MOPD Position on SB 0123.pdf
Uploaded by: BENOIT TSHIWALA
Position: FAV

NATASHA DARTIGUE
PUBLIC DEFENDER
KEITH LOTRIDGE
DEPUTY PUBLIC DEFENDER
MELISSA ROTHSTEIN
CHIEF OF EXTERNAL AFFAIRS
ELIZABETH HILLIARD
ACTING DIRECTOR OF GOVERNMENT RELATIONS

POSITION ON PROPOSED LEGISLATION

BILL: SB 0123 - Criminal Procedure – Petition to Reduce Sentence

FROM: Maryland Office of the Public Defender
POSITION: Favorable
DATE: 3/26/24

The Maryland Office of the Public Defender respectfully requests that this Committee issue an unfavorable report on Senate Bill 0123 which will authorize an individual who is serving a term of confinement to petition a court to reduce the sentence under certain circumstances. As a formerly incarcerated individual, I believe this bill will go a long way in providing truth in rehabilitation and a substantive opportunity for restorative justice.

Under current Maryland law, once an individual is sentenced to the Department of Corrections, there exists only one opportunity for a sentence reconsideration. That is Maryland Rule 4-345 (e), which allows for individual to file for a sentence reconsideration within 90 days after the imposition of sentence in a circuit court.[1] Prior to 2004, an incarcerated individual could file for such relief at any time. However, in 2004, the Supreme Court of Maryland amended this

[1] Md Rule 4-345 (d) (1) states:

"*Generally.* Upon a motion filed within 90 days after imposition of a sentence (A) in the District Court, if an appeal has not been perfected or has been dismissed, and (B) in a circuit court, whether or not an appeal has been filed, the court has revisory power over the sentence except that it may not revise the sentence after the expiration of five years from the date the sentence originally was imposed on the defendant and it may not increase the sentence".

rule by restricting the revisory power of the circuit court to modify such sentences to 5-years. Further, once a motion for modification is denied, the court loses revisory power.

An unintended consequence of the 2004 amendment, however, is the fact that individuals serving long sentences are met with resistance from sentencing judges who had just recently meted out the term of confinement. For example, an individual sentenced to 50 years has 5-years under the current Maryland rules to request a reconsideration of sentence. But because that individual has barely served 10% of that sentence, judges are likely to be resistant to entertaining such requests based on the belief that not enough time has been served to grant such relief. Stated otherwise, the longer the term of confinement initially meted, the less inclined sentencing judges are to reconsider such requests within 5-years.

This bill would allow individuals sentenced to long term sentences sufficient time to fully participate in programming and rehabilitation before making requests for sentence modifcation. This, in turn, will allow sentencing judges a greater period of incarceration from which to fairly evaluate such rehabilitation, and thus, fitness for earlier release into society. This bill will also help mitigate the current state of Maryland's parole release policies, which are unduly restrictive.

For a number of reasons, we urge an unfavorable report.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue a favorable report on SB 0123.

Submitted by: Maryland Office of the Public Defender, Government Relations Division.
Authored by: Benoit Tshiwala ({Paralegal). benoit.tshiwala@maryland.gov

SB0123_Petition_to_Reduce_Sentence_MLC_FAV.pdf
Uploaded by: Cecilia Plante
Position: FAV

MARYLAND LEGISLATIVE COALITION

TESTIMONY FOR SB0123
PETITION TO REDUCE SENTENCE

Bill Sponsor: Senator Carter
Committee: Judiciary
Organization Submitting: Maryland Legislative Coalition
Person Submitting: Aileen Alex, co-chair
Position: FAVORABLE

I am submitting this testimony in favor of SB0123 on behalf of the Maryland Legislative Coalition. The Maryland Legislative Coalition is an association of activists - individuals and grassroots groups in every district in the state. We are unpaid citizen lobbyists, and our Coalition supports well over 30,000 members.

Incarceration rate of Black men in the state ranks among the highest in the country. Black men make up 14 percent of Maryland's general population but consist of 73 percent of the male prison population in the state, according to the Attorney General's Office. Black women make up 16 percent of the state's population but a disproportionate 53 percent of the female prison population (Washington Post, 10/26/23). And Maryland has the fourth highest rate of prisoners convicted as children, with the school to prison pipeline still a risk for disadvantaged students.

More needs to be done to address our systemic injustice in policing and inequity in the criminal justice system. This bill allows an inmate who has served at least 20 years to petition the court for a reduced sentence every 3 years for up to 3 petitions. The decision to grant the petition would be based on factors typically used in parole hearings.

SB0123 reduces the impact of discrimination in our criminal justice system that results in harsher sentences that appear to be race related. It not only benefits a prisoner unjustly sentenced but also stems the ancillary damage to their families. Moreover, reduced sentences save Maryland taxpayers over $38,000 per inmate annually. Money that could be better spent on schools.

The Maryland Legislative Coalition continues to advocate for this and similar bills that chip away at the injustice evidenced in our incarceration rates while providing other benefits. We support this bill and recommend a **FAVORABLE** report in committee.

FAMM MD SB 123 Support House Judiciary Committee .
Uploaded by: celeste trusty
Position: FAV

Written Testimony of Celeste Trusty
Deputy Director of State Policy, FAMM
In Support of SB 123
Maryland House Judiciary Committee
March 26, 2024

I would like to thank the Chair, Vice-Chair, and members of the House Judiciary Committee for the opportunity to provide written testimony in support of SB 123, a bill that would allow opportunities for most incarcerated people who are age 60 or older or have served at least 20 years of their sentence to petition the court for a reduction of their sentence. **FAMM supports SB 123 and urges the Committee to report favorably on this crucial piece of legislation.**

FAMM is a nonpartisan, nonprofit organization that advocates sentencing and prison policies that are individualized and fair, protect public safety, and preserve families. Creating and expanding access to "second look" mechanisms - pathways to review the appropriateness and necessity of a person's continued incarceration - is among FAMM's top priorities across the country. SB 123 would establish an avenue for a second look at the sentences of people who are aging or have served decades behind prison walls by creating an opportunity for people to ask the court to weigh the public benefit of their continued incarceration versus release into the community.

SB 123 would require the court to consider each person's age at the time of the offense, and family and community circumstances prior to entering prison, including any history of trauma, abuse, or involvement in the child welfare system. The court would also consider evidence of maturity and rehabilitation, including institutional history of involvement in programming, and disciplinary infractions. Additionally, the nature of the offense and the person's level of involvement, as well as any victim input would also be

included in the court's decision-making process. This mechanism will not apply to people convicted of violations of § 3-303 of the Criminal Law Article (rape in the first degree). While FAMM remains supportive of this legislation - we note that ideal second look mechanisms would review each petition based on their individual merit and not include blanket exclusions based on offense.

By providing a rebuttable presumption that people who have served more than 30 years in prison or are over age 60 are not a risk to public safety, the provisions included in SB 123 reflect commonly accepted evidence that as people age, they tend to mature out of behaviors that contribute to crime and risk to public safety.[1] Each of these factors would be carefully considered by the court to determine the outcome of every decision. Time and time again, FAMM meets people who have served lengthy terms of incarceration and have demonstrated readiness to return to the community. Yet for many of these people, there is a dearth of opportunities to do so. Second-look efforts have proven highly successful in many jurisdictions at the federal and state levels, including here in Maryland.

The Unger v. Maryland case is a prime example of how the larger Maryland community has and will continue to benefit from second look opportunities for people sentenced to excessive terms of incarceration.[2] The Unger decision led to the release of around 200 people who were sentenced to life in prison in Maryland after being convicted of offenses committed as emerging adults. There has been a nominal recidivism rate of less than 1% for this group.[3] Because the cost of incarceration rises dramatically as people age in prison, the release of this group of people is estimated to have already saved Maryland taxpayers $185 million in unnecessary incarceration costs, with an estimated taxpayer savings of more than $1 billion over the coming decade due to this singular second look effort.[4]

SB 123 would build on the successes of people like the "Ungers." It would free up precious taxpayer resources for investment elsewhere in our communities, instead of in maintaining an ineffective sentencing scheme that has placed Maryland atop the list of worst racial disparities among prison populations nationally. The rate of incarceration for Black Marylanders is greater than

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[1] Prescott, J.J., Pyle, B., and Starr, S.B. (2020). Understanding Violent-Crime Recidivism. Notre Dame Law Review, 95:4, 1643- 1698, 1688. http://ndlawreview.org/wpcontent/uploads/2020/05/9.-Prescott-et-al.pdf.
[2] https://mgaleg.maryland.gov/cmte_testimony/2020/jud/3942_03062020_12133-993.pdf
[3] https://justicepolicy.org/wpcontent/uploads/2021/06/The_Ungers_5_Years_and_Counting.pdf
[4] https://justicepolicy.org/wpcontent/uploads/2021/06/The_Ungers_5_Years_and_Counting.pdf

double the national average.[5] Maryland also tops the country for rates of Black people sentenced to incarceration between ages 18 and 24 who have already served 10 years or more in prison.[6] SB 123 would help address these glaring racial disparities among Maryland's prison population, and, like the overwhelming taxpayer benefit resulting from the Unger decision, allow precious taxpayer resources to be reallocated from incarceration to investing in things Maryland's communities really need.

Thank you for considering FAMM's input on SB 123, a necessary piece of legislation for Maryland. We ask that you vote in support of SB 123. Please do not hesitate to reach out to me at ctrusty@famm.org or 267-559-0195 with any further questions.

[5] https://www.baltimoresun.com/2019/11/06/report-proportion-of-maryland-black-prisonpopulation-is-more-than-double-the-national-average-of-32/
[6]https://justicepolicy.org/wpcontent/uploads/justicepolicy/documents/Rethinking_Approaches_to_Over_Incarceration_MD.pdf

Written Testimony For SB0123_HB0724.pdf
Uploaded by: Desmond Perry
Position: FAV

RECTIFY Inc.
604 N. Chester Street #1047
Baltimore, Maryland 21205
410-656-4111

Desmond Haneef-Perry
Co-founder/ Executive Director of Peer Programs
RECTIFY Inc.
604 N. Chester St. #1047
Baltimore, MD 21205

March 26, 2024

Honorable Members of the Maryland House of Delegates,

I am writing to you today to request that you vote in favor of SB0123/HB0724 the Second Look Act, a pivotal piece of legislation that holds the potential to bring about transformative change in our state's approach to criminal justice. As a living testament to the power of redemption and rehabilitation, I stand before you as evidence that second chances should indeed be granted, even to those who have committed grave offenses such as homicide.

At the tender age of 18, I found myself entangled in a series of regrettable choices that culminated in a conviction for homicide and a daunting sentence of life plus 15 years in prison. However, within the confines of incarceration, I underwent a profound metamorphosis—a journey marked by introspection, remorse, and an unwavering commitment to self-improvement. Central to my transformation was the pursuit of education. Upon entering the prison system, I was functionally illiterate, a seventh-grade dropout struggling to navigate a world fraught with challenges.

RECTIFY Inc.
604 N. Chester Street #1047
Baltimore, Maryland 21205
410-656-4111

Yet, fueled by a fervent desire for change, I embarked on a journey of learning, gradually ascending from a place of academic deficiency to one of intellectual empowerment. Education became my cornerstone, illuminating pathways to redemption and equipping me with the tools necessary to effect positive change within myself and others.

In addition to academic pursuits, I actively engaged in rehabilitative programming, recognizing the imperative of addressing underlying issues of violence, trauma, and substance abuse. Through initiatives such as the Alternative to Violence Project and gang intervention programs, I acquired invaluable skills in conflict resolution and community building, endeavoring to foster a culture of healing within the confines of a maximum-security prison. Moreover, my journey toward redemption was deeply intertwined with spirituality and faith-based communities, providing solace, guidance, and a sense of purpose amidst adversity. As I grappled with the complexities of my past, I found solace in the embrace of compassionate mentors and the camaraderie of fellow seekers of redemption, forging bonds that transcended the confines of prison walls. Beyond personal growth, I dedicated myself to serving others, leveraging my experiences to mentor and support fellow inmates in their own journeys of rehabilitation and self-discovery.

RECTIFY Inc.
604 N. Chester Street #1047
Baltimore, Maryland 21205
410-656-4111

From facilitating cognitive behavioral programs to coordinating peer specialist training initiatives, I endeavored to create a legacy of empowerment and hope within an environment often characterized by despair.

Today, as a forensic peer specialist for the Maryland Office of the Public Defender, I bear witness to the transformative power of second chances on a daily basis. Utilizing my lived experiences as a catalyst for change, I stand as a beacon of hope for those who, like myself, yearn for redemption and a chance to rebuild their lives.

In closing, I implore this esteemed committee to wholeheartedly support the Second Look Act, a landmark piece of legislation that embodies the principles of compassion, fairness, and justice. By affording individuals who have demonstrated genuine remorse and rehabilitation the opportunity for resentencing after 20 years of incarceration, we not only uphold the values of equity and redemption but also pave the way for a more inclusive and compassionate society. Thank you for your unwavering commitment to justice and fairness.

Sincerely,

Desmond Haneef-Perry

SB 0123 Michele Kouadio - Reduce Sentence.pdf
Uploaded by: Dr. Carmen Johnson
Position: FAV

I, Michele Kennedy Kouadio, support SB 0123 to effectively give people in prison a Second Look at their initial judgment and sentencing. Here are various reasons that legislators should give the bill a favorable report.

People sentenced over 20 years ago, when sciences either were not fully evolved or fully employed to determine cause or guilt, often deserve a second look.

Furthermore, some politicians took a tougher stance a few decades ago through Get Tough on Crime initiatives that resulted in longer sentences than may have been warranted starting in the 1990s.

