2024-02-07 SB128 (Support).pdf
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February 7, 2024

TO: The Honorable Will Smith
Chair, Judicial Proceedings Committee

FROM: Adam Spangler
Legislative Aide, Legislative Affairs, Office of the Attorney General

RE: SB128 Correctional Services - Geriatric and Medical Parole- **Support**

The Office of Attorney General (the "OAG") urges this Committee to favorably report Senate Bill 128. This legislation, sponsored by Senator Hettleman, would require the consideration of an inmate's age, and the extent to which the inmate is likely to recidivate or pose a threat to public safety, in the determination of whether to grant parole. Senate Bill 128 would require an inmate who is at least sixty years-old and has served at least fifteen years of the imposed sentence and is not registered or eligible for registration as a sex offender, to have a parole hearing every two years. The bill would also provide for medical parole upon a licensed medical professional's determination that an inmate is terminally ill or chronically debilitated or incapacitated, in need of extended medical care better met by community services and is physically incapable of presenting a danger to society. The bill also contains procedural and reporting requirements for these parole hearings.

Geriatric and medical parole – also known as "compassionate release" – are premised on "a humanitarian desire to allow people to spend their remaining days outside of prison in the company of their family and friends, as well as practical considerations of the high cost and

minimal public safety value of incarcerating people who are old or gravely ill."[1] Despite the overall prison population declining across the U.S., the number of incarcerated older adults has increased.[2] These individuals typically pose minimal risk to public safety and lower rates of recidivism due to age and physical condition.[3] Without expanded access to geriatric and medical parole in Maryland, the elderly population in State prisons will continue to grow, increasing the State's costs in providing necessary health and end-of-life care to inmates, and serving little benefit to public safety.[4]

Additionally, SB 128 provides that any savings as a result of these provisions will revert back to the Department of Public Safety and Correctional Services for use in carrying out these parole hearings, as well as increase pre-release and re-entry resources for inmates released on parole, which will better assist those released from prison in reintegrating into the community.[5] For the foregoing reasons, the Office of the Attorney General urges a favorable report on Senate Bill 128.

cc: Sen. Hettleman
Members of the Senate Judicial Proceedings Committee

[1] Rebecca Silber, Léon Digard, Jesse LaChance, A Question of Compassion: Medical Parole in New York State, VERA INSTITUTE OF JUSTICE (April 2018), https://www.vera.org/publications/medical-parole-new-york-state.
[2] *Id.*
[3] JUSTICE POLICY INSTITUTE, Compassionate Release in Maryland: Recommendations for Improving Medical and Geriatric Parole (January 2022) at 4–5 (available at https://justicepolicy.org/wp-content/uploads/2022/02/MarylandCompassionate-Release.pdf) ("In 2012, a Maryland court determined a series of cases involved unconstitutional jury instructions. This resulted in 235 individuals, many of whom had committed serious violent offenses, becoming eligible for release. The average age of those released due to the Unger decision was 64, and they had served an average of 40 years in prison. In the eight years since the ruling, these individuals have posted a recidivism rate of under three percent. This is much lower than the 40 percent rate of recidivism after only three years for all persons released from Maryland prison. The rate for the aging Unger population is so low that the cohort was five times more likely to pass away from old age than to recidivate for a new crime.").
[4] *Id.* At 1.
[5] S.B. 128, 2024 Legis. Sess, 446th Gen. Assemb. (Md. 2024) § 7-310(D).

_SB 128- Medical and Geriatric Parole-UULM-MD-Supp
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Position: FAV

Unitarian Universalist Legislative Ministry of Maryland

Testimony in Support of SB 128:
Correctional Services - Geriatric and Medical Parole

TO: Senator Will Smith, Jr. Chair and Members of the Judicial Proceedings Committee
FROM: Karen "Candy" Clark,
Unitarian Universalist Legislative Ministry of Maryland Criminal Justice Lead
DATE: February 7, 2024

The state- wide Unitarian Universalist Legislative Ministry of Maryland asks for a favorable vote for **SB 128- Correctional Services - Geriatric and Medical Parole.** This bill upholds one of our basic faith principles; to honor the inherent dignity and worth of every person.

Our prison systems' purpose is twofold:

1. to ensure a safe environment in which our communities can function and thrive and
2. to remove people who are illegally disrupting this environment and/or are a threat to others

This does not characterize most of our elderly prison population. Most of whom are over 60 years old and have served lengthy prison sentences that have extended their stay well beyond the age range in which they are likely to commit crimes.

In Maryland's famous Unger case , where the average age of the released prisoner was 64, the recidivism rate was only 3% –compared to 40% for younger offenders– after 3 years on the outside. Upon release our elderly are still in the correctional system under the management of parole. Since they are no longer a dangerous threat, our faith calls for a compassionate release process for these geriatric citizens.

In 2022, The Justice Policy Institute (JPI) published a policy brief evaluating our Geriatric and Medical parole process. Many of the noted faults in this brief are addressed in this bill. For example, currently there is no in-person medical evaluation required to determine the state of a persons' health status. It's done by a professional response to medical records which has resulted in some tragic stories. SB 128 requires that if a medical examination is requested it must be done in-person.

This bill calls for changes that align with the concerns in the JPI policy brief. The result is a more efficient, accountable and humane process.

The Unitarian Universalists Legislative Ministry of Maryland asks for your support.

Respectfully submitted,
Karen Clark
UULM-MD Criminal Justice Lead Advocate

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Department of Public Safety and Correctional Services

Office of the Secretary

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BILL: **SENATE BILL 128**

POSITION: **LETTER OF SUPPORT**

EXPLANATION:

COMMENTS: SB 128 requires the Maryland Parole Commission to consider the age of an incarcerated individual when determining whether to grant parole and alters how the Commission evaluates a request for medical parole. Under certain circumstances, evaluations for medical parole would include providing for a meeting between the incarcerated individual and the Commission and would require the Commission to develop procedures for assessing medical and geriatric parole requests.

- The Department of Public Safety and Correctional Services (Department) operates the Division of Correction (DOC), the Division of Pretrial Detention and Services (DPDS), and the Division of Parole and Probation (DPP).

- In accordance with Correctional Services Article (CSA) §7–201, the Maryland Parole Commission (Commission) was established in the Department.

- SB 128 expands the ability of parole commissioners to take into account the totality of a petitioner's circumstances when considering a parole request, including an individual's age and to consider whether the incarcerated individual will recidivate.

- The bill adds the definitions of "chronically debilitated or incapacitated" and "terminal illness" to CSA §7–309 while also describing the type of care an individual who is chronically debilitated or incapacitated receives.

- Describing the type of care for an incarcerated individual, who is chronically debilitated or incapacitated to include being physically incapable of presenting a danger to society by a physical or mental health condition, disease, or syndrome, provides the Commission with specific criteria from a medical professional that assists the Commission in making a determination for parole.

- The bill adds language requiring the Commission to consider the age of the incarcerated individual and the impact of age on reducing the risk of recidivation.

- The bill also requires reentry resources be made available to incarcerated individuals who are granted parole as the result of the proposed changes as well as adding a reporting requirement. The Department begins reentry planning at intake and is familiar with reporting requirements.

- SB 128 adds language that would allow the Commission to conduct parole hearings for incarcerated individuals, who are not otherwise prohibited from a parole hearing, and who are 60 years or older and who have served at least 15 years of their sentence to be eligible for a parole hearing beginning at age 60 and every two years after. Thus greatly expanding the number of individuals who may be eligible for medical parole. This language was previously under Criminal Law Article § 14-101, however, only one individual has been eligible for geriatric parole with this section under the crime of violence of statute.

- Finally, SB 128 removes the Governor from the medical parole decision process which would be consistent with the Senate Bill 202/Ch. 30 that passed in 2021 and removed the Governor from the regular parole process.

CONCLUSION: For these reasons, the Department of Public Safety and Correctional Services respectfully requests a **FAVORABLE** Committee report on Senate Bill 128.

SB0128_Geriatric_and_Medical_Parole_MLC_FAV.pdf
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TESTIMONY FOR SB0128
Geriatric and Medical Parole

Bill Sponsor: Senator Hettleman
Committee: Judicial Proceedings
Organization Submitting: Maryland Legislative Coalition
Person Submitting: Aileen Alex, co-chair
Position: FAVORABLE

I am submitting this testimony in favor of SB0128 on behalf of the Maryland Legislative Coalition. The Maryland Legislative Coalition is an association of activists - individuals and grassroots groups in every district in the state. We are unpaid citizen lobbyists, and our Coalition supports well over 30,000 members.

Geriatric and medical parole policies reduce prison populations by releasing inmates whose age or health limits their risk to the community. These policies can also help save money while maintaining public safety.

SB0128 expands the application of geriatric and medical parole to include age as a factor and what constitutes "chronically debilitated or incapacitated" for a medical parole. The bill would also remove the Governor from the medical parole process, which is needed for a timely response.

Reduced sentences through geriatric and medical parole save Maryland taxpayers more than $38,000 per inmate annually--the cost of an inmate of average health. This is money could be better spent on schools.

The Maryland Legislative Coalition continues to advocate for this and similar bills wisely reduce the prison population without risk to the public.

We support this bill and recommend a **FAVORABLE** report in committee.

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FAMM
Families for Justice Reform

Compassionate Release State by State

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State	State name of Compassionate Release program(s)	Covers Medical Condition(s)	Covers Terminal Illness (Prognosis, if Required)	Covers Advanced Age (Age (and other Requirements))	Final Decision-Maker
Alabama	Medical Parole	X	X (12 months or less to live)	X Age 60+ (with infirmity, illness, or disease related to aging)	Board of Pardons and Paroles
	Medical Furlough	X	X (12 months or less to live)	X Age 55+ (with infirmity, illness, or disease related to aging)	Commissioner, Department of Corrections
Alaska	Special Medical Parole	X	X		Board of Parole
	Geriatric Parole/Discretionary Parole Based on Age			X Age 60+ (and served at least 10 years)	Board of Parole
Arizona	Executive Clemency Due to Imminent Danger of Death		X (defined inconsistently as 3, 4, or 6 months to live)		Governor
	Compassionate Leave/Furlough	X	X		Department of Corrections, Rehabilitation, and Reentry
Arkansas	Medical Parole	X	X (2 years or less to live)		Parole Board
	Early Release to Home Detention	X	X (2 years or less to live)		Parole Board
	Executive Clemency Due to Life-Threatening Medical Condition	X	X		Governor
California	Medical Parole	X			Board of Parole Hearings
	Recall of Sentence	X	X (12 months or less to live)		Sentencing Court
	Elderly Parole			X Age 50+ (and served at least 20 years)	Board of Parole Hearings

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State	State name of Compassionate Release program(s)	Covers Medical Condition(s)	Covers Terminal Illness (Prognosis, if Required)	Covers Advanced Age (Age (and other Requirements))	Final Decision-Maker
Colorado	Special Needs Parole	X	X	X Age 55+ (with chronic infirmity, illness, condition, disease, or mental health disorder) **or** Age 64+ (and served at least 20 years)	Board of Parole
Connecticut	Medical Parole		X (6 months or less to live)		Board of Pardons and Paroles
	Compassionate Parole Release	X		X (debilitated as a result of "advanced age")	Board of Pardons and Paroles
	Nursing Home Release		X		Warden and Commissioner, Department of Correction
Delaware	Sentence Modification Due to Illness or Infirmity	X			Sentencing Court
	Medical Parole (individuals designated as "Old-Law" prisoners)	X			Board of Parole
District of Columbia	Compassionate Release	X	X	X Age 60+ (and served 20 years **or** with a serious medical condition and served 15 years)	Sentencing Court
	Medical & Geriatric Suspension of Sentence	X	X	X Age 65+ (with chronic infirmity, illness, or disease related to aging)	Sentencing Court
	Medical & Geriatric Parole (individuals designated as "Old-Law" prisoners)	X	X (6 months or less to live)	X Age 65+ (with chronic infirmity, illness, or disease related to aging)	U.S. Parole Commission
Florida	Conditional Medical Release	X	X		Commission on Offender Review
	Medical Furlough	X	X (6 months or less to live)		Secretary, Department of Corrections

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State	State name of Compassionate Release program(s)	Covers Medical Condition(s)	Covers Terminal Illness (Prognosis, if Required)	Covers Advanced Age (Age (and other Requirements))	Final Decision-Maker
Georgia	Medical Reprieve	X	X (12 months or less to live)		Board of Pardons and Paroles
	Parole Due to Disability or Advanced Age	X		X Age 62+	Board of Pardons and Paroles
Hawaii	Medical Release	X	X		Paroling Authority
Idaho	Medical Parole	X	X		Commision of Pardons and Parole
Illinois	Medical Release	X	X (18 months or less to live)		Prisoner Review Board
Indiana	Special Medical Clemency	X	X		Governor
	Temporary Leave		X		Warden
Iowa	NO COMPASSIONATE RELEASE				N/A
Kansas	Functional Incapacitation Release	X			Prisoner Review Board
	Terminal Medical Release		X (30 days or less to live)		Chair, Prisoner Review Board
Kentucky	Early Medical Consideration (Early Parole)	X	X (1 year or less to live)		Parole Board
Lousiana	Medical Parole	X	X (1 year or less to live)		Board of Pardons, Committee on Parole
	Medical Treatment Furlough	X			Board of Pardons, Committee on Parole

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State	State name of Compassionate Release program(s)	Covers Medical Condition(s)	Covers Terminal Illness (Prognosis, if Required)	Covers Advanced Age (Age (and other Requirements))	Final Decision-Maker
Lousiana	Compassionate Release	X	X (60 days or less to live)		Secretary, Department of Public Safety and Corrections
	Parole: Advanced Age			X Age 60+ (and served 10 years)	Board of Pardons, Committee on Parole
Maine	Supervised Community Confinement	X	X		Commissioner, Department of Corrections
Maryland	Medical Parole	X	X ("imminently" terminal)		Parole Commision
	Geriatric Parole			X Age 60+ (and served at least 15 years)	Parole Commision
Massachusetts	Medical Parole	X	X (18 months or less to live)		Commissioner, Department of Correction
Michigan	Medical Parole	X	X		Parole Board
	Executive Clemency Due to Deteriorating or Terminal Medical Condition	X	X		Governor
Minnesota	Conditional Medical Release	X	X (12 months or less to live)		Commissioner, Department of Correction
Mississippi	Conditional Medical Release	X	X		Commissioner and Chief Medical Officer, Department of Corrections
	Geriatric Parole			X Age 60 (and served at least 10 years)	Parole Board
Missouri	Medical Parole	X	X (6 months or less to live)	X (advanced age with need for long-term nursing home care)	Parole Board

State	State name of Compassionate Release program(s)	Covers Medical Condition(s)	Covers Terminal Illness (Prognosis, if Required)	Covers Advanced Age (Age (and other Requirements))	Final Decision-Maker
Missouri	Executive Clemency Due to Illness or Advanced Age	X	X	X (advanced age with need for long-term nursing home care)	Governor
Montana	Medical Parole	X	X (6 months or less to live)		Board of Pardons and Parole
Nebraska	Medical Parole	X	X		Board of Parole
Nevada	Residential Confinement	X	X (18 months or less to live)		Director, Department of Corrections
	Geriatric Parole			X 65+ (and served majority of maximum term or maximum aggregate term)	Board of Parole Commissioners
New Hampshire	Medical Parole	X	X		Adult Parole Board
New Jersey	Compassionate Release	X	X (6 months or less to live)		Superior Court, Criminal Division
New Mexico	Medical and Geriatric Parole	X	X (6 months or less to live)	X 65+ (with chronic infirmity, illness, or disease related to aging)	Adult Parole Board
New York	Medical Parole	X	X		Board of Parole **or** for some individuals who are terminally ill, the Commissioner, Department of Corrections and Community Supervision
North Carolina	Medical Release	X	X (6 months or less to live)	X 65+ (with chronic infirmity, illness, or disease related to aging)	Post-Release Supervision and Parole Commission
	Extension of the Limits of Confinement	X	X (6 months or less to live)		Secretary, Department of Public Safety

