Testimony for the Senate Judicial Proceedings Committee
March 25, 2025

HB 1123 – Correctional Services – Medical and Elder Parole

FAVORABLE WITH AMENDMENTS

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The ACLU of Maryland supports HB 1123 as long as amendments are adopted to ensure meaningful and efficient parole consideration for the targeted low-risk population by:

(1) clarifying the differentiated elder parole consideration procedure under Section 7-310 of the Correctional Services Article through

(a) requiring a one-year deadline for completing the elder parole hearing process, and

(b) providing a rebuttable presumption that the population eligible for parole under this section is a low risk to public safety due to their statistically low risk of recidivism; and

(2) requiring the imposed risk assessment to take place **after** the provided parole hearing, and allowing the Maryland Parole Commission (MPC) discretion in implementation.

In addition to medical parole provisions, HB 1123 currently mandates that anyone 60 or older who has served 20 years or more and has maintained a good disciplinary record in prison for at least three years must undergo a "risk assessment" in order to have a parole hearing. The ACLU's comments are directed exclusively at this section.

We appreciate the bill's apparent intention to expedite parole consideration for older parole candidates serving extreme sentences, in recognition of this population's statistically low risk of recidivism. However, we urge the adoption of these amendments to resolve significant concerns with implementation, as explained further below.

(1) <u>At bare minimum, clarifying provisions must be added to ensure this parole consideration process builds on existing parole opportunities for the eligible population.</u>

The issue of lengthy delays in the parole consideration is one of the most significant concerns for parole candidates and their representatives. This is especially true for life-sentenced individuals, who often find themselves experiencing lengthy delays at every stage of parole consideration – delays that amount to three or more years between the target parole hearing date and a final determination by the MPC.

To advance the apparent legislative intent of this bill to provide an expedited parole process under Section 7-310 of the Correctional Services Article for older, low risk individuals serving long sentences, the following changes are essential to ensuring timely and meaningful consideration:

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(a) Provide a one-year deadline for completing the provided parole hearing process for the eligible population, including the parole candidate's opportunity to review their parole file and the mandatory victim notification and response period before the hearing; any risk assessment following the hearing; and the resulting decision.

In addition to amending HB1123 to include the parole hearing requirements under subsection (b) instead of subsection (c) (as further explained below), this may be accomplished by striking "ON COMPLETION OF THE RISK ASSESSMENT" from subsection (c) on page 11, line 6, and replacing it with "<u> WITHIN ONE YEAR AFTER RECEIPT OF A NAME OF AN INCARCERATED INDIVIDUAL UNDER SUBSECTION (A) OF THIS SECTION</u>"; and striking "CONDUCT A PAROLE RELEASE HEARING UNDER § 7-306 OR § 7-307 OF THIS SUBTITLE AND" on page 11, lines 7 to 8. As a result, subsection (c) would read:

(c) Within one year after receipt of a name of an incarcerated individual under subsection (a) of this section, the Commission shall determine whether the incarcerated individual is suitable for parole.

This one-year timeline would allow sufficient time to schedule either an open or closed parole hearing; conduct any risk assessment as permitted by this section; and fulfill all applicable requirements and opportunities for pre- and post- hearing notice, review, and response, without permitting the undue delay that currently plagues the parole process.

(b) Implement the goal of affording the eligible population meaningful parole consideration by providing a rebuttable presumption that accounts for their statistically low risk.

This may be accomplished by inserting the following language as subsection (c)(1) following line 9 on page 11: "(1) THERE SHALL BE A REBUTTABLE PRESUMPTION THAT AN INDIVIDUAL ELIGIBLE FOR A PAROLE HEARING UNDER THIS SECTION IS A LOW RISK TO PUBLIC SAFETY DUE TO THE STASTICALLY LOW RISK OF RECIDIVISM AMONG THIS POPULATION."

(2) Most importantly, the State should not codify mandatory reliance on risk assessments, especially before a parole candidate's opportunity to be heard directly by the Commission, as these flawed tools grossly overstate risk and worsen delays in consideration, particularly for Black people serving long sentences.

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As further supported below, the Commission should be afforded necessary discretion to use risk assessments on a case-by-case basis after a parole hearing before rendering a decision by amending the language in Section 7-310 to strike "CONDUCT A RISK ASSESSMENT" in subsection (b) on page 11, line 5, and replace it with "SCHEDULE A PAROLE RELEASE HEARING UNDER § 7-306 AND § 7-307 OF THIS SUBTITLE"; and insert the following language as subsection (c)(2) following line 9 on page 11: "(2) THE COMMISSION MAY CONDUCT A RISK ASSESSMENT FOR THE INCARCERATED INDIVIDUAL."

Including the aforementioned procedural clarifications, the fully amended language of subsections (b) and (c) would read:

(b) Within 60 days of receipt of a name of an incarcerated individual under subsection (a) of this section, the Commission shall schedule a parole release hearing under § 7-306 and § 7-307 of this subtitle for the incarcerated individual.

