SB 123

UNF Written Testimony by:

Joanna Mupanduki
Deputy Director, Maryland Crime Victims' Resource Center, Inc.
1001 Prince George's Blvd., Suite 750
Upper Marlboro, MD 20774

The proposed bill, SB 123, should not be adopted a multitude of reasons, including institutional and practical ones. The proposed bill is unjust, unfair to crime victims, deleterious to principles of separation of power, and is not a second chance bill given that convicted violent offenders in Maryland who are serving sentences longer than 20 years already have a multiple ways to have their sentences reduced. It is outrageous that this committee is considering yet another way to avoid finality in sentences. The public, as we know, favors truth in sentencing. The proposed bill usurps the proper role of the Executive Branch regarding parole and commutation. The proposed bill violates the Maryland Constitution, binding caselaw, the common law, and recent statutes. SB123 undermines the Maryland Sentencing Guidelines in regard to the most serious sentences for the most egregious acts. The proposed bill goes out of its way to diminish the value of societal moral judgment toward horrific crimes that shows a callous disregard for the sanctity of human life. In addition, those re-sentenced under these provisions will be released without the protections afforded to victims and society of those released on parole: stringent monitoring, strict enforcement, and the possibility of reimposition of sentence. The parole process is finely tuned to deal with parole violations. The release process for those whose sentence is adjusted is poorly equipped to deal with recidivism.

I. SB 123 side steps the parole system and facilitates judge shopping.

This bill breaks entirely new ground as a way around the use of the parole system, and it is not based upon any motivation of resolving ongoing legitimate concerns about the integrity of a conviction, but rather upon an attempt to bypass the parole board, go back to the court after a lengthy period of time allowing the convicted inmate to go before a different Judge and prosecutor who do not know all the details of the crime committed and are not as aware of the reasoning and need for the inmate to receive their sentence. This lengthy amount of time also makes it difficult for victims and victim representatives to be contacted and allowed sufficient time to participate in this attempted resentencing. How much time a convicted felon who received a long sentence must serve before getting to spend time "outside the prison walls" is precisely what is at issue here. Indeed, proposed SB 123 specifically requires the court hold a hearing on a petition to reduce a sentence.

Sentence reductions not based on mistakes or constitutional violations do not occur unless a particular sentencing judge has decided in the unilateral exercise of that judge's discretion to accommodate himself or herself by holding a motion to modify a sentence *sub curia,* while that sentencing judge decides a motion made shortly after sentencing to reduce the sentence. The petitions filed to reduce a sentence are not made to the original sentencing judge for the exercise of that sentencing judge's discretion, but just the opposite. The motions are made at least 20 years after the sentencing judge has imposed sentence and can be made long after that. Allowing such a long delay in filing these petitions shows that the original sentencing judge's discretion, as well as the original judge's sentence, is not at issue here, and if anything, is being attacked and denigrated. SB 123 would allow a felon with a long sentence to wait until the original sentencing judge is no longer on the bench and then to ask a new judge to reevaluate the "societal purpose" of the felon's original sentence that the original sentencing judge refused to reduce. And since the petitions can be refiled up to two times if unsuccessful, the felon can wait until that second circuit judge to hear the felon's case has left the bench before filing additional successive motions. Approving a rule like this that facilitates judge shopping is contrary to the public interest.

