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House Judiciary Committee: HB 300 – Inmates – Life Imprisonment –
Parole Reform

Hearing of March 3, 2020

Attached is my written testimony consisting of copies of letters to
Governor Hogan dated July 3, 2019 and January 11, 2020, and
attachments in support of those letters and in support of my oral
testimony of 3/3/2020 on the above bill, HB 300.

A handwritten signature in black ink, appearing to read 'Dan Clements', with a long horizontal stroke extending to the right.

Dan Clements

17 Southgate Avenue
Annapolis, MD 21401
July 3, 2019

Honorable Lawrence J. Hogan, Jr.
Governor
State House
Annapolis, Maryland

Re: Commutation of sentences

Dear Governor Hogan,

I was an Assistant United States Attorney for five years in the late 1970's and learned some basic truths about criminal behavior which have not changed over the past 50 years. The facts are undisputed that for criminals convicted before the age of 30 who are eventually released from prison the chance of any individual committing another crime, becoming a recidivist, drop precipitously after the age of 30. In the male population, which commit the vast majority of violent crimes, simply maturing apparently plays a large part in the change in behaviors.

Thus, the question is raised as to why we persist in keeping people in prison after they are over 50 and have served 30 or more years. As you are aware, a Maryland Court Of Appeals opinion, *Unger v. Maryland*, in 2012 resulted in the release of 200 males convicted in the 1970's and 1980's who were serving life sentences. All were convicted of murder or rape. I suspect you are also aware that of those 200 released individuals, all over the age of 50, only 1 has re-entered the system and that was for a felon in possession charge, not the commission of another violent crime.

The *Unger* cohort is being used throughout the country as an example of why continuing to warehouse older prisoners makes no sense from a public safety perspective. I would argue that continuing to warehouse such individuals also makes no sense from a retribution perspective, an economic perspective and an equal justice perspective.

The criminal justice system throughout the country has discriminated adversely against blacks. Maryland is no exception: for example of the 95 present inmates who have served 40 years or longer, 31 are white and 64 are black. Of the additional 181 who have served 35 to 39 years, 63 are white and 118 are black. Virtually all have been convicted of rape or murder and are serving life sentences. Only 4 are females, all convicted of murder.

I feel it is compelling to note that of Maryland's 95 prisoners who have served 40 years or longer, 27 were teenagers at the time of their incarceration. Of the 181 individuals who have served between 35 and 39 years, 33 were teenagers at the time of their incarceration.

I write to propose that you consider commuting the sentences of older inmates who have served, for starters, 35 or more years. I say for starters because that group consists of 276 individuals and if the process I am about to propose works well, then we could move on to reviewing and possibly commuting the sentences of an additional 220 who have served 30 years or more.

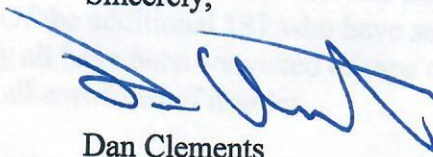
The process would consist of recruiting between 30 and 50 experienced former prosecutors and criminal defense lawyers who would review every inmate's original conviction records and prison records and would then interview the inmates and the victims or the family of the victims. I suggest this would all be done with a presumption of release with limiting factors including, for example, those inmates who continued violent behaviors during the past 10 years of their incarceration. Obviously, any criteria used would be at your discretion. I am volunteering to organize and run this effort.

President Obama commuted the sentences of approximately 2,700 inmates during his last four years in office and used outside attorneys in the process, as I suggest. Of his commuted inmates only two have returned to the system as a result of criminal activity; although his cohort was largely drug conviction related, there being few Federal prisoners serving time for murder or rape.

The economics of such action would be dramatic. Each prisoner costs the state on average \$60,000 a year or for 276 prisoners, \$16,500,000. I am not aware of a specific additional number that exists for the increased health costs for older inmates. Obviously, approximately one-third of those "savings" would need to be used towards establishing those released individuals back into the community.

I will stop here without further statistics or analysis and ask if you are interested in pursuing such a course? I can provide more information in the setting of a direct conversation with you and Bob Scholz and whomever else you might wish to include. If this is something you have no interest in considering, please advise. Understand that as a member of the Bar for 47 years I firmly believe that this is the right thing to do.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Dan Clements', written over a horizontal line.

Dan Clements

Subject: **Re: Proposal for case review**
Date: 1/8/2020 1:38:09 PM Eastern Standard Time
From: robert.scholz@maryland.gov
To: clementsdm@aol.com

To: Dan Clements
clementsdm@aol.com

January 8, 2020

Dear Dan:

This is to follow-up on your offers, conveyed a number of different ways, to use volunteer lawyers to review the records of older inmates who have served 35 years or more for possible commutation recommendations.

As you know, Governor Hogan has been very active in parole and clemency matters. In fact, he has commuted or paroled more inmates than the last three Governors combined.

Our office continues to review cases. Governor Hogan believes that each case should be reviewed individually by state personnel experienced in parole and clemency issues in conjunction with state psychologists trained to determine the suitability for each individual for potential release.

While the Governor appreciates your offer of outside assistance, he prefers to continue the use of State of Maryland professionals.

Many thanks,
Bob

--

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17 Southgate Avenue
Annapolis, MD 21401
January 11, 2020

Robert Scholz, Esq.
Counsel to the Governor
The State House – Shaw House
100 State Circle
Annapolis, MD 21401

Dear Bob,

This e mail, which I am also sending you by US Postal, is in response to your email of January 8, 2020. Let me begin by reviewing the events. In late April 2019 you were kind enough to spend some time with me to discuss the concept of the Governor using his inherent powers to release not just a few, but hundreds of geriatric prisoners. I indicated during that meeting that if this concept, which I understood to be a heavy political lift, was a non-starter with the Governor I would not bother to pursue the matter with him. I reminded you that justice reform is a bi-partisan issue, as has most recently been shown by the parole and commutation actions of the Republic governors of both Oklahoma and Kentucky. And when I indicated that such action would be a progressive and wise one by Governor Hogan and would save the state millions of dollars, your response was: “and it’s the right thing to do.” You encouraged me to write a letter to the Governor which you would hand deliver.

