SB0389 Support.pdf
Uploaded by: Anne Kirsch
Position: FAV

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SB0389 - Criminal Procedure - Incarcerated Seniors - Motion to Reduce the Duration of a Sentence - SUPPORT

In 2019, OSI Baltimore produced a report entitled Building on the Unger Experience: The Cost-Benefit Analysis of Releasing Aging Prisoners.[1] This report analyzed the release of a geriatric population that served long sentences after being convicted of serious violent crimes (84% murder). Using 2019 rates, the study found a fully loaded cost of almost $1 million per incarcerated individual, which the state saved by their release. The five year recidivism rate for the Unger group was only 3%.[2]

Study of the Unger population has yielded numerous suggestions to reduce the geriatric population in Maryland's prisons, many of whom are stalled as a result of two and half decades of Glendenning's "life means life" policy that even Mr. Glendenning admitted was bad public policy as early as 2010. It took until 2021 for serious action to be taken, and as a result of this policy the geriatric population in Maryland prisons has exploded to about 700 people. Using the Unger estimates, this threatens Maryland with a $700 million bill for the incarceration of elders who pose no threat to public safety.

SB0389 opens the door for the Court to review these cases in totality and make an individual decision on each one. Unlike alternatives such as Parole, the Court is able to admit expert witnesses to interpret medical and psychological information. The Court can be charged with considering factors particularly relevant to the geriatric population, and has a broad authority to receive information from a variety of community sources to use in their decision making process. The Office of the Public Defender has in house social workers charged with the development of robust reentry plans - the exact kind of plans that the Ungers had access to, and the difference that is often credited with their incredibly low recidivism rate.

[1] https://goccp.maryland.gov/wp-content/uploads/Unger-Cost-Benefit3.pdf
[2] Justice Policy Institute, The Ungers: Five Years and Counting, https://justicepolicy.org/wp-content/uploads/2021/06/Unger_Fact_Sheet.pdf

Although parole plays an important role in reducing mass incarceration, it has proven to be a poor solution to the growing geriatric population within the prison. In the 2023 Safe at Home report, Justice Policy Institute found the highest parole grant rates at 43% for individuals aged 31 to 35. Those rates plummeted to 28% for individuals aged 60 and over, which runs counter to public safety data that shows a decrease in recidivism with age.[3] This is newly reported data. While it is impossible to identify the cause of this trend in parole grants without further study, the problem of a graying prison population is only increasing, along with the significant financial burden this places on Maryland taxpayers. Further delay will only allow this issue to continue to grow. I urge you to vote for SB0389 and open the door for a solution to this growing problem.

[3] Justice Policy Institute, Safe at Home, https://justicepolicy.org/wp-content/uploads/2023/09/JPI-MD-Parole_Overview.pdf

SB 389 MOPD FAV.pdf
Uploaded by: Brian Saccenti
Position: FAV

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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.

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.

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.

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- 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.

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SB0389_Incarcerated_Seniors_MLC_FAV.pdf
Uploaded by: Cecilia Plante
Position: FAV

MARYLAND LEGISLATIVE COALITION

TESTIMONY FOR SB0389
CRIMINAL PROCEDURE – INCARCERATED SENIORS – MOTION TO REDUCE THE DURATION OF A SENTENCE

Bill Sponsor: Senator West
Committee: Judicial Proceedings
Organization Submitting: Maryland Legislative Coalition
Person Submitting: Cecilia Plante, co-chair
Position: FAVORABLE

I am submitting this testimony in favor of SB0389 on behalf of the Maryland Legislative Coalition. The Maryland Legislative Coalition is an association of activists - individuals and grassroots groups in every district in the state. We are unpaid citizen lobbyists, and our Coalition supports well over 30,000 members.

The United States has the highest incarceration rate in the world. We have historically put many people in jail for possessing small amounts of marijuana (which is now being legalized) and for other small crimes. Over time, our incarcerated population has aged. There are currently over 1,000 individuals who are over 60 years old who are incarcerated in Maryland.

This bill, if enacted, would allow anyone who is over 60 years old who has served at least 20 years of their sentence to request a hearing to reduce their sentence. But lest we think that we would be allowing murderers out on the streets, this bill would require that notice of the hearing would be given to the victim or victim's representative, and the court would be required to approve the request for a reduced sentence only if the individual is not a danger to the public, or if the interests of justice would be better served with a reduced sentence.

Our members believe that we have way too many people whose lives have been on hold for committing offenses that they have long since paid for.

We support this bill and recommend a **FAVORABLE** report in committee

Anecdotes.pdf
Uploaded by: Christopher West
Position: FAV

My dad was ill. Could he survive the prison health-care system?

Perspective by Hope Corrigan
Editorial Initiatives Manager

January 27, 2024 at 7:00 a.m. EST

(Vartika Sharma for The Washington Post)

In the moments after a Florida judge sentenced my 71-year-old father to nearly three years in prison, my mother held his face in her hands while the bailiff handcuffed him, and my sister and I sobbed as we pressed our faces to his shoulders. We promised to take care of him from afar and that he would come home safe and sound, a promise that grew increasingly hard to keep over the course of his sentence.

My father, a lawyer, was sentenced to almost three years in a Florida state prison, the maximum outlined under a plea agreement for racketeering. He had been charged with mishandling his law firm's money; he pleaded no contest and we avoided a public trial.

