

**House Bill 853 – Postconviction Review -- Procedure to Reduce Duration of
Sentence
(Maryland Second Look Act)
Judicial Proceedings Committee – March 25, 2025
FAVORABLE WITH AMENDMENTS**

Thank you for this opportunity to submit written testimony in support of HB 853 with amendments.

I am a long-time resident of Montgomery County who cares deeply about the harmful impact of mass incarceration on Maryland residents and the human, social, moral, and economic costs of allowing people who are demonstrably rehabilitated to languish in prison. Mass incarceration is cruel, unproductive, and very costly.¹

I support HB 853, as originally introduced, because I strongly believe that Maryland cannot ameliorate the harm caused by mass incarceration without providing meaningful opportunities for release to everyone serving excessive sentences. HR 853 would do this by providing a chance for anyone who has been incarcerated for at least 20 years to demonstrate to a judge that they have been rehabilitated and that their release would not impose a threat to public safety and would serve the interests of justice.

Because of the way Maryland has chosen to police, prosecute, sentence Marylanders and administer criminal justice, Maryland's prisons are increasingly populated by people who are serving long sentences, who are aging in prison, who are disproportionately Black, and who have no meaningful opportunities for release. About 23 percent of the prison population are serving life or life-equivalent sentences, 36 percent of whom are over 55 years of age and 76 percent of whom are Black.² Many of these people were sentenced as young men. In fact, Maryland leads the nation in sending young Black men to the longest prison terms.

Maryland should heed the advice of experts who say we are keeping people in prison too long. Leading legal associations agree that courts should be authorized to take a second look at sentences after 10 to 15 years of imprisonment for everyone.³ Decades of research tell us that

¹ See, for example, M. Nelson, S. Feineh, and M. Mapolski, "A New Paradigm for Sentencing in the United States," Vera Institute of Justice (February 2023), <https://vera-institute.files.svdcn.com/production/downloads/publications/Vera-Sentencing-Report-2023.pdf> ; National Research Council, The Growth of Incarceration in the United States: Exploring Causes and Consequences, the National Academies, <https://nap.nationalacademies.org/read/18613/chapter/2#11>

² A. Nellis and C. Barry, "A Matter of Life, The Scope and Impact of Life and Long Term Imprisonment in the United States," The Sentencing Project (2025), p. 6, 14, 18, <https://www.sentencingproject.org/app/uploads/2025/01/A-Matter-of-Life-The-Scope-and-Impact-of-Life-and-Long-Term-Imprisonment-in-the-United-States.pdf>

³ B. Feldman, "The Second Look Movement: A Review of the Nation's Sentence Review Laws", The Sentencing Project (May 2024), p. 9-10, [Second-Look-Movement.pdf](#); see also Principle 6 in a resolution adopted by the American Bar Association in 2022, which recommends a second look after certain designated times. [22A604 \(americanbar.org\)](#)

people age out of crime and that formerly incarcerated older adults are the least likely to reoffend.⁴ We know that criminal activity is primarily a young person's game.⁵ 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 18-20.⁶ Keeping people behind bars whose incarceration serves no public safety benefit comes at great cost to families, communities, and the state.

With the enactment of the Juvenile Restoration Act (JRA), Maryland took an important step forward to remediate the injustices caused by past practices and policies and to recognize the value and power of redemption. The JRA has provided a chance to minors who have served more than 20 years to demonstrate to a judge they have been rehabilitated, and that release would not pose a threat to public safety and would serve the public interest in justice. Our experience to date has shown that the courts can identify individuals who have been rehabilitated and who can be safely released.⁷

Providing a chance for release for more individuals would have a profound positive impact on people outside of prison walls and communities. Legislators should not underestimate the human, social, and economic benefits of enabling individuals who have been behind the walls for decades to reunite with their families and reintegrate into their communities.⁸ Families, particularly the children of incarcerated individuals, suffer incalculable harm when incarcerated family members cannot contribute economically or emotionally to the well-being of the family. Long sentences exacerbate these harms. Moreover, this cost has been borne disproportionately

⁴E. Widra, "The aging prison population: Causes, costs, and consequences," Prison Policy Initiative (August 2, 2023), <https://www.prisonpolicy.org/blog/2023/08/02/aging/>; "Old Behind Bars; The Aging Prison Population in the United States," Human Rights Watch, (January 26, 2012), <https://www.hrw.org/report/2012/01/28/old-behind-bars/aging-prison-population-united-states>; N. Ghandnoosh and K. Budd, "Incarceration & Crime: A Weak Relationship," The Sentencing Project (June 2024), <https://www.sentencingproject.org/reports/incarceration-and-crime-a-weak-relationship/>

⁵ Fetting, 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>

⁶The 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>

⁷For 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

⁸ See discussion of the social and economic costs of incarceration in B. Gifford, "Prison Crime and the Economics of Incarceration," Stanford Law Review, Vol 71 (January 2019), p. 90-93, <https://review.law.stanford.edu/wp-content/uploads/sites/3/2019/01/Gifford-71-Stan.-L.-Rev.-71-2019.pdf>; M. McLaughlin, C. Pettus-Davis, et al, "The Economic Burden of Incarceration in the United States," the Institute for Justice Research and Development, Florida State University, (October 2016), https://www.prisonpolicy.org/scans/iajre/the_economic_burden_of_incarceration_in_the_us.pdf

by Black families. Returning citizens would also have the chance to help heal their communities and contribute as tax-paying and productive members of society. I have met and heard the stories of so many previously incarcerated individuals who are now giving back to their communities in profound ways, including serving as messengers to guide at-risk youth and working to promote public safety.

