



Office of the State's Attorney for Prince George's County

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HB317 – Postconviction Review - Motion for Reduction of Sentence at Request of a State's Attorney – Additional Information

The Bill Deals with Sentences and Not Convictions

Opponents of a similar bill last year insisted that there were already mechanisms to accomplish the goals of this bill. This is not the case. HB317 is focused on sentences and not on the convictions that underlie those sentences. In these cases there is no question that the individual committed the crime and is, in fact, guilty, but there may be reasons for a modification of the sentence. This can be because of subsequent changes in the law or the way individuals are sentenced, the age of the individual at the time of the crime, evidence of substantial rehabilitation, and a variety of other relevant factors.

Available Options for Sentence Reconsideration

Rule 4-345 - After an individual is sentenced, they have 90 days in which to request a modification of the sentence under Maryland Rule 4-345. These motions are frequently denied shortly after they are filed by the sentencing judge. Once denied, however, they cannot be reinstated even if there is a change in circumstances or developments that might warrant a change years later.

If not denied, the ability to modify a sentence under Rule 4-345 ends after five years for all sentences after 2004. Before that date, reconsideration motions could be held in abeyance in case of future developments. That changed in 2004 in the wake of some specific cases that aroused political protest. The Judiciary's Standing Committee on Rules and Practice suggested changing the time limit for some cases two years ago, but the Maryland Court of Appeals, now Supreme Court, declined to do so because of their concern about a flood of cases overwhelming the courts. They also suggested that the change would be an appropriate topic for legislative action.¹

For many crimes, the five-year limit under Rule 4-345 eliminates the option for reconsideration at a time when evidence of significant personal change and rehabilitation is finally present. This is especially true for youthful offenders.

¹ HB317 avoids the problem of a flood of cases by requiring that a new motion for reconsideration be initiated by a State's Attorney. It also requires a positive judicial decision and notification of any victims or next of kin.

The Juvenile Restoration Act (JRA) – The General Assembly passed the Juvenile Restoration Act in 2021 to allow the reconsideration of sentences for individuals who had committed their crime while under the age of 18 and who have been incarcerated for more than 20 years. While very useful for these “juvenile lifers,” the JRA does not address individuals who were over the age of 18 – even if only by a few months.²

Petitions for Post-conviction Relief – An individual convicted of a crime can file a petition for post-conviction relief for a variety of reasons. The most common is for “ineffective assistance” on the part of their attorney. While these petitions are technically aimed at overturning a conviction and securing a new trial, petitions can sometimes be resolved by an agreement to modify a sentence. This often occurs when there would be significant obstacles to a new trial, but can also occur through an agreement between the State’s Attorney and the petitioner.

In general, however, there is a 10 year limit on when a petition can be filed. Beyond that limit, this are backhanded way to secure a sentence reconsideration, but they are not in the least transparent to victims. Change in those circumstances usually requires two or more hearings before different judges. And, in the end, it depends on the willingness of a judge to creatively rule in favor of a reconsideration and they are not obligated to say why they acted as they did.³

Prince George's County Reentry Court – In Prince George's County, the court system has created a special Reentry Court to facilitate the reentry of a limited number of individuals. It operates under the provisions of the Health General Article and does allow for the reconsideration of a sentence upon completion of their program. It is a useful tool, but has significant limitations.

First, it is limited to Prince George's County. There are also serious capacity issues. Reentry Court is currently limited to less than 20 individuals at a time. It has a long waiting list and it can be years before an individual who is granted conditional approval actually enters the program. It also requires that the Maryland Department of Health certify that the individual has a substance abuse problem. While the Department has concluded that individuals who have been incarcerated for decades with no evidence of drug use while incarcerated had a problem at the time of the crime and thus qualify under the law, this often appears to be more of a convenient fiction than an actual diagnosis. We have also had several cases where the incarcerated individual truthfully said they did not have a problem and were, accordingly, denied entry into Reentry Court. There is also an unresolved question of whether individuals who received a life without parole sentence prior to 2018 are eligible to participate in the program even if otherwise qualified.

