SB 318 - Postconviction Review - Motion for Reduct
Uploaded by: Aisha Braveboy
Position: FAV

Office of the State's Attorney for Prince George's County
Aisha N. Braveboy, State's Attorney

SB 318 - Postconviction Review - Motion for Reduction of Sentence - Support

State's Attorney Aisha N. Braveboy and the Office of the State's Attorney for Prince George's County strongly support **SB 318 – 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 involved.

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 remains the judge's, based generally on his or her evaluation of the justice of any request.

HB317 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 whether to grant or deny the request, including the nature of the crime and the actions of the petitioner while incarcerated, as well as victim sentiment.

HB317 addresses a major reservation expressed by the Court of Appeals (now the Maryland Supreme Court) when it considered proposed changes in the reconsideration process proposed by the Standing Committee on Rules and Practice three 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 HB317**.

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 240-606-1298.

SB0318 Support (1).pdf
Uploaded by: Anne Kirsch
Position: FAV

PREPARE
PREpare for PArole and REentry

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SB0318 - Motion for Reduction of Sentence - SUPPORT

Maryland currently incarcerates over 15,000 people, 71% of whom are Black, almost all men. Maryland recently committed itself to reducing this overpopulation in prisons and reducing the racial disparities through initiatives like the Maryland Equitable Justice Collaborative. The problem is a complex one that has existed for a long time and that means it will require many tools to solve. SB0318 creates one such tool that fills a gap in our current criminal justice system.

Some of the disparities trace back to the fact that historically Black individuals were subject to inequities in sentencing and prosecution. For example, currently, 80% of those serving a life sentence are Black. Some trace to rudimentary or incorrect scientific methods which have been replaced. While some of these inequities have been addressed in modern proceedings, there are men languishing in prison after three, four and five decades. Rectifying this situation after such a passage of time is nearly impossible because there is no way back into court even when the State's Attorney is supportive of release, leaving the State's Attorney's office trying to jam the case into what is often an ill-fitting motion in order to serve the interests of justice and ethical prosecution.

Parole is not a meaningful avenue for release in these unusual cases. Some are subject to sentences that do not include the possibility of parole, leaving them beyond the reach of the Parole Commission. Furthermore, the Parole Commission is not set up to analyze the conditions of the original conviction, and instead takes the state-supplied facts on their face. To ask the Parole Commission to investigate the prosecutorial and policing practices, political climate, scientific validity and other surrounding facts of the original case takes them completely outside of their mandate into an area where they have little background or expertise and few resources.

SB0318 creates a new tool for State's Attorneys to use should they choose to. While many may not see an immediate use for it today, I would put forth that it does no harm to have it available in case it is needed. A county with few such cases, or even none that it can identify, might consider this like a roadside emergency kit - hopefully they will never need it, but they will be glad to have it if and when they do. For those State's Attorneys that identify cases where they feel there has been an injustice, they will have access to a legal and appropriate measure to bring their concerns before a judge and get an analysis of the individual's case in the light of modern day ethics and often decades of behavioral monitoring and reports.

SB0318 does not force anyone to do anything - it does not force a State's Attorney to file a motion, it does not force a judge to order a release. Even if it is never used in a single proceeding, it will always be there as a safety net to serve the interests of fairness and justice when there has been a misstep. We all make mistakes, even those in public office, and we should all be afforded the opportunity to make things right.

FAMM SB 318 Support.pdf
Uploaded by: celeste trusty
Position: FAV

Written Testimony of Celeste Trusty
Deputy Director of State Policy for FAMM
In Support of SB 318
Maryland Senate Judicial Proceedings Committee
February 1, 2024

I would like to thank the Chair, Vice Chair, and members of the Senate Judicial Proceedings Committee for the opportunity to submit written testimony in support of HB 317, a bill that would establish a pathway for the State's Attorney to petition the courts to review a sentence of incarceration and determine if a reduction in sentence is in the interest of justice. **FAMM supports SB 318 and urges the Committee to pass this piece of legislation.**

FAMM is a nonpartisan, nonprofit organization that advocates sentencing and prison policies that are individualized and fair, protect public safety, and preserve families. Creating and expanding access to "second look" mechanisms - pathways to review the appropriateness and necessity of a person's continued incarceration - is one of FAMM's top priorities across the country. SB 318, and its companion bill HB 317, would create such a mechanism for the Maryland State's Attorney to initiate a post-conviction sentence review by the courts.

While reviewing the motion and determining the appropriateness of a reduction in sentence, SB 318 would allow the court to consider several important factors. These include the person's age at the time of conviction and evidence of maturation during their period of incarceration, as well as the offense, level of participation in it, and any victim input. The court may also consider a person's family and community circumstances at the time of the offense and during their incarceration, as well as their educational, vocational, rehabilitative, and disciplinary history.

Second look sentencing mechanisms such as those outlined in SB 318 provide an amazing opportunity for our communities to benefit by returning credible messengers with lived experience to our communities after incarceration. Across the country and here in Maryland, FAMM advocates alongside incredible incarcerated people who have demonstrated readiness to return to their communities. Yet, for far too many of these people, there is an absence of opportunities to do so. Second look efforts have proven highly successful across the country and in Maryland as our society moves away from its past focus on harsh sentencing, and toward embracing mercy as a necessary counterbalance to punishment.

In Maryland, it costs an average of nearly $40,000 a year to incarcerate each person, and that number grows significantly as people age.[1] In July of 2022, the Maryland Department of Public Safety and Correctional Services reported more than 3,100 people over age 51 living in its state prisons, with more than 1,100 of this group over age 60.[2] As people mature into adulthood, the likelihood of engaging in criminal behavior diminishes. Therefore, it makes sense to create pathways for incarcerated people to be released back into their communities instead of demanding continued incarceration.

