

COURT OF APPEALS STANDING COMMITTEE
ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee virtually held
via Zoom for Government on July 12, 2021.

Members present:

Hon. Alan M. Wilner, Chair

H. Kenneth Armstrong, Esq.
Julia D. Bernhardt, Esq.
Hon. Pamela J. Brown
Hon. Yvette M. Bryant
Sen. Robert G. Cassilly
Del. Luke Clippinger
Hon. John P. Davey
Mary Anne Day, Esq.
Irwin R. Kramer, Esq.

Victor H. Laws, III, Esq.
Dawne D. Lindsey, Clerk
Bruce L. Marcus, Esq.
Donna Ellen McBride, Esq.
Stephen S. McCloskey, Esq.
Hon. Douglas R.M. Nazarian
Scott D. Shellenberger, Esq.
Hon. Dorothy J. Wilson
Thurman W. Zollicoffer, Esq.

In attendance:

Sandra F. Haines, Esq., Reporter
Colby L. Schmidt, Esq., Deputy Reporter
Heather Cobun, Esq., Assistant Reporter
Meredith A. Drummond, Esq., Assistant Reporter

Dr. Darlene Bell
Faye Bruso
Hon. Philip Caroom
Crystal Carpenter, NAACP of Prince George's County
Richard Collins, Jr.
Deborah¹
Joan Dorsey
Eddie Ellis
Kate Farrar, Maryland Prisoner Rights
Becky Feldman, Esq.
Martina Hazelton, Family Support Network
Virginia Hill
Sierra Holderby

¹ During the Zoom meeting, Deborah did not identify her last name.

Perie Reiko Koyama, Esq.
Daniello Lacey
Pamela Limberry
Pat McCloskey
Munwell²
Hon. Danielle Mosley
Doyle Niemann, Esq., Assistant State's Attorney for Prince
George's County
Melissa Rothstein, Esq., OPD
Brian Saccenti, Esq.
Sandra Sanna-Buckles, Maryland Crime Victims' Resource Center
Brendi Simms
Victor Stone, Esq., Maryland Crime Victims' Resource Center
Magdalena Tsiongas
Tyrone Walker
Keith Wallington
Carrie Williams, Esq., OAG
Kurt Wolfgang, Esq., Maryland Crime Victims' Resource Center
Jeffrey Young-Bey
Brian Zavín, Esq.

The Chair convened the meeting. The Reporter noted that the meeting is being recorded to help prepare the minutes and that speaking is consent to the recording of the speaker's voice.

Agenda Item 1. Consideration of the Court of Appeals remand of proposed amendments to Rule 4-345 (Sentencing - Revisory Power of Court) to the Rules Committee

The Chair presented a "hand-out" version of Rule 4-345 (Sentencing - Revisory Power of Court) for consideration.

²During the Zoom meeting, Munwell did not identify his last name.

MARYLAND RULES OF PROCEDURE
TITLE 4 - CRIMINAL CAUSES
CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-345, 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.

Cross reference: See State v. Brown, 464 Md. 237 (2019), concerning an evident mistake in the announcement of a sentence.

(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.

(e) Modification Upon Motion - Generally

~~(1) Generally~~

Upon a motion filed within 90 days after imposition of a sentence ~~(A)~~ (1) in the

District Court, if an appeal has not been perfected or has been dismissed, and ~~(B)(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 and, unless the court finds the special circumstances set forth in subsection (f)(1), (f)(2), or (f)(3) of the Rule, 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.~~

Cross reference: Rule 7-112 (b).

~~Committee note: The court at any time may commit a defendant who is found to have a drug or alcohol dependency to a treatment program in the Maryland Department of Health if the defendant voluntarily agrees to participate in the treatment, even if the defendant did not timely file a motion for modification or timely filed a motion for modification that was denied. See Code, Health-General Article, § 8-507.~~

(f) Modification in Special Circumstances

(1) Commitment for Drug or Alcohol Dependency Treatment

The court at any time may commit a defendant who is found to have a drug or alcohol dependency to a treatment program in the Maryland Department of Health if the defendant voluntarily agrees to participate in the treatment, even if the defendant did not timely file a motion for modification or timely filed a motion for modification that was denied.

