



TONI HOLNESS
PUBLIC POLICY COUNSEL

April 8, 2016

Senator Thomas V. Mike Miller, Jr.
State House, H-107
100 State Circle
Annapolis, MD 21401

RE: Justice Reinvestment Act (SB 1005/ HB 1312)

Dear President Miller:

The ACLU of Maryland respectfully writes to express the following concerns regarding SB 1005/ HB 1312. Thank you for your time and attention.

AMERICAN CIVIL
LIBERTIES UNION
OF MARYLAND

MAIN OFFICE
& MAILING ADDRESS
3600 CLIPPER MILL ROAD
SUITE 350
BALTIMORE, MD 21211
T/410-889-8555
or 240-274-5295
F/410-366-7838

FIELD OFFICE
6930 CARROLL AVENUE
SUITE 410
TAKOMA PARK, MD 20912
T/240-274-5295

WWW.ACLU-MD.ORG

COLEMAN BAZELON
PRESIDENT

SUSAN GOERING
EXECUTIVE DIRECTOR

ANDREW FREEMAN
GENERAL COUNSEL

1. Theft under \$1,000—Support the HOUSE

House Bill:

- Maintains a lower limit of at least \$100 for misdemeanor theft. This is good because it means that someone who is being charged for stealing \$20 would be charged with theft under \$100 only, not theft under \$1,000.

Senate Bill:

- Strikes the lower limit of at least \$100.

Explanation:

- Frequently, individuals who have stolen less than \$100 are charged with theft under \$1,000, which impacts their sentence and exaggerates their criminal history. For example, in one case that came to our attention, a homeless youth was charged with theft under \$1,000 after stealing a small amount of food. For this reason, the lower threshold of “at least \$100” is needed.

2. Administrative Release—Support the HOUSE

Senate Bill:

- Limits the eligibility criteria for administrative release to only those inmates screened as low risk for re-offense under §316-104.

House Bill:

- Appropriately limits eligibility for administrative release to non-violent inmates and inmates not subject to the sex offender registry.

Explanation:

- Risk level is not the same as the seriousness of an inmate’s offense. Risk level refers to an inmate’s likelihood to

recidivate.

- Many violent offenders are low-risk. Correspondingly, many high-risk offenders are often low-level offenders with a higher chance of recidivating (e.g. drug possession, petty theft).
- It is all the more important for high-risk offenders to be encouraged to participate in recidivism reduction programming.

3. Inmate earnings—Support the HOUSE

Senate Bill:

- Deducts 25% of the earnings of all, including inmates who may not owe restitution.

House Bill:

- Leaves existing law unchanged.

Explanation:

- It is patently unfair for inmates, who may have been convicted of victimless offenses (e.g. prostitution, gambling, trespass, drug possession), to have their earnings taken away.
- The existing program brings in about \$8,000—administering a new program will likely cost more money than what deductions will bring in.
- Furthermore, the Senate struck the \$50 lower limit before which earnings may be siphoned. These earnings are often used to buy simple hygiene products, including soap and deodorant. Inmates should be able to preserve some of the little earnings they make during incarceration for this purpose. Moreover, siphoning earnings disincentivizes work.

4. Medical parole—Support the HOUSE

Senate Bill:

- Makes creates unnecessary barriers for individuals to qualify for medical release by requiring that an inmate be “permanently” debilitated and require that two medical evaluations be conducted.

House Bill:

- Requires that an inmate be “chronically” debilitated and requires only one medical evaluation.

Explanation:

- It is a waste of taxpayer dollars to house elderly and often chronically ill inmates. It costs \$34,135 per year to house an average prisoner, but it costs \$68,270 per year to house a prisoner age 50 and older.¹
- By age 50, most people have outlived the years in which they are most likely to commit crimes. For example, arrest rates

¹ *At America's Expense—The Mass Incarceration of the Elderly*, The American Civil Liberties Union (June 2012), available at http://www.aclu.org/files/assets/elderlyprisonreport_20120613_1.pdf.

drop to just over 2% at age 50 and are almost 0% at age 65.²

5. Geriatric parole—Support the HOUSE

House Bill:

- Allows elderly inmates to be released at 60 years old, after having served at least 10 years of their sentences. This is an improvement from current law, which allows release only after age 65 and after having served 15 years.

Senate Bill:

- Leaves the current law unchanged.

Explanation:

- As is the case with chronically ill inmates—they are expensive to incarcerate and pose little public safety risk, it makes little sense to incarcerate these persons longer than necessary.

6. Driving offenses—Support the HOUSE

House Bill:

- Repeals the jail penalty for driving with a suspended license

Senate Bill:

- Leaves the current law unchanged.

Explanation:

- Repealing this jail penalty is a progressive step toward depopulating our local jails with non-violent offenders.
- Moreover, removing the jail penalty avoided the unnecessary disruption in Marylanders' lives, which could lead to loss of wages and jobs, and compromise household stability.

7. Second degree murder and kidnapping—Support the HOUSE

Senate Bill:

- Raises the maximum sentence for second-degree murder and kidnapping from 30 years to 40 years.

House Bill:

- Leaves the current law unchanged.

Explanation:

- Raising sentences contravenes the spirit and the letter of the JRI—it neither reduces our prison population nor reduces spending on prisons.
- This session, and for several years prior, bills proposing these reforms were introduced, the General Assembly has had ample opportunity to consider them outside of the JRI process.

8. Child Abuse—Support the SENATE

House:

- Increases the maximum penalty for child abuse resulting in the death of a minor under 13 years old.

Senate:

- Leave existing law unchanged.

² *Id.*

Explanation:

- Like kidnapping and second-degree murder, raising sentences contravenes the spirit and the letter of the JRI—it neither reduces our prison population nor reduces spending on prisons.

9. Mandatory minimum sentences—Support the HOUSE

House Bill:

- Eliminates mandatory minimum sentences for low-level non-violent drug offenses, while leaving in place mandatory minimums for high-volume dealers and kingpins.

Senate Bill:

- Leaves existing law unchanged.

Explanation:

- Mandatory minimum sentences are an expensive and unjust framework that shifts discretion from judges to prosecutors, whose decisions are not subject to the same level of review as judges and who wield both the power to charge a defendant with a crime that carries a mandatory minimum sentence and to offer or withhold a plea bargain.
- Research shows grave racial disparities in the imposition of mandatory minimums—81% of offenders sentenced to mandatory minimum sentences in Maryland for drug crimes in FY13 and FY14 were Black.

10. Technical revocation caps—Support the HOUSE

House Bill:

- Limits the amount of time someone can be re-incarcerated for a technical violation of parole or probation, while providing discretion for the judge or parole commission to order incarceration for a longer period for safety reasons. This is important to ensure that defendants are not indiscriminately re-incarcerated (and filling our facilities) for non-criminal activity.

Senate Bill:

- Creates a broad escape valve from the technical revocation caps in the original bill that will seriously undermine the purpose and effectiveness of the revocation caps.

Explanation:

- The revocation caps are an important measure for ensuring that defendants are not re-incarcerated (and filling our facilities) for non-criminal activity.