

SENATE BILL 128

E5
SB 98/23 – JPR

(PRE-FILED)

4lr1395
CF HB 118

By: **Senator Hettleman**

Requested: November 1, 2023

Introduced and read first time: January 10, 2024

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Correctional Services – Geriatric and Medical Parole**

3 FOR the purpose of requiring the Maryland Parole Commission to consider the age of an
4 incarcerated individual when determining whether to grant parole; altering how the
5 Commission evaluates a request for medical parole, including providing for a
6 meeting between the incarcerated individual and the Commission under certain
7 circumstances; requiring the Commission to develop procedures for assessing parole
8 requests by certain incarcerated individuals; and generally relating to geriatric and
9 medical parole.

10 BY repealing and reenacting, with amendments,
11 Article – Correctional Services
12 Section 7–305
13 Annotated Code of Maryland
14 (2017 Replacement Volume and 2023 Supplement)
15 (As enacted by Chapter 721 of the Acts of the General Assembly of 2023)

16 BY repealing and reenacting, with amendments,
17 Article – Correctional Services
18 Section 7–309
19 Annotated Code of Maryland
20 (2017 Replacement Volume and 2023 Supplement)

21 BY adding to
22 Article – Correctional Services
23 Section 7–310
24 Annotated Code of Maryland
25 (2017 Replacement Volume and 2023 Supplement)

26 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 That the Laws of Maryland read as follows:

2 **Article – Correctional Services**

3 7–305.

4 Each hearing examiner and commissioner determining whether an incarcerated
5 individual is suitable for parole, and the Commission before entering into a predetermined
6 parole release agreement, shall consider:

7 (1) the circumstances surrounding the crime;

8 (2) the physical, mental, and moral qualifications of the incarcerated
9 individual;

10 (3) the progress of the incarcerated individual during confinement,
11 including the academic progress of the incarcerated individual in the mandatory education
12 program required under § 22–102 of the Education Article;

13 (4) a report on a drug or alcohol evaluation that has been conducted on the
14 incarcerated individual, including any recommendations concerning the incarcerated
15 individual's amenability for treatment and the availability of an appropriate treatment
16 program;

17 (5) whether, **TAKING INTO ACCOUNT THE TOTALITY OF THE**
18 **CIRCUMSTANCES INCLUDING THE AGE OF THE INCARCERATED INDIVIDUAL**, there is
19 reasonable probability that the incarcerated individual, if released on parole, will [remain
20 at liberty without violating the law] **NOT RECIDIVATE**;

21 (6) whether release of the incarcerated individual on parole is compatible
22 with [the welfare of society] **PUBLIC SAFETY**;

23 (7) an updated victim impact statement or recommendation prepared
24 under § 7–801 of this title;

25 (8) any recommendation made by the sentencing judge at the time of
26 sentencing;

27 (9) any information that is presented to a commissioner at a meeting with
28 the victim;

29 (10) any testimony presented to the Commission by the victim or the victim's
30 designated representative under § 7–801 of this title; and

31 (11) compliance with the case plan developed under § 7–301.1 of this subtitle
32 or § 3–601 of this article.

1 7-309.

2 (a) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
3 INDICATED.

4 (2) (I) "CHRONICALLY DEBILITATED OR INCAPACITATED" MEANS
5 HAVING A DIAGNOSABLE MEDICAL CONDITION THAT IS UNLIKELY TO IMPROVE IN
6 THE FUTURE AND PREVENTS THE INDIVIDUAL FROM COMPLETING MORE THAN ONE
7 ACTIVITY OF DAILY LIVING, INCLUDING EATING, BREATHING, DRESSING,
8 GROOMING, TOILETING, WALKING, OR BATHING, WITHOUT ASSISTANCE.

9 (II) "CHRONICALLY DEBILITATED OR INCAPACITATED"
10 INCLUDES CONDITIONS SUCH AS DEMENTIA OR A SEVERE, PERMANENT MEDICAL OR
11 COGNITIVE DISABILITY IF THE CONDITION PREVENTS THE INDIVIDUAL FROM
12 COMPLETING MORE THAN ONE ACTIVITY OF DAILY LIVING.

13 (3) "TERMINAL ILLNESS" MEANS A DISEASE OR CONDITION WITH AN
14 END-OF-LIFE TRAJECTORY.

15 (B) This section applies to any incarcerated individual who is sentenced to a term
16 of incarceration for which all sentences being served, including any life sentence, are with
17 the possibility of parole.