Cross Reference: See Code, Health-General Article, § 8-507.

Committee note: In order to implement a commitment under section (f)(1), the court must suspend all of the sentence except the time served and place the defendant on supervised probation, a condition of which

is the successful completion of the commitment.

(2) Modification Pursuant to Code,
Criminal Procedure Article, §8-110

The court may modify a sentence imposed prior to October 1, 2021 on an individual who was convicted as an adult for an offense committed when the individual was a minor in accordance with the provisions of Code, Criminal Procedure Article, §8-110.

(3) Modification by Reason of Length of Confinement and Age

(A) Subsection (f)(3) of this Rule applies to a defendant who was sentenced to an aggregate unsuspended term of imprisonment of more than 15 years and (i) committed the last offense for which that sentence or any part of it was imposed before reaching the age of 25 and has served the greater of 15 years or sixty percent of that sentence, or (ii) has served at least 15 years of that sentence and has reached 60 years of age. For purposes of this subsection only, a life sentence or an aggregate unsuspended sentence of more than 40 years shall be regarded as a sentence for 40 years. A defendant who meets the criteria of this paragraph is an eligible petitioner under subsection (f)(3).

(B) Upon a petition filed by an eligible petitioner and compliance with the requirements of sections (g) and (h) of this Rule, the court may modify or reduce the sentence or place the defendant on probation under the terms and conditions the court imposes. Failure to have filed a timely motion under section (e) of this Rule, or a previous grant or denial of a motion under that section, shall not bar relief under this subsection.

(g) Procedure

(1) Where Filed

A motion or petition filed under this Rule shall be filed in the circuit court that entered the sentence sought to be modified. If an aggregate sentence consists of two or more sentences imposed by different courts and the petitioner seeks relief from the aggregate sentence, separate petitions must be filed with each court. A court has revisory power under this Rule only with respect to a sentence that it imposed.

(2) Attachment

A petition seeking relief under subsection (f) (3) of this Rule shall be accompanied by a certified copy of the petitioner's Institutional Adjustment Record.

(3) Notice to Public Defender

If a petitioner seeking relief under subsection (f) (2) or (f) (3) of this Rule is self-represented, the clerk promptly shall forward a copy of the petition to the local county or district Office of the Public Defender.

(4) Service; Response

The motion or petition shall be served on the State's Attorney for the county. The State's Attorney may file a response within 30 days after service of the motion or petition.

(5) Notice to Victims

Whether or not the State's Attorney files a response, ~~The~~ 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 (A) that a

motion or petition to modify, vacate, or reduce a sentence has been filed; (B) that the motion or petition has been denied without a hearing or the date, time, and location of the hearing; and (C) if a hearing is to be held, that each victim or victim's representative may attend and testify.

~~(3)~~ (6) Inquiry by Court

Except as provided in subsection (h) (1), ~~Before~~ before considering a motion or petition under this Rule, the court shall inquire if a victim or victim's representative is present. If one is present, the court shall allow the victim or victim's representative to be heard as allowed by law. If a victim or victim's representative is not present and the case is one in which there was a victim, the court shall inquire of the State's Attorney on the record regarding any justification for the victim or victim's representative not being present, as set forth in Code, Criminal Procedure Article, § 11-403 (e). If no justification is asserted or the court is not satisfied by an asserted justification, the court may postpone the hearing.

~~(f)~~ (h) ~~Open Court~~ Hearing

(1) When required

(A) The court may modify, reduce, correct, or vacate a sentence under this Rule only on the record ~~in open court, and after hearing from the defendant~~ movant or petitioner, the State's Attorney, and from each victim or victim's representative who requests present have been afforded an opportunity to be heard. ~~The defendant may waive the right to be present at the hearing.~~

Drafter's Note: "hearing from" is stricken in lieu of an "opportunity to be heard" because those individuals may choose not to make a presentation. "Movant" is added to subsection (h) (1) because that subsection

applies not only to petitioners seeking relief under subsection (f) (2) and (f) (3), but also to movants seeking relief under other sections of the Rule.

