

## F.W.A. SB 272 - Sentencing - Annual Report

MARYLAND ALLIANCE FOR JUSTICE REFORM  
Working to end unnecessary incarceration and build strong, safe communities



TO: Chair Will Smith and Judicial Proceedings Committee

FROM: Phil Caroom, MAJR Executive Committee

DATE: February 6, 2020

Md. Alliance for Justice Reform ([MAJR-www.ma4jr.org](http://www.ma4jr.org)) supports the central concept of SB 272, calling for availability of reports as to criminal sentencing as to crimes of violence.

However, MAJR urges that the bill should be amended (as discussed below) to avoid a major, potential problem: As now drafted, SB 272 proposed to identify individual judges sentencing records with only minimal explanations for why individual sentences may exceed or may be set below sentencing guidelines ranges. This limited information likely would serve one purpose only: It would enable would-be challengers to sitting judges to point to such sentencing records and to urge that the individual judge isn't sufficiently "tough on crime" and to promise stiffer sentences.

Maryland judicial ethics rules require that judges, in making their decisions, should consider the individual circumstances of every individual in every case. Particularly, judges are required to make their decisions regardless of "public clamor or fear of criticism." Maryland Rule 18-102.4. And, if accused of too lenient sentencing, Maryland judicial ethics rules direct, "With respect to a case, controversy, or issue that is likely to come before the court, a judge shall not make a commitment, pledge, or promise that is inconsistent with the impartial performance of the adjudicative duties of the office." Maryland Rule 18-102.1 (b). The same standards apply to cases that may be appealed or may return to the judge for later actions. Thus, a sitting judge would be prevented from responding to questions about particular criminal cases that were sentenced.

A challenger isn't constrained by these same ethical rules and would revel in being able to bombard a sitting judge with such statistics about which the judge would be ethically would be barred to respond to with specific comments.

In 2019, SB 176 began with the same problem of creating statistics that could be abused for election attacks on particular judges. An amendment was approved that deleted this individual focus and substituted other language that would permit gathering of statistics, including the percentages and types of plea agreements that are well-know to be involved in an estimated 90% of crime-of-violence sentencing. MAJR would support SB 272, if amended in the same manner as SB 176 (2019).

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*PLEASE NOTE: Phil Caroom offers this testimony for Md. Alliance for Justice Reform and not for the Md. Judiciary.*