The provisions included in SB 318 should be considered a public safety effort, allowing limited taxpayer resources to be reallocated from our overcrowded prisons and into our communities. The release of around 200 incarcerated people through the *Unger v. Maryland* ruling has already saved Marylanders an estimated $185 million and is expected to grow to a total taxpayer savings of more than $1 billion over the next decade.[3] SB 318 would allow Marylanders to continue to benefit from second look opportunities by creating a mechanism for post-conviction review for people sentenced to excessive terms of incarceration, thereby freeing up precious taxpayer resources to be reallocated from investing in incarceration to things Maryland's communities really need. While this mechanism will never be enough to address the harm caused by all the excessive sentences doled out during the era of mass incarceration, the provisions contained within SB 318 would create an additional avenue for people to seek relief from unnecessary incarceration.

Thank you for considering FAMM's input on SB 318, a common-sense and necessary piece of legislation for Maryland. **We ask that you vote in support of SB 318.** Please do not hesitate to reach out to me at ctrusty@famm.org or 267-559-0195 with any further questions.

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[1] Vera Institute for Justice, "Price of Prisons," Maryland factsheet. January 2012. https://www.vera.org/downloads/publications/price-of-prisons-updated-version-021914.pdf

[2] MARYLAND DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES Incarcerated Individual Characteristics Report, July 1, 2022 https://www.dpscs.state.md.us/publicinfo/publications/pdfs/Inmate%20Characteristics%20Report%20FY%202022%20Q4.pdf

[3] https://justicepolicy.org/wp-content/uploads/2021/06/The_Ungers_5_Years_and_Counting.pdf

SB 318 Fav.pdf
Uploaded by: Christopher West
Position: FAV

Chris West
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Judicial Proceedings Committee

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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

January 23rd, 2024
The Maryland State Senate Judicial Proceedings Committee
The Honorable William C. Smith, Jr.
2 East Miller Senate Building
Annapolis, Maryland 21401

Re: Senate Bill 318: ***Criminal Procedure - Postconviction Review - Motion for Reduction of Sentence***

Dear Chairman Smith and Members of the Committee,

There is a principle in Maryland law known as "actual innocence". As explained by Chief Justice Matthew Fader in an unpublished 2021 decision that he authored when he was still the Chief Judge of the then Maryland Court of Special Appeals, "actual innocence" means that "the defendant did not commit the crime or offense for which he or she was convicted."

Maryland law provides a very limited opportunity for a person to seek release from prison if newly discovered evidence shows that the prisoner is actually innocent of the crime for which he or she was convicted. The relevant section of the Maryland Code is Section 8-301 of the Criminal Proceedings Article. That statute states that a person convicted of a crime may file a petition for a writ of actual innocence if the person claims that there is newly discovered evidence that either could not have been discovered in time to move for a new trial under the applicable rules or, if the conviction resulted from a trial, that creates a substantial or significant possibility that the result may have been different.

So in Maryland, under existing law, if a States Attorney discovers that an incarcerated prisoner is actually innocent of the crime for which he was convicted, unless various hurdles can be successfully surmounted, it may not be possible for action to be taken to get the prisoner released from jail.

It seems to me that if a human being committed to prison is discovered at any time and for any reason to be actually innocent of his crime, he should be released as soon as possible. Especially if I were a State's Attorney and knew that my office had prosecuted and convicted the person who now turns out to be actually innocent, I would not want to waste any time before getting that person released.

There is another reason why Senate Bill 318 is needed. For any sentence imposed after 2004, a motion to reconsider made by or on behalf of a prisoner cannot be considered after five years have elapsed.

Senate Bill 318 is a very simple bill. It merely authorizes a State's Attorney to file a motion for reduction of sentence of an incarcerated prisoner if the State's Attorney believes such a motion would be in the interests of justice. Such a motion would precipitate a hearing before the court , and at the conclusion of the hearing, the judge would be empowered to reduce or eliminate the remainder of the sentence if the court made the determination that "the interest of justice will be better served by a reduced sentence".

I want to emphasize that under this bill, only a State's Attorney is authorized to file such a motion. No one except a State's Attorney may file the motion. Further, the decision to file such a motion is entirely discretionary on the part of the State's Attorney. I understand that while the Prince George's County State's Attorney, Aisha Braveboy, supports this bill some other State's Attorneys are opposing the bill. Speaking to those opponents, I want to stress that if a State's Attorney does not feel that such a motion would be in the interest of justice, the State's Attorney does not have to even consider filing the motion. In other words, this bill merely adds another arrow to a State's Attorney's quiver, an arrow that the State's Attorney does not need to ever take out of his quiver.

I appreciate the Committee's consideration of Senate Bill 318 and will be happy to answer any questions the Committee may have.

SB318 - SAO Testimony.pdf
Uploaded by: Doyle Niemann
Position: FAV

SB318 - Postconviction Review - Motion for Reduction of Sentence - Support

State's Attorney Aisha N. Braveboy and the Office of the State's Attorney for Prince George's County strongly support **SB318 – 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 involved.

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 remains the judge's, based generally on his or her evaluation of the justice of any request.

SB318 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 whether to grant or deny the request, including the nature of the crime and the actions of the petitioner while incarcerated, as well as victim sentiment.

SB318 addresses a major reservation expressed by the Court of Appeals (now the Maryland Supreme Court) when it considered proposed changes in the reconsideration process proposed by the Standing Committee on Rules and Practice three 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 SB318**.

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 240-606-1298.

