



Maryland Crime Victims' Resource Center, Inc.

Continuing the Missions of the Stephanie Roper Committee and Foundation, Inc.

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From: Kurt W. Wolfgang, Executive Director
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To: Honorable William Smith, Jr.
Chair, Senate Judicial Proceedings Committee

Testimony regarding SB 842 MARYLAND'S VICTIMS STRONGLY OPPOSE SB 842

Mr. Chair and Distinguished Members:

Before you incline to favor this proposal, I must ask you to do your very best to see things from the crime victims' perspective. That is a very dark place. Descend with me to a place of despair at a level that few have ever tried to describe. English words fail to reflect the agony, the fear, the hopelessness. No Churchill, no Shakespeare, no writings of Dante could place you so low. Not J.K. Rowling with her Dementors, not Aleksandr Solzhenitsyn describing the torture of the Gulag, not Shin Dong-Hyuk describing his life and escape from North Korean prison Camp 14, Not any Treblinka or Auschwitz story can take you there. It is a place you can only go when the worst things that you can imagine happen to you and the ones whom you love the most.

Neither you nor I can fully experience it, but we must try. If you do not try, you will miss a vital factor in considering this bill. The means of trying, I beg your forgiveness, is to use your imagination that these sick, horrific things did not happen to others, they happened to you and your loved ones.

Each of the images that I propose for you happened to someone. And they could have happened to you or your family. And they still could.

Imagine that you are eight years old, and you don't understand why, but your uncle has come to live with you. And your uncle's wife is so angry about it that you are afraid. So you ask your mommy if you can sleep in her bed. But during the night you wake to the sound of shrieks of agony, and fear, as your mommy's blood pours onto you and into the bed as your aunt stabs her and stabs her and stabs her head, and stabs her chest, and won't stop and doesn't care and your mommy's life drains out before you into the sheets, and onto your pajamas.

Imagine that you learn on Good Friday that your first daughter, the one who was to graduate next month with honors, that daughter who has been also your best friend, and a model child, was raped, and raped, and sodomized, and raped, and beaten with a logging chain, and taken somewhere else, and sodomized, and raped some more, and then shot, then set on fire, then dumped in the swamp.

Imagine that as you look across the park's green grass you see your thirteen-year-old boy, of whom you are so proud, shot repeatedly because of the evil requirements of gang membership that an innocent stranger must be murdered in order to gain admission to the gang.

Imagine that your son, your pride and joy, has just been commissioned an officer in the US Army, like his father, and his grandfather before him, and as he waits for a bus at a bus stop, some bigot who doesn't like his skin color decides to put a knife in him, until his life leaves him, and pours into the gutter...

Imagine that you hear voices in your home at night, and those voices tie you up, and rape you. And rape you, and rape you, and shoot you, and leave you for dead.

Now imagine, that after the agony of years of waiting, some justice arrives in the form of those sick excuses for humans locked up, where they can not threaten anyone's safety outside of prison again. Until you learn that people - good, misguided people, are trying to let them out. Let them out where they know that some of them will hurt someone else. Without fail, they know that. Because whatever the statistics show, they certainly show that some of them will continue to hurt others.

But let's speak of those who, in theory, won't hurt others. Why should they come out? What would the victims say? I know what they would say, because they say it to me. Here is what they will say:

- Why should I have to worry that they will come to find me for testifying against them?
- Does anyone in government know or care that they threatened to kill me if I testified?
- Why should I have to worry every time I go to the grocery store, or the drug store, or the gas station, that the murderer of my child will meet me in the aisle?
- That the man who ruined my life when he raped me will be there?
- Surely, these well-intentioned people know that fifteen years, twenty years, twenty-five years is not enough for the hateful, deliberate murder of my wife.
- For leaving my daughter to die after they tortured and raped her.
- For ruining my life so that I could never have a normal relationship, or even leave the house without being petrified by demons of anxiety.
- For the mass murder of twenty people, and terrorizing of the entire country.
- For the murder of five journalists, just because they printed the truth to us.
- What about me? What about the fact that because he shot me at 21, I am blind and living on public assistance?
- What about my mother, who will take care of me, and face the financial burden until she dies, because he decided to shoot me? Do they want this person to ever be in our society again?
- Do they think that we should have to go, time after time, to more hearings to let the judge know that our son's life, who died because of the race-hate of this man, is worth more than decades?

