Testimony to the Senate Judicial Proceedings
SB128 Correctional Services – Geriatric and Medical Parole
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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.