

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE

Senate Bill 411 (Senator Haines)
Judicial Proceedings

Criminal Sentencing - Revisory Power of the Courts - Limitation

This bill authorizes a criminal defendant to file a motion to revise, modify, or reduce a sentence within 90 days after the sentence is imposed. The bill limits a court's revisory power to a period of one year after the filing of such a motion. The bill allows such a motion to be filed at any time in a case involving an illegal sentence, fraud, mistake, or an irregularity. The bill specifies that the court may not increase a sentence based on a revisory motion filed by the defendant.

The bill also mandates that a court may only revise, modify, or reduce a sentence if: (1) it is done in open court on the record after hearing from the defendant, the State, and any victim or victim's representative who requests to be heard; and (2) the court's reasons are stated in writing. Lastly, the bill requires that the State's Attorney give notice to each victim or victim's representative who has filed an official request for such notification that states: (1) that the defendant has filed a revisory motion; and (2) that either the motion has been denied without a hearing or the date, time, and location of the hearing.

Fiscal Summary

State Effect: It is expected that any procedural changes could be handled with existing resources, and any sentencing changes would not materially impact governmental finances.

Local Effect: None -- see above.

Small Business Effect: None.

Analysis

Current Law: Under Rule 4-345 of the Maryland Rules, a court has revisory power and control over a sentence upon a motion filed within 90 days after its imposition: (1) in the District Court of Maryland, if an appeal has not been perfected; and (2) in a circuit court, whether or not an appeal has been filed. Thereafter, the court has revisory power and control over the sentence in case of fraud, mistake, or irregularity, or as otherwise provided in the Maryland Rules in cases concerning desertion and nonsupport of spouse, children, or destitute parents. There is no time limit restricting when the court may exercise its revisory power. The court may not increase a sentence after the sentence has been imposed, except that it 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, 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 after hearing from the defendant, the State, and from each victim or victim's representative who requests an opportunity to be heard. 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.

Background: Another way in which a defendant may obtain a revision of sentence is to file a motion under Maryland Rule 4-344 and § 8-102 of the Criminal Procedure Article. Under these provisions, with certain exceptions, a defendant who is sentenced to serve a sentence that exceeds two years in a correctional facility is eligible to file a motion for review of sentence. The motion must be filed within 30 days of the sentencing. A three-judge review panel that hears the motion must file a written decision within 30 days.

Additional Information

Prior Introductions: SB 334 of 2002 received a hearing in the Senate Judicial Proceedings Committee, but the bill was not reported to the full Senate. A similar bill, SB 73 of 2002, received an unfavorable report from the Judicial Proceedings Committee. This bill is also similar to SB 632 and SB 671 of 2001. Hearings were held on both bills by the Judicial Proceedings Committee, but no further action was taken on either. SB 632 was cross-filed as HB 62, which received an unfavorable report from the House Judiciary Committee.

Cross File: None.

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

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