As I told you at the time I did not have a great deal of research but would put something together once I had the basics and would not write an extensive argument for my position in case the Governor quickly rejected the concept. I then obtained from the Department of Corrections an Excel spread sheet setting forth, without names, a list of all Maryland prisoners over the age of 50 by race and sex and their term of incarceration. You advised when I saw you on July 3 that you were also provided with a copy of that spread sheet by Stuart Nathan of the Attorney General’s office. The spread sheet was the foundation of my letter to the Governor of July 3, which I hand delivered to you and which you said you would deliver directly to the Governor shortly thereafter.

Further, although I do not know Governor Hogan personally (we have only met on one occasion) I felt comfortable making what I considered to be a reasonable request for justice reform for several reasons. When Governor Hogan was first elected the then Senate President put in a bill/constitutional amendment to permit sitting judges to sit to age 75 whereas they are now required to retire at age 70. I was that year and for four of the five following years when the constitutional amendment was again put forth the only, sole, just me, attorney who testified against the bill. I did so because it would have perpetuated prior discrimination in the selection of judges, particularly against women. I worked with the Governor’s then legislative team,

mostly Joe Getty, and the Governor's office supported my view with data showing if the amendment were to pass out of the first twenty-four circuit court judges who would get to stay on past age 70, twenty were old white men. In the last year this bill has been put in – 2019 – I was again the sole outspoken opponent but was able to point to the fact that Governor Hogan during his term in office had increased the number of female judges on the circuit court from 39% to 45%. That was only true because so many old white men did not get to stay on the bench past age 70. Again, this made me comfortable that Governor Hogan would be gravely concerned by any action which might perpetuate prior discrimination whether it be based on race or on sex.

Thus although I knew my request that the Governor consider paroling hundreds of geriatric prisoners, the vast majority people of color, was a heavy political lift, I thought, with your encouragement, that this was a discussion worth having and a shot worth taking.

Your email of January 8, 2010, as I pointed out in a brief reply email, was in response to my letter to Governor Hogan of July 3, 2019. I am sorry that you felt my email of January 8th, was “snooty” in that it did point out the delay in receiving a response from the Governor. I intended to basically just leave my response as that one sentence but I am afraid your comments during our phone conversation of January 9, now require that I fully respond to your email. And I make this response because your email response somewhat misrepresents my letter to the Governor of July 3 and because it states, unfortunately, that the Governor intends to continue to rely on a parole system which is totally inadequate and seriously defective.

Your email begins by indicating it is in response to my “offers, conveyed in a number of different ways, to use volunteer lawyers to review the records of older inmates who have served 35 years or more for possible commutation recommendations.” The problem with your response begins with its emphasis on my offer to organize volunteer lawyers to assist in the commutation process. That offer is a small part of the content of the letter and ignores the thrust of my letter and the problem.

As you are more than well aware, 70% of Maryland's prison population is African American in a state where African American's only comprise 29.2% of our total population. A recent Justice Institute study established that figure. My letter pointed out that of those who have been incarcerated 35 years or longer 182 are African American and 94 are Caucasian, or 66% are African American and 34% are Caucasian, closely confirming the Justice Institute's report.

What is extraordinarily disturbing about these numbers is that Maryland leads the nation in per cent of prisoners who are African American. The next state by way of percentage of African American prisoners is Mississippi with a 45% African American prison population. But Mississippi is a state with a 39.2% African American population in the general public. One could perhaps argue that although Mississippi's prison population is somewhat more black than its general population and is some evidence of institutional bias, the 6% difference is not facially outrageous.

On the other hand Maryland's disproportionate African American prison population compared to the state's general African American population is not only disturbing, problematic and outrageous but is without question evidence of long standing institutional bias – including police who make arrests; including prosecutors who prosecute cases; including judges who set the sentences; and including the parole commission which recommends parole. If I am wrong and there is another explanation for this problem, please, please, tell me why and how I am wrong. And I note that Professor Michael Millemann of the University of Maryland Law School has written, with others, a thorough and careful analysis of the Unger decision and cohort and he has footnotes pointing to studies in the 70's and 80's which indicate the number of blacks and whites convicted of murders were roughly 50 - 50%, so how did we get to a jail population of individuals who have served more than 35 years in prison which is 66% African American and 34% Caucasian?

My letter of July 3, 2019 to the Governor also set forth that Maryland has, because of the Unger decision of the Maryland Court of Appeals, released 200 murders and sex offenders with virtually no risk of recidivism. Thus taking a broader approach to releasing geriatric prisoners would not be a risk to public safety. Again see Professor Millemann's law review article, *Digging Them Out Alive*, University of Maryland Clinical Law Review, Spring 2019 Edition, page 365 et seq. I will be happy to send you Professor Millemann's four page summary if you would like.

So the thrust of my letter to the Governor was to implore him to do more than prior governors and to do well more than he himself has done to fix the abhorrent situation that exists historically and exists because his predecessors starting with Governor Glendening exacerbated the problem rather than fix it. To that end I asked him to start by considering, basically releasing all those who have served more than 35 years in prison, following a review by outside counsel which would include a thorough review of the original criminal file, a review of the prisoner's files while incarcerated and contact with the victims and family of victims of the crimes.

