HB 0853 – UNF -- HOUSE JUDICIARY COMMITTEE HEARING 2.18.2025

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I have been a Maryland attorney since 1995 and a resident of this State for about 25 years. Because I enthusiastically support the important work of this committee, and because of the too often adversarial nature of debate in this country, I offer for the sake of reflection some traditional principles of conscience that I think are central to consideration of HB 0853. I will also discuss what I think are some weaknesses in the bill's criteria for a Second Look at sentencing.

A psychologist once wrote of a patient who, having suffered neglect and abuse, tended to "act out" when she did not receive nurturing, security, and esteem from family, authority figures, or even strangers. The first principle that I would like to share is that both victims and offenders suffer from the failure of individuals and society to pay our universal debt to deliver on these three obligations owed to every human being. A victim of crime is deprived of these three things by the criminal, and too often has been further denied them by the criminal justice system, which Article 47 of the Maryland Declaration of Rights seeks to correct. As a result, victims experience trauma and struggle to cope with life. Similarly, a convicted and incarcerated individual who does not receive these three things may not be able to rehabilitate or cope with life. Consider for a moment that these three obligations, to nurture, to secure, and to esteem (or value) a person, are a good working definition of Love.

A second principle I would like to share is *phronesis* or the practical application of wisdom, something with which Aristotle was familiar, and that Solomon prayed for, that is, how to govern a people. Socrates might also tell us that wisdom is not an absolute but a process that continually compares ideas and works them into better ideas, only to challenge them again. Seek and we will find. Seek again, and we will find more. Contrary to this pursuit of wisdom, it is sometimes tempting to advocate for the rights of the victim "regardless" of the rights of the convicted, or to advocate for the rights of the convicted "regardless" of the rights of the victim. I urge you, when deliberating on this bill, which focuses on the welfare of convicted persons, to consider just as thoughtfully and soberly the impact the bill will have on victims. By doing so, I trust you will achieve greater wisdom and justice in your deliberations on the Second Look Act, felony murder reform, and other bills you will consider this term.

Let us focus for a moment on "esteeming" or valuing another person in the context of the most violent and permanently traumatizing crimes I can imagine, murder and rape. A criminal, who may or may not be acting out old trauma from abuse and neglect, seeks to exalt herself artificially, by diminishing the victim through oppression and violence. Like a seesaw, the value of one person goes down while the other, mistakenly, feels exalted. To esteem or value each person properly and so begin to deliver on the three practical obligations of love, we must raise up and value the victim, which we achieve in part through a just punishment. To not prevent a crime when we could have or to not justly punish it would be to further diminish the victim by placing her outside the protection of the law and of society.

A convicted person, on the other hand, is appropriately valued not by freedom from punishment (what else can bring her down from her falsely exalted state of mind?), but by fair and equitable treatment before the law, which leaves her with a sober and equal view of her value *vis-à-vis* the victim. Multiplying lookbacks based primarily on passage of time and perceived harmlessness of the offender retraumatizes the victim by depriving her of the support and respect previously conferred by society through the law's assessment of a just punishment. It tilts the seesaw instead of steadying it at a level that respects the rights of victims and convicted persons equally. Those sentenced to life in prison may already be eligible for parole after only 15 years or even less and then have additional opportunities for parole periodically after that. To add an additional lookback, after 30 or 60 years, for example, with a "presumption" in favor of release, diminishes' the victim's right and expectation of justice by arbitrarily taking away the justice previously accorded to the victim at sentencing.