SB318 Background Info.pdf
Uploaded by: Doyle Niemann
Position: FAV

Office of the State's Attorney for Prince George's County

Aisha N. Braveboy, State's Attorney

February 27, 2023

SB318 – Postconviction Review - Motion for Reduction of Sentence at Request of a State's Attorney – Additional Information

The Bill Deals with Sentences and Not Convictions

Opponents of a similar bill last year insisted that there were already mechanisms to accomplish the goals of this bill. This is not the case. SB318 is focused on sentences and not on the convictions that underlie those sentences. In these cases there is no question that the individual committed the crime and is, in fact, guilty, but there may be reasons for a modification of the sentence. This can be because of subsequent changes in the law or the way individuals are sentenced, the age of the individual at the time of the crime, evidence of substantial rehabilitation, and a variety of other relevant factors.

Available Options for Sentence Reconsideration

Rule 4-345 - After an individual is sentenced, they have 90 days in which to request a modification of the sentence under Maryland Rule 4-345. These motions are frequently denied shortly after they are filed by the sentencing judge. Once denied, however, they cannot be reinstated even if there is a change in circumstances or developments that might warrant a change years later.

If not denied, the ability to modify a sentence under Rule 4-345 ends after five years for all sentences after 2004. Before that date, reconsideration motions could be held in abeyance in case of future developments. That changed in 2004 in the wake of some specific cases that aroused political protest. The Judiciary's Standing Committee on Rules and Practice suggested changing the time limit for some cases two years ago, but the Maryland Court of Appeals, now Supreme Court, declined to do so because of their concern about a flood of cases overwhelming the courts. They also suggested that the change would be an appropriate topic for legislative action.[1]

For many crimes, the five-year limit under Rule 4-345 eliminates the option for reconsideration at a time when evidence of significant personal change and rehabilitation is finally present. This is especially true for youthful offenders.

[1] SB318 avoids the problem of a flood of cases by requiring that a new motion for reconsideration be initiated by a State's Attorney. It also requires a positive judicial decision and notification of any victims or next of kin.

The Juvenile Restoration Act (JRA) – The General Assembly passed the Juvenile Restoration Act in 2021 to allow the reconsideration of sentences for individuals who had committed their crime while under the age of 18 and who have been incarcerated for more than 20 years. While very useful for these "juvenile lifers," the JRA does not address individuals who were over the age of 18 – even if only by a few months.[2]

Petitions for Post-conviction Relief – An individual convicted of a crime can file a petition for post-conviction relief for a variety of reasons. The most common is for "ineffective assistance" on the part of their attorney. While these petitions are technically aimed at overturning a conviction and securing a new trial, petitions can sometimes be resolved by an agreement to modify a sentence. This often occurs when there would be significant obstacles to a new trial, but can also occur through an agreement between the State's Attorney and the petitioner.

In general, however, there is a 10 year limit on when a petition can be filed. Beyond that limit, this are backhanded way to secure a sentence reconsideration, but they are not in the least transparent to victims. Change in those circumstances usually requires two or more hearings before different judges. And, in the end, it depends on the willingness of a judge to creatively rule in favor of a reconsideration and they are not obligated to say why they acted as they did.[3]

Prince George's County Reentry Court – In Prince George's County, the court system has created a special Reentry Court to facilitate the reentry of a limited number of individuals. It operates under the provisions of the Health General Article and does allow for the reconsideration of a sentence upon completion of their program. It is a useful tool, but has significant limitations.

First, it is limited to Prince George's County. There are also serious capacity issues. Reentry Court is currently limited to less than 20 individuals at a time. It has a long waiting list and it can be years before an individual who is granted conditional approval actually enters the program. It also requires that the Maryland Department of Health certify that the individual has a substance abuse problem. While the Department has concluded that individuals who have been incarcerated for decades with no evidence of drug use while incarcerated had a problem at the time of the crime and thus qualify under the law, this often appears to be more of a convenient fiction than an actual diagnosis. We have also had several cases where the incarcerated individual truthfully said they did not have a problem and were, accordingly, denied entry into Reentry Court. There is also an unresolved question of whether individuals who received a life without parole sentence prior to 2018 are eligible to participate in the program even if otherwise qualified.

[2] It is worth noting that the existence of the JRA may create an issue of fundamental fairness when there are several codefendants, some of whom are juveniles while others may not.

[3] By contrast, SB318 explicitly requires notice to victims and guarantees them a right to participate. It also requires a judge to specifically address whether a reconsideration of sentence is appropriate.

Reentry Court also requires that participants have significant family support in Prince George's County and has a limited number of participating providers. These effectively exclude many otherwise qualifying individuals whose support network is outside the county who could benefit from programs that are also based outside the county.

Case Studies and Examples[4]

Tracy S was 18 in 1997, when he was involved in a murder. He received a life without parole sentence. He filed a motion for reconsideration, which was immediately denied, precluding him from filing again. He filed a post-conviction petition, which was also denied. In the 26 years he was incarcerated, he showed significant evidence of change and rehabilitation. He could not enter that program until his sentence was reconsidered.[5]

Tkeshia G was 14 when she was recruited by an individual who was 44, who groomed her over the next several years to do his bidding, and also fathered two children for her, one of whom died in utero as a result of a beating. In 2010, when she was 19, he brought her with him from Texas with a large quantity of marijuana. When the drugs disappeared, he murdered two adults and two children. Tkeshia was present but unable to do anything. She immediately began cooperating with the police, pled guilty to felony murder, and ultimately testified at the murderer's trial several years later. She received four life sentences – essentially the same punishment as the murderer. She filed a motion for reconsideration, which was denied. She is now 33 and has a good prison record. She was referred to Reentry Court. She told the Health Department truthfully that she did not have a substance problem and was denied entry. She has a possible placement in a long-term reentry program for women in Baltimore that provides exactly the kind of long-term support and life-skills training she needs, but she cannot be enrolled without a reconsideration of her sentence.

