

SB976 - Moton for Reduction of Sentence.pdf

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Position: FAV



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To: Members of The Senate Judicial Proceedings Committee

From: Doyle Niemann, Chair, Legislative Committee, Criminal Law and Practice Section

Date: March 28, 2022

Subject: **SB976 – Postconviction Review – Motion for Reduction of Sentence**

Position: **Support**

The Legislative Committee of the Criminal Law & Practice Section of the Maryland State Bar Association (MSBA) **Supports SB976 – Postconviction Review – Motion for Reduction of Sentence.**

This bill will allow a State’s Attorney to file a motion to reduce the sentence for an incarcerated individual. It spells out criteria the court should look at in determining whether a change in sentence is in the interests of justice, including the record of the individual while incarcerated and whether their age, time served, physical condition and other changed circumstances make them no longer a threat to public safety. And it provides for notice to the victim and allows for their participation in any hearing.

The bill addresses a variety of problems in the current law, which precludes reconsideration after five years absent some kind of error on the part of the prosecution or defense. By making the State’s Attorney the gatekeeper, it also avoids fears by some judges that the courts would be flooded with unsubstantiated motions and that victims would continually be forced to revisit the circumstances of past crimes. These are concerns that have been raised in prior efforts at reform. With this bill, if a State’s Attorney does not think reconsideration of a sentence is appropriate, they do not have to file a motion.

The bill would be a useful tool in addressing a variety of circumstances where little or nothing can be done at present. Just as important, it will significantly aid in the process of encouraging and rewarding efforts at rehabilitation and reform by incarcerated individuals. It would provide inmates a real incentive for participating in educational and behavior change programs.

The bill will provide State’s Attorneys a vital tool to address cases where there may have been disproportionate or unequal sentences based on external factors unrelated to the case in question, including the race of the defendant or the victim, or where there have been significant changes in the way specific crimes are enforced, as is true for many drug offenses.

For the reasons stated, **we Support SB976 – Postconviction Review – Motion for Reduction of Sentence.**

If you have questions about the position of the Criminal Law and Practice Section’s Legislative Committee, please feel free to address them to me at 240-606-1298 or at doyleniemann@verizon.net.

MOPD Favorable Senate Bill 976.pdf

Uploaded by: Elizabeth Hilliard

Position: FAV



PAUL DeWOLFE

PUBLIC DEFENDER

KEITH LOTRIDGE

DEPUTY PUBLIC DEFENDER

MELISSA ROTHSTEIN

DIRECTOR OF POLICY AND DEVELOPMENT

KRYSTAL WILLIAMS

DIRECTOR OF GOVERNMENT RELATIONS DIVISION

ELIZABETH HILLIARD

ASSISTANT DIRECTOR OF GOVERNMENT RELATIONS DIVISION

POSITION ON PROPOSED LEGISLATION

BILL: Senate Bill 976 -- Criminal Procedure – Postconviction Review – Motion for Reduction of Sentence

FROM: Maryland Office of the Public Defender

POSITION: Favorable

DATE: 3/28/2022

The Maryland Office of the Public Defender requests that the Committee issue a favorable report Senate Bill 976.

Senate Bill 976 permits a State's Attorney to file a motion for a reduction of sentence at any time during the period of active incarceration. This is a common sense law that would allow Maryland to pursue community-centric public safety measures, decrease prison populations, and save the State money.

Senate Bill 976 recognizes the principle that Public Defenders across Maryland have long touted, incarcerated persons can change, they can be rehabilitated, and they need to be given the opportunity to demonstrate this growth during their period of incarceration in Court. This is a principle that the Maryland General Assembly has also begun to recognize. In 2021, Maryland passed the Juvenile Restoration Act, which allows persons convicted of crimes as juveniles to request the court to reconsider their sentences after serving at least 20 years in prison. This law reflects scientific data on juvenile brain development and multiple Supreme Court decisions, and also recognizes that people can change and be rehabilitated. House Bill 958 critically permits prosecutors to review whether an incarcerated person has made significant rehabilitative progress and would no longer pose a risk to public safety—in other words, someone for whom further incarceration is no longer in the interest of justice.