Another important factor is this: Prisons in Maryland are unstable and dysfunctional as the prison population to corrections' officers is 100:1. AFSCME Council 3 that represents DPSCS staff reported in April 2023 in Maryland Matters that DPSCS prisons (19 plus 6 Detention units) are 3500 staff short due to a cumbersome hiring process and lack of pay and incentives comparable to other MD State Law enforcement officers. As soon as DPSCS hires, either an officer retires or quits, putting DPSCS at just below 5,000 employees compared to the 9,200 level of employees reported in 2023 on the DPSCS website.

People in prison can earn credit to work down their initial sentence time through jobs or programs if they are available, but the majority of people in prison do not have this option. The limiting factors are insufficient staffing and dependable 3rd party service providers.

Parole is another avenue for earlier release than the original sentencing date that sentencing judges originally may have expected. However, most people serving time beyond 20 years are effectively disregarded by the Commissioner's Board that may be influenced politically. According to a DPSCS caseworker, she's never seen a person released on parole with a sentence remaining beyond 10 years or more. Monitoring, if released, is limited to 5 years. Parole releases continue to decline, contributing to the expanding prison population.

In fact, the prison population in Maryland has climbed to 15,900 in 2024 compared to 15,500 in 2023. It costs the Maryland Taxpayer $45,000 per person in prison to house and feed them.

According to a study sponsored by the American Bar Association in 2023, the brains of people under 25 years old are not physically fully developed when they commit youthful crimes. As people in prison age, and with programming early in their incarceration, these people are less likely to recidivate when released to the community and, in fact, often become productive, helpful members of their families and communities.

Consider this, instead of the Maryland Taxpayer supporting an individual in prison at $45,000 a year for 40 years or more. That same individual released through Second Look, Parole or Earned Credit after serving 20 years could start work, contributing more than $45,000 in high demand trade jobs, as an example, rather than costing taxpayers the same amount.

Through the Justice Reinvestment Act established in 2016 a stated goal is to reduce the prison population.
The JRA Board is not transparent to the public in how it articulates and measures its goals and milestones to DPSCS or other influencers. There should be a plan over the next few years to get a ratio of prisoners to corrections officers at 15:1, an optimal ratio for rehabilitation programming as remarked by the Bureau of Prisons.

The Second Look is an effective way to help bring the prison population down and to put taxpayer resources at the Front Door of intervention in Maryland communities for addiction and mental health counseling, and to modify sentences when other criteria are prudently examined by a Judge, perhaps with a new lens.

Michele Kennedy Kouadio
MD Homeowner Voter
MAJR
St Camillus Parish

Untitled document (2).pdf
Uploaded by: Dr. Carmen Johnson
Position: FAV

March 26,2024

Dr. Carmen Johnson

8313 Telegraph Road

Odenton, MD 21113

Subject: SB 123 - the Second Look Act

Dear Chairman Will Smith and Senator Carter,

Maryland's justice system, plagued by racial bias, leads the nation in incarcerating Black individuals, with 71% of its prison population being Black—more than twice the national average. The urgent need to rectify this disparity calls for the immediate passage of the Maryland Second Look Act. This legislation will foster equity and community healing, allowing for sentence reassessment after 20 years for those who have shown rehabilitation, aligning with evidence that long-term inmates are least likely to reoffend. With a 96% non-recidivism rate among those released on adjusted sentences, the Act promises effective community reintegration and addresses the historical injustices of racially motivated sentencing. I ask that you please vote favorably on SB123 - Second Look Act bill.

Thank you,

Dr. Carmen Johnson - Maryland resident

MOPD Position on SB 0123.pdf
Uploaded by: Elizabeth Hilliard
Position: FAV

NATASHA DARTIGUE
PUBLIC DEFENDER
KEITH LOTRIDGE
DEPUTY PUBLIC DEFENDER
MELISSA ROTHSTEIN
CHIEF OF EXTERNAL AFFAIRS
ELIZABETH HILLIARD
ACTING DIRECTOR OF GOVERNMENT RELATIONS

POSITION ON PROPOSED LEGISLATION

BILL: SB 0123 - Criminal Procedure – Petition to Reduce Sentence

FROM: Maryland Office of the Public Defender
POSITION: Favorable
DATE: 3/26/24

The Maryland Office of the Public Defender respectfully requests that this Committee issue an unfavorable report on Senate Bill 0123 which will authorize an individual who is serving a term of confinement to petition a court to reduce the sentence under certain circumstances. As a formerly incarcerated individual, I believe this bill will go a long way in providing truth in rehabilitation and a substantive opportunity for restorative justice.

Under current Maryland law, once an individual is sentenced to the Department of Corrections, there exists only one opportunity for a sentence reconsideration. That is Maryland Rule 4-345 (e), which allows for individual to file for a sentence reconsideration within 90 days after the imposition of sentence in a circuit court.[1] Prior to 2004, an incarcerated individual could file for such relief at any time. However, in 2004, the Supreme Court of Maryland amended this

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"*Generally.* Upon a motion filed within 90 days after imposition of a sentence (A) in the District Court, if an appeal has not been perfected or has been dismissed, and (B) in a circuit court, whether or not an appeal has been filed, the court has revisory power over the sentence except that it may not revise the sentence after the expiration of five years from the date the sentence originally was imposed on the defendant and it may not increase the sentence".

rule by restricting the revisory power of the circuit court to modify such sentences to 5-years. Further, once a motion for modification is denied, the court loses revisory power.

An unintended consequence of the 2004 amendment, however, is the fact that individuals serving long sentences are met with resistance from sentencing judges who had just recently meted out the term of confinement. For example, an individual sentenced to 50 years has 5-years under the current Maryland rules to request a reconsideration of sentence. But because that individual has barely served 10% of that sentence, judges are likely to be resistant to entertaining such requests based on the belief that not enough time has been served to grant such relief. Stated otherwise, the longer the term of confinement initially meted, the less inclined sentencing judges are to reconsider such requests within 5-years.

This bill would allow individuals sentenced to long term sentences sufficient time to fully participate in programming and rehabilitation before making requests for sentence modifcation. This, in turn, will allow sentencing judges a greater period of incarceration from which to fairly evaluate such rehabilitation, and thus, fitness for earlier release into society. This bill will also help mitigate the current state of Maryland's parole release policies, which are unduly restrictive.

For a number of reasons, we urge an unfavorable report.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue a favorable report on SB 0123.

Submitted by: Maryland Office of the Public Defender, Government Relations Division.
Authored by: Benoit Tshiwala ({Paralegal). benoit.tshiwala@maryland.gov

SB123 Judiciary Testimony 03262024 - final.pdf
Uploaded by: Lila Meadows
Position: FAV

MARYLAND OFFICE OF THE PUBLIC DEFENDER

NATASHA M. DARTIGUE
PUBLIC DEFENDER

BRIAN SACCENTI
DIRECTOR
DECARCERATION INITIATIVE

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.

email testimony
Uploaded by: Lisa Sansone
Position: FAV

Lisa J. Sansone
Law Office of Lisa J. Sansone
1002 Frederick Road
Baltimore, Maryland 21228
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March 26, 2024

Re: Second Look Act, Senate Bill 123/House Bill 724

Senate Bill 123/House Bill 724, the aptly named Second Look Act, constructs a balanced procedure enabling a person imprisoned for 20 years to have a court assess whether to "modify" or reduce their sentence. It is balanced and fair bill and should be brought up for a vote in the Senate and passed. It is good legislation for the people of Maryland and is consistent with fairness and sound public safety policy.

Prior to 2004, there was no time limit for an incarcerated person to file a motion to reduce their sentence. That changed in 2004, when a five-year limit was imposed. That meant that if the court did not reduce the sentence within five years, the incarcerated person could never have an opportunity to have his or her sentence reduced, no matter how exemplary their prison record, or how complete their rehabilitation.

SB 123 provides a mechanism through a careful court review process to review lengthy sentences and provide an opportunity for consideration of sentence modification for inmates who served 20 years and who are no longer a threat to the public.

Statistics have consistently demonstrated that older inmates have a very low recidivism rate. Those statistics have been borne out by the recent releases from incarceration under the Justice Reinvestment Act. There have been no known offenses committed by persons who were released under that Act after serving over 20 years in prison. Long-term incarcerated persons released pursuant to the Unger decision have also had an extraordinarily low recidivism rate. For these reasons, knowledgeable prosecutors like State's Attorneys Ivan Bates (Baltimore City) and Aisha Braveboy (Prince George's County) and former Baltimore State's Attorney and former Maryland Secretary of Public Safety, Stuart Simms support this Bill.

Incarcerated persons serving long sentences would have even more incentive to be model prisoners, if there was a way to seek a reduced sentence after serving 20 years. Wardens could expect better behavior in the prison population. Taxpayers would see lower taxes due to a reduction in costs of incarcerating older persons, and releases under this bill would result in an increase in the tax base. Formerly incarcerated persons could contribute to the community by working and paying taxes, and being mentors to young people to stay away from crime.

Maryland has the dubious distinction of being the worst state in the nation for over-incarceration of black men, and of racial disparities throughout the justice system. Passage of this Bill would be a beginning to rectify these wrongs.

This is a small step towards improving our state and our society as a whole. It is in keeping with trends around the country to reduce the incarceration rates of older individuals, whose prolonged incarceration does not increase public safety, and is an undue burden on taxpayers.

The Second Look Act should be brought up for a vote, and passed.

Lisa Sansone, Baltimore, Maryland

email testimony
Uploaded by: Megan Coleman
Position: FAV

Maryland Criminal Defense Attorneys' Association

March 26, 2024

Dear Chairman Clippinger and Members of the House Judiciary Committee:

I write to you as the President of the Maryland Criminal Defense Attorneys' Association in support of House Bill 724/Senate Bill 123 ("Second Look Act"). The MCDAA is comprised of more than 400 attorneys in the State of Maryland who practice criminal defense. Our organization seeks to protect the rights of individuals charged with and/or convicted of crimes, and to ensure the proper administration of justice. We also believe in second chances where the punitive/deterrence aspects of the sentence have been fulfilled and the rehabilitative/repentant characteristics of the offender prove abundant and sustained.

The Second Look Act is essential legislation that will fill in gaps where current legislation is not capable of providing a remedy in such appropriate scenarios. Currently, a defendant serving a sentence can only ask the sentencing court to reconsider its sentence within five years of the date of sentencing. However, in practice, if the court has sentenced a defendant to a sentence in excess of 20 years, no sentencing judge is going to reconsider its sentence within the first five years of that offender's term of imprisonment. This is because the court will want to see an extended period of incarceration that demonstrates rehabilitation, compliance with the rules of the institution, no new charges, and other continuous progress over a lengthy period of time. That simply cannot be demonstrated within the first five years of incarceration.

Many judges and prosecutors realize that people do have the capacity to change for the better as time goes on. What a young person does in their early 20s is not reflective of what they would do in their 40s, 50s, 60s, or beyond, especially given the time they have had to reflect on their past actions while serving decades in prison. Yet currently, judges and prosecutors are unable to provide remedies for those offenders that have served lengthy sentences and have conformed their behavior to what is expected of them.

The Second Look Act would allow the sentencing court to reconsider an offender's sentence after serving a substantial period of time. It is not an automatic get-out-of-jail free card, it is just an opportunity to be heard and to prove oneself to the court. The Second Look Act places limits on the number of times that a motion for reconsideration can be filed so as to prevent unbounded motions appearing on the docket year after year.

The State's Attorneys from Baltimore City and Prince George's County fully support the Second Look Act. This is important support because these two jurisdictions produce the largest volume of criminal cases each year, and respectively, the largest number of incarcerated individuals serving lengthy prison sentences. Most noteworthy is that these jurisdictions also happen to be predominantly African American with many of the offenders entering the criminal justice system at a very young age due to social inequities. The Second Look Act can be a second chance for the most disadvantaged members of the community.

Our organization respectfully requests that you allow the Second Look Act to be put to a vote so that the delegates elected by the people of Maryland can vote on whether to give offenders who truly deserve it, a second chance.

Sincerely,

Megan E. Coleman

Megan E. Coleman, Esq., President of the MCDAA

RESHA TESTIMONY ON HB 724.pdf
Uploaded by: Resha Ingram
Position: FAV

TESTIMONY ON HB 724
MARYLAND SECOND LOOK ACT

House Judiciary Committee
February 13, 2024

SUPPORT

Submitted by: **Resha Ingram**

Chair Clippinger, Vice Chair Bartlett and members of the Judiciary Committee**:**

I, Resha Ingram am testifying in support of HB 724, the Maryland Second Look Act. I am submitting this testimony as a **impacted family member**

Passage of the Maryland Second Look Act would create a meaningful opportunity for sentence modification for incarcerated people after having served 20 years of their sentence. I firmly believe that those individuals who are able to demonstrate their growth and rehabilitation, such that they are no longer a threat to public safety, should have the opportunity for release.

I personally believe the passing of the bill can and will help the incarnated individuals, their families and the communities. People can change,after being incarcerated for 20 years or more. That is a long time to be away from loved ones. I think the vast majority of humans are redeemable. Just because we can't go back and change the past doesn't mean they can't make a difference moving forward. They are different people now. The loved ones can be reconnected with humanity. The possibility of my loved one coming home is one of the best feelings I've ever felt. His absence has left so many open wounds that need healing. Yes u can't make up for lost time but you can make a difference moving forward.This prison life isn't easy. On the inside or outside. It will be hard work that would need to be put in to rebuild some of the damaged relationships begin in prison for 20 years or more have caused. This change is necessary because every one deserves a second look (chance) I'm pretty sure everyone has done something and someone gave them a second look at changing for the better. We learn from our mistakes, so let's give them a chance to show that they have changed and give the opportunity to reconnect with the community. After spending 20 years in prison my loved one had meet some great men who that grew up in foster care. Now he has a soft spot for children in foster care and would like to things to help foster children and help the young men in the community.

