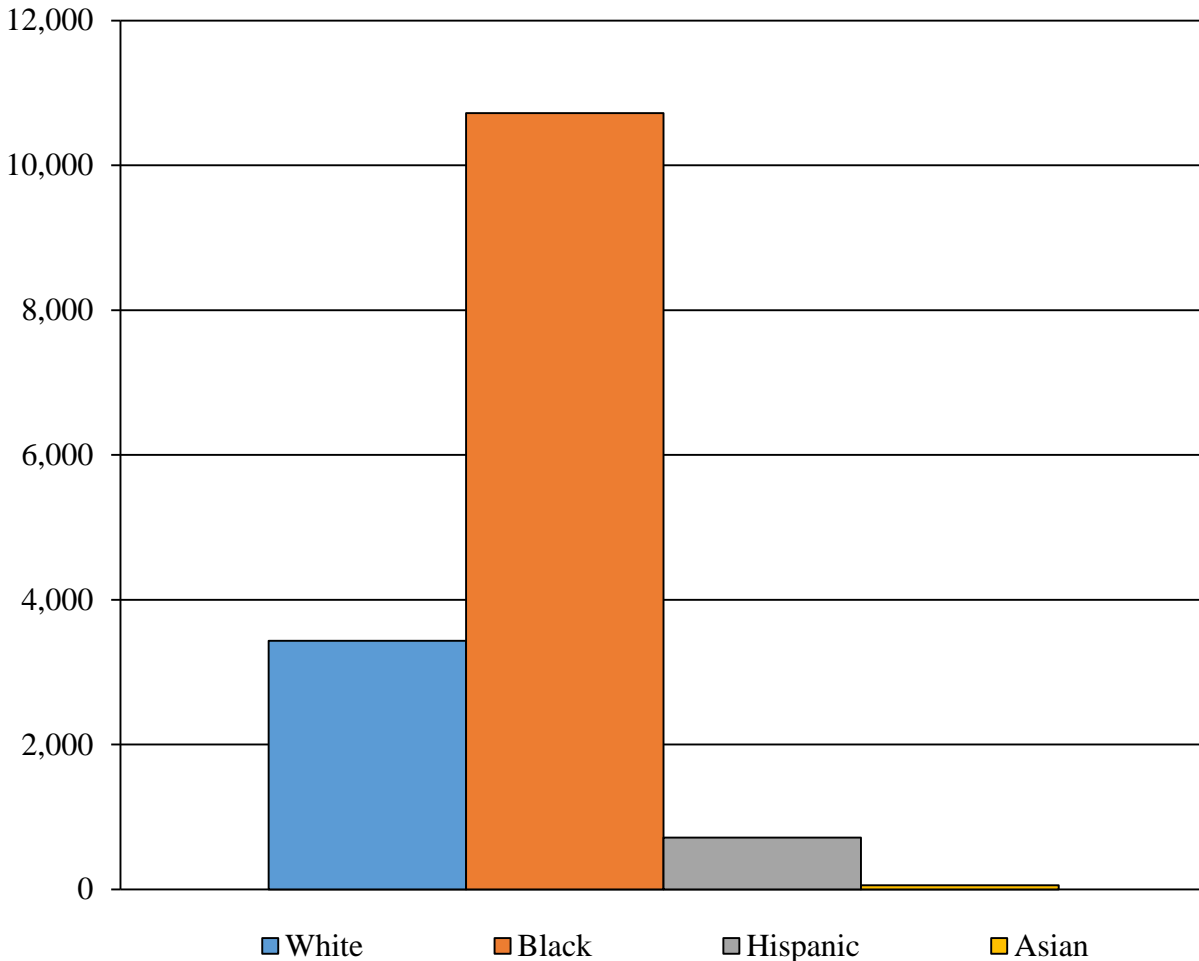
- *Maryland Rule 4-345* allows for a court to correct an illegal or erroneous sentence upon motion filed after the sentence is imposed. The courts cannot revise a sentence after the convicted individual has served over 5 years of that sentence.
- *The Uniform Post-Conviction Act* allows for a review of the sentence by the circuit court, which relies on a number of factors to determine if the sentence should be reduced. A petition for post-conviction relief must be filed within 10 years of the sentencing.
- *The Review of Criminal Sentences Act* gives leave for an individual sentenced by the Circuit Courts to incarceration for 2 years or more to file a petition for a review of their sentence by a three-judge panel of the same Circuit Court. The petitioner must file for this review within 30 days of sentencing.
- *The Juvenile Restoration Act* allows 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 that sentence if the offense occurred before October 1, 2021, and the individual has been incarcerated for at least 20 years.

The bill would allow the State to petition the court on behalf of a convicted individual and argue that the individual has been rehabilitated or that outside factors not present or not considered at the time of sentencing merit a reconsideration of the individual's sentence. Some of those outside factors were detailed by the Office of the Public Defender and the Maryland State Bar Association, they include cases (1) where there may have been disproportionate or unequal sentences based on external factors unrelated to the case in question, including the race of the defendant or the victim; (2) when an incarcerated person has made significant rehabilitative progress and would no longer pose a risk to public safety; and (3) when there have been significant changes in the way specific crimes are enforced, as is true for many drug offenses.

Due to existing racial disparities in the criminal justice system, this bill would offer another avenue for the State to alleviate past practices that may have created or perpetuated existing racial disparity. The Department of Public Safety and Correctional Services' Division of Correction's fiscal 2022 Inmate Characteristics report shows that out of the nearly 15,000 incarcerated individuals in Maryland, Black or African American inmates comprise 71% of that total (see **Exhibit 1**). This data shows that Black or African American individuals are more than twice as

likely to be incarcerated in Maryland compared to their proportion of the State’s population (29%) and are more than five times as likely to be incarcerated compared to white individuals.