James S was convicted or murder and rape in 1995 when he was 17. He is now 47. He requested relief under the Juvenile Restoration Act, but the State opposed this due to his institutional record. The judge agreed and denied any reconsideration. This precludes him from requesting again for three years. But subsequently, he suffered a massive stroke and is now hospitalized with slim prospects that he will be able to fully recover. He needs a reconsideration of his sentence for him to be transferred to private nursing care.

Jackie M was 19 at the time of a murder that occurred in the course of a robbery in 1987. She received a life without parole sentence and has been incarcerated for more

[4] All of the individuals described here are African Americans.

[5] His sentence was ultimately reconsidered using one of the creative "work arounds" that can sometimes be used, but the process was complicated and not particularly transparent.

than 34 years. She has an outstanding institutional record and would be a good candidate for a structured reentry program.[6]

Terry M was 19 when he was convicted of a 1989 murder. He has severed more than 32 years and has a great institutional record. He, too, would be a great candidate for a structured reentry program.

Clarence M was 20 in 1989 when he was convicted of murder. He has served more than 23 years and would also be a good candidate for a structured reentry program based on his behavior and achievements in prison. He has been infraction free for more than 15 years.

Kevin R was 20 when he was convicted of a murder in the course of a robbery in 1983. He has been incarcerated for almost 40 years and has not had an infraction since 1996.

Casey S was 23 in 1994 when he was convicted of murder. He has been incarcerated for 28 years and has a good institutional record. He would be a good candidate for reconsideration and a structured reentry program.

There are other examples in Prince George's County and even more in other jurisdictions that would benefit from SB318.

For additional information, please contact Doyle Niemann, Chief of Operations and Chief of the Conviction and Sentence Integrity Unit, Office of the State's Attorney for Prince George's County. DLNiemann@co.pg.md.us – 240-606-1298..

[6] As a matter of policy, unless there are special circumstances, our policy is to require an individual whose long-term sentence is reconsidered to participate in a structured reentry program that provides transitional housing, counseling, treatment and support as needed to ensure a successful reentry into the community. The court system's Reentry Court is one such program, but there are a number of others that provide comparable services in Prince George's County and around the state.

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Uploaded by: E. Flannery Gallagher

Position: FAV

Center for Criminal Justice Reform

TESTIMONY IN SUPPORT OF SB 318

TO: Members of the Senate Judicial Proceedings Committee
FROM: Center for Criminal Justice Reform, University of Baltimore School of Law
DATE: February 1, 2024

The University of Baltimore School of Law's 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 Senate Bill 318.

Senate Bill 318 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 state's 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 are 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 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. SB 318 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. 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.[1] 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 SB 318 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, SB 318 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— 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.

For these reasons we urge your favorable report on SB 318/HB317.

[1] See The Alliance for Safety and Justice, National Survey on Victims' Views on Safety and Justice (2022)("[V]ictims overwhelmingly prefer safety approaches that prioritize rehabilitation and prevention over punishment.")

[2] Id.

Gordon Pack's SB 0318 Testimony 2024.docx.pdf

Uploaded by: Gordon Pack, Jr.

Position: FAV

PREPARE

PREpare for PArole and REentry

January 31, 2024

Re: Testimony in Support of SB 0318
Criminal Procedure - Post Conviction Review -
Motion for Reduction of Sentence

Dear Members of the Judicial Proceedings Committee:

I support SB0318 sponsored by Senator West and ask that a favorable vote be rendered.

I am a beneficiary of the Juvenile Restoration Act (JUVRA) which became effective in October 2021. I pled guilty and was sentenced to a congregate parole eligible life sentence for horrible crimes committed as a fifteen year old in 1979. As the sentencing judge denied my Motion for Reduction of sentence two months later, the Court loss jurisdiction to act in my case. The ninety-day provision for filing for a sentence modification was inadequate to make any accomplishments demonstrate maturity and rehabilitation.

I became eligible for parole in 1993. Although I had amassed a strong record of accomplishments, no avenue would exist for a meaningful parole consideration based on demonstrated maturity and rehabilitation until 2019. In response to former Governor Glendenning's 'life means life' policy not a single lifer was paroled outright in over two decades. I filed several legal Motions to no avail because the Court still had no jurisdiction to act.

Despite the Court's considerations, intent, and recommendations when imposing sentences, MD has no legal presumption that any prisoner should be released upon reaching parole eligibility. The lack of statutory and regulatory provisions regarding the exercise of MD Parole Commission discretion and the, then, gubernatorial discretion results in disparity without explanation. Additionally, those who have reformed and may be deemed worthy of release consideration prior to and after reaching parole eligibility may never receive it.

PREPARE
PREpare for PArole and REentry

Without the legislation of JuvRA, I would still not know when, if ever, I would be released or what was expected of me to be paroled. Fortunately, the Court recognized my growth and maturity and acted upon its newly gifted jurisdiction in my case. Since 2023 Court release, I am doing well on parole, maintain meaningful employment, involved in the reentry support field, engage prison reform, and live my best law abiding life.

Though I remain deeply sorry for the horrible crimes I committed over four decades ago and spend everyday trying to atone for my actions, I question the justice of holding juveniles, emerging adults, and seniors -reformed men and women- in prison for ten, twenty, thirty years beyond parole eligibility dates. These men and women -whom accepted responsibility for their crimes, did the hard work to improve their social functioning, and became model prisoners and mentors, would be productive citizens.

I believe in redemption and second chances. I believe that I am one of many examples of how the Criminal Justice System can truly work. I believe the State's Attorney Office should have the opportunity initiate release consideration in deserving cases. Thus, I urge this honorable committee to vote favorably for SB0318.

