

Safe & Just Michigan

Safe & Just Michigan Testimony In Support of the Second Look Bills (HB 4556-60)

House Criminal Justice Committee
HOB Room 519
9am, Tuesday, March 19, 2024

Good morning. My name is John Cooper, and I am the Executive Director of Safe & Just Michigan (SJM), a non-partisan, non-profit organization that advocates for evidence-based criminal justice policy. I am pleased to submit written testimony in support of the “Second Look” bills, HB 4556-60.

Michigan is an Outlier on Sentence Length Because of Policy Choices

Michigan is an outlier nationally for its unusually long prison sentences.¹ As a result, our prison system is one of the oldest in the country (average age of prison population is 41²) and has an annual budget of over \$2 billion.

Michigan’s outlier status is the product of policy choices that have prioritized longer sentences while eliminating opportunities for reduced sentences or early release. While this approach may have some intuitive appeal, it is misguided policy that costs the state a fortune annually while producing little to no meaningful impact on public safety.³

¹ Barbara Levine, Citizens’ Alliance on Prisons & Public Spending, *10,000 Fewer Michigan Prisoners: Strategies to Reach the Goal* (June 2015) at 3, available at https://www.safeandjustmi.org/wp-content/uploads/2017/10/10000_fewer_Michigan_prisoners.pdf

² See Michigan Department of Corrections 2022 Statistical Report at C-70, available at <https://www.michigan.gov/corrections/-/media/Project/Websites/corrections/Files/Statistical-Reports/Statistical-Reports/2022-Statistical-Report.pdf?rev=e0aa9bc6974546379ecac6e9b7b4fcaa&hash=E77B49BF5549A13AB534025A20C58B5A>.

³ See, e.g., Nicholas Turner, *Research Shows That Long Prison Sentences Don’t Actually Improve Safety* (Feb. 13, 2023), available at <https://www.vera.org/news/research-shows-that-long-prison-sentences-dont-actually-improve-safety>; See Nazgol Ghandnoosh, Ph.D., *A Second Look at Injustice*. The Sentencing Project (May 12, 2021), available at <https://www.sentencingproject.org/reports/a-second-look-at-injustice/>; Przybylski, R., Maki, J., Kennedy, S., Rosenthal, A., & Lopez, E. (2022). *The Impact of Long Sentences on Public Safety: A Complex Relationship*. Council on Criminal Justice (finding a limited impact due to incapacitation that declines over time due to aging out of crime), available at counciloncj.org/impact-of-long-sentences-on-public-safety.

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The key to understanding why long sentences are not good policy is the phenomenon of “aging out of crime,” which is one of the best-established concepts in criminology.⁴ At a basic level, “aging out of crime” refers to the fact that a person’s likelihood of engaging in criminal activity increases through their late teens, peaks in their early 20s, and then declines through their 20s to very low rates in their 30s and beyond. As Amy Fettig and Steven Zeidman explained in a recent *Time Magazine* article, aging out of crime happens “largely because the prefrontal cortex – the part of the brain responsible for reasoning, problem-solving, and impulse control – does not fully develop until the mid-20s.”⁵ Once a person’s prefrontal cortex *is* fully developed, they are much less likely to commit a crime than they were just a few years prior, and their subsequent risk of doing so will continue to decrease.

Aging out of crime has important implications for sentencing and parole policy, because it means that people sent to prison when they are young (like most) are likely to change and grow as they mature, and will be very different people after serving a decade - when most will be in their late 20s or early 30s. This development supports an approach to sentencing and parole that tracks each person’s progress, identifies good candidates for release, and offers meaningful pathways to early release for people who show they are ready. Michigan’s current system does the opposite: it requires all prisoners serving a term of years to serve every day of their minimum sentence in prison, regardless of how long the minimum is or how much progress the person has made. The result is a prison system that is disproportionately old and expensive. According to the 2022 MDOC Statistical Report, 8,818 prisoners were over the age of 50 at year-end, which is 27% of Michigan’s prison population.⁶

HB 4556-60 - the “Second Look” Policy - Can Help

HB 4556-60 creates a process for the sentencing judge to review a long sentence after a person has served 10 years and adjust it down in light of how that person has changed and what they have accomplished during their sentence. This would improve upon the current system by allowing judges to “right-size” sentences that are longer than necessary to protect the public, by

⁴ See generally, Loeber & Farrington, “Age-crime curve,” *Encyclopedia of Criminology and Criminal Justice* at 12–18, *available at* https://link.springer.com/referenceworkentry/10.1007/978-1-4614-5690-2_474.

