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POSITION ON PROPOSED LEGISLATION

BILL: HB1022 – Election Law – Incarcerated Individuals – Voting Eligibility and Access

FROM: Maryland Office of the Public Defender

POSITION: Favorable

DATE: 3/5/24

The Maryland Office of the Public Defender respectfully requests that this Committee issue a favorable report on House Bill 1022 which will – *inter alia* - alter the circumstances under which an individual is not qualified to be a registered voter for the purpose of allowing individuals convicted of a felony and serving a court-ordered sentence of imprisonment for the conviction to register to vote.

Denying prisoners the franchise was historically premised on the idea of “civic death”—a suspension of normal rights as citizens while they are behind bars. But American jurisprudence has moved away from that notion over the past century. The Supreme Court and Congress have affirmed a variety of constitutional rights for prisoners in recent years, such as religious freedom, First Amendment free speech rights of political expression, access to courts and counsel, freedom from cruel and unusual punishment, all subject to penological interests. Most important, the Supreme Court decided that prisoners cannot have their citizenship stripped *as a punishment for a crime*.¹

¹ *Trop v. Dulles* 356 U.S. 86 (1958)

This bill removes that punishment. Under current Maryland law, persons convicted of a misdemeanor do not lose the right to vote. However, an incarcerated individual serving time for a felony is prohibited from registering and voting, until that person is either on parole, probation, or has otherwise completed their sentence. Allowing incarcerated persons serving time for felonies to vote is beneficial in a number of ways.

First, as long as incarcerated persons retain constitutional rights (again, subject to penological interests), the right to vote remains an indispensable tool for the vindication of those rights as citizens. Incarcerated individuals should have a say in voting for (or against) policies and laws affecting them and their families.

Recognizing the right of this class of incarcerated persons to vote is also in line with the concept of self-government. As prisons populations have expanded in the past 20 years, one of the best ways to solve intractable issues like criminal justice reform or prison abuse is to consider the voices of those currently incarcerated allow them to represent themselves in our national political conversation. Incarcerated persons should have a say – subject to penological and security concerns – in their prison conditions, access to medical services, and laws that affect their freedom and their families.

Allowing currently incarcerated persons to vote will also serve to counterbalance the legislative power wielded by these some corporations and other businesses that lobby for harsher criminal penalties and longer sentences. It is no secret that a number of private equity companies like Global Tel Link and Corizon have benefitted in the millions from access to Maryland's prison population, and necessarily have an interest in maintaining a guaranteed pool of profits and labor. Incarcerated persons have an interest in voting (defending) for policy makers who could neutralize such corporate motives.

Passing this bill will also be consistent with the 2010 ‘No Representation Without Population’ Act”, mandating incarcerated persons will be counted as residents of their home addresses when new state and local legislative districts are drawn in Maryland. Most of the prisoners serving significant time for felony convictions are housed in the state’s maximum and medium security facilities, mostly located in legislative districts away from their home addresses. Allowing all incarcerated persons to vote on matters affecting their home districts will help to foster civic participation in their communities.

As Justice Earl Warren wrote in the 1958 case *Trop v. Dulles*: “Citizenship is not a right that expires upon misbehavior”. As a formerly incarcerated individual myself who served significant time for a felony, I was on the outside looking in with respect to policies affecting me as a citizen. I lost my freedom, and my constitutional rights were severely restricted. But I never lost my citizenship as a result, and I paid my debt to society. This bill ensures that all citizens (including incarcerated ones serving time for felonies) have a say in matters material to that citizenry.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on House Bill 1022.

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

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