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Stop Asking Which Came First, the Jail or the Criminal - Start Reinvesting in Justice in Maryland

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The numerous cries for reform of the United States criminal justice system in recent time are not without merit based on an examination of the prison population. Despite violent crime being at record low rates in the United States, the prison population has expanded tremendously. On the global stage, the United States is the leader in incarceration rates. The United States has more people incarcerated than any other country, including China, Russia, and India. Looking at a local level, Maryland is not immune to this trend. In Maryland, while violent crime is on the decline, the amount of time an offender spends in prison has increased by 23%, or nearly seven months. Unfortunately, this is not without racial implications. The increase in prison sentences, as well as the lower rates of parole release, has led to a disproportionate effect on black offenders. In 2014, black offenders in...
Maryland were sentenced to thirty-six months longer than white offenders while controlling for broad offense type and adult criminal history category.\(^7\)

Calls for reform abound. Too often the policy created to address such issue is the proverbial square peg being forced into a round hole. This has not been the case in Maryland and in many jurisdictions across the country. Rather the focus of such reform began in 2010 with an innovative pilot study in Justice Reinvestment. This was the foundation for what became the Justice Reinvestment Act in Maryland.

The primary goal of Justice Reinvestment is to manage criminal justice populations more effectively based on a data driven approach, thereby generating cost-savings that can be “reinvested” in the criminal justice system, generally in what are considered more effective evidence-based strategies to reduce jail populations.\(^8\) Often these strategies consist of more treatment-based and diversion programs. The Urban Institute’s Justice Reinvestment pilot program began in three counties in the United States – Alachua County, Florida; Travis County, Texas; and Allegheny County, Pennsylvania.\(^9\) The pilot resulted in an eighty-page report and toolkit for stakeholders to implement Justice Reinvestment in their own jurisdiction.\(^10\) Since the 2010 pilot program, Maryland is one of twenty-seven jurisdictions to have passed Justice Reinvestment legislation.\(^11\) Although Maryland largely adopted the recommendations of the Urban Institute with regard to sentencing and post-sentencing practices, in one particular area of Justice Reinvestment, Maryland has gone beyond its counterparts in public policy reform.\(^12\) The policy not only does away with minimum mandatory sentences for certain nonviolent offenders, but includes a provision for individuals previously sentenced under

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\(^7\) See Final Report, supra note 4, at 10 (This data is based on sentencing guidelines worksheet data in Fiscal Year 2014. These were the most recent statistics available at the time of publication.).


\(^10\) See La Vigne, supra note 8. (The report is extensive. It includes recommendations for reform at every potential point of contact an individual may have with the criminal justice system and acts as a real toolkit to implement this change with detail down to working templates for meetings to implement such change. The approach can be implemented in a variety of types of jurisdictions from municipalities, counties to statewide as this paper will examine in the case of Maryland.).


\(^12\) Specific policies passed in Maryland compared to the recommendations of the Urban Institute will be discussed further in the paper.
those laws to apply for early release beginning in October of 2017. This provision will allow approximately 1,600 nonviolent offenders sentenced in the last thirty years, who if sentenced today under the new legislation would not face such penalties, to appeal to a judge for release. This portion of the legislation is nothing short of groundbreaking in terms of criminal justice reform. In fact, this innovative provision almost did not see its way into the final version of the legislation. The provisions eliminating minimum mandatory sentencing were not included in the original version of the legislation because of strong opposition from law enforcement and key Republicans. The change came about when two freshman lawmakers representing each side of the political aisle brokered a deal to include stricter penalties for certain violent crimes while reducing mandatory minimums. This is just one example of the bipartisan support that ushered Justice Reinvestment into Maryland.

Criminal justice reforms have typically been the battle cry of left leaning politicians. However, Justice Reinvestment has been met with bipartisan support. In recent years, the desire to bring down the costs of incarceration

13 Ovetta Wiggins, How Maryland Came to Repeal Mandatory Minimums for Drug Offenders, WASH. POST, (June 1, 2016), https://www.washingtonpost.com/local/md-politics/how-maryland-came-to-repeal-mandatory-minimums-for-drug-offenders/2016/06/01/4961c7c4-2124-11e6-8690-f14ca9de2972_story.html (Current estimates show approximately 1,600 current prisoners now serving sentences in Maryland will become eligible for a hearing for release in October of 2017. The provision allows for retroactive modification of mandatory sentences subject to a court hearing, State and victim objections.).

14 Id.

15 Id. ("‘No state has gone as far as Maryland in recent memory’ said Gregory Newburn, the director of state policy at Families Against Mandatory Minimums, a national advocacy group.

16 Id. (The penalty for second degree murder, which was previously 30 years, was increased to forty years. The final version also included a proposal from Governor Hogan’s Office to adopt state version of the federal Racketeer Influenced and Corrupt Organizations (RICO) in an effort to combat criminal gangs); see also Michael Dresser, Hogan Signs Bill to Overhaul Maryland Criminal Justice System, THE BALTIMORE SUN, (May 19, 2016), http://www.baltimoresun.com/news/maryland/politics/bs-md-justice-reinvestment-20160518-story.html.

17 David Collins, Gov. Larry Hogan Delivers Message of Hope, Support at National Urban League Convention, WBALTV (Oct. 24, 2016, 11:00 AM), http://www.wbaltv.com/news/gov-larry-hogan-delivers-message-of-hope-support-at-national-urban-league-convention/41071758 (referring to Governor Hogan, “He also touched on the new Justice Reinvestment Act, which got tremendous bipartisan support.” This is not to say the Justice Reinvestment Act sailed through the Maryland General Assembly without the normal political rancor. The legislation was originally introduced by Senate President Thomas V. Mike Miller and Delegate
may be the driving factor behind such reform having bipartisan support. Senate President Thomas V. Mike Miller Jr. (D-Calvert County) and Delegate Kathleen Dumais (D-Montgomery County) originally sponsored the Justice Reinvestment legislation in Maryland to focus on reducing the state’s prison population and costs and help offenders reenter society. Such an approach was encouraged by Governor Larry Hogan (R), who called the final version of the legislation “the largest, most comprehensive criminal-justice reform in Maryland in a generation.” Current projections as a result of the legislation indicate a reduction in Maryland’s prison population of nearly 1,200 inmates within ten years, leading to an $80.5 million dollar savings to invest in programs to reduce recidivism rates, treat substance abuse, and enhance community supervision procedures. Unlike many political solutions, the Justice Reinvestment Act in Maryland truly addresses the problem it is seeking to fix.