Truly yours,

Gordon R. Pack, Jr.
Parole Advocate
gordon@prepare-parole.org
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Cell# 410-456-7034

SB 318 Motion for Reconsideration of Sentence Test
Uploaded by: Jane Harman
Position: FAV

SB 318: Postconviction Review – Motion for Reduction of Sentence

FAV

Jane L Harman, PhD
7241 Garland Avenue, Takoma Park, MD
February 2024

This is a reasonable and conservative means to allow our states attorneys to reconsider a sentence after the current 5-year post-conviction time limit.

The current 5-year post-conviction time limit was only established in 2004, and not by legislation.
Prior to 2004, a hearing for reconsideration of sentence was allowed at any time post-conviction. Perhaps due to the deluge of incarcerations that began in the 1980s, by 2004, Maryland judges may have been wanting to reduce their crowded dockets. In 2004, judges held a panel that revised Rule 4-435 of the Maryland Rules of Procedure, setting a limit of 5 years post-conviction for period during which reconsideration of sentence could be considered.
https://www.mdcourts.gov/sites/default/files/import/rules/rodocs/ro-rule4-345.pdf

There is a need for reconsideration of sentences to be considered beyond this current 5-year limit.
The current rule is too rigid. The legal system might determine, later during the period of incarceration, that the *interests of justice are best served* by reconsidering a sentence. This bill allows the consideration of the nature of the original crime, the efforts of the inmate to rehabilitate himself and advance his education, and the family and community support systems to aid his/her upon early release.

The proposed process is carefully designed to prevent recidivism.
The inmate would be subject to a thorough judicial review, with testimony allowed from victims, the state's attorney, prison staff, community supporters, and family members. The sentence may be reduced only upon the decision of the judge hearing this case. This careful process will be a safeguard against the inadvertent release of any inmate likely to reoffend.

The proposed process gives States Attorney the role of gatekeeper.
The 2004 rule was revised by Maryland judges in order to reduce their burden. Having States Attorneys as gatekeepers assures that any reconsideration case that proceeds to a hearing before a judge is a solid case, with the backing of the States Attorney from the original prosecuting district.

Victims have a role in the process.
Many of the crimes of longstanding prisoners occurred 30-40 years ago. In any case, surviving victims and their families would always be notified of an upcoming resentencing hearing and allowed to testify. There are crime victims in other states where processes to reconsider sentences have been established, and victims in these states have handled, and sometimes even approved of the modification of sentences of the perpetrator. There is no reason to believe that victims in Maryland are any different from victims in these other jurisdictions. In the case of great victim sensitivity, the state's attorney can choose not to proceed with the sentence reconsideration.

Maryland's parole system, as it currently functions, does not ameliorate long sentences.
Maryland researchers have shown that the longer an inmate is imprisoned in Maryland, the *less* likely is their chance of parole. The parole board does not hold structured 'hearings', just an interview of the

prisoner by two of its members, with no witnesses allowed on behalf of the inmate. 'Expedited parole hearings' are virtually unknown. When parole is denied, there is no report required from the Commission on reasons for denial. In the rare instance when an inmate with a life sentence is approved for parole, there is an additional waiting period of 12-18 months for the requisite psychological study at Patuxent Institute prior to start of parole.

This process will relieve crowded prisons and save taxpayer money.
We currently have almost 15,000 persons confined to Maryland Department of Corrections facilities. Many of these inmates have served many years, have been sufficiently punished for their crimes, have expressed remorse, have participated in rehabilitation programs available to them, and could be released with *no concern for public safety*. At a cost of over $50,000/year per inmate, a great savings to Maryland taxpayers can be attained with no detrimental effect on society.

SB318 Haven Support.pdf
Uploaded by: Kimberly Haven
Position: FAV

Kimberly
Haven

January 30, 2024

Chair Will Smith
Vice Chair Jeff Waldstreicher
Senate Judicial Proceedings Committee

SB 318 – Criminal Procedure – Postconviction Review
Motion for Reduction of Sentence
POSITION: FAVORABLE

Members of the Senate Judicial Proceedings Committee,

My name is Kimberly Haven and I offer this testimony in support of SB 318, legislation that will address the process for the reduction of sentences for individuals serving periods of incarceration.

This legislation introduces flexibility into the sentencing process, acknowledging that circumstances and an individual's progress can change over time. This flexibility ensures that justice is not rigidly bound by initial sentencing decisions, offering a more dynamic and adaptable system. Additionally, it is a pivotal mechanism that reflects a commitment to ensuring that justice is not only served but also continuously reevaluated considering evolving circumstances.

The legislation allows the State's Attorney to file a motion for the reduction of sentence at any time during the period of active incarceration. This provision is important as I believe that it demonstrates a commitment to continuous review and the pursuit of justice.

Incarcerated individuals are given the opportunity to file a response within 60 days after the filing of the motion, providing additional information for the court's consideration. This ensures that the affected individuals have a voice in the process and can present relevant information that may impact the decision.

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The court is required to explain the basis for its decision to grant or deny the motion in open court or in a written opinion. This level of transparency is crucial for fostering public trust in the justice system – a provision that is generally not provided for.

The bill also mandates a timely hearing on the motion, ensuring that the process is efficient and respects the rights of all parties involved and finally, the court is granted the authority to consider a comprehensive set of factors when determining whether to reduce a sentence. This comprehensive approach recognizes the complexity of each case.

In conclusion, Senate Bill 318 represents a balanced and thoughtful approach to addressing the unique circumstances of individuals serving sentences of incarceration. By providing a mechanism for sentence reduction based on a comprehensive assessment of various factors, this legislation promotes the principles of justice, fairness, and rehabilitation.

I strongly request a favorable report on SB 318, as it represents a significant stride towards a more just and equitable criminal justice system.

