



AMERICAN UNIVERSITY

W A S H I N G T O N , D C

Clinical Program

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Senate – Judicial Proceedings

**Testimony in Support of SB 291 – Criminal Procedure – Petition to Reduce Sentence
(Maryland Second Look Act)**

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As a social justice advocate who has dedicated my legal career to disrupting the machinery of mass incarceration, I have had the honor of representing many men and women confined in Maryland's. The Decarceration and Re-Entry Clinic at the American University Washington College of Law represents individuals before the Maryland courts and the Maryland Parole Commission. Many of these individuals have been detained for decades - far beyond the point of having been successfully rehabilitated, long after achieving educational and vocational goals and way past the stage of being healed from the trauma that led them to prison. We believe that every human being deserves a second chance and that everyone has redemptive value.

SB 291 simply authorizes an individual who is serving a term of confinement to petition a court to reduce their sentence, under certain circumstances, after the individual has served 20 years of their term of confinement. Once the court determines eligibility, the court must hold a hearing where evidence may be introduced in support of the petition. The factors that the court must consider mirror the factors that the courts currently are required to review under the Juvenile Restoration Act¹, the governing statute for most of my clinic practice. These factors focus on balancing public safety with rehabilitation by examining things such as the nature of the offense, the role the individual played in the offense, institutional rule compliance, programming and statements from the victim. Victims are not forced to but may participate in the hearing process to have their voices heard. The court has the judicial acumen to review the evidence presented, assess witness credibility and they are trained to make such thoughtful deliberate decisions to determine if an individual poses a danger and whether it is in the interest of justice to reduce an

¹ Passed by the Maryland General Assembly April 2021, effective October 2021, Criminal Procedure Article, Section 6-235 and Criminal Procedure Article, Section 8-110.

individual's sentence. This bill merely creates one avenue to possible release and contains the necessary safeguards to manage abuse or repeat filings.

This bill does not guarantee release after twenty years in prison, it merely creates an avenue through which an individual can demonstrate rehabilitation. It is worth noting that most western democracies have few or no people serving life sentences, and research suggests that sentences of longer than twenty years are often not justified. See Marc Mauer and Ashley Nellis, *The Meaning of Life: The Case for Abolishing Life Sentences*, (2018). Excessive sentencing thwarts the correctional goals of rehabilitation and reintegration. Most correctional officials will confess that a population without hope is more challenging to prison operations and daily productivity. When prison doors are slammed shut, hopelessness prevails.

Limited Court Review Options

The existing options for getting judicial review of sentences are limited, even though we have historically dolled out extreme sentences in unrestrained fashion. The only way to challenge an excessive sentence is to challenge the constitutionality of the conviction itself. After a conviction and sentencing a person may seek a motion for review by a 3-judge panel but must do so within 30 days after sentencing, (See Criminal Procedure Article, Sections 8-102 – 8-109). A motion for modification or reduction of sentence must be filed within 5 years, when most judges are not amenable to modifying a recent sentence and most individuals have not accumulated enough time in prison to demonstrate rehabilitation. Many individuals spend the first few years navigating the harshness of the prison environment. The passage of time allows judges to fully evaluate an individual's growth, adjustment, education, programming and sincere transformation while behind bars.

Community Asset Upon Release

A person's debt to society is not paid back simply because of the number of years a person spends in prison but are, instead, paid back through spending time retrospectively reflecting upon harm caused and processing through the principles of restorative justice – accountability, healing and rehabilitation and rejuvenation. Many of the individuals who I have represented over the years have proven that, upon release, they can live law-abiding lives and contribute greatly to the very communities that they may have offended years ago. Individuals released pursuant to the *Unger* decision and those released pursuant to the Juvenile Restoration Act demonstrate that most people merely need an opportunity to live out their true purpose and the life they were intended to live before being sidetracked. Because of the overwhelming number of Black men and women captured in our encarceral system and held in Maryland prisons, our communities of color have suffered in their absence. Many can serve as a valuable resource upon their return as evidenced by those who have walked out of prison doors directly to serving their community. All people need is an opportunity and SB 291 merely creates an avenue for such.

One Story of Success

Our clinic recently represented Mr. S before the courts. He qualified under the JRA and this avenue for release would not have been available to him but for the legislative action of the passage of the statute two years ago. He was in prison for over three decades and served most of that time programming and working but living under a cloud of hopelessness that he would ever live in the free world due to his life sentence. However, since his release he has been reunited with his family, working diligently, paying taxes and mentoring young people to deter them from making the mistakes he made which led to his incarceration. He says that his goal is to “be the mentor that was missing in his life during his own adolescence.” His contributions to his community would be void had it not been for legislative intervention and an opportunity to petition the court for release.

We strongly support this bill and urge a favorable vote to foster hope and open an avenue for judicial review for the men and women in our prisons who meet with criteria and demonstrate they are worthy of a sentence reduction.

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