



Testimony for the House Judiciary Committee

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HB 853 – Criminal Procedure – Petition to Reduce Sentence (Maryland Second Look Act)

FAVORABLE

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The ACLU of Maryland supports HB 853, which seeks to give people serving extreme sentences who have served at least 20 years of their sentence the opportunity to petition the court to modify or reduce their sentence based on their demonstrated rehabilitation. The bill allows a circuit court judge to modify a sentence if it is in the interests of justice and the petitioner poses no danger to the public, based on the court's consideration of several factors that include "the nature of the offense" and any statement offered by a victim or victim's representative (CP 8-501(c)(2), (3)).

The need for a comprehensive Second Look Act in Maryland is evident. Maryland incarcerates the highest percentage of Black people in the country, at 71 percent of our prison population, and 76 percent of those serving life sentences, which is more than twice the national average.¹ Shamefully, Maryland also leads the nation in sentencing young Black men to the longest prison terms, at a rate 25 percent higher than the next nearest state – Mississippi.² Additionally, Maryland ranks among the states with the highest rates of life sentences for women, with more than one in six women in prison serving life.³

¹ See demographic data compiled by the Prison Policy Initiative, <https://www.prisonpolicy.org/profiles/MD.html#visuals>; Barry, Ashley Nellis and Celeste. "A Matter of Life: The Scope and Impact of Life and Long Term Imprisonment in the United States." *The Sentencing Project*, 17 Jan. 2025, www.sentencingproject.org/reports/a-matter-of-life-the-scope-and-impact-of-life-and-long-term-imprisonment-in-the-united-states/.

² "Rethinking Approaches to over Incarceration of Black Young Adults in Maryland." *Justice Policy Institute*, 28 Oct. 2021, <https://justicepolicy.org/research/policy-briefs-2019-rethinking-approaches-to-over-incarceration-of-black-young-adults-in-maryland/>.

³ Barry, Ashley Nellis and Celeste. "A Matter of Life: The Scope and Impact of Life and Long Term Imprisonment in the United States." *The Sentencing Project*, 17 Jan. 2025, www.sentencingproject.org/reports/a-matter-of-life-the-scope-and-impact-of-life-and-long-term-imprisonment-in-the-united-states/.

The status quo does not afford meaningful opportunities for release for people serving extreme sentences

Due to the devastating “lock them up and throw away the key” mentality from the last thirty years that led to harsh changes to law and policy, Maryland’s prison system is filled with Black people who were excessively sentenced or denied parole based on the “superpredator” mythology. Similarly, for more than a quarter of a century, Maryland’s parole system was not available to lifers, contributing to the bloated prison system and its extreme racial disparities. Although the Governor has finally been removed from the parole process, this is not enough to remedy decades of wrongful denials nor provide relief to those whose sentence structure may prevent timely parole consideration.

For many years, Maryland judges retained a broader ability to review sentences, ensuring an important safety valve for extreme sentences. Unfortunately, ever since these revisory powers were limited by a rule change in 2004⁴, the main way for someone in Maryland serving an extreme sentence to have their sentence reviewed is by challenging the constitutionality of the conviction itself. There is currently no statutory mechanism for their sentence to be changed solely because they have been rehabilitated, or because the sentence was excessive, disproportionate, or biased. Thus, the current legal framework incentivizes people serving extreme sentences to challenge the conviction and avoid ever conceding guilt because doing so might jeopardize any future chance of release. As a result, people who have been harmed by serious crimes may never hear an explanation or expression of the remorse the person feels. A “Second Look” provision would change this dynamic, ensuring that people are able to express their genuine remorse and maintain focus on their transformation without worrying that conceding guilt would eliminate any hope of resentencing.

Parole is not enough

Parole is not available to people before they reach eligibility or to those who are never eligible. For example, someone with an extreme sentence may not be eligible for parole for 40 years—not because they are more culpable, but because of how the sentence was imposed. And unlike court hearings, parole is an administrative proceeding, where people have very limited due process guarantees and no right to access legal representation to prepare a strong presentation.

