

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

House Bill 495 (Delegate O'Donnell)
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 15 months after the filing of such a motion and requires a decision to change an original sentence to be in writing and state the reasons for the decision. However, such a motion may be filed at any time in a case involving an illegal sentence, fraud, mistake, or irregularity. The court must notify all victims prior to revising, modifying, or reducing the sentence.

Fiscal Summary

State Effect: The bill would not materially affect the finances of the Judiciary or the Division of Correction. Potential increase in general fund expenditures for the Office of the Public Defender (OPD).

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 Maryland Rule 4-345, 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. In the absence of such a motion, 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.

The court may not revise a sentence after five years from the date the sentence originally was imposed on the defendant and it may not increase the sentence, 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 also 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 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.

State Effect: Potential increase in general fund expenditures for OPD due to the increase in trials and the need to hire additional public defenders.

OPD advises that many defendants choose to plead guilty based on the opportunity to demonstrate rehabilitation and receive a possible modification of sentence pursuant the court's revisory powers. Reducing the court's jurisdiction over sentences to 15 months may reduce the number of cases in which a defendant will opt to enter a guilty plea, thus increasing the number of trials. A significant number of additional trials may require additional public defenders.

Additional Information

Prior Introductions: Several similar bills limiting the court's revisory powers have been introduced in prior sessions. HB 1234 of 2004, an identical bill, was scheduled for a hearing in the Judiciary Committee, but no further action was taken. HB 464 of 2004, which would have limited the court's revisory power to five years after the motion was filed, was scheduled for a hearing in the Judiciary Committee, but no further action was taken. HB 602 of 2003 (limiting the court's revisory power to 15 months) received an unfavorable report from the Judiciary Committee. HB 160 of 2002, a similar bill, was scheduled for a hearing in the 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), Department of Public Safety and Correctional Services, Department of Legislative Services

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Analysis by: Kineta A. Rotan

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