I. THE NATIONAL LANDSCAPE OF THE CRIMINAL JUSTICE SYSTEM THAT LED TO JUSTICE REINVESTMENT

Incarceration has become the primary weapon to combat crime in the last twenty years, leading to an astounding increase in the prison population; however, research shows that incarceration is overly relied on in the myriad of tools available to combat crime. As already noted, violent crime during this same window has decreased dramatically in the United States. However, the

Kathleen Dumais, both Democrats. From their original recommendations, the state Senate and House of Delegates diverged in the processes of crafting the legislation before it reached a vote. The Senate version was considered more prosecution oriented. The last forty-eight hours of the legislative session was filled with marathon negotiations that resulted in the compromise noted previously.).

18 Wiggins, supra note 13. See also Dresser, supra note 16.
19 Wiggins, supra note 13.
20 The PEW Charitable Trusts, Pew Applauds Maryland Leaders for Sentencing and Corrections Reforms (Oct. 24, 2016, 11:00 AM), http://www.pewtrusts.org/en/about/news-room/press-releases/2016/05/19/pew-applauds-maryland-leaders-for-sentencing-and-corrections-reforms (As a result of the changes, Maryland’s prison population should be reduced by 1,194 beds resulting in a savings of $80.5 million dollars over ten years; see also Wiggins, supra note 13.
21 This is not to say that incarceration is not an effective and valuable tool to combat crime. To the contrary, when examining the various goals of sentencing often cited as deterrence, incapacitation, retribution, restitution and rehabilitation, there is still a need for incapacitation and retribution; however, when compared to the overwhelming drop in crime statistics, it is clear it is overused.
reduction in violent crime is not the result of greater incarceration rates. In fact, quite to the contrary, researchers find incarceration "has only a small aggregate impact on crime reduction, and that this impact falls as the incarcerated population grows." Consequently, there is very little correlation between incarcerating individuals and lowering crime rates. Researchers have pointed to a number of factors that have led to the decline in crime in the last twenty years, but there is no clear consensus on the relative importance of any of the various factors.

Longer sentences and the prison population boom are the result of a policy driven by a "tough-on-crime" approach that has proven largely ineffective. The explosion in the state prison population is the result of a variety of policies including mandatory minimum sentencing, penalty enhancement, repeat offender laws, and restrictions on parole release. These policies were the reflection of fundamental cultural changes in the criminal justice system in the 1980s and 1990s and what led to the dramatic increase in conviction rates in state courts. During the 1980s and 1990s, states began adopting tough-on-crime legislation. Between 1986 and 2006, the total conviction rate in state courts increased by a dramatic 56% with the largest increase seen in drug trafficking convictions. All the while, violent crime was continuing to decline dramatically falling 39% since 1980 and 52% since its peak in 1991.

23 The White House, supra note 22, at 11.
24 Id. (The White House report notes, "Though there is no consensus about the relative importance of these factors, there is a large body of research on these topics. Further citations for the following topics include: income and unemployment (e.g., Raphael and Winter Ebmer 2001; Gould, Weinberg, and Mustard 2002); demographic changes and aging of the population (e.g., Levitt 1999; Tittle et al., 2003; Blumstein and Nakamura 2009); police technology and tactics (e.g., Weisburd et al. 2010; Braga, Papachristos and Hureau 2014; Roeder, Eisen, and Bowling 2015); declines in alcohol consumption (e.g., Markowitz 2000); decreases in "crack" cocaine use (e.g., Fryer et al. 2013; Evans, Garthwaite, and Moore 2012); and reduction in lead exposure (e.g., Reyes 2007)."").
26 James et. al., supra note 25, at 824.
27 The White House, supra note 22, at 15.
28 The White House, supra note 22, at 15-16 (These statistics indicate that drug trafficking convictions doubled over this period of time while violent crime convictions increased somewhat and property crime convictions changed little. "For consistency with crime statistics, the violent and property categories used here are analogous to the FBI Index I categories and do not align with the National Judicial..."
Analysts have reflected that although successful convictions are in part explained by case specific factors, like severity of the crime and strength of the evidence, those type of factors would likely not account for such an across-the-board rise in state criminal convictions. Rather, the types of policies that were being adopted by the states as a result of the law and order and tough-on-crime movement at the time led to an increase in the number of convictions. Additionally, the “War on Drugs” increased resources for drug crime prosecution and sought to increase jail time for individuals arrested for drug crimes. The whole nation was shifting to a tough-on-crime approach, placing greater value in law and order candidates in the political arena. Being seen as a law and order candidate became so popular during this period that even in judicial campaigns, which are often largely seen as being above typical political rhetoric, it became an election issue. Popular support for longer sentences influenced election of judges, “often translating to higher convictions rates.” The results were far reaching from local judicial elections to the highest federal office. Former President Bill Clinton recently expressed regret over long prison sentences that arose from the federal anti-crime legislation that he long considered one of his top accomplishments. Thus, the nationwide growth in incarceration admissions has been driven by rising total convictions.

The motivation behind such policies has been the topic of much discussion. The reference to the “Prison-Industrial Complex” is not new. The term was first used “by Mike Davis to describe the multibillion-dollar prison-building boom in California.” One supporter of such growth was the American Legislative Exchange Council (“ALEC”). ALEC is a membership group comprised of private organizations that composes template legislation based on the interest of its membership. During the tough-on-crime era, ALEC

Reported Program categories. Violent crime includes murder, rape and robbery, while property crime includes burglary, larceny and motor vehicle theft.”).

29 The White House, supra note 22, at 11 (Violent crime rates declined dramatically, falling by 39% since 1980 and by 52% from their peak in 1991.).
30 The White House, supra note 22, at 15-16.
31 James et al., supra note 25. See also The White House, supra note 22, at 16.
32 THE WHITE HOUSE, supra note 22, at 16.
33 THE WHITE HOUSE, supra note 22, at 16.
35 See The White House, supra note 22, at 12.
37 See id. at 15. ALEC was prominently in the news following the shooting death of Trayvon Martin. Several prominent companies that were members of ALEC severed their ties to the organization citing its support of the “Stand Your Ground” laws.
was providing legislators with “pro-incarceration” legislative language. The unsurprising result of policies encouraging incarceration was almost thirty years of unrelenting growth in the nationwide prison population. Between 1972 and 2010, the nationwide state prison population increased 705%, from 174,379 state inmates in 1972 to 1,404,053 inmates as of January 1, 2010. By 2009, it was calculated that more than one in every one-hundred Americans were behind bars. With such a dramatic increase in the incarcerated population comes an increase in spending. Unsurprisingly, increased prison populations mean higher costs of basic inmate necessitates, such as food and healthcare, but also larger infrastructural costs. This in turn leads to increased expenditures on staffing, maintenance, and operations. Between 1985 and 2009, state budgets increased their annual correctional expenditures from $6.7 billion to more than $47 billion, an increase of 700% in less than fifteen years. From the mid-1980s to the mid-2000s, spending on corrections was the second fastest growing state budget category, behind only Medicaid.

