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POSITION ON PROPOSED LEGISLATION

BILL: Senate Bill 291 – Maryland Second Look Act

FROM: Maryland Office of the Public Defender

POSITION: Favorable

DATE: January 28, 2025

The Maryland Office of the Public Defender respectfully requests that the Committee issue a favorable report on Senate Bill 291.

Known as the Maryland Second Look Act, Senate Bill 291 builds on Maryland's success in safely reducing the prison population by giving judges opportunities to release non-dangerous individuals. It permits people who have been incarcerated for at least 20 years to file a petition for reduction of sentence. It also permits State's Attorneys to file such a request at any time. Victims or their representatives have a right to notice of the hearing, to attend, and to provide a written and/or oral statement, but they are never required to do so. After a hearing, the court may reduce the sentence or sentences *only if* it determines "that the individual is not a danger to the public and the interests of justice will be better served by a reduced sentence or sentences."

Permitting judicial review and modification of sentence is an effective way of safely reducing the prison population by releasing non-dangerous offenders. It has a long and successful history in Maryland. 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 who filed a motion for sentence modification under Rule 4-345 within 90 days of sentencing could ask the court to defer ruling on it indefinitely so that they 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 rehabilitation. 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 could 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. In 2021, the General Assembly gave individuals who were incarcerated for crimes they were convicted of as children an opportunity to demonstrate this when it passed the Juvenile Restoration Act (JUVRA). JUVRA adopted the same legal standard proposed by Senate Bill 291. The court is permitted to modify a sentence only if it finds the individual is not a threat to public safety and the interest of justice will be served by a reduced sentence. Extremely low recidivism among individuals released under both JUVRA and the *Unger* decision have demonstrated that releasing long sentence servers can be done without compromising public safety.

Frequently, the opposition argues that there are already numerous procedural mechanisms available to defendants to challenge their sentences. But nearly all these actually are narrow avenues meant to address specific procedural flaws or failings in a trial. 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 under Rule 4-345, which the court may deny without a hearing and must be ruled upon within five years of the person's sentencing. 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.

Given the appalling racial disparities present in Maryland's prisons, this is also a racial justice bill. Senate Bill 291 provides a critical opportunity to move towards ending mass incarceration and remedying racial disparities without compromising public safety. In fact, such releases would make Maryland safer. It would reduce the demands on prison staff, who (as has been recently reported) are stretched dangerously thin, by reducing the sheer number of incarcerated persons they need to supervise. It would also permit the State to take money and resources it now wastes on imprisoning non-dangerous individuals and reallocate it to programs and initiatives that actually make us safer. Additionally, many of the people who have been released under JUVRA and *Unger* have become forces for good in their community, as volunteers, violence interrupters, youth mentors, reentry specialists, and more.

Senate Bill 291 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.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue a favorable report on Senate Bill 291

Submitted by: Maryland Office of the Public Defender, Government Relations Division.

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