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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 As explained by Chief Justice Matthew Fader in an unpublished 2021 decision that he authored when he was still the Chief Judge of the then Maryland Court of Special Appeals, "actual innocence" means that "the defendant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.