To: House Judiciary Committee
From: Lila Meadows, University of Maryland School of Law Clinical Law Program, 500 W. Baltimore Street, Baltimore, Maryland 21201
Re: In Support of House Bill 157
Date: January 31, 2023

House Bill 157 makes necessary reforms to Maryland's geriatric and medical parole schemes to move Maryland towards having a true mechanism for compassionate release for elderly and infirm incarcerated men and women. According to recent estimates from the Department of Public Safety & Correctional Services, there are currently 1,233 individuals over the age of 60 in the Department of Corrections (DOC). Approximately 650 of those individuals have already served over 15 years in prison. While there is no data to suggest how many of those individuals present with acute or chronic medical issues, as this population continues to age, DOC will continue to struggle to provide the necessary medical and nursing care at great cost to the state. Data provided by the Maryland Parole Commission (MPC) in response to an MPIA request is instructive. In 2020, the first year of the COVID-19 pandemic when vaccines were not yet available, MPC received medical parole requests from 201 individuals. The Commission granted only 27 of those requests – less than 15%. From 2015 – 2020, only 86 individuals were approved for medical parole. House Bill 157 reforms both the medical and geriatric parole process to ensure these processes are meaningfully available to sick and elderly incarcerated individuals who require care beyond what DOC is set up to provide. Given the extremely low rates of recidivism among elderly individuals released from prison, utilizing geriatric and medical parole is not only the humane thing to do, but it also makes fiscal sense without compromising public safety.

House Bill 157 moves Maryland towards a having legally sound standards for medical and geriatric parole. Nothing in House Bill 157 lessens the Commission's obligation to take both public safety or victim impact into account when considering an individual for release under the medical or geriatric parole standards. The Commission is still required to make a determination whether release is compatible with the welfare of public safety and the likelihood that an individual will recidivate if released.

In 2021, the General Assembly took the historic and long overdue step of depoliticizing Maryland's parole process by removing the Governor's authority over parole decisions of individuals serving life sentences. While that step was necessary to move Maryland towards having a functional parole system, it was not sufficient. Medical and geriatric parole affect not only individuals serving life sentences, but the entire correctional population. House Bill 157 moves Maryland closer to having a functional parole system.

<u>Medical parole</u>

Individuals seeking medical parole can ask MPC for consideration by filing a written request under the statute. Current law under MD Code Correctional Services 7-305 requires the Commission to consider an individual's diagnosis and prognosis. In practice, to assess an individual's medical condition and whether it meets the standard in the statute and regulations, the Maryland Parole Commission relies almost entirely on the Karnofsky score provided by

DOC clinician. The Karnofsky score is a measure of functional impairment that can be useful in understanding an individual's limitations but cannot provide a substantive picture of the full medical condition. In my experience, MPC has required a Karnofsky score of 30 or below in order for an individual to merit further consideration for medical parole. The following are examples of clients I have represented who have scored a 40 on the Karnofsky Performance Index and were denied medical parole:

- A client who clearly met the legal standard of being so incapacitated as to pose no threat to public safety. Mismanagement of their diabetes led to the amputation of their leg. While they waited for a prosthetic device that never materialized, they cycled in and out of the prison infirmary because they were unable to care for themself in general population. While in the infirmary, they fell out of the bed, resulting in what clinicians described as a "brain bleed." Not long after their fall, they were taken to a regional hospital for congenital heart failure. They required assistance from nursing staff or other incarcerated individuals to perform all activities of daily living and at times, did not understand that they were in prison. Despite their condition, they were initially denied medical parole.
- A client who had contracted COVID-19 early in the pandemic when DOC staff housed them with another incarcerated individual who was symptomatic. They spent two months at a regional hospital in the ICU on a ventilator before being returned to DOC custody. They now live in the prison infirmary where they are unable to perform most activities of daily living, including showering and walking even short distances, without the aid of supplemental oxygen. DOC clinicians and an independent medical expert agree that the damage to my client's lungs is permanent and there is no prognosis for improvement.

House Bill 157 would clarify the process for obtaining an outside medical evaluation, a process already allowed by statute and require MPC to give those evaluation equal weight to that of DOC physicians. This is a critical change given that many of the sickest incarcerated individuals are receiving care from outside providers who have a better sense of that individual's condition and prognosis than DOC physicians. While Commissioners are not medical professionals, comprehensive medical evaluations that move beyond reliance on the Karnofsky score will help Commissioners better understand whether an individual's diagnosis and prognosis meet the legal standard for consideration under the statute.

These changes are necessary to ensure truly vulnerable and infirm individuals are able to seek release and receive care outside of the correctional setting. Continuing their incarceration of these clients and those like them comes at a great human and financial cost. Continuing the confinement of someone with a debilitating medical condition who poses no threat to public safety and who could receive better medical treatment in the community is inhumane. It is unjust. It costs the State of Maryland an exorbitant amount of money that would be better invested elsewhere in our system.

<u>Geriatric parole</u>

Under current law, Maryland has a geriatric parole provision in name only. Eligibility for geriatric parole is currently governed by MD Code Crim Law §14-101(f)(1) – the section of the code that deals with mandatory sentences for crimes of violence. This alone is a complete

anomaly. No other statutory provision governing parole is placed in the criminal law article of the Maryland Code. The construction of the statute leads to a truly peculiar result. As currently written, the law dictates that geriatric parole is only available to an individual who has reached age 60, served at least 15 years, *and is sentenced under the provisions of 14-101* – meaning only those who have been convicted of multiple crimes of violence are eligible. Despite representing many clients over the age of 60 who have served at least 15 years, I have never had a client who satisfies the subsequent crimes of violence section of the statute.

Beyond the problems with the construction of the statute, the law provides no guidance to the Maryland Parole Commission regarding suitability for geriatric parole. House Bill 157 would remove the geriatric parole provision from MD Code Criminal Law 14-101 and instead place the provision in the Correctional Services Article, where every other provision regarding parole is codified. It would also give the Maryland Parole Commission direction regarding how to evaluate candidates for geriatric parole, creating consistency with standard parole and medical parole consideration.

This written testimony is submitted on behalf of Lila Meadows at the University of Maryland Carey School of Law and not on behalf of the School of Law or University of Maryland, Baltimore.