A Second Look is a noble concept, because we know that the justice system has never been and will never be perfect. However, I think passage of time or length of incarceration may not be the best criteria to favor in a lookback, without a further explanation of *why* we are looking back and *what* we are looking to change. I do not think that time alters the balance of justice. Even if a prisoner has fully rehabilitated (in the sense of being safe to release), without more, such a release suggests that the original sentence was not just, or worse, that the justice originally accorded the victim, and therefore the victim herself, does not matter. However, there are at least two salient reasons to look back that do involve principles of justice. One reason to look back is if, as with the legalization of marijuana, there has been a societal consensus that certain acts should not have been criminalized or punishments were too severe, requiring a current change in the law and a look back to reduce or alter sentences where otherwise appropriate. Another reason is to correct past inequitable enforcement of the law. Numerous scholarly books and studies, some taking more than 20 years to complete, indicate, in my opinion, that unfair and inequitable treatment of the poor and people of color throughout the criminal justice system is an established fact. Ensuring equitable treatment before the law is one way of delivering on society's obligation to esteem or value offenders that does not, in my opinion, raise a convicted person above the victim but establishes justice for all. Nevertheless, any attempt to address that issue should minimize the continuing trauma to victims by minimizing the number of hearings, and the issues should be addressed in regular parole hearings whenever possible. It does not seem reasonable to allow a Second Look hearing a week before or after a parole hearing, which could happen under this bill.

People that Society does not value tend to "act out." Therefore, one way to promote rehabilitation and to value people, or categories of people, and to encourage individuals and communities to buy into the system and support it, is through efforts to correct inequitable application of the laws. In my opinion, exploring the possibility of early release on that basis does not diminish victims because it does not undermine the justice that has been accorded to them; it merely perfects that justice. However, even such a bill would not cure the whole problem, which involves inequality at every stage of the criminal justice process, from investigation, to arrest, to plea bargain, to conviction, to sentencing, to probation and parole.

Going forward, the most direct way to address sentences deemed too long or too short or punishments deemed too severe, is to give judges more discretion via a broader range of sentencing options, as some other state legislatures have done. That would give today's sentencing judges more discretion to correct any inequities tainting other areas of the criminal justice process.

In my opinion, there are better reasons to look back than simply to identify additional opportunities for release to people who have served a long time: to ensure *justice* and *balance* in the judicial system and to give every Maryland resident the nurture, security, and esteem owed to every human being. As the bill is currently worded, with, for example, a "rebuttable presumption" that an incarcerated person of a certain age or length of incarceration is harmless, it is not, in my opinion, sufficiently directed toward justice, does not achieve the appropriate balance between the rights of the victim and those of the convicted person, and is not targeted toward the most likely causes of inequality in the justice system, that is, systemic and implicit bias, racial prejudice, and poverty. One could argue that HB 0853 in its current form offers additional opportunities to correct past injustices, but I would counter that because it does not correct injustice *as* injustice, it misses the mark and multiplies opportunities to undermine the justice already accorded to victims, many of whom are also people of color.

HB 0853's current provisions require judges to *contradict* the prior thoughtful decisions of the sentencing judge and the parole board without *correcting* them, causing different decisionmakers to work at *cross purposes* without considering the *why* of prior decisions. The bill does not require the court to examine the transcripts expounding the *reasoning* or *rationale* behind the original sentence or parole reviews, the arguments presented by counsel at prior hearings or reviews, or even *all* the facts and testimony presented in prior proceedings. This bill requires review long after many of the original players might not be available to object, including victims and witnesses. There are at least two provisions that a judge implementing this proposed statute could interpret to mean that the original circumstances of the crime and the victim impact testimony that informed prior decisionmakers no longer matter: C(2)(II) and C(2)(VI). The former requires consideration of only the "nature" but not the *circumstances* of the crime, while the latter only requires consideration of a victim statement that is "offered." A court could interpret this as legislative permission to ignore the original circumstances of the crime as well as prior victim impact statements already in the record, along with any reasoning or rationale of the original sentencing judge or parole board based on those factors.

Ignoring past decision making and some of the factors most relevant to those prior decisions, is like a judge and parole authority who dug a hole in the sand, and the next day a new judge saw the hole and decided to fill it, without inquiring as to all circumstances and reasonings that prompted the others to dig that hole. Not only is it inefficient and costly for government to work at cross purposes to itself in the dark, making decisions "regardless" of what others may have thought, but it fails to adhere to Socrates's sage advice, which has become known as his "method," to consider plainly two positions and either choose one or come up with a better. We ignore traditional notions of wisdom and justice at the peril of contributing to

schism, and perhaps a kind of schizophrenia, rather than the inclusive consideration needed for the wholesome development of the culture and conscience of our State and nation.