

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

Senate Bill 140

(Senator Conway)

Judicial Proceedings

Criminal Procedure - Revision of Sentence - Timing of Motion

This bill authorizes a defendant to file a motion to revise, modify, or reduce a sentence at any time. The sentencing court may (1) correct an illegal sentence or a sentence in case of fraud, mistake, or irregularity at any time and (2) revise any other sentence at any time, except that the court may not increase the sentence. A decision that changes the original sentence must be in writing and state the reasons for the decision.

The court must notify all victims of the crime committed by the defendant prior to revising, modifying, or reducing the sentence.

Fiscal Summary

State Effect: Potential significant increase in general fund expenditures for the Judiciary if the bill results in a significant increase in motions in the District Court necessitating additional personnel. Potential decrease in general fund expenditures for the Department of Public Safety and Correctional Services if the bill results in shorter incarcerations. The number of motions filed as a result of the bill cannot be reliably estimated at this time.

Local Effect: Potential significant increase in expenditures for the circuit courts if the bill results in a significant increase in motions necessitating additional personnel.

Small Business Effect: None.

Analysis

Current Law: Under Maryland Rule 4-344, a defendant may apply for a review of his or her sentence under the Review of Criminal Sentencing Act (Criminal Procedure Article §§ 8-102 through 8-109). The defendant must file an application for review of a sentence within 30 days after the imposition of sentence or at a later time permitted by the Act.

Maryland Rule 4-345 authorizes a court to correct an illegal sentence at any time. The sentencing court has revisory power over a sentence in case of fraud, mistake, or irregularity. Upon a motion filed within 90 days after imposition of a sentence (1) in the District Court, if an appeal has not been perfected or has been dismissed and (2) in a circuit court, whether or not an appeal has been filed, the court has revisory power over the sentence except that it may not revise the sentence after the expiration of five years from the date the sentence originally was imposed on the defendant and it may not increase the sentence.

Before considering a Rule 4-345 motion, the court must inquire if a victim or the victim's representative (victim/representative) is present. If the victim/representative is present, the court must allow the victim/representative to be heard as allowed by law. If the victim/representative is not present and the case is one in which there was a victim, the court must inquire of the State's Attorney on the record regarding the justification for the victim/representative's absence. The prosecuting attorney at the hearing must state on the record that proceeding without the appearance of the victim/representative is justified because (1) the victim/representative has been notified and waived the right to attend the hearing; (2) the victim/representative cannot be located; or (3) the victim has not filed a notification request. If such a statement is not made, or the court is not satisfied with the statement, the court may postpone the hearing.

State Expenditures: General fund expenditures may increase significantly if the bill generates a significant increase in motions filed in the District Court, requiring additional personnel. The number of additional motions that will be filed as a result of the bill cannot be reliably estimated at this time. However, the bill has the potential to result in a significant increase given that it (1) removes time limits on motions to revise, modify, or reduce a sentence and (2) appears to apply retroactively.

Local Expenditures: Local expenditures increase, perhaps significantly, if the bill generates an increase in motions and filings in the circuit courts that requires additional personnel.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland State Commission on Criminal Sentencing Policy, 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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