MARYLAND OFFICE OF THE PUBLIC DEFENDER

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POSITION ON PROPOSED LEGISLATION

To: Members of the House Judiciary Committee

From: Lila Meadows, Assistant Public Defender, Maryland Office of the Public Defender

Re: SUPPORT SB 123: Criminal Procedure – Petition to Reduce Sentence

Date: March 26, 2024

The Maryland Office of the Public Defender respectfully requests that this committee issue a favorable report on Senate Bill 123.

Senate Bill 123 builds on Maryland's success in safely reducing the prison population by giving judges opportunities to release non-dangerous inmates who have been incarcerated for a substantial period of time. This bill creates a mechanism for incarcerated individuals to file a motion for modification in two circumstances. First, an incarcerated individual may file a motion for modification after spending 20 years in prison. Second, if the first petition is unsuccessful, an individual may file a second petition after the individual turns 60 years of age. Senate Bill 123 merely provides the incarcerated individual an opportunity to present their case to the court, it does not require any reduction in the sentence.

As amended by the Senate, Senate Bill 123 excludes anyone who has been convicted of first degree rape (Criminal Law Article 3-303). The Office of the Public Defender does not support excluding individuals from mechanisms for relief based on either the nature of the conviction or the length of sentence. To the extent that the Senate's amendment to exclude individuals convicted of first degree rape was borne out of concerns for public safety, it is not supported by the evidence on recidivism. A recent report by A recent report issued by The Sentencing Project highlighted data from researchers at the Bureau of Justice Statistics (BJS) who followed more than 400,000 people convicted of rape or sexual assault who exited prison in 2005. Nine years following release, over 92% of individuals released with rape/sexual assault convictions were not rearrested for another rape or sexual assault. Compared to individuals released for a non-sex offense conviction, they were also less likely to be arrested post-release for any crime.[1] The data on recidivism supports giving judges the opportunity to review these cases and determine whether an individual is a current threat to public safety. While we are opposed to the

[1] The Sentencing Project. "Responding to Crimes of a Sexual Nature: *What We Really Want Is No More Victims*" January 2024, accessed at: https://www.sentencingproject.org/app/uploads/2024/01/Crimes-of-a-Sexual-Nature.pdf

amendment for that reason, we urge the committee to pass SB 123 because approximately 1516 incarcerated Marylanders stand to benefit from the bill even as amended. That number includes 513 individuals who are already age 60 and over and as of today have very few options to restore their freedom.

Permitting judicial review and 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 the not-too-distant past, defendants in Maryland could potentially return to court and ask the court to reconsider their sentence many years later. Prior to July 1, 2004, defendants in Maryland had the right to file a Motion to Modify Sentence under Rule 4-345 within 90 days of sentence and the sentencing court had perpetual revisory power over the motion so long as it was timely filed. In other words, so long as a defendant filed the motion within 90 days of the sentence and the sentencing court agreed to hold it and not rule on it, the defendant could come back years later and demonstrate that they had matured, evolved, and used their time productively. Defendants had time to develop an institutional record that could reflect growth and maturity. They might take courses and earn a degree or complete programming intended to impart vocational skills or pro-social behavior.

After 2004, a change in the rule meant that courts only reconsider the sentence within 5 years from the date of sentence. For a defendant who is serving a long sentence, five years is typically not enough time to demonstrate rehabilitation to a court. Though any one of us may change for the better in five years, most of us can agree that we are certainly not the same person as we were 20 or 30 years ago. In 2021, the General Assembly gave individuals who were incarcerated for crimes they were convicted of as children an opportunity to demonstrate this when it passed the Juvenile Restoration Act (JRA). The JRA adopted the same legal standard proposed by Senate Bill 123. The court is only permitted to modify a sentence if it finds the individual is no longer a threat to public safety and the interest of justice will be served by a reduced sentence. Almost two and a half years of data from the JRA suggests this standard works. Of more than 100 rulings on motions filed under the Juvenile Restoration Act, courts have granted immediate release to only 46 individuals. Extremely low recidivism among individuals released under both the Juvenile Restoration Act and the *Unger* decision have demonstrated that releasing long sentence servers can be done without compromising public safety.

Frequently, the opposition argues that there are already numerous procedural mechanisms available to defendants to challenge their sentences. But existing avenues of relief are actually narrow avenues meant to address specific procedural flaws or failings in a trial. More specifically, the court's ability to reconsider a sentence based on a defendant's demonstrated growth and rehabilitation is limited to, typically, one motion to modify sentence which the court may deny without a hearing and must be ruled upon within five years of the persons sentencing. Other pleadings such as an appeal or post conviction petition have nothing to do with a defendant's rehabilitation or any consideration of public safety. The opportunity for juvenile lifers to have a second look is a recent phenomenon that has been very successful, but it leaves behind other, equally deserving individuals.

Given the disturbing racial disparities present in Maryland's prisons, with Maryland incarcerating the largest portion of Black people than any other State in the Nation, this is also a

racial justice bill. Senate Bill 123 provides a critical opportunity to move towards ending mass incarceration and remedying racial disparities without compromising public safety. In fact, such releases will make Maryland safer. 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. It would also 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.

Senate Bill 123 provides an opportunity for the court to take a second look at individuals. It is not a "get-out-of-jail-free card." It is an opportunity for a defendant to demonstrate their worthiness of a second chance.

For the foregoing reasons, the Maryland Office of the Public Defender urges this committee to issue a favorable report on Senate Bill 123.

Submitted by: Maryland Office of the Public Defender, Government Relations Division.