⁵ Amy Fettig & Steven Zeidman, “People age out of crime. Sentences should reflect that.”, *Time* (Sept. 9, 2022), *available at* <https://time.com/6211619/long-prison-sentences-youthful-offenders/>.

⁶ See Michigan Department of Corrections 2022 Statistical Report at C-70, *available at* <https://www.michigan.gov/corrections/-/media/Project/Websites/corrections/Files/Statistical-Reports/Statistical-Reports/2022-Statistical-Report.pdf?rev=e0aa9bc6974546379ecac6e9b7b4fcaa&hash=E77B49BF5549A13AB534025A20C58B5A>.

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making it possible to release more low-risk people from prison more quickly, and by helping to reduce the size and cost of Michigan's prison system moving forward.

The "Second Look" policy that is proposed by HB 4556-60 is similar to ones recommended by a broad range of legal and criminal justice policy experts, including the American Bar Association⁷; the American Law Institute⁸; the National Association of Criminal Defense Lawyers⁹; and national parole experts Edward Rhine, the late Joan Petersilia, and Kevin Reitz.¹⁰ Safe & Just Michigan agrees with these recommendations, and urges the Legislature to pass these bills, which propose commonsense policy changes that could do a lot of good in Michigan.

Finally, to avoid confusion about what the bills would do, I want to emphasize two points:

1. The Sentencing Judge Has Discretion Whether to Modify A Sentence

The bills do not require the sentencing judge to grant anyone a reduced sentence (or release); it simply creates an opportunity for someone who has served 10 years or more to petition for a hearing for the sentencing judge to consider whether a reduction is warranted. The "Second Look" process envisioned by HB 4556-60 is like a resentencing hearing: it allows both the prosecution to present evidence in addition to the petitioning prisoner, and the ultimate decision making authority remains with the judge. If the judge does not believe a different sentence is warranted based on the evidence, then the judge is free to leave the original sentence in place.

2. "Second Look" Does Not Violate "Truth in Sentencing"

Because the sentencing judge is the decision-maker, and the second look is essentially a resentencing hearing, the "Second Look" does not violate "truth in sentencing" - the statutory

⁷ See Amanda Robert, "ABA provides 10 principles for ending mass incarceration and lengthy prison sentences" (August 8, 2022), *available at* <https://www.abajournal.com/web/article/resolutions-604-and-502-aba-provides-guidance-on-ending-mass-incarceration-and-lengthy-prison-sentences>.

⁸See Nazgol Ghandnoosh, Ph.D, *A Second Look at Injustice*. The Sentencing Project (May 12, 2021), *available at* <https://www.sentencingproject.org/reports/a-second-look-at-injustice/> (noting that ALI's Model Penal Code recommends that people receive a second look at either 10 or 15 years, depending on the person's age at conviction). https://www.americanbar.org/groups/crsj/events_cle/recent/second-look-sentencing/#:~:text=The%20Model%20Penal%20Code%20recommends.for%20crimes%20committed%20as%20minor

⁹ See <https://www.nacdl.org/getattachment/4b6c1a49-f5e9-4db8-974b-a90110a6c429/nacdl-model-second-look-legislation.pdf>

¹⁰See Nazgol Ghandnoosh, Ph.D, *A Second Look at Injustice*. The Sentencing Project (May 12, 2021), *available at* <https://www.sentencingproject.org/reports/a-second-look-at-injustice/>.

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requirement that all people sentenced to a term of years must serve every day of their minimum sentence in prison. The judge has discretion to affirm the original sentence or impose a new minimum based on new facts; if the judge does impose a new minimum, the old one is vacated and the “truth in sentencing” law simply applies to the new minimum in the new sentence.

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HB 4556-60 would create a process that could help make Michigan’s corrections system more evidence-based, more cost-effective, and more focused on whether a person poses a genuine risk to public safety.

For all these reasons, Safe & Just Michigan supports these bills and urges committee members to do so as well.

Sincerely,

/s/ John S. Cooper

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