As we learn more about mass incarceration, drug addiction, and the ineffectiveness of mandatory minimums, sentencing protocols change. This change can be seen in the development of

Maryland Office of the Public Defender, Government Relations Division, 45 Calvert St, Suite 108, Annapolis MD 21401 For further information please contact Krystal Williams, krystal.williams@maryland.gov 443-908-0241; Elizabeth Hilliard, Elizabeth.hilliard@maryland.gov 443-507-8414.

Sentencing Review Units and Conviction Integrity Units developing in State's Attorney offices in Maryland.¹ Our growth in these areas means that in some, especially older, cases review may be necessary based on changes in the law or prosecution practices. This is especially true when an incarcerated person is serving a current, lengthy sentence that is longer than would be imposed if the case was prosecuted now. Permitting prosecutors to recommend different sentences appropriate to today's context ensures greater equity and fairness throughout the system. Not only is this demonstrated by creating parity between sentences imposed decades ago compared to sentences requested today, but permitting prosecutors to review sentences retrospectively also permits the State to ensure sentencing parity among co-defendants with different levels of culpability but who may have originally received disparate sentences,

Opportunities for sentence review are particularly important in light of the racial disparity seen in Maryland's mass incarceration. Maryland has earned the embarrassing distinction of incarcerating more Black men than any other state—more than double the national average.² Over 70% of the nearly 18,000 people in Maryland's prisons are Black, compared to about 30% of the general population.³ As the majority of people serving the longest prison terms in Maryland are Black, allowing prosecutors to be proactive in remedying the ills of racial disparity and mass incarceration in our State is a small step towards rectifying a horrible imbalance in our criminal system.⁴

Releasing rehabilitated persons makes good economic sense. Housing a healthy inmate in Maryland costs \$44,001 per year.⁵ Maryland has a significant aging prison population, despite research showing that elderly people have relatively low risk of recidivism, along with the highest healthcare costs and health risks. This law can help facilitate the release of people who are older and for whom incarceration no longer serves neither a rehabilitative nor a public safety purpose. Release of such incarcerated persons could create significant cost savings and divert

¹ <https://www.wbalv.com/article/marilyn-mosby-announces-sentencing-review-unit-to-take-critical-look-at-prison-sentences/34898642#>

² https://justicepolicy.org/wp-content/uploads/justicepolicy/documents/Rethinking_Approaches_to_Over_Incarceration_MD.pdf

³ https://dpscs.maryland.gov/community_releases/DPSCS-Annual-Data-Dashboard.shtml;
<https://www.census.gov/quickfacts/MD>.

⁴ https://justicepolicy.org/wp-content/uploads/justicepolicy/documents/Rethinking_Approaches_to_Over_Incarceration_MD.pdf

⁵ <https://www.vera.org/publications/price-of-prisons-2015-state-spending-trends>.

taxpayer dollars away from incarcerating persons who are not a threat to public safety to other invest in preventative and treatment-driven public safety initiatives.

The arc towards criminal system reform has already begun its ascent toward more just, less arcane policies. The Maryland Office of the Public Defender hopes this bill will be one minor change to effectuate major progress. Maryland would not be alone in this policy reform. In recent years, California, Washington, Oregon, and Illinois all passed laws that permit a prosecutor to bring an incarcerated person back into court to have their sentence reconsidered. A number of other states have also proposed similar laws: Florida, Texas, Minnesota,* Massachusetts,* New York,* and Georgia.*⁶

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue a favorable report, with an amendment on Senate Bill 976.

Submitted by: Government Relations Division of the Maryland Office of the Public Defender.

⁶ The States with Asterisks have legislation currently pending.