Kimberly Haven

For The People Testimony In Support of SB318.pdf

Uploaded by: Nathaniel Erb

Position: FAV

FOR THE PEOPLE

Maryland State Legislature
Senate Judicial Proceedings Committee
Testimony in Support of SB318
February 1, 2024

For The People submits this testimony in support of Senate Bill 318 which would grant State's Attorneys the discretion to petition courts to consider the resentencing of convicted persons in Maryland if it is in the interest of justice.

For The People submits this testimony as an organization which has worked with State's Attorney's Offices nationwide, from diverse political and geographical backgrounds, to implement these policies. For The People was founded by Hillary Blout, a former prosecutor who crafted the nation's first Prosecutor-Initiated Resentencing law in California (AB 2942) which was enacted in 2018. Since then, Illinois, Minnesota, Oregon, and Washington have also enacted this policy. These laws have provided a new opportunity for prosecutors to reevaluate lengthy sentences and petition the court for resentencing, with input from victims and public safety at the forefront of those decisions. They do not question whether original sentencing decisions were legal or appropriate. Rather, they give prosecutors the ability to consider whether the sentence today still serves the interest of justice.

SB318 would provide Maryland's State's Attorneys with this discretionary 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. SB318 would give State's Attorneys the discretion to look back at such sentences on a case-by-case basis.

As SB318 is discretionary, each elected State's Attorney can choose to opt in or opt out of conducting this work 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. SB318 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 the authority only to file a motion for resentencing with the court holding the power to make a final decision. Equally as important, SB318 guarantees a victim's right to be notified of the hearing and to have their voice heard. We have seen prosecutors heavily weigh victim input as one of the most crucial parts of the process of determining if they should proceed with petitioning for resentencing in the first place. Further, victims also have a right to be heard in the resentencing proceedings before a Judge.

In the past years of implementation, prosecutors across the country have opted in to using these laws; others have simply opted out. Prosecutors' offices implementing this law come from a wide diversity of counties — large, small, medium, rural, urban — with prosecutors from across the political spectrum. To date, approximately 1,000 people have been resentenced and released through these laws, which speaks to the extremely careful and methodical review process for each case. The states that have enacted these laws have not experienced an overburdening influx of petitions or resulting hearings. Further, while not enough time has passed for a comprehensive study, less than 1% of the people resentenced through these laws have been re-arrested to our knowledge — and even fewer have returned to prison. Compared to average recidivism rates showing 46% of people returning to prison, these results are remarkable.

SB318 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. It would give State's Attorneys an additional tool to ensure that justice prevails. For these reasons, For The People supports SB318 and encourages the Committee to report favorably on this important bill.

Respectfully,

Nathaniel Erb
State Policy Director
For The People
nathaniel@fortheppl.org

Prosecutor Initiated Resentencing_Fact Sheet.pdf
Uploaded by: Nathaniel Erb
Position: FAV

FOR THE PEOPLE™

Prosecutor-Initiated Resentencing Overview

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.

FOR THE PEOPLE

- ***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 enacted in California, Illinois, Minnesota, Oregon, and Washington State. 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.*

For more information, visit www.fortheppl.org or contact Nathaniel Erb, State Policy Director, at nathaniel@fortheppl.org.

SB0318- Live Testimony- Prechelle Shannon. .pdf
Uploaded by: Prechelle Shannon
Position: FAV

Lawmakers, we stand today at a crossroads. Before us lies a path towards a more just Maryland, a path paved with the promise of second chances and a commitment to dismantling the systemic inequities that stain our criminal justice system. That path is illuminated by the Postconviction Review—Motion for Reduction of Sentence bill.

Let's be clear: Maryland's incarceration crisis is not merely a matter of numbers, though the numbers themselves paint a stark picture. The latest Department of Justice data reveals a shameful truth: Black people make up over **double the national average** in Maryland's prisons. This isn't just an imbalance, it's an indictment of a system that perpetuates racial disparities at every turn.

And the injustice goes deeper. Look at the faces etched in despair behind bars serving life sentences **– 77% of them Black**. These are not simply statistics, they are individuals, mothers, fathers, sons, daughters, whose lives have been swallowed by a system that prioritizes punishment over rehabilitation, vengeance over redemption.

This bill offers a beacon of hope in this pervasive darkness. It empowers prosecutors to petition for sentence reductions based on evidence of rehabilitation, changed circumstances, and diminished risk. It opens the door for those who have demonstrably reformed, who have earned a chance to rejoin society and contribute positively.

Passing this bill is not just about correcting past wrongs, it's about building a safer future. Studies tell a clear story: individuals who've served 20 years or more and successfully rejoin society reoffend at significantly lower rates. Look no further than the "Ungers," where only 5 out of 188 released saw renewed incarceration – a mere 3% compared to Maryland's staggering 40% recidivism rate. This bill isn't just about second chances, it's about investing in proven rehabilitation, a strategy far more effective than the walls of endless incarceration.

Furthermore, consider the financial burden of our current system. Housing an individual for life costs Maryland taxpayers an average **of $2 million dollars**. Imagine the resources we could reinvest in education, healthcare, and community programs that foster opportunity and break the cycle of crime.

The time for excuses is over. The data is undeniable, the human cost immeasurable. This bill is not a handout, it's a hand up. Yet, while we champion this crucial legislation, let us not allow its passage to overshadow the immediate actions we can take for lifers today.

First, let's address the Mutual Agreement Program. Its current state, all but excludes someone serving a life sentence, offers little solace to those yearning for a second chance.

We need to refine the language so that it outlines a defined pathway, a roadmap with clear milestones and criteria, leading lifers towards rehabilitation and reentry.

Second, the parole board's operations deserve scrutiny. We demand standardized procedures and transparent rules, crafted with input from all stakeholders – from legal experts to formerly incarcerated individuals themselves. Let's shed light on the decision-making process, ensuring fairness and consistency in every parole evaluation.