With the growing costs associated with incarceration, the need for more cost-effective, evidence-based solutions has become apparent.

A. MARYLAND’S CRIMINAL JUSTICE LANDSCAPE

Although Maryland has been part of the same trends that face the nation, it has been on the forefront of reducing prison populations relative to its counterparts. Maryland has seen a modest drop in its prison population that should be applauded when compared to its counterparts. However, the decrease is small when compared to the relative drop in crime. For example,

Following the shooting death of Trayvon Martin proponents of the stand your ground laws stated they were necessary to protect ordinary people from criminal attacks while opponents argued they create an atmosphere of vigilantism. Courts Today Apr/May 2012, citing to the Wall Street Journal.

88 See id.
89 See James et. al., supra note 25, at 821.
90 Id.
91 See James et. al., supra note 25, at 822.
93 Melissa Hamilton, Adventures in Risk: Predicting Violent and Sexual Recidivism in Sentencing Law, 47 ARIZ. ST. L.J. 1, 2 (2015) (citing Stephen Hart, Evidence-Based Assessment of Risk for Sexual Violence, 1 CHAP. J. CRIM. JUST. 143, 146 (2009) (“Evidence-based means an action or decision that was guided by, based on, or made after consulting a systematic review of relevant information in the form of observation, research, statistics, or well-validated theory.”)).
2010 saw prison populations decline nationwide for the first time in 38 years.\textsuperscript{44} That same year, Maryland was one of the top five states to decrease prison population.\textsuperscript{45} Maryland’s prison population decreased 5.6%.\textsuperscript{46} This compared to states like Indiana, which had the highest rate of growth in its prison population that year at 5.3%.\textsuperscript{47} Despite sizable reductions in Maryland’s violent and property crime rates over a ten-year period, the state’s prison population has only seen negligible decline.\textsuperscript{48} Maryland prison admissions have declined by 19% over the last decade; however, this statistic is not representative of the actual sentencing trends across the state.\textsuperscript{49} Rather, this statistic is largely driven by the 43% drop in offenders admitted to prison from Baltimore City, while all other jurisdictions across the state have seen a 4% increase in the prison population over the last decade.\textsuperscript{50}

There are two variables that cause prison populations to rise and fall. The first variable is the number of offenders admitted to prison and the second is length of time they remain in prison.\textsuperscript{51} As stated previously, with the exception

\textsuperscript{44}The Pew Center on the States, *Prison Count 2010 State Population Declines for the First Time in 38 Years* 1 (revised Apr. 2010), http://www.pewtrusts.org/~media/legacy/uploadedfiles/wwwpewtrustsorg/reports/sentencing_and_corrections/prisoncount2010pdf.pdf (In 2010, “for the first time in 40 years the number of state prisoners in the United States has declined.” Id. As of January 1, 2010, there were 1,404,053 persons in state prison which was down 4,777 than on December 31, 2008. This is a .3% reduction. Figures were compiled by the Pew Center on States in partnership with the Association of State Correctional Administrators.).

\textsuperscript{45}Id.

\textsuperscript{46}Id.

\textsuperscript{47}Id. at 2 (The 5.6% of the Maryland prison population represented a decline of 1,315 inmates based on a count from December 31, 2008 to December 31, 2009. “In proportional terms, the steepest decline occurred in Rhode Island, where the prison population tumbled 9.2%. Other states with substantial declines included Michigan (6.7%), New Hampshire (6.0%), Maryland (5.6%) and Mississippi (5.4%). Michigan’s contraction follows a 3% drop during 2008.”).

\textsuperscript{48}Final Report, supra note 4, at 1.

\textsuperscript{49}Id.

\textsuperscript{50}Id. at 6 (In Baltimore City, the largest makeup of the 43% drop was found in the drop of drug offenders sentenced to prison which was down 59%. Additionally, the number of individuals whose probation was revoked leading to imposition of suspended prison sentenced was down 73%. “This in turn was the result of fewer drug arrests, down 41% from 2003 through 2012 and criminal cases terminated was down 35% in Baltimore City Circuit Court.” (citing C. Puzzanchera & W. Kang, *Arrest data from the FBI Uniform Crime Reports*, http://www.ojjdp.gov/ojstatbb/ezaucr/asp/ucr_display.asp; court filings data from the Maryland Courts Annual Reports, FY2005 and FY2014, http://mdcourts.gov/publications/annualreports.html)).

\textsuperscript{51}Final Report, supra note 4, at 6. These are the two variables examined by the Justice Reinvestment Coordinating Council. Id. The Council was composed of various stakeholders throughout the state based on the recommendations Justice
of Baltimore City, Maryland jurisdictions demonstrated a 4% increase in prison admittances over the last ten years. Notably, five of the top ten offenses for which people were admitted to Maryland prisons were for nonviolent crimes. While admissions present a mixed picture of growth and decline for different geographic areas, reviewing the second variable – length of stay – demonstrates a consistent increase of the prison population. As previously noted, in Maryland, the length of time an individual remains in prison is almost seven months more than a decade ago. While probation revocations spend 25% longer, length of stay remained relatively flat for post-release supervision returns.

Nationwide increases in prison population relative to crime can be examined in another statistical context as well, the punishment rate. The Reinvestment Group. After two years of meeting the Council issued its final report in December of 2015.

See Final Report, supra note 4, at 6 (“In Baltimore City, the decline was mostly driven by a large drop in the number of drug offenders sentenced to prison (down 59%) and revoked to prison from probation (down 73%). This, in turn, was the result of fewer drug arrests (down 41% from 2003 to 2012) and criminal cases terminated (down 35% in Baltimore City Circuit Court.”).

See Final Report, supra note 4, at 7 (The top ten offenses for admission in 2014 were Possession with Intent to Distribute Narcotics, Second Degree Assault, Robbery with a Deadly Weapon, Narcotics Distribution, Robbery, Felony Theft, First Degree Assault, First Degree Burglary, Possession of a Controlled Dangerous Substance (excluding Marijuana) and First Degree Murder. Arguably more than half are related to drugs.).

