



# Modifying a Sentence

This is not legal advice. Please consult an attorney about your particular situation.

**What is a criminal sentence modification?** If you have been convicted of a crime, you may be able to modify your sentence after the trial. The sentencing judge may have the discretion to reduce your sentence or eliminate a criminal charge in certain circumstances. However, the judge is not obligated to modify your sentence. The judge also cannot increase your sentence.

## WHAT SENTENCES CAN BE MODIFIED?

The court has the power to correct an illegal sentence, or revise a sentence in the case of fraud, mistake, or irregularity.

The court may correct an illegal sentence at any time. An illegal sentence is when there is some illegality in the sentence itself or where no sentence should have been imposed. If your sentence is illegal, you can file a motion to correct a sentence in the court where your trial or plea took place.

If the sentence is not illegal, then the court's power to modify a sentence is limited to a showing of fraud, mistake, or irregularity.

**\*MVLS does assist with modifying sentences.**

## HOW DO YOU MODIFY A SENTENCE?

File a "Motion for Reconsideration of Modification of Sentence"

- In the district court, a motion **must be filed within 90 days** after imposition of a sentence. However, the motion can only be filed if an appeal has not been perfected or has been dismissed.
- In the circuit court, a motion **must be filed within 90 days** after imposition of a sentence whether or not an appeal has been filed.
- In both the district court and circuit court, the court does not have the power to revise a sentence if it has been more than five years from the date that the sentence was originally imposed.
- If a Motion to Modify **was not filed within 90 days** after the imposition of a sentence, then a defendant **will not** be able to modify his/her sentence.
- However, if the Motion to Modify was filed within 90 days and held Sub Curia, then the sentence could be modified at a later date. Sub Curia means under law, or under consideration of the court. This means that the court will hold the motion to modify. The judge will not rule on the motion immediately, and will instead make a decision at a later date. However, the judge must rule on the motion within 5 years of the sentencing date.

**In all circumstances, the court cannot modify the sentence after 5 years.**