

CHRIS WEST
Legislative District 42
Baltimore and Carroll Counties

Judicial Proceedings Committee



Annapolis Office
James Senate Office Building
11 Bladen Street, Room 322
Annapolis, Maryland 21401
410-841-3648 · 301-858-3648
800-492-7122 Ext. 3648
Chris.West@senate.state.md.us

THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

February 2nd, 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 389: *Criminal Procedure – Incarcerated Seniors – Motion to Reduce the Duration of a Sentence*

Dear Chairman Smith and Members of the Committee,

Members of the Judicial Proceedings Committee who were here in 2021 may recall my Juvenile Restoration Act, which enabled youths under 18 years of age convicted in adult court who have served at least 20 years in prison to go back to the court that sentenced them and to present a case that: (a) they are no longer a threat to society, and (b) the interests of justice would be served by reducing the remainder of their sentences, perhaps eliminating the rest of their sentences. That bill passed by lopsided majorities on the floors of both houses, and then both houses overrode Governor Hogan’s veto by similar majorities.

I said at the time that the Juvenile Restoration Act was not some sort of “Get Out of Jail Free” card. I predicted that many would apply for a reduction in their sentences but that the courts would faithfully apply the tough standard set forth in the legislation and therefore that comparatively few prisoners would be released. That turned out to be the case. At the end of the first year after the JRA went into effect courts had decided only 36 motions for sentence reduction by prisoners who committed youthful crimes, and only 23 prisoners were released from confinement. None of the released prisoners had re-offended.

Senate Bill 389 is the logical follow-on to the JRA. You might call it the Seniors Restoration Act because it bookends the JRA. This bill only applies to prisoners who are at least 60 years old and have been imprisoned for at least 20 years. The bill enables qualifying prisoners to return to the court which sentenced them and apply for a reduction in their sentences.

As in the case of the JRA, if the court has not conducted a hearing on such a request in the past five years, the bill requires the court to conduct a hearing at which the prisoner may introduce evidence in support of his case, and the State’s Attorney may introduce evidence in opposition. Any victims will receive notice of the hearing.

The bill requires the court to address a long list of factors, including the prisoner’s age, the nature of the offense, the compliance of the prisoner with the rules of the correctional institution where

he has been confined, whether the prisoner has ever completed an educational or vocational program, whether the prisoner has demonstrated maturity, rehabilitation and fitness to re-enter society, any statement of a victim, any report of a physical, mental or behavioral examination of the prisoner conducted by a health professional and the reduction in recidivism that generally occurs as people age.

After considering all of these factors, the bill authorizes the court to reduce the prisoner's sentence, perhaps eliminating the remainder of the sentence, provided the court makes the determination that: (a) the prisoner is not a danger to the public, and (b) the interests of justice will be better served by a reduced sentence.

Once again, this bill is not a "Get Out of Jail Free" card. The criteria for a sentence reduction are tough.

Let me explain why I feel passage of this bill is warranted.

First, the most recent numbers available to me show that in July, 2022, nearly 15,000 people were imprisoned in Maryland prisons. Of the prison population, 1105 prisoners were over 60 years old. So that's the upper estimate of prisoners who could take advantage of Senate Bill 389, if it were to be passed. Of course, many of those elderly prisoners would not qualify under the bill because they have not been in jail for over 20 years.

Secondly, since the cost to State taxpayers of keeping someone incarcerated has been estimated at around \$60,000, the total cost of keeping all of these elderly prisoners behind bars exceeds \$66 million each year. Furthermore, since the State is responsible for paying for the healthcare expenses of its prisoners, the actual cost of keeping elderly prisoners behind bars and dealing with their health issues is likely considerably in excess of \$66 million each year.

Thirdly, decades of research tells us that as people age, they are less and less likely to commit crimes. There's a reason why corrections officials often categorize persons over 55 years of age as "elderly" or "geriatric". This is because the health of elderly prisoners who have spent decades behind bars is not as robust as people who have not spent much of their lives in prison. The Prison Policy Initiative has produced research showing that every year in prison takes two years off a person's life expectancy. A 2018 study found that incarcerated individuals with an average age of 59 experienced the following four geriatric conditions (mobility impairment, hearing impairment, functional impairment and incontinence) at rates similar to those found in non-incarcerated persons 75 years old or older. For the other two geriatric conditions, falls and multimorbidity, the study found that the prisoners with an average age of 59 experienced these at rates similar to those found in non-incarcerated persons between 65 and 69 years old. And the Johns Hopkins Bloomberg School of Public Health released a study last year showing that "for many common and serious conditions, incarcerated people are substantially less likely to be treated compared to the general U. S. population." So elderly prisoners are far less healthy than their non-incarcerated contemporaries, and, not to belabor the point, elderly, unhealthy people are not serious crime risks. Recidivism statistics for people in this category are nearly non-existent.

As a result of these statistics, it is possible that many prisoners who are over 60 years old will be able to make a strong case that they are no longer a danger to the public. But there is still that second factor that Senate Bill 389 requires the judge to consider, whether the interests of justice will be better served by a reduced sentence. Certainly there are some prisoners whose crime was so heinous and betrayed such a lack of any sense of morality that those prisoners should not ever be released from prison. Senate Bill 389 recognizes this as it explicitly requires the court to consider “the nature of the offense”. But I believe that the courts need more direction in this regard, so I have had an amendment to the bill prepared adding to the bill the requirement that a court considering one of these cases should also take special note of the sentence handed down at the conclusion of the trial. For example, if a prisoner was sentenced to the stiffest sentence possible under current Maryland law, life imprisonment without the possibility of parole, that fact should weigh heavily as the court considers whether the interests of justice will be better served by a reduced sentence in that case.

In short, just as there are overwhelming reasons why juveniles sentenced to jail for lengthy periods should be able, after 20 years, to ask a court to consider whether they are any longer a threat to society and whether the interests of justice would be served by reducing their sentences, so are there overwhelming reasons why elderly, frequently infirm, prisoners who have served over 20 years in prison should be given the right to appear before the court which sentenced them in the first place and ask the court to consider whether they are any longer a threat to society and whether the interests of justice would be served by reducing their sentences.

I appreciate the Committee’s consideration of Senate Bill 389 and will be happy to answer any questions the Committee may have.