



## **SECOND LOOK: WHO SHOULD DECIDE?** **Determining the Best Decision-maker**

**Background:** [Second look laws](#) allow a decision-maker to reevaluate a person's sentence after a significant period of time served in prison and determine if that sentence is still necessary. A person may be granted a sentence reduction or released if the decision-maker finds the person is ready to return home and not a danger to others. [FAMM](#) supports second look sentencing reforms because people change over time, and locking people up long past the point of necessity makes no one safer.

**Who can reevaluate a person's sentence?** The answer varies by jurisdiction and may be limited by existing laws, regulations, or court decisions. Often there are multiple existing and potential second look decision-makers in a single jurisdiction. These may include:

- Courts – judges (who may be elected or appointed, or a mix of both)
- Parole boards – they may be part-time or full-time; comprised of professionals or political appointees (typically chosen by the governor)
- Governors – elected; they typically have sole discretion to grant or deny clemency
- Heads of departments of corrections – these are often appointees chosen by the governor
- Specialty sentence review boards – for example, a medical release review unit; a board of pardons or clemency review board evaluating and making recommendations to the governor on clemency requests; or a sentence review board that operates much like a parole board. These also may be part-time or full-time and comprised of professionals or political appointees.

**Who is the best decision-maker in second look laws?** There are pros and cons for each potential second look decision-maker. FAMM recommends considering all relevant factors when evaluating and choosing a decision-maker in a particular jurisdiction, including the following:

- **The experiences of families and incarcerated people:** What are people's experiences with each decision-maker? Which decision-maker do they generally prefer, and why?
- **Political strategy and viability:** Is there a decision-maker the legislature and/or governor oppose? This opposition may make it impossible to create a second look.
- **Delay in passing reform:** If the legislature and/or governor oppose using a particular decision-maker, can that opposition be overcome in a reasonable amount of time? People could spend much more time in prison if a second look cannot be created.
- **Political versus professional nature of the decision-maker**
  - Elected officials have to campaign and are sensitive to “soft on crime” attacks, which may make them less willing or likely to grant second looks
  - Appointed officials come and go with each election and may be ordered not to grant second looks. Just because a decision-maker is reviewing and granting sentence reductions now does not mean it always will in the future.



- **Funding needs:** How much will it cost to have each decision-maker handle second looks? Is the legislature willing to fund more staff, attorneys, etc.?
- **Legality:** Does using a particular decision-maker for second look raise potential constitutional barriers, legal claims, or lawsuits that could impact or overturn the second look law later on? For example, in some places, laws require that resentencing can only be done in the original court of conviction.
- **Grant rates by parole, pardon, or sentence review boards:** How many people are actually getting sentence reductions now from this decision-maker?
- **Court experience with resentencing:** Have the courts handled resentencing requests before? How many people were granted sentence reductions then? Did courts seem hesitant to revisit their original sentences or in favor of utilizing discretion where, in the context of mandatory sentences, they previously had none?
- **Decision-maker workload:** The more people eligible for a second look, the bigger the workload for the decision-maker. Is the decision-maker already overworked and/or understaffed? If a large number of people could be eligible for a second look, is there a decision-maker better equipped to handle the new second look requests? Can two or more decision-makers effectively divide the work?
- **Familiarity of stakeholders:** Are prosecutors, defenders, and/or the department of corrections already familiar with doing a second look using a certain decision-maker? If so, they may prefer that decision-maker, and it may make it easier for the decision-maker to process and decide second look requests.
- **Disparities:** Is using one decision-maker rather than another going to mean that people get different sentences based on where they live, their race, or other factors?
- **Quality of the decision-making process:** For each potential decision-maker,
  - How long will take to get from the point of second look eligibility to a decision?
  - How many layers of review will be required (*i.e.*, just the court? A parole board first, then a court? A parole board, and then the governor?)? Are the layers unnecessary or reasonable?
  - Will incarcerated people have a right to present their case, use an attorney, experts, or mitigation specialists? Will they have sufficient time to put their best case forward?

**FAMM’s position:** FAMM supports the creation of more robust second look laws. In deciding whether to support legislation that uses a particular decision-maker, FAMM considers all known factors. Passing legislation that uses one decision-maker does not preclude advocacy of current or future legislation allowing other decision-makers to conduct second looks. FAMM wants to see as many second look mechanisms created as possible, at as many points in the criminal justice system as possible.

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