- How many times should we have to come to court? And now that we are old, who speaks for our son once we die?
- Does anyone believe that since this convicted criminal voluntarily and deliberately did these things, that we should not be asked to continue to suffer at his expense?

I ask you to leave behind for now your descent into the hell experienced by the victims of violent crime. Come back and know that you have only scratched the surface. You and I can only experience only a small portion of the torture and horrors that a victim of violent crime experiences. Only remember that as you and I use our imagination to empathize, we are able to return to a life devoid of the agony. Their anguish never leaves them. Every holiday is tainted, every birthday, every anniversary of the event, their relationships with their partners, their children, their parents unfailingly altered, and usually not for the better. For example, most parents of murder victims divorce.

Forgive me for this exercise. But the pain that I describe to you that will occur as a result of passage of this bill is real – it will happen – if you pass this bill. And if you are to vote for it, you must know what additional pain you are inflicting on those who did not choose their fate. They will be forever haunted by the hateful, disgusting, inhuman acts committed by these criminals, and then re-victimized by the acts of their own government who pays little attention to their needs, their safety, or the safety of others, but who expends extraordinary effort in trying to understand and enhance the lives of their violent predators.

Now let me add perhaps less poignant, but equally important arguments opposing this bill.

Maryland judges formerly had an unfettered ability to reconsider the sentences of convicted criminals.¹ The discretionary period was constricted to five years.

There exists an entire elaborate mechanism, or mechanisms, aside from this “second look” legislation to diminish the sentences of those who are serving long terms of years, or life sentences. Good time credits, which come in multiple varieties that can be stacked, and ultimately parole consideration are the best-known examples. In extraordinary cases, there is also commutation of sentence. Many years ago, I set out to count the mechanisms available, and stopped counting when I reached thirteen different ways to diminish a sentence. I believe that none of those has abated, and I have a feeling that more have been added over time. Some of these mechanisms are indefensible and obscene to the unindoctrinated observer.

For example, during the eighties, Public Safety and Corrections changed the manner in which they calculated “good behavior” credits. Convicted criminals in Maryland do not, in fact, earn good behavior credits. Instead, as they enter the system, their sentence is diminished by assuming that they have already earned their good behavior credits over the entirety of their sentence. Besides the obvious ridiculousness of this approach, it results in every inmate receiving credit for sentence time that they will never serve, and therefore will not be exhibiting good behavior that was originally the reason for the existence of good behavior credits. For example, if someone receives a sentence of fifty years, their front-load award of good time credits is calculated over the entire fifty years. But the good time credits that they are awarded up front have already diminished the

¹ A motion for reconsideration had to be filed within 90 days. If the motion was filed, the Court could act on the motion at any time. It was considered obligatory for defense attorneys to file the motion. The Court would seldom if ever deny the motion, but rather defer ruling on the motion, ensuring that the Court continued to retain jurisdiction to rule at a later date. Due to a series of embarrassments, abuses, and improprieties, the Rule was changed, placing a five year maximum time in which the Court could exercise revisory powers.

mandatory number of years that they can serve to a number far less than fifty years. Violent offenders are front-loaded five days per month in good time credits over their entire sentence, and it is automatic².

$50 \times 12 = 600$ months. $600 \times 5 = 3000$ days. 3000 days = approximately 100 months. 100 months = 8 years and four months. The convicted criminal receives automatic, up-front good time credits for eight years and four months that he or she will never serve, because he or she will be released before serving that time.

The point is that far from being cheated, oppressed, and mistreated; these convicted criminals receive more breaks than you intend for them to have.

Parole Commissioners have one job to perform, and they should be left to perform it without interference. This is their job: to determine a cohesive release policy, and implement it, and stick to it. Doing so helps convicted criminals, victims, and citizens alike have some cognizance of a process to be followed for release. Allowing the unlimited wild-card review of sentence by the Court as provided in this bill completely undermines that process. To make a simple analogy, this is like unto a family where one parent is asked for a decision by a child. When the child is unsatisfied with the decision of that parent, they resort to the other parent, in order to undermine the decision of the first parent.

