



POSITION ON PROPOSED LEGISLATION

BILL: SB 591 - Criminal Procedure - Petition to Modify or Reduce Sentence
(Maryland Second Look Act)

POSITION: SUPPORT WITH AMENDMENTS

DATE: February 5, 2020

The Office of the Public Defender supports the Second Look Act (Senate Bill 591) with one proposed amendment.

Proposed Amendment

Based on the OPD's experience seeing adult offenders who have turned their lives around and become model inmates and good people well before they reached the age of 55, we would encourage the Committee to consider reducing the age at which they would become eligible to file a petition.

This bill builds on Maryland's success in safely reducing the prison population by giving judges opportunities to release non-dangerous inmates who have served a substantial period of time.

Permitting judicial modification of sentence is an effective way of safely reducing the prison population by releasing non-dangerous offenders, with a long and successful history in Maryland. In 2017, the Justice Reinvestment Act allowed judges to modify or reduce previously imposed mandatory sentences for certain drug felonies. Between 2012 and 2017, almost 200 individuals serving lengthy sentences for serious crimes were released following the Court of Appeals decision in *Unger v. State*, 427 Md. 383 (2012), most of them through negotiated modifications of sentence. The OPD and the private bar assisted many of the eligible individuals in developing plans for a successful re-entry into society.

The reason that judges (occasionally with the support of prosecutors and even the victims or their representatives) are sometimes willing to reduce sentences when given the opportunity to do so is because, with the passage of time, people convicted even of serious crimes can and very often do change and become much better people.

The OPD sees this all the time. Typically, when a person (especially a young person) is sent to prison on a long sentence, there is a period of adjustment where the individual may accumulate a number of rule violations, not infrequently to protect themselves from being targeted by other inmates. Then, after a few years, they settle in. They get a job, start dealing with addictions, start participating in programs. Many of our lifer clients report a turning point, usually a few years

after they were locked up, where they decided to change. Sometimes it's triggered by reconciliation with a loved one, the death of a family member, mentoring by an older inmate, or a religious conversion. Infractions cease, or become minor and infrequent.

As more time passes, they begin finding satisfaction in contributing to their community. They start to take pride in the work they do, both in prison jobs and in volunteer settings. Some become active in programs where inmates meet with kids in the juvenile justice system to warn them against following in their footsteps. Some mentor younger inmates to help them in their rehabilitation. Some work with victims' groups to raise awareness in the institution of the impact of crime on victims. Despite the serious crimes that brought them there, many inmates eventually grow into truly good people. And they want their lives to mean something.

Releasing non-dangerous individuals who have served decades in prison does not pose a risk to public safety.

This bill permits modification of a sentence *only if* the judge first finds “that retention of the sentence is not necessary for the protection of the public.” Absent such a determination, the court has no authority to modify the sentence.

The individuals eligible for relief under the bill share characteristics that make it much less likely that they will reoffend. Research demonstrates that recidivism diminishes among released inmates in their 40s and beyond, and inmates who have served at least 15 years in prison. In Maryland, only about 3% of people released in light of the *Unger* decision recidivated. A study of 860 murderers paroled in California over a fifteen-year period found that only *five* – less than one percent – were reincarcerated for new felonies since being released, and none of them recidivated for life-term crimes.

The mere possibility of release after decades of incarceration will not diminish any deterrent effect of such sentences. At the moment a person decides to commit a very serious crime, they generally are not thoughtfully considering the potential future consequences of their actions. Even if they did, and if they also knew more than most about the law governing criminal sentences, then they would already know that most sentences would permit release on parole years before someone would become eligible for a modification under the Second Look Act.

To the contrary, such releases will make Maryland safer.

Passing the Second Look Act would make us safer in four ways.

1. It would permit the State to take money and resources it now wastes on imprisoning non-dangerous individuals and reallocate it to programs and initiatives that actually make us safer. For instance, the cost to incarcerate one elderly non-dangerous lifer for a year is enough to send two kids from our juvenile justice system to college for that year, with a fair amount left over.¹

¹ Justice Policy Institute, *The Ungers, 5 Years and Counting: A Case Study in Safely Reducing Long Prison Terms and Saving Taxpayer Dollars*, p.18 n.2 (November 2018) (estimating annual cost of incarcerating geriatric prisoner

2. It would reduce the demands on prison staff, who (as has been recently reported) are stretched dangerously thin, by reducing the sheer number of inmates they need to supervise.
3. It would reduce violence within prisons, by incentivizing inmates to stay out of trouble and take full advantage of opportunities to better themselves. This would make prisons safer for inmates and correctional staff alike.
4. It would enable reformed inmates to use their experience to make their communities better and safer. Lifers released in Maryland have become active volunteers in their houses of worship and their neighborhoods. Many feel called to mentor young people to keep them from going down the wrong path. They get jobs, care for elderly relatives, and otherwise lead positive and productive lives.

For all these reasons, the OPD urges a favorable report on SB 591.

at \$53,832); Towson Univ., Tuition & Expenses website, <https://www.towson.edu/admissions/tuition/> (estimating annual in-state cost for full-time tuition, fees, on-campus housing, and a 14-meal plan at \$23,044)