CHRIS WEST
Legislative District 42
Baltimore County

Judicial Proceedings Committee

Vice Chair, Baltimore County
Senate Delegation

THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

Annapolis Office
James Senate Office Building
11 Bladen Street, Room 303
Annapolis, Maryland 21401
410-841-3648 · 301-858-3648
800-492-7122 *Ext.* 3648
Chris.West@senate.state.md.us

District Office
1134 York Road, Suite 200
Lutherville -Timonium, MD 21093
410-823-7087

February 5, 2020

Senate Judicial Proceedings Committee
The Honorable William C. Smith
2 East Miller Senate Building
Annapolis, Maryland 21401-1991

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

Dear Chairman Smith and Members of the Committee:

Senate Bill 591, the Second Look Act, affords an inmate who has served decades in prison an opportunity to petition the sentencing court to modify or reduce the inmate's sentence. A judge may not modify the sentence unless the judge finds, after a hearing, **"that retention of the sentence is not necessary for the protection of the public."**

To be eligible to file a second look petition, an inmate must have been convicted of a criminal offense committed as a juvenile or be at least 55 years old. Furthermore, the inmate must have served in prison the equivalent of 25 years (taking diminution credits into account), but no less than 20 years (without diminution credits).

An eligible inmate will have the right to representation by counsel. If the inmate cannot afford private counsel, the inmate would be represented by the Office of the Public Defender.

This bill carefully protects the interests of both the State and the victim. The judge will be required to hold a hearing, where the State will be represented by a State's Attorney. The victim will receive notice of the petition, and either the victim or the victim's representative will be entitled to an opportunity to be heard.

(The Maryland Coalition Against Sexual Assault has proposed a friendly amendment that would permit the court to consider a written statement by the victim or a representative in lieu of an in-person appearance. That's a good suggestion that I would support.)

If the judge finds that **"that retention of the sentence is not necessary for the protection of the public,"** then under Senate Bill 591, the next step depends on whether the offense was committed when the person was an adult or a minor.

- If the person was under 18 at the time of the crime, then the judge **is required to modify the sentence** so that the person is released within three years. This up to three-year cushion is intended to allow the person to participate in Department of Corrections re-entry programs that are available to inmates with an approaching release date.

- If the person was 18 or older at the time of the crime, then the court **would have the discretion to modify the sentence but would not be required to do so**.

A court is not permitted to increase the length of a sentence.

Recognizing that there may be situations where a judge thinks a person could be ready for release at some point, but needs more time, the Act permits the inmate to reapply five years after a previous denial.

Finally, to ensure that courts are complying with the requirements of the Act, it permits a party aggrieved by the result to apply to the Maryland Court of Special Appeals for leave to appeal. This gives the appellate court an opportunity to review meritorious claims of error, and the discretion to decline to review non-meritorious claims.
Senate Bill 591 singles out youthful offenders and those who have been incarcerated for over 20 years. Insofar as juvenile offenders are concerned, any human being who reaches his 37th birthday is a different person than he was at the age of 17. Quite literally he is a different person because all of the cells in his body when he was 17 have died and been replaced by new cells. But beyond this, a person's brain doesn't fully mature until he is 25 years old, and with maturity comes different thinking, different attitudes and a different approach to life. If we were to reflect on our own lives, I'm quite sure that at the age of 37, we would look back at our lives at 17 and conclude that a lot of changes had occurred in the meantime.

Insofar as inmates turning 55 after at least 20 years in prison are concerned, statistics show that the most conclusive factor determining whether a person is likely to commit another crime is the person's age. The older a person gets, the less likely he is to commit crimes. You may ask why a person should be entitled to avail himself of the provisions of the Second Look Act at the age of 55 and not at 60 or 65. The answer is that if the incarceration of a 55 year old inmate is not necessary for the protection of the public, it would be best to give the inmate the chance to get a paying job and get some years of work under his belt so that he will qualify for social security payments in his later years.

Senate Bill 591 does not apply to someone convicted for a crime as an adult until that person has served at least 20 years in jail and reaches his 55th birthday. So, for example, if a person engages in serial killings at the age of 23, that person will not qualify to be considered under this bill until he has served 32 years in prison.

The opponents of Senate Bill 591 are going to argue that if this bill is passed, there will be no finality for the family of the victim, that it will never be over. They will claim that if this bill is defeated, the victim's family will achieve finality and will be able to live the remainder of their lives secure in the knowledge that the perpetrator of the crime will never be released. But the written testimony of the Baltimore County State's Attorney shows that this is not the case. It

lists all of the post-conviction options available to a prisoner right now. Many of these are merely post-trial remedies in his criminal case, but some of them are available as the years pass. Most significantly, the Baltimore County State's Attorney argues that the first parole hearing of the convicted felon is set as early as 11 ½ years after his incarceration. And if he is not successful at that hearing, he can return over and over as the years pass and ask the parole board for relief. The only way to truly achieve finality for the family of the victim is to eliminate all possible post-conviction remedies and literally lock the prisoner up and throw away the key. As a society, we try to be just and merciful, and just locking people up in every single case and throwing away the key is not what we do. It's not who we are.

Of course the victims have rights. They are notified every time a prisoner applies for relief, and they have the right to be heard by the reviewing authority. And as embittered as the grieving families are, I suspect that in some cases, they have the capacity to hold out the hope that the person who committed an atrocious crime against their loved one will see the light and will transform himself into a different, better person.

Thus, Senate Bill 591 will provide an opportunity for people who have served most of their lives behind bars to appear before the sentencing court and ask the court to consider whether they have so reformed their lives that they should be released from jail because their continued incarceration is no longer necessary for the protection of the public. People can change. Redemption is possible. When that happens, as a society we should rejoice. Keeping someone in prison after he has spent decades in jail but has transformed his life and is no longer a threat to society is hard to defend, particularly if the inmate committed his crime when he was just a juvenile or if the inmate is beyond the age when further criminal activity is unlikely.

I hope the Committee will issue a favorable report on this bill.