See Final Report, supra note 4, at 8 (As noted previously, such trends in Maryland’s criminal justice system are not without racial implication. Both increases in sentences and low parole release rates have played a role in black offenders serving longer in Maryland’s prisons than white offenders. “Sentences have grown 28% for black offenders compared to 15% for white offenders.” Id. at 10. Statistically black offenders are also less likely to receive parole for the same offenses, “this could be due to a number of factors including the extent to which certain sentences are ineligible for parole (for example, drug mandatory minimums) and the extent to which parole release decisions are based on the static factors in the Parole Commission’s risk assessment (like age at first arrest, age at current arrest, and criminal history) which could disproportionately affect black offenders, rather than the dynamic factors in the risk assessment (like participation in programming in prison).” Id. at 10. These trends have led to black offenders serving an average of 31% longer in prison than white offenders in FY2014. Id. at 10.).

Id.

Id.

punishment rate is a statistical measure comparing the ratio of inmates to the ratio of crime.\textsuperscript{57} This statistic demonstrates the prison population relative to the frequency and severity of crime reported in the jurisdiction.\textsuperscript{58} Based on this analysis, all states have increased their punishment rate in the last twenty years.\textsuperscript{59} Maryland's punishment rate increased 39% between 1983 and 2003.\textsuperscript{60} However, despite this tremendous increase, Maryland is one of the more modest offenders. Relative to every other state, Maryland's change in imprisonment rate was the lowest at only 27%.\textsuperscript{61} This compares with state like Colorado, ranking highest with a 417% increase in its punishment rate.\textsuperscript{62} This nationwide increase in the punishment rates demonstrates that every state has become more punitive in its sentences. Again, within this context, Maryland is only showing modest increases compared to its counterparts.

This is consistent with other trends in Maryland's prison population relative to the nationwide trends. Although Maryland is still incarcerating individuals at increasing rates compared to the rest of the nation, Maryland is still on the lower end of the scale in all measures examined in this article, from rising prison populations to punitive rates. However, Maryland still incarcerated more than 20,000 offenders in 2014, costing Maryland taxpayers $1.3 billion the imprisonment rates and Pew's analysis of the BJS "Prisoners" series data and FBI Uniform Crime Reports series, 1983-2013 punishment rate.\textsuperscript{57} Id. The punishment rate calculates the use of prison relative to the frequency and severity of reported crime in a jurisdiction by combining two data points. The first is the imprisonment rate, which counts the number of inmates sentences to a year or more behind bars per 100,000 residents in a jurisdiction. This number excludes those who are awaiting trial and those who committed low-level offenses for which crime data is limited. The second data point is the severity-weighted crime rate. This second data point captures the frequency and seriousness of crime reporter per 100,000 residents and is measured by the seven specific offenses for which reliable, national data is available that the FBI classifies as Part 1 offense (criminal homicide, rape, robbery, aggravated assault, burglary, larceny theft, and motor vehicle theft). Pew accounted for the difference in the severity of offenses by "construct[ing] a scale that assigns a weight to each crime according to the average period of imprisonment served by offenders convicted and sentenced for it. For example, because robbery offenders serve longer prison terms than larceny offenders, the former is weighted more heavily than the latter." The Pew foundation qualifies the punishment rate statistic by saying, "The punishment rate is not intended to replace the imprisonment rate as an analytical tool, nor should it be viewed as an assessment of specific corrections policies or practices. Instead, it provides a new lens through which policymakers, researchers, and the public can view the use of prison relative to reported crime—and the ways in which that relationship has changed over time."\textsuperscript{58} Id.

\textsuperscript{59} Id.

\textsuperscript{60} Id.

\textsuperscript{61} Maryland ranked 48 out of 505 for the lowest increase in punishment rates between 1983 and 2013. Id.

\textsuperscript{62} Id.
in corrections spending. It is with this historical context that Maryland began exploring Justice Reinvestment.

II. WHAT IS JUSTICE REINVESTMENT?

The central premise behind Justice Reinvestment is that accurate information on risk can inform decisions to reserve prison resources for high-risk offenders, while reducing recidivism of low-risk offenders by diverting them to less costly, community-based solutions. After the 2010 pilot, the Urban Institute Justice Policy Center issued a report about Justice Reinvestment as a solution for city, county, and state governments to cope with rising prison populations and the escalating costs. One of the early states to adopt reinvestment was Georgia. Georgia, like many states, was facing staggering projected increases in its prison population with crippling costs. 2011 projections put Georgia’s prison population at increasing 8% over the next five years with an estimated cost of $264 million. Georgia embraced a data-driven approach and made many of the changes that are often found through such an analysis. Georgia made changes to its drug and property

63 Justice Reinvestment Coordinating Council, supra note 4, at 1.
64 Hamilton, supra note 43.
65 The U.S. Dep’t of Justice, https://www.bja.gov/About/index.html (last visited Mar. 2, 2017) (“[The] BJA is a component of the Office of Justice Programs, U.S. Department of Justice, which also includes the Bureau of Justice Statistics, National Institute of Justice, Office of Juvenile Justice and Delinquency Prevention, Office for Victims of Crime, and Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking.”); The Urban Institute, http://www.urban.org/about (last visited Mar. 2, 2017) (The Urban Institute was founded in 1968 with a mission to “open minds, shape decisions, and offer solutions through economic and social policy research.” As an organization, “the Urban Institute does not take positions on issues” rather “scholars are independent and empowered to share their evidence-based views and recommendations shaped by research.”).
66 La Vigne, supra note 8, at 1 (noting that city and county governments are grappling with burgeoning criminal justice populations, with an increase of over 30% in the number of people in jail or under criminal justice supervision in the past 10 years alone. The escalation in these local criminal justice populations has been accompanied by a dramatic spike in county correctional costs – an 80% increase in the last decade.
68 The Pew Center on the States, 2012 Georgia Public Safety Reform (July 2012), http://www.pewtrusts.org/en/research-and-analysis/reports/0001/01/01/2012-
offense statutes and improved public safety by investing in local community supervision, sanctions, and services. Between 2012 and 2014, Georgia’s crime rate fell 3% and the prison population had declined 3% as well. Georgia is not alone in seeing measurable success by adopting Justice Reinvestment strategies – South Carolina has saved $12.5 million dollars; Kentucky’s pretrial reforms have saved approximately $25 million dollars; and North Carolina’s prison population decreased almost 5.6% between

georgia-public-safety-reform (Analysis showed that drug and property offenders accounted for almost 60% of prison admissions in the state. Judges had few viable sentencing options besides prison as the parole and probation agencies lacked the authority and resources to effectively supervise and offer solutions within the community.).

