



**Testimony for the House Judiciary Committee
March 28, 2024**

**SB 123 – Criminal Procedure – Petition to Reduce Sentence
(Maryland Second Look Act)**

FAVORABLE WITH AMENDMENTS

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The ACLU of Maryland supports SB 123, which would allow individuals in prison a second chance to petition the court to modify or reduce their sentence after serving at least 20 years of their sentence.

The need for a comprehensive Second Look Act in Maryland is evident. Maryland incarcerates the highest percentage of Black people in the country, at 71 percent of our prison population, more than twice the national average. Shamefully, Maryland also leads the nation in sentencing young Black men to the longest prison terms, at a rate 25 percent higher than the next nearest state – Mississippi.¹

The status quo does not afford meaningful opportunities for release. Due to the devastating “lock them up and throw away the key” mentality from the last thirty years that led to harsh changes to law and policy, the only way for someone in Maryland serving an extreme sentence to have their sentence reviewed is by challenging the constitutionality of the conviction itself. For many years, Maryland judges retained an ability to review sentences, ensuring an important safety valve for extreme sentences, but this process was eliminated by a rule change in 2004.² Similarly, for more than a quarter of a century, Maryland's parole system was not available to lifers, contributing to the bloated prison system and its extreme racial disparities. Although the Governor has finally been removed from the parole process, this is not enough to remedy decades of wrongful denials. Unlike court hearings, parole is not a judicial hearing, people have almost no due process rights, and no legal representation to prepare a strong presentation. There is no other way to obtain review of the sentence after serving decades of time. Thus, currently the legal system incentivizes people serving extreme sentences to challenge the conviction and avoid ever conceding guilt because doing so might jeopardize any future chance. As a result, people who have been harmed by serious crimes may never hear an explanation or expression of the remorse the person feels. A “Second Look” provision would change this dynamic ensuring that

¹ <https://justicepolicy.org/research/policy-briefs-2019-rethinking-approaches-to-over-incarceration-of-black-young-adults-in-maryland/>

² <https://www.courts.state.md.us/sites/default/files/import/rules/rodocs/ro-rule4-345.pdf>

people are able to express their genuine remorse and maintain focus on their transformation without worrying that conceding guilt would eliminate any hope of resentencing.

Equally important, in the immediate aftermath of a serious harm, passions are high, and it may be difficult for a sentencing judge to determine a person's capacity for change. In contrast, many years later, a judge can assess an individual's growth, progress and rehabilitation behind bars based on their *actual* track record. Further, Maryland's prison system is filled with Black people who were excessively sentenced or denied parole based on "superpredator" mythology. A broad "second look" provision ensures that, decades after the crime, sentences can be reviewed based on our understanding of fairness and racial justice. Thus, SB 123 represents a vital step towards justice, especially for those who may have encountered bias in their interactions with law enforcement, the courts, or corrections.

SB 123 increases accountability in the criminal justice system.

Bias in Maryland's criminal justice system against indigent defendants and people of color has been widely documented at every stage: from the initial arrest to sentencing. For eligible individuals who may have faced this bias by law enforcement, the courts, or corrections, this bill would lead to more just outcomes by taking a second look to ensure their sentences were correctly decided. For members of the public who already distrust the justice system, it would provide additional assurance that the state is taking steps to recognize and correct past instances of bias and is committed to ensuring that people in its custody receive fair treatment. A second look would catch these instances of bias without reducing time served for those whose sentences were determined incorrectly.

SB 123 will lead to safer prison environments.

The potential opportunity for individuals to reduce their sentences is a compelling incentive to comply with facility rules and maintain good behavior. Good conduct credits are a behavioral incentive and a means of reducing prison overcrowding.³ This in turn lowers the threat of violence and other risks and challenges that inmates, correctional officer, and staff face inside correctional facilities.

Numerous studies have consistently shown that the peak ages for violent crime tend to be in the late teenage years and twenties, followed by a sharp decrease throughout one's mid-to late-twenties.

People age out of crime.

The research conducted by the Sentencing Project, titled "Left to Die in Prison: Emerging Adults 25 and Younger Sentenced to Life without Parole," reveals a noteworthy decrease in the number of individuals receiving a life sentence

³ *Stouffer v. Staton*, 152 Md. App. 586, 592 (2003).

without parole (LWOP) after their early twenties.⁴ This pattern aligns with established age-crime theories, which demonstrate a substantial decline in the likelihood of engaging in violent crimes, including murder, as individuals age. Numerous studies have consistently shown that the peak ages for violent crime tend to be in the late teenage years and twenties, followed by a sharp decrease throughout one's mid-to late-twenties.