By the time of his sentencing, my dad was not a healthy man — he had a manageable but serious blood cancer that increased his risk of stroke and heart attack, and an autoimmune disorder that weakened one side of his body.

What we didn't know as he entered prison was that navigating the maddening world of corrections health care might not be enough to keep him healthy, and that even a short prison term can easily turn into a death sentence — a reality the more than 1.2 million people in U.S. correctional facilities face every day.

Shortened life spans, chronic needs

Every year in prison takes two years off a person's life expectancy, according to research cited by the Prison Policy Initiative, a nonprofit organization that opposes mass incarceration. "Incarcerated people face enormous obstacles to achieving and maintaining good health," Prison Policy Initiative officials wrote in the 2022 report "Chronic Punishment: The unmet health needs of people in state prisons."

Meanwhile, the Centers for Disease Control and Prevention notes that incarcerated people have higher rates of several chronic conditions, including HIV, hepatitis B and tuberculosis. Substance use and mental health disorders are also disproportionately high among prison populations, according to numerous sources. Yet a 2023 study from the Johns Hopkins Bloomberg School of Public Health reported that, "for many common and serious conditions, incarcerated people are substantially less likely to be treated compared to the general U.S. population."

In many prisons, including my father's, inmates must request health-care services through corrections officers who have no medical training, and who often decide whether an issue is worthy of medical care. This means that even minor and nonfatal health issues that aren't life-threatening often result in needless suffering.

> Every year in prison takes two years off a person's life expectancy, according to research cited by the Prison Policy Initiative.

There is a significant difference between U.S. prison health care and the services in other developed countries, according to Brie Williams, a geriatrics physician and professor of medicine in the University of California at San Francisco's Center for Vulnerable Populations. Williams has seen this firsthand in her work facilitating exchange programs between prison staff in Norway and the United States.

"Over the past 10 years, again and again, we are met with shock and confusion on the part of the correctional staff, security-level staff and leaders in Norway when they realize how many people are experiencing serious illness and dying in U.S. prisons," Williams said. To incarcerate someone until they die or to accept that one should die of a life-threatening illness in prison is "absolutely not the norm" in Norwegian prisons, she said.

Gnawing fears, troubling stories

In the first few months of my father's incarceration, I obsessively read prison forums and Facebook groups for family members of people in prison. Everything I read confirmed a gnawing fear that he was standing on a precipice between life and death — one correctional officer who denied a medical request, one nurse who ignored a plea for help or one day too long with a treatable illness could take him away from us forever.

My fear was not unfounded. Larry McCollum, a man in Texas who was incarcerated for writing a bad check, died of heat stroke during his 11-month sentence, the Texas Tribune reported. Walter Jordan, who was serving a life sentence in an Arizona prison, died from skin cancer that he might have survived with competent medical treatment, according to the ACLU.

Reason magazine investigated the case of an Alabama woman named Hazel McGary, who experienced high blood pressure and chest pain, was denied medical care and later collapsed in her cell in a federal prison. (The report said McGary's daughters desperately tried to contact prison officials to intervene in their mother's worsening health to no avail.)

Over the course of my father's incarceration, he would use a walker, be unable to sleep on top bunks, have trouble climbing stairs, and as many older people do, move slowly, which doesn't square with the militaristic pace of prison.

The summer after my father's sentencing, the Miami Herald reported a story that terrified me: A woman named Cheryl Weimar alleged that Florida prison guards beat her and left her permanently paralyzed, after she said she couldn't perform a task — scrubbing toilets — because of a hip condition. (Weimar's attorney sued the state on her behalf, and Florida paid a $4.65 million settlement. Prosecutors declined to charge the officers involved. The state did not comment on the settlement in the Herald article.) I'm still haunted by countless stories of suffering that could have been easily prevented with compassionate care.

My father's first health crisis

Three weeks into my father's sentence, my sister called me while I was at work. "Dad is in the ICU. He's stable and alive, but he had a serious ruptured stomach ulcer," she said. Later, he told us he had been shackled to his hospital bed and under 24-hour guard while in the hospital.

In many cases, families are not alerted when an incarcerated relative is sent to a community hospital. We were warned by a family friend to refrain from calling local hospitals to find him because prison officials might move him to a different hospital if they heard we were trying to locate him.

When my father was finally released from the hospital, he was transferred to a prison hospital, one of a few across the state that have expanded services for medical care. (There is also a prison nursing home near Tampa that houses mostly elderly prisoners and those in hospice.)

> "There is a constant and consistent fear that if you push too much, if you advocate too much, somehow there will be an equal and opposite force that harms your loved one."
>
> — Brie Williams, geriatrics physician and professor of medicine in the UCSF Center for Vulnerable Populations

When we visited him for the first time after his hospitalization, his blue prison uniform hung loose on his frail body as he pushed a walker. His hands and wrists were covered in abrasions from the shackles used during transport, and his feet and ankles were swollen and stuffed into a pair of shoes.

He slowly regained his health, eating mostly commissary food we paid for — and moving as much as he could. He became friends with a man on dialysis whom he pushed around in a wheelchair. My mother, sister and I developed a good rapport with the nursing staff, calling almost every day to ask for updates on his recovery and the medications he was taking.

We quickly learned how to thread a delicate needle: be advocates, loud enough that prison officials knew he had family watching and waiting, but not so loud that it seemed like we were asking for special treatment. In prison, the guards and nurses are in control. Be silent and your family member has no advocate. Push too hard and risk retaliation.

