SB 291: Petition to Reduce Sentence (Maryland Second Look Act) - FAV

SB 291 is not a radical bill. This is a bill that defines and refines a right that was available to Maryland defendants prior to 2004.

In 1984, Maryland Rule of Procedure 4-345 was adopted by the Maryland Judiciary. A motion for Reconsideration of Sentence was required to have been filed within 90 days of sentencing, but the hearing before a judge for reconsideration of this sentence could occur at any time during a defendant's incarceration (Appendix 1).

From 1984 to the early 2000s, Maryland's prison population nearly doubled. In 2004, the Maryland Conference of Circuit Judges, dealing now with a greatly expanded pool of defendants, asked the Judicial Rules Committee—an umbrella group also comprised mostly of Maryland judges—to limit a defendant's right to a hearing for Reconsideration of Sentence.

The Circuit Judges asked that any defendant's hearing for Reconsideration of Sentence be limited to the first five years of their serving such sentence. However, considering that the personal growth and evolution of a defendant is considered paramount for a reduction of their sentence, this personal growth was unlikely to occur satisfactorily during the first five years of a long sentence. This five-year limit proposed by the Circuit Judges was not approved by the 2004 Judicial Rules Committee, but was then referred to the Maryland Court of Appeals (Appendix 2). That court approved the proposed five-year limitation and ordered that this limitation be applied to all persons sentenced after July, 2004 (Appendix 3).

The five-year limit placed on hearings to Reconsider a Sentence in 2004 was not the consequence of new legislation, instead the result of action taken solely by the judicial branch.

The Second Look Act, SB 291, can be viewed as a restoration by our Maryland legislators of the right of a Maryland defendant to request a hearing before a judge for a Reconsideration of Sentence when the defendant has served at least 20 years of incarceration. The new 20-year incarceration requirement will render the process somewhat more restrictive than the original Rule 4-345. However, the new legislation would restore the right to request a hearing for Reconsideration of Sentence to occur years after the expiration of the current 5-year limit set by the judicial rule change of 2004.

This is also one of the few bills that would save taxpayers money. It is exorbitantly expensive to continue the punitive incarceration of mature and remorseful older inmates who no longer pose any risk to society.

Please vote in favor of this common-sense bill.

Jane Harman, Ph.D.,
7241 Garland Ave, Takoma Park, MD 20912
jane.harman@protonmail.com

Appendix 1 - Maryland Rule 4-345 prior to the 2004 Rules Order

[excerpt, Maryland v Brown 2018]

(a) Illegal Sentence. — The court may correct an illegal sentence at any time.

b) Modification or Reduction — Time for. — The 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 provided in section (d) of this Rule. 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.

(c) Open Court Hearing. — The court may modify, reduce, correct, or vacate a sentence only on the record in open court after notice to the parties and an opportunity to be heard.

(d) Desertion and Non-support Cases. — At any time before expiration of the sentence in a case involving desertion and non-support of spouse, children or destitute parents, the court may modify, reduce, or vacate the sentence or place the defendant on probation under the terms and conditions the court imposes.

Appendix 2 - Proposed Rule Change 2004

https://www.mdcourts.gov/sites/default/files/import/rules/reports/courtletter-revisorypower.pdf

STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

NOTICE OF PROPOSED RULE CHANGE

The Rules Committee has submitted a Letter Report to the Court of Appeals, transmitting thereby proposed amendments to Rule 4-345, Sentencing –- Revisory Power of Court, of the Maryland Rules of Procedure.

The Committee's Letter Report and the proposed rule change are set forth below.

Interested persons are asked to consider the Committee's Letter Report and proposed rule change and to forward on or before April 5, 2004 any written comments they may wish to make to:

Sandra F. Haines, Esq.
Reporter, Rules Committee
Room 1.517
100 Community Place
Crownsville, Maryland 21032-2030

ALEXANDER L. CUMMINGS
Clerk
Court of Appeals of Maryland

Appendix 2, cont'd- Proposed Rule Change 2004

February 17, 2004

The Honorable Robert M. Bell,
Chief Judge
The Honorable Irma S. Raker
The Honorable Alan M. Wilner
The Honorable Dale R. Cathell
The Honorable Glenn T. Harrell, Jr.
The Honorable Lynne A. Battaglia
The Honorable Clayton Greene, Jr.,
Judges
The Court of Appeals of Maryland
Robert C. Murphy Courts of
Appeal Building
Annapolis, Maryland 21401

Your Honors:

The Rules Committee submits this Letter Report to the Court, transmitting hereby a recommendation of the Conference of Circuit Judges ("the Conference") that Rule 4-345 be amended to establish a certain five-year limit on a court's exercise of its revisory power over a sentence involving a crime of violence.

