

**Adopted Recommendations from the August 26<sup>th</sup> and September 9<sup>th</sup> Resentencing  
Task Force Meetings**

**Retroactivity**

- 1) The Task Force recommends the General Assembly pass legislation to create prospective and retroactive resentencing opportunities.

**Eligibility Criteria**

- 2) The General Assembly should establish eligibility criteria for sentence modification, including but not limited to:
  - (1) The petitioner is serving a sentence for any criminal offense for which the statutory penalty has been subsequently reduced or altered; or
  - (2) The petitioner makes a showing their sentence no longer advances the interest of justice or the promotion of public safety.

**Procedural Criteria**

- 3) The General Assembly shall recommend parties who may initiate a petition for resentencing including but not limited to the prosecuting attorney, the incarcerated individual, or defense counsel.
- 4) Where a petition for a reduction in a sentence has been denied, the petitioner shall be permitted to file a successive petition for resentencing within a time period to be designated by the General Assembly.
- 5) The General Assembly shall determine a process by which individuals eligible under Recommendation #2, including those serving extreme sentences, can petition the court for a resentencing.
- 6) Any procedure adopted by the General Assembly shall provide adequate notice requirements. The Department of Corrections shall provide notice and adequate materials to inform individuals who are incarcerated of their rights.

**Right to Counsel**

- 7) A petitioner who is unable to afford counsel is entitled to have counsel appointed, at no cost to the defendant, to represent the defendant for the resentencing petition and proceedings.
- 8) A defendant who files a *pro se* petition and subsequently retains or is appointed counsel shall be entitled to amend such petition with the assistance of counsel.

**Hearing**

- 9) ~~The court shall review petitions for resentencing and determine eligibility based on the factors established by the General Assembly.~~ **REJECTED**

- 10) Resentencing petitions shall be dismissed if they do not meet the eligibility criteria; such dismissal shall be a final, appealable order. The court shall set forth, either in open court or in writing, the reasons for its decision.
- 11) Upon a determination of eligibility, the court shall conduct a resentencing hearing.
- 12) The sentencing court shall consider, but not be limited to, the following factors:
  - (1) The age of the petitioner at the time of the offense and the age of the petitioner at the time of the sentence modification petition;
  - (2) The nature and circumstances of the offense;
  - (3) The history and characteristics of the petitioner at the time of the petition for a reduction in sentence, including rehabilitation and maturity demonstrated by the petitioner;
  - (4) The petitioner's family and community circumstances, including any history of physical, emotional, or sexual abuse; substance abuse; trauma; or involvement in the child welfare system;
  - (5) Any report from a physical, mental, or psychiatric examination of the defendant conducted by a licensed health care professional; validated risk assessment; and
  - (6) Any changes to the law governing criminal convictions, dispositions, or length of stay since the time of sentencing;
  - (7) Any other information the court determines is relevant to the decision of the court, including any statement by a victim of an offense or family member of the victim or the recommendation received from the State's Attorney.
- 13) In calculating the new term to be served by the petitioner, the court shall credit the petitioner for any jail time served toward the subject conviction as well as any period of incarceration credited toward the sentence originally imposed.
- 14) The court should be authorized by the General Assembly to depart downward from any mandatory minimum or mandatory sentence enhancement.

### **Victim's Rights**

- 15) All statutory and constitutional rights of victims, including but not limited to the right to notice and to be heard, shall apply to the entire resentencing procedure. The victim shall be notified of any restorative justice programs available at the time the petition is filed.

### **Right to an Appeal**

- 16) The petitioner may appeal a final order from a resentencing proceeding.

### **Data Reporting**

- 17) Appropriate data must be collected and reported.