This bill is an important tool in making meaningful opportunities for release happen, as currently, incarcerated people in MD can only petition the Court for modification within 90 days of sentencing, severely limiting any potential sentence modifications[1]. Maryland judges used to have the ability to review sentences, an important safety valve for extreme sentences, but this opportunity was eliminated with a rule change in 2004[2]. Furthermore for more than 25 years, Maryland's parole system was not available to people serving life with parole sentences. Now, the Governor has finally been removed from the parole process, but this is not enough to

remedy decades of wrongful denials which contributed to the bloated prison system and its extreme racial disparities.

This bill also has serious racial justice implications, given that of the 2,212 people serving life sentences in MD, 80% are Black[3], a huge disparity when compared to the only 31% of Black Marylanders in the general population[4]. Shamefully, Maryland also leads the nation in sentencing young Black men to the longest prison terms, at a rate 25% higher than the next nearest state, Mississippi[5].

Given the tendency for people to age out of crime and the very low recidivism rate for other individuals released from decades-long sentences, this decision is unlikely to negatively impact public safety. For example, in the past 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 individuals, 90 percent of whom are Black, spent an average of 40 years behind bars but could have been contributing to our communities decades earlier. We know many more men and women serving decades-long sentences who have worked hard, hoping for their chance to reenter and succeed in their communities.

For these reasons, I encourage you to vote **favorably** on the **Maryland Second Look Act HB 724.**

Thank you.

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[1] Maryland Rule 4-345

[2] Court of Appeals of Maryland Rules Order

[3] MD DPSCS FY 2022 Q4 Inmate Characteristics Statistics (2022)

[4] United States Census Data (2021)

[5] Justice Policy Institute Rethinking Approaches to Over Incarceration of Black Young Adults in Maryland (2019)

[6] Justice Policy Institute Fact Sheet: The Ungers (2018)

SB123 Testimony FAV JSexton.pdf
Uploaded by: Serena Lao
Position: FAV

IN SUPPORT OF SB 123; Maryland Second Look Act
House Judiciary Committee
March 28, 2024

Testimony by: John Sexton

Chair Clippinger, Vice Chair Bartlett, and members of the Judiciary Committee**:**

Great day! I bid thee the Grace & Shalom of God and thank you for the opportunity to share this perspective.

Why is SB 123 needed?

*There is a 30-year backlog of suitable for release prisoners who pose absolutely NO risk to the public; have demonstrated remorse for their crime and particularly the people they have hurt; and who have spent a lifetime atoning for their errant behavior.

*Irrespective of what your views of the Parole Commission may be, no State agency can effectively or efficiently overcome a 30-year back log or deficit in reasonably expeditious fashion – particularly without giving said agency the resources to achieve that end. What's more, rebuilding the internal infrastructure necessary for functionality of purpose will take considerable time. The Second Look Act is necessary to help deal with this 30-year backlog. Time has literally become an urgent and critical dynamic for a large percentage of prisoners that SB 123 will apply to.

*A considerable percentage of these prisoners have not only redeemed and changed their lives (despite overcoming impossible situations) – but they have become upstanding characters that would be assets to their community. This is clearly seen in a multitude of those who have been blessed with a second chance in the past few years – put another way, denying these individuals a chance isn't just a negative for them and their families – it's a major negative for communities that desperately need people who have overcome the very same ills that are plaguing society – particularly our youth – today.

*Continued imprisonment for individuals who have clearly rehabilitated, pose no danger to the public (and would actually be assets), who want to make amends and contribute in meaningful ways to society, have proven themselves over and over again, and who have done anything that could ever be expected and then some – such continuation is cruel vengeance.

What it comes down to is that you have a great many prisoners with 30+, 40+, or more years in who simply need a fair, straight up, pathway forward! Ask yourself what that is. What is the pathway forward for these individuals? These are individuals that have given all of themselves to atone for their sins and earn an opportunity to redeem their lives. We are talking about people who are not a danger to the public and have not been for decades. So it begs the question- why are we expending such monumental amounts of taxpayer funds to contain people who are not a threat to public safety? Money that our education system desperately needs, money that is

needed to care for our seniors, and so many other causes that are under-resourced. What is the line between appropriate retribution and unnecessary vengeance?

With just a little more of your indulgence, I want to share a bit of my experience.
I am a "juvenile lifer". To be clear, I am consumed with remorse and shame for my crime and all those I hurt and the damage I caused as a teenager strung out on crack. Most importantly, I am full of contrition to my victim's family.

I have been in prison for 35 years. As a teenager, I was sent to some of the most hardcore prison areas imaginable. By the Grace of God, I made it through – and for these past 35 years I have pursued and engaged with every meaningful endeavor that could possibly be had – in the furtherance of atoning and facing the retribution for my sins and crime. In the furtherance of becoming a man of integrity, upstanding character, and family values. In the furtherance of redeeming the time God has Graciously provided.

It is with humility that I can tell you that I have a work, educational, organizational, and program record that would be on par with the best of them. At the top of all of them is engaging in, developing, organizing, and promoting victim awareness forums. Given the opportunity, I would be reaching kids before they went down the pathway that I did. I would be reaching veterans on the brink of suicide. If I could reach just one kid, how much devastation and destruction would that avert or save? What would be the impact of saving one veteran?

I did indeed go before the Circuit Court pursuant to the Juvenile Restoration Act (JRA). The Court found that I had an 'exemplary' record – found that I had in fact demonstrated rehabilitation and maturity – found that I did not (would not) pose a danger to the public – the Court acknowledged a good many things that were demonstratively positive factual evidence. There was even a risk assessment performed on me by one of the most preeminent psychologists in the field that the State of Maryland has ever known. That risk assessment included a psychological test that is the "best single predictor of future violence", with my score placing me "in the lower end of the Very Low range"- in other words, the lowest risk that can possibly be assessed.

But in the Court's view, this was not their decision to make. The judge stated: "This is a parole eligible sentence. And whether or not Mr. Sexton has exhibited behavior that entitles him to a release from incarceration is, in this Court's mind, a parole board decision and not this Court's decision." No matter the form or the mechanism, the Parole Commission, the Court- there's no straightforward pathway. No matter your progress, growth, or achievement. And while it may be great to think that the General Assembly will create such a mechanism, all such possibilities are off in the distance. And the problem- the paramount urgency- to do something now is because there have been so many delays (from politics to pandemic) and kicking the can down the road, kicking the can down the road, and kicking the can down the road, that for many, there simply is no more road to kick the can down.

While SB 123 is not a fix-all by any means, it is the *only* stopgap available at this moment in time- a moment that is filled with urgency. The bill wouldn't apply to me due to my JRA status,

but there are numerous individuals in Maryland prisons who are just like me- who have the exemplary records and character that would not get a reasonable opportunity without this bill.

Thank you for considering my testimony, and I urge you to vote **favorably** on the **Maryland Second Look Act SB 123.**

Thank you,

John Sexton
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SB123 Testimony FWA SLao.pdf
Uploaded by: Serena Lao
Position: FAV

Testimony on SB 123
Maryland Second Look Act
House Judiciary Committee
March 28, 2024

Position: FAVORABLE WITH AMENDMENTS

Submitted by: **Serena Lao**

Chair Clippinger, Vice Chair Bartlett, and members of the Judiciary Committee**:**

I, Serena Lao, am testifying in support of SB 123, the Maryland Second Look Act. I am submitting this testimony as a longtime Maryland resident with a loved one who is incarcerated. As you know, passage of the Maryland Second Look Act would create a meaningful opportunity for sentence modification for incarcerated people after having served 20 years of their sentence. I am urging you to see this bill through to its passage, without any exclusionary amendments.

My loved one is serving a life sentence and has now been incarcerated for 35 years, with no infractions for over three decades. Life doesn't slow down on the outside—he lost his father in 2016 and his mother last year. He spent his entire time incarcerated trying to achieve as much as he could in hopes that he would one day be able to care for them. Having to grieve in prison is an incredibly isolating experience. Inmates cannot hug their loved ones, attend funerals, or adequately provide support with their physical absence in the aftermath of loss. I felt the gravity and magnitude of that loss and can only imagine how many others have been impacted in this way. Time is of the essence for those serving long sentences.

The point of this bill is to give ALL a second look. It is an opportunity to push against what the legal justice system encourages- lumping together all criminals and treating them as the same. Victims are not monoliths, and neither are prisoners. To exclude anyone from this bill based solely on the crime they were charged with goes against the very intent of the Second Look Act, and I ask you to resist any amendments that would do so. The nature of the offense is already one of the factors that the Court must consider in making their decision. The language of the bill implies that every offense has its own circumstances beyond the charge itself. Having a hearing before a judge is meant to allow individuals the opportunity to be viewed and evaluated holistically.

Serious crimes obviously hold psychological and physical weight for victims and their loved ones. It is a sad reality of crime that a victim and offender are forever associated around a traumatic event. But if healing requires that there is improvement over time, how can true healing take place for any party without the acknowledgement of an offender's growth? Without seeing that their healing is intertwined? It baffles me that there are state's attorneys out there, such as the one in my loved one's case, who have led victims and their loved ones to believe that the offender is still a danger to society and has made no efforts to make amends or atone after decades—and making these claims without ever meeting or speaking to the offender. This is a grave injustice to those who have been trying to make progress in their healing from decades-long trauma.

As it currently stands, the system is not interested in rehabilitation or justice—only punishment. Second Look reforms are necessary, backed by research, and can make a meaningful difference. This bill is just a drop in the bucket. True systemic change would take an extended period of time, but it must start with hope. Passing this bill would turn on a light at the end of the tunnel. The infrastructure of the tunnel itself still requires massive amounts of work but having that light ahead would help illuminate what else needs to be done. The parole system has been dysfunctional for decades, and changes to the process are being discussed. *Every* effort is necessary and urgent.

Without the avenue that SB123 would provide, these individuals spend years wasting away in prison, far beyond the time necessary. Nothing about the current avenues in place consider their restorative and rehabilitative efforts. It doesn't make sense for many individuals to challenge their conviction, but those who have demonstrated their maturity and rehabilitation should be able to challenge their continued confinement in a system that has no interest in their growth.

For these reasons, I urge you to vote **favorably** on the **Maryland Second Look Act SB 123.**

Thank you,

Serena Lao
Community Member in District 9B
serenalao16@gmail.com

SB 123-MD Second Look Act.Testimony.tsb.rk.pdf
Uploaded by: T. Shekhinah Braveheart
Position: FAV

TESTIMONY BY T. Shekhinah Braveheart

***Policy Advocate*, Justice Policy Institute**

Senate Bill 123

The Second Look Act

Thursday, March 28, 2024

The Justice Policy Institute (JPI) is a nonprofit organization founded in 1997 dedicated to developing practical solutions to problems plaguing juvenile and criminal legal systems. With over 25 years of experience, JPI has played a crucial role in national reform initiatives, including a specific focus on addressing issues in Maryland's legal system.

JPI supports Senate Bill 123, which would allow incarcerated people to have their sentences modified after serving 20 years or reaching 60 years of age. It would also allow the state's attorney to move to modify a person's sentence at any time.

When There Is Harm, There Need to Be Repair

JPI's recent publication, *Safe at Home: Improving Maryland's Parole Release Decision Making*, offers a comprehensive assessment of Maryland's parole system, delving deep into the systemic issues that have plagued release decision-making processes for decades. Between 2017 and 2021, the average parole grant rate was 39.7 percent. However, these rates sharply decline as the "time served" and the petitioner's age increase. For instance, after 20 years of incarceration, the grant rate plummets to 22 percent, further dropping to 5.6 percent after 50 years of time served.

This trend of imposing stricter release criteria on older individuals with lengthy prison terms contradicts well-established research indicating that criminal activity tends to decline significantly after the age of 40, leading to reduced recidivism rates. Despite rehabilitative success and program completion, long-sentenced individuals eligible for parole often face bureaucratic delays and repeated recommendations for "re-hearings," enduring 3 to 8 parole hearings throughout their incarceration. This situation highlights the dysfunctionality of the parole system, characterized by inefficiencies and a lack of responsiveness to rehabilitation efforts.

Reasons to Support Second Look

Senate Bill 123 presents a crucial opportunity for individuals to showcase their personal growth and transformation. It also offers the opportunity to address deeply entrenched racially biased incarceration and parole denial patterns while posing minimal risks to public safety and fostering community strength. Additionally, there is substantial public support for releasing individuals deemed low risk for reoffending.

Despite these facts, the Maryland Parole Commission (MPC) has persistently obstructed the path to exit for deserving individuals, a practice that is incongruent with the realities outlined above. This underscores the urgent need for the state to explore and implement alternative options.

