Support for SB295-Motion for Reconsideration.pdf
Uploaded by: Carrie Williams
Position: FAV

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To: Members of The Senate Judicial Proceedings Committee
From: Carrie J. Williams, Chair, Legislative Committee, Criminal Law and Practice Section
Date: 2/13/2023
Subject: SB295—Postconviction Review—Motion for a Reduction of Sentence
Position: **Support**

The Legislative Committee of the Criminal Law & Practice Section of the Maryland State Bar Association (MSBA) Supports SB295– 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 some of the 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. The bill would also provide State's Attorneys a 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.

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 carriej.williams@gmail.com. Additional information can also be provided by Shaoli Katana at MSBA - shaoli@msba.org.

Sydnor_SB 295 Testimony Fav-JPR.pdf
Uploaded by: Charles E. Sydnor III
Position: FAV

CHARLES E. SYDNOR III, ESQ.
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Judicial Proceedings Committee
Executive Nominations Committee

Joint Committees
Administrative, Executive, and Legislative Review
Children, Youth, and Families

Senate Chair
Legislative Ethics

Chair
Baltimore County Senate Delegation

THE SENATE OF MARYLAND
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Testimony Regarding SB 295
Criminal Procedure – Postconviction Review –
Motion for Reduction of Sentence
Before the Judicial Proceedings Committee
February 14, 2023

Senate Bill 295 provides State's Attorneys the authority to seek a sentence modification during a person's incarceration if it is in the interest of justice; something that currently doesn't exist under Maryland law. In recent years, California, Washington, Oregon, and Illinois have all passed laws in a similar vein.[1]

Senate Bill 295 empowers a State's Attorney to seek a review. Further, the State's Attorney would need to feel that in light of all of the factors, it would be in the interest of justice to file the motion – if the State's Attorney does not think an incarcerated individual deserves reconsideration, then they are not mandated to file the motion for reduction of sentence.

It has been argued that the ability to reduce a sentence, like this legislation seeks, is already available under Maryland Rule 4-345. This is true; however, the court is only authorized to do this to correct an illegal sentence. Senate Bill 295 goes beyond illegal sentences and focuses on justice. Additionally, Maryland Rule 4-345 allows a court to revise a sentence in a case of fraud, mistake, or irregularity. However, this revisory authority is limited and must be used within five years of sentencing.[2] SB 295 allows courts to reconsider when it is in the best interest of justice to do so, without an arbitrary limitation.

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[1] Maryland State Bar Association. Doyle Niemann, Chair, Legislative Committee, Criminal Law and Practice Section testimony for HB 958. February 18, 2022.

[2] It says: "(1) *Generally.* Upon a motion filed within 90 days after imposition of a sentence (A) in the District Court, if an appeal has not been perfected or has been dismissed, and (B) in a circuit court, whether or not an appeal has been filed, the court has revisory power over the sentence except that it may not revise the sentence after the expiration of five years from the date the sentence originally was imposed on the defendant and it may not increase the sentence."

To determine whether to reduce an incarcerated individual's sentence, SB 295 states that the courts may consider certain factors. Those factors include: (1) disciplinary and rehabilitation records, (2) evidence that age, or diminished physical condition, or their time served indicates a reduced risk for future violence, and (3) evidence that demonstrates changed circumstances warrant a reduction of sentence and demonstrate that continued incarceration is no longer in the interest of justice.

Senate Bill 295 provides State's Attorneys an important tool to address the issue of disproportionate and unequal sentencing, or where a strict mandatory minimum sentence is inappropriate. As the law evolves, case review is of the utmost importance and can help deserving Marylanders currently in State prisons. As such, I urge you to vote favorable for SB 295.

TESTIMONY OF DAVID JAROS IN SUPPORT OF SB 0295.pdf
Uploaded by: David Jaros
Position: FAV

TESTIMONY OF DAVID JAROS
FACULTY DIRECTOR OF THE UNIVERSITY OF BALTIMORE SCHOOL OF LAW
CENTER FOR CRIMINAL JUSTICE REFORM

IN SUPPORT TO SB 0295

JUDICIAL PROCEEDINGS COMMITTEE
MARYLAND SENATE

February 13, 2023

Good afternoon Chairman Smith, Vice Chair Waldstreicher, and members of the Committee. My name is David Jaros, and I am the Faculty Director of the University of Baltimore School of Law's Center for Criminal Justice Reform. The UB Center for Criminal Justice Reform is dedicated to supporting community driven efforts to improve public safety and address harm and inequity in the criminal legal system and we are grateful for this opportunity to submit testimony in support of House Bill 295.

Senate Bill 295 will establish a clear mechanism for State's Attorneys to seek a sentence reduction for a currently incarcerated person when such a sentence reduction is in the interest of justice. This is the kind of common sense criminal justice policy that improves public safety, serves the needs of crime victims, and creates a valuable opportunity to both revisit sentences that may no longer be appropriate and to reverse some of the ill effects of mass incarceration.

As the General Assembly recognized when it passed the Juvenile Restoration Act, people have the capacity to change and rehabilitation is a very real possibility. Allowing states attorneys to review whether an incarcerated person has made significant rehabilitative progress and no longer poses a threat to public safety is sound criminal justice and fiscal policy. Money spent warehousing a rehabilitated person in prison could be better utilized investing in communities and supporting evidence-based strategies that reduce crime without contributing to mass incarceration.

It is also important to recognize that the legitimacy and effectiveness of the criminal legal system is undermined when sentences are perceived as being disproportionate or unequally applied. Variations in sentences can be the result of bias (whether conscious or unconscious) or just the consequence of shifting priorities and policies over time. Regardless of their source, these differences can be profoundly unjust and providing prosecutors with the tools to correct inappropriate or disparate sentences to ensure that equally culpable parties receive equal treatment and that there is parity between sentences imposed decades ago compared to sentences requested today just makes sense.

Prosecutorial Initiated Resentencing (PIR) does not simply recognize people who have successfully rehabilitated themselves; it affirmatively encourages such rehabilitation by incentivizing positive in-prison behavior. It deters people who are incarcerated from incurring

rule violations and motivates people to enroll in and complete education courses, job training, substance abuse classes, and other rehabilitative programming. HB 295 represents the "smart on crime" approaches to incarceration that are being adopted across the country. In recent years, states like California, Washington, Oregon, and Illinois have established rules allowing prosecutors to initiate a resentencing and similar laws have been proposed in several other states.

Prosecutor initiated resentencing also responds to the needs and interests of crime victims. It is important to note that the narrative that crime victims always want longer sentences is false. In fact, a 2019 survey found that nearly 80% of California crime victims believed that, rather than helping rehabilitate a person, incarceration increases a person's chance of committing future crimes or has no effect on public safety.[1] Moreover, a national survey on crime victims' views on safety and justice found that a majority of victims believed the criminal justice system should focus more on rehabilitation, rather than punishment. In that same survey, more than half of crime victims favored a system in which sentences could be shortened for people serving non-life sentences for serious or violent offenses if they were deemed a low risk to public safety.[2] It is also worth noting that HB 295 maintains the protections for victims already enshrined in Maryland law and that victims retain all of the protections and rights outlined in Md. Code, Criminal Procedure §11–104 and §11–503.

Finally, HB 295 makes the criminal process more transparent and consistent. The bill provides much needed clarity on courts' jurisdictional authority to hear prosecutor initiated resentencing motions. While there are a variety of procedural and constitutional avenues that fit individual cases, this bill simplifies and clarifies the process by which a court can consider a prosecutor's motion to resentence. When everyone involved—the prosecutor, the defense, the victim, and the court all believe a resentencing is in the interests of justice, there should be no doubt that a court has the jurisdiction to correct an inappropriate sentence.

As Faculty Director of the University of Baltimore Center for Criminal Justice Reform, I want to thank you all for the opportunity to submit testimony in support of this important bill.

[1] See Californians for Safety and Justice, Crime Survivors Speak: A Statewide Survey Of California Victims' View On Safety And Justice (2019).

[2] See The Alliance for Safety and Justice, National Survey on Victims' Views on Safety and Justice (2016).

SB2295 - Motion to Review Sentence.pdf
Uploaded by: Doyle Niemann
Position: FAV

AISHA N. BRAVEBOY
STATE'S ATTORNEY

JASON B. ABBOTT
PRINCIPAL DEPUTY STATE'S ATTORNEY

State's Attorney for Prince George's County
14735 Main Street, Suite M3403
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301-952-3500

February 14, 2023

Testimony in **Support**

SB295 - Postconviction Review - Motion for Reduction of Sentence

State's Attorney Aisha N. Braveboy and the Office of the State's Attorney for Prince George's County strongly support **SB295 – Postconviction Review – Moton for Reduction of Sentence.**

The Office of the State's Attorney is responsible for prosecuting violations of state or local law in Prince George's County and making sure that the laws are enforced in a just and fair manner and that there is due respect for the rights of everyone.

This bill addresses a real and long-standing gap in our criminal justice system whereby the courts are precluded from reviewing sentences once review has been denied and, in most cases, once five years have gone by – at exactly the time when review may be most appropriate.

Currently Maryland Rule 4-345 provides a framework through which a judge can reconsider a sentence that has been imposed if the defendant requests such a review within 90 days of sentencing. Most defense lawyers file such a request as a matter of good practice. But frequently, judges deny those requests shortly after they are filed. And, once denied, they cannot be brought back at any point – even if there is reason to do so. And for any sentence imposed after 2004, a motion to reconsider cannot be considered after five years have elapsed.

Circumstances and individuals change over time, however. That is as true for individuals who commit crimes and who are locked up for years as it is for anyone else – and it is especially true for those who commit crimes when they are young and immature. Years after they commit a crime and after lengthy periods of incarceration, they are not the same individuals they were when the committed the crime.

This bill will allow a State's Attorney to file a motion to reconsider, regardless of prior actions, and ask a judge to reconsider a sentence. The decision, of course, remains the judge's, based generally on his or her evaluation of the justice of any request.

SB295 is narrowly crafted to reduce any burden on the judicial system and to ensure that there is a reasonable basis for any request and that a court has everything necessary to make an informed decision. Motions to reconsider under the bill can only be filed by a State's Attorney. Any victims of the crime and the family of victims must be notified and given an opportunity to express their support or opposition. The judge can consider all relevant factors in deciding, including the nature of the crime and the actions of the petitioner while incarcerated, as well as victim sentiment.

