

Department of Legislative Services  
Maryland General Assembly  
2007 Session

FISCAL AND POLICY NOTE  
Revised

House Bill 1317

(Delegate Anderson, *et al.*)

Judiciary

Judicial Proceedings

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Mandatory Minimum Sentences - Burglary and Daytime Housebreaking -  
Retroactive Effect

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This bill allows a person serving a mandatory minimum sentence of confinement imposed before October 1, 1994 (under then applicable criminal law provisions) where burglary or daytime housebreaking was a predicate offense for the imposition of the mandatory minimum sentence, to apply for and receive one review of the mandatory minimum sentence. A review panel is authorized to strike the restriction against parole, but not reduce the length of the sentence. An application for review under this provision must be filed by September 30, 2008.

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Fiscal Summary

**State Effect:** Minimal. The bill's provisions would affect very few inmates currently serving a mandatory minimum sentence.

**Local Effect:** None.

**Small Business Effect:** None.

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Analysis

**Current Law:** Under § 8–102 of the Criminal Procedure Article, a person convicted of a crime by a circuit court and sentenced to serve a sentence that exceeds two years in a correctional facility is entitled to a single sentence review by a review panel.

Under Maryland Rule 4-345, generally, upon a motion filed within 90 days after its imposition: (1) in the District Court, if an appeal has not been perfected or has been dismissed; and (2) in a circuit court, whether or not an appeal has been filed, a court has revisory power and control over a sentence, except that it may not revise the sentence after five years from the date the sentence was originally imposed and the court may not increase the sentence.

The court may correct an illegal sentence at any time. The court also has revisory power over a sentence in the case of fraud, mistake, or irregularity. In addition, the court may correct an evident mistake in the announcement of a sentence if the correction is made on the record before the defendant leaves the courtroom following the sentencing proceeding.

Maryland Rule 4-345 also requires the State's Attorney to give notice to each victim and victim's representative who has filed an official request to be notified that states: (1) that a motion to modify or reduce a sentence has been filed; (2) that either the motion has been denied without a hearing or the date, time, and location of the hearing; and (3) if a hearing is to be held, that the victim or victim's representative may attend and testify. The court may modify, reduce, correct, or vacate a sentence only on the record in open court after hearing from the defendant, the State, and from each victim or victim's representative who requests an opportunity to be heard. The defendant may waive the right to be present. No hearing may be held on a motion to modify or reduce the sentence until the court has determined that the notice requirement has been met. If the court grants the motion, it must prepare or dictate into the record a statement of the reasons on which the ruling is based.

A person may not break and enter the dwelling of another with the intent to commit theft or a crime of violence. A violator is guilty of the felony of burglary in the first degree and subject to imprisonment for up to 20 years.

Second degree burglary prohibits a person from breaking and entering the storehouse of another with the intent to commit theft, a crime of violence, or arson in the second degree. A violator is guilty of a felony and subject to imprisonment for up to 15 years. If the intent is to steal, take, or carry away a firearm, a violator is subject to maximum penalties of imprisonment for 20 years and/or a fine of \$10,000.

Third degree burglary prohibits a person from breaking and entering the dwelling of another with the intent to commit a crime. A violator is guilty of a felony subject to imprisonment for up to 10 years.

Under the State's misdemeanor prohibition against fourth degree burglary, a person may not:

- break and enter the dwelling of another;
- break and enter the storehouse of another;
- with the intent to commit theft, be in or on the dwelling or storehouse of another or a yard, garden, or other area belonging to the dwelling or storehouse of another; or
- possess a burglar's tool with the intent to use or allow the use of the burglar's tool in the commission of a burglary violation.

A violator of misdemeanor burglary is subject to imprisonment for up to three years. A person who is convicted of violating general theft provisions may not also be convicted of the fourth degree burglary of being in or on a dwelling, storehouse, or environs based on the act establishing the general theft.

Parole eligibility for persons incarcerated for commission of a violent crime (including first, second, and third degree burglary) is as follows:

- an inmate who has been sentenced to the Division of Correction (DOC) after being convicted of a violent crime committed on or after October 1, 1994 is not eligible for parole until the inmate has served the greater of one-half of the inmate's aggregate sentence for violent crimes, or one-fourth of the inmate's total aggregate sentence;
- an inmate who has been sentenced to DOC after being convicted of a violent crime committed on or after October 1, 1994 and who has been sentenced to more than one term of imprisonment, including a term during which the inmate is eligible for parole and a term during which the inmate is not eligible for parole, is not eligible for parole until the inmate has served the greater of one-half of the inmate's aggregate sentence for violent crimes; one-fourth of the inmate's total aggregate sentence; or a period equal to the term during which the inmate is not eligible for parole;
- an inmate who is serving a term of imprisonment for a violent crime committed on or after October 1, 1994 must receive an administrative review of the inmate's progress in the correctional facility after the inmate has served the greater of one-fourth of the inmate's aggregate sentence; or if the inmate is serving a term of imprisonment that includes a mandatory term during which the inmate is not eligible for parole, a period equal to the term during which the inmate is not eligible for parole.

**Background:** In 1994, the General Assembly removed burglary and daytime housebreaking from the list of violent crimes for which mandatory minimum sentences apply to repeat offenders. Chapter 387 of 2005 allowed a person serving a term of confinement for burglary or daytime housebreaking that includes a mandatory minimum sentence imposed before October 1, 1994 to apply for and receive one review of the mandatory minimum sentence. The panel was allowed to strike the restriction against parole, but could not reduce the length of the sentence. An application for review under Chapter 387 had to be filed on or before September 30, 2006. The Act took effect October 1, 2005 and terminated September 30, 2006. However, there are about 40 persons who are still serving a mandatory minimum sentence from that period for which either the first or second offense, but not the third, was burglary or daytime housebreaking and is, thereby, not eligible for the review under Chapter 387 (now terminated).

It was an unintended consequence of Chapter 387 that only defendants whose last conviction, which directly triggered the applicability of the mandatory minimum sentence, was burglary or daytime housebreaking were allowed to seek a sentence review. Accordingly, this bill is considered a corrective action.

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### **Additional Information**

**Prior Introductions:** None – see Background section above.

**Cross File:** None.

**Information Source(s):** State's Attorneys' Association, Judiciary (Administrative Office of the Courts), Office of the Public Defender, Commission on Criminal Sentencing Policy, Department of Public Safety and Correctional Services, Department of Legislative Services

**Fiscal Note History:** First Reader - March 13, 2007  
ncs/jr Revised - Clarification - May 16, 2007

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Analysis by: Guy G. Cherry

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510