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State	State name of Compassionate Release program(s)	Covers Medical Condition(s)	Covers Terminal Illness (Prognosis, if Required)	Covers Advanced Age (Age (and other Requirements))	Final Decision-Maker
North Dakota	Medical Parole	X	X (death is imminent)		Parole Board
Ohio	Judicial Release	X	X (death is imminent, meaning 6 months or less to live, **or** condition is terminal, meaning 12 months or less to live)		Sentencing Court
	Release as if on Parole	X	X (death is imminent, meaning 6 months or less to live, **or** condition is terminal, meaning 12 months or less to live)		Governor
	Medical Release (individuals designated as "Old-Law" prisoners)	X	X (death is imminent, meaning 6 months or less to live, **or** condition is terminal, meaning 12 months or less to live)		Parole Board
Oklahoma	Medical Parole	X	X (6 months or less to live)		Pardon and Parole Board
	Parole Based on Advanced Age			X 60+ (and served 10 years or 1/3 of sentence, whichever is shorter)	Pardon and Parole Board
Oregon	Early Medical Release	X	X (12 months or less to live)	X (elderly)	Board of Parole and Post-Prison Supervision
Pennsylvania	Deferment of Sentence Due to Serious or Terminal Illness	X	X (12 months or less to live or likely to die in the "near future")		Sentencing Court
Rhode Island	Medical Parole	X	X (18 months or less to live)		Parole Board

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State	State name of Compassionate Release program(s)	Covers Medical Condition(s)	Covers Terminal Illness (Prognosis, if Required)	Covers Advanced Age (Age (and other Requirements))	Final Decision-Maker
South Carolina	Medical Parole for Terminally Ill, Geriatric, or Permanently Disabled Inmates	X	X (2 years or less to live)	X 70+ (and incapacitated from chronic medical condition related to aging)	Board of Paroles and Pardons
	Parole for Medical Reasons		X (1 year or less to live)		Board of Paroles and Pardons
	Medical Furlough/Extension of Limits of Confinement	X	X (1 year or less to live)	X (1 year or less to live)	Director, Department of Corrections
	Special Parole of Veterans for Psychiatric Treatment	X			Board of Paroles and Pardons
South Dakota	Compassionate Parole	X	X	X 65+ (expensive medical needs and served 10+ years) **or** 70+ (and served at least 30 years)	Board of Pardons and Paroles
	Extension of Confinement	X			Warden and Secretary, Department of Corrections
Tennessee	Medical Furlough	X	X (1 year or less to live)		Commissioner, Department of Correction
	Executive Clemency: Illness/Disability	X	X		Governor
	Geriatric Parole			X 70+ (and likely to die due to a chronic and incurable condition)	Board of Parole
Texas	Medically Recommended Intensive Supervision	X	X (6 months or less to live)	X 65+	Board of Pardons and Paroles
	Emergency Medical Reprieve	X	X		Governor
Utah	Compassionate Release	X		X (“advancing age”)	Board of Pardons and Paroles

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Families for Justice Reform

State	State name of Compassionate Release program(s)	Covers Medical Condition(s)	Covers Terminal Illness (Prognosis, if Required)	Covers Advanced Age (Age (and other Requirements))	Final Decision-Maker
Vermont	Medical Parole	X	X (18 months or less to live)		Parole Board
	Medical Furlough	X	X (18 months or less to live)		Commissioner, Department of Corrections **and** Directors of Classification and Field Services
Virginia	Conditional Release Based on Terminal Illness		X (12 months or less to live)		Parole Board
	Executive Clemency: Medical		X (3 months or less to live)		Governor
	Geriatric Conditional Release			X 60+ (and served at least 10 years) **or** 65+ (and served at least 5 years)	Parole Board
Washington	Extraordinary Medical Placement	X			Secretary, Department of Corrections
	Extraordinary Release	X		X (“advanced age”)	Governor
West Virginia	Executive Clemency Due to Life-Threatening Medical Condition		X		Governor
	Medical Respite	X	X 120 Days or Less to Live		Governor
Wisconsin	Sentence Modification Due to Extraordinary Health Condition or Age	X	X (12 months or less to live)	X 60+ (and served at least 10 years) **or** 65+ (and served at least 5 years)	Sentencing Court
	Parole Due to Extraordinary Circumstances (individuals designated as “Old-Law” Prisoners)	X		X (“advanced age”)	Parole Commission
Wyoming	Medical Parole		X (12 months or less to live)	X (“incapacitation because of age”)	Board of Parole

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Everywhere and Nowhere Exec-Summary-2-page.pdf
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June 2018

Everywhere and Nowhere: Compassionate Release in the States

Executive Summary

"Compassionate release" is meant to shorten a prisoner's sentence when circumstances such as imminent death or significant illness lessen the need for, or morality of, continued imprisonment. FAMM became interested in compassionate release because we routinely heard heart-wrenching accounts from sick or dying prisoners and their loved ones trying to navigate complicated compassionate release programs. Prisoners do not understand how to ask for compassionate release or interpret eligibility criteria. They encounter walls of silence and endure lengthy delays. Most are turned down. Some die before a decision in their case is reached.

To help prisoners and their families become better advocates for compassionate release, we needed to examine the rules ourselves. We researched laws and regulations in every state, and we present our state-by-state findings in memos available at www.famm.org. Each memo covers all aspects of the individual state programs, from eligibility criteria through application, investigation, decision-making, release planning, and reporting requirements.

We were gratified to learn that 49 states and the District of Columbia provide some means for prisoners to secure compassionate release. But we were dismayed to discover that very few prisoners actually receive compassionate release.

This report summarizes our findings. It describes the barriers and the best practices we uncovered and illustrates them with selected examples drawn directly from our research on individual states. Above all, we found that every state could improve compassionate release. Accordingly, this report closes with a set of recommendations for policymakers interested in bringing their state programs in line with best practices.

RECOMMENDATIONS

Expand and Improve Compassionate Release Policies in All States

1. Pass or amend legislation guaranteeing compassionate release on the basis of serious medical conditions, terminal illness, and advanced age.
2. Enact, amend, or update agency rules so that they are consistent with compassionate release laws.
3. Replace uncertain, inconsistent, or confusing rules and policies with effective, clear policies.

Ensure That Eligibility Criteria Is Fair and Just

4. Guarantee that all eligible prisoners are considered for compassionate release, notwithstanding their crime, sentence, or amount of time left to serve.
5. Remove unduly strict, cruel, or otherwise unwarranted eligibility requirements.
6. Base medical, end-of-life, and geriatric criteria on evidence and best practices, with input from medical experts.

Establish Deadlines to Keep Applications Moving

7. Establish time frames within which document-gathering, assessment, and decision-making must occur that are realistic, provide sufficient time to develop informed decisions, and are sensitive to the need for expedited review in the case of terminal illness.

Publicize Compassionate Release Programs and Policies

8. Provide information about compassionate release options to each entering prisoner and ensure prison handbooks include a section that clearly explains eligibility and application.
9. Make sure prison law libraries have easy-to-find information and application forms.
10. Provide readily accessible information on relevant state agency websites.
11. Involve families in identifying eligible prisoners and providing support, such as in coordinating release planning.
12. Train corrections staff to understand eligibility criteria for compassionate release.
13. Teach staff how to identify eligible prisoners and make it their duty to do so.
14. Keep prisoners, family members, and advocates informed at each stage of the assessment and decision-making process.
15. Designate and train staff as family liaisons to coordinate with family members.

Provide Assistance With Post-Release Planning

16. Assign dedicated staff to assist ill and elderly prisoners with pre- and post-release planning, including applying for public assistance, veterans' benefits, housing and medical facility placements, Medicaid and/or Medicare, and other supports.
17. Allow attorneys to apply for compassionate release on behalf of prisoners.
18. Ensure the right to counsel for all compassionate release proceedings, including appeals and revocations.
19. Provide the right to appeal denials or the right to reapply following a denial.

Require Data Collection and Reporting

20. Require all agencies involved in compassionate release to provide annual data—including demographic information—on applications, approvals, denials, and revocations, including reasons for denials and revocations.
21. Establish measures of success and report on how well states meet these measures.

Families Against Mandatory Minimums

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Written Testimony of Celeste Trusty
Deputy Director of State Policy, FAMM
In Support of SB 128
Maryland Senate Judicial Proceedings Committee
February 7, 2024

I would like to thank the Chair, Vice Chair, and committee members for the opportunity to submit written testimony in support of SB 128, a bill that would make technical corrections and improve Maryland's parole and release process for sick and elderly people living in state prisons. **FAMM supports SB 128 and encourages the Committee to vote favorably on this common-sense piece of legislation.**

FAMM is a nonpartisan, nonprofit organization that advocates sentencing and prison policies that are individualized and fair, protect public safety, and preserve families. Among one of FAMM's priorities is advocating the creation and expansion of avenues for compassionate release - opportunities for aging and sick people to be released from prison if their incarceration serves no further public safety benefit.[1] People across the country overwhelmingly support compassionate release programs - by a wide margin of 70% to 25%,

[1] While we use the term "compassionate release" to describe this authority, we are aware that many jurisdictions have different names for programs that enable early release for qualifying prisoners. Because of what we have learned of the insurmountable barriers to early release programs encountered by many sick and dying prisoners, we believe every program could benefit from taking a compassion-based look at what it means to go through the process. We call these programs "compassionate release" so that the human experience is foremost in our minds and those of policy makers.

and voters believe that people who are not a risk to public safety should be considered for early release from prison.[2]

For more than two decades, FAMM has been a leading voice for measures that allow for the safe release of people who are aging or in declining health from our nation's prisons. Incarceration is meant as a form of punishment and to protect the public, but also meant to rehabilitate, educate, and support people as they prepare for a successful return to the community. FAMM believes that people should have ample meaningful opportunities to be released back into the community when their continued incarceration no longer serves any public benefit. At a bare minimum, we should be dedicated to solidifying robust pathways for relief for people who are aging, and those who are too debilitated to further offend, too compromised to benefit from rehabilitation, or too impaired to be aware they are being punished. The state of this dedication in Maryland is woefully lacking.

Since 2018, FAMM has conducted comprehensive research into state compassionate release programs.[3] We maintain a set of memos and report cards on our website that document every existing compassionate release program in the 50 states and the District of Columbia.[4] For each jurisdiction we describe eligibility criteria, application requirements, documentation, and decision-making, as well as post-decision and post-release issues. We most recently updated these memoranda in December 2021, including an updated assessment of Maryland's current state of compassionate release.

We set out our findings in a report, "Everywhere and Nowhere: Compassionate Release in the States."[5] Our most disturbing finding was that while nearly every state has some form of compassionate release, it is scarcely used. To understand why this critical mechanism is so severely underused, FAMM examined and reported on the policies and practices that pose barriers to release. We also explored those jurisdictions that exemplify best practices. Finally, we included a set of recommendations for states working to implement or update compassionate release programs.[6]

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[2] https://famm.org/wp-content/uploads/FAMM-POS-CR-deck.pdf
[3] FAMM, Compassionate Release: State Memos (Dec. 2021), https://famm.org/our-work/compassionate- release/everywhere-and-nowhere/#memos.
[4] Compassionate Release Report Card, Maryland, October 2022, FAMM, https://famm.org/wp-content/uploads/md-report-card-final.pdf
[5] Everywhere and Nowhere, Executive Summary, https://famm.org/wp-content/uploads/Exec-Summary-2-page.pdf.
[6] Everywhere and Nowhere, Executive Summary, https://famm.org/wp-content/uploads/Exec-Summary-2-page.pdf.

In 2022, FAMM followed up our 2018 report and subsequent memos with a project in which we graded the medical release policies in all 50 states and the District of Columbia. We graded each policy based on key components of a well-crafted medical release policy, including eligibility criteria, an engaging process, agency policy design, procedures, release planning support, data collection and public reporting, and a right to counsel and appeals. Based on these grading criteria, Maryland received an overall grade of 16/100 - a horribly failing grade that puts Maryland at third worst in the country.[7] Maryland's medical parole system received a 9/100, and the geriatric parole system received a 23/100 - both failing grades.[8]

SB 128 would allow people who are at least age 60 and have served 15 years or more of incarceration; or incarcerated people suffering from chronic or terminal physical or mental health conditions to seek relief through parole. SB 128 would also address important technical concerns that aim to clarify the process around medical parole in Maryland, including a prior drafting error that continues to require people serving life and seeking release under the medical parole statute to have the approval of the Governor prior to release. Another technical concern addressed in SB 128 would expand eligibility for release under this act to include a much larger group of people who are currently incarcerated and over age 60.

Mechanisms like compassionate medical and elderly release provide an amazing opportunity for our communities to benefit from returning credible messengers with lived experience to our communities after incarceration. Across the country and here in Maryland, FAMM advocates alongside incredible incarcerated people who have demonstrated readiness to return to their communities, yet for far too many of these people, there are an absence of opportunities to do so. Release mechanisms for longer-serving people have proven highly successful across the country and in Maryland as our society moves away from a past focus on harsh sentencing, and toward embracing mercy as a counterbalance to punishment.

In Maryland, it costs an average of nearly $40,000 a year to incarcerate each person, and that number grows exponentially as people age.[9] In July of 2022, the Maryland Department of Public Safety and Correctional Services reported

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[7] Compassionate Release Report Card, Maryland, October 2022, FAMM, https://famm.org/wp-content/uploads/md-report-card-final.pdf

[8] Compassionate Release Report Card, Maryland, October 2022, FAMM, https://famm.org/wp-content/uploads/md-report-card-final.pdf

[9] MARYLAND DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES Incarcerated Individual Characteristics Report, July 1, 2022 https://www.dpscs.state.md.us/publicinfo/publications/pdfs/Inmate%20Characteristics%20Report%20FY%202022%20Q4.pdf

more than 3,100 people over age 51 living in its state prisons, with more than 1,100 of this group over age 60.[10] As people mature into adulthood, the likelihood of engaging in criminal behavior diminishes, therefore it makes sense to create pathways for incarcerated people to be released back into their communities instead of demanding continued incarceration. The provisions included in SB 128 should be considered a public safety effort, allowing invaluable taxpayer resources to be reallocated from keeping older and sick people in our overcrowded prisons, and into our communities. The release of over 200 incarcerated people through the *Unger v. Maryland* ruling has already saved Marylanders an estimated $185 million and is expected to grow to a taxpayer savings of more than $1 billion over the next decade.[11] SB 128 would allow Marylanders to continue to benefit from expanded release opportunities by strengthening and expanding Maryland's medical and geriatric release mechanisms, freeing up taxpayer resources to be reallocated from investing in incarceration to investing in things Maryland's communities really need.

Governor Moore and Attorney General Brown have expressed a desire to focus on addressing racial disparities in Maryland, and SB 128 would be a positive step toward that goal. Maryland's history with mass incarceration has placed the state atop the list of worst racial disparities among prison populations nationally, with the rate of incarceration for Black Marylanders greater than double the national average.[12] Maryland also tops the country for rates of Black people sentenced to incarceration between ages 18 and 24 who have already served 10 years or more in prison.[13]

SB 128 would help address these glaring racial disparities among Maryland's prison population, and, like the overwhelming taxpayer benefit resulting from the *Unger* decision, allow precious taxpayer resources to be reallocated from investing in incarceration to investing in things Maryland's communities really need. FAMM encourages the Committee to vote in favor of SB 128 and move this critical piece of legislation forward. Thank you for considering our feedback, and please do not hesitate to reach out with any questions at ctrusty@famm.org or 267.559.0195.