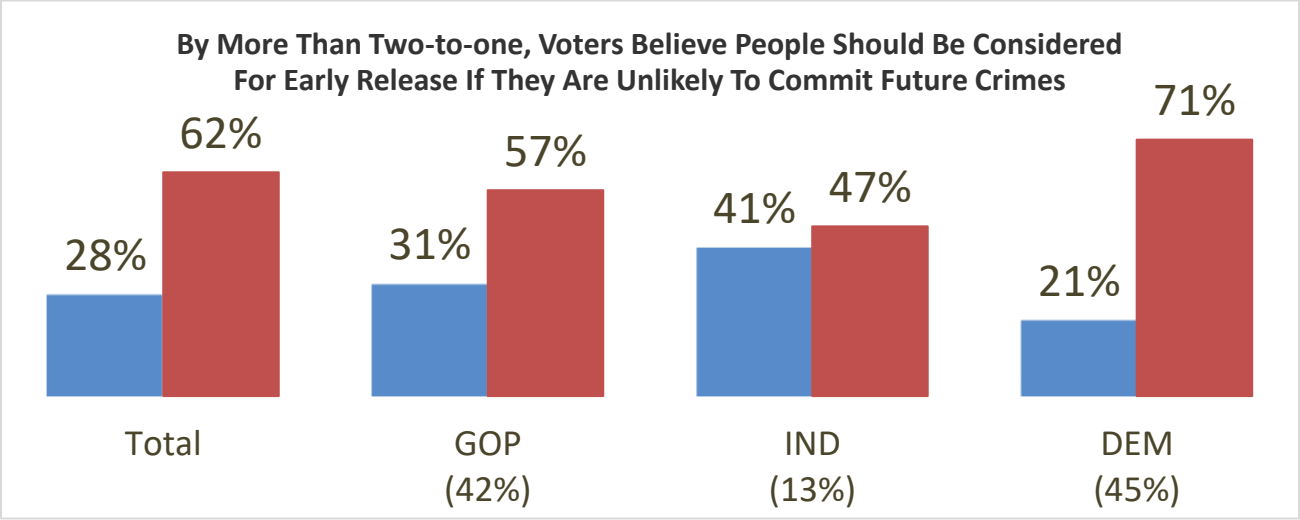
- JPI reported in *Rethinking Approaches to Over-incarceration of Black Young Adults in Maryland* that nearly 50 percent of people serving the longest prison terms in Maryland were initially incarcerated as emerging adults. People who committed crimes when they were under the age of 25 have a greater capacity to change and grow over time. Most people who commit serious crimes naturally grow out of that behavior as they mature and become less likely to re-offend. Continuing to incarcerate people unnecessarily wastes taxpayer money that could otherwise be spent on things that prevent crime and protect public safety.

- The Unger case, a 2012 Maryland Appellate Court decision, released over 200 long-sentenced individuals with an average age of 63 and provided a natural case study. After ten years, the Unger cohort continues to have less than a five percent recidivism rate, and more Ungers have unfortunately passed away than reoffended. Notably, this population comprises individuals denied parole due to being identified as too high risk by the Maryland Parole Commission. Their experience in the decade since the Unger ruling belies those decisions and is a strong argument for an alternative option like SB 123 so that people in prison can show how they have grown and changed.

- This bill has serious racial justice implications as Maryland leads the nation in sentencing young Black men to the longest prison terms. At a rate 25 percent higher than the next most racially disparate state, Mississippi, Maryland's restrictive release policies for this specific population are an obstacle to remedying this situation. It, in fact, exacerbates the long-standing disparities in the prison system. According to data collected in 2020, of the men over 60 years old in Maryland's prison system who have served at least 20 years, 54 percent were Black – SB123 could correct this wrongdoing by allowing judges to have the option to consider resentencing.

- Nationally, people who have been released through Second Look Laws have extremely low rates of reoffending, and many are now working to improve their community's safety by working as mentors with the highest at-risk youth. We have experienced this in Maryland with the passage of the Juvenile Restoration Act (JRA). Those who have been granted a re-sentencing are thriving as community members; to date, none have recidivated. Washington DC's Incarceration Reduction Act (IRAA/SLAA) resulted in 225 individuals being released with just under 6 percent recidivism measured as re-arrest/violation.

- According to a 2022 poll conducted by political and public affairs survey research firm Public Opinion Strategies, American voters supported "Second Look Laws" by a two-to-one margin, and by more than two-to-one, voters believe people should be considered for early release if they are unlikely to commit future crimes. Thus prioritizing public safety over prolonged "punishment. "



*N=500 Registered voters

Poll Question: "Which ONE of the following statements comes closer to your own opinion? People should stay in prison and serve their full sentences, even if they reach a point at which they are unlikely to commit future crimes…or…People in prison should be allowed to be considered for an early release from their sentence if they reach a point where they are unlikely to commit future crimes."

All commonly argued points are valid: Our communities desperately need and deserve safety, the need for criminal legal reform is real, and harm needs to be repaired. Healing starts by creating a system that works, and SB 123 is a reasonable starting point. The Justice Policy Institute urges this committee to issue a favorable report on SB123: Second Look.

TESTIMONY ON SB123.pdf
Uploaded by: Towanda Fenwick
Position: FAV

TESTIMONY ON SB123

MARYLAND SECOND LOOK ACT

Senate Judiciary Proceedings Committee

February 1, 2024

SUPPORT

Submitted by: **Ms. Towanda Fenwick**

Chair Smith, Vice Chair Waldstreicher and members of the Judicial Proceedings Committee**:**

I, Towanda Fenwick am testifying in support of SB123, the Maryland Second Look Act. I am submitting this testimony as a community member in District 14 and an impacted family member of a incarcerated person.

Passage of the Maryland Second Look Act would create a meaningful opportunity for sentence modification for incarcerated people after having served 20 years of their sentence. I firmly believe that those individuals who are able to demonstrate their growth and rehabilitation, such that they are no longer a threat to public safety, should have the opportunity for release.

My family member has been incarcerated for 30+ years. My daughter has never seen her father outside of jail and I know it would make a difference in her life having her father home. When we go for family day I see how much she desires to have her father. During family day, my daughter walks everywhere with him and she never let him out of her sight. Three years ago we were given some bad news. He found out he has colon cancer and it's now in stage 4. It has been very difficult to get the medical treatment that he needs being incarcerated.

He has taking many classes while being housed at Jessup Maryland and now at Cumberland, Maryland. He has many certificates and held many jobs including, tutoring, working in the infirmary, kitchen, tier representative, housing representative to name a few. He is very active in resolving problems that may occur between inmates and he exhibits great behavior that he would want others to imitate. He leads the religious class in the morning. Also, he has demonstrated remorse for his actions every day and there's not a day that goes by that he does not ask for forgiveness. He is not the same immature person that he was over 30 years ago. There's a story that he needs to tell to the youth that's heading in the wrong direction. We are asking for you to please pass this bill, so that the time that he has left he can change someone's life and leave a positive impact. The community needs to have the people who have demonstrated rehabilitation out, so that they can be helpful in combating crime. They have lived it and they would be the better person to help break the cycle. Thank you for reading a short version of why I think this bill needs to be passed.

This bill is an important tool in making meaningful opportunities for release happen, as currently, incarcerated people in MD can only petition the Court for modification within 90 days of sentencing, severely limiting any potential sentence modifications

Maryland judges used to have the ability to review sentences, an important safety valve for extreme sentences, but this opportunity was eliminated with a rule change in 2004. Furthermore for more than 25 years, Maryland's parole system was not available to people serving life with parole sentences. Now, the Governor has finally been removed from the parole process, but this is not enough to remedy decades of wrongful denials which contributed to the bloated prison system and its extreme racial disparities.

This bill also has serious racial justice implications, given that of the 2,212 people serving life sentences in MD, 80% are Black. a huge disparity when compared to the only 31% of Black Marylanders in the general population. Shamefully, Maryland also leads the nation in sentencing young Black men to the longest prison terms, at a rate 25% higher than the next nearest state, Mississippi.

Given the tendency for people to age out of crime and the very low recidivism rate for other individuals released from decades-long sentences, this decision is unlikely to negatively impact public safety. For example, in the past 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. These individuals, 90 percent of whom are Black, spent an average of 40 years behind bars but could have been contributing to our communities decades earlier. We know many more men and women serving decades-long sentences who have worked hard, hoping for their chance to reenter and succeed in their communities.

For these reasons, I encourage you to vote **favorably** on the **Maryland Second Look Act SB123.**

Thank you.

SB123AEbbTestimony3.28.24.pdf
Uploaded by: Alice Ebb
Position: FWA

TESTIMONY ON SB 123
MARYLAND SECOND LOOK ACT

House Judiciary Committee
March 28, 2024

FAVORABLE with AMENDMENTS

Submitted by: Alice Ebb

Chair Clippinger, Vice Chair Bartlett and members of the Judiciary Committee**:**

My name is Alice Ebb and I am testifying in support of SB 123, the Maryland Second Look Act. I am the impacted mother of my incarcerated son who is currently serving a life sentence without parole sentence at the Jessup Correctional Facility. I am speaking on behalf of the men and women who may be candidates for release under the Second Look Act (SB 123), should it become a law. I support the bill without the amendment that excludes certain people (sentenced under Criminal Law Article 3-303) from being able to ask for a second look. Whether or not someone gets a second chance should be decided on a case by case basis by the judge, and not based merely on their offense.

Plato said "The BEST decisions are made from knowledge and experience, not numbers." Similarly, Mark Twain categorized statistics as one of three types of lies. I refer to statements by these two gentlemen because policymakers tend to rely on statistical data when considering the passage of certain bills. In doing so, there is also the tendency to look at incarcerated individuals collectively as opposed to individually. Everyone behind bars does not commit a crime for the same reasons. There are incarcerated people who are remorseful for their offenses, and use their time, while incarcerated, to take advantage of every opportunity to improve themselves via workshops, seminars, and college classes.

I refer you to Eddie Harrison, who was on Death Row, whose sentence was commuted. Upon his release, he started a Pre-trial Intervention Program for Juveniles, working in partnership with HSA, and was very successful. Then there is Dr. Stanley Andrisse, an Endocrinologist and Professor at both Howard University and John Hopkins University. He is also the author of "From Jail Cell To PhD". These are just two examples of individuals who demonstrated their desire to move from lawbreaker to law-abiding citizens, giving back to the community.

I believe that the individuals who can provide strategies for decreasing crime and violence, especially with the youth, are behind bars. They lived it, and so they have the insight for what is

needed in the community. It begins with the root causes, and what society has failed to provide to address it.

In my own experience as a mother of someone who is incarcerated, I have suffered verbal abuse and finger pointing from community members and people that knew nothing about me. I had to vacate my home, and everything in it, due to retaliation.

I genuinely hope that you take into consideration all of the potential that is in those currently incarcerated, that have demonstrated a transformation, and can make significant contributions to society and vote **favorably with amendments** on the **Maryland Second Look Act SB 123.**

Thank you for your time and consideration.

March28SB123BSealoverTestimony.pdf
Uploaded by: Barbara Sealover
Position: FWA

TESTIMONY ON SB 123
MARYLAND SECOND LOOK ACT

House Judiciary Committee
March 28, 2024

FAVORABLE with AMENDMENTS

Submitted by: Barbara Ann Sealover

Chair Clippinger, Vice Chair Bartlett and members of the Judiciary Committee**:**

My name is Barbara Ann Sealover and I am testifying in support of SB 123, the Maryland Second Look Act.

As the mother of an incarcerated person, this bill would greatly impact the life of my whole family. For the past 18 years, we have done our very best to support my son in prison. His absence fractured our family back then, and we have recovered the best we can. We have continued supporting our son throughout his incarceration, even given the financial hardship on our family. I personally took out my retirement to spend on lawyers to support him, so that he could have the opportunity to one day come home. The thought of him rejoining our family, community and becoming a productive member of society again gives us hope.

During my son's incarceration, he found out he has a daughter and is now a grandfather of two beautiful babies. This has impacted him greatly and given him such hope for his future.

The man that sits in prison today is a far cry from the kid that committed crimes all those years ago. Through time, rehabilitation and maturity, my son is not the person who was locked up and sentenced many years ago. He no longer acts or thinks the way a 20 something kid does with no life or responsibility. He is a 42 year old man with a plan for his life and a reason to live and succeed on the outside. This bill would give him the opportunity to prove that he would be a statistic of success.

In recognizing peoples' ability to change, please do not support any amendments that exclude people from the ability to get a second look.

I implore you to vote **favorably with amendments** on the **Maryland Second Look Act SB 123.**

SB 123 Testimony [House].pdf
Uploaded by: Carlos Childs
Position: FWA

Testimony for the House Judiciary Committee

Thursday, March 28th, 2024

SB 123 - Criminal Procedure - Petition to Reduce Sentence

Favorable with Amendments

Dear Chair Clippinger, Vice-Chair Bartlett, and members of the committee,

We write to you to express our support for SB 123, on behalf of the Prince George's County Police Accountability Coalition. We are a grassroots coalition of directly impacted Prince George's County residents, police accountability organizations, and economic justice community groups.

With Maryland leading the nation with the highest percentage of incarcerated Black residents, around 71%, it is imperative our legislators create more meaningful pathways for individuals who are serving extreme sentences and have demonstrated their rehabilitation to come home. SB 123 takes steps toward correcting this egregious disparity, however some of the amendments that have been added to the bill are counter to the bill's goal.

In order for this legislation to truly be a second look for all the bill must be amended to;

1. Allow any incarcerated individual to petition the court for resentencing after serving at least 20 years, regardless of the nature of their offense so that people can be evaluated for who they are today and not by their conviction, which is already going to be considered by the judge in the review process,
2. Allow incarcerated individuals to petition the court for resentencing at least three years after their first petition is denied so that individuals have an opportunity to demonstrate their progress in rehabilitation efforts

In the last two years, individuals returning to the community through parole or the Juvenile Restoration Act have demonstrated compelling success rates. Over the 12 years since the Maryland Supreme Court ruled that improper jury instructions invalidated life-with-parole sentences for 235 individuals, a remarkable 96% have reintegrated into the community without any incidents. These individuals, many of whom were sentenced at a young age, 90 percent of whom are Black, spent an average of 40 years behind bars but could have been contributing to our communities' decades earlier.

Now is not the time for Maryland to go backward in our fight for true justice reform. We must take steps to end mass incarceration within the state, by amending and passing SB 123.