69 Id. (In 2012 Georgia adopted legislation that created probation and alternative sentencing options.).


71 Success Stories, Office of Justice Programs, U.S. Dep’t of Justice, https://www.bja.gov/programs/justicereinvestment/success_stories.html (last visited Oct. 27, 2016) (“Since South Carolina enacted its justice reinvestment legislation in 2010, the total number of state prisoners is down 8.2 percent. Recidivism rates have declined as well—the percentage of prisoners who return to prison has dropped from over 31 percent to 27.5 percent; and 49 percent fewer people on supervision are revoked for violations of supervision conditions, and 6 percent fewer are revoked due to a new crime. Another of South Carolina’s goals was to reserve prison for those convicted of violent and serious crimes. By this measure, the State has been successful as well: before the reforms, over half of state prisoners were low-level, nonviolent offenders; only 37 percent of prisoners are in this category now. Crime has dropped by 14 percent over the last 5 years. In all, the state has saved $12.5 million while increasing public safety.”).

72 Id. (“In Kentucky the prison population had increased from 14,919 to 21,638 inmates from 2000 to 2009. With an average increase of 4.2 percent per year, Kentucky had the fifth fastest growing prison population in the nation, despite steady crime rates. In March 2011, Kentucky passed sweeping JRI legislation focused on three goals: improve public safety, lower costs, and reduce recidivism while still holding offenders accountable. At the time of passage, state leaders estimated the policy package would save Kentucky $422 million dollars over the next decade and reduce the number of prison inmates by 3,824 by 2020. The JRI State Assessment Report notes that Kentucky’s pretrial release rates have increased since JRI enactment: comparing rates from the year before and the year after enactment, 5 percent fewer defendants were held in jail prior to disposition, with no harmful effects on public safety. Because of this one aspect of the legislation, counties have saved roughly $25 million.”).
III. THE PROCESSES OF JUSTICE REINVESTMENT IN MARYLAND

The Urban Institute notes that as a model for success, Justice Reinvestment cannot be a unilateral approach. Rather, local stakeholders from a variety of criminal justice disciplines must collaborate by identifying the causes of the underlying costs in the local criminal justice system, and develop and implement a new way of reinvesting those resources towards more effective goals. To that end, Maryland implemented the Urban Institute's

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73 Id. ("North Carolina’s population was expected to grow by 10 percent, or about 3,900 people, by 2020. Analyses indicated that more than half of prison admissions were people who had failed on probation. Only a small percentage—around 15 percent — of the people released from prison first underwent a period of community supervision, resulting in many high-risk offenders returning to the community without supervision or services. The North Carolina JRI working group, with the support of OJP's Bureau of Justice Assistance (BJA) technical assistance, developed a set of policy options designed to address gaps in the state's sentencing, supervision and treatment systems. North Carolina's Justice Reinvestment Act passed with near-unanimous bipartisan support in both houses and was signed into law on June 23, 2011. As a result, North Carolina projects that its prison population in 2017 will be reduced by 5,000 inmates compared to previous projections, which translates into $560 million in averted costs and cumulative savings. Early indications are that Justice Reinvestment Act is having the intended impact: the prison population decreased almost 5.6 percent between December 2011 and June 2013, in part due to the state's Justice Reinvestment Act. This allowed five prisons to close.").

74 Justice Reinvestment Coordinating Council, supra note 4, at 2.

75 La Vigne, supra note 8, at 2.

76 Id. (The Urban Institute called the group of local stakeholders the strategic planning entity in its report but noted they often have different names. It noted regardless of the name provided by the jurisdiction the shared purpose was the designation of authority and responsibility to make data driven decisions regarding the criminal justice system for a jurisdiction. The group referred to by example in the report was the public safety coordinating council established by Florida state statute for each county to monitor the jail population. By statute the following members or their designee were required participants: state attorney, public defender, chief circuit judge, chief county judge, chief correctional officer, sheriff, state probation circuit administrator, chairperson of the board of county commissioners, director of any county probation or pretrial intervention program, director of a local substance abuse treatment program, representatives from county and state jobs programs. See Fla. Stat. Ann. § 951.26. The report went on to say law enforcement, courts, jails, legal counsel, and community corrections all intuitively comprise the local justice system; however, other key agencies are a part of this system as well. Local housing, public health, employment, and a myriad of other social service providers also have...
recommendations. In 2015, Senate Bill 602 established the bipartisan, interbranch Justice Reinvestment Coordinating Council ("Council") composed of the key stakeholders recommended by the Urban Institute. The Council spent a year analyzing state data and created a comprehensive set of recommendations that would hold offenders accountable but also reduce the state’s prison population and corrections spending. The Council highlighted the notable increases in length of incarceration for individuals as well as the increase in prison admissions relative to crime rates. The Council also noted some potential areas for improvement in the area of community supervision.

a stake in justice management. Seeking their advice, input, and sustained involvement is crucial to the success of any justice reinvestment initiative."

The Council was composed of the following individuals or their representatives: Sam J. Abed, Secretary of the Department of Juvenile Services; Caryn York, Aslan Job Opportunities Task Force; Delegate Erek L. Barron (D), House of Delegates, District 24; Sheriff Troy D. Berry, Charles County; LaMonte E. Cooke, Queen Anne’s County Detention Center; Paul DeWolfe, Office of the Public Defender; Delegate Kathleen Dumais (D), House of Delegates Judiciary Vice-Chair, District 15; David Eppler, Attorney General’s Office; Robert L. Green, Montgomery County Department of Correction and Rehabilitation; Judge Paul A. Hackner, Anne Arundel County Circuit Court (Ret); Senator Michael Hough (R), State Senate, District 4; Judge Diane O. Leasure, Howard County Circuit Court (Ret.); Delegate Michael Malone (R), House of Delegates, District 33; Tim Maloney, Attorney; Stephen T. Moyer, Secretary of the Department of Public Safety and Correctional Services; Senator Nathaniel McFadden (D), State Senate, District 45, President Pro Tem; Sheriff Doug Mullendore, Washington County; Judge Joseph Murphy, Maryland Court of Appeals (Ret); Senator Douglas Peters (D), State Senate, District 23; Christopher B. Shank, Executive Director, Governor’s Office of Crime Control and Prevention, Chairman; Scott Shellenberger, State’s Attorney, Baltimore County; Delegate Geraldine Valentino-Smith (D), House of Delegates, District 23A; Senator Bobby Zirkin (D), State Senate, District 11, Judicial Proceedings Chair. See Final Report, supra note 4, at 2.

The original projections given by the Council based on their recommendations were projected to reduce Maryland’s prison population by 3,930 inmates over ten years with a projected savings of $247 million dollars to be reinvested in practices to reduce recidivism. See Final Report, supra note 4, at 1. With changes to the final legislation that was signed into law projections estimate reducing Maryland’s prison population of nearly 1,200 inmates within ten years leading to an $80.5 million. See supra note 13.

See Final Report, supra note 4, at 6-9.

