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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

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.