SB295 addresses a major reservation expressed by the Court of Appeals (now the Maryland Supreme Court) when it considered proposed changes proposed by the Standing Committee on Rules and Practice to Rule 4-345 two years ago: that the courts would be overwhelmed by motions with little foundation. By limiting requests to those initiated by a State's Attorney, the bill reduces the chance that this will happen.

By limiting the requests to those initiated by a State's Attorney, the bill also provides prosecutorial offices who do not believe such requests should be allowed for any reason, including the potential impact on victims, the ability to refuse to file them – as is their right as the elected State's Attorney for their jurisdiction

On the other hand, prosecutorial offices like the Office of the State's Attorney for Prince George's County, which believes in the possibility of change and redemption, and which has set up a special unit to review such cases, will be able to move ahead with a possible reconsideration when they determine this is in the interests of justice.

For the foregoing reasons, **we urge a favorable report on SB295**.

For more information, contact: Doyle Niemann, Assistant State's Attorney and Chief of the Conviction and Sentencing Integrity Unit, at dlniemann@co.pg.md.us or 240-244-7178.

SB 295 Post Conviction Review Support.pdf
Uploaded by: John Giannetti
Position: FAV

Maryland Criminal Defense Attorneys' Association

MD Senate -Judicial Proceedings Committee

February 14, 2023 1:00pm

Hearing on SB 295

Post-conviction – Motion for Reduction of Sentence

MCDAA Position: Support

Brief bill explanation: This bill authorizes a State's Attorney to file a motion to reduce the sentence of a person serving a sentence of incarceration at any time during the period of active incarceration if it is in the interest of justice. The court must hold a timely hearing on the motion, and the victim or the victim's representative must be notified of the hearing in accordance with specified statutes. The incarcerated individual must be present at the hearing unless the individual waives the right to be present. The court may consider the following factors when determining whether to reduce a sentence: (1) the inmate's disciplinary record and record of rehabilitation and maturity while incarcerated; (2) evidence that reflects whether age, time served, or diminished physical condition has reduced the inmate's risk for future violence; and (3) evidence reflecting a change in circumstances since the original conviction and sentencing such that the inmate's continued incarceration is no longer in the interest of justice.

MCDAA Position: We support, generally, legislation that removes barriers for incarcerated individuals existing in the current law and allows a Court to hear the testimony of defendants who are incarcerated. This legislation, while far from a total fix, does take a positive step forward. This legislation gives defendant's an opportunity to be heard and have their sentence reviewed. If denied, a subsequent motion can be filed by the prosecutor after an additional three years.

For additional information or questions regarding this legislation, please contact MCDAA Government Relations Contact John Giannetti 410.300.6393, JohnGiannetti.mcdaa@gmail.com

FTP_SB 295 LOS_MD_2023.pdf
Uploaded by: May Lim
Position: FAV

FOR THE PEOPLE

February 13, 2023

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

Re: Support for SB 295 (Sydnor) – Prosecutor-Initiated Resentencing

Dear Senator Smith,

On behalf of For The People, I write today in strong support of SB 295 (Sydnor), which would grant State's Attorneys discretion to initiate criminal cases for resentencing if it is in the interest of justice.

For The People is a national organization that leads implementation of Prosecutor-Initiated Resentencing across the country. Our Founder/Executive Director Hillary Blout is a former prosecutor who drafted and secured the passage of the nation's first Prosecutor-Initiated Resentencing (PIR) law in California (AB 2942), which then served as a model for other states that proposed the law. Four additional states have passed the law—Washington State, Oregon, Illinois, and Louisiana—and seven other states have proposed the law, ranging from Texas to Massachusetts. Like the five existing PIR laws, SB 295 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 295 would give State's Attorneys discretion to look back at such sentences on a case-by-case basis.

As SB 295 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 295 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 295 guarantees the victim's rights to be notified of the hearing and to have their voices heard.

In the past four years of implementation, about two dozen prosecutors across the country have opted in to using the law; others have simply opted out. Prosecutors' offices implementing PIR include a wide range of counties—large, small, medium, rural, urban—with prosecutors from across the political spectrum. In the last four years of implementation, approximately 630 people have been resentenced and released, which speaks to the extremely careful and methodical review process for each case.

SB 295 would help eliminate costs of incarcerating people who no longer pose a risk to public safety and allow critical taxpayer dollars to be redirected toward more effective crime-reducing activities, and it would give State's Attorneys an additional tool to ensure that justice prevails. For these reasons, For The People strongly supports SB 295 (Sydnor) and encourages the Committee to report favorably on this important bill.

Respectfully,

May Lim
National Policy Manager, For The People

PIR Fact Sheet_FINAL (1).pdf
Uploaded by: May Lim
Position: FAV

FOR THE PEOPLE™

Prosecutor-Initiated Resentencing (PIR)
Fact Sheet

In recent years, a bipartisan consensus has emerged around the need to improve and strengthen the criminal justice system – to protect communities, ensure fairness, and smartly allocate resources. While communities across the country continue to take part in the criminal justice reform movement, prosecutors have not always been consulted when change occurs.

As ministers of justice, prosecutors should have a leadership role in making public safety determinations for the communities they serve. Prosecutors want to lead from the front on improving the criminal justice system.

Prosecutor-Initiated Resentencing (PIR) establishes a new opportunity for prosecutors to reevaluate lengthy sentences and petition the court for resentencing, with input from victims of the initial crime and public safety at the forefront of those decisions. PIR does not question whether original sentencing decisions were legal or appropriate at the time of sentencing. Rather, it gives prosecutors the ability to consider whether the sentence *today* still serves the interest of justice.

- ***Giving prosecutors discretion to review past sentences***: PIR grants prosecutors discretion to initiate a thorough and methodical review of past sentences to determine whether certain people can be safely released. Prosecutors are empowered to petition a court for recall and resentencing, with courts making the final determination on resentencing. Specifically, PIR laws give prosecutors the discretionary power to determine whether someone can and should be safely released based on instances where the incarcerated person has demonstrated their dedication to rehabilitation after serving a lengthy amount of time, the person's original sentence is inconsistent with current sentencing standards, or other reasons that serve the interests of justice.

- ***Protecting the rights of victims***: In a resentencing process, victims play a critical role. Prosecutors are required to consult victims and incorporate their opinions into resentencing decisions, while also informing victims of their rights to meaningfully participate in the process. Prosecutors have learned that not all victims favor lengthy prison sentences, and many crime survivors want the criminal justice system to focus more on rehabilitation than punishment.

- ***Giving prosecutors a new tool to protect public safety and administer justice***: As ministers of justice, prosecutors have a responsibility to ensure that the punishment fits the crime—both during and after original sentencing. Prosecutors understand that people can change, and that if an incarcerated person has served a significant portion of their sentence, made meaningful strides toward rehabilitation, and can be safely released to reintegrate back into the community, they may deserve a second chance. If a person has been rehabilitated and their continued incarceration is no longer in the interest of justice, PIR gives prosecutors a legal mechanism to correct that injustice.

- ***Promoting safety for incarcerated people and the communities they return to***: PIR helps build safer prisons by incentivizing positive in-prison behavior—deterring incarcerated people from incurring rule violations and motivating people to enroll in and complete education courses, job training, substance abuse classes, and other rehabilitative programming. PIR also emphasizes the importance of positive reintegration back into the community by placing an importance on reentry planning ahead of a person's release from prison.

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- ***Promoting a more effective allocation of public safety resources***: Incarceration has become one of the nation's biggest public safety expenses, displacing more effective interventions such as after-school programs, crime victim assistance, and drug and mental health treatment. PIR can create significant cost savings and divert critical taxpayer dollars away from incarcerating people who are no longer a threat to public safety, and toward more effective crime-reducing activities.

- ***Building community trust***: Identifying and conducting reviews of unjust sentences is an opportunity for prosecutors to show communities that they are committed to prioritizing safety and carrying out justice before, during, and after prosecution and sentencing.

- ***Expanding power to prosecutors across the country:*** In a growing number of states, PIR laws have expanded the discretion of prosecutors with appropriate boundaries. PIR laws have been passed in Illinois, Louisiana, California, Oregon, and Washington State, and PIR bills have been introduced in Texas, Maryland, Georgia, New York, Minnesota, Massachusetts, and Florida. Notably, in states where the law is being implemented, PIR has not strained court or prosecutorial resources because the tool is exercised entirely at the prosecutor's discretion.

For The People *is a non-partisan national organization working to advance Prosecutor-Initiated Resentencing. Our organization supports prosecutors who are implementing PIR in their jurisdictions through case review, data analysis, policy and strategy development, victim notification, and coordination with community-based organizations, defense attorneys, and other criminal justice system stakeholders.*

PIR Preliminary Data Report_2023_SB 295.pdf
Uploaded by: May Lim
Position: FAV

Prosecutor-Initiated Resentencing (PIR)
February 2023: Preliminary Data Report

- States where PIR laws have passed: **5** (CA, WA, OR, IL, LA)
- States where PIR laws have been proposed: **7** (MD, TX, GA, NY, MN, MA, FL)
- Number of people resentenced through PIR: **~639**

SB0295 - Support with Amendment (1).pdf
Uploaded by: Anne Kirsch
Position: FWA

Anne Bocchini Kirsch
Director of Advocacy, PREPARE
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SUPPORT WITH AMENDMENT

SB0295 - Criminal Procedure - Postconviction Review - Motion for Reduction of Sentence

According to the 2022 ADP report, there are currently 14,955 individuals, 14,456 of whom are male, sentenced and serving time in Maryland. Of these people, 71.5% are Black, according to the 2022 DPSCS Inmate Characteristics report (compared to a Maryland population of 12.4% Black alone and 10.2% two or more races according to the 2020 US Census). 3,140 of the incarcerated people in Maryland are over the age of 50, while 2,212 have life sentences (5,843 have sentences over 180 months, which includes, but does not differentiate, many people with sentences so long they become effective life sentences or have parole eligibility that is greater than a life sentence). The inequities suggested by this data are chilling, and there is a need to identify incarcerated people who have successfully achieved rehabilitation and facilitate their return to the community.

I wholeheartedly agree with the need for legislation like HB0330, and its implementation statewide, however this particular piece of legislation, as drafted, does not provide a clear way for individuals to access relief, guidelines for when and how they can apply for review, or the data reporting requirements necessary to see if this legislation is effective, track who is being released under this provision, and ensure that it is being equitably applied to all communities. This creates a number of challenges.