"There is a constant and consistent fear that if you push too much, if you advocate too much, somehow there will be an equal and opposite force that harms your loved one," Williams said.

No air conditioning

More minor concerns about his health needled us constantly. We worried about heat stroke because, like most Florida prisons, his minimum-security facility was not air-conditioned.

In an email, the Florida Department of Corrections told me the agency places "utmost importance on the healthcare and safety of our inmate population." According to the corrections department's 2022 annual report, Florida state prisons housed more than 80,000 inmates. (The number does not include the 60,000 people in Florida's local jails.)

Just 1 in 4 Florida prison housing units have air conditioning, according to the corrections department. While some newer institutions were built with AC, "many current FDC facilities were constructed prior to air-conditioning being commonplace and were instead designed to facilitate airflow to provide natural cooling within them," the department's email said.

Staffing problems, long waits

Once, during a particularly bad bout of food poisoning, my father called us in pain, telling us the nursing staff refused him medication and that a staffer said his violent stomach problems were "because he's old." Over the phone, my father told us that the prison staff ordered him to stop calling us and saying he was sick. He received care only after we called the warden to complain.

Over the course of his incarceration, we heard about scabies outbreaks, dental issues, sleep deprivation and spells of bronchitis — problem after problem that could be fixed or avoided entirely with adequate care. We could see for ourselves my father's decline when we visited every weekend — his swollen ankles, shuffling walk and rasping cough.

My father told us he would wait days, or even weeks, to see a doctor or receive care; he said a visit to a prison doctor sometimes involved sitting for six or seven hours on a bench outside the office. In an interview, a corrections industry official pointed to staffing levels as the top problem in prison health care.

> "We know that when family members stay engaged, like when kids are still close to their moms or dads who are incarcerated, when there is a family support system when people return home or even when they're inside, that the health of

"Remote areas are specifically challenged," said Amy Panagopoulos, vice president of accreditation for the National Commission on Correctional Healthcare, a for-profit organization that provides voluntary accreditation for U.S. prisons and jails.

"They just can't recruit not only the staff, but they can't get dentists to come out. They can't get these people to come and provide the care," Panagopoulos said. The commission does not publicize its list of accredited facilities; as of now, about 500 facilities have applied for and received accreditation in the United States.

> the incarcerated person is better."
>
> — Emily Wang, physician and Yale University professor

The American Correctional Association declined to comment for this story.

Covid's impact

The spread of covid-19 through Florida's prisons compounded my family's already relentless anxiety. Each morning, the number of deceased inmates in Florida ticked up. Visitation was canceled for all of 2020. Each morning I was relieved to hear that my father survived another night, and each night relieved that he had survived another day.

We were not alone in struggling to ensure adequate health care for our loved one in prison. A 2018 study by Cornell University and FWD.us, a criminal justice advocacy group, found that 1 in 7 people in the United States has an immediate family member who has been incarcerated for a year or more. Emily Wang, a physician and Yale University professor, said staying engaged with incarcerated loved ones and their care is crucial.

"We know that when family members stay engaged, like when kids are still close to their moms or dads who are incarcerated, when there is a family support system when people return home or even when they're inside, that the health of the incarcerated person is better," she said.

Back to the hospital

It took my father becoming even sicker for us to be granted a reprieve.

After another hospital visit, he was diagnosed with congestive heart failure, which would get only more serious without intervention, and would require him to use full-time oxygen.

My mother, sister and I applied for a conditional medical release, a rarely used process that allows the state to release incarcerated people who meet a certain requirements: being extremely ill or incapacitated, generally with six months or less to live.

The terms of conditional, or compassionate, medical release vary state-by-state. Proponents of medical releases argue that not only are they the morally correct action, they also free states from the burden of providing expensive care to elderly and sick inmates; a 2012 ACLU report estimates the savings are over $66,000 per year per inmate.

The panel granted our request, allowing my father to come home one month early, in September 2021, a crucial amount of time given his worsening health.

We drove him to his regular doctors who started him on medication to control his heart disease. We bought him new glasses and new clothes and made him meals at home. He slept soundly in his own bed for the first time since his sentencing, and sat in silence, finally free of the constant din of a prison dormitory.

In July 2023, almost two years after he was released from prison, my father passed away suddenly at age 75.

Our shock and grief are leavened by gratitude that he died in our care, holding our hands, comfortable and knowing how loved he was.

A couple of weeks after my father died, I wrote to one of his friends who is still incarcerated to let him know the news. He wrote back: "We both found a comfortable connection of friendship in each other at a time when we both needed a lifeline. It was fortuitous that Jim and I had a common defender — you — and that we became roommates. ... I have no doubt that Jim's prison sentence hurt his long-term health."

It's important, Williams said, to acknowledge that there are health-care professionals working in prisons and jails who care about optimizing care "for people who have been disregarded and have not received the quality health care they needed even in the community."

My family saw the full spectrum of care in prison health care firsthand, but it took patience, effort and discretion to identify who was willing to help us and who wasn't, time squeezed in between meetings and before work to do research and make phone calls.

Much of what we did to help my father navigate his health care during his incarceration was underwritten by privilege — time, money, race and education. Everyone should be able to fight for their incarcerated loved one to come home safely, but no one should have to.

SB 389 Fav.pdf
Uploaded by: Christopher West
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Chris West
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Judicial Proceedings Committee

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THE SENATE OF MARYLAND
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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.