(c) Within one year after receipt of a name of an incarcerated individual under subsection (a) of this section, the Commission shall determine whether the incarcerated individual is suitable for parole.

> *(1) There shall be a rebuttable presumption that an individual eligible for a parole hearing under this section is a low risk to public safety due to this population's statistically low risk of recidivism.*
>
> *(2) Before making a parole determination, the Commission may conduct a risk assessment for the incarcerated individual after the parole release hearing.*

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Parole candidates must have an opportunity to be heard by the Commission prior to any risk assessment to avoid diverting resources toward unnecessary assessments for those determined unsuitable for parole. Unlike the current practice of conducting any risk assessments for those serving life sentences after an initial parole hearing with two commissioners, the current language of HB1123 would require the assessment to occur before a commissioner even has a chance to speak with an eligible parole candidate. This disordered process would result in an inefficient diversion of resources toward assessing candidates who may ultimately be found unready for release following the hearing, and would just be given a subsequent hearing under current practice rather than needlessly subject to the expense-laden risk assessment process.

In addition to ensuring the State's limited, taxpayer-funded resources for risk assessments are only used when actually deemed necessary, requiring the parole hearing to occur before any assessment would allow the often-flawed results of such tools to be reviewed in context of direct dialogue with the parole candidate and any others offering important perspectives during and prior to a hearing.

The term "risk assessments" refers to pseudo-scientific assessments meant to predict a person's risk of violence or recidivism. These evaluations are deeply flawed, rife with racial bias, and known to penalize people who have otherwise demonstrated rehabilitation. Any risk assessment tool is only as good as the information and methodology behind it – and none have been vetted through a racial equity lens.[1]

On top of the disproportionately negative impact on Black people and women, requiring reliance on such insufficiently vetted and often poorly implemented tools before a commissioner even speaks with a parole candidate will just add even more delays to the parole process for the statistically low risk population eligible for consideration under this bill. Currently, risk assessments in Maryland are prioritized for people

[1] A risk assessment tool is created by looking at a group of people, identifying common factors among those who recidivated as compared to those who did not, and then extrapolating to generate risk factors and weights associated with those factors. Essentially, they create profiles based on these statistics, ***which are based on the original group***. The reliability of any assessment depends in part on how closely the person to whom it is applied "matches" the profile of the group/data used to create the original tool. The more different the person being considered is from the original group, the greater the likelihood that there are differences in what predicts risk or how reliably it does.

serving life sentences, and the Maryland Parole Commission (MPC) has discretion to determine when such assessments are necessary after interviewing the parole candidate and reviewing their records. The process is already severely backlogged with a waiting list of more than two years – a problem that has persisted for decades and cannot be resolved through hiring due to national staffing shortages.

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Maryland already relies too heavily on risk assessments and has persistently maintained a years-long backlog in risk assessments, resulting in qualified parole candidates spending at least 2-3 additional years in custody. There is currently, and has consistently been, a waiting list of more than 100 people that has been increasing – as of December 2023, about 170 people were waiting for assessments. Maryland's risk assessment waiting period is currently 2-3 years; this has consistently been the waiting period for the last 15 years, notwithstanding numerous efforts to address backlogs and delays.[2] In fact, between 2004-2019, 11 people died while awaiting a risk assessment in Maryland. Just this year, one of the ACLU's clients passed away awaiting his risk assessment.

The MPC already relies too heavily on unnecessary risk assessments, even when there is overwhelming evidence that the person is extremely unlikely to present risk. For example, the ACLU represented a 65-year-old parole candidate convicted under felony murder, who had served nearly 40 years, had an exemplary disciplinary and work record, had strong family support, and had previously been unanimously recommended for release, with no changes to his record. The MPC refused to waive the risk assessment for him, resulting in his serving an additional two years before he was, again, voted unanimously to be released.

The likelihood of recruiting new clinicians to help address delays is extremely limited by the market. While it has been well-documented for a decade through litigation and other public advocacy, this severe backlog has persisted even after former DPSCS Secretary Greene obtained authorization to increase the salary scale in order to attract candidates. As the market of psychologists with expertise in risk assessment is extremely limited and in high demand, and most

[2] *Ann E. Marimow, Prisoners Need This Exam to Have a Chance at Freedom. But the Wait in Maryland for a Doctor's Appointment Is Excruciatingly Long, Wash. Post (Apr. 10, 2019),* https://www.washingtonpost.com/local/legal-issues/prisoners-need-this-exam-to-have-a-chance-at-freedom-but-the-wait-in-maryland-for-a-doctors-appointment-is-excruciatingly-long/2019/04/10/322482b0-562b-11e9-8ef3-fbd41a2ce4d5_story.html.

clinicians can make significantly more money and focus on their interests by working in private practice.