Respectfully,

JustUs Initiative
Talking Drum Incorporated
Concerned Citizens for Bail Reform
Coalition of Concerned Mothers
Nikki Owens
Gus Griffin
John Spillane

Second Look bill in the House [SB 123].pdf
Uploaded by: Carlos Childs
Position: FWA

Testimony for the House Judiciary Committee

Thursday, March 28th, 2024

SB 123 - Criminal Procedure - Petition to Reduce Sentence

Favorable with Amendments

Dear Chair Clippinger, Vice-Chair Bartlett, and members of the committee,

We write to you to express our support with amendments for Senator Carter's bill, SB 123, on behalf of the Maryland Lifers Coalition. We are a grassroots coalition of directly impacted and formerly incarcerated Maryland citizens, who advocate for legislation and systems that not only provide opportunities for citizens to return home from lengthy sentences but also support returning citizens with pathways to reintegrate into society around the state.

With Maryland leading the nation with the highest percentage of incarcerated Black residents, around 71%, it is imperative our legislators create more meaningful pathways for individuals who are serving extreme sentences and have demonstrated their rehabilitation to come home. SB 123 takes steps toward correcting this egregious disparity, however some of the amendments that have been added to the bill are counter to the bill's goal.

In order for this legislation to truly be a second look for all the bill must be amended to;

1. Allow any incarcerated individual to petition the court for resentencing after serving at least 20 years, regardless of the nature of their offense so that people can be evaluated for who they are today and not by their conviction, which is already going to be considered by the judge in the review process,
2. Allow incarcerated individuals to petition the court for resentencing at least three years after their first petition is denied so that individuals have an opportunity to demonstrate their progress in rehabilitation efforts

In the last two years, individuals returning to the community through parole or the Juvenile Restoration Act have demonstrated compelling success rates. Over the 12 years since the Maryland Supreme Court ruled that improper jury instructions invalidated life-with-parole sentences for 235 individuals, a remarkable 96% have reintegrated into the community without any incidents. These individuals, many of whom were sentenced at a young age, 90 percent of

whom are Black, spent an average of 40 years behind bars but could have been contributing to our communities' decades earlier.

Now is not the time for Maryland to go backward in our fight for true justice reform. We must take steps to end mass incarceration within the state, by amending and passing SB 123.

Respectfully,

Maryland Lifers Coalition

WDC Testimony on SB 123, as amended (2024).pdf
Uploaded by: Carol Cichowski
Position: FWA

MONTGOMERY COUNTY, MARYLAND
WOMEN'S DEMOCRATIC CLUB
P.O. Box 34047, Bethesda, MD 20827 www.womensdemocraticclub.org

Senate Bill 123 – Criminal Procedure -- Petition to Reduce Sentence
Judiciary Committee – March 28, 2024
Favorable with Amendments

Thank you for this opportunity to submit written testimony concerning an important priority of the **Montgomery County Women's Democratic Club** (WDC) for the 2024 legislative session. WDC is one of Maryland's largest and most active Democratic Clubs with hundreds of politically active women and men, including many elected officials.

We firmly believe that our state has for too long allowed people who are demonstrably rehabilitated to languish in prison, a costly policy that fails to credit their efforts to reform and does nothing to make our state safe. For that reason, we strongly support SB0123, which gives individuals who have served more than 20 years in Maryland's prisons an opportunity to seek a reduction of their sentence, based on a showing that they have been rehabilitated and do not represent a threat to public safety.

A meaningful chance of release from prison, such as the opportunity provided by SB0123, is a powerful incentive for people who are serving long sentences to remain steadfast in their efforts to be rehabilitated. The value of giving people hope cannot be underestimated. Recognizing and rewarding an individual's personal transformation is both an act of humanity and justice and a cost-effective and sensible way to allow people who are serving long sentences to ultimately make positive contributions to their community.

Much-needed resources are being wasted on incarcerating people that professional criminologists would agree does absolutely nothing to make our state safer. The average cost to Maryland taxpayers to keep a person imprisoned is close to $60,000 per year. [1] Much of the cost is attributable to incarcerating many aging prisoners and the much higher medical needs of those over age 55. The state could realize considerable savings by offering a second chance to those who have served 20 or more years, many of whom are likely to be over 55 and costly to incarcerate. We should heed the advice of experts who say we are keeping people in prison too long.[2]

There are also huge social costs resulting from the incalculable harm suffered by the families, particularly the children of incarcerated parents, and the communities, when incarcerated family members cannot contribute economically or emotionally to the well-being of the family.[3] Long sentences exacerbate these harms. Moreover, this cost has been borne disproportionately by Black families. Over 70 percent of

[1] Fiscal and Policy Note for SB0771 (2023 Session), p. 4, which states that the average total cost to house a State inmate in a Division of Correction (DOC) facility, including overhead, is estimated at $4,970 per month. https://mgaleg.maryland.gov/2023RS/fnotes/bil_0001/sb0771.pdf
[2] See, for example, Principle 6 in a resolution adopted by the American Bar Association in 2022, which recommends a second look after 15 years of incarceration. 22A604 (americanbar.org)
[3] The Governor's Office for Children, Children and Families Affected by Incarceration, https://goc.maryland.gov/incarceration/

MONTGOMERY COUNTY, MARYLAND
WOMEN'S DEMOCRATIC CLUB
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Maryland's prison population is Black.[4] SB0123 provides Maryland with an opportunity to remediate the harm experienced by its Black population as a result of decades of over-policing and harsh sentencing.

History shows that we can safely release many of the Marylanders serving long sentences. That has been Maryland's experience with the Juvenile Restoration Act (JRA), which provides an opportunity for resentencing to individuals who were incarcerated as minors, who have served at least 20 years, and who have demonstrated to a judge that their release does not pose any threat to public safety and serves the interests of justice. The courts have shown that they can identify individuals who have been rehabilitated and who can be safely released.[5]

We know that criminal activity is primarily a young person's game and that people age out of crime.[6] The immature patterns of thinking found in emerging adults and that can be a factor in criminal behavior are long outgrown after 10 years. The commission of serious crimes such as homicide and rape peak at ages 18-20.[7] Moreover, people released after decades of imprisonment for the most serious crimes have extremely low recidivism rates.[8] For these reasons, we recommend deletion of the language in the bill that would deny giving a second chance to individuals who are serving time for rape and would strongly oppose any amendments that would exclude any other individuals on the basis of their offense.

The courts are well-positioned to evaluate the progress an individual has made since his or her original sentencing and make a considered judgment about the interests of public safety and justice. Like the JRA, SB0123 provides a viable path to re-entry that a failed parole system has been unable to offer to the many Marylanders whose records demonstrate they deserve a second chance. **For these reasons, WDC urges a favorable report with amendments for SB0123.**

Tazeen Ahmad
WDC President

Carol Cichowski
Margaret Martin Barry
Jane Harman
WDC Advocacy Committee

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[4] DOC Data Dashboard, https://www.dpscs.state.md.us/community_releases/DOC-Annual-Data-Dashboard.shtml
[5]For information on the first year, see The Juvenile Restoration Act: Year One – October 1, 2021 to September 30, 2022, Maryland Office of the Public Defender (October 2022), p. 13, https://8684715c-49a2-4082-abff-3d2e65a61f0b.usrfiles.com/ugd/868471_e5999fc44e87471baca9aa9ca10180fb.pdf
[6] Fettig, A. and Zeidman, S., People Age Out of Crime. Prison Sentences Should Reflect That (September 9, 2022), https://time.com/6211619/long-prison-sentences-youthful-offenders/ ; Kazemian, L., "Pathways to Desistance From Crime Among Juveniles and Adults: Applications to Criminal Justice Policy and Practice," NCJ 301503, in Desistance From Crime: Implications for Research, Policy, and Practice (Washington, DC: U.S. Department of Justice, National Institute of Justice, 2021), NCJ 301497, https://www.ojp.gov/pdffiles1/nij/301503.pdf
[7]The Marshall Project, Justice Lab. Goldstein D., Too old to commit crime? (March 20, 2015), https://www.themarshallproject.org/2015/03/20/too-old-to-commit-crime; Sampson, RJ, Laub, JH., Life-course desisters? Trajectories of crime among delinquent boys followed to age 70. Criminology 41: 301.
[8] Ghandnoosh, N., "A Second Look at Injustice," The Sentencing Project (May 12, 2021), https://www.sentencingproject.org/app/uploads/2022/10/A-Second-Look-at-Injustice.pdf

Support SB123.pdf
Uploaded by: Edward Sabin
Position: FWA

Testimony before the House Judiciary Committee

Supporting SB 123, Maryland Second Look Act

Please support SB 123. My name is Edward Sabin. I am a retired state employee. I have been a volunteer at Jessup Correctional Institution (JCI) for over 25 years. In doing so I've met a number of men serving long sentences who rehabilitated themselves. They are facilitators in the Alternatives to Violence Project (AVP), a volunteer program in which I also serve as a facilitator.

On Thursday, the Judiciary Committee will hear Senate Bill 123, widely known as the Second Look Act. It would create an opportunity for incarcerated people to have their sentence modified, generally after having served 20 years or reaching 60 years of age. It would also allow the state's attorney to move to modify a person's sentence at any time.

Those who can demonstrate their growth and rehabilitation and show that they are no longer a threat to public safety should have the opportunity for release. The bill is a step towards redressing racial injustice in the Maryland criminal justice system. Of the 2,212 people serving life sentences in Maryland, 80 percent are Black—a huge disparity when compared to the only 31 percent of Black Marylanders in the general population. Maryland also leads the nation in sentencing young Black men to the longest prison terms, at a rate 25 percent higher than the next most racially disparate state, Mississippi.

A right to petition for sentence reduction does not guarantee that a reduction will be granted. But for many reasons—justice, mercy after the passage of so many years, racial inequities, wastefulness, and cost—sentence modification should be at least a possible outcome for prisoners who have served 20 years in prison.

I urge you to give a favorable report to SB123. Thank you for your service to the people of Maryland,

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UBalt CCJR Law Clinic SB 123 FWA.pdf
Uploaded by: Heather Warnken
Position: FWA

UNIVERSITY OF BALTIMORE
Center for Criminal Justice Reform

UNIVERSITY OF BALTIMORE
Clinical Law Offices

FAVORABLE WITH AMENDMENT
TESTIMONY FOR SENATE BILL 123

TO: Members of the House Judiciary Committee

FROM: Center for Criminal Justice Reform; Criminal Defense and Advocacy Clinic, University of Baltimore School of Law

DATE: March 26, 2024

The University of Baltimore School of Law's Center for Criminal Justice Reform (the "Center") is dedicated to supporting community driven efforts to improve public safety and address the harm and inequities caused by the criminal legal system. The Criminal Defense and Advocacy Clinic (the "Clinic") provides students with an opportunity to directly represent individuals charged with criminal offenses and develop a broad perspective on systemic issues in the criminal legal system. The Center and Clinic support Senate Bill 123 with amendments.

I. Unnecessarily long sentences are detrimental to public safety.

SB 123 promotes, rather than hinders, public safety. There is no evidence that unnecessarily long sentences deter people from engaging in criminal behavior.[1] Instead, certainty of apprehension—not severity of sentence—discourages people from engaging in crime.[2] Incarcerated people grow and change regardless of how old they were at the time of their offense. Accordingly, recidivism rates are extremely low for people released in their mid-40s or later.[3] Furthermore, by creating an opportunity for resentencing, this bill would also very likely improve morale and behavior inside prisons, benefiting incarcerated people and corrections officers alike.[4]

II. Unnecessarily long sentences devastate families and communities across the socioeconomic spectrum, but they disproportionately impact communities of color.

[1] See U.S. DEP'T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, *Five Things About Deterrence*, https://www.ojp.gov/pdffiles1/nij/247350.pdf.
[2] Id.
[3] In one study, only 4% of people convicted of violent crimes released between ages 45 and 54, and 1% released at 55 or older, were reincarcerated for new crimes within three years. Among people previously convicted of murder, those rates fell to 1.5% and 0.4%, respectively. J.J Prescott, et al., *Understanding Violent-Crime Recidivism*, NOTRE DAME LAW REVIEW, 95:4, 1643-1698, 1688-1690 (2018).
[4] KEVIN SHARP & KEVIN RING, *Judges Should be Able to Take a 'Second Look' at Prison Sentencing,* USA TODAY (June 20, 2019, 5:22 PM), https://www.usatoday.com/story/opinion/policing/2019/06/20/inmates-prison-reform-judges-sentencing-trump-policing-the-usa/1498072001/.

Reducing unnecessarily long sentences, regardless of a person's age at the time of his offense, is a critical component of addressing mass incarceration and mitigating racial disparities in our criminal legal systems. Data demonstrate that "there are stark racial and ethnic differences in the shares of people who are sentenced to and serving 10 years or more in prison, especially when comparing Black people and White people."[5] For example, "46% of the total number [of] people serving life or sentences of 50 years or more were Black" across the country in 2020.[6] Racial disparities for children sentenced to long terms of imprisonment as adults in Maryland are also instructive here: 87 percent of those who became eligible for relief under the Juvenile Restoration Act (JRA) are Black.[7] According to the Campaign for Fair Sentencing of Youth, this racial disparity is the worst in the entire nation.[8]

III. Senate Bill 123 would promote cost-savings and allow those funds to be allocated to effective public health and safety efforts.

The state prison population and expenses may be reduced via sentence reductions for incarcerated people with lowest-risk status. Successful applicants for SB 123 sentence modifications would be very low risk in light of their age, deteriorating health, and demonstrated self-rehabilitation achievements. Cost savings are especially likely because costs increase dramatically for older individuals in prison.[9] Wasteful and unnecessary policies and practices—such as the ongoing incarceration of people who pose the lowest risk of reoffending—harm public safety by siphoning massive sums of money that could otherwise support programs that actually prevent crime. The cost savings that are likely to result from the passage of SB 123 would allow the reallocation of critical funds to assist with drug treatment, reentry and other rehabilitation programs for people at higher risk of engaging in criminal behavior.

