OPD FAV SB 842.pdf
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Position: FAV

MARYLAND OFFICE OF THE PUBLIC DEFENDER

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POSITION ON PROPOSED LEGISLATION

BILL: **SB 842 Criminal Procedure – Petition to Modify or Reduce Sentence (Maryland Second Look Act)**

FROM: **Maryland Office of the Public Defender**

POSITION: **Favorable**

DATE: **March 9, 2022**

The Maryland Office of the Public Defender respectfully requests this Committee to issue a favorable report on Senate Bill 842.

SB 842 builds on Maryland's success in safely reducing the prison population by giving judges opportunities to release non-dangerous inmates who have served a substantial period of time.

This process works. In 2017, the Justice Reinvestment Act allowed judges to modify or reduce previously imposed mandatory sentences for certain drug felonies. Between 2012 and 2017, almost 200 individuals serving lengthy sentences for serious crimes were released following the Court of Appeals decision in *Unger v. State*, 427 Md. 383 (2012), most of them through negotiated modifications of sentence. The OPD and the private bar assisted many of the eligible individuals in developing plans for a successful re-entry into society.

The reason that judges (occasionally with the support of prosecutors and even the victims or their representatives) are sometimes willing to reduce sentences when given the opportunity to do so is because, with the passage of time, people convicted even of serious crimes can and very often do change and become much better people.

The OPD sees this all the time. Typically, when a person (especially a young person) is sent to prison on a long sentence, there is a period of adjustment where the individual may accumulate a number of rule violations, not infrequently to protect themselves from being targeted by other inmates. Then, after a few years, they settle in. They get a job, start dealing with addictions, start participating in programs. Many of our clients – and especially those report a turning point, usually a few years after they were locked up, where they decided to change. Sometimes it's triggered by reconciliation with a loved one, the death of a family member, mentoring by an older inmate, or a religious conversion. Infractions cease, or become minor and infrequent.

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For further information please contact Krystal Williams, krystal.williams@maryland.gov 443-908-0241;
Elizabeth Hilliard, Elizabeth.hilliard@maryland.gov, 443-507-8414 or *Brian Saccenti, Director, OPD Decarceration Initiative, at 410-206-3225.*

As more time passes, they begin finding satisfaction in contributing to their community. They start to take pride in the work they do, both in prison jobs and in volunteer settings. Some become active in programs where inmates meet with kids in the juvenile justice system to warn them against following in their footsteps. Some mentor younger inmates to help them in their rehabilitation. Some work with victims' groups to raise awareness in the institution of the impact of crime on victims. Despite the serious crimes that brought them there, many inmates eventually grow into truly good people. And they want their lives to mean something.

Releasing non-dangerous individuals who have served decades in prison does not pose a risk to public safety.

This bill permits modification of a sentence ***only if*** the judge first finds "that retention of the sentence is not necessary for the protection of the public." Absent such a determination, the court has no authority to modify the sentence.

The individuals eligible for relief under the bill share characteristics that make it much less likely that they will reoffend. Research demonstrates that recidivism diminishes among released inmates in their 40s and beyond, and inmates who have served at least 15 years in prison. A study of 860 murderers paroled in California over a fifteen-year period found that only *five* – less than one percent – were reincarcerated for new felonies since being released, and none of them recidivated for life-term crimes.

The mere possibility of release after decades of incarceration will not diminish any deterrent effect of such sentences. At the moment a person decides to commit a very serious crime, they generally are not thoughtfully considering the potential future consequences of their actions. Even if they did, and if they also knew more than most about the law governing criminal sentences, then they would already know that most sentences would permit release on parole years before someone would become eligible for a modification under the Second Look Act.

To the contrary, such releases will make Maryland safer.

Passing the Second Look Act would make us safer in four ways.

1. It would permit the State to take money and resources it now spends over-incarcerating individuals and reallocate it to programs and initiatives that actually make us safer. For instance, the cost to incarcerate one elderly lifer for a year is enough to send two kids from our juvenile justice system to college for that year, with a fair amount left over.

2. It would reduce the demands on prison staff, who are stretched dangerously thin, by reducing the sheer number of inmates they need to supervise.

3. It would reduce violence within prisons, by incentivizing inmates to stay out of trouble and take full advantage of opportunities to better themselves. This would make prisons safer for inmates and correctional staff alike.

