



RACIAL EQUITY IMPACT NOTE

DEPARTMENT OF LEGISLATIVE SERVICES
MARYLAND ▪ GENERAL ▪ ASSEMBLY

2023 Session
SB0771

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

Bill Summary

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.

Racial Equity Impact Statement

This bill would allow persons who have served sentences of 20 years or more to petition the courts for a hearing for a sentence modification if certain requirements are met. The magnitude of the bill's impacts on specific demographic groups cannot be reliably estimated as no detailed data is available on the individuals who would be eligible to petition the courts for sentence modification relief. Data from the Department of Public Safety and Correctional Services (DPSCS) and the Office of the Public Defender (OPD) suggest that the bill could have an overall positive equity impact on incarcerated individuals, particularly for incarcerated Black or African American individuals.

Analysis

This bill allows an individual to petition the court for a sentence modification if that individual has served the greater of at least 20 years of the term of confinement without application of diminution credits or the equivalent of 25 years of the term of confinement with the application of diminution credits. The court must schedule a hearing on the petition and the victim or victim's representative must be given an opportunity to be heard in some manner. If eligible, the individual petitioner may also be provided with counsel by OPD.

Existing law allows several opportunities for a person convicted of a crime to have their sentence reviewed, but except for instances of an illegal sentence, fraud, mistake, or other procedural irregularity, most opportunities to revise a postconviction sentence expire after a specified time period has elapsed. Postconviction review after the specified time period is only currently available to convicted individuals in cases where the individual was a minor when the offense was committed.

Under the bill, an individual can petition the court for reconsideration of their sentence regardless of whether the individual has already been denied a reconsideration on a Maryland Rule 4-345 motion. The individual may apply for reconsideration of a sentence once every five years. The court may modify a sentence of an individual who was sentenced at age 18 or older, if the court determines that incarceration is no longer necessary for the protection of the public. Furthermore, for an individual who was sentenced when a minor, upon determination that an individual has matured and has been rehabilitated, the court must modify the sentence such that the individual would be released within three years of the court's finding.

Other States

At least 5 states – California, Illinois, Louisiana, Oregon, and Washington – and Washington, DC have versions of so called “Second Look” laws with similar provisions as contained in the bill. As of February 2023, Second Look laws have been proposed in 28 states and jurisdictions. Federal Second Look legislation was also recently proposed in the 117th Congress in both the House of Representatives and the Senate.

Impact of the Bill

Although there is no specific data available that identifies the number and racial and ethnic identity of currently incarcerated individuals who would be eligible to petition the court for relief under the bill, DPSCS reports that there are 2,204 incarcerated individuals in Division of Correction facilities that have served 20 years or more without application of diminution credits and 1,312 that have served 25 years or more with application of diminution credits. There is no available data to determine the age of the individuals within each of these categories or the age at which the incarcerated individuals committed the crimes for which they are incarcerated.

DPSCS data also shows that Black or African American inmates comprise 71% of the total incarcerated population in the State and are more than twice as likely to be incarcerated in Maryland compared to their proportion of the State's population (29%). Black or African American individuals are also more than five times likelier to be incarcerated compared to white

individuals.

While there is no data available to measure the exact impact of the bill, there is reason to believe that the bill would have a meaningful impact on the incarcerated population, particularly Black or African American incarcerated individuals, as they are overrepresented in that population and would likely make up a significant portion of the roughly 3,500 individuals currently eligible under the bill.

Conclusion

The bill's provisions will give more convicted/incarcerated individuals access to the possibility of sentence reduction by a court. Although there is no readily available data on the demographics of those individuals that would be able to petition the court for relief, it is reasonable to expect that the Black or African American population of incarcerated individuals would experience the most significant impact given their overrepresentation in the State's correctional facilities. To the extent that the bill allows for the release of inmates that will not recidivate, the overall equity impacts could include reduced demands on prison staff, successful reentry of inmates, and reduced disparities in the criminal justice system as a whole.

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: Department of Public Safety and Correctional Services; Office of the Public Defender; Department of Legislative Services

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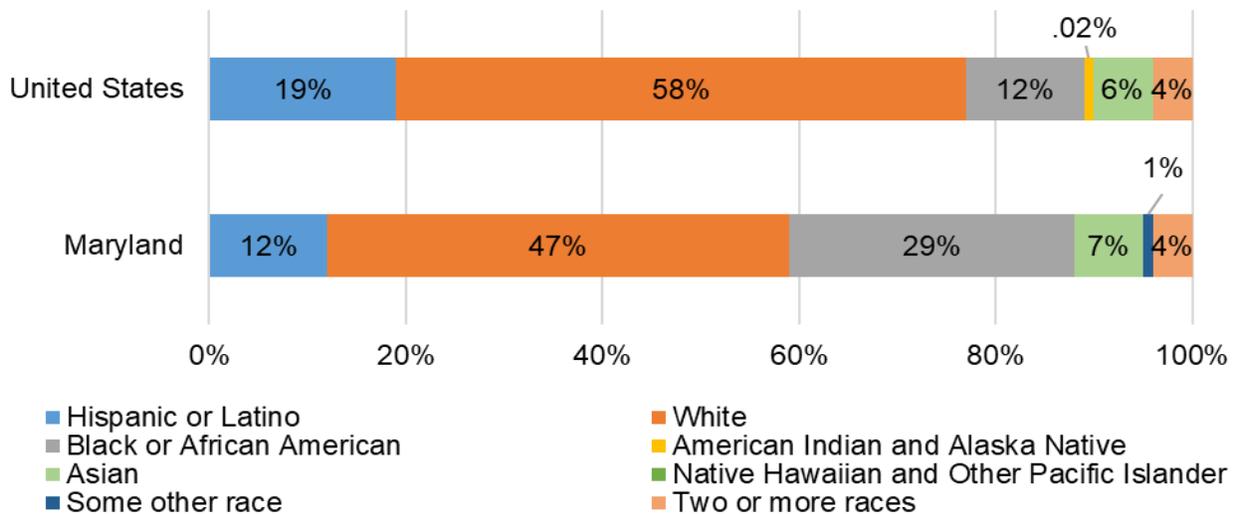
Appendix – Maryland Demographics

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.