The purpose of the Maryland Second Look Act is to establish an opportunity for people’s sentences to be reconsidered based on their demonstrated rehabilitation. The parole commission does not have the authority to change any sentence and is generally bound by the original conviction and sentencing.

⁴ Court’s Standing Committee on Rules of Practice and Procedure. “RULES ORDER.” Maryland Courts, COURT OF APPEALS OF MARYLAND, 2004, www.courts.state.md.us/sites/default/files/import/rules/rodocs/ro158.pdf.

Furthermore, judges are especially well positioned to review sentences that the court was responsible for imposing. Unlike parole, petitioners have the opportunity to present evidence and witnesses with the assistance of counsel, giving judges a better understanding of the factors that led to the individual's incarceration and the likelihood that they can safely return to the community.

HB 853 increases accountability in the criminal justice system

Bias in the criminal legal system against indigent defendants and Black people has been widely documented at every stage. These disparities are evident when examining life without parole (LWOP) sentences, specifically. Nationally, Black people are significantly overrepresented among LWOP sentence servers.⁵ In Maryland, an estimated 69 percent⁶ of those serving LWOP sentences are Black, despite Black people making up roughly 30 percent of Maryland's population.⁷ These racial disparities result from disparate treatment of Black people at every stage of the criminal legal system, including stops and searches, arrests, prosecutions and plea negotiations, trials, and sentencing. In Maryland, there is no specific criteria for when LWOP sentences should be handed down. Rather, it is at the discretion of prosecutors to seek these sentences. The degree of discretion in LWOP sentencing has resulted in a situation where the severity of one's sentence is highly dependent on the individual proclivities of prosecutors which vary from jurisdiction to jurisdiction. For example, just as it did with the death penalty, Baltimore County imposes LWOP at an estimated higher rate than other jurisdictions.⁸ When examining LWOP sentences compared to total population, there are more people serving LWOP sentences as a result of Eastern Shore sentences than areas with historically higher murder rates.⁹

For eligible individuals who may have faced bias by law enforcement, the courts, or corrections, the Second Look Act would lead to more just outcomes by taking a second look to ensure their sentences were correctly decided. For members of the public who already distrust the justice system, it would provide additional assurance that the state is taking steps to recognize and correct past instances of bias and is committed to ensuring that people in its custody receive fair treatment.

⁵ "Written Submission of the American Civil Liberties Union on Racial Disparities in Sentencing." ACLU, American Civil Liberties Union, 27 Oct. 2014, www.aclu.org/sites/default/files/assets/141027_iachr_racial_disparities_aclu_submission_0.pdf.

⁶ Per estimates compiled by the Prison Policy Initiative based on data from the US Census Bureau, the Bureau of Justice Statistics, and unpublished data provided by the Maryland Second Look Coalition.

⁷ See <https://business.maryland.gov/plan-your-move/demographics/>.

⁸ Per unpublished Maryland Division of Corrections data provided to Prison Policy Initiative by the Maryland Second Look Coalition.

⁹ Per unpublished Maryland Division of Corrections data provided to Prison Policy Initiative by the Maryland Second Look Coalition.

HB 853 will lead to safer prison environments and cost savings

The potential opportunity for individuals to reduce their sentences is a compelling incentive to comply with facility rules and maintain good behavior. Good conduct credits are a behavioral incentive and a means of reducing prison overcrowding.¹⁰ This in turn lowers the threat of violence and other risks and challenges faced by people living and working inside correctional facilities, including officers and staff.