4. It would enable reformed inmates to use their experience to make their communities better and safer. Lifers released in Maryland have become active volunteers in their

houses of worship and their neighborhoods. Many feel called to mentor young people to keep them from going down the wrong path. They get jobs, care for elderly relatives, and otherwise lead positive and productive lives. Persons who have served over 20 years can perform similar acts to benefit their community.

For all these reasons, the OPD urges this committee to issue a favorable report on Senate Bill 842.

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

Authored by: Brian Saccenti, Director of the Decarceration Initiative, Maryland Office of the Public Defender *Brian.Saccenti@maryland.gov*, *410-206-3225.*

SB_0842_JPI_support_3_10.pdf
Uploaded by: Keith Wallington
Position: FAV

Testimony to the Senate Judicial Proceeding Committee
SB0842 Criminal Procedure— Petition to Modify or Reduce Sentence (Maryland Second Look Act)

Marc Schindler, Executive Director
Justice Policy Institute
202-558-7974, mschindler@justicepolicy.org

March 9, 2022

My name is Marc Schindler. I serve as the Executive Director of the Justice Policy Institute (JPI), a national research and policy organization with expertise on criminal and juvenile justice issues. Over the last decade, JPI has released over a dozen policy and research reports on the Maryland justice system. Please accept this statement supporting SB0842 Criminal Procedure – Petition to Modify or Reduce Sentence (Maryland Second Look Act).

By way of background, I have had the opportunity in my career to view the justice system from several different angles. I come to this issue today with a perspective drawn from experiences inside and outside the criminal justice system. After graduating from the University of Maryland School of Law, I began my legal career over 20 years ago with the Maryland Office of the Public Defender. I spent eight years as a staff attorney with the Youth Law Center, a national civil rights law firm. Then, I held several leadership roles within the Washington, DC Department of Youth Rehabilitation Services, Washington, DC's juvenile corrections agency, including serving as General Counsel, Chief of Staff, and Interim Director between 2005 and 2010. Before joining JPI, I was a partner with Venture Philanthropy Partners (VPP), a Washington-based philanthropic organization.

Some will argue that Maryland created a second look under the Juvenile Restoration Act (JRA) that passed last year, but JRA only impacts a handful of individuals. Without SB0842, there are few other release valves for Maryland's longest serving, most infirm, and expensive population, which has devasting consequences for Black and Brown citizens. The lack of a meaningful second look policy in Maryland comes at a tremendous social and fiscal cost and delivers very little return on investment concerning public safety.

As recently as July 2018, more than 70 percent of Maryland's prison population was Black, compared to 31 percent of the state population. The latest data from the Department of Justice show that the proportion of the Maryland prison population that is Black is more than double the national average of 32 percent. This alarming racial disparity persists even though the Maryland prison population has declined by 13 percent since 2014, resulting in nearly 2,700 fewer people incarcerated. These inequalities affect the entire population but are most pronounced among those incarcerated as emerging adults (18 to 24 years old) and are serving lengthy prison terms. Nearly eight in 10 people sentenced as emerging adults who have served 10 or more years in a Maryland prison are Black. This is the highest rate of any state in the country and a shame that all Marylanders must bear.

Keeping an aging prison population behind bars years beyond any public safety benefit is not supported by evidence. Crime is a young person's pursuit, and the research is conclusive that the risk of criminal offending declines precipitously with age. Research has conclusively shown that by age 50, most people have significantly outlived the years in which they are most likely to commit crimes. Arrest rates drop to just over two percent at age 50 and are almost zero percent at age 65. Nationally, aging people return to prison for new convictions at a rate between 5 and 10 percent, which is a fraction of recidivism rates for people in their 20s and 30s. In 2012, a Maryland court decision, *Unger v. State of Maryland*, resulted in the release of 200 individuals, many of whom had committed serious violent offenses. The story of the people released from Maryland prisons due to the *Unger* court decision best exemplifies the wisdom of releasing people who have served long prison terms.

Not only have the people released due to *Unger* not been a threat to public safety, but they have been a benefit to the communities they have returned to with extremely low recidivism rates of about 3 percent. More people released under the *Unger* decision have passed away since their release than reoffended. The Unger cohort offers powerful lessons for policymakers interested in safely tackling mass incarceration. The success of this population cannot be overstated and substantiates research that shows that people age of crime, and we can allow people who have served excessively long sentences and opportunity for a second look.