II. SB 123 attempts to take power away from the Parole Commission

Statutory and constitutional authorities place this question, about how long a finally sentenced adult inmate should remain incarcerated, in the Legislative and Executive Branches. The administration of the state parole system is exclusively lodged by statutory and constitutional pronouncements in the Executive Branch of the Maryland Government, absent a final judicial ruling that some aspect of the incarceration or release process is unconstitutional which is not present here. Article 8 of the Maryland Declaration of Rights (Separation of Powers, "the Legislative, Executive and Judicial powers of Government ought to be forever separate and distinct from each other; and no person exercising the functions of one of said Departments shall assume or discharge the duties of any other"); Article II, Section 20 of the Maryland Constitution (Power of Governor, "He shall have power to grant reprieves and pardons"); Md. Code, Corr. Serv. Art. §7-301 *et. seq*.; *Lomax v. Warden, Md. Corr. Training Ctr*., 120 Md. App. 314, 337 (1998)("under Maryland law, parole is purely an executive function"). Courts have also ruled that in cases involving life sentences, including those imposed on young offenders, the Parole Commission's procedures are not unconstitutional. *Carter v. State,* 461 Md. 295, 365 (2018) ("the life sentences being served … do not inherently violate the Eighth Amendment and are not illegal for that reason"). Viewed in this context, which is consistent with the vast majority of states across the nation, there is no need nor a proper place for the Court to do the job of the Parole Commission. Especially at a time long after an original sentence becomes final, and a decade after a long 5 year post-sentencing "claims processing" time limit (for issues held *sub curia* by

the original sentencing judge) has run, *State v. Schlick*, 465 Md. 566, 578 n.4 (2019). No constitutional violation is required by the proposed bill.

In April 2021, the General Assembly first abolished the Governor's right to veto the parole of life sentenced prisoners. That gubernatorial veto has been the target of much policy criticism, although not constitutionally defective, for decades. No one can forecast how this fundamental change in parole decision making will alter the outcomes of parole consideration for inmates with life sentences, but that change incontrovertibly undercuts the proponent's rationale about the need for a modified Rule.

In addition, the General Assembly made an unprecedented change to the juvenile sentencing process. This new statutory provision, Laws of Maryland, 2021 Sess., Ch. 61, provides that going forward no offenders who were juveniles at the time of the offense may be sentenced to life without parole, and any juvenile sentenced for <u>any</u> offense who has already served twenty years of imprisonment may move for resentencing. This provision directly contradicts, and therefore overrules, the Committee's recommendation as to the age of eligibility and prior required years of prison service required for eligibility for resentencing, as it applies to the hundreds of inmates in prison who committed their offense while a juvenile and have served twenty years. The legislative drafters of this 2021 law chose to adopt a different time period before resentencing may be requested, and in addition also chose to restrict the group entitled to this remedy only to juveniles at the time of their offense. The General Assembly chose not to alter the situation of geriatric inmates which is addressed by the geriatric parole provisions in current Maryland law. For this reason alone, the General Assembly should not adopt SB123.

III. SB 123 fails to consider the imprecise nature of rehabilitation and public safety.

There are no "judicially discoverable and manageable standards for resolving the issue" of when a long sentenced violent felon, in the words of Judge Wilner's transmittal letter (at p.2) "has matured at least physiologically and <u>hopefully</u> emotionally" such that release will not undermine public safety or the welfare of society, which the legislature requires. See Md. Code, Corr. Serv. Art. 7-305. About this "hopeful" emotional maturation of convicted murderers, the transmittal letter of Judge Wilner continues, "[c]riminologists and courts have recognized … the positive impact of … just getting old – and whether continued incarceration of prisoners in their sixties, seventies, or eighties serves any rational societal or public safety purpose." (*Id*.) The Report contains similar language and states (p. 3) that "With respect to the ageing prison population, it is based on the conclusions of criminologists." This latter explanation offers nothing that the General Assembly has not already considered and has explicitly delegated to the Parole Commission, Md. Code, Crim. Law Art. 14-101(f) (providing