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[10] MARYLAND DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES Incarcerated Individual Characteristics Report, July 1, 2022 https://www.dpscs.state.md.us/publicinfo/publications/pdfs/Inmate%20Characteristics%20Report%20FY%202022%20Q4.pdf

[11] https://justicepolicy.org/wp-content/uploads/2021/06/The_Ungers_5_Years_and_Counting.pdf

[12] https://www.baltimoresun.com/2019/11/06/report-proportion-of-maryland-black-prison-population-is-more-than-double-the-national-average-of-32/

[13] https://justicepolicy.org/wp-content/uploads/justicepolicy/documents/Rethinking_Approaches_to_Over_Incarceration_MD.pdf

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Maryland provides compassionate release to eligible incarcerated individuals through (1) **Medical Parole**, for those with serious medical conditions,[1] and (2) **Geriatric Parole**, for certain incarcerated individuals aged 60 and older.[2]

MEDICAL PAROLE

Note that Maryland's Medical Parole laws and policies are not consistent, and the contradictions and differences are noted below. In addition, there are gaps in the statute, regulations, and agency policy, with little information provided regarding terminology and the assessment and decision processes.

I. ELIGIBILITY

Medical Condition – Maryland law provides two very different sets of eligibility criteria:

- The Medical Parole statute and the Division of Correction Case Management Manual (DOC Manual) state that to be eligible, an incarcerated individual must be so chronically debilitated or incapacitated by a medical or mental health condition, disease, or syndrome that the person is physically incapable of presenting a danger to society.[3]

- The Medical Parole regulation says that to be eligible, an incarcerated individual must be "imminently terminal" or have a condition indicating that continued imprisonment serves no useful purpose (with the example given being if the individual is in an irreversible coma).[4] In addition, the individual's release must not "unduly" jeopardize public safety.[5]

Exclusions – The statute says that only individuals sentenced to a term of incarceration with the possibility of parole are eligible for Medical Parole consideration.[6] The DOC Manual does not include this exclusionary language and appears to say that any incarcerated individual who meets the medical criteria may be eligible for Medical Parole.[7]

- Note that the Governor must approve Medical Parole for any individuals serving life sentences (discussed below in Decision-Making Process).[8]

II. APPLICATION/REFERRAL

As with the eligibility requirements, the Medical Parole statute and regulations provide different (and seemingly conflicting) information:

- According to the Medical Parole statute and the DOC Manual, (1) the incarcerated individual, (2) an attorney, (3) a family member, (4) a medical

professional, (5) a prison official or employee, or (6) "any other person" may file a request for Medical Parole with the Maryland Parole Commission.[9] The request must be in writing and include the reasons supporting the incarcerated individual's release on Medical Parole.[10]

- According to the Medical Parole regulation, the Warden initiates an individual's consideration for Medical Parole.[11]

III. DOCUMENTATION AND ASSESSMENT

The needed documentation and the process leading up to a Medical Parole decision are described somewhat differently in the statute and the regulation. Because the differences and inconsistencies are not explained or reconciled, both are included below.

MEDICAL PAROLE STATUTE

Initial Review – The statute says that the Parole Commission can review each Medical Parole request to determine (1) whether the request is inconsistent with the best interests of public safety, in which case the Parole Commission will take no further action,[12] or (2) whether the Parole Commission needs additional information from the Department of Public Safety and Correctional Services (Department) or the correctional facility so it can formally consider the incarcerated individual for Medical Parole.[13]

Documentation/Department or Facility – The Department and/or correctional facility must provide the needed information to the Parole Commission,[14] including:

- A medical recommendation by the medical professional treating the incarcerated individual.[15]
    - If the incarcerated individual or someone on the person's behalf (which essentially means anyone other than the individual's treating medical professional) submits the Medical Parole request, a medical professional who is independent of the Division of Correction or the correctional facility will conduct an evaluation at no cost to the incarcerated person.[16]
- Medical documentation, including (1) a description of the incarcerated individual's condition, disease, or syndrome; (2) the prognosis regarding the person's likelihood of recovery from the condition, disease, or syndrome; (3) a description of the person's physical incapacity and score on the Karnofsky Performance Scale Index[17] or similar evaluation tool; and (4) a mental health evaluation, when relevant.[18]

- Discharge information, including (1) the availability of treatment or professional services within the community; (2) family support in the community; and (3) available housing, including hospital or hospice care.[19]

- Case management information, including (1) the circumstances of the individual's current offense; (2) institutional history; (3) pending charges, sentences in other jurisdictions, and any other detainers; and (4) criminal history.[20]

MEDICAL PAROLE REGULATIONS

Initial Review – The regulations do not mention an initial review by the Parole Commission.

Documentation and Recommendation: Warden – The Warden must submit the following documents to the Commissioner of Correction through the Division Director:[21]

- A history of program participation in prison;[22]

- Any special housing requirements;[23]

- A statement from the individual's attending physician that includes the person's diagnosis, prognosis, inpatient or outpatient status, and justification for meeting the Medical Parole criteria;[24] and

- The Warden's statement, including a recommendation to approve or disapprove the Medical Parole request, the reasons for the recommendation, and a treatment plan for the individual.[25]

Review and Recommendation: Commissioner – The Division Director sends the Commissioner of Correction the recommendation and documentation.[26]

- If the Commissioner **denies** Medical Parole, the decision is final.[27]

- If the Commissioner **recommends approval**, the Medical Parole request is submitted to the Parole Commission for consideration.[28]

IV. DECISION-MAKING PROCESS

Decision-Maker – The Maryland Parole Commission makes all decisions to grant or deny Medical Parole.[29]

Decisions – The Medical Parole statute provides very little information about the Parole Commission's decision-making process on Medical Parole requests, and the Medical Parole regulation does not address the decision-making process at all.[30]

- Victim Notification and Input – The Medical Parole statute specifically states that the general parole provisions relating to victim notification and the opportunity to be heard apply to all Medical Parole proceedings.[31]

    - For Medical Parole cases of "imminent death," the Parole Commission can reduce or waive any time limits related to victim notification and the opportunity to be heard.[32]

Governor's Approval Required for Certain Individuals – If the Parole Commission grants parole to a person serving a life sentence, it must then transmit the decision to the Governor.[33]

- The Governor may disapprove the decision and, if so, must then transmit that decision in writing to the Parole Commission.[34]

- If the Governor does not disapprove the decision within 180 days of receiving the Commission's written decision, the decision granting Medical Parole becomes effective.[35]

Conditions

- Environment – The Parole Commission may require that the individual agree to placement "for a definite or indefinite period of time" in a hospital, hospice, or other housing that is appropriate for the person's medical condition. That can include the individual's family home, if approved by the Commission or supervising parole officer.[36]

- Medical Updates – The Parole Commission may require the individual to send medical records on an ongoing basis to indicate that the specific medical condition continues to exist.[37]

V. POST-DECISION

Appeals – If the Parole Commission denies the request for Medical Parole, that decision is final.[38]

Effect of Medical Parole Request on Other Parole Eligibility – An individual whose Medical Parole is revoked because the medical condition has improved may be considered for parole under the general parole eligibility requirements.[39]

Revocation/Termination

- If the Parole Commission determines that the individual on Medical Parole is no longer so debilitated or incapacitated as to be physically incapable of presenting a danger to society, it will return the person to the custody of the Division of Correction or the appropriate correctional facility.[40]

- If the individual is returned to custody, the Commission will "promptly" hold a hearing to consider whether the person is still incapacitated. If incapacitation no longer exists, the individual will stay in custody.[41]

VI. REPORTING/STATISTICS

The Parole Commission's annual reports list how many Medical Parole cases are considered, processed, and "coordinated" – although no definition of "coordinated" is provided. The reports do not say how many requests for Medical Parole the Commission actually granted.

The most recent annual report available online is for 2018, and it says that the Parole Commission processed 34 Medical Parole requests.[42] Again, the Commission only reports on how many were processed and does not provide information on how many of those 34 requests were granted.

- The Parole Commission did not respond to FAMM's request for information on the number of individuals granted Medical Parole in 2019 and 2020.

GERIATRIC PAROLE (PAROLE CONSIDERATION BASED ON AGE): LIMITED TO SPECIFIC INDIVIDUALS

I. ELIGIBILITY

Age – An incarcerated individual sentenced under Maryland's "Mandatory Sentences for Crimes of Violence" law[43] may petition for Geriatric Parole if the person (1) is at least 60 years old and (2) has served at least 15 years of the sentence.[44]

- Note that in 2019 the Justice Reinvestment Oversight Board in the Governor's Office of Crime Control and Prevention proposed several recommendations that would expand Geriatric Parole to other categories of older incarcerated individuals.[45] As of the date of this publication, none of those recommendations have been enacted into law.

Exclusions – Individuals registered (or eligible for registration) under Maryland's sex offender registration law are not eligible for parole consideration under this law.[46]

II. ADDITIONAL INFORMATION: PETITION AND DECISION

The Geriatric Parole statute says that the Maryland Parole Commission must adopt regulations to implement the law.[47] As of September 1, 2021, no new Commission regulations have been published, and the existing regulation includes outdated age criteria.[48] However, until the Parole Commission adopts updated rules, the existing regulatory guidance may be useful:

- Incarcerated individuals who meet the age and time served requirements but were sentenced for a crime of violence may petition the Chair of the Parole Commission in writing.[49]

- The Chair schedules consideration of the petition by a panel composed of two commissioners,[50] which decides whether to grant the individual a parole release hearing.[51]

    - If the panel cannot agree on granting a hearing, the Chair must schedule consideration of the petition by a third member of the Commission, and the majority opinion determines whether the incarcerated individual is granted a hearing.[52]

    - If the panel does not grant a hearing, the individual must wait two years from the date of the denial to petition again.[53]

- If the panel grants the petitioner a Geriatric Parole release hearing, it is scheduled and conducted according to the usual parole hearing rules.[54]

The Parole Commission did not respond to FAMM's request for information on how many individuals, if any, were granted Geriatric Parole in 2019 and 2020.

MARYLAND COMPASSIONATE RELEASE
PRIMARY LEGAL SOURCES

MEDICAL PAROLE

Statute

Maryland Code, Correctional Services § 7-309 (2021), available through the Maryland State Archives, Maryland Manual On-Line, https://msa.maryland.gov/msa/mdmanual/html/mmtoc.html, by selecting Code of Maryland (Laws) and Correctional Services, then clicking on Title 7, Subtitle 3.

Regulations

Code of Maryland Regulations, 12.02.09.04, Medical Parole (2021), available through the Maryland Division of State Documents, http://www.dsd.state.md.us/comar/comarhtml/12/12.02.09.04.htm.

Code of Maryland Regulations, 12.02.09.05, Contents of Medical Parole Request (2021), available through the Maryland Division of State documents, http://www.dsd.state.md.us/comar/comarhtml/12/12.02.09.05.htm.

Agency Policy

Department of Public Safety and Correctional Services, Division of Correction Case Management Manual, DOC 100.0002 (July 31, 2019), Section 22 (D), Medical Parole, https://itcd.dpscs.state.md.us/PIA/ShowFile.aspx?fileID=578.

GERIATRIC PAROLE

Statute

Maryland Code, Criminal Law § 14-101 (2021), available through the Maryland State Archives, Maryland Manual On-Line, https://msa.maryland.gov/msa/mdmanual/html/mmtoc.html, by selecting Code of Maryland (Laws) and Criminal Law, then clicking on Title 14, Subtitle 1.

Regulations

Code of Maryland Regulations, 12.02.09.04, Consideration and Review (2021), available through the Maryland Division of State Documents, http://www.dsd.state.md.us/comar/comarhtml/12/12.08.01.23.htm.

NOTES

* *Id. means see prior note.*

[1] Md. Code Ann., Corr. Servs. § 7-309; Md. Code Regs. 12.02.09.04 and 12.02.09.05.

[2] Md. Code Ann., Crim. Law § 14-101 (f).

[3] Md. Code Ann., Corr. Servs. § 7-309 (b); Department of Public Safety and Correctional Services, Division of Correction Case Management Manual 100.0002 (DOC Manual), § 22 (D) (2).

[4] Md. Code Regs. 12.02.09.04 (A).

[5] Id. at (B).

[6] Md. Code Ann., Corr. Servs. § 7-309 (a).

[7] DOC Manual 100.0002, § 22 (D) (2).

[8] Md. Code Ann., Corr. Servs. § 7-309 (i).

[9] Md. Code Ann., Corr. Servs. §§ 7-309 (c) (1) (i) through (c) (1) (vi). See also DOC Manual 100.0002, §§ 22 (D) (1) and (D) (3).

[10] Md. Code Ann., Corr. Servs. § 7-309 (c) (2).

[11] Md. Code Regs. 12.02.09.05 (B).

[12] Md. Code Ann., Corr. Servs. § 7-309 (d) (1).

[13] Id. at (d) (2).

[14] Id.

[15] Md. Code Ann., Corr. Servs. § 7-309 (e) (1) (i).

[16] Id. at (e) (1) (ii).

[17] The Karnofsky Performance Scale Index classifies individuals according to their functional impairment and is used to compare effectiveness of different therapies and assess an individual's prognosis. The lower the Karnofsky score, generally the worse the odds of survival for most serious illnesses. See the National Palliative Care Resource Center, Karnofsky Performance Scale Index, http://www.npcrc.org/files/news/karnofsky_performance_scale.pdf.

[18] Md. Code Ann., Corr. Servs. §§ 7-309 (e) (2) (i) through (e) (2) (iv).

[19] Id. at (e) (3) (i) through (e) (3) (iii).

[20] Id. at (e) (4) (i) through (e) (4) (iv).

[21] It is not clear whom the regulation is referring to when it uses the term "Division Director." The Maryland Department of Public Safety and Correctional Services webpage lists a Department Secretary and a Commissioner of Correction but no Division Director. See https://msa.maryland.gov/msa/mdmanual/22dpscs/html/dpscs.html.

[22] Md. Code Regs. 12.02.09.05 (B) (1).

[23] Id. at (B) (2).

[24] Id. at (B) (3) (a) through (3) (d).

[25] Id. at (B) (4) (a) through (4) (c).

[26] Id. at (C). Note that the regulation does not address who these documents go to if the Commissioner of Correction position is vacant, as it was as of the date of publication. See https://msa.maryland.gov/msa/mdmanual/22dpscs/html/dpscs.html.

[27] Id. at (C).

[28] Id. at (A).

[29] Md. Code Ann., Corr. Servs. § 7-309.

[30] The statutory general parole provisions are at Md. Code Ann., Corr. Servs. §§ 7-301 through 7-308; however, it is not clear whether they all apply to Medical Parole.

[31] Md. Code Ann., Corr. Servs. § 7-309 (h) (1). The general parole provisions on victim notification and the opportunity to be heard are at Md. Code Ann., Corr. Servs. § 7-801. For a summary of victims' rights in the parole process, see also the Department and Parole Commission's victim services information at https://dpscs.maryland.gov/victimservs/index.shtml.

[32] Md. Code Ann., Corr. Servs. § 7-309 (h) (2).

[33] Id. at (i) (1).

[34] Id. at (i) (2).

[35] Id. at (i) (3).

[36] Id. at (f) (1).

[37] Id. at (f) (2).

[38] DOC Manual 100.0002, § 22 (D) (4).

[39] Md. Code Ann., Corr. Servs. § 7-309 (g) (3), referencing Md. Code Ann., Corr. Servs. § 7-301.

[40] Id. at (g) (1).

[41] Id. at (g) (2).

[42] Maryland Parole Commission, Fiscal Year 2018 Annual Report (Nov. 5, 2018), http://dlslibrary.state.md.us/publications/Exec/DPSCS/MPC/COR7-208_2018.pdf.

[43] Crimes of violence include murder, rape, kidnapping, and 21 other serious crimes. For the full list, see Md. Code Ann., Crim. Law § 14-101 (a).