18 [(b)] (C) An incarcerated individual [who is so chronically debilitated or
19 incapacitated by a medical or mental health condition, disease, or syndrome as to be
20 physically incapable of presenting a danger to society] may be released on medical parole
21 at any time during the term of that incarcerated individual's sentence, without regard to
22 the eligibility standards specified in § 7-301 of this subtitle IF A LICENSED MEDICAL
23 PROFESSIONAL HAS DETERMINED THAT THE INCARCERATED INDIVIDUAL:

24 (1) (I) IS CHRONICALLY DEBILITATED OR INCAPACITATED; OR

25 (II) SUFFERS FROM A TERMINAL ILLNESS; AND

26 (2) (I) REQUIRES EXTENDED MEDICAL MANAGEMENT WITH
27 HEALTH CARE NEEDS THAT WOULD BE BETTER MET BY COMMUNITY SERVICES; OR

28 (II) HAS BEEN RENDERED PHYSICALLY INCAPABLE OF
29 PRESENTING A DANGER TO SOCIETY BY A PHYSICAL OR MENTAL HEALTH
30 CONDITION, DISEASE, OR SYNDROME.

31 (D) (1) THE INFORMATION TO BE CONSIDERED BY THE COMMISSION
32 BEFORE GRANTING MEDICAL PAROLE SHALL, AT A MINIMUM, INCLUDE:

1 **(I) 1. A RECOMMENDATION BY THE MEDICAL**
2 **PROFESSIONAL TREATING THE INCARCERATED INDIVIDUAL UNDER CONTRACT**
3 **WITH THE DEPARTMENT OR LOCAL CORRECTIONAL FACILITY; OR**

4 **2. IF REQUESTED BY AN INDIVIDUAL IDENTIFIED IN**
5 **SUBSECTION (E)(1) OF THIS SECTION, ONE MEDICAL EVALUATION CONDUCTED AT**
6 **NO COST TO THE INCARCERATED INDIVIDUAL BY A MEDICAL PROFESSIONAL WHO IS**
7 **INDEPENDENT FROM THE DIVISION OF CORRECTION OR LOCAL CORRECTIONAL**
8 **FACILITY;**

9 **(II) THE INCARCERATED INDIVIDUAL'S MEDICAL**
10 **INFORMATION, INCLUDING:**

11 **1. A DESCRIPTION OF THE INCARCERATED**
12 **INDIVIDUAL'S CONDITION, DISEASE, OR SYNDROME;**

13 **2. A PROGNOSIS CONCERNING THE LIKELIHOOD OF**
14 **RECOVERY FROM THE CONDITION, DISEASE, OR SYNDROME;**

15 **3. A DESCRIPTION OF THE INCARCERATED**
16 **INDIVIDUAL'S PHYSICAL INCAPACITY; AND**

17 **4. A MENTAL HEALTH EVALUATION, WHERE RELEVANT;**

18 **(III) DISCHARGE INFORMATION, INCLUDING:**

19 **1. AVAILABILITY OF TREATMENT OR PROFESSIONAL**
20 **SERVICES WITHIN THE COMMUNITY;**

21 **2. FAMILY SUPPORT WITHIN THE COMMUNITY; AND**

22 **3. HOUSING AVAILABILITY, INCLUDING HOSPITAL OR**
23 **HOSPICE CARE; AND**

24 **(IV) CASE MANAGEMENT INFORMATION, INCLUDING:**

25 **1. THE CIRCUMSTANCES OF THE CURRENT OFFENSE;**

26 **2. INSTITUTIONAL HISTORY;**

27 **3. PENDING CHARGES, SENTENCES IN OTHER**
28 **JURISDICTIONS, AND ANY OTHER DETAINERS; AND**

1 **3. WHO HAS BEEN FREQUENTLY HOUSED IN AN**
2 **INFIRMARY OF A CORRECTIONAL FACILITY OR HOSPITALIZED OUTSIDE A**
3 **CORRECTIONAL FACILITY IN THE PRECEDING 6 MONTHS; AND**

4 **(II) THE COMMISSION MAY, AT ITS DISCRETION, GRANT THE**
5 **REQUEST FOR A MEETING FOR ANY INCARCERATED INDIVIDUAL WHO DOES NOT**
6 **MEET THE REQUIREMENTS OF ITEM (I) OF THIS PARAGRAPH.**

7 **[(d)] (G)** Following review of the request, the Commission may:

8 (1) find the request to be inconsistent with the best interests of public
9 safety and take no further action; or

10 (2) request that [department] **DEPARTMENT** or local correctional facility
11 personnel provide information for formal consideration of parole release.

