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POSITION ON PROPOSED LEGISLATION

BILL: House Bill 958 -- Criminal Procedure – Postconviction Review – Motion for Reduction of Sentence

FROM: Maryland Office of the Public Defender

POSITION: Favorable

DATE: 2/18/2022

The Maryland Office of the Public Defender requests that the Committee issue a favorable report House Bill 958.

House Bill 958 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.

House Bill 958 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. Critically, House Bill 958 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

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Sentencing Review Units and Conviction Integrity Units 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. Case review is especially important when an incarcerated person is serving a lengthy sentence imposed decades prior 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 fairness among co-defendants with different levels of culpability but who may have originally received similar 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

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>.

purpose. Release of such incarcerated persons could create significant cost savings and divert 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 HB 958.

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

⁶ The States with Asterisks have legislation currently pending.