geriatric parole consideration for inmates at least 60 who have served 15 years). Reliance upon these staff psychological examinations demonstrates that no objective discoverable and manageable standards exist for determining if -- for example, a convicted manipulative psychopath or an obsessed serial murder each of whom have functioned exceptionally well in a restrictive prison setting -- are emotionally ready for release in a manner that is compatible with the welfare of society and public safety. Psychological reports about a felon's behavior during incarceration, while circumstantial, do not and cannot supply direct evidence or "judicially discoverable and manageable standards" about how a violent felon will interact with society act upon release from custody. Indeed, if objective standards existed, no legislators nor citizens would needlessly spend $2 million to incarcerate specific felons for decades. The concept of rehabilitation is imprecise; its utility and proper implementation are the subject of a substantial, dynamic field of inquiry and dialogue. See, *e.g.,* Cullen & Gendreau, Assessing Correctional Rehabilitation: Policy, Practice, and Prospects, 3 Criminal Justice 2000, pp. 119-133 (2000) (describing scholarly debates regarding the effectiveness of rehabilitation over the last several decades). Therefore, SB 123will precipitate a battle of criminology experts in the sentencing court about a reduced sentence in each case based upon these reports. Nor is it clear that such a battle is even relevant. In *Teeter v. State*, 65 Md. App. 105, 118-19 (1985) the Court stated that "in *Solem v. Helm, supra,* it was held that a court's "proportionality" [sentencing] analysis was not to be guided [solely] by a consideration of the defendant's characteristics. Instead, objective criteria should govern, including a comparison of the sentence imposed to that available for other crimes and the same crime in other jurisdictions. *Id*. 463 U.S. at 292, 103 S.Ct. at 3011." The Maryland Sentencing Guidelines take into account the considerations emphasized in *Teeter* but, without explanation, the Sentencing Guidelines are not mentioned in the proposed bill.

Moreover, the determinative issue here, the impact on public safety and the welfare of society after release of a specific violent felon, is a topic as to which there is no definitive caselaw and about which trial judges, unlike parole executives, have little or no specialized background, training, or experience. At bottom, the issue in each case will be how a particular convicted violent felon *is predicted* to behave in society once released from many years of custodial custody, based upon the person's record of behavior while under 24/7 restrictive penal custody, which has never been an issue for judicial determination. This difficult prediction is compounded because the proposed bill does not require the resentencing court to consider the circumstances of the original offense before incarceration restrictions were imposed, and there is no consensus among penological experts on how to successfully accomplish or reliably measure meaningful emotional "rehabilitation" among violent inmates. If there were a consensus, then objectively and statistically reliable correctional rehabilitative

programs would exist and be set up, even if only to save the enormous cost of incarceration, in every jurisdiction. In sum, removing the "hopeful emotional" maturity determination from penologically trained experts who examine that issue thousands of times a year in the Executive Branch in order to promote "societal purposes" ("for whatever reason"), and transferring that discretionary determination to judicial officers does not, *ipso facto*, make this difficult discretionary predictive behavioral determination and its impact upon public welfare and safety, as to which there is no Maryland caselaw standard, "judicially discoverable and manageable." What is at issue here is not a traditional sentencing function but rather a question of post-sentencing treatment efficacy about which judges do not have any special expertise or experience upon which to override the legislative and executive branches of government. *See e.g.* 18 U.S.C. §3626 (legislative restrictions on the ongoing judicial supervision of already sentenced prisoners). Indeed, evidence that this proposed judicial determination, with judges acting as a super parole board, *United States v. Somers*, 552 F.2d 108, 114 (3d Cir. 1977), does not involve judicially discoverable and manageable standards is that the resentencing court is not required to make any specific findings one way or the other, and there is no appellate caselaw that establishes a legal standard which distinguishes between acceptable and unacceptable trial court rulings on reductions in sentence for "societal purposes".

Neither *Miller v* Alabama, 567 U.S. 460(2012) and *Graham v.* Florida, 560 U.S. 48(2010) support the bill's judicial rule's resentencing initiative. The Supreme Court endorsed parole eligibility, "rather than …resentencing". *Montgomery v. Louisiana*, 577 U.S. 190, 136 S. Ct. 718, 736 (2016)(*Miller* "does not require States to relitigate sentences"). Moreover, as the United States Supreme Court stated in In *Graham v. Florida,* 560 U.S. 48, 68 (2010) and again in *Jones v. Mississippi*, No. 18-1259, 2021 U.S. LEXIS 2110, at *12-14 (Apr. 22, 2021), "the Court has recognized that it "is <u>difficult even for expert psychologists</u> [no less judges] to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption." *Roper*, 543 U. S., at 573, 125 S. Ct. 1183, 161 L. Ed. 2d 1. In addition, when the Court has established such an eligibility criterion, the Court has considered whether "'objective indicia of society's standards, <u>as expressed in legislative enactments and state practice,'" demonstrated a "national consensus"</u> in favor of the criterion. *Graham*, 560 U. S., at 61, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (quoting *Roper*, 543 U. S., at 563, 125 S. Ct. 1183, 161 L. Ed. 2d 1). (Emphasis added.)Taking into account the recent General Assembly's actions, the proposed rule is not appropriate. *Diggs v. State, supra*.

