MARYLAND GENERAL ASSEMBLY
HOUSE OF DELEGATES JUDICIARY COMMITTEE
TESTIMONY IN SUPPORT OF HB 1437
MARCH 5, 2020

Submitted by Genevieve Bresnahan, Russell Bruch, and Anna Washburn, Student Attorneys, Re-Entry Clinic at the American University Washington College of Law, with Professor and Clinic Director, Margaret Martin Barry.

We urge passage of HB 1437, legislation that would impose sentencing restrictions on minors and authorize certain individuals to file motions for reduction of sentence. We are currently law students working as student attorneys in the Re-Entry Clinic at the American University Washington College of Law. At the Re-Entry Clinic, law students provide pro-bono parole assistance to people in prison in Maryland who were convicted of a crime as juveniles and sentenced to life with parole – "juvenile lifers". At the Re-Entry Clinic, our clients have been in jail from twenty to over forty years for murders committed when they were as young as 14 years old.

A life sentence is a severe punishment for any person. As the Supreme Court recognized in *Graham v. Florida*, however, a life sentence without parole is especially harsh for a juvenile. The Court pointed out that, since juveniles are so young when they begin their sentence, they will serve "on average more years and a greater percentage" of their life in prison than an adult with a life sentence.[1] Unfortunately, the current parole system in Maryland, where the Governor serves as the ultimate decision-maker, has resulted in a de facto life *without* parole sentence for many offenders, including juveniles, who demonstrably are ready to reenter society. HB 1437 assures citizens of Maryland that the state is following constitutional law by prohibiting a sentence of life without parole for minors convicted as adults, and provides an avenue for relief for minors sentenced to life in a system that effectively treats the sentence as life without parole.

This past November, Governor Larry Hogan granted parole to three juvenile lifers. It was the first time in 24 years that a juvenile lifer was granted parole. Still, only three juvenile lifers were paroled in this action – despite the fact that the Supreme Court held in 2012 that sentencing a minor to life without the possibility of parole was cruel and unusual punishment and therefore unconstitutional. Furthermore, the Governor's action came in the wake of legal pressure to conform with constitutional law. There are currently more than 300 juvenile lifers in prison in Maryland, or fifteen percent of the 2000 lifers in prison in the state; several of these juvenile lifers are currently represented by the Re-Entry Clinic. In many instances, strong evidence and even a determination on the part of the Maryland Parole Commission (MPC) that an individual is ready for parole is insufficient to obtain release.

[1] *Graham v. Florida*, 560 U.S. 48, 50 (2010). As for the punishment, life without parole is "the second most severe penalty permitted by law," *Harmelin v. Michigan*, 501 U.S. 957, 1001, 111 (2001), and is especially harsh for a juvenile offender, who will on average serve more years and a greater percentage of his life in prison than an adult offender, *see, e.g., Roper v. Simmons*, 543 U.S. 551 at 572 (2005).

For example, one of our clients has been sent to the Governor twice with a recommendation of parole by MPC and has been rejected by the Governor each time. This is so despite the explicit parallel factors with regard to juvenile lifers that MPC and the Governor are expected to apply. Furthermore, all of our clients have gone up for hearings before the Parole Board on multiple occasions, with rehearings set for years in advance with a few words or no clear reason for the delay. This suggests the importance of the steps taken to protect individuals who find themselves inexplicably stuck in prison long after demonstrable rehabilitation for crimes committed as children. Since the opportunity for parole for those with life sentences is so remote, it is imperative that rehabilitated juvenile lifers who meet relevant criteria have another option to seek relief. HB 1437 provides that option.

We would like to talk personally about some of the things we, along with our classmates, have experienced in our work. Most of our clients experienced very difficult childhoods often marked by significant abuse at home and on the streets, abandonment, developmental challenges, and various other traumas. During the Fall of 2019, three out of four Clinic clients had experienced physical and/or sexual abuse as children, and all of our clients came from broken, financially stressed homes. These experiences, combined with the science on adolescent brain function, make for a world in which children like our clients have little chance for success throughout adolescence, and further explain their tragic actions. We are glad to see that HB 1437 takes into account these traumas when considering a reduction in sentence.