[44] Md. Code Ann., Crim. Law § 14-101 (f) (2).

[45] Justice Reinvestment Oversight Board, Governor's Office of Crime Control and Prevention, Geriatric Parole Workgroup (July 2019), http://goccp.maryland.gov/wp-content/uploads/Geriatric-Parole-Summary.pdf.

[46] Md. Code Ann., Crim. Law § 14-101 (f) (1), referencing the Criminal Procedure Code, Title 11, Subtitle 7. Subtitle 7 covers sex offender registration. See Md. Code Ann., Crim. Proc. §§ 11-701 through 11-727.

[47] Md. Code Ann., Crim. Law § 14-101 (f) (3).

[48] Md. Code Regs. 12.08.01.23 (C) (1).

[49] Id. at (C) (1) and (C) (2).

[50] Id. at (C) (3).

[51] Id. at (C) (4).

[52] Id. at (C) (5).

[53] Id. at (C) (6).

[54] Id. at (C) (7), referencing Md. Code Regs. 12.08.01.17 and Md. Code Regs. 12.08.01.19. See also Md. Code Regs. 12.08.01.23 (C) (8), referencing Md. Code Regs. 12.08.02.

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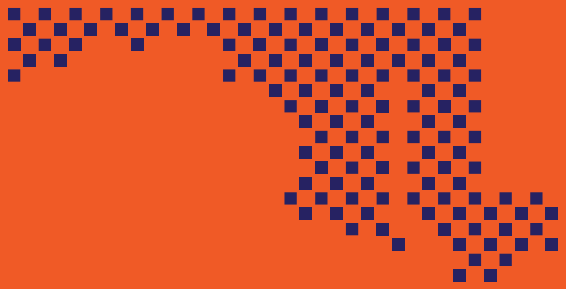


Compassionate Release Report Card • October 2022

Maryland

Overall Grade for Maryland	Total Grade	Letter Grade
	16/100	F

Program Grades

	Total Grade	Letter Grade
Medical Parole	**9/100**	**F**
Geriatric Parole	**23/100**	**F**

Medical Parole

Total Grade **9** /100

Letter Grade **F**

Eligibility Criteria

0/30

0/10 UTD* Clearly set out with understandable and measurable standards.

0/10 UTD Generous or not unduly restrictive.

0/10 UTD No categorical exclusions/everyone is eligible for consideration.

- × **Extra credit:** Terminal illness time-left-to-live provisions are reasonable and sufficiently long to permit the completion of the review and decision-making processes. 0

Procedures

0/10

0/5 Documentation and assessment are straightforward, lacking multiple or redundant reviews and authorizations.

0/5 Time frames for completing review and/or decision-making exist and are designed to keep the process moving along.

- × **Extra credit:** Expedited time frames exist for terminal cases. 0

Engaging the Process

2/15

1/5 Clinical and other staff can identify potentially eligible individuals and initiate the process.

1/5 Incarcerated people, their loved ones, and advocates can initiate the process.

0/5 Corrections staff have an affirmative duty to identify incarcerated people eligible for compassionate release and take the steps necessary to begin the process.

Release Planning Support

0/10

0/5 UTD Agencies provide comprehensive release planning.

- × **Extra credit:** Release planning includes helping the incarcerated person apply for benefits prior to release, including housing, Medicaid, Medicare, and/or veterans benefits. 0

0/5 UTD Release planning begins early in the process.

Agency Policy Design

2/15

2/5 Agency rules exist for all stages of identification, initiation, assessment, and decision-making.

0/5 Agency rules are consistent with and/or complement the statute, are up to date, and internally consistent.

0/5 Rules provide clear guidance to reviewers and decision-makers about steps to take and standards to apply.

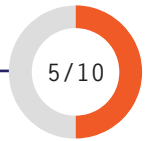
Data Collection and Public Reporting

0/10

0/5 Agencies are obliged to gather, compile, and report release data to legislature.

0/5 Reporting is made available to the public via annual reports or other means.

Right to Counsel and Appeals



5/5 Program allows counsel to represent people before decision-maker (i.e., parole board, commissioner, or court).

- ✖ **Extra credit:** Denials are appealable. 0

0/5 Individuals have the right to reapply should conditions change.

- ✖ **Extra credit:** Revocations are not used to return people to prison because their condition improves or goes into remission or because the individual outlives the prognosis. 0

* UTD stands for "Unable to Determine" and is graded zero. This is when there are no rules, guidelines, regulations, or other authority that FAMM could find addressing the graded category. For example, if there are no published provisions for release planning or telling an agency how it is to evaluate an incarcerated person's eligibility, that results in a zero UTD grade.

The Numbers

While the Parole Commission reports from time to time on how many Medical Parole cases it considers, it does not report on outcomes. The Parole Commission also did not respond to FAMM's request for data for 2019 and 2020.

High and Low Marks

HIGH MARK

- **Right to counsel:** Individuals seeking Medical Parole in Maryland may have counsel represent them before the Parole Commission.

LOW MARKS

- **Overall**, Maryland's Medical Parole program **flunked** because it suffers from internal incoherence, lack of guidance, and conflicting information about everything from eligibility criteria to who initiates the application to standards and procedures. Maryland received one of the worst report cards in the nation because FAMM could not figure out how to reconcile its varied and often contradictory guidance or fill in the many gaps left by incomplete or inconsistent regulations.
- The confusion begins with the **eligibility criteria**. The statute and Division of Correction provide one standard: chronic incapacitation or debilitation so severe a person is physically incapable of posing a danger to society. In contrast, the Parole Commission rules require an individual to be "imminently terminal" or have a condition that indicates continued incarceration will serve no useful purpose (such as when a person is in a permanent coma). FAMM gave a failing grade to generosity of the criteria because we could not determine what the criteria are. Finally, we could not score for categorical exclusions because while the statute states that only parole-eligible individuals may qualify, the Corrections manual apparently allows anyone to be eligible.
- **Engaging the process** is similarly confusing. The statute explains that the incarcerated individual, attorney, family member, medical professional, Corrections employee, or any other person may file a Medical Parole request with the Parole Commission. According to the Medical Parole regulation, the Warden initiates the request.

More on next page ▸

LOW MARKS (CONTINUED)

- Maryland's Medical Parole flunked **policy design** because while some agency rules exist, they at best do not align and, more often, contradict the statute. For example, the statute calls for the Parole Commission to complete an initial review of Medical Parole applications. Medical Parole regulations mention no initial review. The statute and rules also differ on documentation and assessment standards. The regulations do not discuss any steps or standards for the Parole Commission review and decision-making processes.
- Medical Parole also failed **procedures** due to confusion about documentation and rules and an absence of standards and because no deadlines exist for steps in the process.
- **Release planning support** also suffers from conflicting authorities. The statute seems to suggest that the Division of Correction is responsible for discharge information including availability of treatment in the community, family support, and housing. The Medical Parole regulation only directs the Warden to submit information about any special housing requirements and makes no mention of the much more comprehensive discharge plan addressed in the statute.

Geriatric Parole

Total Grade **23** /100

Letter Grade **F**

Eligibility Criteria

21/30

10/10 Clearly set out with understandable and measurable standards.

2/10 Generous or not unduly restrictive.

9/10 No categorical exclusions/everyone is eligible for consideration.

- ✖ **Extra credit:** Terminal illness time-left-to-live provisions are reasonable and sufficiently long to permit the completion of the review and decision-making processes. 0

Procedures

0/10

0/5 Documentation and assessment are straightforward, lacking multiple or redundant reviews and authorizations.

0/5 Time frames for completing review and/or decision-making exist and are designed to keep the process moving along.

- ✖ **Extra credit:** Expedited time frames exist for terminal cases. 0

Engaging the Process

2/15

0/5 Clinical and other staff can identify potentially eligible individuals and initiate the process.

2/5 Incarcerated people, their loved ones, and advocates can initiate the process.

0/5 Corrections staff have an affirmative duty to identify incarcerated people eligible for compassionate release and take the steps necessary to begin the process.

Release Planning Support

0/10

0/5 Agencies provide comprehensive release planning.

- ✖ **Extra credit:** Release planning includes helping the incarcerated person apply for benefits prior to release, including housing, Medicaid, Medicare, and/or veterans benefits. 0

0/5 Release planning begins early in the process.

Agency Policy Design

0/15

0/5 Agency rules exist for all stages of identification, initiation, assessment, and decision-making.

0/5 Agency rules are consistent with and/or complement the statute, are up to date, and internally consistent.

0/5 Rules provide clear guidance to reviewers and decision-makers about steps to take and standards to apply.

Data Collection and Public Reporting

0/10

0/5 Agencies are obliged to gather, compile, and report release data to legislature.

0/5 Reporting is made available to the public via annual reports or other means.

Right to Counsel and Appeals

0/10

0/5 Program allows counsel to represent people before decision-maker (i.e., parole board, commissioner, or court).

- ✖ **Extra credit:** Denials are appealable. 0

0/5 Individuals have the right to reapply should conditions change.

- ✖ **Extra credit:** Revocations are not used to return people to prison because their condition improves or goes into remission or because the individual outlives the prognosis. 0

The Numbers

The Parole Commission did not respond to FAMM's request for information on how many individuals, if any, received Geriatric Parole in 2019 and 2020.

High and Low Marks

HIGH MARK

- By law, Maryland authorizes Geriatric Parole eligibility to individuals serving mandatory minimum sentences for crimes of violence who are at least 60 years old and who have served a minimum of 15 years. Besides being a straightforward description, the **eligibility criteria** explicitly include people convicted of crimes of violence. FAMM commends Maryland for recognizing parole for that population.

LOW MARKS

- Maryland's Geriatric Parole **eligibility criteria** limit parole consideration to people who meet the age and time-served requirements and who are serving mandatory minimum sentences for crimes of violence, except for those registered or eligible to be registered as sex offenders. While FAMM thinks it is commendable that people convicted of crimes of violence and serving mandatory minimum sentences are eligible for consideration, we cannot understand why Maryland provides Geriatric Parole only to such people and not to other incarcerated individuals who meet the age and time-served requirements.
- Despite a statutory directive to do so, Maryland's Parole Commission has not updated regulations to implement Geriatric Parole. Thus, the program fails across the board for **policy design** and **procedures**, because no rules whatsoever exist to carry out this program.
- It also flunks in every other measure because no rules govern **release planning**, **right to counsel or appeals**, and **data collection and reporting**.

SB 128 Geriatric and Medical Parole

Uploaded by: Doyle Niemann

Position: FAV

MSBA
MARYLAND STATE
BAR ASSOCIATION

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 individuals 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 address 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 persons 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.

<u>Concern and Suggested Amendment</u>

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.

SB128 - Ger-Med Parole - MOPD Favorable.pdf
Uploaded by: Elise Desiderio
Position: FAV

MARYLAND OFFICE OF THE PUBLIC DEFENDER

NATASHA DARTIGUE
PUBLIC DEFENDER

KEITH LOTRIDGE
DEPUTY PUBLIC DEFENDER

MELISSA ROTHSTEIN
CHIEF OF EXTERNAL AFFAIRS

ELIZABETH HILLIARD
ACTING DIRECTOR OF GOVERNMENT RELATIONS

POSITION ON PROPOSED LEGISLATION

BILL: SB128 – Correctional Services – Medical and Geriatric Parole

FROM: Maryland Office of the Public Defender

POSITION: Favorable

DATE: 02/06/2024

The Maryland Office of the Public Defender respectfully requests that the Committee issue a favorable report on Senate Bill 128.

Medical Parole

Maryland's current medical parole standards are unclear and not consistent. This bill clarifies standards for medical parole and brings Maryland's compassionate release standards in line with national standards. Between 2015 and 2020, only 86 medical parole requests were approved by the Maryland Parole Commission. 253 requests were denied.

Senate Bill 128 would improve upon the evaluation process for applicants for medical parole. The current standard for evaluation is the Karnofsky Scale, which is outdated and ineffective. The Karnofsky Scale is an instrument originally developed to assess a person's suitability for chemotherapy. It is not effective as a way to determine suitability for medical parole more generally based on terminal illness or chronic incapacitation.

This legislation instead allows for a more dynamic medical assessment of medical parole applicants that more accurately reflects a candidate's level of debilitation and medical needs. Moreover, the Maryland Parole Commission would retain the right under this bill to retake a person granted medical parole if they recover substantially and no longer meet the standards of terminal illness or chronic incapacitation.

The bill would also create a fairer process because incarcerated individuals can request a medical evaluation that can be completed in a timely way and reported to the Maryland Parole Commission in a standardized manner. Current law allows for a person to get an independent medical evaluation, but this bill requires the Medical Parole Commission to give an in-person independent medical evaluation equal weight to an assessment by Division of Correction doctors. Applicants for medical parole under this bill would be able to request a hearing before the Maryland Parole Commission decides the request for medical parole.

This legislation takes into account the Maryland Parole Commission's responsibility to consider public safety concerns in its decision-making. Under this bill, the Commission is directed to consider the circumstances of the current offense, institutional history, criminal history information, and any pending charges, sentences in other jurisdictions, and any other detainers. The Commission also remains empowered to consider victim impact information.

This legislation modernizes, standardizes, and makes more fair Maryland's medical parole process. The changes within this bill vindicate the rights and address the needs of terminally ill or chronically incapacitated incarcerated people while maintaining considerations for public safety.

Geriatric Parole

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 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

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[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%20Q4.pdf.

[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/.

Maryland Office of the Public Defender, Government Relations Division, 45 Calvert St, Suite 108, Annapolis MD 21401
For further information please Elizabeth Hilliard, Elizabeth.hilliard@maryland.gov 443-507-8414.

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]

Research demonstrates llower 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 recidivism.[11] For the eight years after their release, the Commision 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."[12]

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

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[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.

[11] 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.

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

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its total budget, to incarcerate aging inmates in [fiscal year] 2013."[13] "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."[14] These outsized costs are in large part due to the increased healthcare costs associated with elderly persons in prison.[15] 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.[16] From 2001 to 2008, per-inmate healthcare spending rose 103% in Maryland from $3,011 per fiscal year to $5,117 per fiscal year.[17]

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 128 will create a meaningful geriatric parole standard. Currently, geriatric parole is codified in Criminal Law 14-101, the statute that defines sentences for subsequent 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 128 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 Senate Bill 128.

Submitted by: Maryland Office of the Public Defender, Government Relations Division.

Authored by: Elise Desiderio, Assistant Public Defender II, Appellate Division;
elise.desiderio@maryland.gov

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[13] 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.

[14] *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)).

[15] *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.

[16] 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.

[17] *Id.*

MD Catholic Conference_SB 128_FAV.pdf
Uploaded by: Garrett O'Day
Position: FAV

MARYLAND CATHOLIC CONFERENCE

February 7, 2024

SB 128
Correctional Services – Geriatric and Medical Parole

Senate Judicial Proceedings Committee
Position: FAVORABLE

The Maryland Catholic Conference offers this testimony in support of Senate Bill 128. The Catholic Conference is the public policy representative of the three (arch)dioceses serving Maryland, which together encompass over one million Marylanders. Statewide, their parishes, schools, hospitals and numerous charities combine to form our state's second largest social service provider network, behind only our state government.

Senate Bill 128 would afford the parole commission the ability to determine whether certain inmates who are at least 60 years of age and have served at least 15 years of a sentence should be released on parole due to their age and low risk to public safety. It would also allow for expansion of medical parole for those inmates deemed to be "chronically debilitated or incapacitated". The commission would consider multiple factors such as illness, prognosis, available family support, and age in determining eligibility for medical parole.