According to a JPI report, *"The Ungers, 5 Years and Counting: A Case Study in Safely Reducing Long Prison Terms and Saving Taxpayer Dollars,"* the cost to continue to house the parole-eligible geriatric population is well over the price of effective reentry support. Due to the stresses of prison, incarcerated individuals over the age of 50 are generally considered "geriatric." Based on data showing the geriatric population has higher health care costs, a fiscal analysis concluded that continued confinement of the *Unger* cohort for an additional 18 years (based on the expected period of incarceration using the projected life expectancy of the *Unger* cohort) would have amounted to nearly $1 million per person, or $53,000 a year.[1] Meanwhile, it costs only $6,000 a year to provide intensive reentry support that has proven to reintegrate those released due to *Unger* successfully and safely back into the community.

Not only have many of those released under the *Unger* decision successfully reintegrated into society, but they have also added value back to the community. The *Unger* cohort has largely gone on to get jobs, get married, and reconnect with families. In addition, many have become mentors. They contribute to the community, prevent others from making the same mistakes they made, and aid the healing process for families impacted by crime. With the passage of SB0842, we can expect a similar trajectory of more individuals coming home with an appetite to improve their communities when given a second look.

Support for a second look provision has been growing nationally among sentencing experts, fueled in part by the proliferation of extremely long criminal sentences during the U.S. incarceration boom. "The fact that American prison rates remain high after nearly two decades of falling crime rates is due in part to the nation's exceptional use of long confinement terms that make no allowance for changes in the crime policy environment," one study explained. Many researchers believe the country's use of lengthy

[1] See, "*Building on the Unger Experience: A cost-benefit analysis of releasing aging prisoners",* the JFA Institute and The Pandit Group for Open Society Institute-Baltimore (March 2019)

sentences—sentences that are much longer than those in other Western democracies—merits the creation of a mechanism for their review by a court at some point in time.

The American Law Institute (ALI), as part of a nearly 10-year-long review of sentencing to revise the Model Penal Code, noted that "[w]hen ever a legal system imposes the heaviest of incarcerative penalties, it ought to be the most wary of its own powers and alert to opportunities for the correction of errors and injustices." The lack of any potential early review of sentences also removed any incentive for an individual to participate in programming or comply with the institution's rules because any hope to earn early release was absent. A second look mechanism, the ALI said, is intended to ensure that long sentences "remain intelligible and justifiable at a point in time far distant from their original imposition." The ALI's recommendation includes:

A judicial decisionmaker or judicial panel will rule upon applications for a sentence modification from any individual who has served a minimum of 15 years in prison. These 15 years can result from the time served for a single sentence or consecutive sentences.

- This sentence modification is "analogous to a resentencing in light of present circumstances."
- The judicial decisionmaker or judicial panel should have the authority to modify any element of the original sentence, regardless of whether a mandatory minimum was part of the original sentence.
- Sentences cannot be modified to make the term of imprisonment longer.
- The sentencing commission is instructed to develop guidelines for considering release and explore implementing the retroactive application of this provision.
- Appointed counsel can be provided for those in need

The evidence is clear that people age out of crime. Additionally, it's time for Maryland to address failed policies that have paved the way for the state having some of the worst racial disparities in the entire country. JPI encourages a favorable report on SB0842.

SB842 Second Chance Act 2022 3.8.22.pdf
Uploaded by: Marilyn Mosby
Position: FAV

STATE'S ATTORNEY
Marilyn J. Mosby

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

March 8, 2022

Letter of Support SB 842

Senator Will Smith
Chair, Judicial Proceedings
Miller Senate Office Building
11 Bladen Street
Annapolis, MD 21401

Re: Support for – Petition to Modify or Reduce Sentence (Maryland Second Look Act)

Dear Chairman Smith and Committee Members:

As the State's Attorney for Baltimore City, I strongly support SB842 which allows a person who is incarcerated to file for sentence modification if they meet certain criteria including: serving more than 20-25 years, committing the crime as a juvenile, or being 55 years of age or older.

