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Opposition to House Bill 853

Introduction

House Bill 853, which mandates new sentencing hearings for individuals who have been incarcerated for more than twenty years, is a contentious piece of legislation. It raises several significant concerns that warrant a thorough examination. This document outlines the primary arguments against the bill.

Existing Avenues for Sentence Reduction

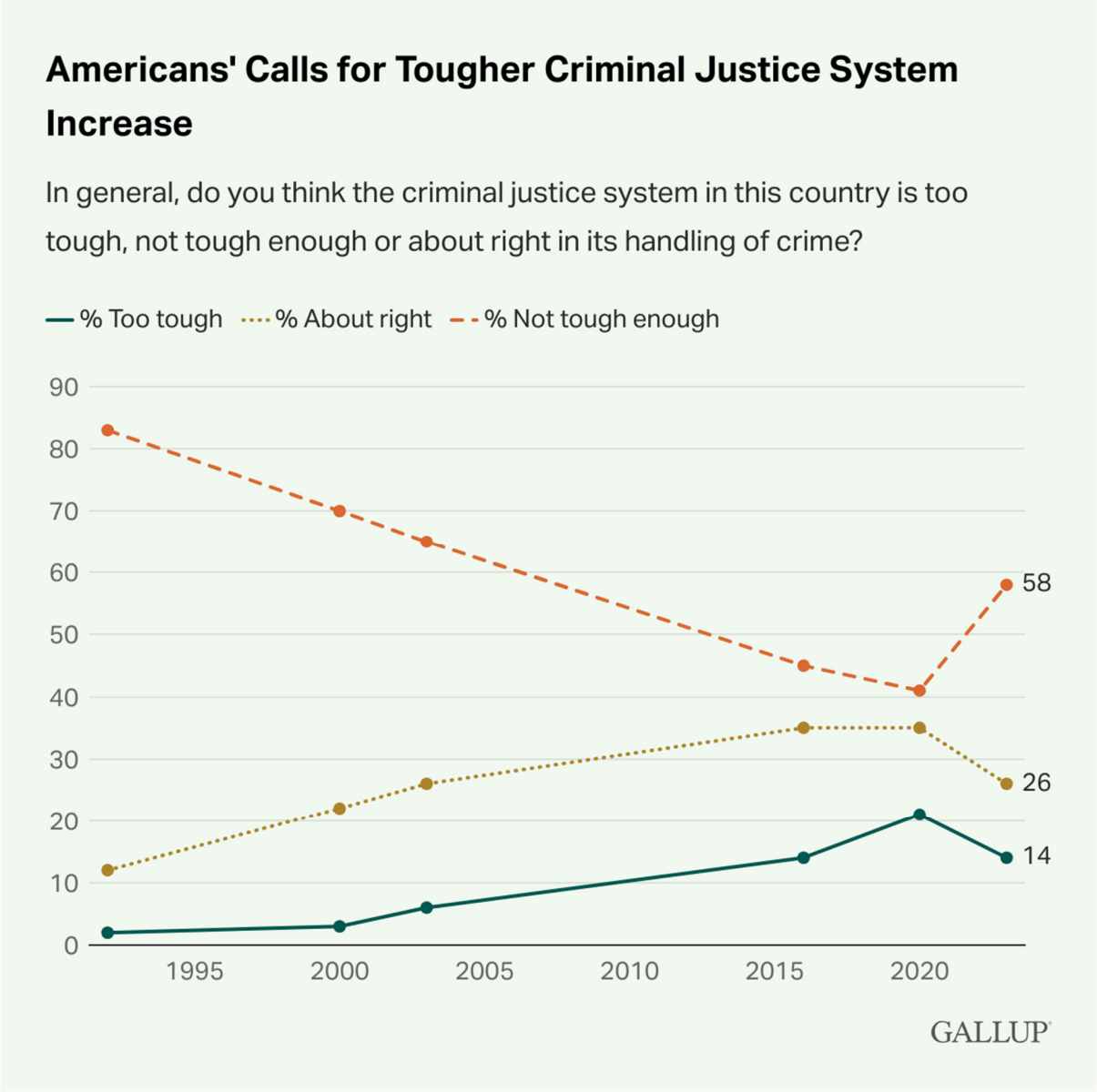
Maryland already provides numerous mechanisms through which sentences can be reviewed and diminished. These include parole, clemency, pardon, a myriad of diminution credits, home detention programs, Special programs such as Patuxent Institution, appeals with free legal representation, post-judgment proceedings with free legal representation, and other judicial reviews. Introducing another layer of potential sentence modification is unnecessary and complicates an already comprehensive system. One client whose aging mother was brutally stabbed to death has been to court 23 times in order to ensure that her murderer remains incarcerated. It is heartless to have a system indifferent to imposing that cruelty on him. Please do not extend the cruelty by adding a 24th, 25th, and 26th occasion. Remember, if an applicant under this bill is unsuccessful in his or her bid to gain release, they may renew their demands every three years. Every three years would come another nightmare for our client, Brittony, who at age 8 slept peacefully with her mother in bed. Until someone stabbed her mother many times, causing her to bleed to death in Brittony's arms. Brittony is now in her mid twenties, and has gone to court many times already. She is aware that our bizarre justice system will require her a lifetime more of appearances to relive and tell her horrors. Attached is a list of sixteen different mechanisms already available to diminish a prison sentence in Maryland. This bill is wrongly named. It should be named ***Seventeenth Look***.