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Uploaded by: Hillary Blout

Position: FAV



March 28, 2022

Senator William C. Smith, Jr.
Chair, Senate Judicial Proceedings Committee
2 East
Miller Senate Office Building
Annapolis, Maryland 21401

Re: Support for SB 976 (Patterson) – Prosecutor-Initiated Resentencing

Dear Senator Smith:

On behalf of For The People, I write today in strong support of SB 976 (Patterson), which would grant State's Attorneys discretion to initiate criminal cases for resentencing if it is in the interest of justice.

As a former prosecutor, I drafted the nation's first Prosecutor-Initiated Resentencing (PIR) law in California (AB 2942), which then served as a model for Washington State, Oregon, and Illinois — all of which have since passed PIR laws. Like the four existing PIR laws, SB 976 would provide State's Attorneys an additional tool to carry out their duty of administering justice both at the time of sentencing and after. Some sentences that were reasonable and appropriate during sentencing may no longer be just today, given changes in sentencing practices and research now known around [adolescent brain development](#) and the [relatively low risk of recidivism for elderly people](#). SB 976 would give State's Attorneys discretion to look back at such sentences on a case-by-case basis.

As SB 976 is discretionary, each elected State's Attorney can choose to opt in or opt out of conducting PIR in their county. Each State's Attorney can make the decision that is in the best interest of the community they were elected to serve. SB 976 includes a system of checks and balances to ensure a thorough and methodical review process for each case. After a careful review of the case, the State's Attorney would have discretion to motion the court for resentencing, but the court would hold the authority to make the final decision. SB 976 also guarantees the victim's rights to be notified of the hearing and to have their voices heard.

California's PIR Law is now entering its fourth year of implementation. About a dozen District Attorneys (out of 58) in California have opted in to using the law; others have simply opted out. District Attorney Offices implementing PIR include Riverside, San Diego, and Yolo Counties, demonstrating the wide range of counties — large, small, medium, rural, urban — with prosecutors from across the political spectrum. Since the law took effect in 2019, about 100 people have been resentenced and released, which speaks to the extremely careful and methodical review process for each case.

SB 976 would result in state savings by eliminating costs of incarcerating people who no longer pose a risk to public safety, and it would give State's Attorneys an additional tool to ensure that justice prevails. For these reasons, For The People strongly supports SB 976 (Patterson) and encourages the Committee to report favorably on this important bill.

Respectfully,

Hillary Blout
Founder/Executive Director, For The People

Gender Violence Clinic Written Testimony SB 976.pd

Uploaded by: Leigh Goodmark

Position: FAV

IN SUPPORT OF SB 976

To: Senate Judicial Proceedings Committee
From: Gender Violence Clinic, University of Maryland Carey School of Law
Date: March 28, 2022
Re: Written Testimony in support of Senate Bill 976

The University of Maryland Carey School of Law Gender Violence Clinic unequivocally supports Senate Bill 976.

The Gender Violence Clinic represents clients who have been incarcerated for crimes related to their own gender-based victimization. Many of our clients have served or are currently serving lengthy terms for defending themselves against abusive partners, committing crimes at the behest of their abusive partners, or being present when their partners engage in illegal behavior. Although they have been convicted of violent offenses, many of our clients have not engaged in violence themselves; others have done so in self-defense or under duress. The conviction for which they are incarcerated is frequently the only conviction they have. They serve lengthy sentences and use that time to address the trauma that they experienced pre-incarceration, to educate themselves, and to work in the prison and in their communities. They pose no threat to society and their continued incarceration is unnecessary. Of the clients that we have helped to achieve release through parole and commutation, not one has returned to prison.

Eraina Pretty was one of these clients. Ms. Pretty was the longest serving woman in the Maryland prison system. After 42 years of incarceration, Ms. Pretty was finally released in 2020—not on parole (for which she was twice recommended), but because the Sentencing Review Unit of the Baltimore City State’s Attorney Office partnered with us in asking the Baltimore City Circuit Court to reconsider her sentence. Ms. Pretty was lucky—there was a legal basis for making that request, as the law currently requires, and the court was willing to consider the issue. For many of our clients, though their performance in prison makes it clear that they are deserving of such reconsideration, no legal basis for returning to court exists or the court refuses to hold a hearing, even though there is a legal basis. Senate Bill 976 would permit State’s Attorneys to file motions to modify sentences in these cases without needing an independent legal basis to return to court and require the court to hear that motion. It would give these clients, who, after enduring serious trauma, work so hard to make their incarceration meaningful, a reason to hope and give judges the ability to show mercy to those who merit it. For these reasons, we strongly support Senate Bill 976.