Maryland spends over \$59,616 annually per incarcerated individual, with costs rising significantly for aging prisoners due to increased healthcare needs.¹¹ By creating a pathway for sentence reconsideration for those who pose little to no public safety risk, HB 853 allows the state to reallocate funds toward initiatives that enhance public safety, such as reentry programs and mental health services. For example, an analysis of the release of over 200 individuals under the *Unger* decision projected state savings of \$185 million.¹²

People age out of crime

There is a large body of evidence showing a rapidly declining likelihood to commit violent crimes (including murder) with age. Dozens of studies have found that the typical ages at which people are most likely to engage in violence fall dramatically beginning in one's mid-to late-twenties.¹³ This is consistent with understandings of psychosocial development in emerging adults.

Additionally, recent Bureau of Justice Statistics studies on 400,000 individuals released in 30 states in 2005 found that those convicted of violent offenses are less likely to be re-arrested within three years for any offense compared to their nonviolent counterparts.¹⁴ This underscores the potential for rehabilitation and successful community reintegration among individuals who have committed violent offenses.

¹⁰ *Stouffer v. Staton*, 152 Md. App. 586, 592 (2003).

¹¹ HB0209 2022-01-21 Testimony to House Judiciary, http://mgaleg.maryland.gov/cmte_testimony/2022/jud/1BxSiD13nGr4LdKt2m4dYOa4Hw2nboPrP.pdf.

¹² "Building on the Unger Experience: A Cost-Benefit Analysis of Releasing Aging Prisoners." OSI Baltimore, JFA Institute and The Pandit Group for Open Society Institute Baltimore, Jan. 2019, www.osibaltimore.org/wp-content/uploads/2019/01/Unger-Cost-Benefit3.pdf.

¹³ Ashley Nellis, Ph.D. and Niki Monazzam. "Left to Die in Prison: Emerging Adults 25 and Younger Sentenced to Life without Parole." *The Sentencing Project*, 15 May 2024, www.sentencingproject.org/reports/left-to-die-in-prison-emerging-adults-25-and-younger-sentenced-to-life-without-parole/.

¹⁴ Alper, Mariel, and Joshua Markman. "2018 Update on Prisoner Recidivism: A 9-Year Follow-up Period (2005-2014)." BJS, U.S. Department of Justice Office of Justice Programs Bureau of Justice Statistics, May 2018, <http://bjs.ojp.gov/content/pub/pdf/18upr9yfup0514.pdf>.

All the available evidence we have in Maryland also supports the fact that people serving extreme sentences are the least likely to reoffend. In the 12 years since the Maryland Supreme Court held in *Unger* that improper jury instructions invalidated the life with parole sentences of 235 people, 96% have remained in the community without incident.¹⁵ These young adults, 90 percent of whom are Black, spent an average of 40 years behind bars but could have been contributing to our communities' decades earlier. In the last two years, the dozens of people to return to the community through parole or the Juvenile Restoration Act have shown similarly compelling success rates.

The Maryland General Assembly has recognized the need to reform the justice system and allow incentives for better behavior

By passing the Justice Reinvestment Act, “ban the box,” Juvenile Restoration Act and expungement bills, the Maryland General Assembly has repeatedly recognized the need and expressed the desire to provide individuals in the justice system with second chances. As demonstrated by the limited number of releases granted under the Juvenile Restoration Act thus far,¹⁶ additional mechanisms for sentence review simply offer a pathway home for deserving individuals, rather than opening any floodgate for indiscriminate release. This bill would not release anyone from their responsibility for their crime. It would simply provide to those who meet the eligibility requirements the small gesture in this bill's title: a second look.

For the foregoing reasons, we urge a favorable report on HB 853.

¹⁵ “The Ungers, 5 Years and Counting: A Case Study in Safely Reducing Long Prison Terms and Saving Taxpayer Dollars.” *Justice Policy Institute*, 19 Jan. 2024, justicepolicy.org/research/reports-2018-the-ungers-5-years-and-counting-a-case-study-in-safely-reducing-long-prison-terms-and-saving-taxpayer-dollars/.

¹⁶ Per unpublished data from the Maryland Office of the Public Defender compiled in November 2024.