BRIAN E. FROSH
Attorney General

ELIZABETH F. HARRIS
Chief Deputy Attorney General

CAROLYN QUATTROCKI
Deputy Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

FACSIMILE NO.

WRITER'S DIRECT DIAL NO.
410-576-6584

February 3, 2021

TO: The Honorable William C. Smith, Jr.
Chair, Judicial Proceedings Committee

FROM: The Office of the Attorney General

RE: SB 202 – Correctional Services – Parole – Life Imprisonment – **Support**

The Office of Attorney General urges this Committee to favorably report SB 202.[1] If enacted, this legislation would remove the Governor's power to veto Parole Commission grants of parole to individuals who (a) are serving life sentences, and (b) have already been imprisoned 20 or more years.

Under Maryland law, "an inmate sentenced to life imprisonment with the possibility of parole is not eligible for parole consideration until the inmate has served 15 years (or the equivalent of 15 years taking into account diminution credits)."[2] By eliminating the Governor's power to block a release upon a favorable Parole Commission recommendation only after an inmate has served 20 years, this legislation ensures that those eligible to benefit from the provision will have served at least 5 additional years after they first became eligible for parole. Twenty years is the equivalent of two decades—nearly a whole generation—and ample time for retribution, deterrence, incapacitation, and rehabilitation. Moreover, only those prisoners the Parole Commission deems mature and rehabilitated enough to warrant release will benefit from the provision.

---

[1] The Office of Attorney General's support for the policy advanced by SB 202 is neither an admission, stipulation, concession nor indication that the current Maryland parole practice is unconstitutional. *See Carter v. State*, 461 Md. 295, 307 (2018) ("[T]he laws governing parole of inmates serving life sentences in Maryland, including the parole statute, regulations, and a recent executive order adopted by the Governor, on their face allow a juvenile offender serving a life sentence a 'meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.'"). Suboptimal, but constitutional, parole outcomes that can be improved legislatively ought to be so improved. In short, nothing in this written testimony signals a shift in the State's litigation position in *Maryland Restorative Justice Initiative et al. v. Gov. Larry Hogan, et al.*, 1:16-cv-01021-ELM.

[2] *Carter*, 461 Md. at 319 (citing CS § 7-301(d)(1); COMAR 12.08.01.17A(7)).

Maryland's practice of providing its Governors a veto power in the context of parole is in the distinct minority amongst states. There are only two other states that follow this practice: Oklahoma[3] and California.[4]

It is beyond dispute that Maryland Governors, dating back to 1995, have seldom approved parole for individuals serving life sentences. At least one such governor, Parris Glendening, coined the phrase "life means life" and refused to grant any paroles to inmates sentenced to life imprisonment except in the case of very old or terminally ill inmates—even when they were eligible and the Parole Commission recommended parole. Governor Glendening's successor, Robert Erlich, granted only few paroles to individuals serving life for reasons other than exceedingly old age or terminal illness. During his two terms, Governor Martin O'Malley returned to the Glendening practice of not granting anyone sentenced to life imprisonment parole.

Upon information and belief, approximately 415 currently incarcerated individuals, circa 200 of whom were juveniles at the time they committed their crimes, might benefit from this provision. If the past is prologue, the vast majority of these individuals will not survive Parole Commission scrutiny. In the 20 years preceding March 2016, evidence suggests that "the Parole Commission had recommended parole for 27 inmates serving life sentences, that governors had denied 24 of those recommendations, and that three remained pending."[5] Nonetheless, if the Governor were removed from the process a quarter century ago, then at least 24 more demonstrably deserving people would be free today.

The time has come to remove gubernatorial politics from Maryland's parole process. It is for this reason that the Office of Attorney General supports SB 202.

cc: Members of the Judicial Proceedings Committee

[3] *See Carter*, 461 Md. at 320 n.12; *see also Tryon v. State*, 423 P.3d 617, 650 (Okla. Crim. App. 2018) ("Parole is a discretionary act of the Governor which releases a person from jail, prison or other confinement, after actually serving a part of the sentence. Probation, on the other hand, relates to judicial action taken before the prison door is closed, and is part of the sentence imposed") (internal quotations and citations omitted).
[4] *See Carter*, 461 Md. at 320 n.12; *see also Gilman v. Brown*, 814 F.3d 1007, 1010 (9th Cir. 2016) (Stating that California's amended constitution gave discretion to the governor to make parole decisions).
[5] *Id.* at 330.