

# SENATE BILL 121

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EMERGENCY BILL

6lr0676  
CF 6lr0686

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By: **Senator Simonaire**

Introduced and read first time: January 15, 2016

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Modification of Sentences**

3 FOR the purpose of authorizing a motion for modification of sentence to be filed within a  
4 certain time after imposition of a sentence in certain courts; prohibiting a court from  
5 revising a sentence after a certain amount of time from the date of the original  
6 sentence; prohibiting a court from increasing a sentence on a motion for modification  
7 of sentence; prohibiting a court from reducing a certain sentence below a certain  
8 guideline recommendation; requiring that the State's Attorney provide notice to  
9 certain victims regarding a motion for modification of sentence and certain hearings;  
10 authorizing a court to modify, reduce, correct, or vacate a sentence in open court after  
11 a hearing; authorizing a court to postpone a hearing due to the absence of certain  
12 victims under certain circumstances; authorizing a defendant to waive the right to  
13 be present at the hearing; requiring a court to consider certain factors before ruling  
14 on a motion for modification on the record; providing that a certain person who filed  
15 a certain motion for modification of sentence is eligible for a certain hearing;  
16 requiring a court to grant a certain hearing to a certain person who submits a certain  
17 application to the court on or before a certain date; authorizing a court to modify a  
18 certain sentence at a certain time; providing for the application of this Act; making  
19 this Act an emergency measure; and generally relating to modification of sentences.

20 BY adding to

21 Article – Criminal Procedure

22 Section 6–234

23 Annotated Code of Maryland

24 (2008 Replacement Volume and 2015 Supplement)

25 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
26 That the Laws of Maryland read as follows:

27 **Article – Criminal Procedure**

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **6-234.**

2 (A) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,  
3 ON A MOTION FILED WITHIN 90 DAYS AFTER IMPOSITION OF A SENTENCE, THE  
4 COURT HAS REVISORY POWER OVER THE SENTENCE:

5 (I) IN THE DISTRICT COURT, IF AN APPEAL HAS NOT BEEN  
6 PERFECTED OR HAS BEEN DISMISSED; AND

7 (II) IN A CIRCUIT COURT, WHETHER OR NOT AN APPEAL HAS  
8 BEEN FILED.

9 (2) ON A MOTION FOR MODIFICATION OF SENTENCE, THE COURT MAY  
10 NOT:

11 (I) REVISE THE SENTENCE AFTER THE EXPIRATION OF 5 YEARS  
12 FROM THE DATE THE SENTENCE ORIGINALLY WAS IMPOSED ON THE DEFENDANT;

13 (II) INCREASE THE SENTENCE; OR

14 (III) REDUCE A SENTENCE FOR A CRIME OF VIOLENCE AS  
15 DEFINED IN § 14-101 OF THE CRIMINAL LAW ARTICLE:

16 1. BELOW THE MINIMUM SENTENCE RECOMMENDED BY  
17 THE SENTENCING GUIDELINES ESTABLISHED UNDER § 6-208 OF THIS SUBTITLE; OR

18 2. IF THE ORIGINAL SENTENCE WAS BELOW THE  
19 MINIMUM SENTENCE RECOMMENDED BY THE SENTENCING GUIDELINES  
20 ESTABLISHED UNDER § 6-208 OF THIS SUBTITLE.

21 (B) THE STATE'S ATTORNEY SHALL GIVE NOTICE TO EACH VICTIM AND  
22 VICTIM'S REPRESENTATIVE WHO HAS FILED A CRIME VICTIM NOTIFICATION  
23 REQUEST FORM UNDER § 11-104 OF THIS ARTICLE OR WHO HAS SUBMITTED A  
24 WRITTEN REQUEST TO THE STATE'S ATTORNEY TO BE NOTIFIED OF SUBSEQUENT  
25 PROCEEDINGS AS PROVIDED IN § 11-503 OF THIS ARTICLE THAT STATES:

26 (1) THAT A MOTION TO MODIFY OR REDUCE A SENTENCE HAS BEEN  
27 FILED; AND

28 (2) (I) THAT THE MOTION HAS BEEN DENIED WITHOUT A HEARING;  
29 OR

1                   **(II) 1. THE DATE, TIME, AND LOCATION OF THE HEARING;**  
2 **AND**

3                   **2. THAT EACH VICTIM OR VICTIM'S REPRESENTATIVE**  
4 **MAY ATTEND THE HEARING AND TESTIFY.**

5           **(C) (1) THE COURT MAY MODIFY, REDUCE, CORRECT, OR VACATE A**  
6 **SENTENCE ONLY ON THE RECORD IN OPEN COURT, AFTER HEARING FROM THE**  
7 **DEFENDANT, THE STATE, AND THE VICTIM OR THE VICTIM'S REPRESENTATIVE.**

8                   **(2) THE COURT MAY POSTPONE THE HEARING IF THE VICTIM OR**  
9 **VICTIM'S REPRESENTATIVE IS NOT PRESENT AND THE COURT FINDS THAT THE**  
10 **STATE'S ATTORNEY HAS NOT PROVIDED SATISFACTORY JUSTIFICATION FOR THE**  
11 **ABSENCE OF THE VICTIM OR THE VICTIM'S REPRESENTATIVE.**

12                   **(3) THE DEFENDANT MAY WAIVE THE RIGHT TO BE PRESENT AT THE**  
13 **HEARING.**

14           **(D) (1) BEFORE RULING ON A MOTION FOR MODIFICATION OF SENTENCE,**  
15 **THE COURT MUST CONSIDER:**

16                   **(I) THE NATURE OF THE CRIME;**

17                   **(II) ANY INJURIES TO THE VICTIM;**

18                   **(III) WHETHER THE CRIME INVOLVED THE USE OF A WEAPON;**

19                   **(IV) THE AGE OF THE VICTIM;**

20                   **(V) THE CONDUCT OF THE DEFENDANT AFTER THE CRIME BUT**  
21 **BEFORE ARREST;**

22                   **(VI) THE LENGTH OF THE ORIGINAL SENTENCE; AND**

23                   **(VII) THE TESTIMONY OF THE VICTIM OR VICTIM'S**  
24 **REPRESENTATIVE.**

25                   **(2) THE COURT SHALL STATE ON THE RECORD THE REASONS FOR**  
26 **GRANTING OR DENYING THE MODIFICATION OF SENTENCE.**

27           **(E) (1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A PERSON**  
28 **WHO IS SERVING A TERM OF CONFINEMENT FOR A SENTENCE IMPOSED ON OR**  
29 **BEFORE JUNE 30, 2004, AND WHO FILED A TIMELY MOTION FOR MODIFICATION OF**

1 SENTENCE AS PROVIDED IN SUBSECTION (A)(1) OF THIS SECTION, WHICH MOTION IS  
2 NOT RULED ON BEFORE OCTOBER 1, 2016, IS ELIGIBLE FOR A HEARING BEFORE THE  
3 COURT TO MODIFY THE SENTENCE.

4 (2) A COURT SHALL GRANT A HEARING UNDER PARAGRAPH (1) OF  
5 THIS SUBSECTION TO A PERSON WHO SUBMITS AN APPLICATION TO THE COURT ON  
6 OR BEFORE JANUARY 1, 2017.

7 (3) ON OR BEFORE 30 DAYS AFTER THE CONCLUSION OF THE  
8 HEARING, THE COURT MAY MODIFY THE SENTENCE.

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to  
10 apply retroactively and shall be applied to and interpreted to affect any person convicted  
11 before, on, or after the effective date of this Act.

12 SECTION 3. AND BE IT FURTHER ENACTED, That this Act is an emergency  
13 measure, is necessary for the immediate preservation of the public health or safety, has  
14 been passed by a yea and nay vote supported by three-fifths of all the members elected to  
15 each of the two Houses of the General Assembly, and shall take effect from the date it is  
16 enacted.