Over the past decade this country's incarceration rate has gone down by more than 10%. The decline illustrates that our country and its citizens value efforts of decarceration, but these efforts alone are not sufficient. There remains in the U.S. nearly 2.3 million people in prisons. According to a report released in 2019 by the Vera Institute of Justice, 17,815 people were held in Maryland's state prisons at the end of 2018. This number amounts to a prison incarceration rate of 295 per 100,000 residents — a 1.7% drop from the rate in 2017. Over the past decade, the rate has fallen by nearly 29%. And while these reductions in numbers are a positive step in the right direction, more can be done. The Maryland 2016 Justice Reinvestment Act played a key and primary role in reducing the prison population in recent years, and SB842 expands on this progress to keep Maryland moving as a leader in ending mass incarceration while continuing to hold public safety paramount.

My office prioritizes justice over convictions at all times, and this means we must ask ourselves is this sentence fair, is it just, does it improve safety? Evidence and data at both the state and federal levels demonstrate that people age out of crime and it is possible to release a significant number of incarcerated people, sentenced to decades-long terms of imprisonment, without negatively affecting public safety. Lengthy prison terms, often doled out as a deterrent and solely as a product of the tough on crime culture, are counterproductive for public safety and contribute to the dynamic of diminishing returns as the prison system has expanded.[1] Evidence illustrates that individuals age out of engagement in criminal activity, they have limited effect on deterrence and they place finite resources into increased incarceration and away from resources that address and prevent/rehabilitate criminal behaviors.[2] Allowing for the modification of sentences when an individual is no longer a public safety threat, and when the wants and needs of the victims are considered, is providing justice.

[1] https://www.sentencingproject.org/publications/long-term-sentences-time-reconsider-scale-punishment/
[2] https://www.sentencingproject.org/publications/long-term-sentences-time-reconsider-scale-punishment/

STATE'S ATTORNEY
Marilyn J. Mosby

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SB842 allows Maryland to further efforts that began in 2017, to reduce mass incarceration while promoting public safety and wisely using the limited criminal justices resources that exist. People grow and change. There are presently tens of thousands of rehabilitated people in prisons who have no meaningful mechanism to seek release and no one advocating on their behalf. To end our incarceration addiction and develop a more dignified, humane, and sensible system, we must do more than change how we arrest, prosecute, and sentence people in the future. We must also look back at those we have already locked away and recognize people's ability to grow. For these reasons we urge you to favorably recommend SB842.

Thank you for your consideration.

Sincerely,

Marilyn J. Mosby
State's Attorney for Baltimore City

Support SB 842 - Second Look Act.pdf
Uploaded by: Philip Caroom
Position: FAV

Support SB 842 - Second Look Act

TO: Chair Will Smith and Senate Judic.Proceedings Committee

FROM: Phil Caroom, MAJR Executive Committee

DATE: March 8, 2022

Md. Alliance for Justice Reform (MAJR-www.ma4jr.org) supports SB 842 that would permit sentencing judges to consider possible modification of sentences under limited circumstances.

This is not a new concept that would create a crisis for the Judiciary. Quite the contrary, prior to a 2004 modification of Maryland Rule 4-345, Maryland judges regularly considered sentence modifications without a 5-year cap. So, SB 842, in its central provision, would restore this discretion that judges previously could exercise throughout earlier Maryland court history. (See revisor's notes to Maryland Rule 4-345.)

In effect, there is a backlog of cases created by Rule 4-345's amendment that the Courts could work through much as was done with review of the Unger cases and of Justice Reinvestment reconsiderations after retroactive modification of mandatory sentence provisions.

One procedural difference between the current sentence modification Rule and SB 842 is the requirement for a hearing in a qualifying motion. Because of the 20 or 25 year qualification under SB 842, the hearing is especially appropriate because it is likely that the original sentencing judge will have retired and that a new judge will need to familiarize herself or himself with the case, with the defendant and with the victim. It also is desirable because sentencing judges, under current law, very rarely ever will see inmates who have been impacted by sentences after 5 years have passed and who have had decades to work on their rehabilitation. Judges should have this opportunity to see, in person, the impact and possible results of our lengthiest sentences.

SB 842 also is consistent with the policy of Maryland's Justice Reinvestment Act (JRA), permitting judges to grant retroactive reduction of sentences in recognition of new sentencing policies. Thus, Maryland courts, prosecutors, Public Defenders and other defense counsel have gained substantial experience in how to process a high volume of such requests.

