

Testimony in Support of Senate Bill 123 (Crossover Bill) With Amendments
Criminal Procedure – Petition to Reduce Sentence

To: Delegate Luke Clippinger, Chair, and Members of the House Judiciary Committee

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I am a student attorney in the Youth, Education, and Justice Clinic (“Clinic”) at the University of Maryland Francis King Carey School of Law. The Clinic represents children who have been excluded from school through suspension, expulsion, or other means, as well as individuals who have served decades in Maryland prisons for crimes they committed as children and emerging adults. The Clinic supports Senate Bill 123, which would, *inter alia*, allow an incarcerated individual who has served at least 20 years of their sentence to petition a court for a reduction of sentence.

New amendments to SB 123 reduce the number of petitions individuals can file from three to two and exclude individuals convicted of first-degree rape. We ask that this exclusion be removed, and no further exclusions be added. The bill already requires the presiding judge to consider multiple factors when making a decision, including “the nature of the offense” and “whether the individual has demonstrated maturity, rehabilitation, and fitness to reenter society sufficient to justify a sentence reduction.” Case-by-case determinations better align with the interests of justice, rather than a blanket prohibition that does not allow for consideration of individualized circumstances and assessments. Adding any exclusion removes judicial discretion and unfairly removes from consideration individuals, like some of our clients, who have rehabilitated, reformed, and deserve an opportunity to be released for all of the reasons described below.

Research has shown that “age is one of the most significant predictors of criminality, with criminal or delinquent activity peaking in late adolescence or early adulthood and decreasing as a person ages.”¹ The United States Department of Justice’s Bureau of Justice Statistics (BJS) conducts research using data from state agencies and the FBI. In a study published in 2021, the BJS analyzed recidivism data from 24 states covering 2008 to 2018.² The BJS found that, during this ten-year follow-up period, released individuals aged 24 or younger were substantially more likely to be arrested than those aged 40 or older.³ The risk of rearrest dropped even more

¹ TINA CHIU, VERA INSTITUTE OF JUSTICE, IT’S ABOUT TIME: AGING PRISONERS, INCREASING COSTS, AND GERIATRIC RELEASE 5 (2010), <https://www.vera.org/downloads/publications/Its-about-time-aging-prisoners-increasing-costs-and-geriatric-release.pdf>.

² LEONARDO ANTENANGELI & MATTHEW R. DUROSE, U.S. DEP’T OF JUST., BUREAU OF JUST. STAT., RECIDIVISM OF PRISONERS RELEASED IN 24 STATES IN 2008: A 10-YEAR FOLLOW-UP PERIOD (2008-2018) 1 (2021), https://bjs.ojp.gov/BJS_PUB/rpr24s0810yfup0818/Web%20content/508%20compliant%20PDFs.

³ *Id.* at 4.

significantly as released individuals continued to age.⁴ SB 123 provides a practical avenue to account for an individual’s reduced risk of recidivism as they age.

Second, our clients—all of whom have served decades in prison—have matured and transformed over their decades of incarceration. Our clients have held jobs and had rewarding careers, attained postsecondary education, earned certificates and awards, mentored children and adults, married loved ones, strengthened families, and positively impacted individuals inside and outside of prison. They are deeply remorseful for their crimes and are committed to working to strengthen communities in fidelity to public safety. They have done everything and more to deserve meaningful opportunities to have their sentences reduced and, ultimately, live productive lives outside of prison.

Third, the financial costs of incarceration are staggering. Housing individuals for a life sentence requires decades of public expenditures. As of 2022, Maryland spent an average of \$59,616 per incarcerated individual annually.⁵ This yearly average forecasts that a 20-year sentence would cost close to \$1.2 million. However, the costs would increase exponentially higher as prison terms extend, given the staggering healthcare expenses for aging incarcerated individuals.⁶ Therefore, providing avenues of opportunity for sentence reduction and release from incarceration would help relieve Maryland taxpayers of the exorbitant costs of incarcerating individuals who have rehabilitated and transformed.

Urgently, SB 123 would also help address the racial injustices that plague Maryland’s prison system. Maryland has the most racially disproportionate prison population in the United States. As the Racial Equity Impact Note for SB 123 details, 71.5% of Maryland’s prisoners are Black,⁷ which is more than double the national average of 32%.⁸ Moreover, these disparities worsen the longer individuals are incarcerated. Of those individuals who have been incarcerated in Maryland’s prisons for more than ten years, nearly 80% are Black.⁹ Given these unconscionable disparities, providing a meaningful opportunity for release is a pressing matter of racial justice.

For these reasons, the Clinic respectfully asks the House Judiciary Committee to issue a favorable report with amendments.

⁴ *Id.*

⁵ MARYLAND MANUAL ONLINE, MARYLAND AT A GLANCE, <https://msa.maryland.gov/msa/mdmanual/01glance/html/criminal.html> (last visited Jan. 25, 2024) (“According to the Division of Correction, in Fiscal Year 2022, the monthly cost of room and board, and health care per inmate was \$4,968.”).

⁶ See, e.g., Leah Wang, *Chronic Punishment: The Unmet Health Needs of People in State Prisons*, PRISON POL’Y INITIATIVE (June 2022), <https://www.prisonpolicy.org/reports/chronicpunishment.html> (“[R]ates of medical problems are always *much* higher for older people [in prison].”) (emphasis in original); U.S. DEPT. OF JUST., THE IMPACT OF AN AGING INMATE POPULATION ON THE FEDERAL BUREAU OF PRISONS i-ii (2016), <https://oig.justice.gov/reports/2015/e1505.pdf> (“Aging inmates are more costly to incarcerate, primarily due to their medical needs.”).

⁷ MARYLAND DEP’T OF LEGIS. SERVICES, RACIAL EQUITY IMPACT NOTE, SENATE BILL 123, 2024 SESSION 2-3.

⁸ JUST. POL’Y INST., RETHINKING APPROACHES TO OVER INCARCERATION OF BLACK YOUNG ADULTS IN MARYLAND 7 (2019), http://www.justicepolicy.org/uploads/justicepolicy/documents/Rethinking_Approaches_to_Over_Incarceration_MD.pdf.

⁹ *Id.* at 8.

This written testimony is submitted on behalf of the Youth, Education, and Justice Clinic at the University of Maryland Francis King Carey School of Law and not on behalf of the School of Law or the University of Maryland, Baltimore.