IV. SB 123 fails to uphold the Maryland Constitution and Declaration of Rights.

There is a strong need for judicial adherence to the current sentencing procedures that is based on the Maryland Constitution and Declaration of Rights. The proposed bill's focus on a violent felon's prison behavior and the omission of the statutorily required focus on the violent felon's societal offense behavior, see Md. Code, Corr. Serv. Art. §7-305(1)(the circumstances surrounding the crime), effectively nullify the input of crime victims. A crime victim's impact statement stems from the original crime, not from the inmate's subsequent prison behavior. Therefore, the substance of the crime victim's impact statement, deriving as it does from the original crime, is rendered largely irrelevant if the focus at resentencing is primarily on the violent felon's subsequent prison behavior. This proposed change of focus violates the parole laws, *id*. at Corr. Serv. Art. §7-305(1), (7),(9) & (10), as well as the impact of the many laws which mandate victim impact presentations at sentencings. The victims' impact statements would now be rendered largely irrelevant even though allowed, and for that reason, these proposed changes violate Article 47(a) of the Maryland Declaration of Rights (requiring that victims be treated with respect, dignity, and sensitivity). That constitutional provision and its implementing statutes and Rules, including Rules 4-342(d), Rule 4-345(e)(2)&(3) and the statutes cited therein, mandate that prior to all sentencing and resentencing, all state agents shall hear victims and treat victims "with dignity, respect, and sensitivity during all phases of the criminal justice process". Removing the circumstances of the original crime from the factors that must be considered at a resentencing as the proposed bill does, renders crime victims' impact statements largely irrelevant, both at the resentencing and at the original sentencing since long sentences, like Lee Boyd Malvo's (the "beltway sniper") including long sentences bargained for, can be routinely reopened. Such actions do not treat family representatives of murdered victims with dignity, respect, or sensitivity because their participation and input becomes irrelevant if the court decides not to consider the original offense. But see, *Jones v. Mississippi*, *supra*, 2021 U.S. LEXIS 2110, at *30 ("any homicide, and particularly a homicide committed by an individual under 18, is a horrific tragedy for all involved and for all affected. Determining the proper sentence in such a case raises profound questions of morality and social policy. The States, not the federal courts, make those broad moral and policy judgments in the first instance when enacting their sentencing laws. And state sentencing judges and juries then determine the proper sentence in individual cases in light of the facts and circumstances of the offense, and the background of the offender." Emphasis added); *Payne v. Tennessee*, 501 U.S. 808, 827 (1991)(as "expressed by Justice Cardozo in *Snyder* v. *Massachusetts*, 291 U.S. 97, 122, 78 L. Ed. 674, 54 S. Ct. 330 (1934): "Justice, though due to the accused, is due to the accuser also. The concept of fairness must not be strained till it is narrowed to a filament. We are to keep the balance true.")