Particularly, state prison population and expenses may be reduced via reductions for inmates with lowest-risk status— and successful applicants for SB 842 sentence modifications would be low risk in light of their aging, deteriorating health, and such individuals' self-rehabilitation achievements. These savings, as provided by JRA, would serve to provide more grant funding to assist with drug treatment, reentry and other rehabilitation programs for younger, higher risk offenders.

For all these reasons, Md. Alliance for Justice Reform (MAJR) urges a favorable report on SB 842.

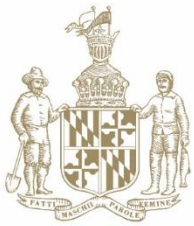
PLEASE NOTE: Phil Caroom offers this testimony for Md. Alliance for Justice Reform and not for the Md. Judiciary.

Testimony- SB 842 Criminal Procedure – Petition to
Uploaded by: Senator Joanne C. Benson
Position: FAV

JOANNE C. BENSON
Legislative District 24
Prince George's County

Finance Committee

Joint Committees
Children, Youth, and Families
Ending Homelessness
Fair Practices and State Personnel Oversight
Management of Public Funds
Protocol



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Testimony of Senator Joanne C. Benson
SB 842: Criminal Procedure – Petition to Modify or Reduce Sentence (Maryland Second Look Act)

Good afternoon, Chair Smith, Vice-Chair Waldstreicher, and esteemed members of The Judicial Proceedings Committee. I am here to present SB842, The Maryland Second Look Act.

Currently, the United States leads the world in incarceration of its citizens with 2 million individuals currently in US correctional facilities. Additionally, prisons have seen a 500% increase throughout the last 40 years. Amendments and changes to laws and policies used for sentencing, NOT changes in crime percentages, explain the vast majority of this increase. African Americans are being incarcerated in prisons across the nation at almost five times the rate of their white counterparts, and Latinx individuals are 1.3 times as likely to be imprisoned than non-Latinx whites. This legislation ensures the fairness and justness of the imprisonment system in the State of Maryland.

Unfortunately, Maryland is one of 12 states where more than half of the prison populace is African American. Per the ACLU, the average yearly expense of imprisoning an elderly individual is $72,000, and the population of older detainees in Maryland is substantially growing. This continues to create an increased financial burden as more of the detained population becomes elderly.

This bill's purpose is to permit an individual serving a term of imprisonment to appeal to a court to alter or decrease the sentence under specific conditions. For the petitioner to have the choice to seek appeal after their conviction, they must first have completed both of the accompanying impediments, served 20 years of the sentence without the utilization of diminution credits, or the equivalent of a 25-year sentence with the utilization of diminution credits. This bill will also allow the victim of the crime or a representative of the victim of the crime to be granted the ability to present their objection to the petitioner's appeal of an alteration or reduction of their sentence.

In conclusion, this bill will assist with lessening the current financial burden that mass incarceration creates and that so many individuals face while also guarantying that we maintain fair practices and empathetic sentences in our courts.

Thus, I respectfully urge the committee to issue a favorable report for SB842.

SB 842_FAV_ACLUMD.pdf
Uploaded by: Yanet Amanuel
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Testimony for the Judicial Proceedings Committee

March 9, 2022

SB 842 - Criminal Procedure – Petition to Modify or Reduce Sentence (Maryland Second Look Act)

FAVORABLE

The ACLU of Maryland supports SB 842, which would allow individuals in prison a second chance to petition the court to modify or reduce their sentence after serving at least 20 years of their term, and if at least five years have passed since the court previously decided any petition for reconsideration.

SB 842 increases accountability in the criminal justice system. Bias in Maryland's criminal justice system against indigent defendants and people of color has been widely documented at every stage: from the initial arrest to sentencing. The overwhelming majority of people serving long sentences in Maryland are Black, in a State that is 30% Black. For eligible individuals who may have faced this bias by law enforcement, the courts, or corrections, this bill 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. A second look would catch these instances of bias without reducing time served for those whose sentences were determined correctly.