What I did not put in my letter to the Governor is another most disturbing fact of which I was generally aware but not focused on but which I am sure you as the Governor's attorney and the Governor are fully aware. Individuals who plead guilty in the 70's (probably before) and the 80's were accurately advised by their counsel and by the prosecutors that a life sentence did not actually mean their entire life but typically 20 or 25 years in prison. When Governor Glendening established his policy of "life means life" there were many folks who expected to be released shortly on parole but were forever after denied such release.

As you know Governor Ehrlich mostly followed the Glendening approach and Governor O'Malley followed it entirely. This is a serious part of why we have so many geriatric prisoners. Thus guilty pleas were honestly offered by those accepting responsibility and being remorseful only to find down the road that they had relied to their detriment on a system represented to be fair and reasonable. Perfect examples of this can be found in the Unger cohort. Many of those released by Unger had co-defendants who plead guilty with the understanding they would most

likely be released after 20 or 25 years but they are still in jail. The Unger folks got out after trials – where they admitted nothing – because of defective jury instructions but those who confessed and showed remorse are still in jail.

Your email “touts” that “as you know, Governor Hogan has been very active in parole and clemency matters. In fact, he has commuted or paroled more inmates than the last three Governors combined.” That is an accurate statement, but the fact that the Governor has now commuted the sentences of thirty-nine lifers including three juveniles who were sentenced to life without parole – and the later only during his 5th year in office, is worthy of acknowledgment but not of praise or pats on the back. “Commuting more than the last three Governors combined” is praising with faint praise when the last three Governors did virtually nothing. There are, as you know 300 incarcerated prisoners in Maryland who were sentenced to life in prison as juveniles; so I gather there are now 3 less. And as you certainly know, the United States Supreme Court ruled years ago that sentencing juveniles to life in prison without the chance of parole is unconstitutional. Releasing 3 does not make a dent in the problem or respond realistically to the issue.

Further I am advised in response to a PIA I issued to the Parole Commission that the Commission has presented the governor a total of 62 lifers, of whom the Governor has commuted 36 sentences (not counting these last 3 juveniles) and denied commutation to 26. That totals around 7 or 8 a year which is not a bad percentage when one considers the other major problem – the Parole Commission only recommends 12 or 13 people a year. Unfortunately, when there are over 490 geriatric prisoners who have served 30 years or longer, releasing 7 or 8 a year does not make a dent in the problem or respond realistically to the issue.

You write that rather than accept the support of volunteer lawyers in reviewing for starters 275 cases to be followed, as I suggested by another 220 who have served 30 or more years, that: “Governor Hogan believes that each case should be reviewed individually by state personnel experienced in parole and clemency issues in conjunction with state psychologists trained to determine the suitability for each individual for potential release.”

Because of my interest, I attended a November meeting of the Justice Reinvestment Board, chaired by Judge Danny Long. You can confirm what I write below with GOCCP head Don Hogan who was present at the meeting. A presentation was made by Parole Commission chair, David Blumberg and Ms. Christine Burke, Esq. of his staff. They were responding to suggestions by the Board’s subcommittee on Geriatric Parole that an additional 250 individuals receive consideration for Parole. I must start by pointing out that the suggested 250 individuals excluded all those serving life without parole sentences or sexual offenders of any nature – thus excluding, probably, the entirety of geriatric prisoners. I might interject a fact of importance here – of the 200 Unger cohort, 30% were sexual offenders and none of them have re-offended. And also, as I am sure you know, when the Justice Reinvestment Act was passed, the legislature was assured it would save the state millions of dollars with the release of prisoners. But as of the November meeting of the Justice Reinvestment Board only 1 prisoner has qualified and been

released. No millions in savings has been had.

Ms. Burke testified to facts that were astounding to me, and perhaps others in the room. Every parole decision, as you write, does require a psychiatric evaluation, but the state has only one psychiatrist doing those evaluations and he/she presently has a 12-16 month back up. Such neatly explains why the Governor only gets 12 recommendations a year – one a month. Further, as deeply disturbing, Ms. Burke was asked whether the instrument used by the psychiatrist has been tested or verified in any manner to see if the outcomes are made useful by the instrument. Ms. Burke advised that the instrument has not been so tested. The Deputy Public Defender then asked for a copy of the instrument and Ms. Burke indicated it would be provided to the Board, which it was not until I wrote to Judge Long and asked where it was. It has now been provided and those professionals who have reviewed the instrument find it woefully lacking in any ability to predict which prisoners will commit future crimes after release.

Thus, if the parole commission is only capable and staffed to provide 12 recommendations for parole a year, obviously, the vast, vast majority of geriatric prisoners are destined to never received parole and to die in jail at great expense to the public. Releasing these folks, however, would provide enormous savings of dollars as was proven by a report done on the economic outcome of releasing the Ungers. That report, the citation of which and a copy of which I will be happy to provide you, indicates the costs including housing, social workers, and other support during the released Unger's life times would be about \$340,000 per released individual; while having kept the Ungers in jail for the remainders of life would have cost the State approximately \$960,000 per prisoner.

I must note two economic points here. First, when I said in my letter to the Governor that one-third of the savings generated by my proposal needed to be spent on releasing and released geriatric prisoners, I guessed at that number. The above study on the economics of releasing the Ungers show I was pretty accurate. And the reason I was accurate was that I knew the success of the Unger group is largely do to volunteer social and legal services provided both before and after their release – again see Millemann's law review article. What is disturbing about the Justice Reinvestment Board's Geriatric Parole Group's recommendations, however, is there is no money asked for providing pre-and post release services. Without such funds any such project could well fail – we cannot give these people \$40 and a bus ticket home.