This is not to say that community supervision in Maryland was broken. The Council identified great success when compared to the body of research denoting best practices for community supervision. The Division of Parole and Probation uses a risk and needs assessment tool to help tailor supervision to each offender’s specific needs. The failure rate for supervision has declined over the last ten years from 46% to 38%. Additionally, over 80% of supervision cases are closed without new criminal convictions. See Final Report, supra note 4, at 12.
Because of the potential cost savings through community supervision, Justice Reinvestment programs seek to maximize the use of community supervision. In Maryland, the cost of community supervision is only $4.55 per day while incarceration costs $25.63 per day.\textsuperscript{81} The Council noted that statistically those identified as “low-risk offenders in Maryland serve considerably longer parole and mandatory supervision than high-risk offenders prior to a successful discharge.”\textsuperscript{82} The Council also noted probation violators served an average of 31 months longer than many offenders sentenced directly to prison.\textsuperscript{83} Over 40% of probation revocations to prison were for technical violations in fiscal year 2014.\textsuperscript{84}

After analyzing all of the data, the Council put forth five key policy recommendations: (1) focus prison beds on serious and violent offenders; (2) strengthen probation and parole supervision; (3) improve and enhance release and reentry practices; (4) support local corrections systems; and (5) ensure oversight and accountability. Each of these recommendations came with more specific legislative recommendations for how to implement, many of which were adopted in the final version of Maryland’s Justice Reinvestment Act.

\section*{IV. JUSTICE REINVESTMENT IN MARYLAND}

After thorough due diligence and making its way through the legislative process, on May 19, 2016, Governor Hogan signed the Justice Reinvestment Act (the “Act”) into law.\textsuperscript{85} The final product is a policy that largely implements the suggestions of the Council. The key provisions that will be examined in this article are the reductions of maximum incarceration for nonviolent offense and preference for treatment over incarceration for drug offenses, changes in the processes of parole and probation, increased penalties for certain violent crimes, and increased eligibility for expungement.

\textsuperscript{81} See Final Report, supra note 4, at 11.
\textsuperscript{82} Id. at 12.
\textsuperscript{84} See Final Report, supra note 4, at 8.
\textsuperscript{85} Office of Governor Larry Hogan, Governor Larry Hogan Signs 144 Bills into Law, MARYLAND.GOV, (May 19, 2016), http://governor.maryland.gov/2016/05/19/governor-larry-hogan-signs-144-bills-into-law/. 
A. **Maximum Incarceration for Nonviolent Offenses, Elimination of Minimum Mandatory Sentences, and Preferences for Treatment**

One of the key provisions to come out of the Council report was the restructuring of penalties for drug possession. The current law provides that first time offenders possessing a substance that is not marijuana receive a penalty of up to four years.\(^{86}\) Subsequent offenders are subject to a doubling of those penalties.\(^{87}\) The Council recommended eliminating all mandatory minimums for drug offenses.\(^{88}\) One note of concern in its final report was that 81% of those sentenced to mandatory minimums for drug crimes in fiscal years 2013 and 2014 were black.\(^{89}\) Under current law, these penalties are severe, with the highest being 40 years with no parole for an individual’s fourth offense.\(^{90}\) The recommendations of the Council were to reduce drug sentences overall and to eliminate minimum mandatory sentences, which were adopted. First time possession of narcotics will receive a sentence of no more than one year for the first conviction.\(^{91}\) Second and third convictions have a potential penalty of no more than eighteen months, and the potential incarceration

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\(^{86}\) Md. Code Ann., Crim. Law § 5-601 (West 2016) ("[A] person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 4 years or a fine not exceeding $25,000 or both.").


\(^{88}\) Final Report, supra note 4, at 27.

\(^{89}\) Final Report, supra note 4, at 27 (noting that 87% of the offenders currently in prison serving sentences of ten years or more are Black, again demonstrating the disproportionate racial implication of the current system). See supra note 6 and accompanying text. See also supra note 51 and accompanying text.

\(^{90}\) Md. Code Ann., Crim. Law § 5-609 (Doubling provisions for the original penalty of 20 years, increasing the penalty to 40 years. This applies for any prior conviction under Title 5, meaning an individual who previously was convicted of simple possession but is later charged with possession with intent to distribute a narcotic could face up to 40 years based on the prior conviction even though it was for the offense of simple possession, not possession with intent to distribute. For the penalty of 40 years with no parole to apply, there are numerous other requirements. Specifically, the person must have served three or more terms of confinement for a violation of §5-609 of the Maryland Code, conspiracy to commit a crime included under §5-609 or a comparable crime in another state. The prosecutor must provide adequate notice under Maryland Rule 4-245 of their intention to seek subsequent offender provisions.).

\(^{91}\) Md. Code Ann., Crim. Law § 5-601 (effective Oct. 1, 2017) (a person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 1 year or a fine not exceeding $5,000 or both for their first conviction).
period for a fourth conviction is not to exceed two years.\textsuperscript{92} All penalties for possession of narcotics can also include a fine not to exceed $5,000. The penalty for possession of marijuana is reduced from one year to six months.\textsuperscript{93} The Act removes prior minimum mandatory sentences for nonviolent drug offenses such as possession with intent to distribute and distribution of drugs. \textsuperscript{94} It leaves the length of sentence in effect so a judge can still sentence an individual to 20 years for a first or second offense, 25 years for a third offense, and 40 years for a fourth offense.\textsuperscript{95} The portion of the legislation that is truly groundbreaking is the ability for those previously sentenced with the minimum mandatory sentences in place to petition for release. Individuals previously sentenced can apply for early release beginning in October of 2017.\textsuperscript{96} This provision will allow approximately 1,600 nonviolent offenders sentenced in the last thirty years, who if sentenced today under the new legislation would not face such penalties, to appeal to a judge for release.\textsuperscript{97} This is unlike that which any other state has done previously.