Additionally, the study highlights that individuals convicted of violent offenses exhibit remarkably low rates of recidivism. Recent Bureau of Justice Statistics studies on 400,000 individuals released in 30 states in 2005 emphasize that, despite high re-arrest rates overall, those convicted of violent offenses are less likely to be re-arrested within three years for any offense compared to their nonviolent counterparts.⁵ This underscores the potential for rehabilitation and successful community reintegration among individuals who have committed violent acts.

All the available evidence we have in Maryland also supports the fact that people serving extreme sentences are the least likely to reoffend. In the 12 years since the Maryland Supreme Court held that improper jury instructions invalidated the life with parole sentences of 235 people, 96% have remained in the community without incident.⁶ These young adults, 90 percent of whom are Black, spent an average of 40 years behind bars but could have been contributing to our communities' decades earlier. In the last two years, the dozens of people to return to the community through parole or the Juvenile Restoration Act have shown similarly compelling success rates.

The Maryland General Assembly has recognized the need to reform the justice system and allow incentives for better behavior.

By passing the Justice Reinvestment Act, “ban the box,” Juvenile Restoration Act and expungement bills, the Maryland General Assembly has repeatedly recognized the need and expressed the desire to provide individuals in the justice system with second chances. This bill would not release anyone from their responsibility for their crime. It would simply provide to those who meet the eligibility requirements the small gesture in this bill's title: a second look.

For individuals who have grappled with past mistakes, SB 123 extends a lifeline—a chance to showcase their personal growth and rehabilitation throughout their time behind bars. It represents hope to the disproportionately Black families who have been the “collateral damage” of our current broken system.

⁴ www.sentencingproject.org/reports/left-to-die-in-prison-emerging-adults-25-and-younger-sentenced-to-life-without-parole/

⁵ <https://bjs.ojp.gov/content/pub/pdf/18upr9yfup0514.pdf>

⁶ <https://justicepolicy.org/research/reports-2018-the-ungers-5-years-and-counting-a-case-study-in-safely-reducing-long-prison-terms-and-saving-taxpayer-dollars/>

The ACLU of Maryland suggests the following amendments to ensure that the law does not categorically exclude people based solely on factors like sentence structure or offense, as well as in the interests of judicial economy.

The intent of this bill is to allow for evaluations based on a holistic assessment of each individual without categorical exclusions based on how the crimes were charged or the sentence structure, which otherwise serve as barriers to parole for people regardless of demonstrated rehabilitation. With that in mind:

Firstly, we urge the Committee to adopt a technical amendment to clarify that a judge will be able to consider cases where someone is serving consecutive life sentences. Such an amendment is consistent with the language used in the Juvenile Restoration Act and is necessary to ensure that those individuals are not excluded from consideration solely because of *how* they were sentenced. The 20-year-incarceration-minimum will still apply to these individuals and would also ensure that courts are not forced to hold separate hearings for each sentence. With the knowledge that people age out of crime, barring people serving consecutive life sentences from this opportunity is not supported by research and serves no public safety benefit.

Secondly, we urge the Committee to strip the amendment that bars anyone serving a sentence for first degree rape from petitioning the court. Categorical exclusions based solely on the nature of the offense, without any consideration of who the person has become, undermine the spirit of the bill. Each person should get an individual look at their sentence. Additionally, judges would be instructed to consider a variety of factors when weighing the decision to reduce a sentence. Among these factors is the nature of the crime. If the weight of one's crime outweighs any demonstrated rehabilitation, this will be reflected in the judge's decision. Consideration through a Second Look does not in any way *guarantee* release; rather it ensures that there is a safety valve that allows an individual to make their case to a judge and allows the judge to make a decision, on a case-by-case basis, based on a holistic understanding of the person and their progress while inside.

We also suggest altering provisions in the bill to allow incarcerated individuals to petition the court for resentencing up to three times, with at least three years between petitions, instead of arbitrary benchmarks at age 60. Three years is a significant amount of time, especially after already serving 20 years, and would permit people to demonstrate their rehabilitative progress without additional arbitrary waiting periods that have nothing to do with individual merit. Each year someone is in prison takes two years off of their life expectancy.⁷

⁷ https://www.prisonpolicy.org/blog/2017/06/26/life_expectancy/

We also suggest a technical amendment to change the name of the bill to the “Maryland Second Look Act.” This name is favored by advocates and directly impacted individuals and captures the spirit of the bill.

For the foregoing reasons, we urge a favorable report on SB 123 with the aforementioned amendments.

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