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POSITION ON PROPOSED LEGISLATION

BILL: House Bill 853 – Maryland Second Look Act

FROM: Maryland Office of the Public Defender

POSITION: Favorable

DATE: February 14, 2025

The Maryland Office of the Public Defender respectfully requests that the Committee issue a favorable report on House Bill 853.

Known as the Maryland Second Look Act, House Bill 853 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. 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 five 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 House Bill 853. 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.

Opponents to this legislation generally raise three points:

- First, they argue that this bill is unnecessary because there are a number of other procedural vehicles to challenge a conviction or sentence in court. 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. There are several significant problems with this argument. There are years-long delays in the parole process for lifers. At parole hearings, incarcerated individuals cannot call witnesses, present expert testimony, or be assisted by counsel. 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.
- Third, opponents note that participating in these hearings can be hard on victims and 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. 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.

Given the severe racial disparities present in Maryland's prisons, this is also a racial justice bill. House Bill 853 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.

House Bill 853 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 House Bill 853.

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

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