Third, accountability is paramount. Denials of parole should be accompanied by **documented justifications**, not shrouded in silence. The reasons for dashed hopes must be laid bare, allowing for informed appeals and, hopefully, future improvements in the system overall.

And finally, let us not forget the power of executive action. Governor Wes Moore, with a single stroke of his pen, can break the shackles of "life means life," a policy born not from justice, but from the shadows of political expediency. Remember how former Governor Glendening altered the landscape of life sentences with a decisive pen stroke? Governor Moore holds that same power; he can wield it for justice.

The time for excuses is over. The data is undeniable, the human cost immeasurable. Let us rise to this moment, let us pass this bill, and pave the way for a more just, more equitable, and more prosperous Maryland for all. This is not just about policy; it's about humanity. It's about choosing hope over despair, redemption over resignation. It's about building a Maryland where every life, regardless of past mistakes, has an opportunity for redemption and second chances. Let us choose that path, lawmakers. Let us choose justice.

SB 318 Postconviction Review - Motion for Reductio
Uploaded by: Rebecca Walker-Keegan
Position: FAV

Testimony *in Support* of Senate Bill 318
Criminal Procedure – Postconviction Review – Motion for Reduction of Sentence

To: Senator William C. Smith, Jr., Chair, and Members of the Senate Judicial Proceedings Committee

From: Rebecca Walker-Keegan, Student Attorney, Youth, Education and Justice Clinic, University of Maryland Francis King Carey School of Law (admitted to practice pursuant to Rule 19-220 of the Maryland Rules Governing Admission to the Bar)

Date: January 31, 2024

I am a student attorney in the Youth, Education, and Justice Clinic ("Clinic") at the University of Maryland Francis King Carey School of Law. The Clinic represents children who have been excluded from school through suspension, expulsion, or other means, as well as individuals who have served decades in Maryland prisons for crimes they committed as children and emerging adults. The Clinic supports Senate Bill 318, which would authorize a State's Attorney to file a motion for a reduction of sentence during an individual's period of active incarceration, recommending a lesser sentence in the interest of justice.

Research has shown that "age is one of the most significant predictors of criminality, with criminal or delinquent activity peaking in late adolescence or early adulthood and decreasing as a person ages."[1] The United States Department of Justice's Bureau of Justice Statistics (BJS) conducts research using data from state agencies and the FBI. In a study published in 2021, the BJS analyzed recidivism data from 24 states covering 2008 to 2018.[2] The BJS found that, during this ten-year follow-up period, released individuals aged 24 or younger were substantially more likely to be arrested than those aged 40 or older.[3] The risk of rearrest dropped even more significantly as released individuals continued to age.[4] SB 318 explicitly allows a court to consider, among several other factors, "whether age . . . has reduced the individual's risk for future offense." Thus, the bill provides a practical avenue to account for an individual's reduced risk of recidivism as they age.

Second, our clients—all of whom have served decades in prison—have matured and transformed over their decades of incarceration. Our clients have held jobs and had rewarding careers, attained postsecondary education, earned certificates and awards, mentored children and adults, married loved ones, strengthened families, and positively impacted individuals inside and outside of prison. They are deeply remorseful for their crimes and are committed to working to strengthen communities in fidelity to public safety. They have done everything and more to

[1] TINA CHIU, VERA INSTITUTE OF JUSTICE, IT'S ABOUT TIME: AGING PRISONERS, INCREASING COSTS, AND GERIATRIC RELEASE 5 (2010), https://www.vera.org/downloads/publications/Its-about-time-aging-prisoners-increasing-costs-and-geriatric-release.pdf.
[2] LEONARDO ANTENANGELI & MATTHEW R. DUROSE, U.S. DEP'T OF JUST., BUREAU OF JUST. STAT., RECIDIVISM OF PRISONERS RELEASED IN 24 STATES IN 2008: A 10-YEAR FOLLOW-UP PERIOD (2008-2018) 1 (2021), https://bjs.ojp.gov/BJS_PUB/rpr24s0810yfup0818/Web%20content/508%20compliant%20PDFs.
[3] *Id.* at 4.
[4] *Id.*

deserve meaningful opportunities to have their sentences reduced and, ultimately, live productive lives outside of prison.

Third, the financial costs of incarceration are staggering. Housing individuals for a life sentence requires decades of public expenditures. As of 2022, Maryland spent an average of $59,616 per incarcerated individual annually.[5] While this yearly average forecasts that a 35-year sentence would cost over $2 million, the actual cost would be significantly higher, as healthcare expenses for aging incarcerated people increase exponentially.[6] Therefore, providing avenues of opportunity for sentence reduction and release from incarceration would help relieve Maryland taxpayers of the exorbitant costs of incarcerating individuals who have rehabilitated and transformed.

Urgently, SB 318 would also help address the racial injustices that plague Maryland's prison system. Maryland has the most racially disproportionate prison population in the United States. Specifically, over 70% of Maryland's prisoners are Black,[7] which is more than double the national average of 32%.[8] Moreover, these disparities worsen the longer individuals are incarcerated. Of those individuals who have been incarcerated in Maryland's prisons for more than ten years, nearly 80% are Black.[9] Given these unconscionable disparities, providing a meaningful opportunity for release is a pressing matter of racial justice.

For these reasons, the Clinic respectfully asks the Senate Judicial Proceedings Committee to issue a favorable report.

This written testimony is submitted on behalf of the Youth, Education, and Justice Clinic at the University of Maryland Francis King Carey School of Law and not on behalf of the School of Law or the University of Maryland, Baltimore.

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[5] MARYLAND MANUAL ONLINE, MARYLAND AT A GLANCE, https://msa.maryland.gov/msa/mdmanual/01glance/html/criminal.html (last visited Jan. 25, 2024) ("According to the Division of Correction, in Fiscal Year 2022, the monthly cost of room and board, and health care per inmate was $4,968.").

