UNIVERSITY of MARYLAND
FRANCIS KING CAREY
SCHOOL OF LAW
GIBSON-BANKS CENTER
FOR RACE AND THE LAW

500 West Baltimore Street
Baltimore, MD 21201
410 706 7214

Testimony Concerning House Bill 853
Postconviction Review – Procedure to Reduce Duration of Sentence (Maryland Second Look Act)
Position: Favorable with Amendments

To: Senator William C. Smith, Jr., Chair
Senator Jeff Waldstreicher, Vice Chair
Members of the Judicial Proceedings Committee

From: Brandon Miller, Erek L. Barron Fellow, Monique L. Dixon, Executive Director, and Michael Pinard, Faculty Director, Gibson-Banks Center for Race and the Law

Date: March 21, 2025

On behalf of the Gibson-Banks Center for Race and the Law ("Gibson-Banks Center" or "Center") at the University of Maryland Francis King Carey School of Law,[1] we appreciate the opportunity to submit testimony in support of House Bill 853 ("HB 853"), which would, among other things, allow certain individuals who are incarcerated and have served at least 20 years of their sentence to file a motion with a court to reduce the sentence. We urge the committee to issue a favorable with amendments report on HB 853. Specifically, we urge you to restore the language of HB 853 as originally introduced this legislative session, which would, among other things, allow more individuals who have served more than 20 years to petition a court for a reduction of sentence. With these amendments, the bill would also: (1) help to address mass incarceration in Maryland, which disproportionately burdens Black people with long prison sentences, and open pathways for individuals' release from prisons; and (2) contribute to building safe communities.

The Gibson-Banks Center works collaboratively to re-imagine and transform institutions and systems of racial inequality, marginalization, and oppression. Through education and engagement, advocacy, and research, the Center examines and addresses racial inequality, including the intersection of race with sex or disability, and advances racial justice in a variety of issue areas, including the criminal legal system. The Gibson-Banks Center has served as a member of the Maryland Equitable Justice Collaborative (MEJC). Led by Maryland Attorney General Anthony Brown and Maryland Public Defender Natasha Dartigue, the MEJC aims to

[1] This written testimony is submitted on behalf of the Gibson-Banks Center and not on behalf of the University of Maryland Francis King Carey School of Law or the University of Maryland, Baltimore.

research, develop, and recommend reforms that reduce the racial disparities in Maryland's incarcerated population. On March 13, 2025, the MEJC released a report that recommended the expansion of second look laws in Maryland, in addition to 17 other measures, as an important step toward ending mass incarceration.[2]

HB 853 Both Helps to Address Mass Incarceration in Maryland, Which Disproportionately Burdens Black People with Long Prison Sentences, and Open Pathways for Individuals' Release from Prisons

1. Addressing Racially Disproportionate Long Prison Sentences

Long prison sentences are a cornerstone of the system of racialized mass incarceration in Maryland. Over 70% of people in Maryland prisons and almost 8 out of 10 people who have served 10 years or more, are Black, even though they comprise only 30% of the state's population.[3] Maryland has the highest racial disparity among Black persons who are in prison and among those serving long sentences than any state in the country.[4] Of those individuals serving the longest sentences, 41% are Black men who were young adults (under age 25) when they were sentenced.[5] Accordingly, Black people in Maryland receive the harshest sentences and languish in prison for the longest periods of time. For example, Black people overwhelmingly comprise the population of people serving life sentences and sentences reaching 50 years or longer.[6]

In Maryland, and throughout the United States, the impulses and intuitions which drive the current reliance on long prison sentences are rooted in a racially repressive paradigm of criminal justice. The tough-on-crime policy agenda which took hold decades ago has conditioned the public and decision-makers to view long prison terms as indispensable for protecting society from violent individuals. Since its origin as a strategy for combatting the civil rights era's advances in racial equality, the tough-on-crime paradigm has relied on racially charged notions that Black people were violent and lawless, particularly those who engaged in civil disobedience to combat racial injustices.[7] This policy agenda advanced further with a school of criminological