(B) The hearing may be held in open court or remotely in accordance with procedures set forth in Rules 2-804 through 2-806.

~~(2) Presence of Defendant~~

(C) A petitioner seeking relief under subsection (f) (3) of this Rule has a right to be present at the hearing. The petitioner may not waive the right to be present at a hearing unless (i) the petitioner is not capable of appearing and effectively participating at the hearing, or (ii) the court permits the waiver. A defendant seeking relief under any other section of this Rule may waive the right to be present at the hearing.

(2) Condition

No hearing shall be held on a motion or petition to modify or reduce the sentence until the court determines that the notice requirements in subsection ~~(e) (2)~~ (g) (5) of this Rule have been satisfied.

(3) When not required

(A) The court shall dismiss a petition filed under subsection (f) (3) without a hearing if the court finds in a written order filed in the record that the petitioner does not qualify as an eligible petitioner.

(B) The court shall dismiss a petition filed under subsection (f) (3) without a hearing if the court finds in a written order filed in the record that;

(i) the petition was filed less than three years after the court denied or granted in part a petition filed under subsection (f) (3), or

(ii) the court has previously denied or granted in part three petitions filed under subsection (f) (3).

(C) The court may deny a petition filed under subsection (f) (3) (ii) without a hearing if, during the preceding six years, a petition under subsection (f) (2) of this Rule was denied after a hearing.

Drafter's Note: In light of subsection (h) (3) (B), we may want to reconsider subsection (h) (3) (C).

Committee note: The court may hold a hearing on a petition filed under subsection (f) (3) if there is insufficient information to allow the court to determine whether the petitioner qualifies as an eligible petitioner.

(4) Factors Relevant to Granting Relief on a Petition

The court may grant relief under subsection (f) (3) if it determines that the individual is not a danger to the public and the interests of justice will be better served by a reduced or modified sentence. In determining whether to grant relief under subsection (f) (3) of this Rule, the court shall consider (A) the Institutional Adjustment Record of the petitioner filed with the petition; (B) the petitioner's plans for housing, education, and employment if released; (C) whether, if the petitioner is released, there is a reasonable likelihood that the petitioner will be a danger to a victim, another person, or the community; (D) if the petitioner is to be released on probation, any conditions recommended by the Division of Parole and Probation, the State's Attorney, or a victim; and (E) any other factor the court deems relevant.

Cross reference: See Code, Criminal Law Article, § 5-609.1 regarding an application to modify a mandatory minimum sentence imposed for certain drug offenses prior to

October 1, 2017, and for procedures relating thereto.

(5) Decision; Reasons

If the court grants the motion or petition, the court ~~ordinarily~~ shall prepare and file or dictate into the record a statement setting forth the reasons on which the ruling is based. When the court rules on the merits of a petition filed pursuant to subsection (f) (3) of this Rule, it shall issue a written decision addressing the factors in subsection (h) (4) of this Rule.

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

The Chair explained that the sole purpose of the meeting is to consider proposed new amendments to Rule 4-345 that address concerns and questions raised by the Court of Appeals at the open meeting on the Committee's 207th Report. The Chair added that there was no sentiment that the Court did not have the authority to impose and modify the requirements stated in the Rule. He explained that the Court did not express any sentiment that no changes should be made because of the possible impact on victims and families 15 or 20 years after a defendant's initial sentencing. The Chair explained that the Court listened patiently and with sincere compassion to testimony from the families of murdered victims, but, like the Committee, the Court understood that the concern was not reason to deny prospective relief.

