

## **Second Look Laws Are an Effective Solution to Reconsider Extreme Sentences Amidst Failing Parole Systems**

### **Maryland has a Significant Aging Population in Prison that is Disproportionately Black**

Maryland incarcerates approximately 15,000 people in its state prisons, of which 21% are aged 51 or older.<sup>1</sup> The overuse of extreme sentences, limited mechanisms for reviewing these sentences, and ineffectual parole systems have resulted in a large number of aging people with no meaningful process for release. Of the 3800 people serving life, life without parole, and sentences over 50 years in Maryland, 35% are 55 years old or older.<sup>2</sup>

Given that Maryland disproportionately imprisons its Black population, lawmakers should create opportunities to determine whether sentences imposed decades ago remain appropriate. Nearly 72% of Maryland’s incarcerated population is Black,<sup>3</sup> compared to 31% of the state population.<sup>4</sup>

Maryland’s geriatric and medical parole systems, recently referred to as “one of the worst” in the nation, have been largely ineffective, both earning “F” ratings based on a comprehensive evaluation of the processes.<sup>5</sup> Meanwhile, the 200 Marylanders who had been released as a result of *Unger v. State* demonstrate that recidivism rates for the older population is extremely low, even among those convicted of the most serious offenses. Moreover, several of the people released under Maryland’s Juvenile Restoration Act are now working in our communities to help stop the cycle of crime—but less than 6% of the prison population will benefit from this law.<sup>6</sup>

Second look laws offer a solution. A judicial review of a person’s sentence, after serving 20 years, allows for a robust, meaningful adversarial process to determine who can be safely released. Savings from ending unnecessary incarceration can then be reinvested in community-based programs that directly address crime prevention.

### **Sentences in Excess of 20 Years Usually No Longer Serve Public Safety Interests**

Maryland’s second look bill proposes a judicial review of sentences after serving 20 years. Reviewing the sentences of those incarcerated for 20 years or longer is a data-driven public safety approach. Evidence suggests that most criminal careers are under 10 years, and as people age, they usually desist from crime.<sup>7</sup> Even people who engage in chronic, repeat

offenses that begin in young adulthood usually desist by their late 30s.<sup>8</sup> A robust body of empirical literature shows that people released after decades of imprisonment, including for murder, have low recidivism rates.<sup>9</sup> Moreover, recidivism rates are lowest among those convicted of the most serious violent crimes for which people generally serve the longest sentences—sexual offenses and homicide.<sup>10</sup>

## **200 Aging Lifers Released from Maryland Prisons Have Extremely Low Recidivism**

Maryland’s real-life experiment of releasing people from medium and maximum-security prisons, who had been incarcerated for decades for the most serious crimes, demonstrates that people age out of crime and can be safely released back into our communities. As of March 2024, the recidivism rate for new convictions is 3.5% for all 200 individuals released under *Unger v. State*. This decision held that those convicted at jury trials prior to 1982 were entitled to a new trial based on unconstitutional jury instructions.

From 2013 through 2018, 199 men and 1 woman were released from Maryland prisons as a result of the decision in *Unger*, which has become known as the Unger Project. All of the releases were convicted of either 1st degree premeditated murder, 1st degree rape, or felony murder. The age at the time of release was between 53 - 83 years old. Since release, 14 men have passed away from natural causes without any new violation or conviction. Of the remaining 186 releases, three violated probation based on a technical violation; four were convicted of new misdemeanors, and four were convicted of new felonies.<sup>11</sup>

## **Maryland’s Juvenile Restoration Act is a Step Forward but Excludes Too Many**

In 2021, Maryland enacted the Juvenile Restoration Act (JRA), which permits persons convicted of offenses committed under the age of 18 and who have served at least 20 years for that conviction to file a request for sentence reduction.<sup>12</sup>

While successfully urging the Senate to override the Governor’s veto, the lead sponsor of the JRA, **Senator Chris West**, said:

... I think that all of us, deep down inside, believe in the possibility of redemption, believe that the least among us can overcome adversity and transform himself or herself into an honorable, law-abiding citizen who can contribute to society.<sup>13</sup>

During the first year of the Act, 36 hearings were held. In 23 of the cases, the courts imposed new sentences that resulted in immediate release from prison. In four cases, the courts granted a reduction of sentence, but additional time in prison was required before release.<sup>14</sup>

The stories of those released are inspiring and have made the news—in good ways. **Anthony**

**Fair (now Anthony Muhammad)** was released in 2022 and was featured in The Baltimore Banner.<sup>15</sup> The story was later rated as one of the most uplifting stories of 2022.<sup>16</sup> Muhammad now works as a youth mentor with Baltimore Brothers, a community engagement specialist with We Our Us, and an Adviser with the Maryland Parole Partnership at the ACLU.<sup>17</sup> His message:

Since my release, I have now become part of the solution to crime and violence in the same community where I was once part of the problem. . .<sup>18</sup>

