MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Joseph M. Getty
Chief Judge

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO:	House Judiciary Committee
FROM:	Legislative Committee Suzanne D. Pelz, Esq. 410-260-1523
RE:	Senate Bill 842 Criminal Procedure – Petition to Modify or Reduce Sentence (Maryland Second Look Act)
DATE:	March 2, 2022 (3/9)
POSITION:	Oppose

The Maryland Judiciary opposes Senate Bill 842. This bill allows a person to file a petition to modify or reduce his or her sentence if he or she has served the greater of 20 years of the sentence term without application of diminution credits or 25 years of the sentence term with application of diminution credits. Petitions under the bill may only be filed by a petitioner once every 5 years and may be filed regardless of whether the petitioner previously filed a motion for reconsideration under Maryland Rule 4-345. The court shall hold a hearing on a petition if the petitioner meets the eligibility criteria above. If the petitioner committed the offense at issue when he or she was a minor, the court shall modify the sentence in a manner reasonably calculated to release the petitioner within 3 years if the petitioner has matured and rehabilitated such that he or she is no longer a threat to the public. If the petitioner was an adult when the offense was committed, the court may modify the sentence if retention of the sentence is no longer necessary for public safety. A court may not increase the length of a sentence under the bill.

First, this bill is unnecessary as several methods of post-conviction relief already exist under Maryland law. In addition, the bill speaks of modifying the sentence. Although that could include increasing the sentence in some way, constitutionally that would be impermissible.

Further, the general right to file an application for leave to appeal in the bill seems overly broad as compared to existing rights to appeal from discretionary sentencing decisions. The right to file an application for leave to appeal to the Court of Special Appeals makes most sense in regard to determinations made under proposed 8-501 (E)(1) (pp. 3- lines, 29 to 3) referring to petitioners who were sentenced when they were minors and containing that provision (mentioned above) that the court "shall modify the sentence." Sentencing decisions that were made under proposed 8-501 (E)(2) are, as drafted, entirely

under a judge's discretion, as they are for motions for modification filed under the existing Rule 4-345(e). Generally, except on a few very limited grounds, there is not a *general* right to file an application for leave to appeal from denial of a motion for modification of sentence under Rule 4-345(e). *State v. Rodriguez*, 125 Md. App. 428, 442 (1999).

It is also not clear what standard the Court of Special Appeals would apply to an appeal of a discretionary sentencing decision, so long as a legal sentence exists. If there is an appeal from the trial judge's decision, either by the state or the petitioner (but not a victim), what standard of review would the appellate court apply – abuse of discretion, arbitrary and capricious, insufficiency of evidence to support the court's conclusion? Also, no specific fact-finding is required, only an amorphous determination as to whether a juvenile has matured and whether retention of the sentence is not necessary for the protection of the public.

Further, this bill provides that the State may appeal which is problematic as there is no provision indicating how the State would appeal or why this is needed. Once modification is granted, the court would be precluded from increasing a sentence on appeal, unless the new sentence were somehow illegal.

As applied to crimes committed by adults, this bill appears to place circuit courts in a position to make decisions currently left to parole. The standard set in the bill is whether "retention of the sentence is not necessary for the protection of the public" plus, for juvenile offenders, the inmate has "matured." That is quintessentially an act of post-judgment clemency, which is an executive branch function, through parole, statutory diminution credits, or gubernatorial commutation or pardon.

It is also not clear what the standard would be or what would happen if someone has separate concurrent sentences imposed in different courts (one court may grant relief from its sentence but the other court may refuse). The role of reviewing sentences, as imposed on the Judiciary by this bill, is more appropriately handled by the Parole Commission. The current standards for the Parole Commission are set forth in Section 7-305 of the Correctional Services Article and are more specific and comprehensive, requiring evidence that can be evaluated. The standard set forth in the bill gives no guidance at all, either to the trial judge or to appellate judges. Section 7-305 of the Correctional Services Article lists 11 specific factors that the Parole Commission must consider in deciding whether to grant parole. They give guidance to the Commission and require factual development. Senate Bill 842 provides no criteria other than whether a juvenile has "matured" or that "retention of the sentence is not necessary for the protection of the public." It is not clear what factors the court will consider in making those amorphous determinations or what factors an appellate court would consider in determining whether the trial judge has abused his/her discretion in granting or denying relief.

The Judiciary is also concerned that the court will lose the ability to hear from the victims in these cases as he or she may not be able to be located. Given the lengthy delay contemplated by this statute, it is likely that the original sentencing judge and counsel

will not be present. The ability to provide an accurate or comprehensive picture of the crime, the victim impact, and the defendant will be significantly compromised.

Further, on the page 3, line 26 the bill requires "the court shall modify." Although this provision is tempered by the balance of the section, which mandates reduction only if the judge finds that the petitioner "has matured and rehabilitated such that retention of the sentence is not necessary for the protection of the public" the Judiciary traditionally opposes legislation that includes mandatory provisions.

There also is the anomaly of excusing the failure to move for modification of sentence (other than for illegality) within 90 days or the five-year deadline for ruling on such a motion (which was added to the rule at the insistence of the legislature) for inmates who have served 20-25 years but not for anyone else. Subject to relief under the various post-conviction remedies, inmates who missed the 90-day deadline will not be entitled to discretionary modification relief until they serve 20-25 years, which the great majority of inmates never do.

In addition, the phrase "modify the sentence in a manner reasonably calculated to result in the petitioner's release within 3 years" (which appears in the bill at Criminal Procedure Article § 8-501(e)(1)) is vague, and additional clarity would be needed to enable courts to apply it properly and consistently.

cc. Hon. Joanne Benson
Judicial Council
Legislative Committee
Kelley O'Connor