[6] *See, e.g.*, Leah Wang, *Chronic Punishment: The Unmet Health Needs of People in State Prisons*, PRISON POL'Y INITIATIVE (June 2022), https://www.prisonpolicy.org/reports/chronicpunishment.html ("[R]ates of medical problems are always *much* higher for older people [in prison].") (emphasis in original); U.S. DEPT. OF JUST., THE IMPACT OF AN AGING INMATE POPULATION ON THE FEDERAL BUREAU OF PRISONS i-ii (2016), https://oig.justice.gov/reports/2015/e1505.pdf ("Aging inmates are more costly to incarcerate, primarily due to their medical needs.").

[7] JUST. POL'Y INST., RETHINKING APPROACHES TO OVER INCARCERATION OF BLACK YOUNG ADULTS IN MARYLAND 8 (2019), http://www.justicepolicy.org/uploads/justicepolicy/documents/Rethinking_Approaches_to_Over_Incarceration_MD.pdf.

[8] *Id.* at 7.

[9] *Id.* at 8.

SB 318 MOPD FWA Prosecutor-Initiated Sentence Redu
Uploaded by: Elizabeth Hilliard
Position: FWA

MARYLAND OFFICE OF THE PUBLIC DEFENDER

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MELISSA ROTHSTEIN
CHIEF OF EXTERNAL AFFAIRS

ELIZABETH HILLIARD
ACTING DIRECTOR OF GOVERNMENT RELATIONS

POSITION ON PROPOSED LEGISLATION

BILL: SB 318 -- Criminal Procedure – Postconviction Review – Motion for Reduction of Sentence

FROM: Maryland Office of the Public Defender

POSITION: Favorable with amendments

DATE: 1/31/24

The Maryland Office of the Public Defender respectfully requests that this Committee issue a favorable report with amendments on Senate Bill 318.

Senate Bill 318 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. 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 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 can only truly help those who need it if it is paired with the passage of a full second look like Senate

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.

Bill 123: a law that permits defense-initiated motions for reduction of sentence under circumstances such as those described above. For these reasons, we urge this Committee to issue a favorable report with amendments that extend the right to file a motion for reconsideration of their sentence or pass Senate Bill 123 as a companion to Senate Bill 318.

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
For further information please contact Elizabeth Hilliard, Elizabeth.hilliard@maryland.gov 443-507-8414.

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 318 Criminal Procedure – Postconviction Review – Motion for Reduction of Sentence
DATE:	January 17, 2024 (2/1)
POSITION:	Oppose

The Maryland Judiciary opposes Senate Bill 318. The offered legislation adds to Criminal Procedure Article § 8-111 which 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. Chris West
Judicial Council
Legislative Committee
Kelley O'Connor

SB318MTsiongasTestimony.pdf
Uploaded by: Magdalena Tsiongas
Position: UNF

TESTIMONY ON SB318

Senate Judicial Proceedings Committee
February 1, 2024

OPPOSE UNLESS AMENDED

Submitted by: **Magdalena Tsiongas**

Chair Smith, Vice Chair Waldstreicher and members of the Judicial Proceedings Committee**:**

I, Magdalena Tsiongas, am testifying in opposition of SB 318. I am submitting this testimony as the family member of an incarcerated person serving a life sentence.

Second chances are vitally important, and currently, sentence modifications are severely limited as incarcerated people in MD can only petition the Court for modification within 90 days of sentencing[1]. Unfortunately, this bill does not go far enough to address this limitation, as it would only allow for the State's Attorney to ask the Court for a sentence modification, and not the individuals serving the sentence. This would, in practice, limit the cases that would be considered for sentence modification only to those counties that have a sympathetic prosecutor willing to ask for sentence modifications, rather than allowing a judge to decide which individuals from any county are worthy of a sentence modification. For my own family member, who was sentenced in a conservative county, and for thousands of others across the state, they would never be afforded the opportunity for sentence review, because of the politics of their State's Attorney.

Importantly, Maryland judges used to have the ability to review sentences, an important safety valve for extreme sentences, but this opportunity was eliminated with a rule change in 2004[2]. There continues to be great need for legislation that creates the opportunity for sentence modification for those who have demonstrated rehabilitation. Second Look for all legislation, such as SB 123, would do just that. Second chances should be based on the individual merit of those individuals who have contributed decades to their growth and rehabilitation, and not limited merely by who their State's Attorney is.

For these reasons, I encourage you to **oppose SB 318 unless amended to include the ability for individuals to petition for sentence modification themselves.**

Thank you.

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[1] Maryland Rule 4-345

[2] Court of Appeals of Maryland Rules Order

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Testimony for the Senate Judicial Proceedings Committee

February 1, 2024

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

UNFAVORABLE UNLESS AMENDED

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.[1] 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.

[1] 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.[2]

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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.

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

SB 0318_HowardCoSAO_Unfavorable_Criminal Procedure
Uploaded by: Rich Gibson
Position: UNF

SENATE BILL 0318

Criminal Procedure-Postconviction Review-Motion for Reduction of Sentence

RICH GIBSON, HOWARD COUNTY STATE'S ATTORNEY

POSITION: UNFAVORABLE

January 31, 2024

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 approximately 20 years, and I am writing today to offer my opposition to Senate Bill 0318.

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 22 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 0318.**

SB 318 Criminal Procedure-Postconviction Review-Mo
Uploaded by: Scott Shellenberger
Position: UNF

Bill Number: SB 318
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 318 CRIMINAL PROCEDURE – POSTCONVICTION REVIEW – MOTION FOR REDUCTION OF SENTENCE

I write in opposition to Senate Bill 318, 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 Court of Special Appeals
6. Ask for appeal to the Supreme Court
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.