SB 842 incentivizes people who have committed serious harms to focus on making amends, rather than disputing their underlying convictions. In recent decades, Maryland, along with the rest of the country, has placed strong emphasis on a purported sense of finality of sentences in ways that completely disincentivize people who have committed serious harms from admitting guilt. When it is impossible to revisit a sentence, people are forced to resort to challenging the conviction. We cannot emphasize enough how consequential this is, as it forces those who committed the harm to protect their only hope of release by never conceding guilt and/or by repeatedly attacking the conviction. Indeed, in post-conviction proceedings, defense counsel may advise against acknowledging guilt because otherwise there is almost no hope for relief. By contrast, where it is possible to revisit the sentence, the balance of considerations shift. The person who is responsible has every incentive to take responsibility for their actions, to invest in their own growth and change behind the walls, and to try to help any survivor find closure after many years

have passed. And, because the Rule contemplates revisiting the sentence many years after the wrong, when emotions may be less raw, it creates genuine opportunities for some kind of closure or improved understanding for all those affected.

SB 842 will lead to safer prison environments. 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.1 This in turn lowers the threat of violence and other risks and challenges that inmates, correctional officers, and staff face inside correctional facilities.

The Maryland General Assembly has recognized the need to reform the justice system and allow incentives for better behavior. By passing the Justice Reinvestment Act, "ban the box," and expungement bills, the Maryland General Assembly has repeatedly recognized the need and expressed the desire to provide individuals in the justice system with second chances. 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 SB 842.

YANET AMANUEL
PUBLIC POLICY ADVOCATE

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Scan OPPOSITION TO SENATE BILL 842 - MY TESTIMONY

Uploaded by: Charlotte White-Gray

Position: UNF

OPPOSITION TO SENATE BILL 842
MY TESTIMONY

Thank you for the opportunity to voice my concerns for Senate Bill 842. Such a bill sends chills throughout my being and causes me great pain.

Let me explain. My only Son was born in 1969 in Washington, D.C. Not wanting him to become a "victim" in DC by the time he turned 1 we had moved to Prince Georges County. He was educated in P.G. County Public Schools and graduated from Forestville High School. At the age of 12 he joined St. Paul Baptist Church, the oldest African American Church in the County. He remained an active member until March 22, 1999. The last live sight of my son was in Church on the night of March 21, 1999. The following night the city I took him out of as an infant took his life. Riding in his car with a friend to pick up her daughter in D.C. a bullet being fired struck him in the back of his head and took his life. I relive this event daily.

From 1999 to 2014 I rallied D.C. Police, the then Mayor and any and all officials that would listen to try and find my Son killer. We were told it was a case of mistaken identity. The police sources said they were looking for a guy driving a similar vehicle with DC tags. My Son vehicle had MD tags.

Fast forward to 2017 when 2 guys confessed to killing my only Son; they were sentenced and were to serve conservative sentences for his murder as well as other crimes. One Keith Fogle was in jail for a drug conviction. He was to finish that sentence and then start his sentence for my Son murder.

2 years ago DC passed a similar bill to this one. A Judge decided that Fogle had served enough time in Prison. Perhaps so for the drug conviction but not so for my Son murder. After serving only 51 days for the Murder of my Son Keith Fogle was FREE. Relatives, friends, Church members wrote numerous letters begging the Judge not to free him. Our letters felled on deaf ears. Letters to the Mayor and all Council members were never responded to. I am told that he immediately was hired by DC Mayor Bowser to work in her office.

The other confessed killer, to my knowledge remains in jail although he applied for Compassionate Release under the Pandemic COVID-19 Release Program but was denied by a different Judge.

In 2004 my beloved husband died calling out for his Son. He asked if they ever found who killed Junior and all I could say was No.

My Son left a mother, father, sister 3 daughters and a Son. His youngest daughter was born 7 months after his death. She never got the opportunity of meeting her beloved father. Over the years my daughter constantly lived in fear that her brother killers would one day come after us. She hovers over me like a hen does it chicks and often, twenty three years later, scream out in her sleep for her brother. Counseling has not helped and all I can do is Pray.

Senator Benson, I speak to you with a heart filled with pain. I understand you are a sponsor of this bill. You represent an area where killings are almost every day events. Do you not know the pain of the mothers, fathers, wives, children, sisters and brothers of those you represent? Have you seen the news reports from your area? Do you understand the greater hurt SB 842 will cause?

I am a Christian so I believe God gives us second, third, etc., chances and we should look at this bill as giving these criminals the same chance. Well I am sorry as the Mother who heart has felt extreme pain for twenty three years I cannot bring myself to accept this horror bill. I would be curious to know in states that passed such a bill how many criminals have been freed and how many has repeated actions of violence after being freed under such bills. Yes I am angry that these criminals who care nothing for others' lives can hurt families and get a pat on the hand and are placed back on the street to do more harm. They should be made to serve their full sentence. If they killed someone they should get life. They took a life that can't be reversed so they have no right to be free.

