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POSITION ON PROPOSED LEGISLATION

BILL: SB 98 - Correctional Services – Geriatric and Medical Parole

FROM: Maryland Office of the Public Defender

POSITION: Favorable

DATE: 02/07/2023

The Maryland Office of the Public Defender respectfully requests that the Committee issue a favorable report on Senate Bill 98. This written testimony focuses on the geriatric parole provisions within the Bill.

Across the country, elderly populations within prison systems are increasing.¹ Since 2003, the fastest growing age group in the prison system has been persons aged 55 and older.² The Maryland Department of Public Safety and Correctional Services reports that as of July 2022, **14,983** people were housed within the Division of Correction.³ Of those, **2,035 were between the ages of 51 and 60 and 1105 were over 60. *Id.***

Several considerations specific to incarcerated seniors demonstrate the need for legislation directed at expanding options for their release. **First**, elderly persons have particular health and safety concerns that living in prison exacerbates. **Second**, elderly persons are less likely to reoffend upon reentering the community than younger persons. **Third**, incarcerating elderly persons is more expensive for the State and its taxpayers than incarcerating younger persons.

First, elderly inmates' health needs are more complex than those of younger inmates. Elderly persons in prison are more likely to be living with chronic health conditions than their

¹ Brie A. Williams, *et al.*, *Addressing the Aging Crisis in U.S. Criminal Justice Healthcare*, 45 J. Am. Geriatric Soc. 1150-56, author manuscript at *3 (2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3374923/pdf/nihms363409.pdf> (citing U.S. Dep't of Justice, Bureau of Justice Statistics, Office of Justice Programs, *Prisoners Series 1990 – 2010*, <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbse&sid=40>).

² U.S. Dep't of Justice, Bureau of Justice Statistics, *Aging of the State Prison Population, 1993-2013* (May 2016), <https://www.bjs.gov/content/pub/pdf/aspp9313.pdf>.

³ Maryland Department of Public Safety and Correctional Services, Division of Correction, *Inmate Characteristics Report FY 2022*, <https://dpscs.maryland.gov/publicinfo/publications/pdfs/Inmate%20Characteristics%20Report%20FY%202022%20O4.pdf>.

younger counterparts.⁴ “On average, older prisoners nationwide have three chronic medical conditions and a substantially higher burden of chronic conditions like hypertension, diabetes and pulmonary disease than both younger prisoners and older non-prisoners.”⁵

Research suggests a correlation between prison life and decline in health. In a 2007 study, researchers interviewed 51 incarcerated men in prison in Pennsylvania with an average age of 57.3 years as well as 33 men in the community with an average age of 72.2.⁶ The researchers compared the rates of high cholesterol, high blood pressure, poor vision, and arthritis between the two groups, finding that the data suggested that the health of male inmates was comparable to men in the community who were 15 years older. *Id.* A similar study published in 2018 of 238 participants similarly found that “[a]mong older adults in jail with an average age of 59, the prevalence of several geriatric conditions was similar to that found among community[-]dwelling adults age 75 or older.”⁷

Additionally, elderly incarcerated persons, particularly those with elevated health concerns, “are at an elevated risk for physical or sexual assault victimization, bullying, and extortion from other prisoners or staff compared to their younger counterparts.”⁸ Older prisoners also report higher stress and anxiety than their younger counterparts, “including the fear of dying in prison and victimization or being diagnosed with a severe physical or mental illness.”⁹ Correctional institutions struggle to meet elderly prisoners’ health needs. “Prisons typically do not have systems in place to monitor chronic problems or to implement preventative measures.”¹⁰

⁴ Tina Maschi, Deborah Viola, & Fei Sun, *The High Cost of the International Aging Prisoner Crisis: Well-Being as the Common Denominator for Action*, 53 *The Gerontologist* 543-54 (2012), <https://academic.oup.com/gerontologist/article/53/4/543/556355>.

⁵ Brie A. Williams, *et al.*, *Addressing the Aging Crisis in U.S. Criminal Justice Healthcare*, *J. Am. Geriatric Soc.* 1150-56, author manuscript at *3 (2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3374923/pdf/nihms363409.pdf>.

⁶ Susan J. Loeb, Darrell Steffensmeier, & Frank Lawrence, *Comparing Incarcerated and Community-Dwelling Older Men’s Health*, *West J. Nurs. Res.* 234-49 (2008), <https://pubmed.ncbi.nlm.nih.gov/17630382/>.

