

14th Amendment of the United States Constitution.

Cherry v. State, 9 Md. App. 416 (1970) applied the Pearce rule to an increase in sentence following conviction after trial de novo on appeal from a People's Court. The General Assembly thereupon amended Art. 5, §43, to codify the Cherry rule (Ch. 181, 1972).

In Colten v. Kentucky, 92 S. Ct. 1953, 32 L.Ed. 2d. 584, 40 L.W. 4703 (1972), the Supreme Court reaffirmed the basic holding of Pearce (as set forth in subsection (b)). But it declined to apply the same rules to sentencing after a conviction following a de novo appeal. Thus, the constitutional mandate which the Court of Appeals had perceived in Cherry turned out to be non-existent.

As a result of this judicial history, we have a constitutional limitation on increase of sentence if there is an ordinary appeal and either a remand for sentencing or a re-conviction after a new trial. And we have a statutory limitation on increase of sentence if there is a conviction after a de novo appeal. What §12-702 proposes is the codification of the case law, and the retention of the existing statutory law, thus providing a uniform approach to the problem, and one readily accessible to and understandable by those involved in criminal sentencing.

GENERAL REVISOR'S NOTES:

In accordance with the underlying philosophy of the revision of Art. 5 as part of a Courts and Judicial Proceedings Article, statutes permitting an appeal from an administrative agency to a court will be retained with the statutes pertaining to that administrative agency. These vary with respect to scope of review, procedure on appeal, etc.; see subtitle B, Ch. 1100, Md. Rules. Statutes permitting a further appeal to the Court of Appeals or Court of Special Appeals are similarly allocated.