Exclusion of Original Criminal Justice Personnel

Resentencing many years after the original sentence poses practical challenges. The original judge, prosecutor, and investigators, who were intimately familiar with the case, are likely no longer serving. This absence can lead to inconsistencies and a lack of continuity in the judicial process, which is detrimental to the integrity of the justice system. Our organization already represents crime victims in "second look" cases generated by the juvenile corollary to this bill. In many of those cases, we find that the offender presents a fantasy story about the original crime, knowing that the new judge will not be familiar with the facts, and will not engage in a new fact-finding hearing to dispute the fantastic allegations of the offender. Neither will the prosecutor be prepared to refute the facts in detail.

Public Opinion

The public sentiment is clear: there is a strong opposition to allowing convicted criminals to request new sentencing procedures or to be released early from their sentences. This opposition is founded on the fear and discomfort that many citizens feel about the possibility of serious offenders being reintegrated into society prematurely. The notion of finality in sentencing brings a sense of security and justice to the public, which this bill threatens to undermine. A recent Gallup Research poll indicates the strong trend in public opinion toward the need for stronger sentencing.



Finality of Sentences

There is a critical need for finality in the sentences handed down to convicted criminals. This finality serves multiple purposes:

- Public Assurance: It reassures the public that justice has been served and that the societal order held as a systemic imperative, and is maintained.
- System Integrity: The justice system relies on the stability and predictability of its rulings to function effectively. It also relies on the cooperation of victims, who often must initiate investigations and charges, and who almost always are crucial witnesses. Diminishing victims' satisfaction with outcomes, and therefore diminishing victim participation has serious detrimental effects.
- Victim Survivors' Well-being: For those who have suffered due to the serious offenses, the finality of the sentence brings closure and a sense of justice. Reopening cases can retraumatize these individuals and disrupt their healing process. They are often afraid of the offender if he is released, whether a rational belief or not. Sometimes, they have been threatened by the offender, such as in courtroom encounters. Even if they are not afraid, they often are repulsed by the thought of encountering the murderer of their loved one in the grocery store, or the pharmacy, or at their child's school. Our society should account more for their peace of mind, their mental well-being, and their satisfaction. In the past three years, I have had two survivor families move from Maryland because of the callousness of releasing the murderer of their loved ones. These were wonderful people, excellent citizens, and taxpayers, and yet we lost them to bend over backwards for those who committed heinous acts against their loved ones. Maryland's Supreme Court, as well as the U/S. Supreme Court have acknowledged the cruelty inflicted on victims by the endless lack of finality and the heartless cycle of forcing them to return to court repeatedly to ensure that justice is served.

Impact on Crime Victim Survivors

One of the most compelling arguments against this bill is the undue burden it places on the survivors of crime victims. These individuals have already endured significant trauma and should not be subjected to additional hearings that reopen old wounds. Key points include:

- Fear and Retaliation: Victim survivors often live in fear of the offender, worrying about potential retaliation if the offender is released. These fears, although sometimes perceived as inordinate, are genuine and must be compassionately acknowledged.
- Emotional Toll: Attending additional hearings means reliving the trauma, which can have severe emotional and psychological impacts on the survivors.
- Injustice to Victims: The original sentencing was a form of justice for the victims. Revisiting and potentially altering this sentence can be seen as an injustice to those who have already suffered immeasurably.