Disappointingly, HB 853, as amended, would extend the opportunities provided by the JRA to a much smaller population than the bill as originally introduced. While a case can be made for focusing on emerging adults because of their similarities to youth offenders, I believe the exclusion of people who were sentenced to life without parole (LWOP) from the opportunities provided by HB 853 is not defensible. **I urge this Committee to amend HR 853 to extend eligibility to those sentenced to LWOP for the following reasons.**

A LWOP sentence should not be regarded as a stand-in for the seriousness of the offense. It is simply wrong to treat individuals with this sentence as if they belong to group determined to be permanently incorrigible, by definition, or otherwise unworthy because of the seriousness of or the nature of the offense you think they have committed. Notably, there are no specific criteria in Maryland that govern when a LWOP sentence should be given. The decision to seek this extreme sentence is left to the discretion of the prosecutor and there is considerable variation among prosecutors and jurisdictions in the use of this sentence. **Consequently, there are people who committed the same offense who are sentenced to die in prison because of a LWOP sentence in one county and who are eligible for parole in another.**

In addition, prosecutors can seek the LWOP penalty for a conviction under the felony murder doctrine, without having to prove intent to murder or premeditation. This means individuals can end up being sentenced to LWOP for a crime-- first-degree murder--they did not, in fact, commit.⁹ Under Maryland's felony murder rule, individuals who did not intend to kill anyone, who did not anticipate that someone would be killed, or who did not participate in the killing can be charged and convicted of first-degree murder if someone dies in the perpetration of a felony. **People sentenced to LWOP under a legal doctrine that is widely regarded as outdated and unfair should certainly not be treated as less worthy of a second look than lifers who are eligible for parole.**

Justice demands looking at people serving LWOP as individuals who have different characteristics and backgrounds and who have behaved and improved themselves in different ways during the decades they have been incarcerated. There is no basis for assuming individuals with LWOP are less capable of rehabilitation or of preparing themselves to make positive contributions to their communities if released than others who would be eligible for a second look. There are many examples of people serving LWOP sentences who are consumed with remorse, who have completely transformed themselves, and who are working

⁹ N. Ghandnoosh, E. Stammen, and C. Budaci, "Felony Murder: An On-Ramp for Extreme Sentencing", The Sentencing Project (March 2022, updated May 2024), <https://www.sentencingproject.org/app/uploads/2024/05/Felony-Murder-An-On-Ramp-for-Extreme-Sentencing.pdf>

hard to help others behind the walls, despite the prospect of dying in prison.¹⁰ It is inhumane to ignore their humanity.

Finally, one can question the overall appropriateness of sentencing emerging adults to die in prison. Experts have argued that like juveniles, the brains of individuals under the age of 25 are not fully developed, making them less culpable because of their impulsiveness, immature decision-making, greater risk-taking, and lack of long-term thinking.¹¹ It was the scientific evidence on brain development that persuaded the General Assembly to acknowledge the inhumanity of sending youth to die in prison and to completely abolish LWOP for juveniles in the JRA. **That same neurobiological research supports affording individuals who were sentenced to LWOP as emerging adults at least a chance for a second look.** Importantly, a disproportionate number of individuals with these excessive sentences have had adverse childhood experiences that may have been traumatizing, that probably were not considered during the original sentencing, and that a judge may want to consider for purposes of resentencing.

Giving more people a second look would be a powerful force in changing both behavior and culture in our prisons, a force that would be enhanced by the inclusion of people serving LWOP sentences. The value of giving people hope cannot be overestimated. Giving prisoners serving excessive sentences a chance for resentencing previously unavailable would provide a powerful incentive for individuals to remain steadfast in their efforts to improve themselves, especially those who have been previously told they are beyond redemption. Potential changes in the motivation, behavior, and attitude of those serving the longest sentences could also have a rippling effect throughout the system and work to transform prison culture. Having more hopeful prisoners could correspondingly improve the climate and working conditions for prison guards.

The very real pain experienced by crime survivors should not be used to forestall the enactment of policies that can help restore individuals, families, and communities that have been harmed by excessive victimization and incarceration. The needs and desires of victims matter greatly, but, importantly, they are not a monolithic group. Some may value retribution above all, but national survey results indicate crime survivors overwhelmingly prefer approaches to justice that focus on rehabilitation over punishment.¹² Giving victims notice of the resentencing proceeding and an opportunity to decide whether or not they want to provide input, as is the case with the Second Look Act, restores autonomy to victims who feel the system does not always recognize their needs or desires.

This is the time to reap all the benefits – social, human, and fiscal—of giving as many people as possible who are serving an excessive sentence a second look. Rewarding an

¹⁰ “‘I Just Want to Give Back’ – The Reintegration of People Sentenced to Life Without Parole,” Human Rights Watch (2023), https://www.hrw.org/sites/default/files/media_2023/06/usa_lwop0623.pdf

¹¹A. Nellis and D. Brown, “Still Cruel and Unusual: Extreme Sentences for Youth and Emerging Adults,” The Sentencing Project (August 8, 2024), https://www.hrw.org/sites/default/files/media_2023/06/usa_lwop0623.pdf

¹²“The Right to Heal; “Crime Survivors Speak, A National Survey of Victims’ Views on Safety and Justice “ (2022), p. 27-28, 36; 2024 National Survey, <https://asj.allianceforsafetyandjustice.org/wp-content/uploads/2024/09/CrimeSurvivorsSpeak2024.pdf>

individual's personal transformation is both an act of humanity and justice. Providing a meaningful opportunity for release from prison to those serving long sentences is a cost-effective strategy in support of public safety and a meaningful way to allow people whose potential is not being fully realized behind the walls to ultimately make positive contributions to their community.

For these reasons, I urge a Favorable Report with Amendments for HB 853.

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