[2] MARYLAND EQUITABLE JUSTICE COLLABORATIVE, BREAKING THE 71%: A PATH TOWARD RACIAL EQUITY IN THE CRIMINAL LEGAL SYSTEM 10 (2025), https://www.marylandattorneygeneral.gov/reports/MEJC_Report.pdf.
[3] *Id.* at 7; JUSTICE POLICY INSTITUTE, RETHINKING APPROACHES TO OVER INCARCERATION OF BLACK YOUNG ADULTS IN MARYLAND 3, 7-8 (2019), https://justicepolicy.org/wp-content/uploads/justicepolicy/documents/Rethinking_Approaches_to_Over_Incarceration_MD.pdf.
[4] Justice Policy Institute, *supra* note 3, at 3, 7.
[5] *Id.* at 7.
[6] THE SENTENCING PROJECT, A MATTER OF LIFE: THE SCOPE AND IMPACT OF LIFE AND LONG TERM IMPRISONMENT IN THE UNITED STATES 14 (2025), 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.
[7] *See* Vesla Mae Weaver, *Frontlash: Race and the Development of Punitive Crime Policy,* 21 STUDIES IN AMERICAN POLITICAL DEVELOPMENT 230, 247-253 (2007), https://www.cambridge.org/core/services/aop-cambridge-core/content/view/9744286F944F1A250B94CD3AFB1A6021/S0898588X07000211a.pdf/frontlash-race-and-the-development-of-punitive-crime-policy.pdf.

research invested in the representation of Black people and other people of color as prone to crime due to biological inferiority.[8]

Also, the influential "superpredator" theory put forth by John Dilulio Jr. in the mid-1990s (when he was a professor at Princeton University), and later abandoned by him, is a prominent example of how racialized concepts shape criminal justice outcomes and become internalized by decision-makers such as prosecutors and judges.[9] These racialized discourses also led to the passage of tough-on-crime laws, such as the federal Violent Crime Control and Law Enforcement Act of 1994, which included mandatory sentences for certain crimes.[10]

Fortunately, efforts are underway at the federal and state levels to end mass incarceration and racial disparities resulting from long prison sentences.[11] HB 853 would add Maryland to these efforts. Because racial disparities in prison populations increase with sentence length,[12] HB 853, which would allow a person who has served at least 20 years to file a motion with a court to reduce the sentence, would thereby help reduce racial disparities in Maryland prisons.[13]

Additionally, HB 853 is part of a burgeoning movement in the United States to implement second look laws to address the ravages of mass incarceration and to provide a meaningful mechanism of release for individuals who have aged, accomplished, and rehabilitated over decades. The American Law Institute, a nonpartisan organization of legal experts dedicated to clarifying and modernizing the law, endorses second look legislation, such as HB 853, reasoning that punishments which may appear justified in one era, may later be revealed as unjust.[14] HB 853 could help ensure that sentences whose severity reflects the influence of a previous era's racialized discourses are subject to the scrutiny of a reviewing court tasked with considering a holistic assessment of the individual's progress over the course of at

---

[8] *See* JEROME G. MILLER, SEARCH AND DESTROY: AFRICAN AMERICAN MALES IN THE CRIMINAL JUSTICE SYSTEM 178-216 (1996) (discussing research that provided genetic explanations for crime that insinuate Black people are innately crime-prone, such as the 1985 book *Crime and Human Nature* by James Q. Wilson and Richard Herrnstein).

[9] *See, e.g.,* THE SENTENCING PROJECT, A SECOND LOOK AT INJUSTICE 13 (2021) (quoting a Chicago attorney who explained that the "superpredator" term "had a profound effect on the way in which judges and prosecutors viewed my clients."), https://www.sentencingproject.org/app/uploads/2022/10/A-Second-Look-at-Injustice.pdf; Carroll Bogert & Lynnell Hancock, *The Media Myth That Demonized a Generation of Black Youth,* THE MARSHALL PROJECT (Nov. 20, 2020), https://www.themarshallproject.org/2020/11/20/superpredator-the-media-myth-that-demonized-a-generation-of-black-youth.

[10] Violent Crime Control and Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796 (Sept. 13, 1994).

