

MARYLAND ALLIANCE FOR JUSTICE REFORM

Working to end unnecessary incarceration and build strong, safe communities



Maryland Second Look Act

The problem

Incarceration rates in the United States have quintupled in the last 40 years, and our jails and prisons now house 2.2 million people. Long sentences have been on the rise. According to a new [report](#) from the Sentencing Project, “Over 260,000 people in U.S. prisons had already been incarcerated for at least 10 years in 2019, comprising 19% of the prison population. Nearly three times as many people were serving sentences of 10 years or longer.” This is a huge increase since 2000. State expenditures on corrections have increased approximately ninefold since 1985. These facts reflect changes in laws and sentences, not increases in crime rates. Moreover, racial and ethnic disparities rise as the severity of punishment increases. The Black imprisonment rate was more than five times that of whites in 2016; the Latino rate was two and a half times that of [whites](#).

The situation in Maryland is particularly dire. The proportion of the Maryland prison population that’s Black is [more than double](#) the national average, making the racial disparity the highest of any state in the union (followed by Mississippi). Disparities are most pronounced among those incarcerated as “emerging adults” (18-24) who are serving long sentences. “Nearly eight in 10 people who were sentenced as emerging adults and have served 10 or more years in a Maryland prison are Black. That is the [highest rate](#) of any state in the country.”

Keeping people incarcerated for crimes they committed when young is particularly problematic. [We know](#) that the brain does not reach maturity until a person is in their mid-twenties. And over the course of decades people can change radically.

The number of prisoners 55 or older [grew 280% from 1999 to 2016](#). For several reasons, “[people in prison are physiologically 7 to 10 years older](#) than their chronological age,” making their care more expensive. Some states estimate that it costs four times as much to care for older prisoners than younger ones. Because people age out of crime by middle age, incarcerating them does not serve any counterbalancing public safety benefit.

So there are [a variety of reasons](#)—rooted in justice, mercy, racial inequities, inefficiency, and cost—to enact a Second Look Act.

What’s the proposal?

The Maryland House and Senate considered [bills](#) (HB0842/SB0842)(2022) to enact Second Look sentencing in Maryland. These bills reflect an emerging consensus among contemporary experts on criminal justice. The Model Penal Code, an influential set of guidelines produced by the American Law Institute that recommends legislation to state governments, endorses a Second Look provision, which reads, in part:

11.02. “The legislature shall authorize a judicial panel or other judicial decisionmaker to hear and rule upon applications for modification of sentence from prisoners who have served 15 years of any sentence of imprisonment.”

(The bills before the legislature require a prisoner to have served 20 years; some bills require the petitioner to have been under 25 at the time of the offense.)

Will this work?

In 2016 the District of Columbia City Council passed the [Incarceration Reduction Amendment](#) Act (IRAA). Under IRAA, people who were convicted of crimes before their eighteenth birthday and who have served at least 15 years may file a motion to have their sentence reduced. As of August 2019, 18 people had been released under the law, and [none had been rearrested](#). In December 2020 the DC Council unanimously passed the [Omnibus Public Safety and Justice Act of 2020](#). The law allows a person who committed a crime before the age of 25, and who has served a minimum of 15 years in prison, to apply to the DC Superior Court to have their sentence reviewed.

For those concerned about recidivism, the case of [Unger v. Maryland](#) (known as the “Ungers” because of the hundreds of people whose legal status was changed by the ruling) is instructive. As the [Justice Policy Institute](#) explains, in 2012, the Maryland Court of Appeals held that improper jury instructions invalidated the life with parole sentences of 235 people. As of 2019, 192 of them had been released. Most were emerging adults when they were sentenced (average age: 24) and had spent an average of 40 years behind bars. Almost 90 percent were Black, even though only 18 percent of Maryland’s population was Black when they were sentenced. Since their release, less than 4 percent have returned to prison. It’s estimated that the release of these prisoners has saved Maryland \$185 million; more than a billion could be saved over the next decade by continuing this policy.

Learn More

- ACLU, [“At America's Expense: The Mass Incarceration of the Elderly”](#), 2012
 - ACLU of Maryland, [“Still Blocking the Exit”](#), 2015.
 - Center for Law, Brain & Behavior, Massachusetts General Hospital, [“Juvenile Justice & the Adolescent Brain,”](#) 2022.
 - Code of the District of Columbia, [24-403.03](#). “Modification of an imposed term of imprisonment for violations of law committed before 25 years of age.”
 - Nazgol Ghandnoosh and Ashley Nellis, “How Many People Are Spending [Over a Decade in Prison?](#),” The Sentencing Project, 2022.
 - Justice Policy Institute, [“5 Years and Counting: A Case Study in Reducing Long Prison Terms and Saving Taxpayer Dollars,”](#) 2018.
 - Daniel Landsman, [“A Second Chance Starts With A Second Look: The Case for Reconsideration of Lengthy Prison Sentences,”](#) Families for Justice Reform (FAMM), n.d.
 - Judith Lichtenberg, [“Abolish Life Sentences,”](#) *Aeon*, 2022.
 - Ashley Nellis, “The Color of Justice: Racial and Ethnic Disparity in State Prisons,” The Sentencing Project, 2021.
 - Ashley Nellis, [“Nothing But Time: Elderly Americans Serving Life Without Parole,”](#) The Sentencing Project, 2022.
 - Prison Policy Initiative, [“Eight Keys to Mercy: How to Shorten Excessive Prison Sentences,”](#) 2018.
 - Kevin Reitz and Cecelia Klingele, “Model Penal Code: Sentencing—Workable Limits on Mass Punishment, *Crime and Justice* 48, 2019.
 - The Sentencing Project, [“Trends in U.S. Corrections.”](#)