



Testimony for the Senate Judicial Proceedings Committee

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HB 853 – Criminal Procedure – Petition to Reduce Sentence (Maryland Second Look Act)

FAVORABLE WITH AMENDMENTS

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The ACLU of Maryland supports HB 853, which would allow people serving extreme sentences who committed crimes between the ages of 18 to 25 and have served at least 20 years of their sentence the opportunity to petition the court to modify or reduce their sentence based on their demonstrated rehabilitation. The bill allows a circuit court judge to modify a sentence if it is in the interests of justice and the petitioner poses no danger to the public, based on the court's consideration of several factors that include "the nature of the offense" and any statement offered by a victim or victim's representative. However, as amended, the bill excludes individuals sentenced to life without parole and those classified as sex offenders under §11-701 of the Criminal Procedure Article.

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, and 76 percent of those serving life sentences, which is more than twice the national average.¹ 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.² Additionally, Maryland ranks among the states with the highest rates of life sentences for women, with more than one in six women in prison serving life.³

¹ See demographic data compiled by the Prison Policy Initiative, <https://www.prisonpolicy.org/profiles/MD.html#visuals>; Barry, Ashley Nellis and Celeste. "A Matter of Life: The Scope and Impact of Life and Long Term Imprisonment in the United States." *The Sentencing Project*, 17 Jan. 2025, www.sentencingproject.org/reports/a-matter-of-life-the-scope-and-impact-of-life-and-long-term-imprisonment-in-the-united-states/.

² "Rethinking Approaches to over Incarceration of Black Young Adults in Maryland." *Justice Policy Institute*, 28 Oct. 2021, <https://justicepolicy.org/research/policy-briefs-2019-rethinking-approaches-to-over-incarceration-of-black-young-adults-in-maryland/>.

³ Barry, Ashley Nellis and Celeste. "A Matter of Life: The Scope and Impact of Life and Long Term Imprisonment in the United States." *The Sentencing Project*, 17 Jan. 2025, www.sentencingproject.org/reports/a-matter-of-life-the-scope-and-impact-of-life-and-long-term-imprisonment-in-the-united-states/.

The status quo does not afford meaningful opportunities for release for people serving extreme sentences

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, Maryland’s prison system is filled with Black people who were excessively sentenced or denied parole based on the “superpredator” mythology. 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 nor provide relief to those whose sentence structure may prevent timely parole consideration.

For many years, Maryland judges retained a broader ability to review sentences, ensuring an important safety valve for extreme sentences. Unfortunately, ever since these revisory powers were limited by a rule change in 2004⁴, the main way for someone in Maryland serving an extreme sentence to have their sentence reviewed is by challenging the constitutionality of the conviction itself. There is currently no statutory mechanism for their sentence to be changed solely because they have been rehabilitated, or because the sentence was excessive, disproportionate, or biased. Thus, the current legal framework incentivizes people serving extreme sentences to challenge the conviction and avoid ever conceding guilt because doing so might jeopardize any future chance of release. 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 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.

Parole is not enough

Parole is not available to people before they reach eligibility or to those who are never eligible. For example, someone with an extreme sentence may not be eligible for parole for 40 years—not because they are more culpable, but because of how the sentence was imposed. And unlike court hearings, parole is an administrative proceeding, where people have very limited due process guarantees and no right to access legal representation to prepare a strong presentation.

The purpose of the Maryland Second Look Act is to establish an opportunity for people’s sentences to be reconsidered based on their demonstrated rehabilitation. The parole commission does not have the authority to change any sentence and is generally bound by the original conviction and sentencing.

⁴ Court’s Standing Committee on Rules of Practice and Procedure. “RULES ORDER.” Maryland Courts, COURT OF APPEALS OF MARYLAND, 2004, www.courts.state.md.us/sites/default/files/import/rules/rodocs/ro158.pdf.

Furthermore, judges are especially well positioned to review sentences that the court was responsible for imposing. Unlike parole, petitioners have the opportunity to present evidence and witnesses with the assistance of counsel, giving judges a better understanding of the factors that led to the individual's incarceration and the likelihood that they can safely return to the community.

HB 853 will lead to safer prison environments and cost savings

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.⁵ This in turn lowers the threat of violence and other risks and challenges faced by people living and working inside correctional facilities, including officers and staff. Maryland spends over \$59,616 annually per incarcerated individual, with costs rising significantly for aging prisoners due to increased healthcare needs.⁶ By creating a pathway for sentence reconsideration for those who pose little to no public safety risk, Senate Bill 291 allows the state to reallocate funds toward initiatives that enhance public safety, such as reentry programs and mental health services. For example, an analysis of the release of over 200 individuals under the *Unger* decision projected state savings of \$185 million.⁷

People age out of crime

There is a large body of evidence showing a rapidly declining likelihood to commit violent crimes (including murder) with age. Dozens of studies have found that the typical ages at which people are most likely to engage in violence fall dramatically beginning in one's mid-to late-twenties.⁸ This is consistent with understandings of psychosocial development in emerging adults.

Additionally, recent Bureau of Justice Statistics studies on 400,000 individuals released in 30 states in 2005 found that those convicted of violent offenses are less likely to be re-arrested within three years for any offense compared to their nonviolent counterparts.⁹ This underscores the potential for rehabilitation and

⁵ *Stouffer v. Staton*, 152 Md. App. 586, 592 (2003).

⁶ HB0209 2022-01-21 Testimony to House Judiciary, http://mgaleg.maryland.gov/cmte_testimony/2022/jud/1BxSiD13nGr4LdKt2m4dYOa4Hw2nboPrP.pdf.