The Catholic Church roots much of its social justice teaching in the inherent dignity of every human person and the principals of forgiveness, redemption and restoration. Catholic doctrine provides that the criminal justice system should serve three principal purposes: (1) the preservation and protection of the common good of society, (2) the restoration of public order, and (3) the restoration or conversion of the offender. Thus, the Church recognizes the importance of striking a balance between protecting the common good and attentiveness to rehabilitation.

The Conference submits that this legislation seeks to embody these principles and purposes, relative to intersection between our justice system and our communities, victims and offenders. Older inmates who have served much of their sentence or are medically incapacitated or need treatment outside of the prison system certainly merit the mercy of a consideration for re-entry into society.

Senate Bill 128 would restore hope for elderly offenders or for those in need of certain medical treatment seeking to reincorporate themselves into society, where they can be cared for by the community, as opposed to behind bars. This is particularly warranted where they pose no danger to society. The Maryland Catholic Conference thus urges this committee to return a favorable report on Senate Bill 128.

SB 128 FAV CCJR.pdf
Uploaded by: Heather Warnken
Position: FAV

UNIVERSITY OF BALTIMORE
Center for Criminal Justice Reform

TESTIMONY IN SUPPORT OF SENATE BILL 128

TO: Members of the Senate Judicial Proceedings Committee
FROM: Center for Criminal Justice Reform, University of Baltimore School of Law
DATE: February 6, 2024

The University of Baltimore School of Law's Center for Criminal Justice Reform is dedicated to supporting community driven efforts to improve public safety and address the harm and inequities caused by the criminal legal system. The Center supports Senate Bill 128.

I. Existing mechanisms are insufficient to address the growth of Maryland's aging and terminally ill incarcerated population.

Under existing law too many people who pose no risk to society remain incarcerated. Recent outcomes under the existing medical parole framework demonstrate that the gaps in its implementation persist. From 2015 to 2020, the Maryland Parole Commission denied nearly two-thirds of medical parole applications forcing terminally ill and chronically incapacitated people to die in prison or receive substandard medical and hospice care.[1] As a result, the Department of Public Safety and Corrections (DPSCS) shouldered the overwhelming financial burden of attempting to provide care to people who are too sick to pose any material risk to public safety. By requiring a medical parole applicant to receive a hearing and updating the factors and personnel involved in determining an applicant's health status, Senate Bill 128 will expand parole opportunities for the very sick.

II. Senate Bill 128 poses no risk to public safety.

SB 123 promotes, rather than hinders, public safety. Successful applicants for geriatric and medical parole have a very low risk of recidivating in light of their age and deteriorating health. Most people age out of criminal behavior. Accordingly, recidivism rates are extremely low for people released in their mid-40s or later.[2] Facilitating parole for these low-risk populations will serve to promote human dignity and support communities in and outside the walls.

III. Senate Bill 128 is sound fiscal policy that will facilitate the reallocation of funds to effective public health and safety measures.

[1] See Justice Policy Institute. (2022, January). Compassionate Release in Maryland: Policy Brief, https://justicepolicy.org/wp-content/uploads/2022/02/Maryland-Compassionate-Release.pdf

[2] In one study, only 4% of people convicted of violent crimes released between ages 45 and 54, and 1% released at 55 or older, were reincarcerated for new crimes within three years. Among people previously convicted of murder, those rates fell to 1.5% and 0.4%, respectively. J.J Prescott, et al., *Understanding Violent-Crime Recidivism*, NOTRE DAME LAW REVIEW, 95:4, 1643-1698, 1688-1690 (2018).

The state prison population and expenses may be reduced by expanding parole opportunities for elderly and chronically debilitated incarcerated people. Cost savings are especially likely because the costs associated with incarceration increase dramatically for those with significant medical needs as well as the elderly.[3] Wasteful and unnecessary policies and practices—such as the ongoing incarceration of people who pose next to no risk of reoffending—harm public safety by siphoning massive sums of money that could otherwise support programs that actually prevent crime. The cost savings that are likely to result from the passage of SB 128 will allow the reallocation of critical funds to assist with victim services, substance use treatment, reentry and other rehabilitation programs for people at higher risk of recidivating.

For these reasons, we urge a favorable report on Senate Bill 128.

[3] MATT MCKILLOP & ALEX BOUCHER, *Aging Prison Populations Drive Up Costs*, THE PEW CHARITABLE TRUSTS, (Feb. 20, 2018), https://www.pewtrusts.org/en/research-and-analysis/articles/2018/02/20/aging-prison-populations-drive-up-costs.

SB 128 Geriatric and Medical Parole

Uploaded by: Ivan Bates

Position: FAV

State's Attorney
Ivan J. Bates

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OFFICE OF THE STATE'S ATTORNEY FOR BALTIMORE CITY

February 07, 2024

The Honorable William C. Smith Jr., Chairman
Senate Judicial Proceedings Committee
2 East Miller Senate Office Building
Annapolis, Maryland 21401

RE: Support of SB128 – Correctional Services – Geriatric and Medical Parole

Dear Chairman Smith and Members of the Senate Judicial Proceedings Committee,

I am writing to express my wholehearted support for **SB128 Correctional Services – Geriatric and Medical Parole**. Let me be crystal clear, regardless of any other testimony previously submitted by my remarkable colleagues from across the state, I personally stand steadfast in my support of this bill as written, free of any amendments.

As an elected representative of the people, we have to understand that it is our obligation as public servants to look at things from a holistic perspective when making decisions that can effect an entire community of individuals. This legislation speaks to the need of having compassion and instituting fairness into our criminal justice system, as it relates to those who have been convicted of a crime but have suffered some sort of chronically debilitating disease or terminal illness, or have been rendered physically incapable of presenting a danger to others or in need of community-based medical needs.

As the State's Attorney, it is my job to ensure that public safety is upheld and those who go astray of the law are held accountable, so make no mistake about it, I am all about ensuring that those convicted of crimes are held to those standards and held responsible for their actions. However, there also comes a time in a person's life that we must recognize that they no longer pose a threat to themselves or others, whether they have demonstrated through action, having shown to have changed their lives around, or they have grown physically and/or mentally incapable of being a threat to the public.

In these cases, we have to weigh the interest of public safety with that of the well-being of an individual's life, along with their mental and physical health and the circumstances that currently exist. This bill puts guardrails in place to protect the public from just anyone being granted this very specific parole, having to meet special conditions in order to be considered; and I believe that this is a compassionate piece of legislation that has been well thought out and thoroughly vetted, and for those reasons and more I support SB128 – and ask the members of this committee to do the same.

State's Attorney
Ivan J. Bates

120 East Baltimore Street
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OFFICE OF THE STATE'S ATTORNEY FOR BALTIMORE CITY

Yours in service,

Ivan J Bates

Ivan J. Bates
State's Attorney for Baltimore City

SB 128 Geriatric and Medical Parole

Uploaded by: Jane Harman

Position: FAV

SB-128 Geriatric and Medical Parole
Favorable
Jane L Harman, PhD
7241 Garland Avenue
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This bill would incur little to no risk to public safety, with large budgetary savings.
Inmates have a lower life expectancy than the comparative U.S. population. Older inmates have high levels of chronic disease,[1] such that prison health experts, as cited in a piece in JAMA, estimate that an older inmate may have a physiological age that is 10-15 years older than his chronological age.[2] Even among younger men who had served 10 years or less in state prisons, there was a 2-year decline in life expectancy for each year served in prison.[3] Inmates over age 60 have long since aged out of violent crime, which peaks at ages 18-20.[4,5] And, although the average price tag to incarcerate someone in Maryland prisons is about $60,000 per year,[6] this is an underestimate for older inmates. For the more than 1100 Maryland inmates over age 60,[7] with health care costs for older inmates estimated at 2-3 times that of younger inmates,[2] Maryland taxpayers likely incur an expense of $70,000 per year per older inmate. Thus, their continuing incarceration costs $8 million per year, with no benefit to public safety.

This bill would greatly improve the process of parole hearings for older inmates.
Currently the Parole Commission is not held accountable for holding timely parole hearings. They commonly delay parole hearings up to 6 months after the month when the hearing should be held, and evidently answer to no one for these delays.

Currently, the Parole Commission is *not required to report its reasons for denial of parole*.

> Current Maryland Code Section 7-307 specifies only that "If parole is denied, the Commission shall give the incarcerated individual a written *report of its findings* within 30 days"
> This 'report of its findings' is not required to be more than the word "DENIED". No reasons for the denial are required and no reasons for the denial are given. The Parole Commission is not held accountable for its decisions.

The bill before your committee, SB-128, corrects this lack of accountability. Page 9, Section E, reads:

"*Every year the parole commission shall report to the Justice Reinvestment Board on the outcomes of parole considerations made under this section, including:*

3) the reason for each decision to deny parole.

5) The average time between when an incarcerated person becomes eligible for parole consideration under this section and when the incarcerated person actually received their first hearing required by this section. "

6) *The average time between parole hearings for incarcerated individuals subject to this bill*."

This increased accountability for the Parole Commission in its treatment of older long-serving inmates is reason enough to pass this bill. This bill will improve the functionality of our parole system. I urge your favorable vote.

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med & geriatric parole.testimony.pdf
Uploaded by: Judith Lichtenberg
Position: FAV

MARYLAND ALLIANCE FOR JUSTICE REFORM
Citizens working to reform criminal justice in Maryland

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Senate Judicial Proceedings Committee
February 7, 2024
Testimony in support of SB128—Medical and Geriatric Parole

My name is Judith Lichtenberg. I am testifying on behalf of the Maryland Alliance for Justice Reform (MAJR), where I serve on the executive committee and co-chair its Behind the Walls Workgroup. I'm also on the executive committee of Prepare, a nonprofit Maryland organization that helps incarcerated people make their best case for parole and successful reentry. I have lived in Hyattsville/University Park (District 22) for forty years and am professor emerita of philosophy at Georgetown University. Since 2016, I've been teaching, tutoring, and mentoring at Jessup Correctional Institute, Patuxent Institution, and the DC Jail, where I have gotten to know many incarcerated people as my students. A good number of these students have been incarcerated for thirty or more years.

Senate Bill 128 would require the Maryland Parole Commission to consider a person's age when determining whether to grant or deny parole. Section 7-319 applies to individuals who are at least 60 years old, have served at least 15 years of the sentence imposed, and are serving a parole-eligible sentence. These people have long ago aged out of crime, and they are almost invariably very different people than they were when they committed their crimes.

The bill also establishes a process for the Maryland Parole Commission to evaluate a request for medical parole, which includes requesting a meeting between the individual and the Commission if the individual is housed in an infirmary, is currently hospitalized, or has been frequently hospitalized over the previous six months. This allows individuals with debilitating or incapacitating conditions the opportunity for more meaningful medical parole consideration.

Many of the people in prison who died during COVID were elderly and especially vulnerable due to chronic preexisting medical conditions. MAJR regularly receives letters from older men and women who are afraid of dying from COVID and other diseases in prison.

Not surprisingly, healthcare costs greatly increase for older prisoners. The Justice Policy Institute estimates that Maryland imprisons approximately 3,000 people over age 50, and nearly 1,000 who are 60 or older. JPI also reports that people over 60 are paroled at a rate of

only 28 percent. This contradicts everything we know about trends in criminal offending in older people.

A fiscal analysis concluded that continued confinement of people in this age group for an additional 18 years (based on the expected period of incarceration) would amount to nearly $1 million per person, or $53,000 a year. Compare this to the $6,000 a year needed to provide the kind of intensive reentry support that has proven successful in reintegrating returning citizens back into the community.

Now is the time for Maryland to treat individuals who are aging and dying behind our prison walls more humanely. This bill broadens who can request a medical parole for an individual and outlines the required documentation, assessment, and decision-making process.

Medical and geriatric parole typically go together. Nearly every state has a policy allowing for people with certain serious medical conditions to be eligible for parole. In 45 states, the authority for the release of these individuals has been established by statute or state regulation. In addition, at least 17 states have geriatric parole laws. In the federal system, a person may apply for geriatric parole pursuant to the US Parole Commission Rules and Procedures, Title 28, CFR, Section 2.78. These laws allow for consideration for release when a person reaches a specified age. At least 16 states have established both medical and geriatric parole legislatively. It is time for Maryland to step up and pass this legislation as well.

For these reasons, the Maryland Alliance for Justice Reform urges a favorable report on SB128.

Respectfully,

Judith Lichtenberg
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District 22
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SB_128_compassionate_release_JPI_support_2_7_24.pd
Uploaded by: Keith Wallington
Position: FAV

Testimony to the Senate Judicial Proceedings
SB128 Correctional Services – Geriatric and Medical Parole
Keith Wallington
Justice Policy Institute
kwallington@justicepolicy.org
February 7, 2024

Founded in 1997, the Justice Policy Institute (JPI) is a nonprofit organization developing workable solutions to problems plaguing juvenile and criminal justice systems. For over 25 years, JPI's work has been part of reform solutions nationally, as well as an intentional focus here in Maryland. Our research and analyses identify effective programs and policies in order to disseminate our findings to the media, policymakers, and advocates and to provide training and technical assistance to people working for justice reform.

JPI supports Senate Bill 128, which would provide a fix to the language errors contained within Maryland's current medical parole statute, as well as deliver enhanced compassionate release opportunities for infirm and/or elderly persons in prison. Without substantial reforms to compassionate release in Maryland, the aging population will continue to grow, and the onus will be on the Department of Public Safety and Correctional Services (DPSCS) to provide adequate care. This testimony today is offered in memory of Barbara Hampton, a woman who was incarcerated at the Maryland Correctional Institution for Women for 15 years, suffering battles with stage-four ovarian cancer. Barbara's case illustrates the inadequacies and challenges associated with administering sufficient medical care in a carceral setting and thus provides a meaningful opportunity to re-examine Maryland's compassionate release policy. Senate Bill 128 is critical to ensure stories like Ms. Hampton's and others are not repeated in the future.

Expand Eligibility and Develop Standards for Compassionate Release.

There are a number of eligibility barriers for individuals applying for geriatric or medical parole release. Ms. Hampton, because of her "life without parole" sentence, was among those deemed ineligible. However, the primary obstacle, in most cases, is the lack of clarity on how the law applies and the standard of eligibility. Maryland's legislative language is so ambiguous it results in excluding mostly everyone, "an inmate who is so chronically debilitated or incapacitated by a medical or mental health condition, disease, or syndrome as to be physically incapable of presenting a danger to society." The statutory criteria remain perpetually restrictive because Maryland's state legislature did not develop the policy in conjunction with medical professionals to statutorily define conditions such as "chronically debilitated."

The current medical parole process does not include an in-person examination by a physician but instead utilizes the Karnofsky Performance Status Scale to assess an individual's suitability based on a series of medical file reviews. A physician issues a short memo (email) to the parole commissioners that includes the score, and if it is *below* 20, patients are typically considered viable candidates for release. According to the scale, a score of 20 indicates very sick, hospital admission necessary, and active, supportive treatment necessary; 10 is moribund, fatal processes progressing rapidly. *The applicants are often permanently ill, not chronically ill as outlined in the statute, by the time they reach this score*. There is a provision in the law that allows a person to receive an outside medical assessment, but it is rarely used.

Even more so, the parole process does not include an in-person assessment by the Maryland Parole Commission (MPC). This likely becomes a contributing factor to the MPC's track record of limiting the scope of approvals. Among qualified individuals, between 2015 and 2020, 86 medical parole applications were approved, and 253 were denied. The Governor granted just nine medical parole requests from individuals serving life sentences and rejected 14. Notably, the lowest yearly approval rating occurred during the height of the COVID pandemic in 2020 at seven percent.

Low-Risk Offenders Place a Significant Burden on Correctional Health Services.

Despite posing minimal risk to public safety and a significant cost to taxpayers, Maryland seldom relies on compassionate release policies to release the elderly and infirm from prison. Even with massive spending, facilities are unable to provide adequate protection and care to keep individuals healthy and safe.