12 **[(e)]** The information to be considered by the Commission before granting medical
13 parole shall, at a minimum, include:

14 (1) (i) a recommendation by the medical professional treating the
15 incarcerated individual under contract with the Department or local correctional facility;
16 or

17 (ii) if requested by an individual identified in subsection (c)(1) of this
18 section, one medical evaluation conducted at no cost to the incarcerated individual by a
19 medical professional who is independent from the Division of Correction or local
20 correctional facility;

21 (2) the incarcerated individual's medical information, including:

22 (i) a description of the incarcerated individual's condition, disease,
23 or syndrome;

24 (ii) a prognosis concerning the likelihood of recovery from the
25 condition, disease, or syndrome;

26 (iii) a description of the incarcerated individual's physical incapacity
27 and score on the Karnofsky Performance Scale Index or similar classification of physical
28 impairment; and

29 (iv) a mental health evaluation, where relevant;

30 (3) discharge information, including:

31 (i) availability of treatment or professional services within the
32 community;

- 1 (ii) family support within the community; and
- 2 (iii) housing availability, including hospital or hospice care; and
- 3 (4) case management information, including:
- 4 (i) the circumstances of the current offense;
- 5 (ii) institutional history;
- 6 (iii) pending charges, sentences in other jurisdictions, and any other
7 detainers; and
- 8 (iv) criminal history information.]

9 **[(f)] (H)** The Commission may require as a condition of release on medical parole
10 that:

- 11 (1) the parolee agree to placement for a definite or indefinite period of time
12 **[in a hospital or hospice or other] UNDER THE CARE OF A MEDICAL PROVIDER AND IN**
13 **A housing accommodation suitable to the parolee's medical condition, including the family**
14 **home of the parolee, as specified by the Commission or the supervising agent; and**
- 15 (2) the parolee forward authentic copies of applicable medical records to
16 indicate that the particular medical condition giving rise to the release continues to exist.

17 **[(g)] (I)** (1) If the Commission has reason to believe that a parolee is no
18 longer so debilitated or incapacitated as to be physically incapable of presenting a danger
19 to society, the parolee shall be returned to the custody of the Division of Correction or the
20 local correctional facility from which the incarcerated individual was released.

21 (2) (i) A parole hearing for a parolee returned to custody shall be held
22 to consider whether the parolee remains incapacitated and shall be heard promptly.

23 (ii) A parolee returned to custody under this subsection shall be
24 maintained in custody, if the incapacitation is found to no longer exist.

25 (3) An incarcerated individual whose medical parole is revoked for lack of
26 continued incapacitation may be considered for parole in accordance with the eligibility
27 requirements specified in § 7-301 of this subtitle.

28 **[(h)] (J)** (1) **IN THIS SUBSECTION, "IMMINENT DEATH" MEANS DEATH**
29 **THAT IS LIKELY TO OCCUR WITHIN 6 MONTHS.**

30 (2) Subject to paragraph **[(2)] (3)** of this subsection, provisions of law

1 relating to victim notification and opportunity to be heard shall apply to proceedings
2 relating to medical parole.

3 ~~[(2)]~~ **(3)** In cases of imminent death, time limits relating to victim
4 notification and opportunity to be heard may be reduced or waived in the discretion of the
5 Commission.

6 **[(i)] (1)** If the Commission decides to grant medical parole to an incarcerated
7 individual sentenced to life imprisonment, the decision shall be transmitted to the
8 Governor.

9 **(2)** The Governor may disapprove the decision by written transmittal to
10 the Commission.

11 **(3)** If the Governor does not disapprove the decision within 180 days after
12 receipt of the written transmittal, the decision becomes effective.]

13 **[(j)] (K)** The Commission shall [issue] **ADOPT** regulations to implement the
14 provisions of this section.

