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TO: Members of the House Judiciary Committee

FROM: Erica J. Suter, Assistant Public Defender and Director of the UB Innocence Project Clinic

RE: HB0724: Criminal Procedure- Petition to Reduce Sentence

DATE: February 9, 2024

I am an assistant public defender, faculty member of the University of Baltimore School of Law and Director of the UB Innocence Project Clinic, and Immediate Past President of the Maryland Criminal Defense Attorney's Association. I write in support of HB0724.

In the not-too-distant past, defendants in Maryland could potentially return to court and ask the court to reconsider their sentence many years later. Prior to July 1, 2004, defendants in Maryland had the right to file a Motion to Modify Sentence under Rule 4-345 within 90 days of sentence and the sentencing court had perpetual revisory power over the motion so long as it was timely filed. In other words, so long as a defendant filed the motion within 90 days of the sentence and the sentencing court agreed to hold it and not rule on it, the defendant could come back years later and demonstrate that they had matured, evolved, and used their time productively. Defendants had time to develop an institutional record that could reflect growth and maturity. They might take courses and earn a degree or complete programming intended to impart vocational skills or pro-social behavior. After 2004, a change in the rule meant that courts only reconsider the sentence within 5 years from the date of sentence. For a defendant who is serving a long sentence, five years is typically not enough time to demonstrate rehabilitation to a court. Though any one of us may change for the better in five years, most of us can agree that we are certainly not the same person as we were 20 or 30 years ago.

Although much is often said from the opposition regarding the numerous procedural mechanisms that defendants have at their disposal to challenge their sentences, I can state as a criminal defense attorney with nearly two decades of experience working with defendants on their cases after they have been sentenced, their avenues of relief are quite circumscribed. More specifically, the court's ability to reconsider a sentence based on a defendant's demonstrated growth and rehabilitation is limited to, typically, one motion to modify sentence. Other pleadings such as an appeal or post conviction petition have nothing to do with a defendant's rehabilitation or any consideration of public safety. The opportunity for juvenile lifers to have a second look is a recent phenomenon that has been very successful, but it leaves behind other, equally deserving individuals. HB0724 provides an opportunity for the court to take a second look at individuals. It is not a "get-out-of-jail-free card." It is an opportunity for a defendant to demonstrate their

worthiness of a second chance. Given the disturbing racial disparities present in Maryland's prisons, with Maryland incarcerating the largest portion of our Black citizens than any other State in the Nation, this is also a racial justice bill.

It is important to note that HB0724 is more restrictive than the rule that covered all modifications prior to 2004. It requires that a defendant serve at least 20 years, which is consistent with the lessons of social science. Individuals tend to age out of crime and violence and recidivism decline sharply with age. The bill puts public safety as an explicit consideration, which the court must assess. The lack of recidivism and remarkable success of defendants in Maryland who were released pursuant to *Unger* and the juvenile lifers who have been released as a result of the Juvenile Restoration Act are local, recent reminders that our returning citizens can be thriving, contributing members of our community.

For these reasons, I urge a favorable report.