In addition, unlike at parole hearings where the original offense is not reopened, at a resentencing hearing, who did not anticipate a reopening decades later, victims will

be traumatized once more. Some victims will feel compelled to attend and to reopen their old wounds, perhaps repetitively, because new sentencing judges who did not preside at the original proceeding are likely to be assigned each time these 20 year (or more) delayed motions are made. Those victims will feel obligated to apprise the new sentencing judge about the terrible circumstances that have profoundly impacted their lives, which they may have been desperately trying to push away from the spotlight in order to go on with their lives. But they know that other than the victim, or victim's representative, and the defendant, few if any original participants, including prosecutors, law enforcement investigators, defense counsel, or judges, will be present who were present from the outset. This puts a heavy burden on the victims to undergo additional revictimization from again having to meet one's tormenters because the crime victims and their representatives are among the few original participants available. As acknowledged in *Antoine v. State*, 245 Md. App. 521, 546 (2020), "The Court of Appeals has emphasized that consistent with Article 47(a) of the Maryland Declaration of Rights "trial judges *must* give appropriate consideration to the impact of crime upon the victims." *Lopez*, 458 Md. at 176 (quoting *Cianos*, 338 Md. at 413)." That "appropriate consideration" is undercut by this proposed Rule which for these reasons violates the Declaration of Rights.

V. SB 123 will negatively impact and curtail plea bargaining in Maryland.

The bill will negatively impact and curtail plea bargaining in Maryland. Plea bargains are a "significant if not critical, component of the criminal justice system." *Chertkov v. State*, 335 Md. 161, 170 (1994). They dispose of 95% of all criminal cases that proceed to sentencing. *Antoine v. State*, 245 Md. App. 521,547,n.8 (2020). Current Rule 4-243(a)(1)(F) and (c)(3) bind a court and defendant to a specific "ABA" plea and sentence bargain unless all parties agree to "a disposition more favorable to the defendant than provided for in the agreement." *Chertkov, supra* 174 ("allowing the plea agreement to be violated, even if not by the trial judge, 'would be inconsistent with the standard of fair play and equity'."); *State v. Smith*, 230 Md. App. 214, 240 (2016)(State's plea deal must be honored). However, as a result of this proposed bill, "ABA" pleas, which are entered into in many of the most serious violent crimes, will no longer have any meaning since their agreed upon sentences can later be reduced upon the sole initiative of the defendant. This will undercut the reason for prosecutors in future cases allowing life or long sentences to enter into a Rule 4-243(c) sentence bargain since the terms of those agreements can be abrogated at will by the defendant, and they will have no reason not to try to do so.

Another adverse consequence of the bill is that defendants facing the most serious charges will have no incentive to plead guilty since, no matter how insincere or lacking in remorse or veracity they appear to the trial judge, those defendants know that after 20 years they can seek resentencing, and their prior lack of remorse, decorum and

even anger displayed at trial towards their victim will no longer be considered. Moreover, defendants who have received long sentences can postpone making their motion for resentencing until their sentencing judge is no longer sitting on the bench, thereby obtaining a form of judge shopping. The original judge will likely have heard evidence at various motions hearings, or at the defendant's or possibly a codefendant's trial, and had the opportunity to assess reasonably contemporaneous portrayals of the defendant's criminal conduct. Defendants will have an incentive to wait until a new judge is assigned to their case, especially if the original judge did not reduce the sentence to the defendants liking. A new judge will likely have no familiarity with the detailed facts from the original evidentiary hearings, which may not have ever been transcribed. Moreover, under the proposed bill, the new judge will have to focus on the behavioral aspects of incarceration and may not feel the court has the time and resources to become intimately familiar with the circumstances of the original offense in each of the resentencings the court is assigned, since the original crime is no longer a factor the court must consider, contrary to what the Parole Commission must consider, Corr. Serv. §7-305(1).

An additional consequence of the proposed bill is that it may discourage prosecutors from agreeing to plea bargains involving long sentences. Proposed bill SB 123 gives judges, including successor judges, the discretion, 20 or more years after the case was originally sentenced, to essentially vacate the original sentence. In that event, a defendant would be free to ask a successor judge to permit the defendant to withdraw the defendant's prior guilty plea, as allowed by Rule 4-242(h). As a result, a prosecutor would have no assurance when negotiating a plea bargain that a defendant, who waits for the original sentencing judge to leave the bench, will not ask a first, second, or later successor judge, to vacate the sentence and then allow the defendant to withdraw his plea. This provides no assurance to the State that they will not have to try cases that are by then 20or more years old where the evidence may now be lost and memories very dim. For that reason, it would be more desirable for prosecutors to obtain a jury verdict than enter into a plea bargain.