I note that this letter is substantially longer than the two pages I sent Governor Hogan back in July. Part of that is because I have undertaken to learn more about the issues. Further, having presumed, by the end of August, that the Governor was not going to take up this issue, I began to talk with folks about legislative solutions to this problem. Actually, based on the race of the imprisoned this should actually not just be called just a "problem" but a disgrace and a blot on the reputation of the State of Maryland.

I am sure you are aware that I have fairly widely circulated my July 3 letter to the Governor. I am still in agreement with your comment to me at the end of our April meeting – this is the right

thing to do. And I think it is the right thing for the Governor to engage on this topic. It does not undercut his "tough on crime" comments of late, it is simply a recognition on his part that people change; that they can be re-habilitated; that many even in jail self-rehabilitate as they age despite that our prisons do not offer the best of rehabilitation services; and it is simply a recognition that human beings change, make mistakes as youngsters, and they should not just be considered forever the garbage of our society.

I have copied the Governor and Keiffer Mitchell on the mailed copy of this email. So I invite you to share this letter with anyone you please, and to afford me and others the opportunity to sit down with the Governor to make our case directly to him. And based on the Parole Commission's obvious inadequate ability to fix this problem alone, I again renew the concept of seeking outside assistance of counsel experienced in the criminal system both as prosecutors and defense counsel, otherwise the numbers of people who should be released will never get their opportunity and will just die in prison at taxpayers expense.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dan Clements", with a stylized flourish extending to the left.

Dan Clements
410-207-3161

cc: The Honorable Larry Hogan
Keiffer Mitchell

Subject: **Follow up to Justice Reinvestment meeting of 11/13**

Date: 11/15/2019 2:13:18 PM Eastern Standard Time

From: clementsdm@aol.com

To: christine.burke@maryland.gov

Cc: clementsdm@aol.com

Christine,

Hi, I am a retired attorney and attended the Justice Reinvestment meeting on Wednesday where you and Mr. Blumberg presented.

I have a question, not entirely related to your testimony. In the past 5 years, Governor Hogan's term(s), how many times has the Commission recommended parole for a lifer where the governor has agreed and the parole been granted? And conversely how many times has the Commission recommended parole for a lifer and the governor has not agreed, thus parole was not granted?

If you require a written and mailed PIA to supply this information, I will be happy to prepare such a letter, but to the extent you can please consider this a formal PIA.

Thanks so much. I found your testimony on the issue of geriatric parole issues most enlightening and educational.

Dan Clements
410-207-3161



Department of Public Safety and Correctional Services

Maryland Parole Commission

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STATE OF MARYLAND

LARRY HOGAN
GOVERNOR

BOYD K. RUTHERFORD
LT. GOVERNOR

ROBERT L. GREEN
SECRETARY

DAVID R. BLUMBERG
CHAIRMAN

November 19, 2019

Dan Clements
clementsdm@aol.com

VIA E-mail

RE: MPIA Request

Dear Mr. Clements,

Pursuant to your request dated November 15, 2019 for information, please find our response below:

As to your request for the number of lifer cases the Parole Commission has recommended parole to the Governor and the Governor has agreed during the Hogan Administration, the number is 36. The total number of paroles recommended by the Commission is 62, therefore, 26 cases have been denied by this Governor.

Pursuant to GP Section 4-362, you are entitled to seek judicial review of this decision. You also have the option to file a complaint with the public Information Act Compliance Board concerning the amount of fee charged, *see* GP section 4-1A-01 *et seq.*, and may also refer any concerns about this decision to the Public Access Ombudsman pursuant to GP Section 4-1B-01 *et seq.* Also, if you have any questions about this letter, please feel free to contact me.

Sincerely,

Christine Burke
Chief Administrator
Maryland Parole Commission

Dan Clements' Equal Justice Act of 2020 – Draft –

Whereas: African Americans comprise 70% of the prison population of the State of Maryland; a state in which African Americans comprise 29.2% of the population;

And whereas: Having a prison population of 70% African Americans makes Maryland the state with the highest proportion of African Americans prisoners in the Country; the state with the next highest proportion of African American prisoners is Mississippi, a state with a 39.2% African American population;

And whereas: Maryland has 95 inmates who have served in prison for 40 years or longer, 64 of those individuals are African American and 31 of those individuals are Caucasian – 67.3% black to 33.7% white; and of those individuals 27 were teenagers at the time of their incarceration – 28.42%;

And whereas: Maryland has 181 inmates who have served in prison between 35 and 39 years and of this group 118 are African Americans and 63 are Caucasian – 65.19% black to 34.80% white; and of those individuals 33 were teenagers at the time of their incarceration – 18.2%;

And whereas: Maryland has 300 inmates who were sentenced to life or life without parole as teenagers; and the Supreme Court has ruled that such sentences are unconstitutional;

And whereas: the Legislature recognizes that the above statistics are evidence of institutional bias in arrests, convictions, sentencing and/or parole decisions and that such should be corrected;

And whereas: 200 prisoners serving life sentences in Maryland were released as a result of the case of *Unger v. Maryland* in 2012 and thereafter without the risk to public safety as only three of those have been re-institutionalized but none for murder or sexual offenses;

And whereas: the Legislature recognizes that a substantial factor contributing to the lack of recidivism by the Unger group was the services provided by social workers and volunteers both before and following their release;

And whereas: the Legislature recognizes that geriatric prisoners create no serious risk to public safety upon their release;

And whereas: in the 1970's and 1980's and early 1990's as parole in Maryland worked in effect, individuals pleading guilty to crimes carrying a life sentence were accurately advised by both their counsel and the prosecutors that pleading guilty to "life" meant, absent unusual circumstances, an actual prison term of 20 to 25 years of incarceration;