**Kenneth Bond** was released after 27 years.<sup>19</sup> He graduated from the University of Baltimore after his release with a Bachelor's degree in human service administration.<sup>20</sup> Bond began working at the Baltimore County Detention Center to teach 18-21 year olds.<sup>21</sup> His message:

I was part of the problem when I was a young man. How can I be a part of the solution now?<sup>22</sup>

Although the JRA is a step forward in providing meaningful review of juvenile sentences after serving a lengthy period of time, only 6% of Maryland's prison population were convicted of offenses that occurred under the age of 18, and even fewer than that will serve enough time to be eligible to file a JRA motion.<sup>23</sup> Therefore, other age groups should be considered for second look opportunities.

### **Expanding Second Look Addresses the Ineffectiveness of Parole Systems**

The limited effectiveness of parole boards in releasing rehabilitated citizens, as well as concerns with the lack of due process and oversight, among other issues, has fueled the need for broader judicial sentence reviews. Indeed, a recommendation of the University of Maryland School of Law after reviewing the Unger Project was to eliminate parole and invest in second look laws and policies.<sup>24</sup> A recent report published by the Justice Policy Institute also assessed Maryland's parole process and found that there was a lack of transparency and data, that rules and regulations were "not necessarily reflected in practice," and that parole was "more likely to produce hopelessness than rehabilitation."<sup>25</sup>

Judicial review of lengthy sentences, as opposed to parole review, affords due process protections, such as a transparent and public process, with adversarial testing, which provides a much more meaningful hearing.<sup>26</sup> Furthermore, judges are best suited as a function of their training and experience, to admit and consider relevant evidence and testimony, and to conduct an individualized assessment of penological needs and objectives in each case.<sup>27</sup>

## Medical Parole

In addition to the challenges with the general parole process, medical and geriatric parole are extremely problematic. Maryland's medical parole process earned an "F" rating from FAMM because "it suffers from internal incoherence, lack of guidance, and conflicting information about everything from eligibility criteria to who initiates the application to standards and procedures."<sup>28</sup> Maryland received one of the worst report cards in the nation because FAMM could not figure out how to reconcile its varied and often contradictory guidance or fill in the many gaps left by incomplete or inconsistent regulations."<sup>29</sup> Between 2013-2022, the Maryland Parole Commission approved only 149 people for medical parole but denied 464 others.<sup>30</sup>

## Geriatric Parole

Maryland's geriatric parole process also earned an "F" rating. The law for geriatric parole is so specific – it applies to only those serving mandatory sentences for crimes of violence, who are 60 years old or older – that only seven people qualify.<sup>31</sup> Realizing the limitations with geriatric parole, the Governor's Office of Crime Control and Prevention announced a task force, which ultimately made recommendations for changes to the law in 2019.<sup>32</sup> Despite the recommendations, Maryland has not taken any action to expand or improve geriatric parole.

## **National Organizations Have Called for Second Look Laws as a Solution to Safely and Effectively Reduce the Prison Population**

Multiple national organizations have also called for the passage of second look laws for all ages, regardless of the conviction, in order to reduce excessively long sentences.

- The **American Law Institute (Model Penal Code)** recommends that states adopt a "second look" judicial process that would include sentence review after 15 years of imprisonment.<sup>33</sup>
- **Fair and Just Prosecution** issued a statement signed by over 60 current and former elected prosecutors and law enforcement leaders that recommends a sentence review of sentences after "15 years or more" of incarceration for middle-aged and elderly incarcerated people.<sup>34</sup>
- The **American Bar Association** adopted Resolution 502 that urges governments to enact legislation permitting courts to take a "second look" after 10 years of incarceration.<sup>35</sup>

## Conclusion

Expanding the Juvenile Restoration Act to the rest of the prison population is a data-driven approach that can ultimately improve public safety by reinvesting funds allocated to incarcerate people who no longer pose any risk, into effective crime prevention programs. Data has also clearly demonstrated that sentences in excess of 20 years, in most cases, no longer serve any public safety interest. Maryland is unique because local precedent has already established that people serving lengthy sentences for the most serious crimes can be safely released.

Parole in Maryland has not been a viable substitute to effectively reconsider lengthy sentences. Instead, judicial reconsideration of sentences is now recommended by national organizations, including in the Model Penal Code, as a more effective and meaningful opportunity for sentence reconsideration.

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<sup>1</sup> Maryland Department of Public Safety, [Inmate Characteristics Report](#), FY 2022.

<sup>2</sup> Nellis, A. (2021). [No End in Sight: America's Enduring Reliance on Life Imprisonment](#), Tables 1 & 6. The Sentencing Project.

<sup>3</sup> See Note 1.

<sup>4</sup> United States Census Bureau, [QuickFacts: Maryland](#), Population Estimates, July 1, 2023.