All of these consequences show that under the proposed bill, both prosecutors and defendants will have less incentive to enter plea bargains in serious violent crime cases, causing more such cases to proceed to trial, which will unnecessarily increase criminal justice system litigation costs and adversely affect the capacity of the judiciary and the State's Attorneys.

VI. SB 123 will undercut the current sentencing system.

Currently, a sentencing judge may hold a sentencing reduction motion *sub curia* after a defendant makes a motion within 90 days under Rule 4-345. The time that these motions are held *sub curia*, for example where the court wants to be sure that it was not

over hasty or needed a cooling off period, is the "claims processing" time before the ruling issues. Allowing a judge the "claims processing" time to decide what remedial action, if any, to take on a motion to reduce a sentence, was the driving force behind Rule 4-345. While there was a difference of views in the past over what the outside limit should be regarding the original sentencing judge's "claims processing" time period to reconsider that original sentence, and whether going beyond the common law period of one "term of court" was constitutional, see *Schlick, supra*, the focus remained on the original sentencing judge's reconsideration of that judge's own prior action after supervising the entry of the plea and sentence.

The current proposed bill breaks new ground because it has no such moorings, and from the outset will institutionalize a new two step sentencing scheme for many offenders. Under the proposed bill, a new sentence can be entered for a defendant even if no such motion was made to the original sentencing judge, and worse, even if the sentencing judge considered and denied such a motion, from which denial the General Assembly has decided a defendant may not appeal. *Telak v. State*, 315 Md. 568, 575-76 (1989)("The Legislature did not authorize an appeal from the denial of a motion to correct an illegal sentence; it authorized an appeal from the final judgment in the criminal case.) Despite the controlling precedent of *Telak*, the intentions of the original sentencing judge would now be subject to review 20 years later, may be overturned, and the original sentence and sentencing justification rendered irrelevant. As a result, where a long sentence is likely, this proposed bill discourages the original sentencing judge from carefully considering exactly how long that original sentence should be since the court's original sentence is not final and the victim's impact statement relating to the original offense may ultimately make no difference. The original sentence in these cases will be a "tentative" sentence because it will always be open to revision in the future. Therefore, if a violent offender warrants at least a 20 year sentence under the Sentencing Guidelines, some courts may well decide that there is no reason to spend the court's scarce resources at the time of the original sentencing figuring out how much longer than 20 years to impose or considering the impact of the crime on the victim, but may simply double that 20 years, incorrectly implying the court is "tough on crime", and let future judges figure out, with the benefit of hindsight, the more appropriate amount of incarceration to require in each such case. That resulting process, if it came to pass, would disserve the integrity of the criminal justice system and violate the crime victim's rights to have their concerns treated with respect and dignity under Article 47(a) of the Maryland Declaration of Rights.

The proposed bill focuses on post-sentence behavior by an inmate which did not exist at the time of sentencing and as to which, for that reason, there could be no record. Combined with the fact that such a motion can be considered 20 or more years after the original sentencing, despite the sentencing judge previously denying such a

motion, shows that this billl has nothing to do with reconsideration of the proper sentencing determination made at the time of sentencing but rather, is a rule that is concerned with what rehabilitation may or may not have occurred since that time.

It is evident that this proposed bill is creating a new case because if an inmate has a life sentence commuted and is released prior to 20 years, that inmate will never have a claim for resentencing. Moreover, since evidence on this new claim cannot be found in the existing case record, the court will need to take new evidence, some of which will be from officials not a party to the case who have never previously testified in the case and, for institutional reasons, may not wish to testify (and appear either hostile or favorable to such releases) , i.e., prison correctional officials. In sum, such new claims only arising after 20 years which are not based on evidence in the record and not previously before the court and not based on earlier timely 90-day reconsideration motions, are not reconsiderations of prior determinations but rather are new determinations based on new evidence from new evidentiary sources and therefore a new case.

