



## Testimony for the House Judiciary Committee

February 13, 2024

### HB 87 - Criminal Law – Death Penalty

#### UNFAVORABLE

OLIVIA SPACCASI  
PUBLIC POLICY PROGRAM  
ASSOCIATE

AMERICAN CIVIL  
LIBERTIES UNION  
FOUNDATION OF  
MARYLAND

3600 CLIPPER MILL ROAD  
SUITE 350  
BALTIMORE, MD 21211  
T/410-889-8555  
F/410-366-7838

WWW.ACLU-MD.ORG

OFFICERS AND DIRECTORS  
HOMAYRA ZIAD  
PRESIDENT

DANA VICKERS SHELLEY  
EXECUTIVE DIRECTOR

ANDREW FREEMAN  
GENERAL COUNSEL

The American Civil Liberties Union of Maryland urges an unfavorable report on HB 87, which would reinstate the death penalty for first degree murder with aggravating circumstances through lethal injection. It would also bring back life without parole sentences for children, which were abolished by the legislature in 2021.

The ACLU believes that, in all circumstances, the death penalty is unconstitutional under the Eighth Amendment. We also believe that, during its use in Maryland, the death penalty was applied in an arbitrary and discriminatory manner in violation of the Fourteenth Amendment.

In 2013, the Maryland General Assembly voted to abolish the death penalty. After years of careful deliberation, consideration of evidence and data, and review of the Maryland Commission on Capital Punishment Report, the legislature did the right thing. This bill seeks to undo that decision.

#### Reinstating the Death Penalty Would Not Improve Public Safety

In its 2008 report, the Maryland Commission on Capital Punishment found that there is no persuasive evidence that the death penalty deters homicide. Such findings reflect what the overwhelming majority of experts say, both now and 10 years ago.<sup>1</sup> States that have death penalty laws do not have lower crime rates or murder rates than states without such laws.<sup>2</sup> The

---

<sup>1</sup> Radelet, Michael L, and Traci L Lacock. "RECENT DEVELOPMENTS: DO EXECUTIONS LOWER HOMICIDE RATES?: THE VIEWS OF LEADING CRIMINOLOGISTS." Death Penalty Information Center, The Journal of Criminal Law and Criminology, 2009, <https://dpic-cdn.org/production/legacy/DeterrenceStudy2009.pdf>; "Five Things About Deterrence." Office of Justice Programs National Institute of Justice, National Institute of Justice, May 2016, [www.ojp.gov/pdffiles1/nij/247350.pdf](http://www.ojp.gov/pdffiles1/nij/247350.pdf)

<sup>2</sup> Bonner, Raymond, and Ford Fessenden. "States with No Death Penalty Share Lower Homicide Rates." Death Penalty Information Center, New York Times, 6 Apr. 2000, <http://deathpenaltyinfo.org/stories/states-with-no-death-penalty-share-lower-homicide-rates>; "Murder Rate of Death Penalty States Compared to Non-Death Penalty States." Death Penalty Information Center, Death Penalty Information Center, 2021, <http://deathpenaltyinfo.org/facts-and-research/murder-rates/murder-rate-of-death-penalty-states-compared-to-non-death-penalty-states>

murder rate in non-death penalty states has remained consistently lower than the rate in states with the death penalty, and the gap has grown since 1990.<sup>3</sup>

Moreover, Maryland already has sufficient penalties for first degree murder, including life and life without the possibility of parole. Such penalties are more than sufficient. Increasing the severity of punishment, in general, does little to deter crime. Rather, the real deterrent to crime is the likelihood that you will get caught.<sup>4</sup> In 2022, only 32% of homicides were cleared.<sup>5</sup> Increasing penalties will have no benefit on public safety, especially when the majority of cases go uncleared by police.