MD Catholic Conference_SB 389_FAV.pdf
Uploaded by: Garrett O'Day
Position: FAV

MARYLAND CATHOLIC CONFERENCE

February 2, 2024

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

Senate Judicial Proceedings Committee

Position: FAVORABLE

The Maryland Catholic Conference offers this testimony in support of Senate Bill 389. The Catholic Conference is the public policy representative of the three (arch)dioceses serving Maryland, which together encompass over one million Marylanders. Statewide, their parishes, schools, hospitals and numerous charities combine to form our state's second largest social service provider network, behind only our state government.

Senate Bill 389 would allow a prison inmate who is at least 60 years of age and has served at least 20 years of a sentence to file a motion for reduction of their sentence. Upon that motion, a court must conduct a hearing on the matter. In the event that the evidence presented by both the inmate and the state, if any, shows within judicial discretion that the inmate is not a danger to society and that the interest of justice will be better served by a reduced sentence, the motion may be granted.

In *A Catholic Perspective on Crime and Criminal Justice* (2000), the United States Conference of Catholic Bishops stated: "We believe that both victims and offender are children of God. Despite their very different claims on society, their lives and dignity should be protected and respected. We seek justice, not vengeance. We believe punishment must have clear purposes: protecting society and rehabilitating those who violate the law."

The Catholic Church roots much of its social justice teaching in the inherent dignity of every human person and the principals of forgiveness, redemption and restoration. Catholic doctrine provides that the criminal justice system should serve three principal purposes: (1) the preservation and protection of the common good of society, (2) the restoration of public order, and (3) the restoration or conversion of the offender. Thus, the Church recognizes the delicate balance between public safety, protecting the common good, and the rehabilitation of the incarcerated.

The Conference submits that this legislation seeks to embody these principals and purposes. Older inmates who have served much of their sentence should be entitled to a hearing, wherein a judge may determine in their discretion whether the inmate's rehabilitative path warrants an end to their incarceration. Senate Bill 389 would restore hope for elderly offenders seeking to reincorporate themselves into society, where they can be cared for by the community as opposed to behind bars. For these reasons, we urge a favorable report on Senate Bill 389.

Gordon Pack's SB 0389 Testimony 2024.docx.pdf
Uploaded by: Gordon Pack, Jr.
Position: FAV

PREPARE
PREpare for PArole and REentry

February 1, 2024

Re: Testimony in Support of SB 0389
Criminal Procedure - Petition for Sentence Modification

Dear Members of the Judicial Proceedings Committee:

I am a parole advocate, reentry guide, and recidivism interruptor. I support SB0389 sponsored by Senator West, Hettleman, Kelly, and Carozza 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.

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 new jurisdiction in my case. Since my 2022 court release, I am doing exceptionally well on parole/probation, maintaining meaningful employment with a livable wage, have housing and transportation, remain active in the reentry support field, engage in prison reform efforts, and manage a quality, tax-paying, law-abiding life.

Though I am deeply sorry for the tragic crimes I committed over four decades ago and continue to spend everyday atoning for my horrible transgressions, I question the justice of holding juveniles, emerging adults, and seniors -reformed men and women- in prison for well beyond parole eligibility dates. These particular men and women have accepted responsibility for their crimes, worked hard to improve their social functioning, and became model prisoners are no longer threats to public safety and would be productive citizens.

As an example of someone who was held in prison longer than necessary in terms of rehabilitation and has transitioned to the outside community successfully, I believe in redemption and second chances. Providing an elderly incarcerated individual with minimal risk of recidivism the opportunity to petition the Court for sentence modification consideration after serving twenty years would not be a miscarriage of justice. What penalogical objective would be accomplished by further incarceration of reformed individuals who have aged out of crime?

Thus, I urge this honorable committee to vote favorably for SB0389. Thank you for your time and consideration.

Truly yours,

Gordon R. Pack, Jr.
gordon@prepare-parole.org
gordonrpack@gmail.com
Cell# 410-456-7034

SB 389 Senior Incarc Testimony Jan 2024-1.pdf
Uploaded by: Jane Harman
Position: FAV

SB 389: Incarcerated Seniors – Motion to Reduce the Duration of a Sentence

FAV

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

We are allowing too many mature and elderly prisoners to languish in our state correctional institutes. This current policy toward incarcerated seniors:

1) Does not make our state safer, and

2) Is a burdensome expense for taxpayers.

1) Current policy toward senior inmates does not our state safer

Today, Maryland has almost 15,000 persons confined in our state prisons. Because of the flurry of long sentences handed out to young men during the 1980s and 1990s, we now have many aging prisoners in the Maryland correctional system: 1105 inmates are age 61.[1] On a visit to a Maryland state prison infirmary, one will encounter many elderly inmates who are barely ambulatory, many already in wheelchairs. [2]

What, we ask, is the purpose in keeping such persons in our prisons for decade after decade? Even those who have committed violent crimes in their youth, in their old age no longer pose a threat to society. *The commission of both homicide and rape peaks at ages 18-20.*[3,4]

Criminologists also know the years of a lifetime during which a perpetrator is likely to commit such violent acts typically lasts about 5-10 years.[5] Our older incarcerated Maryland men and women—and they are mostly men—have long ago 'aged out' of violent crime. Such criminal activity takes physical prowess that these older prisoners do not have. Criminal behavior springs from an impulsive mindset that neglects consequences and is heedless of others, immature patterns of thinking that these men have long since outgrown. [6,7,8]

The American Bar Association's policy statement reads: *"Sentences … should be no more severe than necessary to achieve the societal purposes for which they are authorized."* [9]

No societal purpose is being achieved by keeping these older inmates incarcerated in Maryland. The continued incarceration of senior inmates does not make our state safer.