And, because such new determinations can be made 20 or more years later including after the original judge has refused similar requests, without the defendant being able to appeal and judicially overturn any prior denials, these new actions under the proposed bill become vehicles for judge shopping. Because the proposed bill has nothing to do with the original offense, the original prosecution, the original sentencing proceeding and evidentiary record, or the original sentencing judge's "cooling off" or "claims filing" needs, the proposal's delayed resentencing extends way beyond any possible definition of the "term of court" imposed by the common law. Therefore, this entirely new concept of recurring sentencing is an initiative that has nothing to with the orderly running of the judicial system and is not a "claims processing rule" which "promote[s] the orderly progress of litigation", *Schlick, supra* n.4. Instead, the proposed rule allows entirely new claims about rehabilitation that are legislatively delegated to the Parole Commission, Corr. Serv. §7-305(3),(5)&(6), denigrates the rule of finality as to original judicial sentencing proceeding, and encourages judge shopping.

In fact, the current five year limitation on motions for reconsideration in Rule 4-345 was a response to the 2001 legislative concern over the prior rule's completely open-ended time limits after a timely Rule 4-345(e) motion was filed within 90 days with the original sentencing judge. Shellenberger, Scott, "Proposed sentencing changes would traumatize victims' families for years to come," *Commentary*, Baltimore Sun (April 2, 2021), Para. 8. Therefore, this proposed bill, which goes beyond any time limit that the original sentence judge might possibly need, contradicts the 2004 correction to the "no time limit" version of Rule 4-345, as well as the earlier controlling Maryland caselaw, and the common law, which is why the current proposal is constitutionally infirm.

The bill also runs directly afoul of not only the Parole Commission's statutory authority, cited above, but also the Maryland Post Conviction Procedure Act, Md. Code, Crim. Pro. Art. §7-101 *et seq*. That law provides for a ten year time limit, codifying common law laches principals, during which any challenge to a judgment and conviction must be filed, unless a constitutional error is proven. *Id*. at §7-103, 106(c); *Schlick*, *supra* (defendant had constitutionally incompetent trial counsel). Thus *Schlick* does not support this proposed bill. The Post Conviction Procedure Act, the parole laws, and the separation of powers constitutional provision upon which they are premised, directly contradict this proposed bill. Court rules are allowed by the Maryland Constitution, Art. IV, Section 2, so that courts may insure the orderly processing of cases filed in the judicial branch of the Maryland government. *Robinson v. Bd. of Cty. Comm'rs*, 262 Md. 342, 346 (1971)(the rules are "precise rubrics 'established to promote the orderly and efficient administration of justice", citing *Brown v. Fraley*, 222 Md. 480, 483 (1960) and *Isen v. Phoenix Assurance Co.*, 259 Md. 564, 570 (1970)).

VII. SB 123 fails to meaningfully retain Victim participation and fails to provide finality to sentences.

Although the proposed Rule seeks to retain victim participation at resentencing hearings, these resentencing hearings are to be convened at least 20 years after the original sentencing proceedings. Therefore, even assuming that a resentencing judge decides to consider the original offense, which presents the constitutionally based problem discussed above, the long delay before resentencing, by itself, damages victims. By then many crime victim representatives in homicide cases, particularly if they are grieving parents, may have passed away, or moved away from the locale of the violent crime to aid their recovery from having to repeatedly see and recall their mental stress and trauma originating at that location. Finding these victims so much later will not be easy, if they are still alive. Nor does causing them, by this proposal, to need to return to court to repeatedly to rip the scab off their deep traumatic wounds and to publicly recount those wounds, treat them with respect, sensitivity, or dignity, as required by Article 47 of the Declaration of Rights. This prejudice to victims, combined with the amended proposal's open door to judge shopping, which necessitates the victims to relive their injuries for new judges, also violates the doctrine of laches, codified in Maryland at ten years after a sentence has begun, see *supra*. "The doctrine of laches…applies whe[re] there is an unreasonable delay in the assertion of one [party]'s rights and that delay results in prejudice to the opposing party." *Jones v. State*, 445 Md. 324, 339 (2015)(cleaned up, citing cases). That is the circumstance here.