The Chair stated that the Court requested clearer justification in departing from the statute with respect to youthful offenders. The Court questioned why the Committee made certain distinctions, such as selecting 25 years instead of 18 years, and 15 years rather than 20 years in certain parts of the proposed Rule. The Chair indicated that some members of the Court also wanted to know what other states have done in this area. Two judges wanted clarification as to whether the proposed amendments impact whether hearings must be held on requests for sentence reduction other than hearings pursuant to the proposed amendments. The proposals on this agenda attempt to provide responses to the Court's concerns.

The Chair explained that, in regard to Code, Criminal Procedure Article, § 8-110, there is no conflict with respect to aging inmates because the statute does not address this group and there is no indication that the legislature considered this group. The Chair acknowledged that the treatment of youthful offenders is an area of conflict. Proposed amendments to Rule 4-345 incorporate into the Rule a new category that tracks what is provided in the statute, with one exception. The "hand-out" version of Rule 4-345 under consideration today places the statutory provisions cleanly into a separate category

within the Rule instead of merging them into the earlier proposed amendments to Rule 4-345. A person eligible under the statute can pursue the statutory remedy.

The Chair stated that the Court wanted information about the practices of other jurisdictions. The Office of the Public Defender prepared a letter on this issue. See Appendix A. The letter addresses the practices of the District of Columbia, Delaware, Florida, and the federal courts. These jurisdictions have gone in the direction proposed in amendments to Rule 4-345, as has the Model Penal Code. The Chair noted that other states are looking at this issue but have not yet taken action.

The Chair explained that the fact that the District of Columbia, Delaware, and Florida have acted by statute does not preclude Maryland acting by Rule. The Chair elaborated that Rule 16-701 directs the Committee to "keep abreast of emerging trends and new developments in the law that may affect practice and procedure in the Maryland courts." The Rule further directs that the Committee "review relevant new legislation, Executive initiatives, judicial decisions, and proposals from persons and groups interested in the Maryland judicial system to determine whether any new Rules of Procedure or changes to existing Rules may be advisable." The actions of the Committee are fulfilling the mission from the Court of Appeals, and it is up to the Court to determine whether to accept the Committee's recommendations.

The Chair noted that comments have been received regarding the proposed amendments to Rule 4-345. He explained that those wishing to make comments who are not members of the Committee will each have three minutes to speak.

Ms. Lacey expressed concern regarding the proposed amendments. She stated that there are two individuals currently incarcerated for murdering her son in July of 2015. In the four years since the sentencings and trials of the defendants, she already has had to attend one parole hearing. She explained that the individuals were both convicted felons and had been previously incarcerated. She stated her concern that there is no rehabilitation in the prison system, because, if these defendants had been rehabilitated, they may not have murdered her son. Ms. Lacey said that her son's rights were taken away when he was murdered. She explained that she is being told that the incarcerated individuals have rights, but she questions her rights and the rights of her son.

Ms. Lacey stated that the individuals who murdered her son were 22 or 23 years old and were not reformed after their previous incarcerations. The defendants started committing crimes when they were 13 and 7 years old. Ms. Lacey added that it is very upsetting to have to fight to keep the defendants behind bars and to think that there is a possibility that the defendants could be released in 20 years. The frontal lobes of

the two individuals may not have been developed, but they knew right from wrong. Ms. Lacey noted that it is very upsetting as a mother to lose her son who had his whole life ahead of him due to the actions of convicted felons. She concluded that she does not agree with the proposed amendments to Rule 4-345.

Mr. Stone commented that he opposes the proposed changes to subsections (f)(2) and (f)(3). The executive initiatives in the General Assembly specifically delegated release by statute for people over 60 to the parole commission by providing an option for parole. There is a geriatric parole option, so it is incorrect to state that there is no direction as to how elderly inmates should be handled.

Mr. Stone pointed to *Brown v. State*, 470 Md. 503 (2020) as a crucial judicial decision holding that a plea bargain cannot be breached twenty years down the line unless it's the result of a statute. He noted that there may be an impact on the use of ABA pleas that may result in more trials and an increase in judicial workload in certain cases.