² It is worth noting that the existence of the JRA may create an issue of fundamental fairness when there are several codefendants, some of whom are juveniles while others may not.

³ By contrast, HB317 explicitly requires notice to victims and guarantees them a right to participate. It also requires a judge to specifically address whether a reconsideration of sentence is appropriate.

Reentry Court also requires that participants have significant family support in Prince George's County and has a limited number of participating providers. These effectively exclude many otherwise qualifying individuals whose support network is outside the county who could benefit from programs that are also based outside the county.

Case Studies and Examples⁴

Tracy S was 18 in 1997, when he was involved in a murder. He received a life without parole sentence. He filed a motion for reconsideration, which was immediately denied, precluding him from filing again. He filed a post-conviction petition, which was also denied. In the 26 years he was incarcerated, he showed significant evidence of change and rehabilitation. He could not enter that program until his sentence was reconsidered.⁵

Tkeshia G was 14 when she was recruited by an individual who was 44, who groomed her over the next several years to do his bidding, and also fathered two children for her, one of whom died in utero as a result of a beating. In 2010, when she was 19, he brought her with him from Texas with a large quantity of marijuana. When the drugs disappeared, he murdered two adults and two children. Tkeshia was present but unable to do anything. She immediately began cooperating with the police, pled guilty to felony murder, and ultimately testified at the murderer's trial several years later. She received four life sentences – essentially the same punishment as the murderer. She filed a motion for reconsideration, which was denied. She is now 33 and has a good prison record. She was referred to Reentry Court. She told the Health Department truthfully that she did not have a substance problem and was denied entry. She has a possible placement in a long-term reentry program for women in Baltimore that provides exactly the kind of long-term support and life-skills training she needs, but she cannot be enrolled without a reconsideration of her sentence.

James S was convicted of murder and rape in 1995 when he was 17. He is now 47. He requested relief under the Juvenile Restoration Act, but the State opposed this due to his institutional record. The judge agreed and denied any reconsideration. This precludes him from requesting again for three years. But subsequently, he suffered a massive stroke and is now hospitalized with slim prospects that he will be able to fully recover. He needs a reconsideration of his sentence for him to be transferred to private nursing care.

Jackie M was 19 at the time of a murder that occurred in the course of a robbery in 1987. She received a life without parole sentence and has been incarcerated for more

⁴ All of the individuals described here are African Americans.

⁵ His sentence was ultimately reconsidered using one of the creative “work arounds” that can sometimes be used, but the process was complicated and not particularly transparent.

than 34 years. She has an outstanding institutional record and would be a good candidate for a structured reentry program.⁶

Terry M was 19 when he was convicted of a 1989 murder. He has served more than 32 years and has a great institutional record. He, too, would be a great candidate for a structured reentry program.

Clarence M was 20 in 1989 when he was convicted of murder. He has served more than 23 years and would also be a good candidate for a structured reentry program based on his behavior and achievements in prison. He has been infraction free for more than 15 years.

Kevin R was 20 when he was convicted of a murder in the course of a robbery in 1983. He has been incarcerated for almost 40 years and has not had an infraction since 1996.

Casey S was 23 in 1994 when he was convicted of murder. He has been incarcerated for 28 years and has a good institutional record. He would be a good candidate for reconsideration and a structured reentry program.

There are other examples in Prince George's County and even more in other jurisdictions that would benefit from HB317.

For additional information, please contact Doyle Niemann, Chief of Operations and Chief of the Conviction and Sentence Integrity Unit, Office of the State's Attorney for Prince George's County. DLNiemann@co.pq.md.us – 240-606-1298..

⁶ As a matter of policy, unless there are special circumstances, our policy is to require an individual whose long-term sentence is reconsidered to participate in a structured reentry program that provides transitional housing, counseling, treatment and support as needed to ensure a successful reentry into the community. The court system's Reentry Court is one such program, but there are a number of others that provide comparable services in Prince George's County and around the state.