

## SUPPORTING PROPOSED MARYLAND REFORMS TO ADDRESS UNJUST CONVICTIONS AND JUDGMENTS

### *Letter from Criminal Justice Leaders*

March 7, 2019

The undersigned current and former prosecutor and law enforcement leaders write to support efforts by Baltimore City State's Attorney Marilyn Mosby to promote a mechanism for prosecutors to correct unjust convictions and judgments.

Prosecutors are charged with serving as “administrators of justice”<sup>1</sup> and, as such, have a responsibility to zealously pursue justice at all times. That role requires the pursuit of just results not simply prospectively, but also imposes an obligation to address and remedy *past* injustices.

Many prosecutors' offices and legislative bodies are facilitating the pursuit of justice by developing processes and remedies that enable prosecutors and judges to correct past convictions or previously imposed sentences that no longer represent a fair and just result. These vitally important mechanisms to ensure a just result include: conviction integrity units to address and remedy claims of wrongful conviction;<sup>2</sup> legal vehicles to review convictions predicated on police or prosecutorial misconduct that casts doubts on the integrity of the process;<sup>3</sup> vehicles for expungement of convictions when those prosecutions are no longer deemed appropriate;<sup>4</sup> and mechanisms to revisit and modify extreme sentences.<sup>5</sup>

A provision currently pending in the Maryland legislature similarly would allow prosecutors to address past injustices by asking the court to vacate a conviction if “the interest of justice and fairness” justifies such action.<sup>6</sup> This proposal seeks to address a gap in Maryland law which currently provides no clear legal basis for a prosecutor to request that a judge revisit a prior conviction. In doing so, it would bring Maryland in line with other states that already have mechanisms for allowing judicial review of prior convictions or sentences, including Arizona, California, Massachusetts and New York.<sup>7</sup>

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<sup>1</sup> American Bar Association Criminal Justice Standards, Rule 3.8,

[https://www.americanbar.org/groups/criminal\\_justice/standards/ProsecutionFunctionFourthEdition/](https://www.americanbar.org/groups/criminal_justice/standards/ProsecutionFunctionFourthEdition/)

<sup>2</sup> See, e.g., “The Value and Importance of Conviction Integrity Units”, <https://fairandjustprosecution.org/wp-content/uploads/2018/08/KCK-CIU-SIGN-ON-LETTER-FINAL.pdf>.

<sup>3</sup> See, e.g., Williams, T., “Inquiry to Examine Racial Bias in the San Francisco Police,” *The New York Times*, <https://www.nytimes.com/2015/05/08/us/san-francisco-police-department-racial-bias-investigation.html>.

<sup>4</sup> See Krinsky, M. and Cox, B., “Baltimore prosecutor makes ‘bold and groundbreaking decision’ regarding marijuana arrests,” *The Baltimore Sun*, <https://www.baltimoresun.com/news/opinion/oped/bs-ed-op-0204-mosby-marijuana-20190201-story.html>.

<sup>5</sup> See, e.g., California Assembly Bill 2942, [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180AB2942](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB2942).

<sup>6</sup> Maryland House Bill 874, <http://mgaleg.maryland.gov/2019RS/bills/hb/hb0874f.pdf>.

<sup>7</sup> See, e.g., Order Amending Rule 24.2 Arizona Rules of Criminal Procedure, <https://www.azcourts.gov/Portals/20/2014%20August%20Rules/R140005.pdf>; Assembly Member Phil Ting, “Governor Signs Ting Bill That Could Help Inmates Get a Second Chance,” <https://a19.asmdc.org/press-releases/20180930-governor-signs-ting-bill-could-help-inmates-get-second-chance>.

We commend State's Attorney Mosby's efforts to ensure that prosecutors have a clear mechanism to meet their obligation to seek "justice over convictions."<sup>8</sup> By doing so, she is seeking to address troubling convictions resulting from Baltimore Police Department Gun Trace Task Force officers who were found to be engaged in corrupt acts, cases involving actual innocence, as well as nearly 5,000 prior marijuana convictions that would no longer be prosecuted today. Failing to address these concerning scenarios would erode trust in the integrity of our justice system.

Some opponents of these reforms have suggested that a vehicle that would enable prosecutors to seek judicial relief in these cases is an unnecessary, unwanted, or inappropriate means of correcting injustices. They argue that it could "open up a Pandora's box" of individuals seeking review of their cases, that prosecutors should not be given the discretion to review and seek to address past injustices, and that only the legislature should be charged with exercising these remedies (although it is unclear how the legislature would do so in individual cases).<sup>9</sup>

We disagree. Prosecutors have a duty and obligation to ensure the integrity of our justice system. Prosecutors often have the best access to information that can allow for reexamination of past cases and are uniquely situated to determine when there has been a potential injustice. These proposed mechanisms will empower prosecutors to open the door for review, with the ultimate decision regarding relief to be made by the court.

In a community that has suffered far too many incidents that have seeded mistrust of law enforcement,<sup>10</sup> efforts to promote the integrity of the justice system are especially critical. By shoring up the justice system's ability to right past wrongs, these reforms will fortify trust in the justice system and thereby make communities safer. Indeed, strengthening community trust in the justice system is vital to the functioning of law enforcement, which depends on the participation of the people it serves.

We applaud State Attorney Mosby's efforts to ensure her office has the legal authority required to identify and remedy past instances of injustice. We urge the legislature, and all who are committed to the equitable delivery of justice, to support these proposed reforms and thereby enable Maryland prosecutors to fulfill their ethical duties.

Sincerely,

**Roy L. Austin, Jr.**

Former Deputy Assistant to the President, Office of Urban Affairs, Justice, and Opportunity

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<sup>8</sup> Baltimore State's Attorney's Office, "State's Attorney Mosby Testifies In Support of Legislation That Would Provide Prosecutors With Tools to Seek Justice For Unfairly or Wrongly Convicted Individuals," <https://www.stattorney.org/media-center/press-releases/1695-state-s-attorney-mosby-testifies-in-support-of-legislation-that-would-provide-prosecutors-with-tools-to-seek-justice-for-unfairly-or-wrongly-convicted-individuals>.

<sup>9</sup> See: <http://mgahouse.maryland.gov/mga/play/474bb5ed-4a8c-4950-9d07-cf075b4a2300/?catalog/03e481c7-8a42-4438-a7da-93ff74bdaa4c>.

<sup>10</sup> Duncan, I. "Misconduct, mismanagement and civil rights struggles: Baltimore Police have had a difficult July," *The Baltimore Sun*, <https://www.baltimoresun.com/news/maryland/crime/bs-md-ci-sun-investigates-police-bad-news-20180726-story.html>.

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