Recidivism

Another critical concern regarding this bill is the issue of recidivism. The risk that individuals who have committed violent crimes may reoffend if released prematurely poses a serious threat to public safety. It is a mathematical certainty that more crimes will be committed by at least some of those released. DPSCS statistics show a recidivism rate of 13% for released offenders older than 75. The rate increases the younger the age of the releasee. I remind you that all recidivism cannot be captured, because all crimes are not solved, and all guilty parties are not captured, tried, and convicted. Whenever you see a recidivism rate, you must know that the true figure is higher, there is a built-in error in that statistic. The DPSCS figures are deceptively low regardless, due to the limited time period (3 years). These individuals will be released permanently, not for three years. A more accurate recidivism period would be ten years, and a longer study period with always reveal a higher recidivism statistic. In addition, the DPSCS figures appear grossly out of alignment with other estimates of recidivism for serious violent offenses. Even usings DPSCS questionable statistics the cost in human suffering of additional reconsideration releases is too high.

Recidivism not only endangers the community but also undermines the justice system's role in protecting citizens. By allowing the possibility of reduced sentences, this bill increases the likelihood that repeat offenders will be back on the streets, potentially causing additional harm and suffering. Therefore, maintaining stringent sentencing measures is essential to deter further criminal behavior and to uphold the safety and security of society. According to the Public Defender's Office, there have been fifty-four releases from prison as a result of the 2021 Juvenile Restoration Act. While we have not yet tried to compile data on recidivism, there have already been two serious crimes committed by convicted murderers who were released. Please see the accompanying information regarding Byron Alton Bowie, Jr., a convicted murder, whose crime after release was threatening to burn down a Frederick, Maryland townhouse with everyone inside. The event occurred around Thanksgiving, 2023. The Public Defender's Office secured his release under the Juvenile Restoration Act in May, of 2022. It took him all of eighteen months to be caught for a new serious violent offense.

The second case is that of convicted murderer Keith Curtis. We are in the initial stages of investigating the details of this matter, but it appears that Mr. Curtis was convicted of murder and sentenced to life in 1995. He murdered a beloved Johns Hopkins University professor who suffered from Parkinson's Disease. He was released apparently in 2019, and quickly violated probation, earning a return to prison for four months. His released was earned through another "innovative" release program that is misused by many to exact a resentencing.

His new offense, according to news reports, was robbing a former co-employee at gunpoint. The co-worker was working the cash register of an Ace Hardware Store. Curtis gained one hundred dollars in the robbery.

The third case: In ***1999, Christopher Lee Myers tried to murder his ex-girlfriend and her new boyfriend by burning her house down while they were inside. Chris knew that his own helpless infant son was also in the house before he doused it in Gasoline and set it on fire.*** Apparently concerned over the safety of the public, the Parole Commission refused Myers request for parole (2013). Undaunted, the Office of the Public Defender filed a motion for him to be released in accordance with the Health General Article, 8-505 (et seq). This provision allows the Court to

resentence an inmate who has completed drug or alcohol treatment. In 2015, Christopher was released.

In ***2019, Myers decided to murder his next girlfriend***. This time, he succeeded, apparently fracturing her skull. Heather Caitlin Williams breathed her final breath after he bashed in her 24-year-old skull. Here is a death to count because of early release..

The fourth case: Justin Kyle Marshall started his murder career early. In 2004, when he was 17, he beat an innocent man to death. At one point, he went back hours later to see if his victim had died. He pled guilty to second degree murder, and avoided trial on first degree murder and other charges.

In 2010, five years after his conviction, his sentence was modified, leading to his release in 2019. It took him three years after release to murder again. This time, it was the mother of his child. He shot her in the neck.

The average person cannot help but be stricken by the cheap pricetag that the State of Maryland has placed on the lives of the victims in these examples. The other "takeaway" from these stories is that violent recidivism is an inevitable result of these programs. On this occasion, you get a chance to look into the eyes of someone whose life was cut short because of an early release of a juvenile murderer.

