



Testimony to the House Judiciary Committee
HB0958 Criminal Procedure— Postconviction Review – Motion of Reduction of Sentence
Marc Schindler, Executive Director
Justice Policy Institute
202-558-7974, mschindler@justicepolicy.org
February 22, 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 HB0958 Criminal Procedure – Postconviction Review – Motion of Reduction of Sentence.

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 HB0958, there are few other release valves for Maryland's longest serving, most infirm, and expensive population, which has devastating 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 HB0958, 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 HB0958.