⁷ Meredith Greene, *et al.*, *Older Adults in Jail: High Rates and Early Onset of Geriatric Conditions*, *Health & Justice* (2018), author’s manuscript at *4, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5816733/pdf/40352_2018_Article_62.pdf.

⁸ Maschi, *supra*, at 545 (citing Stan Stocovic, *Elderly Prisoners: A Growing and Forgotten Group Within Correctional Systems Vulnerable to Elder Abuse*, 19 *J. of Elder Abuse & Neglect* 97-117 (2008)). https://www.tandfonline.com/doi/abs/10.1300/J084v19n03_06.

⁹ *Id.* (citations omitted); *see also* Stephanie C. Yarnell, Paul D. Kirwin & Howard V. Zonana, *Geriatrics and the Legal System*, 45 *J. of the Am. Academy of Psychiatry & the L. Online* 208-17 (2017), <http://jaapl.org/content/jaapl/45/2/208.full.pdf>.

¹⁰ *At America’s Expense: Mass Incarceration of the Elderly*, *Am. Civil Liberties Union*, 28-29 (2012), <https://www.aclu.org/report/americas-expense-mass-incarceration-elderly>.

The COVID-19 pandemic exacerbates these health concerns. The threat of COVID-19 is not over: as of January 26, 2023, the virus has infected more than **102 million** people in the United States¹¹ and more than **1.3 million** Marylanders.¹²

People living in prisons are especially vulnerable to COVID-19. The CDC has cautioned that “[c]orrectional and detention facilities are high-density congregate settings that present unique challenges” to effective COVID-19 testing, mitigation, and treatment.¹³ Prisons are closed spaces in which detainees sleep, eat, recreate, and share hygiene facilities in close proximity to each other and do not have the freedom to distance themselves from their peers. Under these conditions, communicable diseases like COVID-19 spread more readily through touch inside correctional facilities.¹⁴ From the start of the pandemic to June 25, 2021, the Marshall Project tracked reported cases of COVID-19 among incarcerated people, until the data became impossible to continue collecting.¹⁵ The organization noted **398,627** confirmed COVID-19 cases reported among incarcerated persons across state and federal prisons, which is thought to be a significant undercount. *Id.*

COVID-19 is especially dangerous for incarcerated **seniors**. The CDC cautions that “[m]ore than 81% of COVID-19 deaths occur in people over age 65.”¹⁶ Those with underlying medical conditions, which seniors are more likely to have, are also at increased risk of severe illness with COVID-19.¹⁷ The mortality rate for persons with COVID-19 and certain comorbidities are significantly higher than the mortality rate among those without these comorbidities.

I turn now to research demonstrating lower recidivism rates among elderly persons released from prison. The United States Sentencing Commission examined 25,431 federal offenders released in 2005, using a follow-up period of eight years for its definition of

¹¹ *COVID-19 Dashboard*, Johns Hopkins University, Center for Systems Science and Engineering, <https://www.arcgis.com/apps/opsdashboard/index.html#/bda7594740fd40299423467b48e9ecf6> (last visited Jan. 26, 2023).

¹² *Coronavirus Disease 2019 (COVID-19) Outbreak*, Maryland Department of Health, <https://coronavirus.maryland.gov/> (last visited Jan. 26, 2023).

¹³ *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html> (last visited Dec. 8, 2020).

¹⁴ Dan Morse & Justin Jouvenal, *Inmates Sharing Sinks, Showers and Cells Say Social Distancing is Impossible in Maryland Prisons*, The Washington Post (Apr. 10, 2020), https://www.washingtonpost.com/local/public-safety/inmates-sharing-sinks-showers-and-cells-say-social-distancing-isnt-possible-in-maryland-prisons/2020/04/10/5b1d5cf8-7913-11ea-9bee-c5bf9d2e3288_story.html.

¹⁵ *A State-By-State Look at 15 Months of Coronavirus in Prisons*, The Marshall Project, <https://www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons> (last visited Jan. 26, 2023).

¹⁶ *People with Certain Medical Conditions*, Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html> (last visited Jan. 26, 2023).