Rebutting The Arguments of Proponents of This Bill

Among the claims made by the proponents of this bill, the victims of Maryland would like to comment on the following arguments:

<u>Proponent statement: "This Bill would Address Racial Disparities"</u> – Not one victim represented by Maryland Crime Victims' Resource Center has ever espoused any reason other than the guilt of the perpetrator, regardless of that perpetrator's race, ethnicity, gender or sexual identity for the reason to incarcerate. The need for a victim to see proper justice served has nothing to do with the race of the perpetrator who butchered their mother as she slept, raped and sodomized their sister, or shot their five-year-old son.

Focusing on some perceived inequities for offenders excludes the consideration of the greater inequities to victims. We ask that you not focus on the tree that you see of inequity to the offenders, and fail to see the forest of oppression that plagues victims, who are far more numerous, and far more afflicted than the offenders. Criminologists estimate that for every murder victim, there are twenty friends and relatives who face a life of mental health challenges on the loss of the one victim. We do not deny that there may be too many inequities in the system. The place to combat those inequities is where they occur – within the scope of the segment of the process for determining guilt or innocence. Not after the offender has been identified beyond a reasonable doubt by the fairest system in the world (albeit humanly imperfect).

While all victims face bitter insult and trauma at the hands of governmental actions, people of color are numerically affected much more dramatically due to their rate of victimization. We ask you to save some sympathy for victims. Statistically, the likelihood in Maryland is that the majority of victims of those who are released as a result of this bill, and recidivate, will be people of color. While African Americans comprise about 30% of Marylanders, they make up 50% of murder victims in Maryland. It is reasonable to assume that African American Marylanders will comprise the majority of the victims of those who recidivate upon release under the mechanisms of this bill. There is the forest for you to see. Victims of the past crimes, mostly people of color, get traumatized by the re-victimization foisted upon them by "second look" legislation. Future victims, also majority minority, will suffer as a result of the inevitable and undeniable recidivating offenders released. The only debatable variable is the number who will recidivate. The racial equity note on this bill should be amended to reflect an estimate of the carnage unleashed on people of color by recidivating offenders. Of course, there will be white victims of carnage and other races as well.

Proponent statement: "Not every victim is monolithic in the desire to throw away the key" - This organization has represented more than one thousand murder victims. None of us can remember a victim seeking to aid in the release of their perpetrator after sentencing. Indeed, we would have helped them present that desire in an appropriate forum, such as a Parole hearing.

There is irony in the proponents claiming that the position of victims is not monolithic. The irony is that the proposed legislation ***monolithically applies to all victims***, whether they like it or not. Those who wish their perpetrator to be released or treated leniently have always been free to assist the perpetrator in achieving a diminished sentence. They can have their opinion heard at sentencing, three judge panel reviews, parole hearings, and the many other avenues available already to diminish a sentence.

Proponent statement: "The bill requires that there is a finding that the Defendant is not a danger to the public" - Beyond the fantastic idea that anyone could no longer be a danger to the public after proving their ability to commit heinous acts against their fellow human beings, this premise crashes into reality. Any judge who could determine that someone is "no longer a danger" should earn the Nobel Peace Prize. Meanwhile, science demands that release of violent offenders promises that many more violent crimes with be perpetrated. This is known as recidivism and there are established rates to predict future re-victimization of innocent Marylanders. Attached please find a chart indicating rates of recidivism as calculated by DPSCS, and presented to the Maryland Legislature. In short, even those released at or above age sixty-five recidivate at a 15 percent rate. For every one hundred releasees over the age of sixty-five, expect fifteen more victims, perhaps more if the crime involves more than one victim. The rate of recidivism advances exponentially as the age of releasees decreases. Averaging the recidivism rates for the higher age groups, we must anticipate a recidivism rate of closer to 29%. For every one hundred releasees under this bill, scientifically we can expect and predict 29 more crimes, with more than twentynine

victims. There is a fair chance as stated above that most of those victims will be people of color.

In addition, it is highly offensive that the bill shifts the burden of proving that the perpetrator is no longer a danger to the State and the victim to disprove.

Proponent statement: "Regarding Rehabilitation and forgiveness" - Most victims hope, wish, and perhaps pray for their perpetrator to realize and atone for the horrific conduct of their past. This concept of rehabilitation should never be conflated with some sort of obligation to release from confinement. Rehabilitation has merit apart from time of confinement. So does forgiveness. And forgiveness does not mean an offender should not be held accountable to serve their sentence.