The most important piece of this amendment is the data tracking. The concept of a motion for reduction of sentence that only the State's Attorney's Office can file is a novel one, and therefore requires careful study during and after its implementation. While there is one such successful program operating in Prince George's County, scaling a program is always a delicate and difficult process. This legislation is a step in the right direction to healing the damage caused by systemic racism, technological challenges, and personnel problems that have left so many people, including over 10,000 Black men, stranded in prison with long sentences and no chance for a second look. But in order to truly serve that goal, it is necessary to ensure the relief reaches its intended population. As with any new concept, that means building the prototype, figuring out

what works and what doesn't, and improving the model. The only way to do this is by tracking data and making those reports available for analysis.

Good data analysis requires a uniform structure, and that is what the guidelines of this amendment are designed to offer. This amendment limits who can ask for review to a reasonably sized population with an incarceration record of sufficient length to offer insight into the individual's readiness for release. Without this limit, the already overburdened State's Attorney's Office would be inundated with requests for review. While it is important for the State's Attorney's Office to have access to this modification measure at all times during the incarcerated person's sentence, it is also important that they not be burdened by the need to review cases too early or too frequently. Another reason for uniform criteria is the critical need for this process to be applied fairly and uniformly across the state, rather than encouraging each county to set different guidelines.

In my work as a parole advocate, I've seen many people who have done spectacular things with decades of incarceration, and are deserving of a second chance. In many cases, these are the mentors and leaders that the youth are in desperate need of - people who could do the community work necessary to prevent crimes before they happen. Maryland is literally paying to keep the solution away from the problem. While the process of bringing these people home may seem daunting at first, the long-term rewards to our society as a whole are too great to ignore. We need to move forward now.

I know that the idea of a law that puts so much power in the hands of one side of what has until now been an adversarial system is frightening to many people. As a proponent of collaborative justice and a strong believer in our ability to reach common ground, I have hope in an idea that will start to mend our divided system and bring all parties to the table to find results-driven solutions that provide the best outcomes for the State, individuals, families, and society as a whole. Properly executed, this might be the answer. We will never know unless we try it, track it, and then come back to discuss it. I urge you to pass this bill with the following amendment:

Bold is recommended amendment to be inserted after section (B)

(B) The State's Attorney's Office may file a motion for reduction of sentence at any time during the period of active incarceration recommending a lesser sentence.

(C) An incarcerated person or their representative may petition the State's Attorney's Office for a sentencing review.

(D) When an incarcerated person who has served a minimum of 20 years incarceration without application of diminution credits requests a sentencing review under section (C) of this subtitle, the State's Attorney's Office shall conduct the sentencing review within 6 months unless good cause is shown, and either:

(1) File a motion for reduction of sentence in the Court, or

(2) Report the reason for denial to the petitioner.

(E) The State's Attorney's Office shall produce a yearly report of the number of requests submitted, the number of requests denied, the reason for the denials, the number of motions filed under this section, and the outcome of the hearings to be provided to the legislature and made available to the public.

(F) If the State's Attorney's Office declines to file a motion for reduction of sentence after a review under section (D) of this subtitle, the incarcerated person is not entitled to a subsequent review for at least 3 years from the date of denial.

(G) The individual may file a response within 60 days after the filing of the motion providing any additional information for the court's consideration.

OPD Report on Juvenile Restoration Act - Year One.

Uploaded by: Brian Saccenti

Position: FWA

The Juvenile Restoration Act

Year One — October 1, 2021 to September 30, 2022

> "After I got to the transitional house and got settled, I went to the back yard and put my hand on a tree trunk and just stood there for a while looking up at the light shining down through the leaves. . . .
>
> You see, there are no trees in prison. I hadn't touched a tree in more than 26 years."
>
> - J.B., a man released as a result of the Juvenile Restoration Act

The Juvenile Restoration Act

Year One – October 1, 2021 to September 30, 2022

Table of Contents

Summary

Effective October 1, 2021, the Juvenile Restoration Act permits people who have served at least 20 years of a sentence for a crime that occurred when they were under the age of 18 to file a motion for reduction of sentence. This report documents the progress that has been made implementing the Act and its successes over the first year.

More than 200 individuals are eligible for consideration under the JRA, with approximately 160 eligible individuals represented by OPD and its legal partners. To represent its clients, the OPD's Decarceration Initiative has assembled a team of Assistant Public Defenders, law school clinics, and pro bono attorneys, who often work collaboratively with social workers, re-entry specialists, or other experts. Working with their clients, the multidisciplinary legal teams normally develop release plans connecting clients with community re-entry organizations that support their transition from incarceration to freedom.

The Juvenile Restoration Act is predicated on research showing that most people who commit serious crimes as children eventually mature, become rehabilitated, and can be safely released. The operative statute permits a court to reduce a person's sentence only if it determines that the person would not pose a danger to public safety and that the interest of justice would be better served by a reduced sentence.

Consistent with what the research predicts and the legislature intended, courts in the first year since the Act took effect have reduced sentences and released people in the majority of cases decided. Courts have ruled on the motions filed by 36 people. They released 23 of those individuals from prison. In four more cases, courts granted the motion in part and reduced the duration of the sentence, but the individual has more time to serve before being released. In seven cases, the court reached the merits but denied the motion. In one case, the court denied the motion without a hearing because it found that the client was ineligible to file a motion – a decision that has been appealed. Finally, in one case, the individual was released on parole after the motion was filed but before the hearing; in that case, the court modified the sentence to place the individual on probation with conditions designed to maximize his chances of success.

Almost two-thirds of the motions decided so far were in Baltimore City cases. The next three jurisdictions with the most rulings on these motions are Baltimore County (4 motions), Frederick County (2 motions), and Prince George's County (2 motions), with six other jurisdictions having one ruling each. Most of the individuals who were released were connected with organizations that provide holistic re-entry services, some in conjunction with transitional housing. In the group released so far, half lived with family after their release, and the other half initially lived at a transitional housing program.

The first year of the Juvenile Restoration Act shows that, with an available court mechanism and robust re-entry planning and support services, many individuals who have served long sentences can be safely released. The General Assembly should expand on the success of the JRA by expanding eligibility for sentence reduction consideration to people who were emerging adults (18 to 25 year olds) at the time of the crime and older prisoners who have similarly served long prison terms. Funds should also be invested in implementing these recommendations and encouraging reliance on community based services where incarceration is no longer necessary for public safety.

What the Act did

The Juvenile Restoration Act of 2021 created two statutes that did three things.

Criminal Procedure Article § 6-235 addressed sentencing for children tried as adults by (1) prohibiting courts from imposing sentences of life without parole on juveniles tried as adults, making Maryland the 25th state to ban this punishment; and (2) providing that mandatory minimums no longer apply to children sentenced as adults.

Criminal Procedure Article § 8-110 allows a person who was convicted as an adult when they were a minor and who has served at least 20 years of a sentence imposed before October 1, 2021, to seek a sentence reduction. It provides that "[n]otwithstanding any other provision of law, after a hearing under subsection (b) of this section, the court may reduce the duration of a sentence imposed on an individual for an offense committed when the individual was a minor if the court determines that: (1) the individual is not a danger to the public; and (2) the interests of justice will be better served by a reduced sentence."[1] In making this determination, § 8-110 directs the court to consider the following factors:

> (1) the individual's age at the time of the offense;
>
> (2) the nature of the offense and the history and characteristics of the individual;
>
> (3) whether the individual has substantially complied with the rules of the institution in which the individual has been confined;
>
> (4) whether the individual has completed an educational, vocational, or other program;
>
> (5) whether the individual has demonstrated maturity, rehabilitation, and fitness to reenter society sufficient to justify a sentence reduction;
>
> (6) any statement offered by a victim or a victim's representative;
>
> (7) any report of a physical, mental, or behavioral examination of the individual conducted by a health professional;
>
> (8) the individual's family and community circumstances at the time of the offense, including any history of trauma, abuse, or involvement in the child welfare system;
>
> (9) the extent of the individual's role in the offense and whether and to what extent an adult was involved in the offense;
>
> (10) the diminished culpability of a juvenile as compared to an adult, including an inability to fully appreciate risks and consequences; and
>
> (11) any other factor the court deems relevant.[2]

The statute requires the circuit court to hold a hearing on the motion where the individual and the State may present evidence, and the victim or a representative has the right to be heard. If the court denies the motion or grants it only in part, than the individual may file a second and third motion three years after the previous ruling.

I think that all of us, deep down inside, believe in the possibility of redemption, believe that the least among us can overcome adversity and transform himself or herself into an honorable, law-abiding citizen who can contribute to society.

We all know, don't we, that any human being who reaches his 37th birthday is a different person than he was at the age of 17. A person's brain doesn't fully mature until he's 25 years old, and with maturity comes different thinking, different attitudes, and a different approach to life. Impulsive behavior diminishes. There's a far greater appreciation of the consequences of one's actions.

We all know this to be true because each of us has had this happen to us. If we were to reflect on our own lives, we would have to acknowledge that at the age of 37, we could look back at our actions when we were only 17 and conclude that a lot of changes had occurred in the meantime

- Senator Chris West

The Purposes of the Act

The legislative history indicates that the General Assembly was motivated by the following information and concerns when passing the Act.

The diminished culpability of adolescents and their greater capacity for change

The judiciary has come to recognize that adolescents are less culpable for their criminal acts than adults and more capable of change as they age and mature. The Supreme Court has noted that "(1) juveniles lack maturity, leading to 'an underdeveloped sense of responsibility,' as well as 'impetuous and ill-considered actions and decisions'; (2) juveniles are more vulnerable or susceptible to negative influences and peer pressure due, in part, to juveniles having less control over their environment or freedom 'to extricate themselves from a criminogenic setting'; [and] (3) the personality of a juvenile is not as well formed as that of an adult, and their traits are more transitory and less fixed."[3]

As a result, the traditional justifications for punishment apply with less force to juvenile offenders. The case for retribution is not as strong because of the lesser culpability of children. Harsh sentences are unlikely to deter other juveniles because "the characteristics that make juveniles more likely to make bad decisions also make them less likely to consider the possibility of punishment, which is a prerequisite to a deterrent effect."[4] The need to incapacitate the wrongdoer to protect public safety diminishes and disappears as children mature and become rehabilitated. Finally, a "meaningful possibility of release based on demonstrated maturity and rehabilitation"[5] incentivizes and thereby promotes rehabilitation.