### **Racial Disparities Persisted Throughout Maryland’s Capital Sentencing System**

Research presented to the Commission showed that cases in which a Black person killed a white person were almost 2.5 times more likely to have a death sentence imposed than in cases where a white person killed a white person. Of the ten cases that resulted in a death sentence in Maryland since 1978, 70% of those featured a Black perpetrator and a white victim. However, this combination constituted only twenty-three percent (23%) of all death-eligible cases in Maryland.<sup>6</sup> The Commission concluded that no procedural or administrative changes would eliminate these racial disparities and recommended abolition of the death penalty.

Racial disparities still permeate Maryland’s legal system from arrest to conviction to sentencing.<sup>7</sup> Reinstating the death penalty will only exacerbate

---

<sup>3</sup>“Murder Rate of Death Penalty States Compared to Non-Death Penalty States.” Death Penalty Information Center, Death Penalty Information Center, 2021, <http://deathpenaltyinfo.org/facts-and-research/murder-rates/murder-rate-of-death-penalty-states-compared-to-non-death-penalty-states>

<sup>4</sup> “Five Things About Deterrence.” Office of Justice Programs National Institute of Justice, National Institute of Justice, May 2016, [www.ojp.gov/pdffiles1/nij/247350.pdf](http://www.ojp.gov/pdffiles1/nij/247350.pdf)

<sup>5</sup> “Crime in Maryland: 2022 Uniform Crime Report.” Maryland Department of State Police, State of Maryland, 28 Dec. 2023, <http://mdsp.maryland.gov/Document%20Downloads/2022%20CIM%20Book%20-%2012-28-2023.pdf>.

<sup>6</sup> “Maryland Commission on Capital Punishment: Final Report to the General Assembly .” Maryland State Archives, Maryland Commission on Capital Punishment, 12 Dec. 2008, <http://msa.maryland.gov/megafile/msa/speccol/sc5300/sc5339/000113/012000/012331/unrestrictied/20100208e.pdf>.

<sup>7</sup> “Maryland State Commission on Criminal Sentencing Policy: An Assessment of Racial Differences in Maryland Guidelines-Eligible Sentencing Events.” Maryland State Commission on Criminal Sentencing Policy (MSCCSP), MSCCSP University of Maryland College Park, July 2023, [https://msccsp.org/Files/Reports/Sentencing\\_Racial\\_Differences\\_Assessment\\_July2023.pdf](https://msccsp.org/Files/Reports/Sentencing_Racial_Differences_Assessment_July2023.pdf); “Crime in Maryland: 2022 Uniform Crime Report.” Maryland Department of State Police, State of Maryland, 28 Dec. 2023, <http://mdsp.maryland.gov/Document%20Downloads/2022%20CIM%20Book%20-%2012-28-2023.pdf>; “Sentencing Snapshot Issue 11.” [https://msccsp.org/Files/Sentencing\\_Snapshot/Issue11.Pdf](https://msccsp.org/Files/Sentencing_Snapshot/Issue11.Pdf), Maryland State Commission on Criminal Sentencing Policy, Nov. 2023, [https://msccsp.org/Files/Sentencing\\_Snapshot/Issue11.pdf](https://msccsp.org/Files/Sentencing_Snapshot/Issue11.pdf)

these disparities, with irreversible consequences for those who have been unfairly sentenced.

### **HB 87 Would Bring Back Life Without Parole for Kids**

In 2021, under the Juvenile Restoration Act, Maryland abolished life sentences without parole for people under the age of 18. Understanding that children are not simply miniature adults, the legislature decided to end the inhumane practice of sentencing children to a lifetime in prison. Under HB 87, a person under 18 years of age, can be sentenced to life without the possibility of parole if their sentence would have otherwise been a death penalty sentence.

Given what we know about brain development and diminished understanding of consequences in children and even emerging adults, the application of a life without parole sentence to someone under the age of 18 is entirely inappropriate.

**This bill poses no benefit to public safety, would increase racial disparities, and rolls back recent strides towards a more humane criminal legal system. For the foregoing reasons, the ACLU of Maryland urges an unfavorable report on HB 87.**