2) Current policy toward senior inmates is a burdensome expense for taxpayers

The average cost to Maryland taxpayers to keep a person imprisoned is over $50,000 per year.[10,11] Largely because of the much higher medical needs of inmates over age 55, Maryland taxpayers currently spend well over $75,000 per year for each of these elders.[12] With more than 1100 inmates over the age of 60, we can estimate that this group of elders alone is costing Marylanders more than $80 million per year, or *$1 billion* for every *12* years that this continues.

Over the next 12 years, we taxpayers have much better uses for $1 billion. This is a wasted expenditure that, professional criminologists agree, does absolutely nothing to make our state safer. To support a meaningless and stubborn policy of lifelong punishment and revenge is not how we want Maryland legislators to spend our money.

Safeguards

At any age, in any prison, there will be some aberrant personalities who should not be returned to society. This bill has adequate safeguards to assure that does not happen. Any reconsideration of sentencing will require a thorough judicial hearing, weighing testimony from all sides. This bill by no means provides a 'get out of jail free card'.

Considering the arguments presented above, and in the best interests of all of Maryland's citizens, I ask for your favorable vote for this reasonable and sensible bill.

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SB389_JPI_2_1_24.pdf
Uploaded by: Keith Wallington
Position: FAV

Testimony to the Senate Judiciary Proceeding Committee

Senate Bill 389 — Criminal Procedure – Incarcerated Seniors – Motion to Reduce the Duration of a Sentence

Keith Wallington
Justice Policy Institute
kwallington@justicepolicy.org
February 2, 2024

Justicepolicy.org

Founded in 1997, the Justice Policy Institute (JPI) is a nonprofit organization developing workable solutions to problems plaguing youth and criminal legal systems. For over 25 years, JPI's work has been part of reform solutions nationally, with an intentional focus on Maryland.

JPI supports Senate Bill 389 which would permit individuals over 60 years old, who have served at least 20 years incarcerated to petition the court for early release based on their rehabilitation progress.

When There Is Harm, There Need to Be Repair

JPI recently released, *Safe at Home: Improving Maryland's Parole Release Decision Making*, a comprehensive look at Maryland's parole system, including a deep analysis of the inefficiencies. Between 2017 and 2021, the average parole grant rate was 39.69 percent. And those grant rates drop off precipitously as the time served, and subsequently the age of the petitioner, increases. After 20 years of incarceration, the grant rate is 21.9 percent, and continues to drop all the way to 5.6 percent after 50 years of time served. As a result of bureaucratic delays and perpetual recommendations for "re-hearings", long-sentenced, parole-eligible individuals are often subjected to 3- 8 parole hearings throughout their incarceration, despite rehabilitative success and program completion. *That* is a broken parole system.

Moreover, "key-man" laws, the unconstitutional practice that lead to the Unger ruling, resulted in a racially disparate system with its contribution to a prison population. According to data collected in 2020, of the men over 60 years old in Maryland's prison system that have served at least 20 years, 53.9 percent are black – SB389 can correct this wrongdoing. SB389 would allow judges to consider individuals' post-conviction conduct, including their disciplinary record and participation in rehabilitative programming before determining that their sentence reduction and/or release poses little to no risk to public safety. The SB389 does *not* guarantee anyone will get out early. Instead, it just gives incarcerated people an opportunity to show how they have changed.

Strongest Reasons to Support Second Look

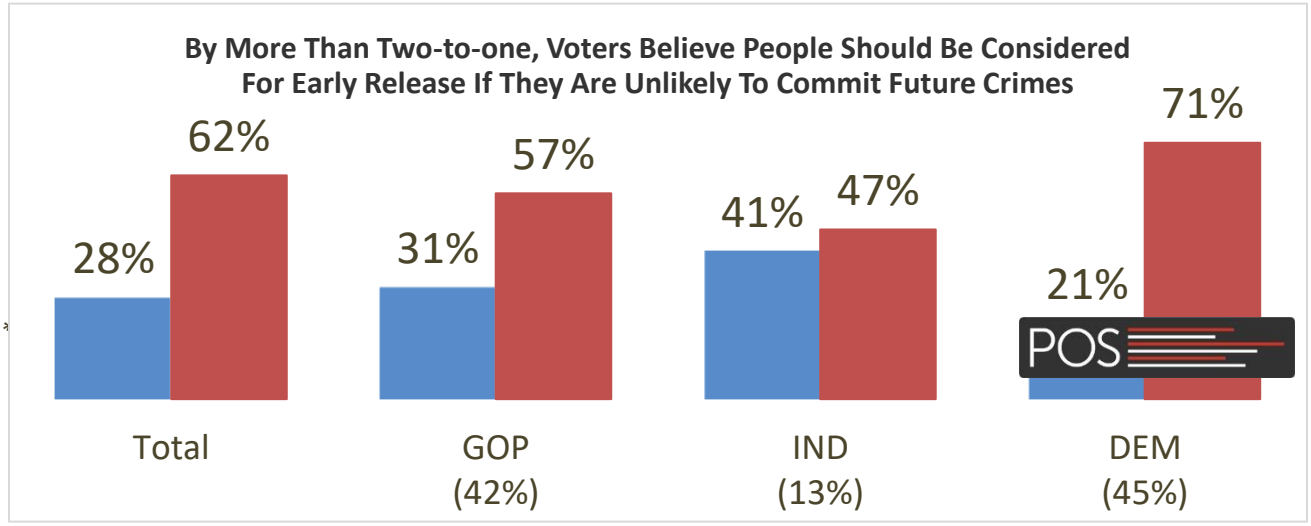
The strongest reasons to support Second Look point to low risk of re-offending:

- The Unger case, a 2012 Maryland Appellate Court decision resulted in the release of over 200 long-sentenced individuals with an average age of 63, and provided a natural case study. After 10 years since the ruling, the Unger cohort continues to have less than five percent recidivism rate, and more Ungers have unfortunately passed away than reoffended.

- Nationally, people who have been released through Second Look Laws have extremely low rates of re-offending, and many are now working to improve their community's safety by working as mentos with the highest at-risk youth. We have experienced this in Maryland with the passage of the Juvenile Restoration Act (JRA). Individuals who have been granted a re-sentencing are thriving as community members, and to date, only **one** individuals has recidivated.

- People who committed crimes when they were under age 25 have a greater capacity to change and grow over time. The vast majority of people who commit serious crimes naturally grow out of that behavior as they mature and become less likely to re-offend. Continuing to incarcerate people unnecessarily wastes taxpayer money that could otherwise be spent on things that actually prevent crime and protect public safety. JPI's reported in, *Rethinking approaches to over incarceration of black young adults in Maryland,* that nearly 50 percent of those serving the longest prison terms in Maryland were initially incarcerated as emerging adults.

- According to a 2022 poll conducted by political and public affairs survey research firm, *Public Opinion Strategies*, American voters supported "Second Look Laws" by a two-to-one margin, and by more than two-to-one, voters believe people should be considered for early release if they are unlikely to commit future crimes. Thus, prioritizing public safety over prolonged "punishment"



Poll Question: "Which ONE of the following statements comes closer to your own opinion?
People should stay in prison and serve their full sentences, even if they reach a point at which they are unlikely to commit future crimes…or…People in prison should be allowed to be considered for an early release from their sentence if they reach a point at which they are unlikely to commit future crimes."

All commonly argued points are true: Our communities desperately need and deserve safety, the need for criminal legal reform is real, and harm needs to be repaired. Healing starts by creating a system that works and SB 389 is reasonable starting point. The Justice Policy Institute urges this committee to issue a favorable report.

sb389.pdf
Uploaded by: Linda Miller
Position: UNF

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 Pelz, Esq. (410)260-1523
RE:	Senate Bill 389 Criminal Procedure – Incarcerated Seniors – Motion to Reduce the Duration of a Sentence
DATE:	January 24, 2024 (2/2)
POSITION:	Oppose

The Maryland Judiciary opposes Senate Bill 389.

The Judiciary generally opposes mandatory provisions that limit judicial discretion and interfere with the courts' ability to control its dockets. By requiring mandatory hearings, the bill poses such concerns. The decision to set a hearing should remain with the judicial branch. In addition, the language of proposed Criminal Procedure § 8-111(e)., requiring the court to consider, among other factors, "the individual has substantially complied with the rules of the institution" and "the reduction in recidivism that generally occurs as people age" in deciding a motion to reduce a sentence—is also very broad and/or vague. The Court does not have the ability to gather evidence to make such decisions and must rely on the parties to present such information. It is unclear how the court would consider such factors if the parties themselves do not present such evidence. Lastly, the bill would require the court to consider "whether the individual has completed an educational, vocational, or other program," which would be difficult given that DPSCS currently limits individuals serving life sentences from participating in such programs.

cc. Hon. Chris West
Judicial Council
Legislative Committee
Kelley O'Connor

SB389MTsiongasTestimony.pdf
Uploaded by: Magdalena Tsiongas
Position: UNF

TESTIMONY ON SB389

Senate Judicial Proceedings Committee
February 1, 2024

OPPOSE

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 389. 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 individuals who are 60 years and older to petition the Court for sentence modification, after serving 20 years. This bill would create an illogical and unjust reality when it comes to who can ask for sentence modification. Under the Juvenile Restoration Act, individuals who were incarcerated at 17 years and younger now have the ability to petition the court after serving 20 years for sentence modification. If SB 389 were to pass, someone who was convicted at 40 years old would also have the ability to petition the court for sentence modification after serving 20 years, once they reach aged 60. However, for someone like my loved one John, who was incarcerated at 19 years old, he would have to serve 41 years in prison before being eligible to file for sentence modification under this bill. Those incarcerated at 18 and 19 years old would have the longest wait for sentence modification out of any incarcerated people.

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 their age.

For these reasons, I encourage you to **oppose SB 389 unless amended to allow for all people, regardless of age, to file a motion to reduce duration of sentence after serving 20 years.**

Thank you.

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[1] Maryland Rule 4-345

[2] Court of Appeals of Maryland Rules Order

SB389_UNFAV_Amanuel.pdf
Uploaded by: Yanet Amanuel
Position: UNF

Testimony for the Senate Judicial Proceedings Committee

February 2, 2024

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

YANET AMANUEL
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UNFAVORABLE UNLESS AMENDED

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.

AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF MARYLAND

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

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[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.

AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF MARYLAND

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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MARYLAND

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FOUNDATION OF
MARYLAND

2024-02-01 SB0389 SB0123 (Letter of Information).
Uploaded by: Adam Spangler
Position: INFO

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LEONARD HOWIE
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Chief, Equity, Policy, and Engagement

PETER V. BERNS
General Counsel

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

February 1, 2024

TO: The Honorable Will Smith Jr.
Chair, Judicial Proceedings Committee

FROM: Tiffany Johnson Clark
Chief Counsel, Legislative Affairs, Office of the Attorney General

RE: Senate Bill 389 – Criminal Procedure – Incarcerated Seniors – Motion to Reduce the Duration of a Sentence and Senate Bill 123 Criminal Procedure – Petition to Reduce Sentence

---

The Office of the Attorney General (OAG) writes in support of affording rehabilitated incarcerated individuals an opportunity to modify their sentence, which holds the potential to address mass incarceration and promote a more just criminal justice system. The OAG also believes that expanded eligibility for such "second looks" should be supported by the careful balancing of factors that enhance fairness and rehabilitation, while also weighing the importance of public safety and victims' rights. Indeed, it is our commitment to developing well-researched, comprehensive, and consensus strategies for eliminating mass incarceration that prompted Attorney General Anthony Brown to create the Maryland Equitable Justice Collaborative (MEJC), in partnership with the Public Defender of Maryland, academic partners from the University of Maryland system, and representatives from over 40 local government agencies and community organizations, including impacted individuals. Thus, while the OAG's endorsement of any particular "second look" approach is premature, we fully support the goal of providing mechanisms for the modification of sentences, and we applaud the General Assembly's efforts in this regard.

Mass incarceration is one of this country's most destructive symptoms of systemic racism. Maryland has the shameful distinction of locking up the largest percentage of Black men and women in the country—72.4%—even though Black people make up only 31.7% of the State's population.[1] Black men in particular are serving the longest sentences, making up nearly 8 in 10 Marylanders who are imprisoned ten years or more.[2] These disparities point to systemic issues within the criminal justice system that demand comprehensive reform.

One such reform currently being evaluated by MEJC are "second look" proposals. Data suggests that the recidivism rate for individuals released from sentences over 30 years is significantly lower than individuals released from sentences less than 30 years and that recidivism rates tend to decrease as individuals age.[3] The *Unger* case, a 2012 Supreme Court of Maryland Decision that resulted in the release of over 200 long-sentenced individuals, provides a valuable case study. The *Unger* cohort was comprised of individuals with an average age of 64 years and an average length of incarceration of 39 years. The *Unger* group experienced a 3% recidivism rate, a fraction of Maryland's overall recidivism rate of 40%.[4]

Consistent with these lessons, several bills have been introduced which increase opportunities for incarcerated individuals to modify their sentence. Senate Bill123 allows an incarcerated individual who is serving a term of confinement to petition a court to reduce the sentence if the individual has served at least 20 years of the individual's term of confinement. Senate Bill 389, in comparison, allows an incarcerated individual who is at least 60 years old and has been imprisoned for at least 20 years to file a motion to reduce the duration of the individual's sentence. Both bills acknowledge incarcerated individuals' capacity for personal growth and rehabilitation, offering a chance for those who have demonstrated positive change to reintegrate into society.

Notably, both bills allow a court to modify a sentence of an incarcerated individual if it concludes that the individual is not a danger to public safety and that the interests of justice warrant a sentence modification. In its analysis, the court would consider a number of factors, including the nature of the crime, the history and characteristics of the individual, a statement from the victim or the victim's representative, evidence of rehabilitation, compliance with rules of the institution, participation in educational programs, family and community circumstances at the time of the offense, and health assessments conducted by a health professional.[5] As you weigh these eligibility factors, the OAG would urge the Committee to also consider whether the court's decisions should be subject to appellate review.[6]

---

[1] https://dpscs.maryland.gov/publicinfo/publications/pdfs/Inmate%20Characteristics%20Report%20FY%202022%20Q4.pdf; https://www.census.gov/quickfacts/fact/table/MD/RHI225222#RHI225222

[2] https://justicepolicy.org/wp-content/uploads/2022/02/Rethinking_Approaches_to_Over_Incarceration_MD.pdf

[3] https://dpscs.maryland.gov/publicinfo/publications/pdfs/2022_p157_DPSCS_Recividism%20Report.pdf

[4] https://goccp.maryland.gov/wp-content/uploads/Unger-Presentation-JRAOB.pdf

[5] SB0123 also instructs a court to factor in the individual's age at the time of the offense, while SB0389 encourages a court to consider the age at the time of filling the petition.

[6] We note, for example, that the law is silent as to whether the sentence modification decisions authorized by the Justice Reinvestment Act (2016) and the Juvenile Restoration Act (2022) are appealable, resulting in significant litigation in State courts.