According to the Maryland Department of Public Safety and Correctional Services (DPSCS), the annual cost of incarcerating one person is $46,000 per year, which includes a $7,956 allocation for medical and mental health services. Like how health insurance premiums increase with older age, the medical allocation increases 34 percent in the prison system. This results in an $18,361 allocation for the geriatric population, or a low estimate of $36.5 million per year for the 650 individuals over 60 years old.

Correctional Healthcare Accreditation Organizations Do Not Evaluate Providers Based on The Institute of Medicine Standards.

[1]Accreditation only guarantees the minimum standard of care for constitutional compliance. Healthcare contractors are responsible for all specialty care and procedures under $25,000. This leads to a financial incentive for the contractor to restrict care and not provide rehabilitative services to those that need them.

"Barbara's continued health challenges were not met with the attention and care most people would even give their pets. Medical staff at MCI-W administered Barbara's treatment and access to outside medical care as if it were an extra burden placed upon them. And despite complying eventually, the approach of correctional personnel was almost adversarial—especially after Barbara's *third* stage-4 cancer recurrence."

—Danny Varner, father of Barbara Hampton

As Barbara's cancer required treatment at an offsite facility, correctional-transportation officers often made her miss her appointments, and the prison dietary department refused to consistently provide her the proper nutritional food prescribed by her physicians—even after she filed several formal complaints to the Warden about the mistreatment.

Current practice in Maryland's system dictates once a grievance is filed, it is referred directly back to the contractor medical department. Incapable of investigating themselves thoroughly and impartially, wrongdoing is often denied.

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[1] Clarke, Matthew. "Neither Fines Nor Lawsuits Deter Corizon From Delivering Substandard Health Care", Prison Legal News. https://www.prisonlegalnews.org/news/2020/mar/3/neither-fines-nor-lawsuits-deter-corizon-delivering-substandard-health-care/.

"She was a human being too physically frail to harm anyone in the community", says Mr. Varner. "I had to listen to my child cry non-stop because she was in so much pain, knowing that there was nothing I could do to help. It was one of the hardest things I ever had to deal with in life."

Something must be done to simplify the process for the release of people like Mr. Varner's daughter. Even with the help of Senator Jill Carter, Barbara was not released within a compassionate time frame. Through a last-minute sentence commutation by Governor Hogan, Barbara Hampton was eventually released to a care facility where she lived for a few hours; dying before her father could arrive from Washington state. "I believe she finally gave up the fight because she was free at last", Mr. Varner states.

The Justice Policy Institute urge this committee to issue a favorable report on SB 128.

SB128_WDC 2024 Testimony_SUPPORT.pdf
Uploaded by: Margaret Barry
Position: FAV

MONTGOMERY COUNTY, MARYLAND
WOMEN'S DEMOCRATIC CLUB
P.O. Box 34047, Bethesda, MD 20827 www.womensdemocraticclub.org

Senate Bill 128, Correctional Services – Geriatric and Medical Parole
Judicial Proceedings Committee – February 7, 2024
SUPPORT

Thank you for this opportunity to submit written testimony in **support of SB 128,** which would expand and clarify parole for those who due to their age or significant illness should no longer be held in prison. This bill is a priority for the **Montgomery County Women's Democratic Club (WDC)** for this legislative session and we thank Senator Hettleman for her leadership in sponsoring it. WDC is one of the largest and most active Democratic clubs in our state with hundreds of politically active women and men, including many elected officials.

There are three reasons why this bill should become law. First, the current law does not achieve its intended results. Second, the demonstrably low recidivism rates for those who are fifty or older suggests that little is gained by keeping them in prison; for those who are very ill it is simply cruel to keep them locked up, particularly given the poor care that we provide in our prisons. Third, the cost of keeping older people and those who are ill in prison is prohibitively high; the money should, as the bill directs, go to ensuring that parole applications are appropriately considered and to support re-entry.

Despite its provisions, current law fails to deliver medical and geriatric parole.
When people are very ill, there is no credible public benefit to keeping them locked up. The current law does not achieve its intended results for those seeking medical parole. People are denied medical parole because the standards make such parole essentially unavailable. The Justice Policy Institute (JPI) described the process as follows:

There is no required medical examination, and an applicant never receives a hearing. Instead, a physician merely reviews medical records, designates a Karnofsky score measuring functional impairment, and sends a recommendation to the Maryland Parole Commission. This is often in the form of an email or a few-sentence memo. The Parole Commission is under no obligation to grant an in-person hearing or to accept that recommendation and, in fact, may come to a different conclusion based on the Code of Maryland Regulations, which are more restrictive than the statute and state that the person must be "imminently terminal" to be granted medical parole.[1]

We know of cases where people who were not considered sufficiently ill to be released died in custody shortly after denial and others who died within days of release. JPI reports that of the 253 requests for medical parole between 2015 and 2020, only 86 were ultimately approved.[2] The existing process does not support returning people to their families and to decent care when they

[1] Justice Policy Institute, *Compassionate Release in Maryland: Policy Brief* (January 2022) at 2.
[2] Statistics provided by the Maryland Parole Commission, Justice Policy Institute PIA Request, 2021.

are seriously ill—a goal that is both morally and legally compelling.[3] SB 128 provides for medical parole by calling for direct evaluation of the person's condition.

In order to be eligible for geriatric parole, a person must be 60 years of age or older, have served at least 15 years in prison, committed a certain type of violent offense *and* subsequent offenses. This conflicts with the general terms of parole, which carve out parole eligibility based on the length of sentences and type of crime with no specific provisions regarding age or the number of offenses. Neither path has resulted in parole for seniors. Thus, there are currently in the system over 600 people over age 60 who have served 15 or more years.[4] SB 128 would clarify eligibility for parole - based on age, 60, and length of incarceration, 15 years.

Geriatric and medical parole does not pose a risk to public safety.
Research has shown that by age 50 most people are not likely to commit crimes. Nationally, arrest rates drop to just over two percent at age 50 and are almost zero percent at age 65.[5] At such low rates, there is no credible public safety basis for keeping people in prison who have already been punished by lengthy sentences. They should have the chance to contribute to their families and communities.

For those who meet the medical release criteria, their medical incapacity makes any danger to public safety highly unlikely.

The cost of keeping older people in prison is very high and given the low rate of recidivism these taxpayer dollars could be put to much better use.

It costs Maryland taxpayers almost $60,000 per person annually to house people in Maryland prisons.[6] The high number is due in part to the cost of incarcerating older people. Referencing a

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[3] The U.S. Supreme Court held in *Estelle v. Gamble* that deliberate indifference to healthcare for the incarcerated people constituted cruel and unusual punishment. *Estelle v. Gamble*, 429 U.S. 97 (1976). Maryland's poor record with regard to providing healthcare for those incarcerated has been well documented. See e.g. *The Baltimore Banner, Maryland waited until the last minute to seek alternatives to its troubled prison healthcare provider* (Nov. 30, 2023), https://www.thebaltimorebanner.com/politics-power/state-government/corizon-yescare-medical-contract-OBVQJ2VAVJGS5C3KO3YBPAF4QY/

[4] Justice Policy Institute *supra* note 1 at 4.

[5] *Id* at 5, *citing* I.M Chettiar, W. Bunting, and G. Schotter, At America's Expense: The Mass Incarceration of the Elderly (New York, NY: American Civil Liberties Union, 2012). *See also* DPSCS Recidivism Report (Nov. 15, 2022) at 14 (citing the low recidivism rates for geriatric people released in Maryland).

[6] Fiscal and Policy Note for HB0157 (2023 Session), p. 5. The Note states that the average total cost to house a State inmate in a Division of Correction facility, including overhead, is estimated at $4,970 per month. https://mgaleg.maryland.gov/2023RS/fnotes/bil_0001/sb0771.pdf

national study, the Justice Policy Institute reports that, "it costs about $34,000 per year to incarcerate an individual, but that rises to an estimated $68,000 per year for someone over the age of 50," and the difference is largely due to health care costs for this cohort.[7]

The higher incarceration costs do not account for the cost to families and communities when people are locked away, especially for so very long. In 2018, the Governor's Office for Children reported as follows,

As the number of incarcerated adults increases, so do the number of children and families impacted by the effects. It is estimated that on any given day, approximately 90,000 children in Maryland have a parent under some form of correctional supervision – parole, probation, jail or prison…The impact of incarceration on children and families includes family instability, higher rates of child welfare involvement, and post-traumatic effects such as hypervigilance, feelings of despair and powerlessness, and poor academic outcomes.[8]

Passage of this legislation is justified on moral, legal, and fiscal grounds. As members of the community who care about each of these aspects, **we ask for your support for SB 128 and urge a favorable Committee report.**

Tazeen Ahmad
WDC President

Carol Cichowski and
Margaret Martin Barry
WDC Advocacy Committee

Cynthia Rubenstein
Chair, WDC Advocacy

[7] *Id* at 7 *citing* Pro and Miesha Marzell, "Medical Parole and Aging Prisoners: A Qualitative Study."
[8] The Governor's Office for Children, *Children and Families Affected by Incarceration*, https://goc.maryland.gov/incarceration/#:~:text=Finally%2C%20incarceration%20overall%20costs%20Maryland,the%20 Justice Policy Institute *supra* note 1 Justice Policy Institute *supra* note 1 s%20from%20Sandtown%2DWinchester (last visited January 10, 2024).

SB128-JPR-FAV.pdf
Uploaded by: Nina Themelis
Position: FAV

BRANDON M. SCOTT
MAYOR

Office of Government Relations
88 State Circle
Annapolis, Maryland 21401

SB0128

February 7, 2024

TO: Members of the Senate Judicial Proceedings Committee

FROM: Nina Themelis, Director of Mayor's Office of Government Relations

RE: Senate Bill 128 – Correctional Services - Geriatric and Medical Parole

POSITION: SUPPORT

Chair Smith, Vice Chair Waldstreicher, and Members of the Committee, please be advised that the Baltimore City Administration (BCA) **supports** Senate Bill (SB) 128.

SB 128 requires the Maryland Parole Commission to consider the age of an incarcerated individual when determining whether to grant parole and updates the medical criteria and community support factors to be considered upon discharge. SB 128 allows the Commission to consider the combination of age and medical conditions in determining if an inmate can be safely returned to the community.

According to Maryland Department of Public Safety data, 7.4% of Maryland inmates are over the age of 60.[i] Many of these older inmates have chronic or even terminal illnesses. Prisons are not appropriate settings for older adults with these medical issues and are not equipped to provide care that is necessary and humane, including palliative care. The increased vulnerability of these older inmates may it more likely that they may become targets for violence from younger inmates, while at the same time, incarcerated people are less likely to participate in misconduct as they age.[ii] The functional limitations that these conditions impose make it very unlikely that they will re-offend if released.[iii] As a result, the Parole Commission should consider age and medical conditions when making decisions about granting parole for older and/or medically frail incarcerated people.

For these reasons, the BCA respectfully request a **favorable** report on SB 128.

[i] Maryland Department of Public Safety and Correctional Services. (2022). Maryland Department of Public Safety and Correctional Services. Retrieved from https://dpscs.maryland.gov/publicinfo/publications/pdfs/Inmate%20Characteristics%20Report%20FY%202022%20Q4.pdf
[ii] Augustyn, Rita A., Tusty ten Bensel, Robert D. Lytle, Benjamin R. Gibbs, and Lisa L. Sample. 2020. "'Older' Inmates in Prison: Considering the Tipping Point of Age and Misconduct." *Criminology, Criminal Justice, Law & Society* 21 (2): 37–57. Retrieved from https://ccjls.scholasticahq.com/article/14161-older-inmates-in-prison-considering-the-tipping-point-of-age-and-misconduct
[iii] Department of Public Safety and Correctional Services. (2022). Joint Chairmen's Report – Q00R – Recidivism Report. Retrieved from https://dpscs.maryland.gov/publicinfo/publications/pdfs/2022_p157_DPSCS_Recividism%20Report.pdf

O. Moyd Testimony - SB 0128 - Medical & Geriatric

Uploaded by: Olinda Moyd, Esquire

Position: FAV

AMERICAN UNIVERSITY
WASHINGTON, DC
Clinical Program

RE: SB 0128 – Favorable
Medical and Geriatric Parole

Senate - Judicial Proceedings Committee
February 7, 2024

Written Testimony - Olinda Moyd on behalf of The American University Washington College of Law, Decarceration and Re-Entry Clinic

The American University Washington College of Law, Decarceration and Re-Entry Clinic supports a favorable report on this bill for several reasons.

Our clinic represents men and women confined in Maryland prisons before the courts and before the Maryland Parole Commission. Most of these individuals have served decades in prison and they have grown older and sicker while confined. I have also represented many individuals before the Maryland Parole Commission in a pro bono capacity for years. Many of whom I have befriended and walked with them along their aging journey.

This bill would require the Maryland Parole Commission to consider the age of an individual when determining whether to grant or deny parole. Section 7-319 applies to individuals who are at least 60 years old, has served at least 15 years of the sentence imposed and who is serving a sentence with the eligibility of parole. So many of the men and women who I have come to know over the years have surpassed this age requirement and have been detained for over 15 years – most having been detained for 20 years or more. They have aged out of criminality and many live daily under a cloud of hopelessness, never knowing if they will take their last breath behind bars. Individuals should be released when they are too debilitated to commit further crimes, too compromised to benefit from rehabilitation or too impaired to even be aware of the punishment.

The bill also establishes a process for the Maryland Parole Commission to evaluate a request for medical parole, which includes requesting a meeting between the individual and the Commission if the individual is housed in an infirmary, currently hospitalized or frequently hospitalized over the last 6 months. This affords individuals with chronically debilitating or incapacitating conditions the opportunity for more meaningful medical parole consideration.

Many of the individuals who passed away during COVID were elderly individuals who were even more vulnerable due to their chronic preexisting medical conditions. Mr. Andrew Parker was in his early 60's and had been in prison for 39 years and Mr. Charles Wright had been in for 30 years and was also in his 60's – both died in prison from COVID. Every week MAJR continues to receive letters from men and women who fit this age group who are afraid of dying from COVID and other diseases in prison.[1]

Along with an aging population come increased costs for healthcare and other conditions associated with growing old. There are thousands of geriatric-aged individuals still in the prison system. I see them on walkers and in wheelchairs as I cross the prison yards. According to a report from the Justice Policy Institute, People over 60 are paroled at a rate of a mere 28%.[2] This is contrary to everything we know about trends in criminal offending in older individuals.

It is estimated that Maryland imprisons approximately 3,000 people over age 50, and nearly 1,000 individuals who are 60 or older.[3] Based on data showing the geriatric population has higher care costs, a fiscal analysis concluded that continued confinement of this age group for an additional 18 years (based on the expected period of incarceration, the age at release and the projected life expectancy of the Ungers), would amount to nearly $1 million per person, or $53,000 a year. This is compared to the $6,000 a year to provide intensive reentry support that has proven to successfully reintegrate them back into the community.[4]

For those individuals who continue to serve lengthy sentences, most individuals desist from crime as they get older, and they eventually present little threat to public safety. Experts agree that for persons otherwise ineligible, age-based parole is an appropriate consideration.[5]

Maryland lags behind in providing medical and geriatric release opportunities

Medical parole is parole that is granted based on humanitarian and medical reasons. Now is the time for Maryland to act in a more humane way towards individuals who are aging and dying behind our prison walls. This bill broadens who can request a medical

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[1] DPSCS reports 3t inmate deaths and 8 staff deaths from COVID-19. The number of persons testing positive for the omicron variant has increased significantly in recent months. See DPSCS Daily Dash reporting,Cumulative COVID – 19 Cases page, viewed, January 27, 2023.

[2] Report by The Justice Policy Institute, *Safe at Home: Improving Maryland's Parole Release Decision Making,* May 2023 (page 17).

