

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

House Bill 812 (Delegate Sophocleus, *et al.*)
Judiciary

Sentencing - Revisory Power of Courts - Limitations

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 requires that a court's decision to change an original sentence be in writing and state the reasons for the decision. In addition, the bill allows such a motion to be filed at any time in a case involving an illegal sentence, fraud, mistake, or an irregularity. Lastly, the bill requires that the court notify all victims of the crime(s) prior to revising, modifying, or reducing the sentence.

Fiscal Summary

State Effect: Minimal increase in general fund expenditures if the bill results in longer terms of incarceration in State or local facilities, or leads to additional trials where defendants are represented by the Office of the Public Defender. The bill is not expected to have a significant impact on the Judiciary's finances.

Local Effect: Minimal increase in local expenditures if the bill results in longer terms of incarceration in local facilities. The bill is not expected to have a significant impact on the finances of the circuit courts or State's Attorneys' offices.

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, 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 only 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(c) 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.

Another way in which defendants 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.

Background: Concerns have been raised about this revisory authority in recent years when individuals whose sentences have been reduced are released from prison and subsequently commit violent crimes. The most recent instance involved a man who was convicted of the murder of his wife in 1994. In 1999, after the individual received treatment at the Patuxent Institution and after a psychiatrist concluded that he was a low risk to engage in future violent behavior, the sentencing judge reduced his original sentence from 30 to 20 years. As a result, he was eligible for parole and was released in 2001. In 2003, approximately 20 months after his parole, he was arrested for the stabbing death of his girlfriend.

In recent years, the General Assembly has considered and rejected similar bills. In part due to this legislative attention, the Maryland Judiciary has examined possible amendments to the revisory power through its rulemaking authority. The Conference of Circuit Judges Ad Hoc Committee to Consider Amending Rule 4-345 submitted a proposal to the Court of Appeals Standing Committee on Rules of Practice and Procedure

that would have limited a court's authority to modify or reduce a criminal sentence to instances in which a motion to revise was filed within 90 days in District Court or 30 days in circuit court. In addition, under the proposed amendments, a court would not have been able to revise a sentence for a crime of violence more than five years after the sentence was imposed, unless the State's Attorney and the defendant agreed. In January 2004, the Rules Committee voted not to recommend these proposed changes to the Court of Appeals.

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 how often the request results in a reduced sentence. However, general fund expenditures could increase minimally due to people being incarcerated in Division of Correction (DOC) facilities for longer periods of time and increased payments to counties for reimbursement of inmate costs.

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$1,850 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including medical care and variable costs) is \$350 per month. Excluding medical care, the average variable costs total \$120 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or DOC. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2005 are estimated to range from \$14 to \$58 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in DOC facilities.

The Office of the Public Defender advises that one factor in a client's decision to plead guilty is often the ability to have the sentence revised under the court's revisory powers. They anticipate additional trials would take place if this possibility was limited.

Local Expenditures: Expenditures could increase minimally as a result of people serving longer terms in local incarceration facilities. Counties pay the full cost of incarceration for people in their facilities for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$29 to \$97 per inmate in fiscal 2005.

Additional Information

Prior Introductions: HB 842 of 2003 received an unfavorable report from the House Judiciary Committee. HB 160 of 2002 was scheduled for a hearing in the House Judiciary Committee, but no further action was taken. Its companion bill, SB 73 of 2002, received an unfavorable report from the Judicial Proceedings Committee. A similar bill was introduced as SB 632 of 2001 and cross filed as HB 62. SB 632 was scheduled for a hearing in the Judicial Proceedings Committee, but no further action was taken. HB 62 received an unfavorable report from the Judiciary Committee. Another similar bill, SB 671 of 2001, was scheduled for a hearing in the Judicial Proceedings Committee, but no further action was taken.

Cross File: SB 333 (Senator Jacobs, *et al.*) – Judicial Proceedings.

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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Analysis by: Rita A. Reimer

Direct Inquires to:
(410) 946-5510
(301) 970-5510