Minimum-mandatory sentences still remain in place for kingpins.\textsuperscript{98} Another key provision, not related to minimum mandatory, but related to drug offenses, is the distinction between crack and powder cocaine for volume dealers. Previously, a volume dealer of crack cocaine was one who possessed more than 50 grams, while a volume dealer of powder cocaine was one who possessed 448 grams.\textsuperscript{99} Those two are now consistent at 448 grams.\textsuperscript{100}

Although drug offenses usually take the spotlight for nonviolent offenses with high rates of incarceration, theft provisions fall into this same category. One recommendation from the Council was to raise the felony theft threshold\textsuperscript{101} and concentrate on longer prison sentences for higher-level theft offenders.\textsuperscript{102} Research shows that raising felony thresholds does not create an

\textsuperscript{92} Id. (For a second or third conviction, imprisonment not exceeding 18 months or a fine not exceeding $5,000 or both; or for a fourth or subsequent conviction, imprisonment not exceeding 2 years or a fine not exceeding $5,000 or both).
\textsuperscript{93} Id. ($1,000 fine remains unchanged).
\textsuperscript{94} MD. CODE ANN., CRIM. LAW § 5-608 (effective Oct. 1, 2017).
\textsuperscript{95} Id.
\textsuperscript{96} Id.
\textsuperscript{97} Wiggins, supra note 13.
\textsuperscript{98} MD. CODE ANN., CRIM. LAW § 5-613(b)(1).
\textsuperscript{99} MD. CODE ANN., CRIM. LAW § 5-612 (effective Oct. 1, 2017) (Note, unlike Federal jurisdiction, the only noted difference in crack and powder cocaine sentencing was for volume dealers. Possession with intent to distribute, and Manufacturing already treated powder cocaine and crack the same.).
\textsuperscript{100} Id.
\textsuperscript{101} MD. CODE ANN., CRIM. LAW § 7-104 (effective Oct. 1, 2017) (Maryland, like most states, measures theft by the value of the goods taken thus increasing the threshold of those goods changes the penalties involved.).
\textsuperscript{102} Final Report, supra note 4 at 16.
incentive for theft. Pew examined 23 states that raised their felony thresholds over a ten-year period from 2001 to 2011 and found no correlation with higher thresholds and increased theft trends. Additionally, the study found no correlation between states with lower thresholds and lower or higher crime rates. These studies in no way suggest that raising theft thresholds will decrease crime, but analysis shows that neither the enactment of higher felony thresholds nor the amount to which it is raised is related to overall theft rates.

The Council’s recommendations to raise the threshold found their way into legislation eventually becoming law. The Act raised the values from at least $100 but less than $1,000 with eighteen months maximum to at least $100 but less than $1,500 to six months maximum for the first offense. It changes the value from at least $1,000 but less than $10,000 and a penalty of ten years to at least $1,500 but less than $25,000 with a penalty of five years. The Act changed the threshold from at least $10,000 but less than $100,000 and a penalty of fifteen years to at least $25,000 but still less than $100,000 and change the penalty to 10 years. Finally, the Act lowered the penalty for theft over $100,00 from 25 to 20 years.

The Council found a high percentage of criminal justice-involved individuals suffer from substance abuse and mental health disorders that require treatment and support. Under current law, a judge can order the Department of Health and Mental Hygiene to evaluate an inmate to determine a recommended level of treatment, if any. If the recommendation is for residential treatment, the judge can then order what is known as a section 8-507 order where the law calls for prompt placement in a residential facility; however, the current statewide average wait time is 167 days. Low-level drug offenders will be more likely to be sentenced to treatment instead of jail.

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103 Gramlich & Zafft, supra note 3 (finding that states that raised their thresholds during this period cut their property crime and theft by roughly the same amount as states that did not.).

104 Gramlich & Zafft, supra note 3 (Another example provided in the same study was in Mississippi. There lawmakers doubled the threshold from $250 to $500 dollars in 2003 but property crime and theft rates continues to fall in the years that followed. With this success legislators raised the threshold again in 2014 from $500 to $1,000. No data is yet available to determine success of the second change.).

105 Id.

106 MD. CODE ANN., CRIM. LAW § 7-104 (effective Oct. 1, 2017) (providing for punishment of up to one year and five years for the second offense and four or more convictions, respectively.)

107 Id.

108 Id.

109 Id.

110 See Final Report, supra note 4, at 13.


113 See Final Report, supra note 4, at 15.
time. When offenders are sentenced to treatment, the state will have to make sure spots are available sooner.

B. CHANGING THE PROCESSES FOR PAROLE AND PROBATION

With almost 60% of all prison admissions representing failures of probation, parole, or mandatory release supervision, the Council saw this as an area for change. The measures adopted in the Act are lengthy. The Act first defines “Technical Violation” as “a violation of a condition of probation, parole, or mandatory supervision that does not involve an arrest; a violation of a criminal prohibition; violation of a no-contact or stay-away order; or absconding.” If a person is found to have a technical violation, various alternative treatments are encouraged before imprisonment; however, the length of imprisonment is capped at no more than 15 days for a first technical violation, 30 days for a second technical violation, and 45 for a third technical violation. These requirements allow judges to impose a longer sentence where certain criteria are met indicating public safety risks.

Geriatric parole is expanded by lowering the threshold age from 65 to 60 once an individual has served at least fifteen years of his or her sentence. Additionally, any inmate who is serving a life sentence and is chronically debilitated or incapacitated may be paroled absent the Governor’s veto within 180 days of receipt of the request from the Parole Commission. Those individuals serving time for nonviolent drug crimes, theft, and writing bad

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116 MD. CODE ANN., CORR. SERV. § 6-101 (m)(3) (effective Oct. 1, 2017) (The Council originally recommended that a failure to participate in a required domestic abuse intervention program be considered a true violation, not just a technical one. This did not make its way into the final version of the act.).
117 MD. CODE ANN., CORR. SERV. § 7-401 (effective Oct. 1, 2017) (Once an individual reaches a fourth violation, technical or otherwise, any sentence that might have originally been imposed for the crime on the defendant may be imposed.).
118 Id. (Specifically, there is a rebuttable presumption that the limits imposed for a technical violation are as such; however, the presumption may be rebutted if there is a finding that such an imposition of sentence would create a risk to the public, safety, a victim, or a witness based on the nature of the violation, facts and circumstances surrounding the original conviction, and/or the nature of their probation’s or defendant’s history.).
119 MD. CODE ANN., CRIM. LAW. § 14-101 (effective Oct. 1, 2017) (Both this and the previous version of the statute apply to eligibility for parole for individuals how have mandatory sentences for crimes of violence.).
checks will become eligible for parole after serving only 25% of their sentence.¹²¹

One major finding of the Council was that many inmates who are eligible for parole are serving an average of nine months past their initial eligibility date.¹²² Even more startling was inmates serving time for common nonviolent offenses are serving roughly 40% of their sentence on average, despite being eligible for parole at 25%, while violent inmates are released as soon as they become eligible at 50% of their sentence length.¹²³ The final version of the Act seeks to eliminate these delays for certain nonviolent offenders by allowing for administrative release without a hearing once the inmate has served 25% of their time if they have met certain conditions.¹²⁴