And whereas: starting in the mid 1990's life sentences stopped meaning 20 to 25 years of incarceration but became upon edict of Maryland's Governors "life means life" thus creating the present extraordinary and growing geriatric population in Maryland prisons;

And whereas: Under Governor Glendening, the originator of the no parole for "lifers" policy, not a single lifer was paroled; and under Governor Ehrlich who largely abided by the "life means life policy" less than ten lifers were paroled; and under Governor O'Malley who fully adopted the Glendening policy, not a single lifer was paroled; and under Governor Hogan who has agreed to commute sentences of lifers but has commuted the sentences of 39 lifers over his five years in office, or 8 per year based on recommendations of the Parole Commission of only 12 per year;

And whereas: Even under Governor Hogan's more "liberal" commutation policy, 276 prisoners who have served 35 or more years in Maryland's prisons remain so imprisoned and at the rate of 12 recommendations a year those imprisoned would not get reviews or released for over 23 years;

And whereas: the Legislature recognizes that a change to "life means life" resulted in those guilty pleas to life with the understanding that such meant 20 to 25 years were induced to enter pleas under one set of facts upon which those individuals entered pleas ultimately resulting in detrimental reliance as the term of "life imprisonment" changed with time and circumstances;

And whereas: the Legislature believes it is appropriate and necessary to correct the results on the lives of those of relied to their detriment on then accurate representations of counsel and prosecutors;

THEREFORE: It is the purpose of this legislation to have the Parole

Commission release those geriatric prisoners and other who are not a risk to public safety, with the presumption that they are not a risk to public safety;

AND THEREFORE: It is the purpose of this legislation to remove the Governor from the parole process;

AND THEREFORE: It is the purpose of this legislation to establish terms of imprisonment for those convicted as teenagers appropriate for those who commit crimes as teenagers;

AND THEREFORE: It is the purpose of this legislation to direct that appropriate and substantial services be provided to those being released both in the sixty days prior to release and for at least six months to five years following release;

Article I – Parole Commission Obligations

A. Within eighteen (18) months of the enactment of this act, the Parole Commission shall, as set for below, review the files of each and every prisoner who has served 30 years or longer and has reached the age of fifty-five (55) or older.

1. Recognizing that the scope of this provision is beyond the present capacity of the Parole Commission and its members, the Commission can and must seek the assistance of volunteers to conduct the following review;

a) Each prisoner's original criminal file shall be reviewed; each prisoner's incarceration shall be reviewed; each prisoner shall be interviewed; the victim of each prisoner's crime if alive shall be interviewed and if not alive attempts shall be made to talk with at least one member of each of the victim's relatives;

b) The above reviews shall be conducted under the auspices of the State Public Defender's office who shall recruit and/or assist in recruiting the volunteers conducting the reviews; the volunteers shall conduct the reviews in teams of two who shall be responsible for making recommendations as set forth below; to the degree possible each review team shall consist of at least one person of color;

c) Prior to beginning each prisoner's file, the prisoner shall agree in order to be part of this process that their reviewed files are subject to public disclosure both to the reviewers, the Commission, and through requests made through the Public Information Act it being the intention of this act that this

process and the results of the process shall be transparent to the public and all participants; exceptions to disclosure as determined by the police, prosecutors, defense counsel or victims and victims families may include prohibiting information relating to others charged with the crime, informants information, previously undisclosed witness information, and any personal information regarding the victim or the victim's family which they wish to not be disclosed.

2) The above reviews shall be conducted with the following understanding – at the conclusion of the review all those who have served 30 years or longer will be released from prison on parole with a presumption of release unless by clear and convincing evidence the following is shown:

a) The prisoner remains a clear danger to themselves and/or the public;
b) The prisoner's acts which resulted in their conviction were part of a pattern of crime that extended for longer than 3 years;

c) The prisoner's in prison behaviors show a continuing course of conduct making it more likely than not that the prisoner would continue criminal conduct upon release; in considering this element, the prisoner's conduct during the immediate prior five years in prison shall be the only conduct considered;

d) Whether the prisoner's original crime was of such a nature as to establish an evil intent typically not seen with such a criminal act; e.g. multiple sexual assaults over a period of 3 years or longer, shooting a law enforcement officer;

e) A determination that the prisoner suffers from a mental disorder shall not preclude release providing that disorder is not in and of itself predictive of future violence;

3) After the reviews of the files has been conducted, no review if possible to take longer than 120 days and the reviews are to begin with the oldest prisoners who have served the longest terms the Parole Commission shall order the prisoner's release on parole and/or probation if so recommended by the reviewers; any prisoner denied such release shall have the right to appeal the decision to the Circuit Court of their original conviction and any prisoner denied such release shall have the right to a new review of these conditions every three years after the initial denial.

4) Those prisoners whose release is to occur shall be released within 90 days of the determination and it shall be required of the Department of Corrections that during those 90 days the prisoner shall be afforded the support and assistance of a paid social worker and whatever other appropriate services are

necessary to result in a comfortable transition back into the community.

a) Upon release the prisoner shall be entitled to post release support of a specifically assigned social worker or post release assistant and assistance shall be provided for the finding of housing, the payment of housing, and any other social services determined to be necessary to assist the prisoner in maintaining their obligations while on parole and or probation.

b) Along those lines it is understood by the Legislature that this act will result in substantial economic savings flowing from the release of these prisoners and the Department of Corrections is required by this act to expend whatever sums are necessary per prisoner, up to 1/3 of the annual cost of imprisonment, on services to be provided post release for each prisoner for a period of at least 3 years and longer if determined necessary by the social workers working with the prisoners. If the released prisoner believes they are receiving inadequate post release services they have the right file in the appropriate Circuit Court of their residence for an order of court requiring the Department of Corrections to provide and pay for those services, including, when necessary, appropriate health and mental health services.

