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February 1, 2024

TO: The Honorable Will Smith Jr.
Chair, Judicial Proceedings Committee

FROM: Tiffany Johnson Clark
Chief Counsel, Legislative Affairs, Office of the Attorney General

RE: Senate Bill 389 – Criminal Procedure – Incarcerated Seniors – Motion to Reduce the Duration of a Sentence and Senate Bill 123 Criminal Procedure – Petition to Reduce Sentence

The Office of the Attorney General (OAG) writes in support of affording rehabilitated incarcerated individuals an opportunity to modify their sentence, which holds the potential to address mass incarceration and promote a more just criminal justice system. The OAG also believes that expanded eligibility for such “second looks” should be supported by the careful balancing of factors that enhance fairness and rehabilitation, while also weighing the importance of public safety and victims’ rights. Indeed, it is our commitment to developing well-researched, comprehensive, and consensus strategies for eliminating mass incarceration that prompted Attorney General Anthony Brown to create the Maryland Equitable Justice Collaborative (MEJC), in partnership with the Public Defender of Maryland, academic partners from the University of Maryland system, and representatives from over 40 local government agencies and community organizations, including impacted individuals. Thus, while the OAG’s endorsement of any particular “second look” approach is premature, we fully support the goal of providing mechanisms for the modification of sentences, and we applaud the General Assembly’s efforts in this regard.

Mass incarceration is one of this country’s most destructive symptoms of systemic racism. Maryland has the shameful distinction of locking up the largest percentage of Black men and women in the country—72.4%—even though Black people make up only 31.7% of the State’s population.¹ Black men in particular are serving the longest sentences, making up nearly 8 in 10 Marylanders who are imprisoned ten years or more.² These disparities point to systemic issues within the criminal justice system that demand comprehensive reform.

One such reform currently being evaluated by MEJC are “second look” proposals. Data suggests that the recidivism rate for individuals released from sentences over 30 years is significantly lower than individuals released from sentences less than 30 years and that recidivism rates tend to decrease as individuals age.³ The *Unger* case, a 2012 Supreme Court of Maryland Decision that resulted in the release of over 200 long-sentenced individuals, provides a valuable case study. The *Unger* cohort was comprised of individuals with an average age of 64 years and an average length of incarceration of 39 years. The *Unger* group experienced a 3% recidivism rate, a fraction of Maryland’s overall recidivism rate of 40%.⁴

Consistent with these lessons, several bills have been introduced which increase opportunities for incarcerated individuals to modify their sentence. Senate Bill 123 allows an incarcerated individual who is serving a term of confinement to petition a court to reduce the sentence if the individual has served at least 20 years of the individual’s term of confinement. Senate Bill 389, in comparison, allows an incarcerated individual who is at least 60 years old and has been imprisoned for at least 20 years to file a motion to reduce the duration of the individual’s sentence. Both bills acknowledge incarcerated individuals’ capacity for personal growth and rehabilitation, offering a chance for those who have demonstrated positive change to reintegrate into society.

Notably, both bills allow a court to modify a sentence of an incarcerated individual if it concludes that the individual is not a danger to public safety and that the interests of justice warrant a sentence modification. In its analysis, the court would consider a number of factors, including the nature of the crime, the history and characteristics of the individual, a statement from the victim or the victim’s representative, evidence of rehabilitation, compliance with rules of the institution, participation in educational programs, family and community circumstances at the time of the offense, and health assessments conducted by a health professional.⁵ As you weigh these eligibility factors, the OAG would urge the Committee to also consider whether the court’s decisions should be subject to appellate review.⁶

¹ <https://dpscs.maryland.gov/publicinfo/publications/pdfs/Inmate%20Characteristics%20Report%20FY%202022%20Q4.pdf>; <https://www.census.gov/quickfacts/fact/table/MD/RHI225222#RHI225222>

² https://justicepolicy.org/wp-content/uploads/2022/02/Rethinking_Approaches_to_Over_Incarceration_MD.pdf

³ https://dpscs.maryland.gov/publicinfo/publications/pdfs/2022_p157_DPSCS_Recidivism%20Report.pdf

⁴ <https://gocep.maryland.gov/wp-content/uploads/Unger-Presentation-JRAOB.pdf>

⁵ SB0123 also instructs a court to factor in the individual’s age at the time of the offense, while SB0389 encourages a court to consider the age at the time of filing the petition.

⁶ We note, for example, that the law is silent as to whether the sentence modification decisions authorized by the Justice Reinvestment Act (2016) and the Juvenile Restoration Act (2022) are appealable, resulting in significant litigation in State courts.

We cannot solve the crisis of mass incarceration solely by preventing wrongful convictions, revisiting criminal penalties, or otherwise preventing individuals from being jailed. Longstanding inequities currently existing in our prisons demand that our efforts also include “second look” and other strategies for releasing rehabilitated individuals who no longer pose any threat to public safety with the support necessary to ensure their successful reentry into our communities.

cc: The Honorable Chris West
The Honorable Jill Carter
Committee members