The bill is crafted so that the original sentence that they received is meaningless, and the convicted criminal can demand a new sentencing proceeding. There is no preference or even reference to the original sentence required in the new proceeding. The new sentencing takes place at least twenty years after the first sentencing. The original judge will likely be gone, or at least not remember the details. The police investigators will certainly be gone, and perhaps the victim or victim's family will not be available, either. So the new judge will have a far less clear picture of the original crime, and the impact on society and the victims.

The bill is crafted so that every five years, the convicted criminal can demand a new sentencing. Setting aside how wasteful and disruptive this repetition can be to the system, it is cruel and inhumane to the victims, who will be compelled to re-live their horrors repeatedly, and be reminded of a face which they should never again be forced to see, in a just and kind world.

Parole Commissioners are more familiar with the critical precepts regarding penology. In my practice of law over many years, I have found most circuit judges to be completely unfamiliar with the five well-recognized concepts of criminal penalties: Incapacitation – a locked up criminal causes no more crime (in society) while incarcerated; general deterrence – imposing sentences severely enough to deter others from committing similar offenses; specific deterrence; imposing sentences severely enough to deter this criminal from re-offending; rehabilitation – sentencing in a fashion that convinces the criminal of the merits of not re-offending and providing him or her sufficient tools to live a life free of crime; and retribution. Retribution is perhaps the least well-defined and difficult to understand. I suggest to you that several precepts that would be better considered separately exist in this rubric.

² See Maryland Diminution Credit System, Maryland Dept of Legislative Services, 2011

The first sub-component of retribution in my view is determining a sentence that fairly matches the severity of the crime, from the perspective of the victims. In many societies, and even in our recent past, criminal justice was or is not the sole province of the State. Our society has determined that the least disruptive, and most fair means of dealing with violent crime is by allowing the State to deal with it. But that approach requires a buy-in on the part of the crime victims. The victims must cooperate by bringing forth their charges, by cooperating with law enforcement, and by testifying and providing evidence. Their cooperation critically depends on their satisfaction with the experience, including whether they think the sentence imposed – and served is fair.

The victim should also be fairly satisfied with the sentence in order to diminish taking the law into the victims' hands. Across the country there are those who respond to violence with violence as a result of believing that our system already unfairly favors the convicted criminal over the victims. Search the headlines and you will find those who avenge the lives of their family and friends.

The second sub-component is that the severity of the sentence should fairly match the severity of the crime from the public's perspective, and for many of the same reasons. Without public participation, criminal justice would come to a halt. The public also serves as witnesses, providers of evidence, bringers of charges, but likewise serves as jurors. The public can additionally descend to vigilante justice, if not satisfied with the sentences given.

In 1994, Maryland voters adopted Article 47 to the Maryland Declaration of Rights. Please take the time to read it, or re-read it. Maryland voters voted 92.5% in favor of adopting these rights. I challenge any one of you to show me a comparable agreement among voters. I suggest that you would have a hard time getting 92.5% of the public to agree whether it is raining outside. Yet the public felt this strongly about the plight of crime victims and the manner in which they have been neglected.

In my opinion, if the voters were asked today, what should become of our worst criminals? The ones who have committed offenses so vile and heinous that they have received life sentences? The answer would be clear, and overwhelming. Life should mean life. I hear that all the time. In fact I hear it this way: "What do you mean that life does not mean life?" In all but the rarest of circumstances, there are many good reasons that the public feels that life sentence should result in the person not being released into our society. In a democracy, shouldn't the public's opinion count?

Proponents of this legislation will point you to statistics that lead you to believe that lifer's who are paroled re-offend (recidivism rate) at a very low percentage rate. I believe those statistics are accurate as far as they go, but this bill will change the statistics. The controlling factors that make those low recidivism rates are their age and health upon release. In other words, if this legislation passes, expect to see the recidivism rates jump up, as the bill results in younger and healthier lifer-convicts returning to the streets.

Any criminologist will admit to you that under this bill, there will be some re-offenders released. Recidivating offenders led to the contraction of the Court's ability to review sentences in the first place. When these convicted criminals are released into our neighborhoods, and commit new horrific crimes, how will you feel? How will the previous victims feel? How will the new victims feel? How will the public feel?

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