I did want to read something from a former judge, a circuit court judge, from Montgomery County about this bill. He said:

> Having been involved in the juvenile justice system for over 45 years, as a prosecutor, a defense attorney and a trial judge, I've seen these cases from all angles. Without a doubt, we here in Maryland often prosecute and punish children much too harshly in a system designed for adults. The Juvenile Restoration Act will provide appropriate second chances to those children, now that they are mature adults, who have been rehabilitated and are ready for a life outside of prison. Now is the time to finally recognize that a child who commits a serious crime at the age of 16 is not the same person 20 years later.

So, to my colleagues in the body who voted green [*i.e.*, to pass the bill], your green vote here tonight affirms the belief that there is a modicum of redemption in the human condition, and this legislation moves us toward that end, so thank you very much.

\- Senator Will Smith, Chair
Judicial Proceedings Committee

The very low recidivism rate

Research has confirmed that most adolescents who commit serious crimes "age out" of criminal behavior and become law-abiding adults.[6] This is particularly true of adolescents convicted of serious crimes, such as sex offenses and murder. "A meta-analysis of over thirty studies conducted over the past twenty years found that the recidivism rate for juvenile sex offenders is less than three percent" and that "among those juvenile offenders who did reoffend, the vast majority did so within three years of their first offense."[7] Likewise, a recent study from Philadelphia found that among 174 people released after being sentenced to life without parole for murder committed when they were under 18 years old, only six (3.5%) were re-arrested, with only two of these cases (1%) resulting in a new conviction.[8]

The need to redress severe racial disparities

In the Juvenile Restoration Act's Racial and Equity Impact Note, the Maryland Department of Legislative Services (DLS) acknowledged the appalling racial disparities in which children get charged as adults and which children receive more severe sentences.

Citing data from 2019 (the most recent pre-pandemic year), DLS noted that "African American youth, or 10- to 17-year-old children identified as Black, are more than seven times as likely to be criminally charged as adults than their White peers in the State."[9] Although Black children comprised only 32% of Marylanders ages 10 to 17, they comprised 81% of children charged as adults.[10] Additionally, approximately 80% of people serving 10 years or more in Maryland prisons are Black.[11] "Given existing data and scholarly research," the Racial and Equity Impact Note informed the General Assembly, "the [Juvenile Restoration Act] has the potential to reduce the inequitable impacts on Black youth criminally charged as adults in the State."[12]

The science of adolescent development

The judiciary's recognition of the lesser culpability of adolescents is rooted in science. Adolescents are immature both in their emotional development and in the physiology of their brains. This makes them less mindful of the potential consequences of their actions, less able to effectively regulate strong emotions, more impulsive, more likely to take risks, and more susceptible to negative influences from peers and adults.

Adolescents are not as mentally or emotionally developed as adults. Brain development research shows that juveniles' prefrontal cortexes (the part of the brain primarily responsible for judgment and impulse control) are less effective than those of adults. The prefrontal cortex does not normally develop until an individual reaches her twenties. Adolescent brains have high levels of dopamine in the prefrontal cortex, which increases the likelihood of engaging in risky or "novelty-seeking" behavior. In addition to the prefrontal cortex, juveniles' limbic systems – responsible for emotional and reward-seeking behaviors – are more active than those of adults. Adolescents place less weight on risk than adults and are "vulnerab[le] to risky behavior, because sensation-seeking is high and self-regulation is still immature." As a result, adolescents are more likely than adults to take risks and make poor decisions.

In addition to issues related to prefrontal cortexes and limbic systems, the white matter in the brain of a juvenile is not fully developed. This impedes that part of the brain that handles judgment and decision-making – the prefrontal cortex – from effectively communicating with the part that controls emotions and thrill seeking. As an adolescent matures, the white matter increases in the brain through the process of myelination, and information processing improves. At the same time, gray matter in the brain, which causes information processing inefficiencies, is pruned away. Simply put, the part of the teen brain that is responsible for judgment and impulse control and the part of the brain that controls emotions and reward seeking become better able to communicate as a teen matures; as this communication improves, youths become better decisionmakers.

In addition to the neurological, adolescents are not fully developed in the psychosocial realm. The most extreme increase in psychosocial development occurs between ages sixteen and nineteen. As they develop psychosocial competencies, juveniles increase their "capacity to resist the pull of social and emotional influences and remain focused on long-term goals." Until early adulthood, young people lack the ability to efficiently process social and emotional cues, leading to increased susceptibility to outside negative influences. Juveniles are especially susceptible to peer influences and are more likely to engage in "antisocial behavior" to conform to peer expectations or build status in a group.

- Amy E. Halbrook, *Juvenile Pariahs*, 65 Hastings L.J. 1, 8-10 (2013)

Preparing for Implementation

Shortly after the passage of the Juvenile Restoration Act, the Maryland Office of the Public Defender (OPD) established the Decarceration Initiative to coordinate representation of indigent people eligible to file a motion for reduction of sentence under the Act, and to advocate for the adoption of similar "look back" provisions authorizing the reduction of sentences for other individuals who have served lengthy periods of incarceration.

The OPD's Decarceration Initiative partnered with the Campaign for the Fair Sentencing of Youth, the Family Support Network, former Baltimore City State's Attorney Gregg Bernstein, and other organizations and advocates to prepare to represent eligible individuals on motions for reduction of sentence. This leadership group guided much of the initial work.

With help from the Department of Public Safety and Correctional Services, the OPD began the process of identifying eligible individuals and informing them of the new law and its potential relevance to their sentence. As of September 2022, approximately 160 eligible indigent individuals have received representation through the OPD.

The Act took effect at a challenging time for the OPD. In addition to its high caseloads, the pandemic had created a backlog of cases awaiting jury trials. To increase its bandwidth, the OPD and its aforementioned partners recruited dozens of *pro bono* attorneys and teamed up with law school professors and clinics from the University of Baltimore School of Law, the University of Maryland Francis King Carey School of Law, and the American University Washington College of Law to provide representation to eligible individuals.

Next, the OPD developed and presented training curricula and resources for legal teams (attorneys, social workers, paralegals, core staff, and others) working on these cases, and conducted bi-weekly drop-in meetings on Zoom. Finally, in July 2021, the OPD began assigning legal teams to represent individual clients.

Preparing the Motion for Sentence Reduction

The first step for an eligible individual to be considered for a sentence reduction is to file a motion in circuit court, typically to be decided by the sentencing judge if they are still on the bench. The motion typically addresses the legal background of the JRA, the factual circumstances unique to that client, the factors the court is required to consider under CP 8-110, and the proposed release plan.

To prepare the motion, a legal team typically meets with their client multiple times, gathers information from the court, prison and parole files, and contacts family members or close friends of the client. In some cases, the team may retain a psychologist to conduct a psychological evaluation or risk assessment of the client.

As part of preparing the motion, the legal team and the client typically develop a proposed release plan for meeting the client's needs if they are released. OPD's forensic social workers and reentry specialists have played a vital role in identifying client needs and connecting them with relevant services. Although not required by the Juvenile Restoration Act, these plans are an important part of

helping the client to be successful on the outside and they build upon proven practices established with the "Unger defendants."

The Decarceration Initiative approach builds off the successes and lessons learned from OPD's coordination of cases impacted by *Unger v. State*, 48 A.3d 242 (2012). In *Unger,* the Court of Appeals of Maryland made it possible for more than 200 prisoners who had been incarcerated more than 30 years to challenge their convictions based on a defective jury instruction. In each of those cases, the state's attorney needed to decide whether to retry the case or offer a plea. Reentry planning services were coupled with legal advocacy to secure the release of approximately 188 individuals, connect them with appropriate resources in the community, and provide ongoing support. Five years after the Court's decision, the recidivism rate for the *Unger* defendants was less than 3%, dramatically lower than the state average of 40%. OPD's Decarceration Initiative director was among the lawyers leading the *Unger* effort, and other key players there also have an active role in this Initiative.

Planning for Re-entry

People who were incarcerated as children and have been locked up for decades sometimes lack the life skills needed for independent living. They may have never lived on their own, paid rent, had a bank account, cooked food for themselves, or gotten a driver's license. They also may not have the identification documents they need, like a birth certificate or a Social Security card, in order to receive income or services.

The world has also changed while they were imprisoned in unanticipated ways, large and small. Advances in technology are particularly challenging. Most job applications are done online, as are many other transactions. Smart phones are ubiquitous and used as phones, to text, as cameras, as wallets. Many stores have self-checkouts, which can cause a lot of anxiety among clients unaccustomed to them and terrified of being accused of shoplifting.

People incarcerated long-term often face chronic health conditions that create additional challenges, including diabetes, hypertension, cardiovascular disease, liver disease and cancer. They need to sign up for medical insurance, access primary care, and obtain prescriptions or medical supplies in the community. Many have to learn self-management skills for conditions like diabetes after relying on care from correctional medical providers in the Chronic Care Clinic. It is important to ensure continuity of any ongoing medical care, from daily medication to dialysis or even nursing care.

Pre-release re-entry planning

Re-entry planning is crucial for both the success of the motion and the success of the client. It requires assessing the needs of the client, identifying resources to meet those needs, and developing a release plan that can guide the client's transition home and provide sufficient services and support.

For OPD clients, the legal team often includes a social worker from **OPD's Social Work Division** or a re-entry specialist from its **Community Engagement Reentry Project**, who provide their expertise in release planning and experience assisting clients who have served lengthy prison sentences.

OPD's Social Work Division serves as a national model for public defender offices around the country. With specialized training in forensic services, licensed clinicians enhance OPD's multidisciplinary representation by assessing the underlying causes of clients' behaviors and developing individualized recommendations to respond to their needs.

The Social Work Division utilizes the highest standards of social work practice. The team screens clients for trauma and adheres to research-informed practice to inform and improve client outcomes. OPD social workers have expertise in addiction, trauma, adolescent development, chronic mental illness, and developmental disabilities.

The Social Work Division's licensed clinicians conduct comprehensive biopsychosocial assessments and utilize validated screening and assessment tools to determine a diagnosis (or diagnoses) for individuals with mental health and/or substance use disorders. In addition to identifying appropriate treatment for inclusion in the release plan, these assessments provide valuable background information for the motion and, where appropriate, the social worker may serve as a witness at the hearing.

Community Engagement Reentry Project staff utilizes its knowledge and connections with community service providers to ensure that clients are connected with the full range of services that they need. This may include treatment services, employment and workforce development, life skills training, GED and college planning, vital documents retrieval, housing, food security, clothing, technology training, transportation, and peer support.

The Community Engagement Reentry Project (CERP) connects OPD clients to resources and services within the community to provide sustainable reentry. Piloted in Baltimore in 2020 to assist clients being released at start of the COVID pandemic, CERP has provided over 400 referrals to date and has been growing to provide assistance in surrounding counties. CERP staff connect clients to needed services and resources through partnerships with service providers within the community that ensure referrals can be made directly and support is easily accessible.