The proposed amendment has received the unanimous endorsement of the Conference. The Rules Committee, by a vote of 11-10, has declined to approve the recommendation. The relevant portion of the Minutes of the January 9, 2004 meeting of the Rules Committee at which this vote was taken are enclosed for the Court's reference. Also enclosed are the relevant portions of the Minutes of the March 9, 2001 meeting of the Rules Committee, at which this issue previously was discussed, and the Minutes of the September 15, 2003 meeting of the Conference, at which the vote was taken to recommend the amendment.

The Conference also recommended that the time for filing a

motion for modification under Rule 4-345 in a circuit court be reduced from 90 to 30 days. This recommendation received a strong negative vote from the Rules Committee, with only two members in favor, and therefore has not been included in the draft Rule.

Because of the importance of the issue of the revisory power of the court in criminal matters, the unanimous recommendation of the Conference, and the close vote by the Rules Committee, the proposed amendments to Rule 4-345 are submitted to the Court for its determination of this policy issue.

For the guidance of the Court and the public, following the proposed rule change is a Reporter's Note describing the reasons for the proposal and any changes that would be effected in current law or practice. We caution that the Reporter's Note was prepared initially for the benefit of the Rules Committee; it is not part of the Rule and has not been debated or approved by the Committee; and it is not to be regarded as any kind of official comment or interpretation. It is included solely to assist the Court in understanding some of the reasons for the proposed changes.

Respectfully submitted,

Joseph F. Murphy, Jr.
Chair

Linda M. Schuett
Vice Chair

JFM/LMS:cdc
Enclosures
cc: Alexander L. Cummings, Clerk

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-345 to reorganize it, to add the phrase "or has been dismissed" to relettered subsection (e)(1), to add a certain cross reference after subsection (e)(1), to add a new subsection (e)(2) that sets a five-year limit on the court's exercise of its revisory power over a sentence involving a crime of violence except where the State's Attorney and defendant agree that the court may exercise its revisory power, and to make certain stylistic changes, as follows:

Rule 4-345. SENTENCING -- REVISORY POWER OF COURT

(a) Illegal Sentence

The court may correct an illegal sentence at any time.

(b) Fraud, Mistake, or Irregularity

The court has revisory power over a sentence in case of fraud, mistake, or irregularity.

(c) Correction of Mistake in Announcement

The court 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.

~~(e)~~ (d) Desertion and Non-support Cases

At any time before expiration of the sentence in a case involving desertion and non-support of spouse, children, or destitute parents, the court may modify, reduce, or vacate the sentence or place the defendant on probation under the terms and conditions the court imposes.

~~(b)~~ (e) Modification ~~or Reduction - Time For~~ Upon Motion

(1) Generally

~~The court has revisory power and control over a sentence upon~~ Upon a motion filed within 90 days after ~~its~~ 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 increase the sentence. ~~Thereafter, the court has revisory power and control over the sentence in case of fraud, mistake, or irregularity, or as provided in section (e) of this Rule. 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.~~

Cross reference: Rule 7-112 (b).

(2) Defendant Convicted of a Crime of Violence

Unless the State's Attorney and the defendant agree that the court may exercise its revisory power, the court may not

revise a sentence after the expiration of five years from the date the sentence originally was imposed on a defendant convicted of a crime of violence, as defined in Code, Criminal Law Article, §14-101.

~~(c)~~ (3) Notice to Victims

The State's Attorney shall give notice to each victim and victim's representative who has filed a Crime Victim Notification Request form pursuant to Code, Criminal Procedure Article, §11-104 or who has submitted a written request to the State's Attorney to be notified of subsequent proceedings as provided under Code, Criminal Procedure Article, §11-503 that states (1) that a motion to modify or reduce a sentence has been filed; (2) that 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 each victim or victim's representative may attend and testify.

~~(d)~~ (f) Open Court Hearing

The court may modify, reduce, correct, or vacate a sentence only on the record in open court, after hearing from the defendant, the State, and from each victim or victim's representative who requests an opportunity to be heard. No hearing shall be held on a motion to modify or reduce the sentence until the court determines that the notice requirements in ~~section (c)~~ subsection (e)(3) of this Rule have been satisfied. If the court grants the motion, the court ordinarily

shall prepare and file or dictate into the record a statement setting forth the reasons on which the ruling is based.

Source: This Rule is derived in part from former Rule 774 and M.D.R. 774, and is in part new.

REPORTER'S NOTE

The Conference of Circuit Judges *Ad Hoc* Committee to Consider Amending Rule 4-345 has recommended several changes to Rule 4-345, including reducing the 90-day period for filing a motion for modification or reduction of a sentence to 30 days in the circuit court and imposing a five-year limit on the courts' revisory power when the defendant has been convicted of a crime of violence.

With two members opposed, the Rules Committee voted to recommend retaining the 90-day period for filing the motion, rather than reducing it to a 30-day period. The Committee was concerned that a reduction in this long-standing time period would lead to an increase in late-filed motions, which would result in an increase in post conviction proceedings.