[11] *See, e.g.,* Jessie Brenner & Stephanie Wylie, *Analyzing the First Step Act's Impact on Criminal Justice,* BRENNAN CENTER FOR JUSTICE (Aug. 20, 2024), https://www.brennancenter.org/our-work/analysis-opinion/analyzing-first-step-acts-impact-criminal-justice (discussing the First Step Act of 2018, which reduced mandatory minimums for certain drug offenses and allowed federal prisoners to file compassionate release petitions on their own behalf, among other things).

[12] THE SENTENCING PROJECT, THE SECOND LOOK MOVEMENT: A REVIEW OF THE NATION'S SENTENCE REVIEW LAWS 10 (2024), https://www.sentencingproject.org/app/uploads/2024/05/Second-Look-Movement.pdf.

[13] NATIONAL ACADEMIES OF SCIENCES, ENGINEERING, AND MEDICINE, REDUCING RACIAL INEQUALITY IN CRIME AND JUSTICE: SCIENCE, PRACTICE, AND POLICY 308 (2023), https://nap.nationalacademies.org/read/26705/chapter/10#308 (stating that second look provisions for long sentences could reduce racial disparities in long prison sentences).

[14] MODEL PENAL CODE: SENTENCING § 305.6(b) and 564-70 (Proposed Final Draft Apr. 10, 2017), https://robinainstitute.umn.edu/sites/robinainstitute.umn.edu/files/2022-02/mpcs_proposed_final_draft.pdf.

least 20 years. Maryland judges who review sentences, confronted with evidence of petitioning individuals' growth, change, and accomplishment, would be better positioned to reassess many extreme sentences imposed disproportionately on Black people and other people of color, and reconsider these sentences in light of the petitioning individuals' progress as well as the interests of justice and public safety.

2. Opening Pathways to Individuals' Release from Prisons

HB 853 offers a new pathway for people in Maryland's prisons to petition the sentencing court for a reduction of the sentence. Under current court rules, a person who has been sentenced to a term of years may file a motion requesting a sentence modification no longer than 90 days after the sentence was imposed.[15] The Court then has "revisory power" over the sentence for five years—after five years, the sentence cannot be modified.[16] Maryland courts' limited ability to revise sentences has deprived individuals in state prisons of the opportunity to return to court decades later and request a sentence modification based on demonstrated rehabilitation. Instead, persons who are incarcerated rely on the Maryland parole system, which has a track record of not granting parole, particularly for older individuals serving long sentences.

The problem of widespread and racially disproportionate long prison sentences in Maryland reproduces itself partly through the decline of back-end release mechanisms such as parole. Maryland's parole system is particularly restrictive as applied to older individuals and individuals serving the longest sentences. While between 2017 and 2021 the average parole grant rate was 39.6 percent, grant rates decreased sharply as time served and the petitioner's age increased.[17] For example, the grant rate for individuals over age 60 was just 28 percent and the grant rate for individuals who served over 50 years was a dismal 5.6 percent.[18]

Withholding parole from eligible individuals who are aging and people with longer prison terms leads to unnecessarily long sentences that waste taxpayer dollars on warehousing individuals who have aged out of crime and are no longer a risk to public safety.[19] HB 853 would in effect expand the court's role as a forum for individuals to make their case for their rehabilitation and transformation.

HB 853 Will Contribute to Building Safe Communities

HB 853 is also needed as a step toward repairing the harm that mass incarceration wreaks in Black and other impacted communities. Each year, Maryland taxpayers pay around $60,000 per

[15] MD R. CRIM. CAUSES, RULE 4-345(e)(1) (2023).
[16] *Id.*
[17] JUSTICE POLICY INSTITUTE, SAFE AT HOME: IMPROVING MARYLAND'S PAROLE RELEASE DECISION MAKING 16 (2023), https://justicepolicy.org/wp-content/uploads/2023/05/Safe-At-Home.pdf.
[18] *Id*. at 17.
[19] THE SENTENCING PROJECT, A SECOND LOOK AT INJUSTICE 10 (2021) (discussing the concept of the "age-crime curve" and explaining that "[a]ging out of crime is a key reason why people who have been imprisoned for violent crimes—who generally serve longer sentences—are the least likely to recidivate when released from prison."), https://www.sentencingproject.org/app/uploads/2022/10/A-Second-Look-at-Injustice.pdf.

incarcerated individual.[20] HB 853 holds the promise of releasing people from Maryland prisons, thereby saving costs that could be devoted to areas such as housing, education, employment, and public health. HB 853 would contribute to restoring Maryland communities that currently suffer the effects of a bloated and self-perpetuating carceral system.

