

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 409
Judiciary

(Delegate J. Lewis)

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 sentence; the bill establishes related procedures.

Fiscal Summary

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

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

Small Business Effect: None.

Analysis

Bill Summary: The court must conduct a hearing if an individual files a motion to reduce the duration of the sentence under the bill's provisions. 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. The individual may introduce evidence in support of the motion at the hearing.

After a hearing, the court may reduce the duration of a sentence imposed if the individual *has been imprisoned for at least 20 years* and 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.

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.

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.

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.

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.

State/Local Fiscal Effect: The bill is not anticipated to materially affect State or local finances or operations.

Although the bill will generate additional hearings, because the court may only reduce the sentence of an individual who has been imprisoned for at least 20 years, it is anticipated that the number of individuals who would qualify for relief under the bill's provisions each year is small enough that it 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 incarceration costs.

Furthermore, given the juvenile court's jurisdiction and the types of offenses that carry a minimum sentence, the 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.

According to the Department of Public Safety and Correctional Services, 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.

Additional Information

Prior Introductions: HB 1437 of 2020 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: None.

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
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