¹⁷ *Id.*

recidivism.¹⁸ For the eight years after their release, the Commission calculated a rearrest rate of 64.8% for the released persons younger than 30, 53.6% for the released persons between the ages of 30 and 39, 43.2% for the released persons between 40 and 49, 26.8% for the released persons between 50 and 59, and 16.4% for the released persons older than 59. *Id.*

The Commission's data shows that the recidivism rate drops off most sharply after the age of 50. Moreover, before age 50, released persons are most likely to be re-arrested for assault. *Id.* After age 50, they are most likely to be re-arrested for a comparatively minor public order offense like public drunkenness. *Id.* The American Civil Liberties Union has also compiled data collected nationally and from various states demonstrating that older incarcerated persons across the country have a "lower propensity to commit crimes and pose threats to public safety."¹⁹

It is also more expensive to incarcerate elderly persons than their younger counterparts. At the national level, "[b]ased on [the Bureau of Prisons'] cost data, [the Office of the Inspector General] estimate[s] that the [Bureau of Prisons] spent approximately \$881 million, or 19 percent of its total budget, to incarcerate aging inmates in [fiscal year] 2013."²⁰ "According to a National Institute of Corrections (NIC) study from 2004, taxpayers pay more than twice as much per year to incarcerate an aging prisoner than they pay to incarcerate a younger one."²¹ These outsized costs are in large part due to the increased healthcare costs associated with elderly persons in prison.²² Maryland feels this economic strain more acutely than many other states do. From 2010 to 2015, the national median spending per inmate on healthcare was \$5,720 per fiscal year, while the state of Maryland spent \$7,280 per fiscal year.²³ From 2001 to 2008, per-inmate healthcare spending rose 103% in Maryland from \$3,011 per fiscal year to \$5,117 per fiscal year.²⁴

The public policy interest in retribution has been satisfied by the many years most elderly persons have already spent in prison. Expanding options for parole release for seniors in prison is the right thing to do. Giving weight to their age when evaluating parole suitability is a laudable step.

Senate Bill 98 will create a meaningful geriatric parole standard. Currently, geriatric parole is codified in Criminal Law 14-101, the statute that defines sentences for subsequent

¹⁸ Kim Steven Hunt & Billy Easley, U.S. Sent'g Comm'n, *The Effects of Aging on Recidivism Among Federal Offenders* (2017), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171207_Recidivism-Age.pdf.

¹⁹ *At America's Expense: Mass Incarceration of the Elderly*, American Civil Liberties Union (2012), <https://www.aclu.org/report/americas-expense-mass-incarceration-elderly>.

²⁰ Dep't of Justice, Office of the Inspector Gen., *The Impact of an Aging Inmate Population on the Federal Bureau of Prisons*, i (Feb. 2016), <https://oig.justice.gov/reports/2015/e1505.pdf>.

²¹ *At America's Expense: Mass Incarceration of the Elderly*, Am. Civil Liberties Union, 27 (2012) (citing B. Jaye Anno *et al.*, U.S. Dep't of Justice, Nat'l Inst. of Corr., *Correctional Health Care: Addressing the Needs of Elderly, Chronically Ill, and Terminally Ill Inmates*, 10 (2004)).

²² *Id.*; Zachary Psick, *et al.*, *Prison Boomers: Policy Implications of Aging Prison Populations*, Int. J. Prison Health, 57-63 (2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5812446/pdf/nihms940509.pdf>.

²³ Pew Charitable Trusts, *Prison Health Care Costs and Quality* (Oct. 18, 2017), <https://www.pewtrusts.org/en/research-and-analysis/reports/2017/10/prison-health-care-costs-and-quality>.

²⁴ *Id.*

crimes of violence. Under the current law, only repeat violent offenders are eligible for geriatric parole. Last year, Chairman Blumberg testified before the Judicial Proceedings Committee that the current statute is unworkable. Senate Bill 98 simply moves the geriatric parole provision into the Correctional Services article and at the Commission's suggestion, sets the standard for review for elderly individuals who have served at least 15 years at every two years. Under the amended language, approximately 650 individuals will qualify for geriatric parole.

Maryland has the opportunity to reduce mass incarceration, save the state millions of dollars, contribute to safer communities, and allow Maryland's incarcerated seniors the opportunity they deserve to live their twilight years with dignity, breathing free air.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue a favorable report on SB98.

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