



NATASHA DARTIGUE
PUBLIC DEFENDER

KEITH LOTRIDGE
DEPUTY PUBLIC DEFENDER

MELISSA ROTHSTEIN
CHIEF OF EXTERNAL AFFAIRS

ELIZABETH HILLIARD
ACTING DIRECTOR OF GOVERNMENT RELATIONS

POSITION ON PROPOSED LEGISLATION

BILL: SB 389

FROM: Maryland Office of the Public Defender

POSITION: Favorable

DATE: 2/1/2024

The Maryland Office of the Public Defender respectfully requests that this Committee issue a favorable report on Senate Bill 389.

Consistent with its long-standing support of second look initiatives, the Maryland Office of the Public Defender (MOPD) supports Senate Bill 389 because it will create a needed procedural vehicle to allow courts to reduce unnecessary incarceration by releasing non-dangerous, rehabilitated elderly individuals.

This bill would give individuals age 60 or older who have been in prison for at least 20 years the ability to ask the sentencing court to reduce their term of incarceration. Such individuals are statistically very unlikely to reoffend, are the most expensive to incarcerate, and are the most vulnerable to the harsh conditions of prison. To this latter point, research has shown that incarcerated individuals around age 60 suffer from geriatric health conditions at rates similar to non-incarcerated individuals in their late 60s or 70s, a phenomenon referred to by researchers as accelerated aging.¹ This bill permits judges to release elderly prisoners who can demonstrate

¹ Meredith Greene, et al, *Older adults in jail: high rates and early onset of geriatric conditions*, Health & Justice, vol. 6 (Dec. 2018).

that they would not pose a danger and that the interests of justice would be better served by a sentence reduction.

The General Assembly has adopted second look provisions in the past to reduce unnecessary incarceration. As part of the Justice Reinvestment Act of 2016, it permitted people serving mandatory minimum sentences for drug felonies to file motions for reduction of sentence. As part of the Juvenile Restoration Act of 2021, it permitted people who had served at least 20 years for a crime that occurred when they were a minor to file a motion for reduction of sentence. These have been safe and effective ways to reduce mass incarceration in Maryland. If we trust judges to send people to prison for decades or even for life based on speculation that the person needs to be incarcerated to protect the public, then we ought trust judges to reduce those sentences when a defendant can show that they have been rehabilitated and would not pose a danger if released.

Based on its experience representing individuals on sentence reductions after the 2012 *Unger* decision, the 2016 Justice Reinvestment Act, and the 2021 Juvenile Restoration Act (JUVRA), the MOPD knows that judges are more than capable of identifying people who can be safely released and modifying sentences accordingly. Counsel typically provide judges extensive information about the individual's history, the underlying crime, and, most importantly, their conduct while incarcerated to aid the court in making its decision. MOPD, sometimes in collaboration with the Division of Correction, normally prepares release plans for clients to ensure they have the reentry support they need to be successful. The result is that rates of recidivism for people released after lengthy periods of incarceration through *Unger* and JUVRA have been very low, and many of those released have become forces for good in their communities.

Opponents to this legislation generally raise three points.

- First, they note that there are a number of other procedural vehicles to challenge a conviction or sentence in court, and suggest that this bill is unnecessary. This is incorrect. The procedural vehicles they cite require a showing of legal error, illegality, or newly discovered evidence, or they are time-limited so that they are no longer available when a person has served long enough to demonstrate significant rehabilitation, or they only apply to people convicted as adults for crimes occurring when they were children. None of them authorize a court to reduce a legal sentence of a person convicted of a crime that occurred when they were 18 or older after enough time has passed for the person to show that they have been rehabilitated.
- Second, they argue that the Parole Commission, not the courts, should decide whether a person should be released. A significant problem with this argument is that there is no recognized right to state-funded counsel for indigent people in parole proceedings, and even if a person can hire counsel, the lawyer is not permitted to participate in the parole hearing itself. In sentence modification court hearings, however, there is a right to counsel. This is important because having a lawyer (often working with a social worker and/or a reentry specialist) makes all the difference in the world. The legal team can more effectively gather and present information, retain an expert if needed, develop a release plan, call witnesses, and elicit information helpful to the decisionmaker in making the right call. Additionally, the appallingly high and disproportionate rates at which Black people are incarcerated in Maryland is an urgent crisis that cries out for expansion of ways to get rehabilitated people out of prison.

- Third, opponents note that participating in these hearings can be hard on victims or victims' family members. That is unfortunately true. But it is important to remember a few things. First, the State's Attorney is only required to notify the victim or victim's representative if they have requested notification. A victim or victim's representative is never required to request notification. If notified, they are never required to appear for the hearing. If they appear, they cannot be required to speak. If they decide to submit an impact statement, they may do so in writing or in person. Second, the reality is that for as long as a person is imprisoned, they will seek opportunities to be released. It is human nature to try to get out of a cage. A victim who has requested notice will be notified of those efforts. Only two things will stop a caged person from trying to regain their freedom: release from incarceration, or death. When a rehabilitated, non-dangerous person is released, the hearings normally end.

Lastly, it is important to note that many returning citizens – and especially those released under second look provisions and *Unger* – very often spend the rest of their lives giving back. They are passionate about mentoring at-risk young people to help them stay out of trouble and be successful. They are involved in violence interruption efforts, collecting and distributing food and school supplies, and supporting others in their reentry after leaving prison. They support their families and make their communities better.

For these reasons, we urge this Committee to issue a favorable report on Senate Bill 389.

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