I recognize my personal case did not happen in Maryland however I have lived in Maryland for over 52 years. This is my home and I raised my children to respect the laws of the land. Such a law has destroyed my respect for the judicial system. I want you to see and know the impact and hurt my family is enduring because of unfair justice. We are victimized with the original killing, got a sense of justice during sentencing only to have it snatched from us by a Judge who didn't give s darn.

You see Senator Benson and all supporters of SB-842, I had a Son and he lived for 29 years staying free of the justice system. His name is Edward Conway Gray, Jr., and he did live. Today his sister and I along with his 4 children, 7 grandchildren, aunts, uncles, tons of cousins and a multitude of friends beg of you not to pass this Bill. This is not the time. Put yourself in our place, would you be sponsoring such a Bill if what happened to us had happened to you? I don't think you would.

With a Still Broken Heart,

Charlotte W. Gray

Charlotte White-Gray
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testimony SB 842 03-08-2022 FINAL.pdf
Uploaded by: Kurt Wolfgang
Position: UNF

MCVRC
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
Maryland Crime Victims' Resource Center, Inc. March 08, 2022

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 automatic[2].

50 x 12 = 600 months. 600 x 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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MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Joseph M. Getty
Chief Judge

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO:	House Judiciary Committee
FROM:	Legislative Committee Suzanne D. Pelz, Esq. 410-260-1523
RE:	Senate Bill 842 Criminal Procedure – Petition to Modify or Reduce Sentence (Maryland Second Look Act)
DATE:	March 2, 2022 (3/9)
POSITION:	Oppose

The Maryland Judiciary opposes Senate Bill 842. This bill allows a person to file a petition to modify or reduce his or her sentence if he or she has served the greater of 20 years of the sentence term without application of diminution credits or 25 years of the sentence term with application of diminution credits. Petitions under the bill may only be filed by a petitioner once every 5 years and may be filed regardless of whether the petitioner previously filed a motion for reconsideration under Maryland Rule 4-345. The court shall hold a hearing on a petition if the petitioner meets the eligibility criteria above. If the petitioner committed the offense at issue when he or she was a minor, the court shall modify the sentence in a manner reasonably calculated to release the petitioner within 3 years if the petitioner has matured and rehabilitated such that he or she is no longer a threat to the public. If the petitioner was an adult when the offense was committed, the court may modify the sentence if retention of the sentence is no longer necessary for public safety. A court may not increase the length of a sentence under the bill.

First, this bill is unnecessary as several methods of post-conviction relief already exist under Maryland law. In addition, the bill speaks of modifying the sentence. Although that could include increasing the sentence in some way, constitutionally that would be impermissible.

Further, the general right to file an application for leave to appeal in the bill seems overly broad as compared to existing rights to appeal from discretionary sentencing decisions. The right to file an application for leave to appeal to the Court of Special Appeals makes most sense in regard to determinations made under proposed 8-501 (E)(1) (pp. 3- lines, 29 to 3) referring to petitioners who were sentenced when they were minors and containing that provision (mentioned above) that the court "shall modify the sentence." Sentencing decisions that were made under proposed 8-501 (E)(2) are, as drafted, entirely

under a judge's discretion, as they are for motions for modification filed under the existing Rule 4-345(e). Generally, except on a few very limited grounds, there is not a *general* right to file an application for leave to appeal from denial of a motion for modification of sentence under Rule 4-345(e). *State v. Rodriguez*, 125 Md. App. 428, 442 (1999).

It is also not clear what standard the Court of Special Appeals would apply to an appeal of a discretionary sentencing decision, so long as a legal sentence exists. If there is an appeal from the trial judge's decision, either by the state or the petitioner (but not a victim), what standard of review would the appellate court apply – abuse of discretion, arbitrary and capricious, insufficiency of evidence to support the court's conclusion? Also, no specific fact-finding is required, only an amorphous determination as to whether a juvenile has matured and whether retention of the sentence is not necessary for the protection of the public.

Further, this bill provides that the State may appeal which is problematic as there is no provision indicating how the State would appeal or why this is needed. Once modification is granted, the court would be precluded from increasing a sentence on appeal, unless the new sentence were somehow illegal.

