



Maryland Criminal Defense Attorneys' Association

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Re: Second Look Act, Senate Bill 291

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The Maryland Criminal Defense Attorneys' Association ("MCDAA") has approximately 500 members that include both attorneys and associated professionals throughout Maryland. MCDAA was formed to promote study and research in the field of criminal defense law and the related areas; to disseminate by lecture, seminars and publications the advance of the knowledge of the law as it relates to the field of criminal defense practice; to promote the proper administration of justice; to foster, maintain and encourage the integrity, independence and expertise of the defense lawyer in criminal cases; and to foster periodic meetings of the defense lawyers and to provide a forum for the material exchange of information regarding the administration of criminal justice and thereby concern itself with the protection of individual rights and the improvement of criminal law, its practice and procedures.

We support SB291.

SB291 Is Good Policy

Senate Bill 291, the aptly named Second Look Act, constructs a balanced procedure enabling a person imprisoned for 20 years or more to have a court assess whether to "modify" or reduce their sentence. It is a balanced and fair bill. It is good legislation for the people of Maryland and is consistent with fairness and sound public safety policy.

We support legislation that requires courts to consider certain factors in their sentencing/re-sentencing decisions as that will hopefully bring uniformity to these hearings and allow the offender to know what he/she has to work towards to try to get a reduction – it also allows for more meaningful appellate review should there be a challenge to the lower court's decision.

So many offenses occur when offenders are young, are under the influence of drugs, or some other life circumstance causes them to get into the system. We believe in reform and providing people with second chances after serving a reasonable amount of time

Judges may feel that for serious cases they would like to see more than 5 years before



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they modify a sentence, but because of current legislation, their hands are tied from considering reductions more than 5 years out.

Statistics have consistently demonstrated that these older inmates have a very low recidivism rate. Those statistics have been borne out by the recent releases from incarceration under the Justice Reinvestment Act. Long-term incarcerated persons released pursuant to the Unger decision have also had an extraordinarily low recidivism rate.

Incarcerated persons serving long sentences would have even more incentive to be model prisoners, if there was a way to seek a reduced sentence after serving 20 years. Wardens could expect better behavior in the prison population. Taxpayers would see lower taxes due to a reduction in costs of incarcerating older persons, and releases under this bill would result in an increase in the tax base. Formerly incarcerated persons could contribute to the community by working and paying taxes, and being mentors to young people to stay away from crime.

Maryland has the dubious distinction of being the worst state in the nation for over-incarceration of black men, and of racial disparities throughout the justice system. Passage of this Bill would be a beginning to rectify these wrongs.

SB291 is a small step towards improving our state and our society as a whole. It is in keeping with trends around the country to reduce the incarceration rates of older individuals, whose prolonged incarceration does not increase public safety and is an undue burden on taxpayers.

SB291 Fills A Gap In Available Remedies

Prior to 2004, there was no time limit for an incarcerated person to file a motion to reduce their sentence. That changed in 2004, when a five-year limit was imposed. Under current law, if the court did not reduce the sentence within five years, the incarcerated person could never have an opportunity to have his or her sentence reduced, no matter how exemplary their prison record, or how complete their rehabilitation.

SB291 provides a mechanism through a careful court review process to review lengthy sentences and provide an opportunity for consideration of sentence modification for inmates who served 20 years or more and who are no longer a threat to the public.

Additionally, there are many reentry programs providing job training and wrap-around support for inmates reentering society. These organizations have been highly successful in preparing inmates to transition to a productive life in society.



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Additional Points to Consider

None of the post-verdict vehicles, such as a motion for new trial or postconviction petitions, target the narrow focus of this bill, which is modification after years of incarceration.

- Maryland's 10-day new trial motion is heard prior to sentencing.
- Maryland's 30-day 3-judge panel is heard shortly following trial.
- Direct appeals review trial court error only.
- Fraud/mistake/irregularity motions are very limited and rarely used; they are not applicable to reconsideration of sentence matters.
- Postconvictions/Motion to Reopen/Habeas Corpus relate to constitutional violations and currently require proof of error on the part of a lawyer or prosecutor to get relief. To the extent a belated modification is granted it is because either (1) a lawyer missed a filing or hearing date or (2) the state wants to resolve the case because of some other error or reason.
- Writs of actual innocence and DNA post convictions are narrowly focused to ensure no one is wrongly convicted; they are inapplicable to the conversation at hand.
- Parole considerations are much different than a modification before a judge, where someone is able to be advised, guided and represented by counsel. During the parole process, there is no right to counsel. If an incarcerated person has counsel, that attorney's role is limited to a 30-minute meeting with a commissioner and submission of written documentation. Attorneys are entitled to appear only at open parole hearings, however they are not permitted to sit with, talk to or participate in the hearing. The incarcerated individual must represent himself.

There are currently no other remedies for inmates who have been incarcerated for decades and who are fully rehabilitated and pose no risk to society. The MCDAA fully supports SB 291.

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