

## **HB 853: Petition to Reduce Sentence (Maryland Second Look Act) – FAV**

This 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 (Appendix 1). Prior to 2004, a motion for a hearing for Reconsideration of Sentence must have been filed within 90 days of sentencing, but the hearing could occur at any time during a defendant's incarceration.

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. The proposal was then referred to the Maryland Court of Appeals (Attachment 2). That court approved the proposed five-year limitation and ordered that this limitation be applied to all persons sentenced after July, 2004 (Attachments 3,4).

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, HB 853, can be viewed as a restoration by legislators of the right of a defendant to request a hearing before a judge for a Reconsideration of Sentence long after incarceration has begun. The 20-year incarceration requirement will, in fact, render the process somewhat more restrictive than the original Rule 4-345.

The new bill also proposes that Reconsideration hearing can occur at any time during incarceration upon agreement by the prosecuting State's Attorney. This is also not a new idea; the Conference of Circuit Judges suggested this arrangement in 2004. (Appendix 2, page 5)

HB 853 is one of the few proposed bills of 2025 that would save taxpayers money. It is exorbitantly expensive to continue the punitive incarceration of mature, remorseful older inmates for decade upon decade, when these older inmates no longer pose any risk to society.

Please vote to pass this common-sense piece of legislation.

**Jane L. Harman, Ph.D., Takoma Park, MD [jane.harman@protonmail.com](mailto:jane.harman@protonmail.com)**

## **Attachment 1 - 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.

**Attachment 2 - Conference of Circuit Judges proposed  
change to Rule 4-345, 2004**

[https://www.mdcourts.gov/sites/default/files/import/rules/reports/  
courtletter\\_revisorypower.pdf](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



Attachment 2, cont'd - Conf Circuit Judges proposed change to Rule 4-345, 2004

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

Attachment 2, cont'd - Conf Circuit Judges proposed change to Rule 4-345, 2004

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

**Attachment 2, cont'd - Conf Circuit Judges proposed change to Rule 4-345, 2004**

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

Attachment 2, cont'd - Conf Circuit Judges proposed change to Rule 4-345, 2004

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



**Attachment 2, cont'd - Conf Circuit Judges proposed change to Rule 4-345, 2004**

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.

COURT OF APPEALS STANDING COMMITTEE  
ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held in Room 1100A of the People's Resource Center, 100 Community Place, Crownsville, Maryland on May 21, 2004.

Members present:

Hon. Joseph F. Murphy, Jr., Chair  
Linda M. Schuett, Esq., Vice Chair

F. Vernon Boozer, Esq.  
Lowell R. Bowen, Esq.  
Albert D. Brault, Esq.  
Robert L. Dean, Esq.  
Hon. Joseph H. H. Kaplan  
Hon. John F. McAuliffe  
Robert R. Michael, Esq.  
Hon. William D. Missouri

Hon. John L. Norton, III  
Anne C. Ogletree, Esq.  
Debbie L. Potter, Esq.  
Larry W. Shipley, Clerk  
Twilah S. Shipley, Esq.  
Sen. Norman R. Stone, Jr.  
Melvin J. Sykes, Esq.  
Del. Joseph F. Vallario, Jr.

In attendance:

Sandra F. Haines, Esq., Reporter  
Sherie B. Libber, Esq., Assistant Reporter  
George W. Liebmann, Esq.

The Chair convened the meeting. He asked if there were any corrections to the second half of the minutes of the January 9, 2004 meeting. There being none, the Vice Chair moved to approve the minutes, the motion was seconded, and it passed unanimously.

Judge Missouri told the Committee that the Court of Appeals held a hearing on May 10, 2004 on Rule 4-345, Revisory Power. Since the Rules Committee had voted on a change to the Rule with a close vote of 11 to 10 in favor of the change, the Committee,

at the wise suggestion of the Vice Chair, had decided to let the Court of Appeals make the decision as to whether or not to change the Rule. Judge Missouri said that along with the Chair, the Vice Chair, the Reporter, and himself, the Honorable Daniel Long, Chair of the Conference of Circuit Judges, Glenn Ivey, Esq., who is the State's Attorney for Prince George's County, and Richard Finci, Esq., representing the Maryland Defense Lawyers' Association were present at the hearing.

The Honorable Dale R. Cathell, Judge of the Court of Appeals, read into the record a three-page statement that expressed his opposition to changing the Rule. The Honorable Alan M. Wilner, Judge of the Court of Appeals, proposed two amendments to Rule 4-345 -- that the proposed five-year limitation apply not only to crimes of violence but to all crimes and that the Rule should not contain the language providing that the prosecutor and defense attorney could agree to eliminate the five-year limitation. By a vote of five to one, the Court of Appeals approved the Rule with Judge Wilner's amendments. The Honorable Robert M. Bell, Chief Judge of the Court of Appeals, did not vote on the Rule. The Rule will take effect prospectively, applying to sentences imposed on or after July 1, 2004.

The Chair said that the Criminal Subcommittee will be asked to look into why there is a 90-day period for filing a motion under Rule 4-345, when other comparable provisions in the Rules have a 30-day period for filing. Judge Missouri noted that the

**Attachment 3, cont'd - Rules Committee, post-ruling by Court on Rule 4-345, 2004**

Honorable Lynne A. Battaglia, Judge of the Court of Appeals, had asked this question. The Vice Chair added that Judge Battaglia was interested in the historical reasons for the time period. The Vice Chair hypothesized that one of the reasons may have been that the time period was tied into the former "terms of court." Judge Kaplan added that these began in September and March of every year. The Chair said that their times varied. The Reporter observed that some terms of court had been on a quarterly basis. The Chair questioned whether the original time period came from the former Rules of the Supreme Bench, which was what the circuit court in Baltimore City was previously named.

Judge Kaplan noted that the longer time period allows *pro se* prisoners sufficient time to file the motions from prison, and it prevents attorneys from being accused of malpractice by not limiting them to filing these motions within only 30 days. The Chair said that many citizens testified in support of the amended Rule limiting the revisory period. Judge Missouri remarked that Delegate Vallario had indicated that further legislation on this issue may be filed.

The Reporter stated that she had asked the Assistant Reporter to research this issue, and the law school intern who will be working at the Rules Committee Office this summer can help with the research.

Agenda Item 1. Consideration of a policy issue concerning peremptory challenges (See Appendix 1)

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**Attachment 4 - Rules Order**

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 11<sup>th</sup> 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

**Attachment 4 - Rules Order, cont'd**

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

/s/ Robert M. Bell

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Robert M. Bell

/s/ Irma S. Raker

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Irma S. Raker

/s/ Alan M. Wilner

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Alan M. Wilner

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Dale R. Cathell

/s/ Glenn T. Harrell, Jr.

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Glenn T. Harrell, Jr.

/s/ Lynne A. Battaglia

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Lynne A. Battaglia

/s/ Clayton Greene, Jr.

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Clayton Greene, Jr.

\* Judge Cathell declined to sign the Rules Order.

Filed: May 11, 2004

/s/ Alexander L. Cummings

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Clerk  
Court of Appeals of Maryland

**Attachment 4 - Rules Order, cont'd**

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

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#### Attachment 4 - Rules Order, cont'd

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

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Cross reference: Rule 7-112 (b).

~~(e)~~ (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



#### Attachment 4 - Rules Order, cont'd

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.