Mr. Stone added that there was no fiscal analysis completed by the General Assembly and therefore it would not feel obligated to provide more resources to the judiciary. There is no disincentive to filing for multiple hearings. He stated that his clients believe that the Sentencing Commission, which has

guidelines to avoid racial disparities, is the correct forum for these issues to be addressed.

Mr. Wolfgang, Executive Director of the Maryland Crime Victims Resource Center, explained that he has been working with crime victims for 40 years. He stated that he wants to impress two points on the Committee. First, crime victims do not want to have to return to court for another reason. Mr. Wolfgang added that one client has returned to court 21 times. The client does not need a 22nd or 23rd reason to return to court. Mr. Wolfgang commented that defendants may have an option to file under the statute and under the Rule, creating an additional means to trigger a new hearing. Second, this subject should be decided by the deliberative process of the legislature, not by the rule-making process. Mr. Wolfgang pointed out that these are complex subjects having to deal with matters of criminology and the effects of deterrents. The will of the people is also important as to whether an individual should be released after committing a heinous offense.

Mr. Wolfgang suggested that one of the shortcomings of the proposal is that it treats someone convicted of five counts of murder and five counts of rape in the same fashion as someone convicted of one count of murder and one count of rape. He emphasized crime victims deserve some finality. A sentence should reflect that victims have been severely affected and

maintain the safety of the victims from a defendant who will be eventually released.

Mr. Walker, Director of Reentry Services for Georgetown Prison and Justice Initiative, commented that he benefitted from the original Incarceration Reduction Amendment Act of 2016 in the District of Columbia. He explained that he committed the worst mistake of his life when he was 17 years old. He stated that he can never understand the pain of the mother who spoke earlier and the trauma that she has experienced. No number of apologies will change that.

Mr. Walker said that he served nearly 25 years of a life sentence. He received a second chance and is doing different things with his life today. Is a child supposed to be held to the child's worst mistake and serve the rest of the child's years in prison? Mr. Walker indicated that he supported this measure in understanding that people change, and that people make mistakes. He clarified that the Rule provides for a review and does not state that the incarcerated person will be released from jail. He noted that these measures should be individualized. Mr. Walker acknowledged that it is hard and painful to deal with these issues again, but there needs to be a way to bridge the gap and deal with the pain on the front end. Measures should be put in place to help families cope.

Ms. Deborah stated that she understands both sides of this issue. She explained that her son is serving life in prison with a mental illness and stated that modification should be on a case-by-case basis. There are different levels of mental illness and factors such as race are involved. She concluded that everything should be judged case-by-case.

Ms. Reiko Koyama stated that she has taught, served, and represented incarcerated people, including a group of men serving life sentences at Jessup Correctional Institution. She explained that she represents a man who is serving a life sentence for a crime he committed at 20-years-old, on a *pro bono* basis. Her client has been incarcerated for 25 years. She explained that her client has been a model inmate and upstanding citizen during his decades of incarceration, and he deserves a second chance. She noted that these amendments would impact her client and other men that she worked with at Jessup. It would be monumental for her client, his wife, and their family.

Ms. Simms indicated that she supports the proposed amendment. She explained that she is the victim of a gunshot wound. Someone was paralyzed for life during the tragedy, and someone was killed. Ms. Simms said that she has a family member who served over 20 years for a crime committed at age 17, and she can understand both sides as a person who is a victim of

crime and as a person who has a family member who has changed while incarcerated.

Ms. Simms stated that rehabilitation is possible. She explained that her incarcerated cousin strives to be better, wrote a book while in prison, and started barbering. There was rehabilitation because he wanted to change and has a great support system outside of prison. Ms. Simms suggested that the Rule presents a great opportunity for a case-by-case consideration for people who committed crimes as teenagers when they did not have support or guidance. She hoped this is a step in the right direction for those who can or have changed.