By an 11 to 10 vote, the Committee also declined to approve the proposed five-year limit on the court's exercise of its revisory power over sentences involving a crime of violence, except where the State's Attorney and defendant agree that the court may exercise that power. However, in light of the close vote and the strong support of the Conference of Circuit Judges in favor of the rule change, the Committee is transmitting the proposal to the Court of Appeals for a policy determination by the Court.

The proposed addition of the phrase "or had been dismissed" to subsection (e)(1) appears to be noncontroversial. The addition of the phrase and a cross reference to Rule 7-112 (b) clarify the revisory power of the District Court over a sentence imposed by that Court.

Other changes, including replacing the phrase "revisory power and control" with the phrase "revisory power," are stylistic only.

Appendix 3 - Rules Order 2004

IN THE COURT OF APPEALS OF MARYLAND

R U L E S O R D E R

This Court's Standing Committee on Rules of Practice and Procedure having submitted a Letter Report to the Court, transmitting thereby proposed amendments to Rule 4-345 of the Maryland Rules of Procedure, as set forth in that Letter Report published in the *Maryland Register*, Vol. 31, Issue 5, pages 443 - 444 (March 5, 2004); and

This Court having considered at an open meeting, notice of which was posted as prescribed by law, the proposed rule changes, together with the comments received, and making certain amendments to the proposed rule changes on its own motion, it is this 11th day of May, 2004,

ORDERED, by the Court of Appeals of Maryland, that the amendments to Rule 4-345 be, and they are hereby, adopted in the form attached to this Order; and it is further

ORDERED that the rule changes hereby adopted by this Court shall govern the courts of this State and all parties and their attorneys in all actions and proceedings, and shall take effect and apply to all sentences imposed on or after July 1, 2004; and it is further

ORDERED that a copy of this Order be published in the next issue of the *Maryland Register*.

/s/ Robert M. Bell

Robert M. Bell

/s/ Irma S. Raker

Irma S. Raker

/s/ Alan M. Wilner

Alan M. Wilner

*

Dale R. Cathell

/s/ Glenn T. Harrell, Jr.

Glenn T. Harrell, Jr.

/s/ Lynne A. Battaglia

Lynne A. Battaglia

/s/ Clayton Greene, Jr.

Clayton Greene, Jr.

* Judge Cathell declined to sign the Rules Order.

Filed: May 11, 2004

/s/ Alexander L. Cummings

Clerk
Court of Appeals of Maryland

Appendix 3, cont'd

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-345 to reorganize it, to add the phrase "or has been dismissed" to relettered subsection (e)(1), to add a certain cross reference after subsection (e)(1), to set a certain five-year limit on the court's exercise of its revisory power over a sentence, and to make certain stylistic changes, as follows:

Rule 4-345. SENTENCING -- REVISORY POWER OF COURT

(a) Illegal Sentence

The court may correct an illegal sentence at any time.

(b) Fraud, Mistake, or Irregularity

The court has revisory power over a sentence in case of fraud, mistake, or irregularity.

(c) Correction of Mistake in Announcement

The court 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.

~~(c)~~ (d) Desertion and Non-support Cases

At any time before expiration of the sentence in a case involving desertion and non-support of spouse, children, or destitute parents, the court may modify, reduce, or vacate the

sentence or place the defendant on probation under the terms and conditions the court imposes.

~~(b)~~ (e) Modification ~~or Reduction - Time For~~ Upon Motion

(1) Generally

~~The court has revisory power and control over a sentence upon~~ Upon a motion filed within 90 days after ~~its~~ imposition of a sentence ~~(1)~~ (A) in the District Court, if an appeal has not been perfected or has been dismissed, and ~~(2)~~ (B) 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. ~~Thereafter, the court has revisory power and control over the sentence in case of fraud, mistake, or irregularity, or as provided in section (e) of this Rule. 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.~~

Cross reference: Rule 7-112 (b).

~~(c)~~ (2) Notice to Victims

The State's Attorney shall give notice to each victim and victim's representative who has filed a Crime Victim Notification Request form pursuant to Code, Criminal Procedure

Article, §11-104 or who has submitted a written request to the State's Attorney to be notified of subsequent proceedings as provided under Code, Criminal Procedure Article, §11-503 that states ~~(1)~~ (A) that a motion to modify or reduce a sentence has been filed; ~~(2)~~ (B) that the motion has been denied without a hearing or the date, time, and location of the hearing; and ~~(3)~~ (C) if a hearing is to be held, that each victim or victim's representative may attend and testify.

~~(d)~~ (f) Open Court Hearing

The court may modify, reduce, correct, or vacate a sentence only on the record in open court, after hearing from the defendant, the State, and from each victim or victim's representative who requests an opportunity to be heard. No hearing shall be held on a motion to modify or reduce the sentence until the court determines that the notice requirements in ~~section (c)~~ subsection (e)(2) of this Rule have been satisfied. If the court grants the motion, the court ordinarily shall prepare and file or dictate into the record a statement setting forth the reasons on which the ruling is based.

Source: This Rule is derived in part from former Rule 774 and M.D.R. 774, and is in part new.