Moreover, judges' decisions to release individuals would have more immediate, on the ground effects that would promote public safety. HB 853 would help reunite families and the networks of friends and other loved ones divided by incarceration. It would reintegrate thoughtful, skilled, and talented individuals who would be able to contribute to their communities. We need look no further than the Maryland Juvenile Restoration Act[21] and the *Unger v. State of Maryland*[22] decision for proof that citizens returning from long prison sentences are invaluable assets to their communities. The remarkably low recidivism rates of decarceration efforts in Maryland is further evidence that reducing the prison population is consistent with public safety and community welfare,[23] and counsels support for HB 853 as a matter of wise, and racially equitable, public policy.

A serious commitment to ending mass incarceration requires tackling the problem of long prison sentences. In recent years, Maryland has made major progress toward shifting away from punitive and counterproductive criminal justice policy with legislation such as the Justice Reinvestment Act[24] and the Juvenile Restoration Act. However, the system of mass incarceration will remain intact unless second chances are extended beyond persons serving sentences for nonviolent drug crimes and for crimes they committed when they were children or youth. In expanding opportunities for individuals to access second chances, HB 853, particularly the version of the bill that was originally introduced, prior to the current amendments, represents a

---

[20] Fiscal and Policy Note for HB 118, at 5, 2024 Leg., 446th Sess. (Md. 2024), https://mgaleg.maryland.gov/2024RS/fnotes/bil_0008/hb0118.pdf ("[C]urrently, the average total cost to house a State incarcerated individual in a Division of Correction facility, including overhead, is estimated at $5,110 per month.").

[21] Md. Code Ann., Crim. Proc. § 8-110 (permitting people who have been imprisoned at least 20 years for crimes committed when they were minors to file a motion to reduce their sentence).

[22] In *Unger v. State*, 48 A.3d 242 (Md. 2012), Maryland's highest court made retroactive a 1980 decision that had invalidated improper jury instructions, leading to new trials and the release of 200 older individuals from Maryland prisons, the vast majority of whom were serving life with parole sentences. *See* Michael A. Millemann, Jennifer Elisa Chapman, & Samuel Feder, *Releasing Older Prisoners Convicted of Violent Crimes: The Unger Story*, 21 U. MD. L. J. OF RACE, RELIGION, GENDER & CLASS 185 (2021), U of Maryland Legal Studies Research Paper No. 2022-03, https://ssrn.com/abstract=4069563.

[23] *See, e.g.*, THE SENTENCING PROJECT, *Second Look Laws Are an Effective Solution to Reconsider Extreme Sentences Amidst Failing Parole Systems*, 2 (Mar. 21, 2024) ("Maryland's real-life experiment of releasing people from medium and maximum-security prisons, who had been incarcerated for decades for the most serious crimes, demonstrates that people age out of crime and can be safely released back into our communities. As of March 2024, the recidivism rate for new convictions is 3.5% for all 200 individuals released under *Unger v. State.*"), https://www.sentencingproject.org/fact-sheet/second-look-laws-are-an-effective-solution-to-reconsider-extreme-sentences-amidst-failing-parole-systems/.

[24] The Justice Reinvestment Act, S.B. 1005, 2016 Leg., 436th Sess. (Md. 2016), https://mgaleg.maryland.gov/2016RS/chapters_noln/Ch_515_sb1005E.pdf. The Act is a package of criminal justice reforms aimed at addressing the incarceration rate of people convicted of nonviolent offenses and the disproportionate punishments for technical violations, among other things. Specific measures include restricting mandatory minimum sentencing for certain drug crimes and establishing a process for administrative release for certain individuals convicted of nonviolent offenses.

critical mechanism for reducing mass incarceration, advancing racial justice, and building safer communities. For these reasons, we ask for a favorable with amendments report on HB 853.