



To: Members of The Senate Judicial Proceedings Committee

From: Doyle Niemann, Chair, Legislative Committee, Criminal Law and Practice Section, Maryland State Bar Association

Date: February 9, 2024

Subject: SB128 – Correctional Services – Geriatric and Medical Parole

Position: Support with Amendment

The Legislative Committee of the Criminal Law & Practice Section of the Maryland State Bar Association (MSBA) **Supports SB128 with a proposed amendment.**

This bill will require the Maryland Parole Commission to consider the age of an incarcerated person and the totality of their circumstances when evaluating a request for medical parole. It is one of several bills on the subject that the Committee will consider this session.

With an increasing aging population, the question of medical and geriatric parole has important implications for the individuals involved, for public safety, and for the ability of the correctional system to efficiently function. There is considerable evidence, for example, that an individual's ability and inclination to commit future crimes decreases significantly with age. This is particularly true when there are serious medical conditions. And as the prison population ages, the cost and burden of providing legally required care continues to rise.

SB128 addresses the medical side of this issue, directing the Commission to consider the totality of the circumstances of an applicant, including their age and medical condition. It provides useful definitions for some of the critical terms, including chronically debilitated or incapacitated (a medical condition unlikely to improve in the future that impacts on the person's ability to complete critical personal tasks) and terminal illness. Ultimately, it directs that the Commission determine whether the individual has been rendered incapable of presenting a danger to society. If so, release would be justified.

Concern and Suggested Amendment

Our technical concern is with the language on page 4, lines 4-8, which provides, in effect, that any individual can request that the incarcerated individual receive an independent medical examination. While we support the requirement that the Commission get an independent evaluation from an independent medical professional, we are concerned with the language that would allow anyone, regardless of their connection to the inmate in question or to the prospects of the application to request this independent evaluation given that SB128 limits the incarcerated individual to only one such evaluation. We believe that any such request for an independent



evaluation paid for by the State should come from the applicant, their attorney or someone actively involved in the application.

We believe possible problems with this section could be addressed by removing the language on lines four and five providing “If requested by an individual identified in subsection €(1) of this section.”

For the reasons stated, we **Support SB128 with an amendment.**

If you have questions about the position of the Criminal Law and Practice Section’s Legislative Committee, please feel free to address them to me at 240-606-1298 or at doyleniemann@gmail.com.

Should you have other questions, please contact The MSBA’s Legislative Office at (410)-269-6464 / (410)-685-7878.