IV. The successful implementation of the Juvenile Restoration Act bolsters confidence in the impact of SB 123.

Positive outcomes from the Juvenile Restoration Act (JRA), which this committee supported three years ago, underscore the types of impact that the passage of SB 123 would have on Maryland families and communities. Marylanders who were granted relief pursuant to the JRA have contributed to their families and communities since returning home by caring for sick family members, paying taxes, and dedicating their lives to repairing and preventing the types of harmful behavior that they engaged in as young people. Our communities are safer and healthier because of their contributions. This bill would be another significant step forward in allowing Maryland courts to take a meaningful look at the positive changes made over time by those serving lengthy sentences. Due to existing law only allowing consideration for a sentence modification within five

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[5] COUNCIL ON CRIMINAL JUSTICE, *How Long is Enough? Task Force on Long Sentences Final Report* (Mar. 2023), https://assets.foleon.com/eu-central-1/de-uploads-7e3kk3/41697/task_force_on_long_sentences_final_report.ecc1d701464c.pdf.

[6] Id.

[7] CAMPAIGN FOR THE FAIR SENTENCING OF YOUTH, *Juvenile Restoration Act (HB409/SB494),* https://cfsy.org/wp-content/uploads/HB409_SB494_JuvenileRestorationAct_FACTSHEET-1.pdf.

[8] Id.

[9] MATT MCKILLOP & ALEX BOUCHER, *Aging Prison Populations Drive Up Costs*, THE PEW CHARITABLE TRUSTS, (Feb. 20, 2018), https://www.pewtrusts.org/en/research-and-analysis/articles/2018/02/20/aging-prison-populations-drive-up-costs.

years of a sentence being imposed, no mechanism exists to remedy unnecessarily long sentences for individuals who are not a threat to public safety and when the interests of justice would be best served by a reduced sentence. There is an entire population of incarcerated Marylanders who are not eligible for relief under the JRA who have the same capacity for change, redemption, and positive impact. SB 123 would afford them that opportunity.

V. Senate Bill 123 should be amended in three critical ways.

First, consistent with the JRA, Senate Bill 123 should allow individuals to seek a reduction in sentence up to three times. Second, Senate Bill 123 should not require that an individual filing his second petition to reduce his sentence be 60 years or older. No similar requirement exists in the JRA. Third, individuals who are serving sentence for a violation of Md. Code Ann § 3-303 should not be barred from seeking a reduction in sentence. Individuals serving sentences for sex offenses, even rape, are capable of rehabilitation and deserve an opportunity to present their petition to a court.

For these reasons, we urge a favorable with amendment report on Senate Bill 123.

3.28SB123JDorseyTestimony.pdf
Uploaded by: JOAN DORSEY
Position: FWA

TESTIMONY ON SB 123
MARYLAND SECOND LOOK ACT

House Judiciary Committee
March 28, 2024

FAVORABLE with AMENDMENTS

Submitted by: Joan Dorsey

Chair Clippinger, Vice Chair Bartlett and members of the Judiciary Committee**:**

I, Joan Dorsey, am submitting this testimony in support of, the Maryland Second Look Act, with an amendment to ensure everyone who has served 20 years will be eligible to petition. I am submitting this testimony as an impacted family member and member of the Maryland Second Look Coalition, Family Support Network, and MAJR.

I support this initiative, SECOND LOOK ACT SB 123, where the Second-look laws would legally allow courts to re-examine the sentences of incarcerated individuals with a minimum of 20 years to apply for sentence modification. The opportunity should be given to people regardless of their offense, as the Judge will consider a wide range of things, to include the nature of their offense, their rehabilitation and any mitigating factors to support a *potential* change in sentence. Therefore I ask that the exclusion for those sentenced under Criminal Law Article 3-303 be removed and no more exclusionary amendments be added.

I believe that the literature inclusive of numerous studies targeting 20-year sentences justifies, substantiates and validates why 20 years sentencing will significantly reduce mass incarceration. Countless evidenced based studies have definitively reported in many official, authenticated documents that credible, scholarly and reliable research in many states and countries support this argument.

The premise is that if the incarcerated persons have demonstrated their growth and progress by rehabilitation and show that they are no longer a threat to the safety of others, then the opportunity should be available for them to apply for modification at 20 years and ultimately be released.

My son would be eligible and meets the criteria for this law if passed. He is currently 37 years old and was incarcerated at age 19 years old. My husband and I adopted him at 2 1/2 months old, where subtle but noticeable developmental behaviors began. At age 7, he was diagnosed

with Tourette Syndrome, (multiple motor tics and vocal tics) as well as and other health impairments. The lack of technology, research, knowledge, skills and training in the late 80's from renowned physicians regarding Tourette Syndrome only produced very little help, just speculation and many medications that failed!. The teasing, bullying and being ostracized led to unruly and reckless behavior. He was a truly a classic book case example of Tourette Syndrome whereby this body jumped and moved all over and all the time. Echolalia, coprolalia, palialia overwhelmed in conversations and consumed him. He was relentlessly punished by teacher, church leaders, sport leaders coaches, by writing repeatedly, recess removed, trips, and events not allowed to attend, time out in corners and more. Our son and us literally prayed and cried out to anyone we thought that could help him. His mind and body traveled down a daily life of uncertainly, confusion and isolation with powerful medications that only exacerbated and worsen his condition as he developed and progressed into middle school. As a result, proper treatment, he began reckless and unruly behaviors that manifested in school, peer groups and in the general public. These misbehaviors, and my son not having the ability to manage, led him to incarceration.

I believe my son received an unfair and unjust sentence as the judge doubled his sentence, going outside of the guidelines, never taking in consideration the clinically diagnosed disabilities of Tourette Syndrome and other health impairments. Additionally, I believe that racial disparity can clearly be seen in his case. He has thus far served nearly twenty years in prison with limited support, however with my husband's and my consistent communication with strong advocacy, allow the storms slowly diminish with meds and counseling, even though barely adequate. Currently, my son has grown to be a loving, caring, compassionate, and responsible man, through rehabilitation, and a continuous very strong support of family. We love him very much and are fighting for his purposeful life.

My husband and I are aging, 73 and 75 and experiencing a number of health challenges where our son's absence has created a profound impact on our lives, however, his release from incarceration after 20 years will significantly help, assist and support us! I know my son is ready to contribute to the community and would meet the criteria set forth and truly make a positive difference and change in this society.

I believe that "The Second Look Act" that includes the option for a 20 year sentence review, incorporates an absolute confirmation of corroborative data with proper measures and will execute the following factors:

- Reduce and eliminate factual racial disparities among Black and Brown persons who have been sentenced to long sentences, which is well documented
- Eliminate mandatory minimum sentences and allow the discretion of the judge to be the executive rather than sentence guidelines
- Examine the incarcerated individuals who have aged out and show no threat to public safety
- Provide huge monetary savings to empower communities, states and countries to invest
- Reviewing sentences after 20 years critically measuring the fairness and justice of the sentence rendered
- Carefully look at the unfairness and societal impact on the poor, low income, disadvantaged, and disabled
- Eliminate enhancements, parole, continuous parole denials, and consecutive sentences
- Provide provisions for re-entry to society which can increase jobs, employment, family unification and lessen family support and dependence on government
- Review and examine the lengthy sentences of persons for misdemeanors and the innocence convicted of a crime
- Review and scrutinize the criteria of the 20 year sentence review, which can provide data that demonstrates that the reduction of lengthy sentences prove that it is not a deterrent to crime and does not limit public safety.
- Allow a Judge to assess the qualifications of applicants based upon a strict criterion for prison release, for example: good time served, accomplishments, character references from correctional officers and staff, outside contacts, rehabilitation, any outreach/support given to community, family, and while in jail
- Review statistics in research that demonstrate how contributions to society and the world reduced the prison population of mass incarceration and the over-crowdedness of jails causing violence and deaths
- Seriously analyze and understand data that shows incarcerated persons who age out of crime and showing no threat to public safety
- Examine facts that show the recidivism rates decline for persons released after lengthy sentences.
- Identify persons with misdemeanors sentences to long sentences due to racial disparity, which is well documented, and provide opportunities for release.

- Identify and address mental and physical disabilities and consequently find the proper and effective treatments and resources, then pursue implementation.

The criminal justice system in the state of Maryland houses the highest number of blacks incarcerated in the United States at 71 % which doubles the national average. Additionally, Maryland heads the country with distributing the longest sentences to young black men, with a 25% higher than MISSISSIPPI... I PONDER and ask WHY WHEN I READ AND HEAR ABOUT THE OTHER STATES MAKING MODIFICATIONS, CONSIDERATIONS AND PASSING SECOND LOOK LEGISLATION.... My belief is that IT IS NOW,,,,,,NOT TO WAIT CONTINUE TO RESEARCH, RAKE OVER STUDIES, continue to attend hearings, meetings that generally conclude using proven data that stated Second Look sentencing can be highly effective! We know that one of the major issues in THE STATE OF MARYLAND criminal justice system is MASS INCARCERATION. I believe that review of a sentence at 20 years can bring a meaningful resolve to support this issue. WE MUST PRIORITIZE FAIR AND JUST SENTENCES FOR ALL AND PASS THE BILL NOW.

My hope is that mercy, grace and a strong hard look are considered by you in the passage of the Second Look Act whereby, clearly seeing and understanding that the evidenced based studies of other states, countries who have modified and reduced sentences in alignment with the 20 year sentence have demonstrated positive outcomes. Please, please look at the strict criteria to be followed for the acceptance of being granted release and pass this bill. I believe that individuals deserving OF A SECOND CHANCE AND fully have met the criteria for the 20 year sentence review should be considered for release. As a result, their character will demonstrate positive attributes of a productive citizen eagerly, actively, seriously committed to serving the community and this world.

2024March SB123 JRistickTestimony.pdf
Uploaded by: John Ristick
Position: FWA

TESTIMONY ON SB 123
MARYLAND SECOND LOOK ACT

House Judiciary Committee
March 28, 2024

FAVORABLE with AMENDMENTS

Submitted by: **John Ristick**

Chair Clippinger, Vice Chair Bartlett and members of the Judiciary Committee**:**

I, John Ristick, am testifying in support of SB 123, the Maryland Second Look Act. I am submitting this testimony as a previously incarcerated person who served 38 years in MD prisons. At 15 years old, I was arrested and given a life sentence plus 20 years.

In 1986, I was one of the few incarcerated people who had access to therapy, through the programming at Patuxent Institution. There, I had individual therapy twice a week, and group therapy once a week. I was finally able to answer questions like “Was I the victim?” “How did this contribute to my crime?” and “How can I change this?” During my incarceration, I received only 4 minor infractions. By 20 years in prison, I was a far different person than when I entered at 15 years old, but I did not have the opportunity to go before a judge for a second look at my sentence then.

Instead, even given my record, I still was denied parole multiple times over decades. It wasn’t until finally, in 2020, the parole board approved me for parole, but because I had a life sentence, my parole also had to be approved by the governor. While in the hospital with COVID, feeling I was on my deathbed, I was denied parole by the governor.

Then, in 2021, something unexpected happened, and the legislature removed the governor from the parole process for lifers. With this change, on June 12, 2022, I was approved for 6 month delayed release. After 38 years, I came home on January 18, 2023.

Since coming home, I have been successful in finding work and am so grateful to be reunited with my fiancée and family. But I know it should not have taken this long for me to come home. I had demonstrated my rehabilitation 20 years after being incarcerated, but it took 38 until I finally got my second chance. The crime never changes, but people do.

Passage of the Maryland Second Look Act would create a meaningful opportunity for sentence modification for incarcerated people after having served 20 years of their sentence.

I ask you to resist any amendments that exclude certain people from being given the opportunity to petition the court for a second look, including the amendment that was added to exclude those sentenced under Criminal Law Article 3-303. While the nature of the offense will never

change, a judge in the original sentencing court will decide if given that offense AND the person's rehabilitation, if they have done enough for a possible change in sentence. People should not be excluded from that opportunity.

For these reasons, I encourage you to vote **favorably with amendments** on the **Maryland Second Look Act SB 123.**

Thank you.

second look testimony house judic MAJR 2024.pdf
Uploaded by: Judith Lichtenberg
Position: FWA

MARYLAND ALLIANCE FOR JUSTICE REFORM
Citizens working to reform criminal justice in Maryland

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March 26, 2024

Testimony in support of SB 123: Criminal Procedure – Petition to Reduce Sentence (Maryland Second Look Act)

My name is Judith Lichtenberg. I am testifying on behalf of the Maryland Alliance for Justice Reform (MAJR), a nonprofit, all-volunteer organization of more than 2,000 Marylanders; I serve on its executive committee and the board. I have lived in Hyattsville since the early 1980s and am professor emerita of philosophy at Georgetown University. Since 2016, I've been teaching, tutoring, and mentoring at Jessup Correctional Institution (JCI), the DC Jail, and Patuxent Institution—in colleges courses offered for credit by Georgetown University and the University of Baltimore.

The Second Look Act would create an opportunity for incarcerated people to have their sentence reduced after many years—usually decades—of imprisonment. It would also allow the state's attorney to move to modify a person's sentence at any time.

Those who can demonstrate their growth and rehabilitation and show that they are no longer a threat to public safety should have the opportunity for release. Currently, incarcerated people can only petition the court for modification within 5 years. Maryland judges used to have the ability to review sentences without this time limit, but this opportunity was eliminated in 2004.

This bill has serious racial justice implications. Of the 2,212 people serving life sentences in Maryland, 80 percent are Black—a huge disparity when compared to the only 31 percent of Black Marylanders in the general population. Maryland also leads the nation in sentencing young Black men to the longest prison terms, at a rate 25 percent higher than the next most racially disparate state, Mississippi.