Article II: Any law requiring involvement of the Governor of the State of Maryland in the parole process shall be hereby revoked the above process shall occur without the necessity of the Governor's approval or involvement. This provision does not, however, revoke the Governor's general rights to grant parole or commutations or pardons on his own account.

Article III: Any prisoner presently serving a sentence of life or life without the possibility of parole who was sentenced as such for a crime(s) committed as a juvenile and who has served at least 20 years in prison shall be considered for release under the same terms and conditions as set forth in Article I.



Department of Public Safety and Correctional Services

Public Information Act Request Form

PURSUANT TO THE GENERAL PROVISIONS ARTICLE SECTION 4-101 THROUGH 4-601, OF THE ANNOTATED CODE OF MARYLAND, THE UNDERSIGNED REQUESTS A COPY OF ALL PUBLIC RECORDS CONTAINING THE INFORMATION HEREINAFTER DESCRIBED.

Date: 12/5/19

Requester: Daniel M. Clements

Phone 410-207-3161


Address: 17 Southgate Avenue

City: Annapolis

State: MD

Zip: 21401

I request the following public record/s: The name of each member of the Parole Commission from 1980 to present; including along with their name their race, sex, date of birth and their term of service on the Parole Commission.

Requester's Signature: 

A copying fee of \$.50 per page will be charged for every request of three or more pages. When the request has been approved, you will be notified as to the total fee. Remit the exact amount by check or money order, payable to the "Maryland Department of Public Safety and Correctional Services" within 30 days from date of approval.

Should your request be denied, you will be notified within 30 days and you will have the right to several methods of resolution through GP § 4-1B-04 and GP § 4-362.

Mail or Email: Renata Seergae, Maryland DPSCS, 300 East Joppa Road, Towson, MD 21286

renata.seergae@maryland.gov

For State Use Only			
Reviewer:		Agency/Division:	Date:
Approved	Denied	Fee: \$	# of Pages:

Subject: MD DPSCS PIA Request Inmate Deaths
Date: 2/20/2020 3:03:32 PM Eastern Standard Time
From: jay.miller@maryland.gov
To: clementsdm@aol.com
Cc: Ivy.Williams@maryland.gov, angelina.guarino1@maryland.gov

Attached is an Excel file, which provides the requested aggregate counts.

Please let me know if you have any questions or concerns.

Thank you



Jay E. Miller

Director, Office of Data Development

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Death Year	50-54	55-59	60-64	65-69	70-74	75-79	80+	Total
2010	10	7	9	3	0	3	1	33
2011	11	6	3	5	3	0	2	30
2012	7	6	10	3	2	2	3	33
2013	13	10	9	7	3	1	2	45
2014	5	8	3	6	6	2	4	34
2015	9	10	14	5	5	4	2	49
2016	13	11	3	7	2	1	1	38
2017	3	6	8	6	5	6	4	38
2018	12	14	3	3	5	2	3	42
2019	6	8	9	4	4	1	3	35

The Maryland Unger Project: Demonstrating That Many Older Life-Sentenced Prisoners Can Be Safely Released

In 2012, the Maryland Court of Appeals, in *Unger v. State*, held that 237 old prisoners were entitled to new trials because, remarkably, the judges had told their juries that they—the jurors—could decide the law as well as the facts.

As of November 5, 2019, 199 of these prisoners had been released. On release, on average, they were 64 years old and had served almost 40 years. All were serving parole-eligible life sentences, most for murder (especially felony murder), and some for rape. All were convicted before 1981; one as long ago as 1952. Most had redeemed their lives in prison through hard work and participation in programs.

All but one of the release orders were based on agreements between prosecutors and the prisoners that placed the prisoners on probation.

The University of Maryland-Carey School of Law, working with the State Public Defender's Office, created a reentry program, with social workers and students, to help these old prisoners—all convicted before Ronald Reagan began to serve his first term--reenter a foreign world none had known before.

To say this has been a success understates it. On average, this group has been out of prison for four to five years. To date, only six (6) have been sent back to prison; three based on convictions for new crimes, three for violations of probation. This is especially remarkable since the 199 were not "cherry-picked." Rather, they were **84% of all prisoners in Maryland who had been convicted by juries before 1981**. Some had been recommended for parole by the parole commission, but most probably had not.

When they were convicted, the average length of a "lifer's" incarceration prior to parole, assuming good conduct, was 20 years. In 1995, the Maryland governor pledged not to approve parole for any lifers sentenced with the possibility of parole regardless of the circumstances of the crime, whether there was overwhelming evidence of rehabilitation, and whether the Parole Commission had recommended parole (as it did in many of these cases). This political decision, by executive fiat, converted life-with-parole sentences into life-without-parole sentences and nullified the role of the Parole Commission. Since then, Maryland governors, especially Democratic governors, have largely followed this no-parole policy for parole-eligible lifers.

The Unger project strongly supports national efforts to reduce prison populations and to reform laws and policies governing sentencing, parole and corrections. It also demonstrates that states and the federal government can save substantial funds by releasing older prisoners. There are almost a quarter of a million of them now in the U.S. They cost over \$50,000 per year to incarcerate, many billions of dollars annually.

The Pervasive and Lasting Effects of Race

The experiences of the Unger group wholly validate the claims made by many scholars about racism in the criminal justice system.¹ The advisory-only jury instruction added an especially ugly dimension to the racism.

¹ See, e.g., MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (2010).

