Testimony for the House Judiciary Committee
March 26th, 2021

SB 202 Inmates - Life Imprisonment - Parole Reform

FAVORABLE WITH AMENDMENTS

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The ACLU of Maryland supports SB 202, which would bring Maryland into line with other states by giving the final say on parole for individuals serving parole-eligible life sentences to the Parole Commission.

The process for earning a recommendation for parole from the Maryland Parole Commission is itself extremely long and rigorous. An individual must serve many years before he or she can even be considered by the Parole Commission. After an initial hearing before two commissioners, parole candidates are subjected to an intensive risk assessment, reconsideration by the two-person panel, and, if successful, a vote by the entire Parole Commission. Only a tiny fraction of people serving life sentences make it through this process, which typically takes at least two years, and which invites opportunity for victim input at any stage.

Currently, Maryland is one of only three states in the country that adds an additional political step, requiring the Governor to personally approve parole for any individual serving a parole-eligible life sentence.[1] Ever since the 1990s, Maryland Governors have essentially refused to parole lifers regardless of individual merit and despite the fact that these individuals were sentenced with an understanding that, if they earned it, they would have a meaningful chance to live outside prison walls.

Maryland's current practice politicizes the parole process and disregards both the intent of the judges who sentence individuals to parole-eligible sentences and the expertise of the Parole Commission.

Maryland law is supposed to treat life and life without parole sentences differently. In Maryland, more than 2,000 individuals are serving sentences of life with the possibility of parole, including nearly 300 whose offenses were committed at age 17 or younger and 400 people who are now

[1] The other states are California and Oklahoma.

50 years or older. (An additional 300 people are serving life without parole sentences; this bill does not affect them). Individuals serving life with parole were sentenced with the understanding that, if they demonstrated their rehabilitation, one day they would receive meaningful consideration for release.

But in the 1990s, Maryland Governors instituted a policy of denying lifers parole, regardless of individual merit, essentially changing their sentences to life without parole.[2] This policy has become so entrenched that until very recently, *no lifer had been paroled by a Governor in Maryland in nearly a quarter of a century*—during the tenure of several different Governors –no matter how thoroughly he or she had been rehabilitated.[3] Thanks to enormous public pressure and legal action in the courts, the current administration has allowed a handful of lifers to be paroled. But these actions show what people serving life sentences and their supporters have said for years: That whether people obtain their freedom on parole in Maryland is driven by politics, not merit. Marylanders who turn their lives around should have the right to earn parole. It should not depend on who is Governor – not now, and not in the future.

Moreover, under the current administration, the majority of lifers recommended to the Governor are still denied, many of whom are in their 50s and 60s. Many lifers have now spent three or four decades doing everything within their power to make things right – being model prisoners, holding jobs, mentoring younger prisoners, and more, only to be denied any hope of release. Maryland is spending millions of dollars incarcerating people who have demonstrated that they can safely return to their communities.

In 2011, the Maryland General Assembly expressed its opposition to this senseless approach and attempted to craft a compromise by passing legislation that required the Governor to act on Parole Commission decisions within 180 days after Commission approval. But it is clear that this step was not sufficient to take the politics out of parole: then-Governor O'Malley simply denied the application of the dozens of cases on his desk. Little has changed under the current Governor.

This bill seeks to bring Maryland into line with other states—most states

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[2] In the years prior, Governors routinely paroled lifers. Between 1969-1995, 181 lifers were paroled.

[3] A handful of individuals' sentences have been commuted in the last two decades, meaning that the Governor reduced their sentence. There are no standards governing commutations and no requirement of continuing supervision by the Courts. In contrast, a person who is paroled from a life sentence remains under supervision.

routinely parole lifers who are serving parole-eligible sentences. SB 202 makes no changes to the parole process except to take some of the politics out of parole by giving the final decision to the Parole Commission instead of the Governor. It does not guarantee the release of any person. In fact, the bill increases to 20 years the time individuals must serve before being considered for parole but makes no changes to the rigorous, multi-step process that the Parole Commission uses to evaluate people for parole, including the seriousness of the offense, victim impact, and psychological assessments. The current practice of the Parole Commission is to recommend people serving life-with-parole sentences for parole only in the rarest of cases.[4]

SB 202 seeks to take the politics out of parole by leaving the decision to parole up to the Parole Commission. This change will not open any floodgates. It simply makes it possible for people with parole-eligible sentences to be released *if* the Parole Commission makes the decision to recommend them after its extensive vetting—the way the system is supposed to work.

Lastly, the Senate Judicial Proceedings committee intended to require majority approval by the Parole Commission before a parole candidate serving a life sentence may be found suitable for parole. This is the current practice of the Parole Commission, which requires two commissioners to "hear" the case and then, after further processes, requires a majority vote to approve parole for people serving life sentences. However, as drafted, the amendments do something quite different — they require six commissioners to "hear" the case, meaning to be present for and conduct the parole hearing. Not only is this not what the committee intended, but it also creates an administrative nightmare for the MPC and the DOC due to the complexity of Commissioner schedules and the limitations of DOC space capacity. We propose a friendly amendment that would simply codify existing language in COMAR that describes how the MPC conducts votes in lifer cases.

For these reasons, we urge you to issue a favorable report on SB 202, with amendments.

[4] In response to a 2018 Public Information Act request, the Parole Commission indicated it had recommended less than ten people for parole—out of more than 2,000—in the last ten years. An additional number of people have been recommended for commutations, averaging to about 4 per year, depending on the year.