



## Testimony for the Senate Judicial Proceedings Committee

February 1, 2024

### SB 318 - Criminal Procedure - Postconviction Review - Motion for Reduction of Sentence

#### UNFAVORABLE UNLESS AMENDED

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The American Civil Liberties Union of Maryland respectfully urges an unfavorable report on SB 318 unless it is amended to also allow the defense or the person serving the sentence to file a motion for a reduction of the sentence as well.

The need for a comprehensive Second Look Act in Maryland is evident. Maryland incarcerates the highest percentage of Black people in the country, at 71 percent of our prison population, more than twice the national average. Shamefully, Maryland also leads the nation in sentencing young Black men to the longest prison terms, at a rate 25 percent higher than the next nearest state – Mississippi.<sup>1</sup> Maryland’s bloated prison system is filled with Black people who were excessively sentenced or denied parole based on “superpredator” mythology.

While the bill may be intended to address much needed decarceration in the state of Maryland, limiting the ability to file such motions to State’s Attorneys is not the most effective or fair way to achieve this goal.

#### **Prosecutor-Initiated Only Second Look Bills Will Help Very Few Marylanders, Create Statewide Disparities and Create Confusion**

Limiting these motions to State’s Attorneys means that an individual’s chances at sentence reconsideration vary based on where they were sentenced and who the State’s Attorney is. Currently, only one jurisdiction in the State has a functioning sentence review unit, meaning that this bill does nothing for the vast majority of Maryland.

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<sup>1</sup> <https://justicepolicy.org/research/policy-briefs-2019-rethinking-approaches-to-over-incarceration-of-black-young-adults-in-maryland/>

The bill states that State’s Attorneys can initiate such reconsiderations “if it is in the interest of justice.” However, application and utilization of this standard will likely vary between counties in ways that fundamentally undermine basic fairness. Based on existing practices, most State’s Attorneys do not have the motivation or will to utilize the second look process, especially if this means reopening cases that they, themselves, were involved in. In Louisiana, where a prosecutor-only Second Look Bill was passed recently, almost all early releases have come solely from New Orleans, while prosecutors in other areas of the state have not utilized the law.<sup>2</sup>

Further, prosecutor-initiated sentence review creates confusion for those seeking relief from their sentences, particularly when pro se applicants are to communicate directly with the State. Prosecutors already have tremendous discretion in determining whether to support or oppose other requests.

Allowing for pro se and defense-initiated motions will reduce potential politicization of the second look process and insulate the process from potential capacity issues within State’s Attorneys offices.

We reiterate that our opposition to this bill is not with the underlying principle of expanding opportunities for reconsideration; rather it is based on the importance of doing so in ways that do not further undermine fairness, exacerbate extreme racial and other disparities. Access to the courts, and to reconsideration, should not be defined by geography.

For the aforementioned reasons, we urge an unfavorable report on SB 318 unless it is amended.

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<sup>2</sup> <https://www.themarshallproject.org/2022/11/11/prosecutors-in-these-states-can-review-sentences-they-deem-extreme-few-do-it>