As applied to crimes committed by adults, this bill appears to place circuit courts in a position to make decisions currently left to parole. The standard set in the bill is whether "retention of the sentence is not necessary for the protection of the public" plus, for juvenile offenders, the inmate has "matured." That is quintessentially an act of post-judgment clemency, which is an executive branch function, through parole, statutory diminution credits, or gubernatorial commutation or pardon.

It is also not clear what the standard would be or what would happen if someone has separate concurrent sentences imposed in different courts (one court may grant relief from its sentence but the other court may refuse). The role of reviewing sentences, as imposed on the Judiciary by this bill, is more appropriately handled by the Parole Commission. The current standards for the Parole Commission are set forth in Section 7-305 of the Correctional Services Article and are more specific and comprehensive, requiring evidence that can be evaluated. The standard set forth in the bill gives no guidance at all, either to the trial judge or to appellate judges. Section 7-305 of the Correctional Services Article lists 11 specific factors that the Parole Commission must consider in deciding whether to grant parole. They give guidance to the Commission and require factual development. Senate Bill 842 provides no criteria other than whether a juvenile has "matured" or that "retention of the sentence is not necessary for the protection of the public." It is not clear what factors the court will consider in making those amorphous determinations or what factors an appellate court would consider in determining whether the trial judge has abused his/her discretion in granting or denying relief.

The Judiciary is also concerned that the court will lose the ability to hear from the victims in these cases as he or she may not be able to be located. Given the lengthy delay contemplated by this statute, it is likely that the original sentencing judge and counsel

will not be present. The ability to provide an accurate or comprehensive picture of the crime, the victim impact, and the defendant will be significantly compromised.

Further, on the page 3, line 26 the bill requires "the court shall modify." Although this provision is tempered by the balance of the section, which mandates reduction only if the judge finds that the petitioner "has matured and rehabilitated such that retention of the sentence is not necessary for the protection of the public" the Judiciary traditionally opposes legislation that includes mandatory provisions.

There also is the anomaly of excusing the failure to move for modification of sentence (other than for illegality) within 90 days or the five-year deadline for ruling on such a motion (which was added to the rule at the insistence of the legislature) for inmates who have served 20-25 years but not for anyone else. Subject to relief under the various post-conviction remedies, inmates who missed the 90-day deadline will not be entitled to discretionary modification relief until they serve 20-25 years, which the great majority of inmates never do.

In addition, the phrase "modify the sentence in a manner reasonably calculated to result in the petitioner's release within 3 years" (which appears in the bill at Criminal Procedure Article § 8-501(e)(1)) is vague, and additional clarity would be needed to enable courts to apply it properly and consistently.

cc. Hon. Joanne Benson
Judicial Council
Legislative Committee
Kelley O'Connor

SB 842_MNADV_INFO.pdf
Uploaded by: Melanie Shapiro
Position: INFO

BILL NO: Senate Bill 842
TITLE: Criminal Procedure – Petition to Modify or Reduce Sentence (Maryland Second Look Act)
COMMITTEE: Judicial Proceedings
HEARING DATE: March 9, 2022
POSITION: **Information**

The Maryland Network Against Domestic Violence (MNADV) is the state domestic violence coalition that brings together victim service providers, allied professionals, and concerned individuals for the common purpose of reducing intimate partner and family violence and its harmful effects on our citizens. **MNADV urges the Senate Judicial Proceedings Committee to amend SB 842.**

Senate Bill 842 allows a person serving a term of confinement to file a petition to modify or reduce their sentence if they have served the greater of 20 years of the sentence term without application of diminution credits or 25 years of the sentence term with application of diminution credits.

MNADV appreciates that the bill includes provisions requiring notice to a victim and the opportunity for a victim to be heard. However, the bill provides that a victim or victim's representative appear and testify in person at a hearing pursuant to this bill. The requirement of a personal appearance could inflict significant trauma on a victim and, conversely, if a victim does not object to the reduction, it is onerous to require personal appearance. We therefore urge the Committee to permit a victim to submit a victim impact statement or appear by video conferencing and require the Court to consider the statement or grant a victim's request to testify by video conference if it is requested by the victim.

For the above stated reasons, the **Maryland Network Against Domestic Violence urges SB 842 be amended.**

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