Exhibit 1
2022 Division of Correction Population Demographics



Source: Department of Public Safety and Correctional Services

Conclusion

The bill’s provisions will give more convicted individuals access to the possibility of sentence reduction by a court. Because the bill authorizes only a State’s Attorney to file a petition, it is unclear to what extent the bill will impact that population of convicted individuals that are not otherwise eligible for a post-conviction sentence review. Much of that impact will depend on the policy decisions of individual State’s Attorneys. There is also no historical data readily available that indicate the demographics of those individuals that have received post-conviction sentence

reductions, and this data could give some insight into the magnitude of the impact on various racial and ethnic groups. Given the data limitations, it is reasonable to expect that the Black or African American convicted population would experience the most significant impact given their overrepresentation in the State's incarcerated population.

Methodologies, Assumptions, and Uncertainties

Although some reports use disparity and disproportionality interchangeably, this racial equity impact note distinguishes them. Disproportionality is the state of being out of proportion. It compares the proportion of one racial or ethnic group of a target population to the proportion of the same racial or ethnic demographic group in the general population. Disparity, however, refers to a state of being unequal. A disparity describes an unequal outcome experienced by one racial or ethnic group of the target population as contrast against a different racial or ethnic group in the target population.

The information provided in this note is drawn from quantitative data analysis of available statistical datasets on crime and criminal justice collected by entities at the national and state level. Moreover, the information includes scholarly literature on racial and ethnic disparities in the U.S. criminal justice system.

Information Sources: American Civil Liberties Union; Office of the Public Defender; Maryland State Bar Association; Department of Public Safety and Correctional Services; Department of Legislative Services

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Published: 02/17/2023

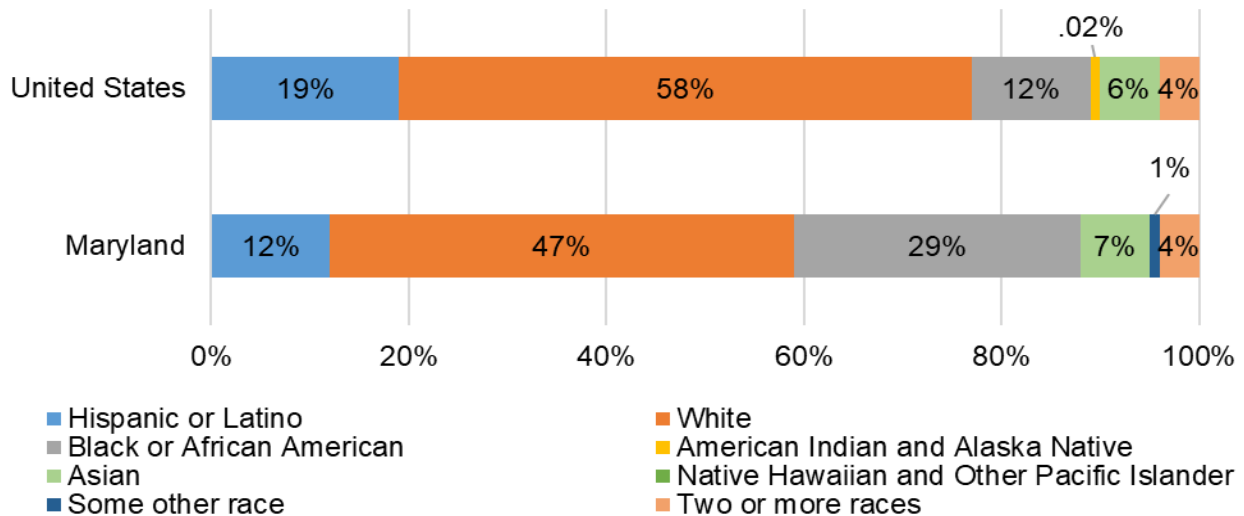
Appendix – Maryland Demographics

Race and Ethnicity of the Maryland Population

Maryland’s 2020 census population is 6,177,244, a 7% increase from the 2010 census count and approximately 2% higher than the 2019 census population estimates. In addition to an increase in population, Maryland’s racial demographics have become more diverse. Maryland is now a state in which racial minorities make up a majority of its total population. Notable changes relevant to this shift are the increase in groups who identify as “other” and “multiracial” (*i.e.*, two or more racial identities), which total 5% of the State’s population. Additionally, the change in demographics is due to the decrease in the number of individuals who only report “White” as their racial group. Despite this decrease, non-Hispanic Whites remain the largest single race demographic group in the State of Maryland comprising 47% of the State’s population.

Compared to the U.S. population overall, Maryland’s population of individuals who identify as a single race is more diverse. Maryland is ranked as the fourth most diverse state by the U.S. Census Bureau’s [Diversity Index](#). As shown in **Exhibit 1**, in Maryland, 47% identify as White alone compared to 58% of the national population. Similarly, 51% of the population identify as non-White or multi-racial compared to 38% of the national population. In both the State and national population, the largest shares of the non-White population are individuals who are Black or African American, with 29% of the State population identifying only as Black or African American and another 2.5% identifying as Black in combination with some other race. Maryland’s Asian population is 7%, which is slightly higher than the Asian share of the national population of 6%. The State’s overall population by ethnicity, however, is slightly less diverse than the U.S. population; 12% of the State’s population identified as Hispanic or Latino compared to 19% of the U.S. population.

Exhibit 1
U.S. and Maryland Population by Race and Ethnicity
2020



Source: U.S. Census Bureau, 2020 Census Redistricting Data (Public Law 94-171), Table ID P2, HISPANIC OR LATINO, AND NOT HISPANIC OR LATINO BY RACE.