

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 409
Judiciary

(Delegate J. Lewis)

Judicial Proceedings

Juveniles Convicted as Adults - Sentencing - Limitations and Reduction (Juvenile Restoration Act)

This bill authorizes a court, when sentencing a minor convicted as an adult, to impose a sentence less than the minimum term required under law. A court is prohibited from imposing a sentence of life imprisonment without the possibility of parole or release on a minor convicted as an adult. The bill also 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 bill establishes procedures related to such motions.

Fiscal Summary

State Effect: Potential minimal decrease in general fund expenditures for the Department of Public Safety and Correctional Services (DPSCS), as discussed below. Otherwise, the bill is not anticipated to materially affect State operations or finances.

Local Effect: The bill is not anticipated to materially affect local government finances or operations, as discussed below.

Small Business Effect: None.

Analysis

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

Current Law:

Juvenile Court Jurisdiction

In general, the juvenile court has jurisdiction over a child alleged to be delinquent, in need of supervision, or who has received a citation for specified violations. The juvenile court does not have jurisdiction over children at least age 16 who are alleged to have committed specified violent crimes, children age 14 and older charged with a crime punishable by life imprisonment, and children who have previously been convicted as an adult of a felony and are subsequently alleged to have committed an act that would be a felony if committed by an adult. However, a circuit court may transfer a case involving such a child to the juvenile court if such a transfer is believed to be in the interests of the child or society ("reverse waiver"). A reverse waiver is not permitted in limited circumstances related to specified prior convictions of the child or when the alleged crime is murder in the first degree and the child was 16 or 17 years old at the time the alleged crime was committed.

Life Imprisonment without the Possibility of Parole

Individuals convicted of the following offenses may be subject to imprisonment for life without the possibility of parole: (1) murder in the first degree; and (2) specified instances of rape in the first degree (the defendant was previously convicted of first-degree rape or first-degree sexual offense, the offense was committed in conjunction with kidnapping a child younger than age 16, or the defendant is at least age 18 and the violation involved a victim younger than age 13).

Life without Parole for Juvenile Offenders

In *Graham v. Florida*, 560 U.S. 48 (2010), the Supreme Court held that it is unconstitutional to sentence a juvenile offender to life without the possibility of parole for nonhomicide crimes. In *Miller v. Alabama*, 567 U.S. 460 (2012), the U.S. Supreme Court held that a *mandatory* sentence of life without the possibility of parole may not be imposed on a juvenile offender. However, courts may still impose life imprisonment without the possibility of parole on a juvenile offender after considering mitigating factors. In *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), the court held that *Miller* applies retroactively and that states may remedy sentences that are in violation of *Miller* by extending parole eligibility to, rather than resentencing, offenders mandatorily sentenced to life without the possibility of parole for crimes they committed as juveniles.

Parole and Parole Eligibility

Parole is a discretionary and conditional release from imprisonment determined after a hearing for an inmate who is eligible to be considered for parole. If parole is granted, the inmate is allowed to serve the remainder of the sentence in the community, subject to the terms and conditions specified in a written parole order.

The Maryland Parole Commission (MPC) has jurisdiction regarding parole for eligible inmates sentenced to State correctional facilities and local detention centers. Inmates in the Patuxent Institution who are eligible for parole are under the jurisdiction of the Patuxent Board of Review.

In general, a person sentenced to life imprisonment must serve a minimum of 15 years, less diminution credits, before becoming eligible for parole and may be paroled only with the approval of the Governor. However, offenders sentenced to life imprisonment for first-degree murder, instead of a sentence of life imprisonment without the possibility of parole, must serve a minimum of 25 years less diminution credits before becoming eligible for parole and may generally be paroled only with approval of the Governor. However, if MPC or the Patuxent Board of Review decides to grant parole to an inmate who has served 25 years *without* application of diminution credits and the Secretary of Public Safety and

Correctional Services approves the decision, the decision must be transmitted to the Governor, who may disapprove the decision in writing within 180 days. If the Governor does not disapprove the decision to grant parole within that timeframe, the decision to grant parole becomes effective.

Inmates serving a sentence of life without the possibility of parole may not be granted parole unless the Governor commutes the sentence to allow for the possibility of parole or pardons the individual.

Reconsideration of a Sentence

Pursuant to Maryland Rule 4-345, a court may correct an illegal sentence at any time and has revisory power over a sentence in case of fraud, mistake, or irregularity. The court also has revisory power over the sentence upon a motion filed after imposition of the sentence, as specified; however, it may not revise the sentence after the expiration of five years from the date the sentence originally was imposed on the defendant, and it may not increase the sentence. Maryland Rule 4-345 contains specified provisions regarding victim notification and the right of a victim or a victim's representative to attend and testify at a hearing on the motion.

Under the Review of Criminal Sentences Act (§§ 8-102 through 8-109 of the Criminal Procedure Article), with certain exceptions, a person convicted of a crime by a circuit court and sentenced to a term of imprisonment that exceeds two years in a correctional facility is entitled to have a panel of three circuit court judges of the judicial circuit in which the sentencing court is located review the appropriateness of the sentence. The sentencing judge may not be a member of the review panel but may sit with the review panel in an advisory capacity. The defendant must file a motion within 30 days after sentencing to exercise this right to review. The Act also contains specified provisions regarding victim notification and the right of a victim or a victim's representative to attend the hearing on the motion and address the review panel.