<sup>5</sup> FAMM (2022, October). [Compassionate Release Report Card: Maryland](#).

<sup>6</sup> Human Rights for Kids (2023, May 9). [Crimes Against Humanity - The Mass Incarceration of Children in the United States](#), p. 46.

<sup>7</sup> Komar, L., Nellis, A., Budd, K. (2023, February). [Counting Down: Paths to a 20-year Maximum Prison Sentence](#), p. 3. The Sentencing Project.

<sup>8</sup> See Note 7.

<sup>9</sup> Nellis, A. (2022). [Nothing but Time: Elderly Americans Serving Life Without Parole](#), p. 17. The Sentencing Project.

<sup>10</sup> Ghandnoosh, N. (2021, May 12). [A Second Look at Injustice](#), p. 10. The Sentencing Project.

<sup>11</sup> Statistics maintained by Becky Feldman, former director of the Unger Project at Maryland's Office of the Public Defender, and current Director of Second Look Network at The Sentencing Project.

<sup>12</sup> Md. Laws, ch. 61 (2021 Reg. Sess.), *codified at* Md. Code, Crim. Pro, §§ 6-235 & 8-110 (2021).

<sup>13</sup> Senate Floor Actions, [Statement of Sen. Chris West in Floor Debate on Override of Veto of S.B. 494](#) (Apr. 10, 2021).

<sup>14</sup> Maryland Office of the Public Defender (2022, October). *The Juvenile Restoration Act; Year One – October 1, 2021 to September 30, 2022*.

<sup>15</sup> Segelbaum, D. (2022, October 3). ['It Means Everything:' How the Juvenile Restoration Act has Provided a Second Chance for People Sentenced as Children to Prison in Maryland](#). The Baltimore Banner.

<sup>16</sup> Baltimore Banner Staff (2022, December 25). [The Baltimore Banner's Best 2022: Uplifting Stories](#). The Baltimore Banner.

<sup>17</sup> Muhammad, A. (2024, March 5). [Commentary: Once Part of the Problem, We Are Now Part of the Solution](#). Maryland Matters.

<sup>18</sup> See Note 17.

<sup>19</sup> Costello, D. (2023, April 21). [He was Freed from a Life Sentence in Prison After 27 Years. Now, He Will Fight for His Innocence](#). The Baltimore Sun.

<sup>20</sup> Leboeuf, S. (2023, May 25). [University of Baltimore Graduates Second Chance Students from Correctional Institution as Program Expands](#). The Baltimore Sun.

<sup>21</sup> See Note 20.

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<sup>22</sup> See Note 19.

<sup>23</sup> See Note 6.

<sup>24</sup> Millemann, M., Chapman, J., Feder, S. (2021). [Releasing Older Prisoners Convicted of Violent Crimes: The Unger Story](#), p. 186 (“[T]he 200 who were released had not been approved individually by a parole authority as ‘safe’ to release.”)

<sup>25</sup> Justice Policy Institute (2023, May). [Report Overview: Safe at Home: Improving Maryland’s Parole Release Decision Making](#).

<sup>26</sup> Murray, J., Hecker, S., Skocpol, M., Elkins, M. (2021). [Second Look = Second Chance: Turning the Tide through NACDL’s Model Second Look Legislation](#), p. 6. National Association for Criminal Defense Lawyers.

<sup>27</sup> See Note 26.

<sup>28</sup> See Note 5.

<sup>29</sup> See Note 5.

<sup>30</sup> Segelbaum, D. (2023, January 30). [Maryland Among the ‘Worst’ States for Releasing Aging or Sick Prisoners. Is Reform Coming?](#) The Baltimore Banner.

<sup>31</sup> See Note 30.

<sup>32</sup> Governor’s Office of Crime Control and Prevention; Justice Reinvestment Oversight Board (2019, July). [Geriatric Parole Workgroup](#).

<sup>33</sup> American Law Institute (2017). [Model Penal Code: Sentencing §305.6 – Modification of Long-Term Prison Sentences; Principles for Legislation](#). See also Reitz, K. (2017, June 7). [New Model Penal Code for Criminal Sentencing: Comprehensive Reform Recommendations for State Legislatures](#).

<sup>34</sup> Fair & Just Prosecution (2021, April). [Joint Statement on Sentencing Second Chances and Addressing Past Extreme Sentences](#). [Press Release.]

<sup>35</sup> American Bar Association (2022). [Resolution 502](#). Also in 2022, the ABA adopted Resolution 604, which, among other things, urged the adoption of “‘second look’ policies, requiring review of sentences of incarceration at designated times to determine if they remain appropriate. American Bar Association (2022). ABA Nine Principles on Reducing Mass Incarceration, [Resolution 604](#) (2022). See also Robert, A. (2022, August 8). [ABA Provides 10 Principles for Ending Mass Incarceration and Lengthy Prison Sentences](#). ABA Journal.