Furthermore, our clients have served their time. When they plead to life, they anticipated a true opportunity for parole after 15 years in prison if they worked hard to rehabilitate. Often our clients were encouraged to plead life, with no understanding of the effective result of such a plea in Maryland. In fact, they are serving 20, 30, 40 or more years - regardless of their efforts to rehabilitate, to work, to stay out of trouble in a very difficult situation, and, despite the very limited opportunities for lifers, gaining skills and an education. The extended time is inconsistent with their sentences, ignores their achievements, and is simply unconstitutional as applied to juveniles.

One Re-Entry Clinic client was incarcerated at 16 years old, and has been incarcerated for close to 30 years. This individual made the mistake that many teenagers make - being around the wrong crowd at the wrong time – and he has paid for it dearly. This individual was sentenced to life with parole on a felony murder charge – and was given the exact same sentence as the individual who executed the murder. This is despite the fact that he did not commit the murder, had no intent for a murder to occur, and did not carry a weapon when the crime was committed. Despite being a perfect candidate for parole, this individual is still imprisoned - the only seeming stumbling-block being reliance on a statistical test that is biased against youth and that looked only to his circumstance at the time of the crime.

At the time of the incident for this particular client, the judge deciding the case was not required to consider his age - 16 years old - when sentencing him as an adult. Our client did not benefit from an understanding of the cognitive differences between adult and juvenile offenders that

have been recognized by the U.S. Supreme Court as well as the Maryland Court of Appeals.[2] The Supreme Court in *Roper v. Simmons*, *Graham v. Florida,* and *Miller v. Alabama* (known as the *Miller* trilogy) and as made retroactive through *Montgomery v. Louisiana,* found that: (1) juveniles lack maturity and a sense of responsibility compared to adults; and, (2) they are more vulnerable to peer pressure.[3] The Supreme Court also recognized (3) juveniles' greater capacity for rehabilitation based on psychology and brain science.[4] The *Miller* trilogy of Supreme Court cases mean that juvenile offenders must be able to obtain release upon demonstrated maturity and rehabilitation, unless they are the highly unusual offender who is decidedly incorrigible.[5] HB1437's criteria provide a chance to correct this failure to appropriately take youth into account.

Finally, beyond the inhumanity of keeping someone in prison in this hope-crushing system, it is a waste of money. One study estimates that in Maryland the cost per inmate is approximately $46,000 per year.[6] According to a 2015 report from the American Civil Liberties Union (ACLU) of Maryland, the detention of more than 2,000 individuals with life sentences costs the state more than $70 million per year.[7] However, a 2018 Justice Policy Institute report estimates that reentry services would only cost the government about $6,000 per inmate per year.[8] Thus, HB 1437 will allow the state to respond more effectively and efficiently.

It is in the interest of justice that Maryland act to provide this relief for juvenile offenders who have served their time and demonstrated that they are ready to reenter society. It is simply the right thing to do. We therefore urge you to pass HB 1437.

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[2] *See Montgomery v. Louisiana*, 136 S. Ct. 718 (2016); *Miller v. Alabama*, 567 U.S. 460 (2012); *Graham v. Florida*, 560 U.S. 48 (2010); *Roper v. Simmons*, 543 U.S. 551 (2005); *Carter v. State*, 192 A.3d 695 (Md. 2018).

[3] *See, e.g., Roper*, 543 U.S. at 569-70.

[4] *Graham v. Florida*, 560 U.S. 48, 68 (2010); *see also Miller*, 567 U.S. at 460. The Maryland Court of Appeals acknowledged this is in *Carter v. State*, 461 Md. 295 (2018)(choosing to rely on the factors the Maryland Parole Commission and the Governor indicated, by regulation and executive order respectively, that they would apply but have demonstrably given little weight).

[5] *Graham supra* note 1 at 72.

[6] *Building on the Unger Experience: A Cost-Benefit Analysis of Releasing Aging Prisoners*, OSI Baltimore (Jan. 2019),
https://www.osibaltimore.org/wp-content/uploads/2019/01/Unger-Cost-Benefit3.pdf.

[7] *Still Blocking the Exit*, ACLU Maryland (Jan. 20, 2015), https://www.aclu-md.org/en/publications/still-blocking-exit.

[8] *The Ungers: Five Years and Counting,* Justice Policy Institute (Nov. 2018),
http://www.justicepolicy.org/uploads/justicepolicy/documents/The_Ungers_5_Years_and_Counting.pdf (noting that out of the 188 people released, only five have returned to prison for a violation of parole or a new crime, an overall recidivism rate of less than 3 percent).