DPSCS's Social Work and Case Management Units have helped with this process by ordering birth certificates for prisoners who may be eligible for a sentence modification, conducting initial release planning with them, and working with OPD social workers on cases where the client has special needs. Many DOC Social Workers have known these same individuals for years through their participation in groups and workshops. When a court date and potential release date is scheduled DOC Social Workers can provide pre-release services to prepare individuals for release.

> The Decarceration Initiative's collaborative and multidisciplinary approach – which includes in-house social workers and reentry specialists, as well as a wide array of community-based service providers working with public defenders, law clinics, and *pro bono* counsel – has been a vital part of the Juvenile Restoration Act's success.
>
> – Maryland Public Defender Natasha Dartigue

Connecting clients with community-based services and support

The release plans developed rely on the expertise, resources, and dedication of organizations within the community that have committed to assisting individuals returning home from prison. These include:

Re-entry service providers such as ***No Struggle No Success*** in Baltimore***, The Bridge Center at Adam's House*** in Prince George's County's, and ***Anne Arundel County Police Department's Re-Entry & Community Collaboration Office***.

Supportive transitional housing programs, such as ***T.I.M.E. Organization*** ("Teaching, Inspiring, Mentoring & Empowering the Minds of Tomorrow's Leaders.") in Baltimore, ***High Hopes*** also in Baltimore, ***The Way Homes*** in Anne Arundel County, and the ***Damascus House RISTORe Program*** (Rehabilitating Individuals So They Overcome Recidivism) in Prince George's County.

Peer support and mentorship in meetings held by the **Living Classrooms' First Monday Empowerment Group** and **H.O.P.E. (Helping Oppressed People Excel)**, where members provide emotional and practical support for each other as they navigate the challenges of adjusting to life outside prison.

A graduation celebration at T.I.M.E.

The Hearing

The Juvenile Restoration Act requires that the court hold a hearing on a motion for sentence reduction. After a motion is filed, courts have generally been scheduling hearings around two to six months later. In the wake of the pandemic, these hearings are sometimes done in person, sometimes via videoconference technology, and sometime through a hybrid of the two. At that hearing, the individual who filed the motion and the state are permitted to present evidence, and the victim or a victim's representative has the right to notice and an opportunity to present a statement.

The movant's presentation

Counsel for the person filing the motion (*i.e.*, the movant) usually begins with an opening statement summarizing the reasons to grant the motion and addressing any matters that may be of special concern to the judge. Counsel then normally calls witnesses, often to speak about the defendant's character and growth and/or the release plan, and presents other documents and information that may be relevant. After the state's presentation and any statement by a victim or victim's representative, counsel for the movant normally responds to points they've raised. Additionally, the person seeking a sentence reduction has an opportunity to address the court in allocution at the end of the hearing.

The state's presentation

The state's approach to these motions differs depending on the jurisdiction. The State's Attorney's Offices (SAOs) in Baltimore City and Prince George's County, which together have the majority of these cases, have established units to review requests for sentence reduction on a case-by-case basis, supported such requests where they believe it is in the interest of justice to do so, and opposed motions where they belief release is not presently warranted. They often take an active role in recommending that certain community re-entry organizations be made a part of the release plan. Elsewhere, SAOs routinely oppose these motions for sentence reduction.

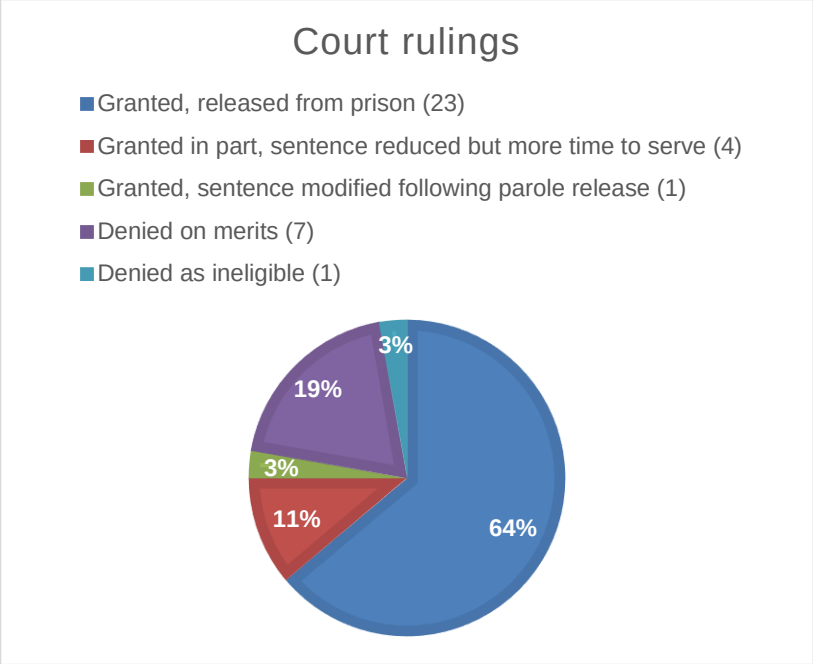
Statement by the victim or a victim's representative

SAOs make efforts to contact the victim or a family member to notify them of the hearing and ascertain their position on the request for sentence reduction regardless of whether they've formally requested notification of such hearings. A victim or victim's family member is never required to attend the hearing. In cases where the SAO has reached a victim or victim's representative, some opt not to participate at all, others don't attend but ask the Assistant State's Attorney to relay a written or oral statement to the judge, and still others attend the hearing. When a victim or a victim's family members present their position to the court, these positions have varied widely. Some staunchly oppose any relief. Others speak about the impact of the crime but defer to the court as to the request for sentence reduction. Still others, having learned of the person's remorse and rehabilitation, support release and use the hearing as an opportunity to convey to the person forgiveness and hope that they will lead a good life in the future.

Results and Trends

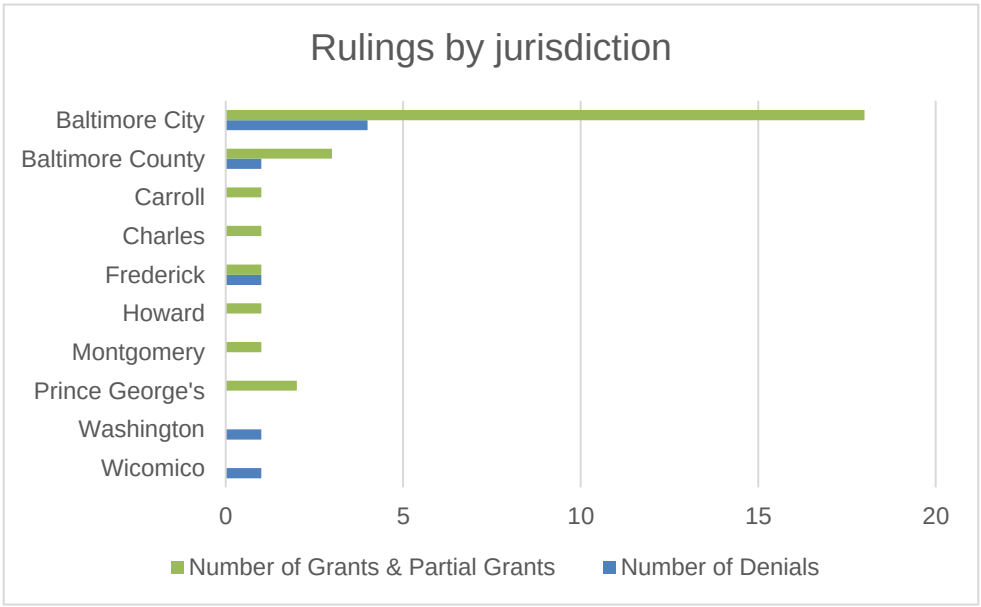
Statewide results

In the first year of the Juvenile Restoration Act, courts have decided 36 motions.[13] In 23 of these cases – almost two-thirds – the courts granted the motion and released the defendant from prison. In four more cases, courts have granted the motion in part and reduced the duration of the sentence, but the individual has more time to serve before being released. In seven cases, the court reached the merits but denied the motion. In one case, the court denied the motion without a hearing because it found that the client was ineligible to file a motion; an appeal is pending. Finally, in one case, the individual was released on parole after the motion was filed but before the hearing; in that case, the court modified the sentence to place the individual on probation with conditions designed to maximize his chances of success.



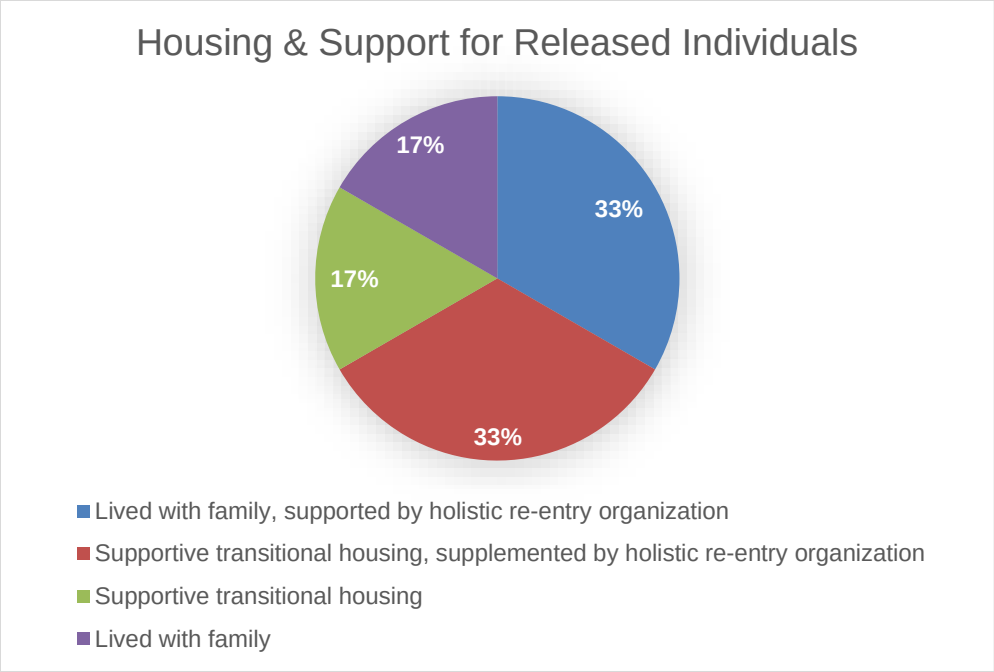
Results by jurisdiction

Baltimore City has both the most JRA eligible cases and the most motions decided (22). More than eighty percent (80%) of those rulings granted the motion in whole or in part. The next three jurisdictions with the most rulings on these motions are Baltimore County (4 motions), Frederick County (2 motions) and Prince George's County (2 motions), with six other jurisdictions having one ruling each. Aside from Baltimore City, the numbers of rulings in these jurisdictions is too small to suggest a trend or pattern.