We know that people age out of crime and that those released from decades-long sentences have very low recidivism rates. Since the Maryland Supreme Court held 12 years ago that improper jury instructions invalidated the life with parole sentences of 235 people (in what is known as the Unger cases), 96 percent returned to the community without incident. These individuals, 90 percent of whom are Black, spent an average of 40 years behind bars. We know

many more men and women serving decades-long sentences who have worked hard, transformed their lives, and deserve the chance to reenter and succeed in their communities.

Since 2016 I have taught well over a hundred students behind the walls. Many of them have been incarcerated since they were in their teens or twenties. Many have been locked up for more than 20 years. Most are very different people than they were when they committed their crimes. Most are people I believe are decent and trustworthy. I find it unconscionable that they will live out their days in prison no matter who they are today or how they have changed. The people I am thinking of do not present a threat to society; they are remorseful for their crimes; and they can and want to make valuable contributions to their communities.

A current amendment to SB123 would exclude those convicted of first-degree rape. The Committee should reject excluding any group of people; no one is inherently incapable of transformation. MAJR supports a second look for *all.*

A right to petition for sentence reduction does not guarantee that a reduction will be granted. But for many reasons—justice, mercy, racial inequities, wastefulness, and cost—sentence modification should be at least a possible outcome for prisoners who have served 20 years in prison.

I urge you to give a favorable report to SB123, amended so as to be a second look for all.

Respectfully,

Judith Lichtenberg

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SB123HouseHearingMTsiongasTestimony.pdf
Uploaded by: Magdalena Tsiongas
Position: FWA

TESTIMONY ON SB 123
MARYLAND SECOND LOOK ACT

House Judiciary Committee
March 28, 2024

FAVORABLE with AMENDMENTS

Submitted by: **Magdalena Tsiongas**

Chair Clippinger, Vice Chair Bartlett and members of the Judiciary Committee**:**

I, Magdalena Tsiongas, am testifying in support of SB 123, the Maryland Second Look Act. I am submitting this testimony as the convenor of the Maryland Second Look Coalition and the family member of an incarcerated person. I urge your favorable report on this bill, without any exclusions as to who is eligible to petition for the opportunity for a second look.

I started convening the Maryland Second Look Coalition with other impacted family members, previously incarcerated people and advocates to create a pathway for hope and reunification for families. Passage of the Maryland Second Look Act would create a meaningful opportunity for sentence modification for incarcerated people after having served 20 years of their sentence. I firmly believe that those individuals who are able to demonstrate their growth and rehabilitation, such that they are no longer a threat to public safety, should have the opportunity for release. After 20 years of incarceration, my own family member, John, will have been in prison longer than he was free, the equivalent of his entire lifetime before prison, behind bars. A lifetime is enough to be a different person. It is the difference between a teenager and a 40 year old.

While watching someone you love dream of a life you don't know if they will ever reach is painful, seeing their growth is amazing. During his 17 years of incarceration, I have seen the leadership in John that drives him to support others in rehabilitation. Being given the opportunity to get therapy while behind bars has given him a chance to finally unpack the first 19 years of his life, where he often experienced things no child should have to experience, that contributed to his incarceration. It’s also allowed him to address the harm that he has caused and to gain the wisdom to know where he wants to go. Our dream is to have our family whole.

A second look through SB 123 is not a guarantee for anyone to come home, but it is hope. Hope that a judge will see what decades worth of growth has amounted to and grant some the opportunity to finally come home and bring that hard work to the community with them.

I know many more men and women serving decades-long sentences who have worked hard, hoping for their chance to reenter and succeed in their communities, and finally get the chance to fully be sons, daughters, parents, spouses and siblings to their families again. Nothing has brought me more joy in this fight than seeing other coalition members who have come home after decades in prison, now reunited with their wives, children and parents.

The current version of the bill now includes a harmful amendment that makes people incarcerated for first degree rape ineligible for a second look, and I ask you to amend that language out of the bill. The nature of the offense is already a factor that a Judge shall consider in making their decision, and it should not exclude an individual from the opportunity for a hearing to demonstrate their rehabilitation. I am also asking that you resist any further amendments that exclude certain people from being eligible to petition the court for a second look. I truly believe, from the dozens of people I know personally having served decades behind bars, that we are so much more than the worst thing we have done.

For these reasons, I encourage you to vote **favorably with amendments** on the **Maryland Second Look Act SB 123.**

Thank you.

SB 0123 - SECOND LOOK ACT - FSN - MARTINA HAZELTON

Uploaded by: MARTINA HAZELTON

Position: FWA

March 28, 2024 @ 1:00pm (House Hearing)

Delegate Luke Clippinger, Chair
Delegate J. Sandy Bartlett, Vice Chair
Maryland General Assembly
House Judiciary Committee
Room 101
House Office Building
Annapolis, MD 21401

RE: SB 123 – Criminal Procedure – Petition to Reduce Sentence (Md Second Look Act)
SUPPORT – FAVORABLE with AMENDMENTS

Please accept my written testimony in support of Senate Bill 123 (SB 123). I am testifying on behalf of the Family Support Network (FSN) and from my personal experience.

FSN is a network of individuals with incarcerated loved ones, returning citizens and advocates that support one another and serve as a voice for those behind the wall. I have the lived experience and remain near to those that are dealing with the daily challenges of having an incarcerated loved one. Most of the FSN returning citizens and those still serving are lifers or have life equivalent sentences.

My husband was incarcerated at 16 years of age and served 28 years and 8 months in Maryland prisons. In 1993, he was sentenced to two consecutive life sentences plus 23 years. Given his sentence he was not eligible for his first parole hearing until he had served 40 years at which time, he would have been 56 years of age. With all his post-conviction options exhausted and parole out of sight. We thought all was lost. However, after retaining private counsel in March 2017, a Motion to Correct an Illegal Sentence was filed and through that motion it was discovered that there was illegality in his sentence. Subsequently, his original sentence was modified to correct the illegality and through that action he was able to file a second Motion for Reconsideration. His initial Motion for Reconsideration was denied in 1999. After 25+ years of incarceration, the second Motion for Reconsideration was granted and a hearing was scheduled. My husband was not the lost 16-year-old teenager that was engulfed in a situation where he found himself at the wrong place, at the wrong time, with the wrong people. He was now a man in his mid-forties that had matured, committed himself to being a better person, engaged in developmental opportunities whenever possible and ultimately was no threat to public safety. His impeccable institutional record and demonstration of growth garnered the State's support and recommendation of release. On November 8, 2021, his sentence was reduced to time served and by the grace of God he became a free man on November 9, 2021. Since his release he maintains full employment, supports our family, and makes positive contributions to strengthening our community. None of this would have been possible without a Second Look, we both know how fortunate he is and that his case is an exception and not the rule. The one thing that he expresses that lingers over his mind the most is that he left behind so many deserving men that are just like him. He says those men are trapped in a system that has forgotten about them and has left them for dead. He proclaims often that he is not special and that the same "Second Look" that God blessed him with should be bestowed upon others.

Maryland incarcerates the highest percentage of Black people in the country (71% of Md's prison population is Black – 2x the national average). Maryland leads the nation in its level of incarcerated black men ages 18 to 24 by sentencing young Black men to the longest prison terms at a rate 25% higher than the next nearest state (Mississippi). How did this happen? Bias and discrimination against Black and Brown people with low income has been well documented at

every stage in Maryland's criminal legal system, to arresting and sentencing. It is my desire that you consider the legislation before you as a step in the right direction of fixing the systemic mass incarceration of Black and Brown men in Maryland (see Exhibit 1 from Racial Equity Impact Note). The extreme level of incarceration did not occur overnight by one specific action. It took years and incremental actions that had negative affects throughout the legal system to get here. To undo the injustices and address this crisis it is also going to take several actions over a period of years to achieve real justice reform. In 2021, the Juvenile Restoration Act (JRA) was passed but, it ended on the day it was signed as it was retrospective legislation. I implore you to build upon that to ensure we give those most deserving of a second look an opportunity to do so after having served 20 years in prison regardless of their age at the time of the offense.

We have been in communication with those behind the wall so they may also exercise their voices and participate in this legislative process. Please read their stories, lament the amount of time they have served and acknowledge that redemption is possible. Second chances are needed and necessary.

The current version of the bill now includes a harmful exclusionary amendment that makes people incarcerated for specific crimes ineligible for a second look, and I ask you to amend that language out of the bill. The nature of the offense is already a factor that a Judge shall consider in making their decision, and it should not exclude an individual from the opportunity for a hearing to demonstrate their rehabilitation. I am also asking that you resist any further amendments that exclude certain people from being eligible to petition the court for a second look.

On behalf of myself, FSN and the Md Second Look Coalition I hope that you will unequivocally support this bill and vote **favorably with amendments** on the **Maryland Second Look Act (SB 123).**

Respectfully,

Martina Hazelton

Martina Hazelton
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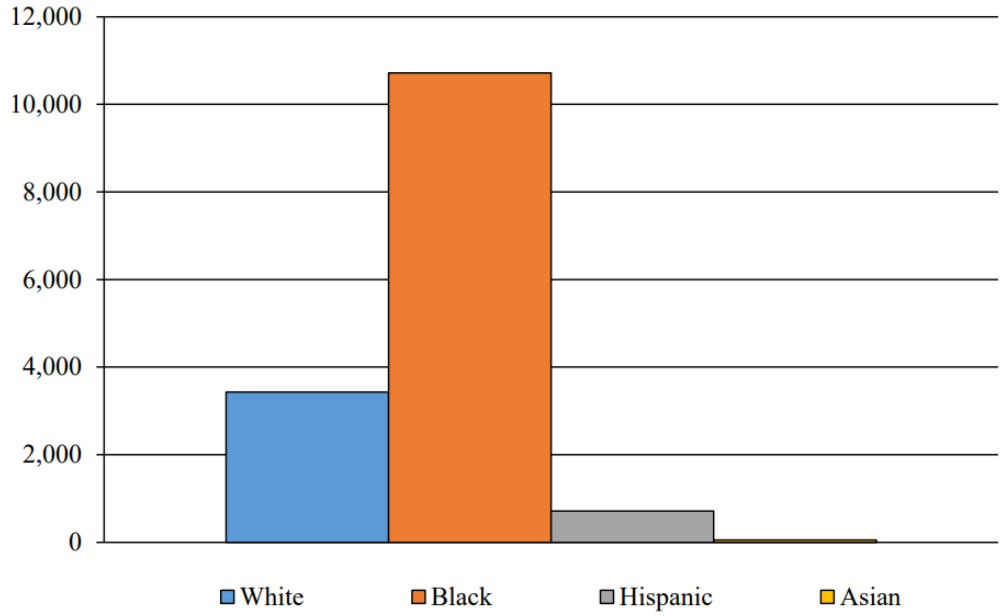
Exhibit 1
2023 Division of Correction Population Demographics



Source: Department of Public Safety and Correctional Services

Conclusion

The bill's provisions will give more convicted individuals access to the possibility of sentence reduction by a court. Regarding State's Attorney initiated petitions under the bill, it is unclear to what extent this provision will impact that population of convicted individuals that are not otherwise eligible for a post-conviction sentence review. Much of that impact will depend on the policy decisions of individual State's Attorneys. There is no historical data readily available that indicate the demographics of those individuals that have received post-conviction sentence reductions under existing law, nor is data available to determine the size of the eligible incarcerated population. This data could give some insight into the magnitude of the impact on various racial and ethnic groups. However, despite the data limitations, it is reasonable to expect that the Black incarcerated population would likely experience the most significant impact given their overrepresentation in the State's incarcerated population.

3-26-24 Ngozi Lawal Testimony on SB 123 to House.p

Uploaded by: Ngozi Lawal

Position: FWA

TESTIMONY ON SB 123
MARYLAND SECOND LOOK ACT

House Judiciary Committee
Submitted March 26, 2024 for March 28 Hearing

FAVORABLE with no new additional AMENDMENTS

Submitted by: **Ngozi Lawal**

Chair Clippinger, Vice Chair Bartlett and members of the Judiciary Committee**:**

I, Ngozi Lawal, am testifying in support of SB 123, the Maryland Second Look Act. I am submitting this testimony as an impacted family member of a currently incarcerated person serving a life sentence in Maryland and as an advocate of inmate rehabilitation and community safety. I am kindly making three requests. I ask that you: **1.) bring this bill forward for a vote before the House Judiciary Committee 2.) work with members of the Judiciary Committee and the full House membership to vote in favor of the bill's passage with the current amendments from the Senate. 3.) resist any new amendments that exclude groups of incarcerated people from being eligible to petition the court for a second look.**

Passage of the Maryland Second Look Act would create a meaningful opportunity for sentence modification for incarcerated people after having served 20 years of their sentence. I firmly believe that those individuals who are able to demonstrate their growth and rehabilitation, such that they are no longer a threat to public safety, should have the opportunity for release.

My brother, Emeka Onunaku (Maryland Department of Corrections Number #267-778; State Identification Number #1623475) **is incarcerated for first degree murder and has been serving a life sentence since 1996, a total of 27 years. Emeka is accountable for his wrongdoing; he has admitted, both in private as well as publicly, that he committed the killing and that it was heinous and horrible. It is worth noting that the murder victim was involved in the breaking and entering of Emeka's home the day of the crime and that Emeka's infant daughter and the mother of the infant were in Emeka's home during this break-in and entry. Emeka had just turned 21 years old at that time. He is now 48 years old.**

Thanks to the rehabilitation opportunities he has taken advantage of while in prison, Emeka is a grounded individual, focused on advancing himself and his community: He maintained the same job for almost 10 years and has been infraction-free for over 10 years.

Education: Emeka completed his G.E.D. and graduated as valedictorian of his class. He also studied and became an Ordained Minister, credentialed from Universal Life Church, on December 20, 2010. During his time in prison, he completed multiple self-improvement programs, including the Alternative to Violence program.