After a hearing, the panel may order a different sentence to be imposed or served, including an increased sentence, a decreased sentence, a suspended sentence to be served wholly or partly, or a sentence to be suspended with or without probation. The panel may decide that the sentence should remain unchanged with or without a hearing. In general, a majority of the members of the review panel is necessary to render a decision. The panel has 30 days after the filing date of the motion to make a decision.

Should the panel increase the sentence, a defendant may then appeal on the limited grounds that the sentence was not within statutory or constitutional limits or that the panel acted from ill will, prejudice, or other impermissible considerations. Otherwise, there is no right to appeal a decision made by the review panel.

A person is not entitled to this sentence review if the person's sentence was imposed by more than one judge. A person is not entitled to a review of an order requiring a suspended part of a sentence to be served if the sentence originally was wholly or partly suspended, the sentence was reviewed, and the suspended sentence or suspended part of that sentence later was required to be served.

Victims' Rights

Under Maryland law, a victim of a crime or delinquent act (or a representative in the event the victim is deceased, disabled, or a minor) has a broad range of specific rights during the criminal justice process. On first contact with a victim, a law enforcement officer, District Court commissioner, or juvenile intake officer must give an identified victim a pamphlet that advises the victim of the rights, services, and procedures available in the time before and after the filing of a charging document. Also, within 10 days after the filing or unsealing of an indictment or information, the prosecuting attorney must provide a victim with a pamphlet that describes the rights, services, and procedures available to a victim after the indictment or information is filed and a notification request form by which a victim may request notice of various proceedings. Section § 11-104 of the Criminal Procedure Article addresses victim notification, including the victim's rights pamphlet and the victim notification request form.

Under § 11-503 of the Criminal Procedure Article, following conviction or adjudication and sentencing or disposition of a defendant or child respondent, the State's Attorney must notify the victim or victim's representative of a "subsequent proceeding" in accordance with § 11-104 if the victim or victim's representative submitted to the State's Attorney a written request to be notified of subsequent proceedings or submitted a victim notification request form. The notice must include the date, the time, the location, and a brief description of the subsequent proceeding.

State/Local Fiscal Effect: General fund expenditures for DPSCS may decrease minimally if (1) individuals who would otherwise be sentenced to life imprisonment without the possibility of parole are sentenced to life imprisonment and are granted parole or (2) individuals serve less incarceration time from sentence reductions under the judicial process established by the bill or from courts opting to impose sentences that are less than the minimum sentences required under statute. Implementation of the petition and hearing process is not anticipated to materially affect State or local finances or operations.

According to DPSCS, as of December 30, 2020, the Division of Correction (DOC) had 1,159 inmates in custody who were younger than age 18 at the time of the offense. Of these individuals, 47 were sentenced to life *without* the possibility of parole; 189 were sentenced to life imprisonment *with* the possibility of parole; and the remaining individuals have an average sentence length of 22.21 years.

During fiscal 2020, DOC received 129 inmates who were younger than age 18 at the time of offense. Of these inmates, none were sentenced to life *without* the possibility of parole; 15 were sentenced to life imprisonment *with* the possibility of parole; and the remaining 114 inmates have an average sentence length of 12.68 years.

Any potential minimal decrease in DPSCS expenditures from the bill's prospective prohibition on life imprisonment without the possibility of parole or release for juvenile offenders is not realized until well into the future, since inmates sentenced to life imprisonment are generally required to serve at least 15 years, considering allowances for diminution credits, before becoming eligible for parole. Given the number of juvenile offenders sentenced to life imprisonment without the possibility of parole in recent years, this bill is expected to apply to a small number of cases. Furthermore, given the juvenile court's jurisdiction and the types of offenses that carry a minimum sentence, the prospective authority of a court, under the bill, to impose less than the minimum sentence required under law when sentencing a minor convicted as an adult is not expected to materially affect State or local finances.

As for the bill's sentence reduction provisions, the number of individuals who are likely to serve less incarceration time as a result of the process established under the bill compared to existing judicial remedies or the existing parole process cannot be reliably predicted beforehand, but is not expected to materially affect State incarceration costs.

Although the bill will generate additional hearings, because a motion to reduce a sentence may only be filed by an individual who was sentenced for the offense before October 1, 2021, and has been imprisoned for at least 20 years for the offense, it is anticipated that the number of individuals who qualify for relief under the bill's provisions each year is small enough that the workload associated with these hearings can be absorbed within the existing resources of the Office of the Public Defender and State's Attorneys' offices and not materially impact the workload of the courts. The bill is also not anticipated to materially affect local incarceration costs.

Additional Information

Prior Introductions: HB 1437 of 2020, a similar bill, received a hearing in the House Judiciary Committee, but no further action was taken. Its cross file, SB 1038, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

Designated Cross File: SB 494 (Senator West, *et al.*) - Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of Juvenile

Services; Department of Public Safety and Correctional Services; Department of Legislative Services

Fiscal Note History: First Reader - January 19, 2021
rh/jkb Third Reader - April 5, 2021
Revised - Amendment(s) - April 5, 2021
Revised - Clarification - April 5, 2021
Revised - Updated Information - April 5, 2021

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