⁷ "Building on the Unger Experience: A Cost-Benefit Analysis of Releasing Aging Prisoners." OSI Baltimore, JFA Institute and The Pandit Group for Open Society Institute Baltimore, Jan. 2019, <https://www.osibaltimore.org/wp-content/uploads/2019/01/Unger-Cost-Benefit3.pdf>

⁸ Ashley Nellis, Ph.D. and Niki Monazzam. "Left to Die in Prison: Emerging Adults 25 and Younger Sentenced to Life without Parole." The Sentencing Project, 15 May 2024, www.sentencingproject.org/reports/left-to-die-in-prison-emerging-adults-25-and-younger-sentenced-to-life-without-parole/.

⁹ Alper, Mariel, and Joshua Markman. "2018 Update on Prisoner Recidivism: A 9- Year Follow-up Period (2005-2014)." BJS, U.S. Department of Justice Office of Justice Programs Bureau of Justice Statistics, May 2018, <http://bjs.ojp.gov/content/pub/pdf/18upr9yfup0514.pdf>.

successful community reintegration among individuals who have committed violent offenses.

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 in *Unger* that improper jury instructions invalidated the life with parole sentences of 235 people, 96% have remained in the community without incident.¹⁰ 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.¹¹

The ACLU of Maryland recommends the following amendments to ensure the law does not impose categorical exclusions based solely on factors such as age or type of offense.

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: First, we urge the committee to strip the amendment that excludes those convicted of Life Without Parole from being eligible for a second look. The Juvenile Restoration Act (JRA), which HB 853 builds upon, banned Life without Parole (LWOP) for minors sentenced as adults and gave individuals convicted as adults for crimes committed under 18 the chance to request a sentence reduction after serving 20 years, including those originally sentenced to LWOP as minors. Excluding LWOP from the Second Look process for emerging adults while allowing it under the JRA just doesn't make sense. Research consistently shows that brain development continues into the mid-to-late 20s, with the prefrontal cortex, the part responsible for decision-making, among the last to fully mature. Emerging adults still share many of the same risk factors as youth, such as increased impulsivity, greater risk-taking, poor decision-making, and difficulty with long-term thinking.

Furthermore, bias in the criminal legal system against indigent defendants and Black people has been widely documented at every stage. These disparities are evident when examining life without parole (LWOP) sentences, specifically. Nationally, Black people are significantly overrepresented among

¹⁰ “The Ungers, 5 Years and Counting: A Case Study in Safely Reducing Long Prison Terms and Saving Taxpayer Dollars.” Justice Policy Institute, 19 Jan. 2024, <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/>

¹¹ Per unpublished data from the Maryland Office of the Public Defender compiled in November 2024.

LWOP sentence servers.¹² In Maryland, an estimated 69 percent¹³ of those serving LWOP sentences are Black, despite Black people making up roughly 30 percent of Maryland's population.¹⁴ These racial disparities result from disparate treatment of Black people at every stage of the criminal legal system, including stops and searches, arrests, prosecutions and plea negotiations, trials, and sentencing. In Maryland, there is no specific criteria for when LWOP sentences should be handed down. Rather, it is at the discretion of prosecutors to seek these sentences. The degree of discretion in LWOP sentencing has resulted in a situation where the severity of one's sentence is highly dependent on the individual proclivities of prosecutors which vary from jurisdiction to jurisdiction. For example, just as it did with the death penalty, Baltimore County imposes LWOP at an estimated higher rate than other jurisdictions.¹⁵ When examining LWOP sentences compared to total population, there are more people serving LWOP sentences as a result of Eastern Shore sentences than areas with historically higher murder rates.¹⁶

For eligible individuals who may have faced bias by law enforcement, the courts, or corrections, the Second Look Act 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.

Secondly, we urge the Committee to strip the amendment that bars petitions by anyone serving a sentence for a conviction requiring sex offender registration as defined in 11-1701 of the Criminal Procedure Article. Such a categorical exclusion, without room for considering any mitigating facts or an individual's demonstrated rehabilitation, severely undermines the spirit of this bill. This category of convictions covers an extremely wide spectrum of offenses, including fourth-degree offenses and other convictions requiring registration for 15 years as tier I offenses, all the way up to the wildly different tier III offenses requiring lifetime registration. These differences necessitate individual consideration of each circumstance rather than wholesale preemptive exclusion.

Providing an opportunity for consideration in these cases would in no way require release or diminish the salience of facts demonstrating severe ongoing

¹² "Written Submission of the American Civil Liberties Union on Racial Disparities in Sentencing." ACLU, American Civil Liberties Union, 27 Oct. 2014, www.aclu.org/sites/default/files/assets/141027_iachr_racial_disparities_aclu_submission_0.pdf.

¹³ Per estimates compiled by the Prison Policy Initiative based on data from the US Census Bureau, the Bureau of Justice Statistics, and unpublished data provided by the Maryland Second Look Coalition.

¹⁴ See <https://business.maryland.gov/plan-your-move/demographics/>.

¹⁵ Per unpublished Maryland Division of Corrections data provided to Prison Policy Initiative by the Maryland Second Look Coalition.

¹⁶ Per unpublished Maryland Division of Corrections data provided to Prison Policy Initiative by the Maryland Second Look Coalition.

harm, as 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 conviction outweighs any demonstrated rehabilitation, this will be reflected in the judge's decision.

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 the foregoing reasons, we urge a favorable report on HB 853, with the aforementioned amendments.

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