

HOUSE BILL 312

E2

11r0871
CF SB 17

By: **Chair, Judiciary Committee (By Request – Maryland Judicial Conference)**

Introduced and read first time: February 2, 2011

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Courts – Sentence Review – Review Panel**

3 FOR the purpose of altering the number of judges on a criminal sentence review panel;
4 altering a certain definition to require review panel judges to be of a certain
5 judicial circuit; clarifying who is entitled to a sentence review by a review panel;
6 clarifying that a sentence includes any suspended portion for the purposes of a
7 sentence review; repealing a provision of law authorizing a certain sentencing
8 judge to sit with a review panel in an advisory capacity; authorizing a review
9 panel to confer with a certain sentencing judge; establishing that a review panel
10 has jurisdiction over a defendant's case once a sentence has been changed;
11 clarifying who may be heard at a criminal sentence review hearing; and
12 generally relating to criminal sentence reviews and review panels.

13 BY repealing and reenacting, with amendments,
14 Article – Criminal Procedure
15 Section 8–101, 8–102, 8–105, and 8–106
16 Annotated Code of Maryland
17 (2008 Replacement Volume and 2010 Supplement)

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

20 **Article – Criminal Procedure**

21 8–101.

22 (a) In this subtitle the following terms have the meanings indicated.

23 (b) “Review panel” means a group of three [or more] circuit court judges OF
24 THE JUDICIAL CIRCUIT IN WHICH THE SENTENCING COURT IS LOCATED who

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 conduct a review proceeding in connection with an application for a review of a
2 sentence under this subtitle.

3 (c) "Sentencing court" means the court in which the sentencing judge
4 imposed the sentence or required that a sentence that was wholly or partly suspended
5 be served.

6 (d) "Sentencing judge" means the judge who imposed a sentence or who
7 required that a sentence that was wholly or partly suspended be served.

8 8–102.

9 (a) [Except as provided in subsection (b) of this section, a] **A** person
10 convicted of a crime **OR FOUND IN VIOLATION OF PROBATION** by a circuit court and
11 sentenced to serve a sentence that exceeds 2 years in a correctional facility is entitled
12 to a single sentence review [by a review panel] **OF THE SENTENCE IMPOSED FOR**
13 **THE CRIMINAL CONVICTION OR THE VIOLATION OF PROBATION, BUT NOT BOTH,**
14 **IN ACCORDANCE WITH THIS SUBTITLE.**

15 (b) [A person is not entitled:

16 (1) to a sentence review if the sentence was imposed by more than one
17 circuit court judge; or

18 (2) to a review of an order requiring a suspended part of a sentence to
19 be served if:

20 (i) the sentence originally was wholly or partly suspended;

21 (ii) the sentence was reviewed; and

22 (iii) the suspended sentence or suspended part of that sentence
23 later was required to be served.

24 (c) For purposes of this subtitle, a sentence that exceeds 2 years is a
25 sentence in which the total period of the sentence, **INCLUDING ANY SUSPENDED**
26 **PORTION**, [and any unserved time of a prior or simultaneous sentence] exceeds 2
27 years[, including:

28 (1) a sentence imposed by a circuit court;

29 (2) a requirement by a circuit court that all or part of a suspended
30 sentence be served; and

31 (3) a prior or simultaneous sentence, suspended or not suspended,
32 that has been imposed by a court or other authority of the State or of another
33 jurisdiction].

1 8–105.

2 (a) (1) A review panel consists of three [or more] circuit court judges of
3 the judicial circuit in which the sentencing court is located.

4 (2) **THE SENTENCING JUDGE MAY NOT BE A MEMBER OF THE**
5 **REVIEW PANEL.**

6 (b) [Notwithstanding any Maryland Rule, the sentencing judge may not be a
7 member of the review panel, but on request of the sentencing judge, the sentencing
8 judge may sit with the] **THE** review panel [only in an advisory capacity] **MAY**
9 **CONFER WITH THE SENTENCING JUDGE.**

10 (c) (1) A review panel shall consider each application for review of a
11 sentence.

12 (2) A review panel may require the Division of Parole and Probation to
13 make investigations, reports, and recommendations.

14 (3) A review panel:

15 (i) with or without a hearing, may decide that the sentence
16 under review should remain unchanged; or

17 (ii) after a hearing, may order a different sentence to be imposed
18 or served, including:

19 1. an increased sentence;

20 2. subject to § 8–107(c) of this subtitle, a decreased
21 sentence;

22 3. a suspended sentence to be served wholly or partly; or

23 4. a sentence to be suspended with or without probation.

24 (4) In deciding to order a different sentence, the review panel may
25 impose **ANY LAWFUL** conditions that the review panel considers just [and that could
26 have been imposed lawfully by the sentencing court when the sentence was imposed].

27 (d) If the review panel orders a different sentence, the review panel shall
28 resentence and notify the defendant in accordance with the order of the panel.

29 (E) (1) **IF THE REVIEW PANEL ORDERS A DIFFERENT SENTENCE, THE**
30 **SENTENCING JUDGE MAY NOT TAKE ANY FURTHER ACTION REGARDING THE**
31 **CASE OF THE DEFENDANT.**

1 **(2) AFTER RESENTENCING BY A REVIEW PANEL, ANY FURTHER**
2 **ACTION IN THE CASE, INCLUDING ANY VIOLATION OF PROBATION, SHALL BE**
3 **TAKEN BY THE REVIEW PANEL MEMBER DESIGNATED BY THE REVIEW PANEL.**

4 8–106.

5 (a) A review panel may increase, modify, or reduce a sentence only after
6 notice to each party and notice to any victim or victim’s representative as provided
7 under § 11–104 or § 11–503 of this article.

8 (b) **[Before changing] AT A HEARING FOR A REVIEW OF** a sentence, a
9 review panel shall allow:

10 (1) **[each party] THE STATE, DEFENDANT, AND DEFENDANT’S**
11 **COUNSEL** to be heard at the hearing; and

12 (2) the victim or victim’s representative to attend the hearing, as
13 provided by § 11–102 of this article, and to address the review panel, as provided by §
14 11–403 of this article.

15 **SECTION 2. AND BE IT FURTHER ENACTED,** That this Act shall take effect
16 October 1, 2011.