Initial housing and support for released individuals

Twenty-four (24) of the individuals granted sentence reductions have been released: twenty-three (23) as a direct result of the sentence modification, and one (1) who was released on parole and subsequently had his sentence modified by the court. Twelve (12) of these individuals lived with family; twelve (12) went to a transitional housing program. Twenty (20) of the released individuals (approximately 83% of those released) received holistic re-entry support through a transitional housing program, a re-entry organization, or both.



Recidivism

At the end of the first year of the Juvenile Restoration Act, none of the 24 individuals who were released have been charged with a new crime or found to have violated probation.[14]

Success Stories

What follows are short interviews with some of the people who have been released as a result of the Juvenile Restoration Act. To protect their privacy and that of their families, we are not using their full names, and are using photographs run through a filter. Interviews have been lightly edited for brevity.

It is worth mentioning that nearly all of those we interviewed knew others who remained incarcerated and deserved a chance at life outside of prison but did not meet the specific JRA eligibility criteria. They hoped that those individuals would one day get that opportunity as well.

K.M., graduating from the second phase of TIME Organization's program

K.M.

K.M. was sentenced to life plus 30 years in prison for a crime he committed when he was seventeen. He was incarcerated for more than 37 years. In the years preceding his release, correctional officers commended him for helping to resolve conflicts and prevent violence in the prisons where he was incarcerated. In early 2022, he was released at the age of 55 pursuant to the Juvenile Restoration Act. Because he had struggled with addiction in the past, he went from prison to TIME Organization's transitional housing program. After graduating from the program, he now lives with his sister.

What are you doing now?

I'm working at a PRP, a psychological rehabilitation program, as a field agent, going into the community and finding people who need help. I'm also working part-time for the Mayor's Office going into hot spots and encourage people who are using drugs or are homeless to accept resources we have to help them get off the streets.

What were you looking forward to most when you were released?

Being with my family, and trying to establish and rebuild relationships with my daughter, and grandbabies. That's the most important thing, rebuilding these relationships with family members, the ones who are still alive.

What advice would you have for others acclimating to life after release?

Patience. You've got to have patience. Everything is not going to go the way you want it to go. I'm fortunate to have a lot of family support and friend support, but some guys don't. I had TIME to help me, and I'm trying to put myself in a position where I can help other people when they come out.

What was the best thing about coming home?

Probably my sister. We fought so hard for me to get out, and when it happened, I saw the relief on her face. And since I've been home, we've had the best time.

What do you hope to be doing in five years?

I want to have my own PRP. I want to get my AA degree and become an addictions counselor. My main focus would be guys who are in prison, because there's a big drug problem in prison.

What would you like legislators to know?

There are a lot of brothers in there who deserve a second chance. There's a lot of crime in the streets now, but I guarantee that if some people got a second chance, they'd help turn that around.

W.H.

W.H., moments after he was released

W.H. was sentenced to life plus 30 years in prison for a crime that occurred when he was sixteen. After serving more than 30 years, he was released in the late spring of 2022 at the age of 47.

What are you doing now?

I'm living in a transitional home right now. I'm also doing some prisoner advocacy work for an organization called Life After Release in Prince George's County.

What were you looking forward to most when you were released?

To be honest, not knowing if this would be a reality, I couldn't think in terms of "I want to do this, I want to do that." I just wanted to be free, to be with my family, to have options after being in a place where we didn't have options.

What's been challenging?

Learning how to shop. When I got home, Mr. Mitchell from NSNS took me to Walmart, and seeing all these people and all this stuff was overwhelming. So he took me and walked me through each aisle and showed me what was there, and broke down how to look through clothes and find ones that would work. In prison, we got issued clothes and didn't really have options.

W.H., today

Registering for Medicaid and getting my health insurance together, getting acclimated to a computer and using passcodes. I tell people, if you don't know, please ask questions. I tell my family and friends, don't assume that I know something, walk me through the steps. Even crossing the street – learning to use crosswalks again. You have the mindset "I don't want to break any laws" and so I'm extremely careful.

What do you hope to be doing in five years?

My wife lives in Georgia. We want to open up a re-entry program and transitional home there for people leaving prison.

What would you like legislators to know?

That a child is a child, regardless of the crime that he's committed. And I'm not saying people shouldn't be held accountable for the crimes they've committed. But I think one of the worst things they can do is put a child in an adult facility. It doesn't rehabilitate them. I was fortunate that some older people in prison encouraged me and helped me, but most people don't have that experience.

J.B., at his full-time job

J.B.

J.B. was sentenced to life in prison when he was seventeen years old. He was released pursuant to the Juvenile Restoration Act after serving more than 26 years. About two weeks after he was released, he started working as a facility maintenance technician for a vehicle rental company.

What are you doing now?

I'm currently living in a transitional home owned by the Damascus House Foundation. I was recently moved to a lower-level home that provides me with more freedom, but still gives me structure and support. I am also working over 50 hours per week as a facility maintenance technician.

What were you looking forward to most when you were released?

Being able to walk out the front door and have the freedoms I did not have on the inside, like the ability to reconnect with family, go to the fridge, take walks, and walk in the grass. There is not one thing you look forward to more because everything is precious.

What advice would you have for others acclimating to life after release?

Don't try too hard. If you let it happen, it will happen. Also, your worst day on the outside is ten times better than any day on the inside. When you're in as long as I was, you learn to be appreciative of everything. Some people say I am doing too much with working over 50 hours per week, but I am just trying to do what needs to be done to have a good life.

What was the best thing about coming home?

Being able to connect with people who matter to me. I am able to see these people at dinner rather than in a visiting room.

What do you hope to be doing in five years?

I hope to be off probation and truly be clear. I really enjoy my current job. I like being able to work directly with people and complete a variety of different tasks throughout my day. There is room for advancement in my current job, so I hope to stay here.

What would you like legislators to know?

There is a ton of value in the people serving life sentences. These individuals can provide value to the workforce and can help stabilize the community. We don't want to see today's youth go through what we went through. It is helpful to have someone in these communities telling youth directly their experiences, so they do not make the same mistakes.

G.G., at school to become a barber

G.G.

G.G. was sentenced to life suspended all but 50 years in prison for a crime he committed when he was sixteen. He was incarcerated for more than 28 years. In early 2022, he was released at the age of 44 pursuant to the Juvenile Restoration Act. He went from prison to living with his wife.

What are you doing now?

I'm currently in barber school. I am also investing in real estate. When I am not in school or investing, I attend community events where I cut hair for students and the homeless, and I provide people with physical training.

What were you looking forward to most when you were released?

There isn't one particular thing you look forward to doing the most; you want to do everything.

What advice would you have for others acclimating to life after release?

I would prepare for release beforehand. When doing my boxing training, I don't give advice before they get into the ring; I train them. Therefore, I am not going to give you advice before you get into the ring of life. You must train before you are released to understand how this world has changed.

What was the best thing about coming home?

I'm not in prison; I'm free! I get to spend time with my wife. I now have the ability to grab my desires and can take my life into my own hands. I have the opportunity to prove those who doubted me wrong and prove I am anew.

What do you hope to be doing in five years?

I hope to be financially free. I also hope to help the community and those who are still incarcerated. I want to travel, stay healthy, eat good food, and create stronger relationships.

What would you like legislators to know?

Give those that are deserving a second opportunity. If they prove they are deserving, they should be provided a second chance.

J.P. with his wife at No Struggle No Success shortly after being released

J.P.

J.P. was sentenced to life in prison for a crime he committed when he was seventeen. He was incarcerated for more than 38 years. In early 2022, he was released at the age of 56 pursuant to the Juvenile Restoration Act. He went from prison to living with his wife.

What are you doing now?

I'm currently working as a tailor. I have lived with my wife in our own place since I was released.

What were you looking forward to most when you were released?

When I found out I was going to be released I almost jumped out of my skin. I was very grateful and thankful to have a second chance at life. It was a breathtaking experience and a tremendous blessing.

What advice would you have for others acclimating to life after release?

I would tell them to just breathe and take your time. I would also tell them to take it all in one moment and event at a time.

What was the best thing about coming home?

Being able to spend quality time with my wife and family. I also enjoyed being able to eat great food.

What do you hope to be doing in five years?

I hope to be off probation and to fully regain my citizenship as a free person. With respect to my career, I hope to be a peer recovering specialist who helps those with alcohol and drug issues. I want to promote the overall wellbeing of these individuals.

What would you like legislators to know?

This legislation allows for people to have a second chance at life. It allows them to give back to communities and to share their life experiences with others. If we are able to turn one life around, it makes it all worth it.

J.P. with his wife, after preaching at the church they attend

Next steps

The first year of the Juvenile Restoration Act shows that, with an available mechanism, courts are able and willing to identify individuals who have been rehabilitated after serving a long period of incarceration and can be safely released. Robust re-entry planning and support services both support court decisions to reduce the terms of incarceration and promote successful transition back to the community. OPD recommends the following common sense measures to further reduce unnecessary incarceration and encourage successful returns home.

Allow other rehabilitated individuals to seek sentence reductions

- ***Emerging adults (18 to 25 year olds)***

There is broad agreement that the age at which brain development is "complete" is approximately 25 years old.[15] The National Academies of Sciences, Engineering, and Medicine has recognized that "although adolescents may develop some adult-like cognitive abilities by late adolescence (roughly age 16), the cognitive control capacities needed for inhibiting risk-taking behaviors continue to develop through young adulthood (age 25)."[16] "The neuroscientific evidence," their report explains, "bolsters the argument that adolescents—including young adults in their 20s—are neurologically less mature than adults," which "adds strength to the understanding that adolescent wrongdoing is unlikely to reflect irreparable depravity."[17] The report notes that "[w]hile older adolescents (or young adults) differ greatly in their social roles and tasks from younger adolescents, it would be developmentally arbitrary in developmental terms to draw a cut-off line at age 18."[18] And yet, this is what the Juvenile Restoration Act currently does. To better align the law with the science, the General Assembly should pass legislation to give rehabilitated people who committed crimes when they were emerging adults – neurologically, still adolescents – a similar opportunity to file a motion for reduction of sentence after they've been incarcerated for a substantial period of time.