15 **7-310.**

16 **(A) THIS SECTION APPLIES ONLY TO AN INCARCERATED INDIVIDUAL WHO:**

17 **(1) IS AT LEAST 60 YEARS OLD;**

18 **(2) HAS SERVED AT LEAST 15 YEARS OF THE SENTENCE IMPOSED;**

19 **(3) IS NOT REGISTERED OR ELIGIBLE FOR SEX OFFENDER**
20 **REGISTRATION UNDER TITLE 11, SUBTITLE 7 OF THE CRIMINAL PROCEDURE**
21 **ARTICLE; AND**

22 **(4) IS SENTENCED TO A TERM OF INCARCERATION FOR WHICH ALL**
23 **SENTENCES BEING SERVED, INCLUDING ANY LIFE SENTENCE, ARE WITH THE**
24 **POSSIBILITY OF PAROLE.**

25 **(B) AN INCARCERATED INDIVIDUAL CONSIDERED FOR PAROLE UNDER THIS**
26 **SECTION SHALL HAVE A PAROLE HEARING EVERY 2 YEARS.**

27 **(C) IN ADDITION TO THE FACTORS SPECIFIED UNDER § 7-305 OF THIS**
28 **SUBTITLE, EACH COMMISSION PANEL DETERMINING WHETHER AN INCARCERATED**
29 **INDIVIDUAL IS SUITABLE FOR PAROLE SHALL CONSIDER AND GIVE WEIGHT TO THE**
30 **AGE OF THE INCARCERATED INDIVIDUAL AND THE IMPACT THAT THE AGE OF THE**
31 **INCARCERATED INDIVIDUAL HAS ON REDUCING THE RISK THAT THE INCARCERATED**

1 INDIVIDUAL WILL NOT RECIDIVATE.

2 (D) ANY SAVINGS REALIZED BY THE DEPARTMENT AS A RESULT OF THIS
3 SECTION SHALL REVERT TO THE DEPARTMENT AND SHALL BE USED FOR THE
4 PURPOSE OF:

5 (1) CONDUCTING HEARINGS FOR INCARCERATED INDIVIDUALS AS
6 REQUIRED UNDER SUBSECTION (B) OF THIS SECTION; AND

7 (2) PROVIDING PRERELEASE AND REENTRY CASE MANAGEMENT AND
8 RESOURCES FOR INCARCERATED INDIVIDUALS WHO ARE SUBJECT TO THIS SECTION
9 AND RELEASED ON PAROLE.

10 (E) EVERY YEAR, THE COMMISSION SHALL REPORT TO THE JUSTICE
11 REINVESTMENT OVERSIGHT BOARD ON THE OUTCOMES OF PAROLE
12 CONSIDERATIONS MADE UNDER THIS SECTION, INCLUDING:

13 (1) THE NUMBER OF INCARCERATED INDIVIDUALS WHO ARE SUBJECT
14 TO THIS SECTION WHO ARE DENIED PAROLE AND RELEASED ON PAROLE;

15 (2) THE REASON FOR EACH DECISION TO RELEASE AN INCARCERATED
16 INDIVIDUAL ON PAROLE;

17 (3) THE REASON FOR EACH DECISION TO DENY PAROLE TO AN
18 INCARCERATED INDIVIDUAL;

19 (4) OF THE NUMBER OF INCARCERATED INDIVIDUALS WHO ARE
20 RELEASED ON PAROLE, THE NUMBER OF INDIVIDUALS WHO ARE CONVICTED OF AN
21 OFFENSE COMMITTED AFTER RELEASE;

22 (5) THE AVERAGE TIME BETWEEN WHEN AN INCARCERATED
23 INDIVIDUAL BECOMES ELIGIBLE FOR PAROLE CONSIDERATION UNDER THIS
24 SECTION AND WHEN THE INCARCERATED INDIVIDUAL RECEIVES THE FIRST PAROLE
25 HEARING REQUIRED BY THIS SECTION; AND

26 (6) THE AVERAGE TIME BETWEEN PAROLE HEARINGS FOR
27 INCARCERATED INDIVIDUALS WHO ARE SUBJECT TO THIS SECTION.

28 (F) (1) THE COMMISSION SHALL ADOPT REGULATIONS TO IMPLEMENT
29 THE PROVISIONS OF THIS SECTION.

30 (2) THE REGULATIONS REQUIRED BY THIS SUBSECTION SHALL
31 INCLUDE A REQUIREMENT THAT THE DEPARTMENT PROVIDE ANY INCARCERATED

1 **INDIVIDUAL SUBJECT TO THIS SECTION WITH INFORMATION ON THE REGULATIONS**
2 **AT LEAST ONCE EVERY YEAR.**

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 October 1, 2024.