

**Department of Legislative Services
Maryland General Assembly
2004 Session**

FISCAL AND POLICY NOTE

House Bill 464 (Delegate Barkley, *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 five years 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: The bill would not materially affect the finances of the Judiciary, the Division of Correction, or the Office of the Public Defender.

Local Effect: 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 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.

Pursuant to a 2001 amendment to Maryland Rule 4-345 (applying to all actions commenced on or after January 1, 2002 and, as practicable, to all actions pending as of that date), the State's Attorney must 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 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.

Additional Information

Prior Introductions: Several similar bills have been introduced in prior sessions, though they typically limited the court's revisory authority to a period of one year, rather than five years, after the motion to reconsider was filed. HB 602 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 cross file 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: None.

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

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mam/jr

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