Dr. Bell stated that she fully supports the proposed amendments and agrees that consideration should be case-by-case. Every defendant is different, and every crime is different. Dr. Bell noted that she wants to address the 60% rule. There are a lot of disparities between African-American and white populations when sentences are given. With the 60% rule, it seems that a lot of these disparities will be carried over. She asked the Committee to consider excluding the proposed 60% Rule because the current racial disparities in sentencing will be carried forward into the amended Rule.

Mr. Munwell explained that he has two family members and a friend who each served over 20 years. All were

juveniles, became model citizens in prison, and never gave up on rehabilitating themselves. He added that one was released after serving 27 years. All persons deserve a second chance. Munwell noted that he was incarcerated in the District of Columbia, joined a program and attended college, and his record was cleared. He expressed support for anything that will help redeem the youth and those who deserve a second chance. Munwell pointed out that everyone changes and may redeem themselves, so there should not be a disparity based on age. He acknowledged that some people do fall short, but he hopes that those who deserve it are granted mercy.

Mr. Ellis stated that he was formerly incarcerated in the District of Columbia at the age of 16. Someone lost their life. He noted that he takes full responsibility for his actions and what took place. Case-by-case situations are very important. Mr. Ellis pointed out that these laws are not made to open the flood gates and individuals must prove that they have done enough to rehabilitate themselves. Mr. Ellis indicated that he now lives in Montgomery County as a husband, father, and tax-paying citizen. He explained that he works with a national organization that helps people get their lives back on

track. This group shows that people can change if given the opportunity.

Mr. Ellis commented that he is also a victim, and his father was taken from him. He said that he understands both sides, and he believes that people should be given a chance to prove they deserve to be out in society. For example, the individual may have to prove that he or she can maintain employment.

Mr. Collins, Jr. explained that he is the father of a person who was murdered on the campus of the University of Maryland, College Park about four years ago. He noted that a lot of comments so far mention second chances, but the fact that there are no second chances for the victims needs to be considered. There may be people making strides toward rehabilitation, but there are still no second chances for the victims.

Mr. Collins stated that there has not been enough consideration for the impact of these amendments. The discussion is looking at the consequences of the defendant's actions, but not considering the impact of those actions. He pointed out that the defendant has made certain choices, and those choices have consequences. The families of victims are left with a hole in their lives forever.

The Chair thanked the guests for their comments.

The Chair directed the Committee's attention to the proposed amendments to Rule 4-345. He noted that the statute requires a hearing if proceeding under the statute. This differs from a provision in subsection (h)(3) of the Rule proposal, which provides that the court does not have to hold a hearing if the person is ineligible. He asked for comments from members of the Committee.

Mr. Shellenberger responded that it appears that the ability to not hold a hearing in regular modifications has been changed. The proposed amendments call into question whether a motion to modify can be denied without a hearing. He suggested that the Rule be re-worded to clarify this issue. The Chair responded that the language can be clarified if needed, regarding the correction as a stylistic change. There was no intention to modify the hearing provisions for other sentence modifications. Mr. Shellenberger pointed out that two judges at the open meeting expressed concern about the hearing provision. The Chair commented that the issue can be addressed.

Mr. Shellenberger commented that the part of the Rule concerning the Health - General Article of the Code is unclear. It seems like a hearing is always required. He suggested addressing the hearing requirement in the text of

the Rule itself instead of using a cross reference. He sent a letter suggesting commitments pursuant to the Health - General Article be added to the Rule itself, instead of in the cross reference, to ensure the Rule is consistent with the statute. See Appendix B. The Chair asked if any member of the Committee opposed clarifying the ambiguous language to make clear that the statute prevails. There were no objections.

Mr. Shellenberger pointed out that the changes made in other states have been done by the legislature. The Maryland legislature has spoken loud and clear about the changes that it wants, although the Court has the power to change this. He pointed to Judge Getty's concerns raised at the open meeting about the possible number of hearings and that the families of victims would be subjected to countless additional hearings.

The Chair responded that the statute does not address the incarcerated aging population and does nothing for any individual sentenced after October 1, 2021. Mr. Shellenberger agreed and noted that the statute embodies what the legislature wants to do in Maryland. The Chair responded that the Court may do more. Mr. Shellenberger agreed, but requested that the Court not do more.

