



Testimony for the Senate Judicial Proceedings Committee

February 2, 2024

SB 389 - Criminal Procedure - Incarcerated Seniors - Motion to Reduce the Duration of a Sentence

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UNFAVORABLE UNLESS AMENDED

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The ACLU of Maryland respectfully urges an unfavorable report on SB 389, unless amended, to allow anyone who has served at least 20 years, regardless of age, to file a motion for a sentence reduction.

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 SB 389 may intend to address much-needed incarceration in the state of Maryland, limiting the ability to file such motions to those age sixty and older fails to acknowledge the rehabilitation and positive transformation that can occur over time for those who are serving long sentences.

We Need a Full Second Look Act to increase accountability in the criminal justice system.

Bias in Maryland's criminal justice system against indigent defendants and people of color has been widely documented at every stage, from the initial arrest to sentencing. For eligible individuals who may have faced this bias by law enforcement, the courts, or corrections, a comprehensive

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

second look act would lead to more just outcomes by taking a second look to ensure their sentences were correctly decided. For members of the public who already distrust the justice system, it would provide additional assurance that the state is taking steps to recognize and correct past instances of bias and is committed to ensuring that people in its custody receive fair treatment. A comprehensive second look act would catch these instances of bias without reducing the time served for those whose sentences were determined incorrectly.

People Age Out of Crime

The research conducted by the Sentencing Project, titled "Left to Die in Prison: Emerging Adults 25 and Younger Sentenced to Life without Parole," reveals a noteworthy decrease in the number of individuals receiving a life sentence without parole (LWOP) after their early twenties.² This pattern aligns with established age-crime theories, which demonstrate a substantial decline in the likelihood of engaging in violent crimes, including murder, as individuals age. Numerous studies have consistently shown that the peak ages for violent crime tend to be in the late teenage years and twenties, followed by a sharp decrease throughout one's mid-to-late twenties.

Additionally, the study highlights that individuals convicted of violent offenses exhibit remarkably low rates of recidivism. Recent Bureau of Justice Statistics studies on 400,000 individuals released in 30 states in 2005 emphasize that, despite high re-arrest rates overall, those convicted of violent offenses are less likely to be re-arrested within three years for any offense compared to their non-violent counterparts.³ This underscores the potential for rehabilitation and successful community reintegration among individuals who have committed violent acts.

All the available evidence we have in Maryland also supports the fact that people serving extreme sentences are the least likely to re-offend. In the 12 years since the Maryland Supreme Court held that improper jury instructions invalidated the life with parole sentences of 235 people, 96% have remained in the community without incident.⁴ These young adults, 90 percent of whom are Black, spent an average of 40 years behind bars but could have been contributing to our communities decades earlier. In the last two years, the dozens of people who return

² www.sentencingproject.org/reports/left-to-die-in-prison-emerging-adults-25-and-younger-sentenced-to-life-without-parole/

³ <https://bjs.ojp.gov/content/pub/pdf/18upr9yfup0514.pdf>

⁴ <https://justicepolicy.org/research/reports-2018-the-ungers-5-years-and-counting-a-case-study-in-safely-reducing-long-prison-terms-and-saving-taxpayer-dollars/>

to the community through parole or the Juvenile Restoration Act have shown similarly compelling success rates.

The Maryland General Assembly has recognized the need to reform the justice system and allow incentives for better behavior.

By passing the Justice Reinvestment Act, "ban the box," expungement bills, the Maryland General Assembly has repeatedly recognized the need and expressed the desire to provide individuals in the justice system with second chances. In 2021, the General Assembly also passed the Juvenile Restoration Act, which allows an individual convicted as an adult for an offense when the individual was a minor to file a motion with the court to reduce the duration of the sentence after they've served at least 20 years. However, that law ended the day it was signed and only applies to individuals sentenced before Oct. 1, 2021. A comprehensive second look act would allow the courts to continue to recognize that brain development continues throughout adolescence and into adulthood and account for a child's family and community circumstances at the time of the offense, including any history of trauma, abuse, or involvement in the child welfare system.

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 or exacerbate extreme racial and other disparities. Access to the courts and to reconsideration should not be defined by age alone.

For the aforementioned reasons, we urge an unfavorable report on SB 389 unless it is amended.

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