There are many reasons, rehabilitation aside, that those who commit heinous offenses need to remain incarcerated.

- **Future crimes and future victims (recidivism**).
- **Placing an appropriate value on the human lives ended, and the ones left in tatters from the actions of the offender.**
- **Making a societal statement regarding what is completely unacceptable.**

Without Taboos, and the societal pressure to refrain from heinous acts, there would be more acts committed. ***Swift certain, stern sentences help establish those societal norms. Eroding them reverses these imperatives.***

- Matching prison release expectations to the public opinion. ***Nothing breeds contempt for the courts or the legislature more than criminal sentencing and releases that are unacceptable in the eyes of the public, based upon the seriousness of the crime.*** Clearly, Marylanders of all races have strong feelings about leniency for serious offenders. Here is an excerpt from a recent WBAL article, citing a Patrick Gonzales poll:

  Gonzales- "**What we found statewide, 59% of Marylanders say need we need a strict approach, 35% said a more moderate approach," Patrick Gonzales said.**
  "When we looked within the Democrat group **… 62% of black Democrats in Maryland supported tougher penalties for juvenile offenders.**"

This seems to support the recent annual Gallup poll reflecting that **58% of Americans support tougher sentencing for violent offenders, while only 14% feel that sentencing is too lenient.**

Distaste for current sentencing practice in Maryland is even more acute and critical in crime victims. Indeed, ***crime victim participation in the criminal justice system is crucial to the ability to convict the guilty.*** Yet victims and witnesses will not participate in a system that they view as skewed toward their offender. This effect is progressive and linear. In other words, we can see the development of non-cooperation in existence right now. It is more prevalent in jurisdictions ***where sentencing is too lenient - victims (and witnesses) decide not to participate***. It is also increasing in crime categories where sentencing is too lenient for the victim to consider that it is worth the pain and risk of participating. The best category example is sexual offenses or child sexual offenses. In the 1980s when I was a prosecutor, I believe that the norm for a sentence in a serious sexual assault would be about 20 years. Now, the average statewide sentence for a second-degree rape is nine years. In one circuit, the average is as low as four years. (Source – 2024 Annual Report – Maryland State Commission on Criminal Sentencing Policy).

Allow me an opinion that I have earned, both as a citizen, a prosecutor, an advocate for Maryland victims, and a member of both the Maryland and US military: these averages are obscene, and dangerous. For a rape victim, this makes a difficult decision harder. We all know that diminution credits can half the original sentence, and other release possibilities can accelerate release even more. Their offender could be back on the street seeking revenge within two to four years and even less if their offender was incarcerated while awaiting trial.

The same calculus applies to those affected by more serious crimes. ***This is more than just a general degradation of the reputation of the courts, legislature, and criminal justice system. The nonparticipation of victims and witnesses, who feel that sentencing is treated cavalierly, can cripple the system.***

<u>Proponent statement: "This bill will result in cost savings"</u> - I must convey the comment of one victim after hearing yesterday's comment in response to how releases under this provision would provide cost savings. He was insulted, and commented how the concept proved that the focus was not on the victims as proponent claimed it to be. I have asked for years that you as our legislators consider also what it costs to release people.

Let me address the fiscal note on this bill. Having worked in Legislative Services myself, I know that these things are difficult to quantify. The fiscal note addresses only one entity in government: the Public Defender's Office's need for additional staff to pursue these re-sentencings (minimum of $538,100.00). It overlooks the cost of additional prosecutors, and staff in the State Attorney's Offices. Perhaps the most serious governmental omission is that of precious court time. Our organization has participated in many reconsideration proceedings that would be similar to those generated by this bill. They generally require one to two days of court time.

For direct governmental expenses, I suggest that ***a more accurate annual expense would be between three and six million dollars.***

However, there are more important, albeit indirect costs that dwarf the direct costs.

Consider the fiscal requirements to identify, catch, retry and re-incarcerate the recidivating perpetrators.

If you happen to be an accountant, your consideration might focus on those meager expenses. They are meager indeed compared to the human suffering that will result from the inevitable new crimes committed.

