

**Department of Legislative Services**  
Maryland General Assembly  
2016 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

Senate Bill 121

(Senator Simonaire)

Judicial Proceedings

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**Criminal Procedure - Modification of Sentences**

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This emergency bill codifies existing procedures under the Maryland Rules and creates several additional requirements relating to a court's revisory power to modify a sentence.

The bill applies retroactively to affect any person convicted before, on, or after the bill's effective date.

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**Fiscal Summary**

**State Effect:** Potential minimal increase in general fund expenditures for the Judiciary if the bill results in additional applications/hearings. The number of motions filed or hearings held as a result of the bill cannot be reliably estimated at this time. The Department of Public Safety and Correctional Services (DPSCS) can handle the bill's requirements with existing resources. Revenues are not affected.

**Local Effect:** Potential minimal increase in expenditures for the circuit courts if the bill results in an increase in applications/hearings. The number of motions filed or hearings held as a result of the bill cannot be reliably estimated at this time. Local revenues are not affected.

**Small Business Effect:** None.

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**Analysis**

**Bill Summary:** The bill authorizes a court, on a motion filed within 90 days after imposition of sentence, to revise a sentence (1) in the District Court, if an appeal has not been perfected or has been dismissed, and (2) in the circuit court, whether or not an appeal

has been filed. The court's revisory power is limited to a period of five years after the imposition of sentence and a court may not (1) increase a sentence; (2) reduce a sentence below the minimum sentence recommended by the sentencing guidelines; or (3) reduce a sentence at all if the original sentence was below the minimum sentence recommended by the sentencing guidelines.

The State's Attorney must give notice to each victim or victim's representative (victim/representative) who has filed the specified form or a written notification request stating (1) that a motion to modify or reduce a sentence has been filed; (2) that 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 each victim/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/representative who requests an opportunity to be heard. If a victim/representative is not present and the court finds that the prosecuting attorney has not provided satisfactory justification for the victim/representative's absence, the court may postpone the hearing. The defendant may waive the right to be present at the hearing.

Before ruling on a motion for modification of sentence, the court must consider:

- the nature of the crime;
- any injuries to the victim;
- whether the crime involved the use of a weapon;
- the age of the victim;
- the conduct of the defendant after the crime but before the arrest;
- the length of the original sentence; and
- the testimony of the victim/representative.

The court must state on the record the reasons for granting or denying the modification of sentence.

A person who is serving a term of confinement for a sentence imposed on or before June 30, 2004, and who filed a timely motion for modification of sentence which is not ruled on or before October 1, 2016, is eligible for a hearing before the court to modify the sentence. A court must grant a hearing on a motion for modification of sentence to a person who submits an application to the court on or before January 1, 2017. The court may modify the sentence within 30 days after the conclusion of the hearing.

**Current Law:** Under Maryland Rule 4-344, a defendant may apply for a review of sentence under the Review of Criminal Sentences Act (Criminal Procedure Article,

§§ 8-102 to 8-109, inclusive). The defendant must file an application for review of the sentence with the sentencing court within 30 days after the imposition of sentence or at a later time permitted by the Act. The clerk must promptly notify the defendant's counsel, if any, the State's Attorney, and the Circuit Administrative Judge of the filing of the application.

Maryland Rule 4-345 authorizes a court to correct an illegal sentence at any time. The sentencing court has revisory power over a sentence in case of fraud, mistake, or irregularity, and 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. Upon a motion filed within 90 days after imposition of a sentence (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, the court has revisory power over the sentence except that 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.

Before considering a Rule 4-345 motion, the court must inquire if a victim/representative is present. If the victim/representative is present, the court must allow the victim/representative to be heard as allowed by law. If a victim/representative is not present and the case is one in which there was a victim, the court must inquire of the State's Attorney on the record regarding any justification for the victim/representative's absence. The prosecuting attorney at the hearing must state on the record that proceeding without the appearance of the victim/representative is justified because (1) the victim/representative has been notified and waived the right to attend the hearing; (2) the victim/representative cannot be located; or (3) the victim has not filed a notification request. If no justification is asserted or the court is not satisfied by an asserted justification, the court may postpone the hearing.

In addition, under Rule 4-345, the State's Attorney must give notice to each victim/representative who has filed a notification request form or submitted a written request stating (1) that a motion to modify or reduce a sentence has been filed; (2) that 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 each victim/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/representative who requests an opportunity to be heard. The defendant may waive the right to be present at the hearing. No hearing may be held on a motion to modify or reduce the sentence until the court determines that the victim/representative notification requirements have been satisfied. If the court grants the motion, the court ordinarily must prepare and file or dictate into the record a statement setting forth the reasons on which the ruling is based.

**Background:** In 2004, the Court of Appeals adopted the existing language of Rule 4-345(e)(1), to provide: “upon a motion filed within 90 days after imposition of a sentence (A) in the District Court, if an appeal has not been perfected or has been dismissed, and (B) in a circuit court, whether or not an appeal has been filed, the court has revisory power over the sentence except that 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.”