- ***Older prisoners***

There are approximately 630 people in Maryland prisons who are 60 years of age or older and have served at least 15 years.[19] Most of these individuals can be safely released. The Justice Policy Institute has observed that "[o]lder prisoners pose a low public safety risk due to their age, general physical deterioration, and low propensity for recidivism."[20] Releasing older rehabilitated prisoners would save the state the high costs associated with caring for prisoners as their health deteriorates from a combination of age and the harsh conditions of imprisonment.[21] It is also the humane thing to do. No one should spend the last weeks, months or years of their life in the bleak environs of a prison hospital ward unless absolutely necessary to protect the public, and it almost never is necessary. We should be better than this. The General Assembly should enact legislation to allow older prisoners who have served a substantial period of time to file motions seeking their release from incarceration.

Increase funding for organizations that implement these statutes

Releasing non-dangerous prisoners is much less expensive than keeping them incarcerated. The money saved can be invested in ways that promote public safety. Financially, this is a no-brainer. That

said, it is important for the state to invest the resources necessary to implement such reforms effectively. Litigating motions for reduction of sentence, including release planning, requires lawyers, social workers, re-entry specialists, funds for experts, and appropriate support staff. A successful transition from prison to life in the community requires adequately funded re-entry organizations and, for some individuals, supportive transitional housing. Investing in these services today will save the state millions of dollars it would otherwise waste keeping non-dangerous people imprisoned.

Acknowledgements

Any acknowledgment of those responsible for the success of the Juvenile Restoration Act has to start with those who enacted it: Senator Chris West and Delegate Jazz Lewis, the lead sponsors of the Act; Senate Judicial Proceedings Committee Chair Will Smith and House Judiciary Committee Chair Luke Clippinger; and, of course, the majority of legislators who both passed the Act and overrode the Governor's veto.

OPD joined with a wide array of organizations and individuals who advocated for this Act, including but not limited to the Campaign for the Fair Sentencing of Youth, the Family Support Network, the Maryland Alliance for Justice Reform, Human Rights for Kids, the Maryland State Conference of the NAACP, the Public Justice Center, the Maryland Prisoners' Rights Coalition, Showing Up for Racial Justice Baltimore, Out for Justice, the ACLU of Maryland, the Maryland Legislative Coalition, the Sentencing Project, the Justice Policy Institute, the Office of the Attorney General, the State's Attorneys for Baltimore City and Prince George's County, the Maryland Association of Youth Service Bureaus, the Maryland Youth Justice Coalition, the Montgomery County Women's Democratic Club, the Council on American-Islamic Relations, the Maryland Catholic Conference, the Legislative Committee of the Criminal Law & Practice Section of the Maryland State Bar Association, Lila Meadows, Dr. Tarika Daftary-Kapur, Dr. Tina M. Zottoli, retired-Judge Gary Bair, Alonzo Turner-Bey, Southern Marylanders for Racial Equality, the Denney House, the R Street Institute, Strong Future Maryland, Players Coalition, Advancing Real Chance, the Re-Entry Clinic at the American University Washington College of Law, the Youth, Education and Justice Clinic and the Juvenile Lifer Advocacy Clinic at the University of Maryland School of Law, the Montgomery County Commission on Juvenile Justice, Takoma Park Mobilization, the Maryland Criminal Defense Attorneys' Association, and numerous incarcerated individuals, family members, and other advocates.

The Open Society Institute (OSI)-Baltimore recognized the importance of supporting advocacy and implementation to effectively address the negative impact of long-term incarceration. In addition to supporting OPD's Decarceration Initiative, they provided funding for several advocacy and implementation partners.

The OPD thanks the attorneys, social workers, and re-entry specialists who gave their time and hard work to represent its indigent clients on these motions, and the re-entry organizations (especially those mentioned in this report) that have helped those released with the challenges of leaving prison and reintegrating into society outside the walls. We gratefully acknowledge those State's Attorney's Offices and crime victims or their family members that have supported the release of rehabilitated individuals, and thank the judges who have granted people a second chance, or, if they did not do so, suggested rehabilitative measures the clients could take to increase their likelihood of release at a later time.

Last, and most importantly, we thank our clients for the lessons they teach us daily about the human capacity for growth and redemption.

This report was written by Brian Saccenti, Director of the OPD's Decarceration Initiative, with help from law student Taylor White.

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[1] Md. Code Ann., Crim. Proc. Art. § 8-110(c) (eff. Oct. 1, 2021).
[2] *Id*. § 8-110(d).
[3] *Carter v. State*, 461 Md. 295, 309 (2018) (citation omitted).
[4] *Id*. at 311 (citation omitted).
[5] *Graham v. Florida*, 560 U.S. 46, 75 (2010).
[6] *See Roper v. Simmons*, 543 U.S. 551, 570 (2005) ("Only a relatively small proportion of adolescents who experiment in risky or illegal activities develop entrenched patterns of problem behavior that persist into adulthood" (quoting Laurence Steinberg & Elizabeth Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 Am. Psych. 1009, 1014 (2003))).
[7] *In re T.B.*, 489 P.3d 752, 768 (Colo. 2021) (citing Michael F. Caldwell, *Quantifying the Decline in Juvenile Sexual Recidivism Rates*, 22 Psychol. Pub. Pol'y & L. 414, 419 (2016)).
[8] Tarika Daftary-Kapur & Tina M. Zottoli, Study, *Resentencing of Juvenile Lifers: The Philadelphia Experience* 2, Montclair St. Univ. Legal Decision Making Lab (2020).
[9] Dep't Legislative Servs., Md. Gen. Assembly, 2021 Session, SB-494, *Racial and Equity Impact Note* 5-6 (March 22, 2021), https://mgaleg.maryland.gov/Pubs/BudgetFiscal/2021rs-SB494-REIN.pdf.
[10] *See id*. at 4.
[11] *See* Hannah Gaskill, *Senate Panel Briefed on Disparity in Incarceration*, Maryland Matters (January 17, 2020), https://www.marylandmatters.org/2020/01/17/judicial-proceedings-committee-holds-hearing-on-equity-in-marylands-justice-system/.
[12] *Racial and Equity Impact Note*, *supra* at 7.
[13] The OPD's Decarceration Initiative has attempted to identify and gather information on all such cases whether represented through OPD or by private counsel, but it cannot rule out the possibility that there are additional decisions of which it is unaware.
[14] Based on searches conducted on the Maryland Judiciary Case Search webpage on October 1-2, 2022.
[15] *See*, *generally*, Kayt Sukel, *When is the Brain "Mature"?*, Dana Foundation (April 4, 2017), https://www.dana.org/article/when-is-the-brain-mature/ (interviewing Martha Denckla, director of development cognitive neurology at the Kennedy Kreiger Institute at Johns Hopkins University, who says "the corsolateral prefrontal cortex, responsible for cognitive control and executive function, is pretty much myelinated by 25,"); Office of Juvenile Justice and Delinquency Program, *Pathways to Desistance* Bulletin Series, at pp. 182-183 (2015) ("Recent research indicates that youth experience protracted maturation, into their midtwenties, of brain systems responsible for self-regulation."); Lucy Wallis, *Is 25 the new cut-off point for adulthood?*, BBC News, (Sept. 23, 2013), https://www.bbc.com/news/magazine-24173194, (noting that "child" psychologists are now being directed to serve populations 0-25 years old instead of 0-18); Kersten Konrad et al., *Brain Development During Adolescence*, Deutsches Ärzteblatt (June 2013), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3705203/; Marian Arain et al., *Maturation of the Adolescent Brain*, Neuropsychiatric Disease Treatment 9 (April 2013), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3621648/; Tony Cox, *Brain Maturity Extends Well Beyond Teen Years*, "Tell Me More" NPR (Oct. 10, 2011), https://www.npr.org/templates/story/story.php?storyId=141164708 (the brain is not finished developing until "about age 25").
[16] The National Academies of Sciences, Engineering, and Medicine, *The Promise of Adolescence: Realizing Opportunity for All Youth*, at p. 296 (The National Academies Press, 2019) (https://doi.org/10.17226/25388). This document is a Consensus Study Report. Such reports "document the evidence-based consensus on the study's statement of task by an authoring committee of experts," and "typically include findings, conclusions, and recommendations based on information gathered by the committee and the committee's deliberations." *Id*. at iv. "Each report has been subjected to a rigorous and independent peer-review process and it represents the position of the National Academies on the statement of task." *Id*.
[17] *Id*. at 301.
[18] *Id*. at 23.

[19] Justice Policy Institute, Policy Brief, *Compassionate Release in Maryland*, at 1 (Jan. 2022), https://justicepolicy.org/wp-content/uploads/2022/02/Maryland-Compassionate-Release.pdf.
[20] *Id*. at 4.
[21] *Id*. at 7-8.

SB 295 MOPD Favor Prosecutor-Initiated Sentence Re

Uploaded by: Brian Saccenti

Position: FWA

NATASHA DARTIGUE
PUBLIC DEFENDER
KEITH LOTRIDGE
DEPUTY PUBLIC DEFENDER
MELISSA ROTHSTEIN
CHIEF OF EXTERNAL AFFAIRS
ELIZABETH HILLIARD
ACTING DIRECTOR OF GOVERNMENT RELATIONS

POSITION ON PROPOSED LEGISLATION

BILL: SB 295 -- Criminal Procedure – Postconviction Review – Motion for Reduction of Sentence

FROM: Maryland Office of the Public Defender

POSITION: Favorable with amendments

DATE: 2/13/2023

The Maryland Office of the Public Defender respectfully requests that this Committee issue a favorable report with amendments on Senate Bill 295.

Senate Bill 295 authorizes a State's Attorney to file a motion to reduce the sentence of any incarcerated individual, and allows a court to grant the motion if it determines that "the interest of justice will be better served by a reduced sentence."

There are many circumstances when reducing a sentence is in the interest of justice. These could include circumstances such as the following:

- The General Assembly has reduced the maximum penalty for an offense but individuals remain incarcerated on sentences that exceed the new lesser penalty;
- The General Assembly has decriminalized conduct for which individuals remain incarcerated;
- The sentencing guidelines have changed such that a shorter sentence would be recommended today;
- New mitigating evidence is discovered that could have led the prosecutor to seek or the court to impose a shorter sentence;
- The incarcerated individual has demonstrated such rehabilitation as to warrant a sentence reduction;

- Society's understanding of science (*e.g.*, adolescent development, mental illness, or the effects of trauma) has evolved in such a way as to call into question the fairness of the sentence;
- A public health emergency such as the COVID-19 pandemic creates a danger within jails and prisons that targeted sentence reductions could help to ameliorate; or
- An incarcerated individual has a health problem that would warrant a reduction in sentence so that they could obtain treatment or other care.