As we said earlier, in the Unger group, 84% of those for whom race is known were African-Americans.² These numbers are grossly disproportionate to the relative percentages of African-Americans and whites charged with homicides in the 1960s and 70s.³

All parts of Maryland in this period had racial strife.⁴ All of the 237 Unger cases were tried before the Supreme Court held in *Batson v. Kentucky* that prosecutors could not use peremptory challenges to strike minorities from juries.⁵ In the 1960s in Baltimore City, African-Americans were not generally summoned for jury duty,⁶ and when they were in the 1970s, the prosecutors routinely struck them with peremptory challenges.⁷ This was true statewide as well. Thus, the juries in the trials of the Unger clients did not come from fair cross-sections of their communities.

In the 1960s and early 1970s, when the Unger group was convicted, Baltimore was a majority-white city. It had a substantial white working class population and a growing African-American population.⁸ A measure of the views of the people throughout the State was provided by the presidential primary in 1964. When George Wallace, famous for his “segregation now, segregation tomorrow, segregation forever” pledge as Alabama governor, ran, he won 43% of the vote in

² See UNGER PROJECT DATA, *supra* note **Error! Bookmark not defined.**

³ See *Id.*; RACE, CRIME, AND JUSTICE, *supra* note **Error! Bookmark not defined.**; FBI UNIFORM CRIME REPORT, *supra* note **Error! Bookmark not defined.**; AM. SOCIOLOGICAL ASS’N, *supra* note **Error! Bookmark not defined.**

⁴ See SUZANNE E. GREENE CHAPPELLE, JEAN H. BAKER, DEAN R. ESSLINGER, WHITMAN H. RIDGWAY, JEAN B. RUSSO, CONSTANCE B. SCHULZ & GREGORY A. STIVERSON, MARYLAND: A HISTORY OF ITS PEOPLE 262 (1986) (discussing racial violence occurring in Maryland in the 1960s).

⁵ *Batson v. Kentucky*, 476 U.S. 79 (1986).

⁶ There was a “key man” system in effect in Baltimore City until 1969. Pursuant to this system, each judge of the seventeen judges on the circuit court (then called the Supreme Bench), all of whom were white until 1967, asked “key men,” friends of the judges, to nominate jurors for criminal trials. After this practice ended in 1969, African-American representation in Baltimore City juries increased significantly. See *Archives of Maryland Historical List, Supreme Bench of Baltimore City and Baltimore City Circuit Court, 1867-*, MD. ST. ARCHIVES, <https://msa.maryland.gov/msa/speccol/sc2600/sc2685/html/supbench.html>; Douglas L. Colbert, *Challenging the Challenge: Thirteenth Amendment as a Prohibition Against the Racial Use of Peremptory Challenges*, 76 CORNELL L. REV. 1, 114–15 n.562 (1990) (stating: “In 1969, Baltimore revised its jury selection procedures, and selected registered voters to serve as jurors instead of personally selecting ‘key-men.’ The difference increased black jury representation from 30% to 46.7% in the years 1969 to 1974.”) (citing JON M. VAN DYKE, JURY SELECTION PROCEDURES: OUR UNCERTAIN COMMITMENT TO REPRESENTATIVE PANELS 33–34 (1977)).

⁷ In Maryland in the 1960s and 70s, legal challenges to the exclusion of minorities from juries met with little success. See, e.g., *Brooks v. State*, 240 A.2d 114 (Md. Ct. Spec. App. 1968) (stating that of 400 prospective jurors, only fourteen were African-American, and that—as well as other evidence of exclusion of African-Americans from the jury—was not enough to establish a prima facie case of purposeful discrimination).

⁸ See KENNETH D. DURR, BEHIND THE BACKLASH: WHITE WORKING-CLASS POLITICS IN BALTIMORE, 1940–1980 126 (2003); HAROLD A. MCDUGALL, BLACK BALTIMORE: A NEW THEORY OF COMMUNITY 98 (1993).

Maryland, and won the majority-white precincts.⁹ If you exclude African-Americans, then over 20% of Maryland's population, who almost certainly did not vote for him, *it means a majority of white people in Maryland voted for Wallace*.¹⁰ This majority often formed the majorities of juries with the racist exclusion of blacks from juries.

During the 1960s and 70s, race relations in Maryland, as throughout the country, also were inflamed by the backlash against the Civil Rights Movement, the assassination of Dr. Martin Luther King Jr., the violent disturbances in reaction to that event, and the angry counter-responses.¹¹

It was in this context that judges in the trials of the Unger group were instructing juries that they were free to decide what the law was.

Over-Incarceration, Especially of Older, Long-Incarcerated Prisoners

There is a developing consensus that the United States incarcerates far too many people.¹² The Unger Project experiences support this consensus, demonstrating that thousands of older long-incarcerated prisoners could be safely released, especially with post-release support. These experiences are highly relevant in the current debates about our nation's penal policy generally and about over-incarceration specifically.¹³ The Project experiences confirm recidivist studies¹⁴ and support arguments, including cost-effective arguments, against over-incarceration.¹⁵ Our Unger clients put human faces on these policy arguments.

⁹ See DURR, *supra* note 8, at 124.

¹⁰ See U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES 36 (101st ed. 1980).

¹¹ See DURR, *supra* note 8, at 141–42. See Sears, *supra* note **Error! Bookmark not defined.**

¹² See PEW CTR. ON THE STS., TIME SERVED: THE HIGH COST, LOW RETURN OF LONGER PRISON TERMS (2012); ACLU, *supra* note **Error! Bookmark not defined.**; Caitlin J. Taylor, *Ending the Punishment Cycle by Reducing Sentence Length and Reconsidering Evidence-Based Reentry Practices*, 89 TEMP. L. REV. 747 (2017); Lynn Adelman & Jon Deitrich, "Booker," *Judges, and Mass Incarceration*, 29 FED. SENT'G REP. 224 (2017). See also ALEXANDER, *supra* note 1; ELIZABETH HINTON, FROM THE WAR ON POVERTY TO THE WAR ON CRIME: THE MAKING OF MASS INCARCERATION IN AMERICA (2016); STEVEN RAPHAEL & MICHAEL A. STOLL, DO PRISONS MAKE US SAFER? 3 (2009) ("Over the past three decades, the U.S. prison incarceration rate has increased to unprecedented levels. Prior to the mid-1970s, the incarceration rate was stable . . . thereafter, however, the incarceration rate increases precipitously. Between 1975 and 2004, the prison incarceration rate more than quadrupled.").

