

Department of Legislative Services  
Maryland General Assembly  
2024 Session

FISCAL AND POLICY NOTE  
First Reader

Senate Bill 389

(Senator West, *et al.*)

Judicial Proceedings

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Criminal Procedure - Incarcerated Seniors - Motion to Reduce the Duration of a Sentence

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This bill allows an individual who is at least age 60 and has been imprisoned for at least 20 years to file a motion to reduce the duration of any sentence that the individual is currently serving and any consecutive sentence. After a hearing, a court may reduce the individual's sentence if it 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 bill establishes factors that a court must consider in making the determination and procedural requirements for these motions.

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Fiscal Summary

**State Effect:** General fund expenditures for the Office of the Public Defender (OPD) increase by a *minimum* of \$170,400 in FY 2025. Future years reflect annualization and inflation and account for minimum staffing costs only. General fund expenditures for the Department of Public Safety and Correctional Services (DPSCS) decrease if incarcerated individuals are released from State correctional facilities under the bill. Revenues are not affected.

**Local Effect:** Local expenditures may increase minimally for State's Attorneys' offices to handle petitions generated by the bill. Local revenues are not affected.

**Small Business Effect:** None.

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## Analysis

**Bill Summary:** A court must conduct a hearing on a motion, unless the court has previously conducted a hearing and ruled on a prior motion under the provisions of the bill or § 8-110 of the Criminal Procedure Article (Juvenile Restoration Act) within the preceding five years. In that situation, the court may conduct a hearing if good cause is shown or deny the motion without conducting a hearing if good cause is not shown. The individual must be present at a hearing required under the bill unless the individual waives that right. This requirement may be satisfied if the individual elects to be present at the hearing by video conference. The victim or the victim's representative must be notified of the hearing in accordance with existing statutory requirements. The individual and the State may introduce evidence at the hearing. After a hearing, a court may reduce an individual's sentence if it determines that the individual is not a danger to the public and the interests of justice will be better served by a reduced sentence.

After a hearing, the court must issue its decision to grant or deny the motion in writing or on the record in open court. The decision must address the following factors:

- the individual's age at the time the motion is filed;
- the nature of the offense and the history and characteristics of the individual;
- whether the individual has substantially complied with the rules of the institution in which the individual has been confined;
- whether the individual has completed an educational, vocational, or other program;
- whether the individual has demonstrated maturity, rehabilitation, and fitness to reenter society sufficient to justify a sentence reduction;
- any statement offered by a victim or a victim's representative;
- any report of a physical, mental, or behavioral examination of the individual conducted by a health professional;
- the individual's family and community circumstances at the time of the offense, including any history of trauma;
- the reduction in recidivism that generally occurs as people age; and
- any other factor the court considers relevant.

**Current Law:** A person convicted of a crime who wishes to have their sentence reduced has multiple alternatives. One option is the Juvenile Restoration Act, which is similar to the bill. The Juvenile Restoration Act was enacted in 2021 and provides an opportunity for an individual 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.

### *Juvenile Restoration Act*

Among other provisions, the Juvenile Restoration Act (Chapter 61 of 2021) 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 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.

### *Geriatric Parole*

Other than a person required to register as a sex offender, a person sentenced under § 14-101 of the Criminal Law Article (crimes of violence) may petition for and be granted parole if the person is at least age 60 and has served at least 15 years of the sentence

imposed under § 14-101 for violent crime offenders. The Maryland Parole Commission must adopt regulations to implement geriatric parole.

**State Expenditures:**

*Office of the Public Defender*

General fund expenditures increase beginning in fiscal 2025 for OPD to implement the bill. OPD advises that it does not know the total number of people who may be eligible. However, based on data OPD received from DPSCS, approximately 624 people incarcerated as of October 2023 would be eligible under the bill (see discussion regarding DPSCS below for updated figures). Relying on that figure and accounting for individuals who opt for private counsel (10%) and existing OPD clients (100), OPD estimates that it will need to represent 462 new clients under the bill.