This written testimony is submitted on behalf of the Gender Violence Clinic at the University of Maryland Carey School of Law and not on behalf of the School of Law or the University of Maryland, Baltimore.

SB976 letter of support 3.29.22 BCSAO.pdf

Uploaded by: Marilyn Mosby

Position: FAV



March 29, 2022

Senator William C. Smith, Jr.
Chair, Judicial Proceedings Committee
2 East, Miller Senate Office Building
Annapolis, MD 21401

SUPPORT SB976 Criminal Procedure – Postconviction Review – Motion for Reduction of Sentence

Dear Chairman Smith, Vice Chairman Waldstreicher and Committee Members:

On behalf of the State's Attorney's Office for Baltimore City, we strongly support Senate Bill SB 976. This bill would allow prosecutors, within their discretion, to request a modification of sentence for an incarcerated defendant, if a shorter sentence is in the interest of justice. Currently, there is no legal mechanism that permits this type of sentence review.

Arguably, prosecutors are the most powerful players in the criminal justice system. Over time, laws have evolved and our practices have evolved. There is a better and more evolved understanding of juvenile behavior, drug addiction and poverty.

Also, as prosecutors, we need to be mindful that we have a mass incarceration problem and a significant aging inmate population problem. We are also aware that racial disparities exist in this system.

For these reasons, we have, as an office, began evaluating our own prosecution practices for racial inequities, so we can do better. We have also begun the process of reviewing the cases of persons who have already served lengthy period of times and remain in prison, and evaluating those cases with a more modern and compassionate lens.

With this context, my office of prosecutors want to be responsible, and should be responsible, for ensuring that sentences of people who are still serving time in prison, continue to be fair and reasonable under our most current standards. This type of review is not within the parole board's purview.

This law would permit prosecutors to request a sentencing hearing in cases where we agree that a reduced sentence is in the interest of justice, for any number of reasons.

We need this procedural vehicle to do this work. And for any prosecutor offices that do not want or need this tool, they do not need to use it. I am here on behalf of the office for Baltimore City – we incarcerate more people than any other county in Maryland. We have a greater responsibility. We urge you to pass Senate Bill 976.

STATE'S ATTORNEY
Marilyn J. Mosby



OFFICE *of the* STATE'S ATTORNEY *for* BALTIMORE CITY
120 East Baltimore Street | Baltimore, Maryland 21202

DIRECT DIAL

443-984-6000

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "Marilyn J. Mosby". The signature is written in a cursive style with a large, stylized initial "M".

Marilyn J. Mosby
State's Attorney for Baltimore City

sb976.pdf

Uploaded by: Suzanne Pelz

Position: UNF

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Joseph M. Getty
Chief Judge

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: Senate Judicial Proceedings Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: Senate Bill 976
Criminal Procedure – Postconviction Review – Motion for
Reduction of Sentence
DATE: March 23, 2022
(3/29)
POSITION: Oppose, as drafted

The Maryland Judiciary opposes Senate Bill 976, as drafted. The offered legislation adds to the § 8-111 of the Criminal Procedure Article and allows the State’s Attorney to file a motion for reduction of sentence at any time during the period of active incarceration recommending a lesser sentence if it is in the interest of justice.

The Judiciary opposes this bill because, at Criminal Procedure § 8-111(d), it requires courts to hold hearings on motions for reduction of sentences. The Judiciary generally opposes mandatory provisions that limit courts’ ability to control their dockets and limits judicial discretion. The decision to hold a hearing should be discretionary.

cc. Hon. Obie Patterson
Judicial Council
Legislative Committee
Kelley O’Connor