[3] Report by The Justice Policy Institute, *Rethinking Approaches to over Incarceration of Black Young Adults in Maryland,* (November 6, 2019).

[4] Report by The Justice Policy Institute, *The Ungers, 5 Years and Counting: A Case Study in Safely Reducing Long Prison Terms and Saving Taxpayer Dollars*, November 2018.

[5] E. Rhine, Kelly Lyn Mitchell, and Kevin R. Reitz, Robina Inst. of Crim. Law & Crim. Just., *Levers of Change in Parole Release and Revocation* (2018).

parole for an individual and outlines the documentation, assessment and decision-making process.

Medical and geriatric parole typically go hand-in-hand. Nearly every state has a policy allowing for people with certain serious medical conditions to be eligible for parole, known colloquially as medical parole. In 45 states, the authority for the release of these individuals has been established in statute or state regulation. Additionally, at least 17 states have geriatric parole laws in statute. In the federal system persons may apply for geriatric parole pursuant to the US Parole Commission Rules and Procedures, Title 28, CFR, Section 2.78.

These laws allow for the consideration for release when a person reaches a specified age. At least 16 states have established both medical and geriatric parole legislatively. It is time for Maryland to pass this legislation.
For these reasons, we urge a favorable report.

Olinda Moyd, Esq.
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SUPPORT HB 128-geriatric_med.parole.pdf
Uploaded by: Philip Caroom
Position: FAV

SUPPORT SB 128 – Geriatric and Medical Parole

MARYLAND ALLIANCE FOR JUSTICE REFORM

TO: Chair Will Smith and Senate Judicial Proceedings Com.
FROM: Phil Caroom, MAJR Executive Committee
DATE: February 7, 2024

Maryland Alliance for Justice Reform (MAJR-www.ma4jr.org) strongly supports SB 128 that better would facilitate parole of Marylanders who, due to age and medical conditions, pose no risk to public safety and, also, would permit transfer of their costly medical care to Medicaid.

The Parole Commission will have extensive documentation from medical and correctional personnel in every such case. They will have input from victims and prosecutors. Life sentences are the most serious category of case that Parole Commissioners, themselves selected by the Governor, will face in their careers. Legislators can have confidence that the Parole Commissioners will make sound decisions in these important cases.

Savings from parole of these older and medically-disable inmates to the State Budget and, especially, the DPSCS medical budget, via transfer of these costs to Medicaid, will be great. The Pew Institute has reported: "***The older inmate population has a substantial impact on prison budgets. ...The National Institute of Corrections pegged the annual cost of incarcerating prisoners age 55 and older with chronic and terminal illnesses at, on average, two to three times that of the expense for all other inmates, particularly younger ones. More recently, other researchers have found that the cost differential may be wider***." See 7/14 Pew State Prison Health Care Spending Report.

Public safety concerns are greatly reduced with older and disabled inmates, as national studies show. See, e.g., "*Graying Prisons- States Face the Challenge of an Aging Inmate Population* (2014)," Council of State Governments. A study of more than 130 older Maryland inmates released as a result of the Maryland Court of Appeals Unger decision indicated virtually no recidivism. Maryland's DPSCS, in 2006, also reported a zero recidivism rate for inmates paroled over age 60. *Aging Inmate Population, supra*. Funds saved from medical parole may be redirected towards for younger, higher-risk inmates who may pose much greater threats to public safety without appropriate services.

For all these reasons, Maryland Alliance for Justice Reform strongly supports passage of SB 128.

PLEASE NOTE: Phil Caroom offers this testimony for Md. Alliance for Justice Reform and not for the Md. Judiciary or any other unit of state government.

SB0128 - Correctional Services - Geriatric and Med

Uploaded by: Rabbi Sholom Reindorp

Position: FAV

בס"ד

JEWISH INCARCERATED FAMILY SERVICES

February 6th 2024

Honorable Members of Congress,

I am writing to you not just as an advocate for the humane treatment of those within our correctional system but as a voice echoing the profound teachings of Judaism on compassion, justice, and the sanctity of life. The proposed SB0128, focusing on Geriatric and Medical Parole, presents an opportunity for our society to align our correctional practices with these timeless values, ensuring that our policies reflect our collective moral and ethical standards.

In Judaism, every individual is seen as a world unto themselves, carrying a unique purpose and divine spark that commands respect and consideration, regardless of their circumstances. The Lubavitcher Rebbe, Rabbi Menachem Mendel Schneerson, emphasized the necessity of viewing each person's life and contributions as invaluable, advocating for a system that nurtures rather than negates this potential. His teachings inspire us to consider the deeper implications of our correctional policies, urging us to create environments that support rehabilitation and respect for human dignity, especially for the elderly and those with medical conditions.

SB0128 addresses a critical oversight in our current system, which too often leaves the elderly and medically vulnerable in conditions that neither serve the interests of justice nor the imperatives of compassion. By advocating for Geriatric and Medical Parole, this bill acknowledges the diminished threat these individuals pose to society and the disproportionate burden their continued incarceration imposes — both on the moral fabric of our community and our financial resources.

Moreover, the principles of justice and mercy that are foundational to Judaism compel us to consider the broader impacts of our actions and policies. In supporting SB0128, we are not merely advocating for a change in procedure but for a reevaluation of our societal values, recognizing the importance of providing care, dignity, and a path toward redemption for all individuals, particularly those who, due to age or illness, find themselves at the most vulnerable stages of their lives.

בס"ד

JEWISH INCARCERATED FAMILY SERVICES

My involvement with individuals and families affected by incarceration has only deepened my conviction that policies like SB0128 are not just beneficial but necessary. We have seen firsthand the challenges faced by the elderly and ill within the prison system — challenges that extend beyond the confines of justice into the realms of basic human rights and dignity. The ability for these individuals to access geriatric and medical parole would not only reflect a compassionate and just society but also promote a more effective and humane correctional system that aligns with our shared values of rehabilitation and respect for every person's inherent worth.

In conclusion, I urge you to support and advocate for the passage of SB0128. In doing so, we take a significant step toward honoring the principles of compassion, justice, and mercy that are central to Judaism and integral to our collective human conscience. Let us lead by example, showing that our commitment to these values transcends words and finds expression in our laws and policies, ensuring that our correctional system reflects our highest aspirations for a just and compassionate society.

Thank you for your time and consideration of this critical issue.

Sincerely,

Rabbi Sholom Reindorp
Founder & Director
Jewish Incarcerated Family Services

Donald Braxton Written Testimony for SB0128_ Corre
Uploaded by: Rachel Hettleman
Position: FAV

I entered the system at the youthful age of 16 in excellent health and I returned after 40 years in bad health.
I am partially blind, suffering from congestive heart failure, and lower lumbar back problems, and I truly believe if I was given better medical treatment I wouldn't be in the health situation I am in today.
Not only myself, but other prisoners were given Motrin and told to go back to their cell unless they were bleeding or on the floor dying right on the spot.
Having a strong support system after coming home from a long stay in prison is important for an individual staying free and not returning to prison. Myself and others are truly grateful to the ones who supported us and gave us a second chance.
Donald Braxton 2-4-2024

Johnny Reynolds Testimony - Geriatric and medical

Uploaded by: Rachel Hettleman

Position: FAV

Geriatric and Medical Parole

My name is Johnny Reynolds,and I wish to speak on the horrible medical services that the Maryland penal system offers it's prisoners. Let me begin by saying I was incarcerated for 37yrs. 4 months and 6 days. *I've been free for 11 months and 18 days. I was fortunate to meet a young lady who knew this Senator named Ms S.Hettleman,and until the senator got involved I never received adequate medical attention for my Hep-C virus.Which then led to me being treated for the fourth time. Three previous times after thousands of request to be seen by doctors a lot of the them went unheard of. After the senator got involved I was taken out of one institution and placed into an infirmary at another where they wanted to continue checking my vitals several times a day and placed on a cocktail of meds which fortunately cured me ,and I concluded the treatment upon my release. I was treated for a hemorrhoid condition after 9-10 years of complaining also. I also had a hernia that protruded from my naval which the doctors said I didn't need surgery for because they said it would only be cosmetic surgery. I remember it protruding out of my stomach one evening with me laying on the floor in the middle of the tier in pain begging to be taken to hospital and 2 officers came and picked me up and threw me in my cell. They came and took me to the infirmary after the shift changed. Then once I got to the infirmary the so called nurse massaged I guess my intestine back into my naval area and put a piece of tape over it and said you'll be ok.*

I wish to speak now on one of my most horrifying moments of my incarceration and that was when I was placed into that infirmary. Fortunately I had the backing of the senator,but what I witness in the M.C.I.-H was horrible. I'm a pretty tough dude,but what I witnessed there was truly inhumane men having to sit around in their own feces because no one wanted to change them. Men walking around out of their minds just babbling.

Check this out. I have a friend by the name of William H. Daniels #161-945,Sid #225976. He has sleep apnea , and narcolepsy. We're sitting there talking one day , now remember he has narcolepsy so he can't hold a 10-15 minute conversation without dozing off on you. We're sitting there talking and he falls out of the chair he's sitting in right on his face, I'm terrified that he busted his head or face open, they the police and nurse tell me to get away from him they're out in the hallway and I'm struggling to turn him over to make sure he's not bleeding or busted his head. I roll him over to make sure he's not and then back up after they start threatening to lock me up. I do so and they take 10 minutes to come into the infirmary to pick him up off the floor. Once they finally get him on his bed they leave and come back 10-15 minutes later to check his vitals and say he's ok. He's dying,he's now on a oxygen machine,and has contracted covid,. He was recently released from an outside hospital again.I'm speaking to you now if he isn't released from there soon he'll die.He's over 60yrs. Old and has done at least 43 yrs. In prison.

Johnny Reynolds 2-4-2024.

SB128_Hettleman_FAV.pdf
Uploaded by: Shelly Hettleman
Position: FAV

Shelly Hettleman
Legislative District 11
Baltimore County

Chair
Rules Committee

Budget and Taxation Committee

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TESTIMONY OF SENATOR SHELLY HETTLEMAN
SB 128- CORRECTIONAL SERVICES - GERIATRIC AND MEDICAL PAROLE

Maryland law currently provides for both medical and geriatric parole release opportunities. The problem is that requests for either are rarely granted. The Maryland Parole Commission approved just 149 medical parole requests and denied 464 between 2013 and 2022. While the Justice Reinvestment Act lowered from 65 to 60 the age eligibility for geriatric parole, it is rarely approved. Maryland parole grant rates in general have significantly lowered over recent years, with 27% less paroles being heard and 54% less paroles being granted in 2022 compared to 2019.

As this committee is well aware, over the past decades our prison population has ballooned, attributable more to longer sentencing than increased crime. As this population ages, just like it does outside the walls, the care of older adults will cost more. As it currently stands, the annual cost of an inmate is over $46,000 per year and estimates are that health care costs double for those age 60 and over.

Current law enables anyone to apply for medical parole except those sentenced for a sex offense and those ineligible for parole. No medical examination is required and there is no hearing. A physician reviews the medical record, assigns a Karnofsky score that measures impairment, and sends a recommendation to the Parole Commission. Regulations are actually **stricter** than statute and stipulate that a person must be "imminently terminal" to be eligible for medical parole, which is also dramatically **more restrictive than federal standards of care**.

The bill permits the inmate, a family member or other representative to request a meeting with the Parole Commission to request medical parole. They may also request a medical evaluation that the Parole Commission must consider along with other factors in assessing whether to grant parole. The bill strikes an important balance between the health care needs of the inmate with public safety concerns by taking into consideration whether an ill inmate is likely to recidivate.

Concerning geriatric parole, Maryland's experience with the Unger population is telling. These older inmates (whose average age was 64 and who had served an average of 40 years), and were released by court ruling, demonstrate that as individuals age, the risk to public safety is minimal (under 3%). In other words, most people age out of criminal behavior. SB 128 also fixes a quirk in current law that allows geriatric parole only for offenders who have committed multiple violent offenses and are not otherwise parole eligible. This should be fixed. It should also be moved from the Criminal Code section to the Correctional Law section where other parole matters are located.

Maryland has a lot of work to do. In 2022, the national nonprofit Families Against Mandatory Minimums (FAMM) released report cards grading compassionate release in state. (FAMM, 2022)[1] Maryland received an overall F grade with a score of 16/100, as well as an F grade for both its medical parole and geriatric parole programs, with FAMM noting that the state's program is internally inconsistent and incoherent. (FAMM, n.d.)[2] This is worse than Washington D.C. (scored at 90/100), Virginia (45/100), Pennsylvania (41/100), West Virginia (32/100), and Delaware (19/100). (Price, 2022)[3] Significant reform and improvement is necessary.

This bill improves our medical and geriatric parole processes by standardizing them, providing an opportunity for medical oversight while protecting public safety and saving resources.

Thank you for your consideration of SB 128.

[1] Compassionate Release Report Card-Maryland, FAMM (2022), https://famm.org/wp-content/uploads/md-report-card-final.pdf (last visited Feb 5, 2024).
[2] Everywhere and nowhere: Compassionate release in the States, FAMM, https://famm.org/our-work/compassionate-release/everywhere-and-nowhere/#memos (last visited Feb 1, 2024).
[3] Mary Price, Grading the states FAMM (2022), https://famm.org/wp-content/uploads/compassionate-release-report.pdf (last visited Feb 5, 2024).

SB0128 - Amended.pdf
Uploaded by: Anne Kirsch
Position: FWA

Anne Bocchini Kirsch
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SB0128 - Correctional Services - Geriatric and Medical Parole - Support only if Amended

As a parole advocate, and someone who is deeply concerned with over incarceration, and particularly that of the low-risk geriatric population that come with a fully loaded cost of $1 million per individual as reported in 2019,[1] I must still ask for an unfavorable report on SB0128 unless it is amended to remove the provision under CS 7-310 (3). This provision, which excludes anyone who is subject to the sex offender registry from geriatric parole consideration, needlessly removes the discretion of the Parole Commission in a way that is incredibly harmful and serves no benefit.

In Fiscal Year 2022, the Maryland Parole Commission heard 5,922 cases. Only 959 people were released on parole during that same time period.[2] Our parole commission reduced its grant rate by 66% between 2019 and 2022.[3] That is the fourth largest grant reduction among the 26 states that publish parole grant data. This is evidence of an extremely conservative Parole Commission and there is no reason for the Legislature to restrict its discretion.

This particular sex offender restriction applies to anyone who is subject to sex offender registry, so it is important to remember that "criminalized conduct ranges across a broad spectrum of culpability including public nudity, indecent exposure ("flashing"), public urination, "sexting," sex between consenting minors (statutory rape), soliciting sex workers, illegal image creation (e.g., a minor taking a nude photo of themselves), illegal image sharing (e.g., a minor sharing a nude photo of themselves), the creation or dissemination of sexually explicit images of youth, incest, to acts of fondling, sodomy, and rape using force."[4] Interstate registry also comes with a variety of complicated rules

[1] OSI Baltimore, Building on the Unger Experience: A Cost-Benefit Analysis of Releasing Aging Prisoners, 2019, https://goccp.maryland.gov/wp-content/uploads/Unger-Cost-Benefit3.pdf
[2] Maryland Parole Commission, Fiscal Year 2022 Annual Report, page 12, https://dlslibrary.state.md.us/publications/Exec/DPSCS/MPC/COR7-208_2022.pdf
[3] Prison Policy Initiative, No Release: Parole grant rates have plummeted in most states since the pandemic started, https://www.prisonpolicy.org/blog/2023/10/16/parole-grants/
[4] Kristen M. Budd, Ph.D., Sabrina Pearce and Niki Monazzam, Responding to Crimes of a Sexual Nature: What We Really Want Is No More Victims, 2024,

that might land someone on the registry for a crime that is not even registrable under Maryland law under CP 11-704 (a) (4).