¹³ See, e.g., Roger Fairfax, *From Overcriminalization to Smart on Crime: American Criminal Justice Reform-Legacy and Prospects*, 7 J. L. ECON. & POL'Y 597 (2011); Mary D. Fan, *Beyond Budget-Cut Criminal Justice: The Future of Penal Law*, 90 N.C. L. REV. 581 (2012); Carol S. Steiker, *Symposium: Mass Incarceration: Causes, Consequences, and Exit Strategies: Introduction*, 9 OHIO ST. J. CRIM. L. 1 (2011).

¹⁴ See CAL. DEP'T CORRECTIONS & REHABILITATION, *supra* note **Error! Bookmark not defined.**; OSBORNE ASS'N, *supra* note **Error! Bookmark not defined.**; Goldstein, *supra* note **Error! Bookmark not defined.**

¹⁵ CTR. FOR JUST. COLUM. U., AGING IN PRISON: REDUCING ELDER INCARCERATION AND PROMOTING PUBLIC SAFETY IX (2015); Matt Stroud, *U.S. Taxpayers Shell Out \$16 Billion Every Year to Care for Elderly Prisoners*, FORBES (July 1, 2013), <https://www.forbes.com/sites/mattstroud/2013/07/01/caring-for-elderly->

We emphasize that those in the Unger group were not selected because they had the best prison records - although most had good-to-excellent records. The Maryland Parole Commission recommended many for parole, but almost certainly not the majority.¹⁶ The 237 are representative of long-term lifers generally, and there is no reason to distinguish the 199 released in Maryland from tens of thousands of long-term, old lifers across the country.

Geriatric prisoners are a special national problem. Nationally, almost one-quarter of a million prisoners are age fifty or older.¹⁷ With longer mandatory sentences and less meaningful opportunities for parole, the prison population continues to age in place. From 1995 to 2010, the numbers of prisoners age fifty-five or older nearly quadrupled, from 32,600 to 124,400.¹⁸ By 2020 older inmates will represent 21% to 33% of the prison population.¹⁹

The cost of keeping aging prisoners behind bars is an estimated \$16 billion per year, including \$3 billion in medical care.²⁰ By 2030, it is estimated that up to one-third of the entire prison population in the United States, upwards of 400,000 prisoners, will be classified as elderly.²¹ While it costs approximately \$34,100 per year on average to incarcerate a prisoner, it costs approximately twice as much, \$68,270 per year, to incarcerate an elderly prisoner.²² That is a major reason Maryland's corrections spending grew by 674% over the last twenty-five years.²³

In sum, the Unger experiences strongly support policy arguments in favor of many criminal justice reforms, including those limiting prison populations, against life-without-parole sentences, and in favor of a substantially expanded use of parole, not parole-abolition, for lifers.

prisoners/#51fa085722f2. Currently, the Open Society Institute-Baltimore is conducting an economic study that will measure the savings from the releases of the Unger group. The annual cost of an elderly inmate is roughly double that of a younger inmate, in large part because of the enhanced medical expenses, with estimates in the \$60,000 to \$70,000 a year range. *Id.* The Unger group members, on average, were incarcerated thirty-nine years. Using a more conservative cost figure, \$50,000 a year, and considering only the last fourteen years of their incarcerations, everything over twenty-five years cost the State over 160 million dollars (236 x 14 x \$50,000) in prison costs. Obviously, there are some offsetting costs of reentry.

¹⁶ See *supra* Part V.D.

¹⁷ OSBORNE ASS'N, *supra* note **Error! Bookmark not defined.**, at 2.

¹⁸ HUMAN RIGHTS WATCH, OLD BEHIND BARS: THE AGING PRISON POPULATION IN THE UNITED STATES 24 (2012).

¹⁹ R.V. Rikard & Ed Rosenberg, *Aging Inmates: A Convergence of Trends in the American Criminal Justice System*, 13 J. CORRE. HEALTH CARE 150, 151 (2007).

²⁰ CTR. FOR JUST. COLUM. U., *supra* note 15, at IX; Stroud, *supra* note 15.

²¹ CTR. FOR JUST. COLUM. U., *supra* note 15, at 3; Stroud, *supra* note 15; ACLU, *supra* note **Error! Bookmark not defined.**, at v. See also MORTON, *supra* note **Error! Bookmark not defined.**

²² ACLU, *supra* note **Error! Bookmark not defined.**, at 28; PEW CHARITABLE TRUSTS & MACARTHUR FOUND., STATE PRISON HEALTH CARE SPENDING 1 (2014) (stating that health care spending peaked at \$ 8.2 billion in 2009 and since declined, due in part to a decrease in state prison populations).

²³ MD. DEP'T OF PUBLIC SAFETY & CORRECTIONAL SERVS., QUARTERLY INMATE CHARACTERISTICS REPORT (July 2013), http://www.dpscs.state.md.us/publicinfo/pdfs/stats/data-reports/I_and_I-Statistics/Inmate_Characteristics/Quarterly_Inmate_Characteristics/FY2014/2013_July_Inmate_Char.pdf.