Maryland has consistently had significant quality control failures in parole risk assessments for people with life sentences, resulting in egregious failures of basic fairness. For as long as Maryland has had risk assessments, there have been problematic clinicians who abused their role in the process. During the 2000s, for example, one clinician was known for her harsh and unsupported assessments of parole candidates. Another longtime clinician was so problematic that independent clinicians urged the MPC to review all of his assessments, something the MPC never did. (See below). In another instance, MPC hired a clinician that appeared to try to vet candidates through his own religious beliefs, reaching conclusions without even pretending to apply risk assessment tools.

In some instances, parole candidates have been able to find pro bono counsel to assist them in the parole process. In one such case, the lawyers were so shocked by the conclusions of the risk assessment for their client that they paid for an independent one. MPC's clinician had characterized the parole candidate as high-risk. The independent clinician concluded in the following excerpt from her report that the candidate was one of the lowest-risk people she had ever evaluated in her career, and was so disturbed by the MPC's clinician that she urged a systemic review of his reports:

> Dr. [redacted] produced a set of opinions that are in stark contrast to characterizations of Mr. B[redacted] consistently reflected in more than three decades of records, collateral interviews, personal interview, and testing results for Mr. B[redacted]. He did not apply the psychological testing reliably in that he did not follow the manual's instructions, and he presented his interpretations without sufficient psychological science context. He did not conduct, and evidently did not even attempt, collateral interviews that would have provided relevant risk-related information.
>
> Given that this pattern was observed in my review of Dr. [redacted]'s evaluation of another older incarcerated individual, I have concerns that Dr. [redacted]'s poor practices may have resulted in distorted representations of other individuals who were under consideration for parole. Consequently, I strongly recommend that all of Dr. [redacted]'s preserved files be comprehensively and thoroughly reviewed by an objective party with training and expertise in risk assessment, to determine if other individuals should be re-evaluated as well. Errors in psychological testing are, unfortunately, not uncommon. However, the reports I have reviewed showed a pattern of problems that would have potentially systematically disadvantaged and, frankly, maligned, other individuals whom he assessed.

Mandating risk assessments is not only impractical, but unjust. These rigid tools have been shown to penalize people on the basis of race, gender, or socioeconomic status. Risk assessment tools used in

Maryland have never been validated for the state's prison population in general, much less for people serving extreme sentences.

For people serving lengthy sentences, risk assessments are extremely limited in their predictive ability, because they are based entirely on data associated with people with short sentences or in psychiatric institutions. Overall, risk assessment tools have been created based on general "offender" groups that do not focus specifically on people with long-term sentences in correctional settings. Rather, nearly all studies and data involve people with relatively short sentences (less than 3 years) and/or people in forensic psychiatric settings.

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To the best we can ascertain, none of the risk assessments currently used have ever been "validated" on majority-Black populations, let alone Maryland populations. Studies on risk assessments are often conducted by researchers with vested interests in affirming reliability, so findings from a singular study are often amplified without scrutiny of its limitations. For example, a majority of the studies relating to the VRAG and the HCR-20 risk assessment tools appear to be based on primarily white, non-US populations with significantly different characteristics.

It is increasingly acknowledged in risk assessments are infected with racial bias in multiple important ways, most notably their reliance on historical population data.[3] Many of the factors in risk assessment are associated with significant racial disparities in Maryland – such as school discipline, being separated from parents, or contacts with police. This exacerbates existing racial inequities in Maryland's prison population. Risk assessment tools are widely understood to penalize people who grew up in poor or high-crime neighborhoods. They frequently overestimate risk for people who have faced systemic disadvantages – while completely missing people from more privileged backgrounds who could pose a real violent threat to the community.

These significant issues severely undermine the extent to which such assessment tools accurately predict the risk of reoffending for those serving life sentences in Maryland. For example, at the recent hearing on the House cross-file of this bill (HB190), individuals who were exonerated after being wrongfully sentenced to decades in prison testified to being given risk assessment scores indicating they were high

[3] For example, consider school discipline. Because Black children are disciplined differently than their white peers, their "base rates" of getting in trouble at school appear to be higher. They are more "risky." But that is not because they behave differently, rather it is because the system responds to them differently. Data based on how the system has operated will generate false positives.

risk and predicting they would reoffend within two to three years. Another individual testified that his risk assessment indicated he would reoffend within 90 days; instead, he was released under the *Unger* decision and has now been home for more than 13 years without so much as a parking ticket.

Risk assessments are unnecessary given the low risk of elder populations seeking release after decades in prison. The population eligible for parole consideration under HB1123 is a group that is widely regarded as low risk by definition. Indeed, unlike most states, Maryland has a large group of more than 230 individuals released from life sentences with a broad variety of institutional records and profiles. The recidivism rate for this group has been extremely low, 3%. Mandating risk assessments for people who are largely low-risk is simply a waste of resources.

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For the foregoing the reasons, the ACLU of Maryland urges a favorable report on HB1123 if the above amendments are applied.