This is the risk of restricting the discretion of the Parole Commission - you remove the human eyes from the situation and apply a mindless formula, often ending in results that run counter to legislative intent due to unforeseen circumstances that require critical analysis. "For example, two consenting teenagers who have sex could receive up to a 15 year prison sentence in Florida or up to a 20 year prison sentence in Alabama due to statutory rape and other laws. These convictions could also trigger a lifetime public registration requirement."[5] CP 11-704 (a) (4) would then compel these people to register in Maryland, and if they were incarcerated in Maryland decades later for a nonviolent crime like drug trafficking, they would be barred from relief under this Geriatric Parole statute. Certainly if the discretion of the Parole Commission were left intact, the Commissioner would easily be able to divide this case based on its unique circumstances and treat it accordingly.

I therefore urge you to amend this bill to strike CS 7-310(3) and leave the specifics of the case consideration in the capable hands of our Parole Commission. However, if that is not possible, I urge you to return an unfavorable report.

https://www.sentencingproject.org/policy-brief/responding-to-crimes-of-a-sexual-nature-what-we-really-want-is-no-more-victims/

[5] Kristen M. Budd, Ph.D., Sabrina Pearce and Niki Monazzam, Responding to Crimes of a Sexual Nature: What We Really Want Is No More Victims, 2024,
https://www.sentencingproject.org/policy-brief/responding-to-crimes-of-a-sexual-nature-what-we-really-want-is-no-more-victims/

SB0128 K Burr Hill Written Testimony.pdf
Uploaded by: Kristin Hill
Position: FWA

Kristin Burr Hill
Regarding Judicial Proceedings Hearing Related to SB0128
February 6, 2024

My name is Kristin Burr Hill and I am a concerned citizen who has become a domestic violence advocate in my free time.

In 2021, my best friend and maid of honor, Lauren Charles, was brutally murdered by her husband in Silver Spring, MD. His sentencing in 2023 made me aware of this bill and how it could be putting women's lives at risk.

Ultimately, I believe this is a good bill. Many studies have been done on recidivism in older Americans and they generally find recidivism rates to be around 3%. However, none of these studies have isolated domestic abuse. Domestic abuse is unique from other violent crimes in both motive and opportunity. Further, unlike other violent crimes, less than 2% of domestic abuse cases result in jail time. Most cases of violence are not even reported to the police. This means that rates of "true recidivism" — meaning actions that result in a legal conviction — is not the standard for which we can determine success when it comes to domestic abuse. Additionally, I want to note that black women are disproportionately affected by domestic abuse. 41% of black women are physically abused by a romantic partner in their lifetime and black women are 3x more likely to be murdered by a partner over any other racial group. The State of Maryland should have a greater interest in ensuring that people are safe within their homes.

Lauren's murderer is an example of where this bill has failings. He was convicted at age 45. He has a history of domestic abuse that is not on his criminal record and was not presented as evidence at his trial. In fact, other witnesses told me they refused to testify about his violence towards them because they were afraid for their safety. He is likely to have a good criminal record because he only has exhibited violent behavior towards women. He has a history of relying on women for his financial welfare. The parole commission will consider recidivism rates generally, because there is no other data to consider. Under this bill, he could be released at age 60 and, needing a place to live, move in with another woman he meets online. And, I don't think his situation is unique.

I'm asking that you consider expanding the sexual violence exception in § 7-310(A)(3) to include domestic abuse as defined in Maryland Family code. This will ensure that people with a documented history of hurting family members will not be given the opportunity to do it again.

If you are unwilling to make this change, then I'd ask that you expand the list of factors that the parole commission may consider in §7-305 to include things such as :

- Evidence of domestic abuse outside of the incarcerated individuals criminal history;
- Whether the crime was domestic abuse as defined by the Maryland Family Code;
- The lack of data for geriatric recidivism related to domestic abuse; and/or
- What the incarcerated individual's living situation will be and/or may be in the future; especially considering previous patterns

The parole commission are not experts on domestic abuse and expecting them to be is setting them up for failure. Instead, I'm asking you to lay these factors out for them.

I know we all have the same goal of finding a way to work towards criminal justice reform while also keeping people, especially black women, safe in their homes. I want to thank all the members of the Judiciary Proceedings Committee for hearing me out and being dedicated to keeping women safe in the State of Maryland. Your consideration of these additions to SB0128 means a lot to me and can save lives. While we couldn't save Lauren, I am dedicated to doing what I can to help other victims become survivors.

SB 128 Geriatric & Medical Parole

Uploaded by: Noelle Melton

Position: FWA

Maryland General Assembly
Senate Judicial Proceedings Committee
Wednesday, February 7, 2024 at 2pm
Hearing on SB0128, Correctional Services – Geriatric & Medical Parole

Good afternoon, Senator Hettleman and members of the committee. My name is Noelle Melton, and I am a resident of Takoma Park, MD where I live with my husband and three young children.

I am submitting my written testimony today first to inform you of the dire possible consequences presented by SB0128, the bill which was reintroduced in January 2024 to make changes to Maryland's geriatric parole policy, **and second, to urge you to expand the sexual violence exception in Section 7-310(A)(3) to include domestic abuse as defined by Maryland Family code to protect and save the lives of women and families** or make other similar changes as recommended by Kristin Burr in her testimony at today's hearing.

In March 2021, **Lauren Charles, a Silver Spring resident** and friend of our family, **was brutally murdered in her sleep at home by her husband**, who viciously beat her with a statue and shoved a pillowcase down her throat. In 2023, he was convicted at the age of 45 and sentenced to 55 years to life. It was later learned that prior to this, her killer was also previously named in a protective order and an ex-girlfriend of his also submitted a written statement at his sentencing that he tried to suffocate her with a pillowcase. **Under your bill, Lauren's killer would be eligible for parole in 14 short years, leaving other women's lives in danger upon his release.**

Lauren was a successful, outgoing, 40 year old black woman with her whole life ahead of her. FOX5 created a special on Lauren's story which you can find here: https://youtu.be/wrfmar27lS0.

While studies on recidivism in older Americans show low recidivism rates, none of these studies isolate domestic abuse or consider that less than 2% of domestic abuse cases ever even result in jail time to begin with. This means that rates of "true recidivism", or actions that result in a legal conviction, is not the standard for which we should determine success when it comes to domestic abuse. **The findings of these studies are being conflated, and the resulting bill, SB0128, puts women and families in jeopardy of domestic violence.**

I strongly support the main premise of your legislation, but in its current form, it still prioritizes the early release of domestic violence felons over the safety of women and families and puts women at serious risk of facing a similarly horrifying end of life as Lauren. Homicide is the #2

cause of death in black women ages 1-19 years old, and the #4 cause of death to black women ages 20-44. **Maryland legislators should have a strong interest in ensuring that people, especially those most vulnerable like black women, are safe within their homes.**

I urge you to make the changes above to SB0128 to continue to protect women and families from such brutal actions. Thank you for your time for holding this hearing today and for hearing from your constituents and concerned members of the public.

SB0128 FAIR UNFAV.pdf
Uploaded by: Brenda Jones
Position: UNF

Families Advocating Intelligent Registries
PO Box 8402 Elkridge, MD 21075 ♥ 800-708-8535 ♥ info@fairregistry.org

SB0128
Unfavorable

Unfavorable Response to SB0128
Correctional Services – Geriatric and Medical Parole

Families Advocating Intelligent Registries (FAIR) seeks rational, constitutional sexual offense laws and policies for persons accused and convicted of sexual offenses.

FAIR agrees that the focus of parole considerations should be on recidivism and public safety. Proposed Amendment to Section 7-305(5) makes clear that the Commission shall consider "the totality of the circumstances relating to the incarcerated individual." In FAIR's view, the further proposed additional language "including the age of the incarcerated individual" is unnecessary as it highlights a single factor which may or may not play a role in potential for an individual's recidivism in a particular case. We are concerned that the Commission will view "age" as a highlighted factor and that this will result in unintended consequences of individuals being denied Parole despite otherwise satisfying requirements.

FAIR supports the addition of Section 7-310 for geriatric parole. However, **FAIR objects strenuously to the proposed addition of Section 7-310(A)(3) that carves out the opportunity for this parole consideration for anyone required to register (meaning nearly all sex offenses).** On the next page you can see the results of a reliable study demonstrating that the longer the time after conviction, the less likely even the most serious offenders are to repeat. It has also been well-established with over 30 years of experience and research that individuals convicted of sexual offenses compared to the rest of the prison population as a whole have a much lower re-offense rate (3.5% within three years, compared to 67% for all classes.*)

There is no rational basis for excluding registrants from such parole consideration either for reasons of recidivism risk or public safety risk. We urge that proposed Section 7-310(A)(3) be removed, as it is arbitrary and removes from the Commission's authority the ability to periodically review appropriate individuals for parole consideration under applicable law.

We urge the committee to return an unfavorable vote for SB0128.

Sincerely,

Brenda V. Jones, Executive Director
Families Advocating Intelligent Registries

*Bureau of Justice Statistics study page 7.
https://www.bjs.gov/content/pub/press/rsorp94pr.cfm https://www.ncjrs.gov/pdffiles1/nij/grants/231989.pdf

Declaration of Dr. R. Karl Hanson.
United States District Court for the Northern District of California.
Civil Case No. C 12 5713. Filed 11-7-12

Selection:

I, R. Karl Hanson, declare as follows:

I am a Senior Research Scientist at Public Safety Canada. Throughout my career, I have studied recidivism, with a focus on sex offenders. I discuss in this declaration key findings and conclusions of research scientists, including myself, regarding recidivism rates of the general offender population and sex offenders in particular. The information in this declaration is based upon my personal knowledge and on sources of the type which researchers in my field would rely upon in their work. If called upon to testify, I could and would competently testify thereto.

Summary of Declaration:

My research on recidivism shows the following:

1) Recidivism rates are not uniform across all sex offenders. Risk of re-offending varies based on well-known factors and can be reliably predicted by widely used risk assessment tools such as the Static-99 and Static-99R, which are used to classify offenders into various risk levels.

2) Once convicted, most sexual offenders are never re-convicted of another sexual offence.

3) First-time sexual offenders are significantly less likely to sexually re-offend than are those with previous sexual convictions.

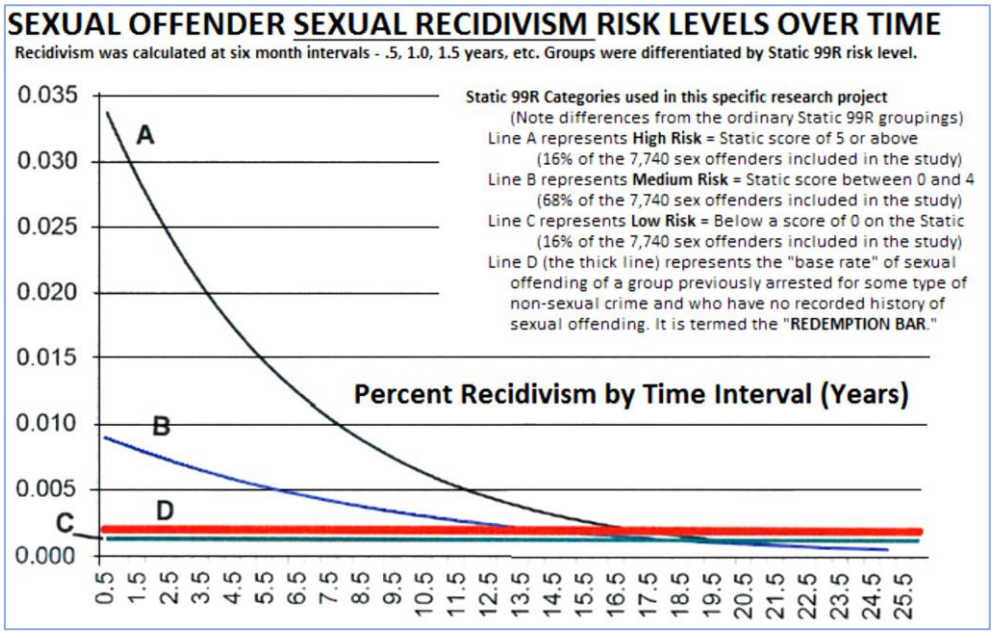
4) Contrary to the popular notion that sexual offenders remain at risk of reoffending through their lifespan, the longer offenders remain offence-free in the community, the less likely they are to re-offend sexually. Eventually, they are less likely to re-offend than a non-sexual offender is to commit an "out of the blue" sexual offence.

   a) Offenders who are classified as low-risk by Static-99R pose no more risk of recidivism than do individuals who have never been arrested for a sex-related offense but have been arrested for some other crime.

   b) After 10 - 14 years in the community without committing a sex offense, medium-risk offenders pose no more risk of recidivism than Individuals who have never been arrested for a sex-related offense but have been arrested for some other crime.

   c) After 17 years without a new arrest for a sex-related offense, high-risk offenders pose no more risk of committing a new sex offense than do individuals who have never been arrested for a sex related offense but have been arrested for some other crime.

5) Based on my research, my colleagues and I recommend that rather than considering all sexual offenders as continuous, lifelong threats, society will be better served when legislation and policies consider the cost/benefit break point after which resources spent tracking and supervising low-risk sexual offenders are better re-directed toward the management of high-risk sexual offenders, crime prevention, and victim services.



Gordon Pack's SB 0128 Testimony 2024.docx.pdf
Uploaded by: Gordon Pack, Jr.
Position: UNF

December 6, 2024

Re: Testimony in Opposition of SB 0128
Correctional Services - Geriatric and Medical Parole

Dear Members of the Judicial Proceedings Committee:

As a, now, 60 year old JuvRA releasee who had served over four continuous decades in Maryland's prison system, a juvenile justice and criminal justice advocate, and someone engaged in parole and reentry services, I oppose SB 0128 sponsored by Senator Hettleman.

My opposition is based solely on the discriminatory application provision (A) (3) found on page 8, lines 19-21: "is not registered or eligible for sex offender registration under Title 11, Subtitle 7, of the Criminal Procedure Article; and"

This exclusion bars an incarcerated individual from geriatric and medical parole solely due to the nature of the convicted offense. Thus, an incarcerated individual's sentence, age, medical prognosis, availability of outside medical treatment, rehabilitation, as well as the factors identified in the Correctional Services Articles and COMAR for parole consideration are without merit. Frankly, the implication is that the life of a sex offender has less value than other incarcerated individuals as he/she will forever be unworthy of release consideration under any circumstances.

This narrative is untrue, and certainly not supported by any investigative data. While I understand the public fear related to sex offenses, I believe it is damaging to lump every sex offender into one homogeneous group. Offenders and circumstances of crimes vary. Likewise, responses to incarceration and treatment vary. This is why the Parole Commission and the Courts are more qualified to consider the totality of circumstances of criminal offense before making judgments.

Am I to believe that this was an oversight when the legislature enacted JuvRA? After committing horrible crimes as a fifteen year old, being sentenced to an aggregate parole

eligible life term, eleven years of specialized treatment, and amassing an outstanding record of accomplishment, and having served over forty-two years with parole hearings in the doubled digits, I still did not know when, if ever, I would be released. I share this with mixed feelings because it is important to recognize that just because a sex offender has an opportunity for parole consideration does not mean that the Parole Commission will grant release.

The proposed carve out in this Bill undermines its intent. If a person has aged out of crime, is no longer a threat to public safety, and has a debilitating medical condition, why keep him or her incarcerated? Why continue to spend excessive amounts of money to detain incarcerated individuals who have served significant time in prison unnecessarily? Personal bias and unfounded fears should not be the basis of and legislation.

If geriatric and medical parole is not equitable, it should not be legislated. Thus, I ask this honorable committee not to vote in favor of SB 0128. Thank you for your time and consideration.

Truly yours,

Gordon R. Pack, Jr.
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