C. INCREASED PENALTIES FOR CERTAIN VIOLENT CRIMES

One of the objectives of Justice Reinvestment is to create harsher sentences for violent crimes, thus allocating scarce penitentiary resources more efficiently. In Maryland this took the form of harsher sentences for several crimes and the creation of a state version of federal Racketeer Influenced and Corrupt Organization (RICO) to help as a tool for gang prosecution.¹²⁵ Now, in Maryland, the maximum sentence for second-degree murder is increased from 30 to 40 years.¹²⁶ Additionally, the maximum sentence for abuse that results in the death of a child would be life in prison for killing a child under thirteen years-old and up to 40 years for killing a teenager.¹²⁷

¹²² Final Report, supra note 4, at 9.
¹²³ Final Report, supra note 4, at 9-10 (A file review of offenders released on parole revealed that the extended prison terms are the result of multiple factors, including delays receiving programming in prison and decisions to postpone release until after the parole eligibility dates.).
¹²⁴ MD. CODE ANN., CORR. SERV. § 7-301.1 (effective Oct. 1, 2017) (The conditions required for administrative release are extensive. The individual must be serving a sentence for a violation of §§ 5-601 through 6-606 of the Criminal Law Article or a valuation of §§ 7–104, §§ 8–204, §§ 8–206, §§ 8–207, §§ 8–209, §§ 8–301, §§ 8–509, §§ 8–510, §§ 8–511, §§ 8–512, §§ 8–513, §§ 8–514, §§ 8–515, §§ 8–611, or §§ 8–801 having a value of $1,500 or less. The individual must not have a prior conviction for a crime of violence, a sexual offense which requires registration, two or more violations of §§ 5-601 through 5-606, and if their sentence requires a minimum mandatory they must have served that before eligibility. Additionally, the Parole Commission must still notify any victim of the crime of the potential administrative release and the victim may still request a hearing prior to the inmate’s administrative relief. The inmate must also be in compliance with their case plan.).
D. INCREASED ELIGIBILITY FOR EXPUNGEMENTS

Eligibility for expungements has grown in Maryland over the last several years. Studies show that minorities, who are more likely to be arrested, have been affected disproportionately.128 This goes beyond a criminal justice issue and becomes an employment issue when advances in technology have given potential employers, landlords, and anybody with an internet connection easy access to such information. Legislatures across the country are passing “ban the box” measures to limit the ability of employers to ask job applicants about their criminal records.129 On October 1, 2015, some crimes that are no longer criminal in nature and certain misdemeanors are now shielded from public view, including disorderly conduct, prostitution, and trespassing.130 The Act went even further in its expansion of eligible offenses for expungement. Now almost forty crimes are eligible for expungement.131 However, any

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129 Id. Some examples include Illinois House Bill 5701 became effective January 1, 2015, which prohibits public and private employers with fifteen or more employees an employer or employment agency may not inquire about or into, consider, or require disclosure of the criminal record or criminal history of an applicant until the applicant has been determined qualified for the position and notified that the applicant has been selected for an interview by the employer or employment agency or, if there is not an interview, until after a conditional offer of employment is made to the applicant by the employer or employment agency. Mass. Gen. Laws Ann. ch. 151B, § 4 makes it illegal for an employer to inquire about an applicant’s criminal history on the initial application form unless state or federal law would mandate disqualification. The Minnesota State Legislature passed SF 523, which prohibits employers from inquiring about criminal history until the applicant has made it to the interview stage.
130 MD. CODE ANN., CRIM. PROC. § 10-301-06. See MD. CODE ANN., CRIM. LAW § 10-201(c)(2) (Disorderly Conduct); MD. CODE ANN., CRIM. LAW § 10-201(c)(4) (Disturbing the Peace); MD. CODE ANN., CRIM. LAW § 10-201(c)(3) (Failure to Obey a Reasonable and Lawful Order); MD. CODE ANN., CRIM. LAW § 6-301 (Malicious Destruction of Property in the Lesser Degree); MD. CODE ANN., CRIM. LAW § 5-601 (Possessing or Administering a Noncontrolled Dangerous Substance); MD. CODE ANN., CRIM. LAW § 5-619(c)(1) (Possessing or Administering a Controlled Substance); MD. CODE ANN., CRIM. LAW § 5-619(c)(1) (Use of or Possession with Intent to Use Drug Paraphernalia); MD. CODE ANN., TRANS. § 16-101 (Driving Without a License); MD. CODE ANN., TRANS. § 16-303 (Driving while Privilege is Canceled, Suspended, Refused, or Revoked); MD. CODE ANN., TRANS. § 17-107 (Driving While Uninsured); or MD. CODE ANN., CRIM. LAW § 11-306(a)(1) (Prostitution Offenses).
131 MD. CODE ANN., CRIM. LAW § 10-201(c)(2) (Disorderly Conduct); MD. CODE ANN., CRIM. LAW § 10-201(c)(4) (Disturbing the peace); MD. CODE ANN., CRIM. LAW § 10-201(c)(3) (Failure to Obey a Reasonable and Lawful Order); MD. CODE
expungement petition filed under the new list of expanded crimes must wait ten years after the offender has satisfied his or her sentence before becoming eligible.\textsuperscript{132} Additionally, an individual must wait fifteen years before filing for expungement of a violation of section 3-203 of the Criminal Law Article or for an offense classified as a domestically-related crime under section 6-233 of the Criminal Procedures Article.\textsuperscript{133} The number of expungements has grown steadily in Maryland over the past decade, from 15,800 in 2004 to about 33,800 in 2014.\textsuperscript{134} Another new law repeals the so-called “subsequent conviction rule.” People may have eligible charges expunged even if they are later convicted of another crime.\textsuperscript{135}

\begin{footnotesize}
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\item \textsuperscript{132} Thus an individual must wait ten years after all of their sentence is satisfied including sentences imposed for parole, probation, or mandatory supervision.
\item \textsuperscript{133} The fifteen-year time period is subject to the same restrictions noted above.
\item \textsuperscript{134} Knezevich, supra note 117.
\item \textsuperscript{135} Knezevich, supra note 128.
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As noted, blacks are disproportionately affected by the criminal justice system. In Maryland, blacks are serving longer jail sentences, less likely to be paroled, and are arrested in disproportionate numbers compared to their white counterparts. Our society is a reactive one. In the wake of the crime surge in the 1980s and 1990s tough-on-crime legislation swept the nation. The result has been more black people incarcerated.

The Justice Reinvestment Act addresses issues in sentencing and beyond. Given the higher rates of incarceration, the black community will see greater benefits from this change. An area that was not addressed in Justice Reinvestment was pretrial release. This is another area where blacks are disproportionately affected. “According to the Pretrial Justice Institute, defendants of color are given higher bail amounts and are detained more often than white defendants.” The Institute says that more than 60% of the people in jails across the country have not been convicted of a crime but are awaiting trial in jail because they cannot afford the bail amount.” Governor Hogan has already declared this will be an issue for his administration going forward.