Moreover, many victims will have, after years of nightmares and with considerable grief counseling, learned how to cope their loss despite the grave trauma they suffered. They may not be willing, and it may not be in their best health interests, to reopen themselves to being retraumatized and subject to cross-examination from a person who hurt them

so, see Md. Code, Crim. Proc. §11-403(c). The proposed rule will therefore result in revictimization of them each time the defendant obtains a future resentencing hearing. Victims, just like defendants, have a right to reasonably prompt sentencing hearings and their trauma from unresolved sentencing hearings may not be left open forever. Under Maryland statutory law, victims "should be entitled to a speedy disposition of the case to minimize the length of time the person must endure responsibility and stress in connection with the case." Md. Code, Crim. Pro. Art. §11-1002(b)(13); *Sigma Reprod. Health Ctr. v. State*, 297 Md. 660, 665-66 (1983)(in criminal cases, "final judgment exists…after conviction and sentence has been determined, or, in other words, when only the execution of the judgment remains. (citing cases)").

The U.S. Supreme Court explained in *Calderon v. Thompson*, 523 U.S. 538, 555-556 ((1998):

> Finality is essential to both the retributive and the deterrent functions of criminal law. "Neither innocence nor just punishment can be vindicated until the final judgment is known." *McCleskey, supra,* at 491. "Without finality, the criminal law is deprived of much of its deterrent effect." *Teague, supra,* at 309.
>
> Finality also enhances the quality of judging. There is perhaps "nothing more subversive of a judge's sense of responsibility, of the inner subjective conscientiousness which is so essential a part of the difficult and subtle art of judging well, than an indiscriminate acceptance of the notion that all the shots will always be called by someone else." Bator, Finality in Criminal Law and Federal Habeas Corpus for State Prisoners, 76 Harv. L. Rev. 441, 451 (1963).
>
> Only with an assurance of real finality can the State execute its moral judgment in a case. Only with real finality can the victims of crime move forward knowing the moral judgment will be carried out. See generally *Payne* v. *Tennessee,* 501 U.S. 808, 115 L. Ed. 2d 720, 111 S. Ct. 2597 (1991). To unsettle these expectations is to inflict a profound injury to the "powerful and legitimate interest in punishing the guilty," *Herrera* v. *Collins,* 506 U.S. 390, 421, 122 L. Ed. 2d 203, 113 S. Ct. 853 (1993) (O'CONNOR, J., concurring), an interest shared by the State and the victims of crime alike.

The Maryland Crime Victims' Resource Center, Inc. (MCVRC), formerly the Stephanie Roper Committee, is the largest and oldest victims' rights organization in the State of Maryland. An annual Governor's Award for victim's services is named after one of its founders, the Vincent Roper Memorial Award, and the state maintains a state employee victim's rights training program called the Roper Academy. MCVRC also

sponsored the current constitutional protection for victims contained in Article 47 of the Maryland Declaration of Rights and sponsored or testified before the Maryland General Assembly on every victims' rights statutory proposal during the last 35 years, including recent bills which address this same topic.

Crime victims have a bigger stake in this proposed rule change than inmates or taxpayers. Every long sentenced felon leaves in his or her wake at least one and usually several victim's family members who are permanently damaged and left in a "mental prison", unable to move on, tortured by the trauma resulting from the crime for the rest of their lives. There is no second chance or way to leave behind the grievous harm suffered by their murdered, maimed, or raped family members, and by them. Their need for accountability and right to be treated with sensitivity in order to help heal, even though most will never fully recover, was accepted and memorialized by the majority of Maryland citizens, not just by a selection of interest groups.

The impact on victims and the danger to society must be considered ....