Because of its existing high caseloads and backlogged jury trial cases during the pandemic, OPD recruited dozens of *pro bono* attorneys and sought assistance from law schools to provide representation to eligible individuals under the Juvenile Restoration Act. Based on OPD’s experience with the Juvenile Restoration Act, the office anticipates varying the representation to account for conflicts of interest, maximize cost efficiency, and ensure best practices. After accounting for clients that will be represented by panel attorneys or law school clinics, the staffing needs estimated by OPD for representing 360 new anticipated OPD clients over three years are as follows: four attorneys to provide legal representation (using appellate caseload standards), one social worker to assist with the mitigation and release planning, and one administrative employee to provide clerical support. The cost associated with these positions is \$479,346 in fiscal 2025 and increases to \$650,155 by fiscal 2029.

Without experience under the bill, the Department of Legislative Services (DLS) is unable to verify that staffing of the magnitude indicated by OPD is required. However, DLS agrees that the bill creates additional work for OPD that cannot be absorbed within existing resources. Accordingly, *at a minimum*, general fund expenditures increase by \$170,366 in fiscal 2025, which accounts for the bill’s October 1, 2024 effective date. This estimate reflects the cost of hiring one attorney and one social worker. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

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| Positions                               | 2.0              |
| Salaries and Fringe Benefits            | \$155,854        |
| Operating Expenses                      | <u>14,512</u>    |
| <b>Minimum FY 2025 OPD Expenditures</b> | <b>\$170,366</b> |

Additional legal representation will be provided by panel attorneys, law school clinics, and volunteer private attorneys. However, OPD advises that it cannot estimate projected costs for panel attorneys at this time, therefore, such costs are not included in the estimate above.

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses. To the extent that the staffing levels represented above prove insufficient for actual implementation of the bill, OPD can request additional resources through the annual budget process.

Initial workloads are likely to be heavy as OPD identifies eligible incarcerated individuals within the existing Division of Correction (DOC) population, compiles and evaluates their casefiles, prepares their petitions, and presents their petitions at court hearings. Future workloads will likely stabilize over time and will involve newly eligible incarcerated individuals and repeat petitions for previous petitioners.

For reference, OPD's Post-Conviction Defenders Unit has 21 attorneys and 3 attorney vacancies; the unit has 6.5 additional staff, including 1 paralegal and administrative employees. OPD's Appellate Division has 26 attorneys and 4 attorney vacancies; the unit has 7.5 additional staff, including 2 paralegals and administrative employees.

#### *Department of Public Safety and Correctional Services*

According to DPSCS, there are 647 individuals currently in DOC facilities who are at least age 60 and have served 20 or more years of imprisonment; 501 of these individuals are serving life sentences (with or without the possibility of parole). It is unclear at this time if some of these individuals are also eligible for sentence reductions under the Juvenile Restoration Act.

General fund expenditures for DPSCS decrease if the bill shortens incarcerations. The extent to which this occurs depends on judicial decisions on filed petitions and can only be determined with actual experience under the bill. Many of the factors judges must consider under the bill are natural considerations during the parole process. Excluding all health care (which is a fixed cost under the current contract), the average variable costs in State correctional facilities total \$336 per month.

For context, according to OPD's report on its efforts in the first year of the Juvenile Restoration Act, courts decided 36 motions during the first year of the Act. The following is a summary of the outcomes in those 36 cases:

- 23 cases (63.9%) – motion granted and defendant released from prison;
- 4 cases – the court granted the motion in part and reduced the remaining incarceration time the petitioner must serve prior to release;

- 7 cases – the court reached the merits but denied the petition;
- 1 case – the court denied the motion without a hearing due to ineligibility; and
- 1 case – the individual was released on parole after the motion was filed but before the hearing (the court modified the sentence to place the individual on probation with conditions designed to maximize his chances of success).

As noted above, the Juvenile Restoration Act is limited to individuals who were convicted as adults for crimes *they committed as minors*. It is not clear at this time if the population eligible to file motions under the bill will experience similar judicial outcomes as individuals who filed motions under the Juvenile Restoration Act.

### *Judiciary*

The Judiciary advises that it does not anticipate a significant operational impact from the bill.

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## **Additional Information**

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

**Designated Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State’s Attorneys’ Association; Department of Public Safety and Correctional Services; Department of Legislative Services

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