Witness, if you will, one Byron Alton Bowie, Jr., who was determined by a judge under the Juvenile Restoration Act to "no longer pose a danger". Apparently Byron did not agree. Eighteen months after his release, he threatened to burn down a townhouse and kill everyone in it. Fortunately for the victims, he announced his intentions in advance. He was arrested and reincarcerated. But this event could have led to the murder of many victims in the townhouse he intended to burn as well as the neighboring townhouses.

And another: Keith Curtis, whose first-degree murder charge was reconsidered in 2019. In 2023, he robbed a former coworker at the local Ace Hardware at gunpoint. His reconsideration was under another dubious and duplicative release mechanism that required a judicial finding that he "no longer posed a danger." Before you minimize in your mind that this was only an armed robbery, walk a mile in the shoes of the elderly cashier, suffering from Parkinson's disease. Such an encounter can destroy a fragile psyche, and devastate even a strong one. In addition, please consider that this crime was only a hair's breadth from another murder. When a convicted murderer sticks a gun in someone's face, that is a reasonable assumption. Any small change in circumstance could have changed this statistic to murder. So let's discuss the tangible, but difficult to calculate, economic costs of these two recidivations. These are all estimates:

- New police expenses per case (investigation, files, court time, incidentals): $25,000 per case.
- New public defender expenses per case: $15,000 if plea bargained quickly; $2030,000 if tried in a jury trial.

- Court time and costs per new case, also including violation of probation time:

$10,000.00 for a quickly plea bargained case; $25,000-$50,000 for a one-two week jury trial.

In the two murder cases above as an example, expect a two to four week jury trial and add another $50,000 to $100,000 for the PD costs, State's Attorney's costs, expert witness fees, and court time costs. Then there is expense for re-incarceration. As for the victims, we have provided them with altered lives, that can never be properly mended. A lifetime of grief, mental health issues, sleeplessness, paranoia, and a deep, abiding discomfort in their personal security. ***Perhaps the worst feeling is that the system, the judge, government cared less for them and their loved ones than they cared about the criminal who destroyed their lives. Or even worse, that the system valued saving a few dollars on incarceration more than the life of their loved ones.***

Worst of all are the innumerable economic and noneconomic costs to the victim and society: The utter, bone chilling terror of the cashier, already suffering from Parkinson's disease. The potential for long term mental health results. Nightmares, phobias, lost productivity. Many victims in my charge have decided to leave Maryland as a result of similar experiences. Who pays for the mental health counseling for the victim? In worse scenarios, who pays for the hospital bills, the funeral expenses for the victim, and the subsequent mental health counseling for five family members affected by a murder?

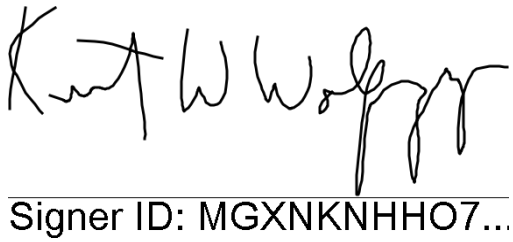
- On January 29, 2025, homicide survivors gathered in Upper Marlboro to voice their opposition to this bill. Many more had signed up to testify before you on January 30th, but were unable to do so due to Senate rules. I ask that each of you do them this small courtesy before you vote: go to our website at www.mdcrimevictims.org and watch the YouTube video of this event that pops up when you visit our homepage. Please listen to these victims before you cast your vote on this bill.

Those who wish to express sympathy to violent offenders have many other great causes to fight: make more meaningful programs and work available in prison. Improve prison conditions. Improve the safety of inmates. But this approach of releasing violent offenders wreaks a horrible toll on those who should be most protected by the government, the victims and survivors of outrageous conduct by the offenders. Please, vote unfavorably on this unworthy bill.

Conclusion

In conclusion, this bill presents numerous drawbacks that outweigh its intended benefits. The public's desire and need for stability, the critical need for finality in sentencing, the many existing avenues for sentence reduction, the practical challenges of excluding original vital criminal justice participants, and the undue burden on crime victim survivors collectively make a compelling case against this legislation. Perhaps the strongest reason not to enact this is the additional crimes and victims that will inevitably be committed by those released. It is imperative to prioritize the well-being of the public, the integrity of the justice system, and the compassion due to victims over few the potential benefits of this bill.

PLEASE VOTE UNFAVORABLY



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