The court’s May 11, 2004 Rules Order adopting the rule, which for the first time included the five-year limit on a circuit court’s ability to revise a sentence, established the prospective application of the rule, ordering that the amended rule “shall take effect and apply to all sentences imposed on or after July 1, 2004.” (Md. Reg., Vol. 31, Issue 11, p. 848 (May 28, 2004)). Although the original proposed rule, which was forwarded to the Court of Appeals by the Standing Committee on Rules of Practice and Procedure, limited the application of the five-year limitation to a sentence imposed on a “defendant convicted of a crime of violence,” defined under § 14-101 of the Criminal Law Article, the final rule was amended by the court to extend the five-year limit to any sentence imposed in a circuit court. (Md. Reg., Vol. 31, Issue 5, p. 444 (March 5, 2004)). The revisory power available under Rule 4-345 sets forth remedies that may be granted after a criminal conviction becomes final, not before. (See *State v. Griffiths*, 338 Md. 485, 496 (1995) (describing Rule 4-345 as providing “a method of opening a judgment otherwise final and beyond the reach of the court”)).

The U.S. Constitution and Article 17 of the Maryland Declaration of Rights prohibit *ex post facto* laws. Generally, an “*ex post facto*” law is one that makes an action a crime when it was not a crime before the law was passed or a law that aggravates a crime or increases the punishment for a crime and applies those changes to persons who committed those actions before the law was passed. Generally, the Court of Appeals has viewed the State and federal *ex post facto* prohibitions as generally having the same meaning, but has said that each provision is independent, and that a violation of one is not necessarily a violation of the other. (*Doe v. Department of Public Safety and Correctional Services*, 430 Md. 535, 548-50 (2013)). According to a letter of advice from the Attorney General’s Office dated September 16, 2015, “Various cases appear to view differently the propriety of retroactive amendments of postconviction procedures and remedies that could impact the sentence of a convicted person under *ex post facto* analysis.” The letter of advice concluded that:

“In light of the conflicting case law and the Court of Appeals’ willingness to view *ex post facto* analysis independently under Article 17 of the Declaration of Rights, it is difficult to assess whether federal or State courts would view the retroactive application of a five-year cap on the court’s revisory power as an *ex post facto* law. Although there does not appear to be controlling case law prohibiting such a limitation, there appear to be cases supporting either argument. Legislation

imposing such a cap retroactively may be subject to a possible ex post facto violation challenge if enacted.”

**State Expenditures:** Statistics are not readily available on how often inmates request a revision of sentence, how long after sentencing these requests are typically made or ruled on, or how often the requests result in reduced sentences. Accordingly, the number of motions subject to the bill’s provisions that may be filed in the District Court cannot be reliably estimated. Assuming that there are not a significant number of motions for modification of sentence which were filed in the District Court in a timely manner for a sentence imposed before July 1, 2004, or within the past five years in which the court has not held a hearing or ruled on the motion, the bill does not have a significant impact on the Judiciary. However, the bill may result in a minimal increase in general fund expenditures for the Judiciary because, according to the Judiciary, the modification of sentence hearing process is handled manually and is labor intensive and the bill (1) requires the court to grant a hearing for specified persons who submit an application before January 1, 2017; (2) requires the court to state on the record the reasons for denying a modification of sentence; (3) appears to indicate that the court must act on a motion within 30 days after the conclusion of the hearing; and (4) appears to apply retroactively.

Also, assuming that there are not a significant number of persons who filed in a timely manner, were sentenced before July 1, 2004, or within the last five years, have not had his or her motion granted or denied, and who are still serving a sentence of incarceration in a Division of Correction (DOC) facility, if the bill takes effect, there is not likely to be a decrease in general fund expenditures for DPSCS due to any reductions in sentences that may be granted by the District Court.

**Local Expenditures:** Although the number of motions filed as a result of the bill cannot be reliably estimated at this time, assuming that there are not a significant number of motions for modification of sentence which were filed in the circuit courts in a timely manner for a sentence imposed before July 1, 2004, or within the past five years in which the court has not held a hearing or ruled on the motion, circuit court expenditures are not significantly affected. However, the bill may result in a minimal increase in circuit court expenditures given that, according to the Judiciary, the modification of sentence hearing process is handled manually and is labor intensive and the bill (1) requires the court to grant a hearing; (2) requires the court to state on the record the reasons for denying a modification of sentence; (3) appears to indicate that the court must act on a motion within 30 days after the conclusion of the hearing; and (4) appears to apply retroactively.

Local jail expenditures are not likely to be impacted by the bill’s provisions because persons serving a sentence longer than 18 months are incarcerated in DOC facilities. If the bill takes effect, there is likely no change in the process or any significant changes in sentences for persons serving a sentence of less than 18 months in a local facility.

## **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

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

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