We cannot solve the crisis of mass incarceration solely by preventing wrongful convictions, revisiting criminal penalties, or otherwise preventing individuals from being jailed. Longstanding inequities currently existing in our prisons demand that our efforts also include "second look" and other strategies for releasing rehabilitated individuals who no longer pose any threat to public safety with the support necessary to ensure their successful reentry into our communities.

cc: The Honorable Chris West
The Honorable Jill Carter
Committee members

2024-02-01 SB0389 & SB0123 (Support in Concept).pd
Uploaded by: Tiffany Clark
Position: INFO

CANDACE MCLAREN LANHAM
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CAROLYN A. QUATTROCKI
Deputy Attorney General

LEONARD HOWIE
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Chief, Equity, Policy, and Engagement

PETER V. BERNS
General Counsel

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

February 1, 2024

TO: The Honorable Will Smith, Jr.
Chair, Judicial Proceedings Committee

FROM: Tiffany Johnson Clark
Chief Counsel, Legislative Affairs, Office of the Attorney General

RE: Senate Bill 389 – Criminal Procedure – Incarcerated Seniors – Motion to Reduce the Duration of a Sentence and Senate Bill 123 Criminal Procedure – Petition to Reduce Sentence (**Support in Concept**)

The Office of the Attorney General (OAG) writes in support of affording rehabilitated incarcerated individuals an opportunity to modify their sentence, which holds the potential to address mass incarceration and promote a more just criminal justice system. The OAG also believes that expanded eligibility for such "second looks" should be supported by the careful balancing of factors that enhance fairness and rehabilitation, while also weighing the importance of public safety and victims' rights. Indeed, it is our commitment to developing well-researched, comprehensive, and consensus strategies for eliminating mass incarceration that prompted Attorney General Anthony Brown to create the Maryland Equitable Justice Collaborative (MEJC), in partnership with the Public Defender of Maryland, academic partners from the University of Maryland system, and representatives from over 40 local government agencies and community organizations, including impacted individuals. Thus, while the OAG's endorsement of any particular "second look" approach is premature, we fully support the goal of providing mechanisms for the modification of sentences, and we applaud the General Assembly's efforts in this regard.

Mass incarceration is one of this country's most destructive symptoms of systemic racism. Maryland has the shameful distinction of locking up the largest percentage of Black men and women in the country—72.4%—even though Black people make up only 31.7% of the State's population.[1] Black men in particular are serving the longest sentences, making up nearly 8 in 10 Marylanders who are imprisoned ten years or more.[2] These disparities point to systemic issues within the criminal justice system that demand comprehensive reform.

One such reform currently being evaluated by MEJC are "second look" proposals. Data suggests that the recidivism rate for individuals released from sentences over 30 years is significantly lower than individuals released from sentences less than 30 years and that recidivism rates tend to decrease as individuals age.[3] The *Unger* case, a 2012 Supreme Court of Maryland Decision that resulted in the release of over 200 long-sentenced individuals, provides a valuable case study. The *Unger* cohort was comprised of individuals with an average age of 64 years and an average length of incarceration of 39 years. The *Unger* group experienced a 3% recidivism rate, a fraction of Maryland's overall recidivism rate of 40%.[4]

Consistent with these lessons, several bills have been introduced which increase opportunities for incarcerated individuals to modify their sentence. Senate Bill123 allows an incarcerated individual who is serving a term of confinement to petition a court to reduce the sentence if the individual has served at least 20 years of the individual's term of confinement. Senate Bill 389, in comparison, allows an incarcerated individual who is at least 60 years old and has been imprisoned for at least 20 years to file a motion to reduce the duration of the individual's sentence. Both bills acknowledge incarcerated individuals' capacity for personal growth and rehabilitation, offering a chance for those who have demonstrated positive change to reintegrate into society.

Notably, both bills allow a court to modify a sentence of an incarcerated individual if it concludes that the individual is not a danger to public safety and that the interests of justice warrant a sentence modification. In its analysis, the court would consider a number of factors, including the nature of the crime, the history and characteristics of the individual, a statement from the victim or the victim's representative, evidence of rehabilitation, compliance with rules of the institution, participation in educational programs, family and community circumstances at the time of the offense, and health assessments conducted by a health professional.[5] As you weigh these eligibility factors, the OAG would urge the Committee to also consider whether the court's decisions should be subject to appellate review.[6]

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[1] https://dpscs.maryland.gov/publicinfo/publications/pdfs/Inmate%20Characteristics%20Report%20FY%202022%20Q4.pdf; https://www.census.gov/quickfacts/fact/table/MD/RHI225222#RHI225222

[2] https://justicepolicy.org/wp-content/uploads/2022/02/Rethinking_Approaches_to_Over_Incarceration_MD.pdf

[3] https://dpscs.maryland.gov/publicinfo/publications/pdfs/2022_p157_DPSCS_Recividism%20Report.pdf

[4] https://goccp.maryland.gov/wp-content/uploads/Unger-Presentation-JRAOB.pdf

[5] SB0123 also instructs a court to factor in the individual's age at the time of the offense, while SB0389 encourages a court to consider the age at the time of filling the petition.

[6] We note, for example, that the law is silent as to whether the sentence modification decisions authorized by the Justice Reinvestment Act (2016) and the Juvenile Restoration Act (2022) are appealable, resulting in significant litigation in State courts.

We cannot solve the crisis of mass incarceration solely by preventing wrongful convictions, revisiting criminal penalties, or otherwise preventing individuals from being jailed. Longstanding inequities currently existing in our prisons demand that our efforts also include "second look" and other strategies for releasing rehabilitated individuals who no longer pose any threat to public safety with the support necessary to ensure their successful reentry into our communities.

cc: The Honorable Chris West
The Honorable Jill Carter
Committee members