Mr. Laws raised a question about drafting and a broader question. He suggested that references to subsection (f) (3) in subsection (h) (3) (B) should be changed to subsections (f) (3) (A) (i). In subsection (h) (3) (C), the current reference to "(f) (3) (ii)" should be replaced with "(f) (3) (A) (ii)."

Mr. Laws asked a broader question of whether the Rule is supposed to be different for youthful offenders versus aging offenders? The Chair responded that the amendments aim to provide someone proceeding under the statute three chances and three years between filings, as provided by the statute. For individuals not subject to the statute, the Rule provisions would apply.

Mr. Laws asked if subsection (h) (3) (B) should then refer to subsection (f) (2) instead of (f) (3). The Chair clarified that subsection (f) (2) refers to proceedings under the statute. Subsection (f) (3) refers to when the filing is not proceeding under the statute. The Chair noted that subsection (f) (3) contains the filing provisions previously recommended by the Committee.

Senator Cassilly expressed concern with subsection (f) (3) and the Committee acting based on alleged non-action by the General Assembly. The courts typically look at issues that are ripe and presented to them. He expressed

confusion as to why the Committee is looking to make a Rule impacting individuals whose rights will not be ripe for consideration until 2036. The fair implication by the General Assembly is that the new law relates to people that are currently incarcerated, and it intentionally does not need to address rights of individuals for crimes not yet committed.

Senator Cassilly concluded that it is more within the province of the General Assembly than the courts to look at these matters. He noted that there was ample discussion about the impact of the statute on crime rates, recidivism, and the courts. He questioned why the Committee is looking beyond the typical role of the Judiciary.

Senator Cassilly said that he agrees with Mr. Shellenberger's points, noting that the first person who may be impacted by subsection (f)(3), assuming the individual is convicted in October, will not be impacted until 2036. Individuals will have ample time to evaluate and determine the appropriate direction to go. The Chair pointed out that, until 2005, there was no five-year limit on the Court's ability to modify a sentence.

Mr. Kramer commented that he believes in redemption and that the door should not be closed to second chances. There are other mechanisms in the system to provide second

chances. He stated that revisiting a sentence years later when the facts of the case have not changed should not be one of mechanisms used. Nothing changes the fact that a murder was committed, and a person was adjudged guilty and sentenced.

Mr. Kramer said that, if there is so little confidence in the justice system or the parole system, the legislature should address it. He added that he does not see the urgency of the issue, except that the Chief Judge is retiring and is interested in this topic. He suggested letting the legislature consider the system as a whole. The system can be improved at the point of conviction and sentencing instead of later trying to change history.

Mr. Zollicoffer responded that he greatly respects Mr. Kramer and Mr. Shellenberger, and he understands their comments. He noted that he is concerned because the modifications that are being contemplated still leave the court at the center of the decisions. If a court imposed a sentence, why can't the court revise the sentence?

Mr. Zollicoffer stated that the Committee is forgetting or failing to acknowledge that this country and this court system still have the taint of racial injustice. Allowing individuals to petition for modification, as many people have commented, is not a broad brush for opening the

prison doors. It is an opportunity to give judges more tools to make changes as they see fit. Mr. Zollicoffer concluded that he is quite happy with the amendments and whole-heartedly supports the proposed changes. He added that the United States is the most incarcerated country on the planet, and incarceration affects more black and brown people than anyone else.

The Chair pointed out that the Court of Appeals could have refused to entertain changes to Rule 4-345. Instead, the Rule was returned to the Committee to consider the comments made by the Court.

Mr. Zollicoffer moved to adopt the "hand-out" version of Rule 4-345, subject to the stylistic clarifications discussed at this meeting. The motion was seconded and carried with 12 in favor and 3 opposed. The Chair added that written approval was submitted by two Committee members who were unable to attend the meeting.

There being no further business before the Committee, the Chair adjourned the meeting.