Teaching: While serving his sentence, Emeka taught the Life Upliftment Course to his fellow inmates. The course focuses on applying reason and problem solving. He also taught Business Class 101, an introductory course to inmates.

Mentorship: He has remained in his daughter's life over the 27 years and continues to be an active, present father. After I completed my master's degree, he mentored me with step-by-step guidance on how to start my beauty business, a Color Me Beautiful (CMB) franchise in

> Maryland, that I opened in 2006 and ran successfully until 2009. Along the way, he provided me with insights on marketing, hiring, staff retention, financial management, and scaling that allowed me to open my second store. I could not have become the number one CMB selling franchise in the country in 2007 without his wisdom and intelligence, despite all my degrees in education. And now that I have two sons - ages 5 and 8 years old, he mentors them.

His leadership is felt strongly behind bars and is also felt outside of prison with his family. The contributions he has made over the past 27 years show me that his reintroduction to society would be non-violent and would result in a benefit to his community and society as a whole – both socially and economically. One problem remains – throughout his imprisonment all appeals, post convictions, sentence modification requests have all been either denied or unanswered.

SB 123 is an important tool in making meaningful opportunities for release happen, as currently, incarcerated people in MD can only petition the Court for modification within 90 days of sentencing, severely limiting any potential sentence modifications. Maryland judges used to have the ability to review sentences, an important safety valve for extreme sentences, but this opportunity was eliminated with a rule change in 2004. Furthermore, for more than 25 years, Maryland's parole system was not available to people serving life with parole sentences. Now, the Governor has finally been removed from the parole process, but this is not enough to remedy decades of wrongful denials which contributed to the bloated prison system and its extreme racial disparities.

Given the tendency for people to age out of crime and the very low recidivism rate for other individuals released from decades-long sentences, this decision is unlikely to negatively impact public safety. For example, in the past 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. These individuals, 90 percent of whom are Black, spent an average of 40 years behind bars but could have been contributing to our communities decades earlier. We know many more men and women serving decades-long sentences who have worked hard, hoping for their chance to reenter and succeed in their communities.

For these reasons, I encourage you to vote **favorably with no additional amendments** on the **Maryland Second Look Act SB 123.**

Thank you for your consideration,

Ngozi Onunaku Lawal

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YEJ Clinic - Written Testimony in Support of SB 12

Uploaded by: Rebecca Walker-Keegan

Position: FWA

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

From: Rebecca Walker-Keegan, Student Attorney, Youth, Education and Justice Clinic, University of Maryland Francis King Carey School of Law (admitted to practice pursuant to Rule 19-220 of the Maryland Rules Governing Admission to the Bar)

Date: March 26, 2024

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.

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[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.

SB123_FWA_Amanuel .pdf
Uploaded by: Yanet Amanuel
Position: FWA

ACLU Maryland

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.

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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.

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[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:

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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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SB 123 Unfavorable by Joanna Mupanaduki MCVRC.pdf
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Position: UNF

SB 123

UNF Written Testimony by:

Joanna Mupanduki
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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 ....

sb123amend (3).pdf
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CIRCUIT COURT
JUDGE
BALTIMORE COUNTY
CHAIR

HON. RICHARD SANDY
CIRCUIT COURT
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MARYLAND JUDICIAL COUNCIL
LEGISLATIVE COMMITTEE

MEMORANDUM

TO:	House Judiciary Committee
FROM:	Legislative Committee Suzanne D. Pelz, Esq. 410-260-1523
RE:	Senate Bill 123 Criminal Procedure – Petition to Reduce Sentence
DATE:	March 22, 2024 (3/28)
POSITION:	Oppose

The Maryland Judiciary continues to oppose Senate Bill 123 as amended. The Judiciary generally opposes mandatory provisions that limit the courts' ability to control their dockets and limits judicial discretion. The decision to hold a hearing should be discretionary. This bill would intrude on the Judiciary's ability to manage its own affairs. In addition, the requirement of mandating multiple hearings on a petition would be an additional burden to the court's current docket structure. The procedures contemplated by the bill also duplicate and circumvent existing postconviction remedies available through the courts and available by way of parole.

cc. Hon. Jill Carter
Judicial Council
Legislative Committee
Kelley O'Connor

SB 123 Criminal Procedure-Postconviction Review-Mo

Uploaded by: Scott Shellenberger

Position: UNF

Bill Number: SB 123
Scott D. Shellenberger, State's Attorney for Baltimore County
Opposed

WRITTEN TESTIMONY OF SCOTT D. SHELLENBERGER,
STATE'S ATTORNEY FOR BALTIMORE COUNTY,
IN OPPOSITION OF SENATE BILL 123
CRIMINAL PROCEDURE – POSTCONVICTION REVIEW – MOTION FOR REDUCTION OF SENTENCE

I write in opposition to Senate Bill 123, Criminal Procedure – Postconviction Review – Moton for Reduction of Sentence that adds yet another post-conviction review to an already long list of post-conviction remedies that will force victims to court and prevents any finality to a criminal case.

Right after a jury or Judge finds a Defendant guilty, Maryland law currently permits numerous ways for a Defendant to challenge his conviction and sentence. Here are the current rights:

1. Motion for new trial
2. Motion to modify or reduce sentence (motion can be held for five years)
3. If the modification is based upon illegal sentence, fraud, mistake or irregularity, there is no time limit
4. Three Judge panel to reduce or modify
5. Appeal to the Court of Special Appeals
6. Ask for appeal to the Supreme Court
7. Post-Conviction (sometimes they get more than one)
8. Writ of Corum Nobis
9. Writ of Habeas Corpus
10. Writ of Actual Innocence
11. Motion to vacate judgement (passed last year)
12. Post-Conviction DNA testing
13. The parole system which can review a sentence more than once.

Based on the above list, this Bill will add yet another post-conviction remedy.

When does it end for victims of crime?
When can I look at the victim of a crime and say it is over?
It never ends and this bill will add one more event over which the Victim has no control.

The only thing different about this Bill is that the State's Attorney would have the power to request the reduction. Even when it is the State that is granted the power it is still a lack of finality for the victim and /or their family.

This type of power even when given to the State challenges the appropriateness of what a likely prior State's Attorney did and a prior judge imposed.

While the amended Bill limits the number of hearings to two it is still two to many.

I also appreciate not allowing these petitions to be filed in 1st degree rape cases, but why not murder cases as well.

The passage of this Bill is an attempt to replace the parole system which is designed for early release after years of serving a sentence.

I urge an unfavorable report.

2024-03-28 SB123.pdf
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March 28, 2024

TO: The Honorable Luke Clippinger
Chair, Judiciary Committee

FROM: Tiffany Clark
Chief Counsel, Legislative Affairs, Office of the Attorney General

RE: Senate Bill 123 Criminal Procedure– Petition to Reduce Sentence

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The Office of the Attorney General (OAG) writes in support of affording rehabilitated incarcerated individuals an opportunity to modify their sentence, which holds the potential to address mass incarceration and promote a more just criminal justice system. The OAG also believes that expanded eligibility for such "second looks" should be supported by the careful balancing of factors that enhance fairness and rehabilitation, while also weighing the importance of public safety and victims' rights. Indeed, it is our commitment to developing well-researched, comprehensive, and consensus strategies for eliminating mass incarceration that prompted Attorney General Anthony Brown to create the Maryland Equitable Justice Collaborative (MEJC), in partnership with the Public Defender of Maryland, academic partners from the University of Maryland system, and representatives from over 40 local government agencies and community organizations, including impacted individuals. Thus, while the OAG's endorsement of any particular "second look" approach is premature, we fully support the goal of providing mechanisms for the modification of sentences, and we applaud the General Assembly's efforts in this regard.

Mass incarceration is one of this country's most destructive symptoms of systemic racism. Maryland has the shameful distinction of locking up the largest percentage of Black men and women in the country—72.4%—even though Black people make up only 31.7% of the State's population.[1] Black men in particular are serving the longest sentences, making up nearly 8 in 10 Marylanders who are imprisoned ten years or more.[2] These disparities point to systemic issues within the criminal justice system that demand comprehensive reform.

One such reform currently being evaluated by MEJC are "second look" proposals. Data suggests that the recidivism rate for individuals released from sentences over 30 years is significantly lower than individuals released from sentences less than 30 years and that recidivism rates tend to decrease as individuals age.[3] The *Unger* case, a 2012 Supreme Court of Maryland Decision that resulted in the release of over 200 long-sentenced individuals, provides a valuable case study. The *Unger* cohort was comprised of individuals with an average age of 64 years and an average length of incarceration of 39 years. The *Unger* group experienced a 3% recidivism rate, a fraction of Maryland's overall recidivism rate of 40%.[4]

Consistent with these lessons, several bills have been introduced which increase opportunities for incarcerated individuals to modify their sentence. Senate Bill 123 allows an incarcerated individual who is serving a term of confinement to petition a court to reduce the sentence if the individual has served at least 20 years of the individual's term of confinement. Senate Bill 123 acknowledges incarcerated individuals' capacity for personal growth and rehabilitation, offering a chance for those who have demonstrated positive change to reintegrate into society.

Notably, the bill allows a court to modify a sentence of an incarcerated individual if it concludes that the individual is not a danger to public safety and that the interests of justice warrant a sentence modification. In its analysis, the court would consider a number of factors, including the nature of the crime, the history and characteristics of the individual, a statement from the victim or the victim's representative, evidence of rehabilitation, compliance with rules of the institution, participation in educational programs, family and community circumstances at the time of the offense, and health assessments conducted by a health professional.[5] As you weigh these eligibility factors, the OAG would urge the Committee to also consider whether the court's decisions should be subject to appellate review.[6]

We cannot solve the crisis of mass incarceration solely by preventing wrongful convictions, revisiting criminal penalties, or otherwise preventing individuals from being jailed. Longstanding inequities currently existing in our prisons demand that our efforts also include "second look" and other strategies for releasing rehabilitated individuals who no longer pose any

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[1] https://dpscs.maryland.gov/publicinfo/publications/pdfs/Inmate%20Characteristics%20Report%20FY%202022%20Q4.pdf; https://www.census.gov/quickfacts/fact/table/MD/RHI225222#RHI225222

[2] https://justicepolicy.org/wp-content/uploads/2022/02/Rethinking_Approaches_to_Over_Incarceration_MD.pdf

[3] https://dpscs.maryland.gov/publicinfo/publications/pdfs/2022_p157_DPSCS_Recividism%20Report.pdf

[4] https://goccp.maryland.gov/wp-content/uploads/Unger-Presentation-JRAOB.pdf

[5] SB 123 also instructs a court to factor in the individual's age at the time of the offense.

[6] We note, for example, that the law is silent as to whether the sentence modification decisions authorized by the Justice Reinvestment Act (2016) and the Juvenile Restoration Act (2022) are appealable, resulting in significant litigation in State courts.

threat to public safety with the support necessary to ensure their successful reentry into our communities.

cc: The Honorable Jill Carter
Judiciary Committee members

Sentence reduction - senate in house testimony -

Uploaded by: Lisae C Jordan

Position: INFO

MCASA
Maryland Coalition Against Sexual Assault

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Testimony Regarding Senate Bill 123
Lisae C. Jordan, Executive Director & Counsel
March 28, 2024

The Maryland Coalition Against Sexual Assault (MCASA) is a non-profit membership organization that includes the State's seventeen rape crisis centers, law enforcement, mental health and health care providers, attorneys, educators, survivors of sexual violence and other concerned individuals. MCASA includes the Sexual Assault Legal Institute (SALI), a statewide legal services provider for survivors of sexual assault. MCASA represents the unified voice and combined energy of all of its members working to eliminate sexual violence. If the Committee chooses to move forward on HB123, we urge the Judiciary Committee to amend Senate Bill 123 to ensure greater victim participation.

Senate Bill 123
Crime Victim Participation in Proceedings Regarding Sentence Reduction
Senate Bill 123 creates a process for reduction of sentences on motion after a person has served 20 years incarceration or when the person reaches age 60. A motion may be renewed every 3 years thereafter up to 2 times total if filed by the inmate and at any time if filed by the State's Attorney. Sentences may not be reduced for a violation of 1st degree rape (Criminal Law §3-303).

MCASA appreciates the provisions incorporating crime victim rights laws requiring notice to a victim. We note that Criminal Procedure §11-403 also clearly provides a victim with the right to be heard at a sentencing disposition hearing and that "sentencing disposition hearing" is defined to include "alteration of a sentence" so would encompass the hearing contemplated by HB123.

However, the crime victim rights provisions of SB123 are insufficient. It could inflict significant trauma on a rape victim to participate in person and, conversely, if a victim does not object to the reduction, it is onerous to require personal appearance. Additionally, it is important to provide the victim with the opportunity to comment not only on the impact of the crime, but also the impact of a potential early release.

We therefore urge the Committee to permit a victim to submit victim impact statement and to require the Court to consider all statements, including previously filed statements.

On page 3, amend lines 13-15 as follows:

(3) (I) NOTICE OF THE HEARING UNDER SUBSECTION (D) OF THIS SECTION SHALL BE GIVEN TO THE VICTIM OR THE VICTIM'S REPRESENTATIVE AS PROVIDED IN §§ 11–104 AND 11–503 OF THIS ARTICLE.

(II) A VICTIM MAY SUBMIT A VICTIM IMPACT STATEMENT REGARDING THE IMPACT OF THE CRIME AND THE PROPOSED SENTENCE REDUCTION;

(III) THE COURT SHALL CONSIDER ALL VICTIM IMPACT STATEMENTS FILED IN THE CASE OR PRESENTED TO THE COURT AT THE TIME OF SENTENCING OR UNDER THIS SUBSECTION.

The Maryland Coalition Against Sexual Assault urges the Judiciary Committee to Amend Senate Bill 123