The Office of the Public Defender supports giving prosecutors the ability to seek sentence reductions in the optimistic hope that they will exercise this authority in ways that reduce unnecessary incarceration, aid in Maryland's efforts to end its historically discriminatory mass incarceration, and advance the interest of justice. That said, this bill fails to ensure equity and balance in its creation of a prosecution-only filing power. The long history of State's Attorneys appearing before this Committee to oppose even modest efforts to reduce mass incarceration or to temper carceral punishment with mercy suggests that many State's Attorneys will decline to file such motions even when the reasons for doing so are compelling. In fact, OPD is concerned that many State's Attorneys will not even contemplate exercising the power regardless of the circumstances of the incarcerated individual seeking help. In part, this is no fault of the State's Attorney but rather the nature of their role – a representative of the State, not a client. Specifically, a State's Attorney is charged with prosecuting crimes, not representing incarcerated persons nor witnesses nor victims. The nature of a prosecutorial role is important to the criminal system we have relied upon for centuries, and it is accordingly critical to consider that role when deciding how to mete out reconsideration-filing power.

This bill may help some individuals, and for that reason the OPD supports it, but it is no substitute for what is needed: a law that permits defense-initiated motions for reduction of sentence under circumstances such as those described above. Should this bill incorporate a

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

possible amendment of that nature we would support it and gladly utilize the opportunity presented to aid our State in further improving its efforts towards public safety through alternatives to incarceration. (Attached with this testimony is a report demonstrating the efficacy of the Juvenile Restoration Act that this body passed two years ago and the import of equitable power when establishing a reconsideration process.)

For these reasons, we urge this Committee to issue a favorable report with amendments for Senate Bill 295.

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

Maryland Office of the Public Defender, Government Relations Division, 45 Calvert St, Suite 108, Annapolis MD 21401
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sb295.pdf
Uploaded by: Matthew Pipkin
Position: UNF

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Matthew J. Fader
Chief Justice

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 295 Criminal Procedure – Postconviction Review – Motion for Reduction of Sentence
DATE:	February 1, 2023 (2/14)
POSITION:	Oppose, as drafted

The Maryland Judiciary opposes Senate Bill 295, 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 the court to hold a mandatory hearing on motions for reduction of sentences. The Judiciary generally opposes mandatory provisions that limit the courts' ability to control their dockets and limits judicial discretion. The decision to hold a hearing should be discretionary.

In addition, the Judiciary opposes subsection (h) of the bill that would require the court to issue a "written opinion" explaining its decision even in situations where the court has denied the motion. Courts should not need to write a detailed opinion in the case of a denial.

cc. Hon. Charles Sydnor, III
Judicial Council
Legislative Committee
Kelley O'Connor

SB 0295_HoCoState'sAttorney_Unfav_Criminal Procedu
Uploaded by: Rich Gibson
Position: UNF

SENATE BILL 0295

Criminal Procedure-Postconviction Review-Motion for Reduction of Sentence

RICH GIBSON, HOWARD COUNTY STATE'S ATTORNEY

POSITION: UNFAVORABLE

February 13, 2023

My name is Rich Gibson, I am the State's Attorney for Howard County and the President of the Maryland State's Attorneys' Association (hereinafter MSAA). I have been a prosecutor for 19 years and I am writing today to offer my opposition to Senate Bill 0295.

I oppose this bill for the following reasons: this bill, if enacted into law, undermines finality in justice which is unfair to victims of crime, unnecessarily politicizes and potentially monetizes justice, converts State's Attorneys into a parole commission and we are not designed to function as one, and finally, there are numerous mechanisms currently available for a defendant to collaterally attack a conviction and this would add yet another.

Victims of crime suffer through the trial process. They must relive painful moments where they were wronged by another in the pursuit of a consequence for the criminal conduct they were exposed to. When a defendant is sentenced, the victims have a justified expectation that the outcome will not be disturbed unnecessarily. This bill, if passed, will allow State's Attorneys to file for a reduction in sentence, a power that 23 of the 24 elected State's Attorneys in our State are opposed to having.

This bill, if passed, has the potential to unnecessarily politicize the criminal justice process. What is to stop candidates for State's Attorney from fundraising and campaigning on the promise of overturning any or all convictions in the "interest of justice"? The interest of justice is a nebulous and undefined term. It could be distorted to mean whatever the candidate wants it to mean. For

example, a wealthy business owner's child is incarcerated for a crime, and the business owner approaches a lawyer in the community and tells them, "I will open a PAC and fund your campaign if you run for State's Attorney provided once you get into office you agree to file a motion to release my child." While this may be an unintended consequence of the proposed bill, based upon the language of the bill, this result is possible. Justice is not a commodity that should be exposed to this level of politicization; nor is justice a commodity that should be monetized, which is what this bill would expose our society to.

The Maryland Parole Commission is the entity charged with determining, on a case-by-case basis, whether inmates have reformed sufficiently to be released back into the community and under what conditions they will be rejoining society. That is not a function of the State's Attorneys. We don't conduct hearings to examine the progress of the defendant while incarcerated nor do we have direct access to the defendant's institutional history. This function properly rests with the parole commission.

Finally, defendants convicted of crimes in Maryland currently have numerous mechanisms to challenge and overturn their convictions. Defendants can file direct appeals, Motions to Vacate Judgment, Motions for New Trial, Habeas Corpus Petitions, Writs of Actual Innocence, Motions for Modification of Sentence, Motion for Post -Conviction Relief, and Coram Nobis Petitions. Our justice system has more than enough ways to reduce and overturn criminal convictions and this bill would add yet another unnecessarily.

For these reasons, **I respectfully request an unfavorable report for Senate Bill 0295.**

SB 295 Criminal Procedure-Postconviction Review-Mo

Uploaded by: Scott Shellenberger

Position: UNF

Bill Number: SB 295
Scott D. Shellenberger, State's Attorney for Baltimore County
Opposed

WRITTEN TESTIMONY OF SCOTT D. SHELLENBERGER,
STATE'S ATTORNEY FOR BALTIMORE COUNTY,
IN OPPOSITION OF SENATE BILL 295
CRIMINAL PROCEDURE – POSTCONVICTION REVIEW – MOTION FOR REDUCTION OF SENTENCE

I write in opposition to Senate Bill 295, Criminal Procedure – Postconviction Review – Moton for Reduction of Sentence that adds yet another post-conviction review to an already long list of post-conviction remedies that will force victims to court and prevents any finality to a criminal case.

Right after a jury or Judge finds a Defendant guilty, Maryland law currently permits numerous ways for a Defendant to challenge his conviction and sentence. Here are the current rights:

1. Motion for new trial
2. Motion to modify or reduce sentence (motion can be held for five years)
3. If the modification is based upon illegal sentence, fraud, mistake or irregularity, there is no time limit
4. Three Judge panel to reduce or modify
5. Appeal to the Supreme Court
6. Ask for appeal to the Court of Appeals
7. Post-Conviction (sometimes they get more than one)
8. Writ of Corum Nobis
9. Writ of Habeas Corpus
10. Writ of Actual Innocence
11. Motion to vacate judgement (passed last year)
12. Post-Conviction DNA testing
13. The parole system which can review a sentence more than once.

Based on the above list, this Bill will add yet another post-conviction remedy.

When does it end for victims of crime?
When can I look at the victim of a crime and say it is over?
It never ends and this bill will add one more event over which the Victim has no control.

The only thing different about this Bill is that the State's Attorney would have the power to request the reduction. Even when it is the State that is granted the power it is still a lack of finality for the victim and /or their family.

This type of power even when given to the State challenges the appropriateness of what a likely prior State's Attorney did and a prior judge imposed.

I urge an unfavorable report.

Sentence reduction - senate testimony - 2023 - SB
Uploaded by: Lisae C Jordan
Position: INFO

MCASA
Maryland Coalition Against Sexual Assault

Working to end sexual violence in Maryland

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For more information contact:
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Testimony Regarding Senate Bill 295
Lisae C. Jordan, Executive Director & Counsel
February 14, 2023

The Maryland Coalition Against Sexual Assault (MCASA) is a non-profit membership organization that includes the State's seventeen rape crisis centers, law enforcement, mental health and health care providers, attorneys, educators, survivors of sexual violence and other concerned individuals. MCASA includes the Sexual Assault Legal Institute (SALI), a statewide legal services provider for survivors of sexual assault. MCASA represents the unified voice and combined energy of all of its members working to eliminate sexual violence. If the Committee chooses to move forward on HB295, we urge the Judicial Proceedings Committee to amend Senate Bill 295 to ensure greater victim participation.

Senate Bill 295
Crime Victim Participation in Proceedings Regarding Sentence Reduction
Senate Bill 295 creates a process for reduction of sentences on motion of the State's Attorney and after a determination by the Court that the interest of justice will be better served by a reduced sentence.

MCASA appreciates the provisions incorporating crime victim rights laws requiring notice to a victim. We note that Criminal Procedure §11-403 also clearly provides a victim with the right to be heard at a sentencing disposition hearing and that "sentencing disposition hearing" is defined to include "alteration of a sentence" so would encompass the hearing contemplated by SB295.

However, it could inflict significant trauma on a rape victim to participate in person 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 victim impact statement and to require the Court to consider the statement, including previously filed statements.

On page 2, amend lines 23-25 as follows:

(I) (1) NOTICE OF THE HEARING UNDER SUBSECTION (D) OF THIS SECTION SHALL BE GIVEN TO THE VICTIM OR THE VICTIM'S REPRESENTATIVE AS PROVIDED IN §§ 11–104 AND 11–503 OF THIS ARTICLE.

(2) A VICTIM MAY SUBMIT A VICTIM IMPACT STATEMENT REGARDING PROPOSED SENTENCE REDUCTION

(3) THE COURT SHALL CONSIDER ANY VICTIM IMPACT STATEMENT FILED IN THE CASE AT THE TIME OF SENTENCING OR UNDER THIS SUBSECTION.

The Maryland Coalition Against Sexual Assault urges the Judicial Proceedings Committee to Amend Senate Bill 295