



**Testimony to the House Judiciary Committee
HB01219 and HB300 Inmates – Life Imprisonment – Parole Reform**

Marc Schindler, Executive Director

Justice Policy Institute

202-558-7974, mschindler@justicepolicy.org

March 3, 2020

My name is Marc Schindler and I serve as the Executive Director of the Justice Policy Institute (JPI), a national research and policy organization with expertise on criminal and juvenile justice issues. Please accept this statement in support of HB1219 and HB300 Inmates –Life Imprisonment—Parole Reform.

JPI is dedicated to changing the conversation around juvenile and criminal justice policy and advancing policies that promote well-being and justice for all people and communities. Over the last decade, JPI has done several reports on the Maryland justice system.

By way of background, I have been fortunate in my career that I have had the opportunity to view the justice system from several different angles, and therefore I come to this issue today from a number of different perspectives. After graduating from the University of Maryland School of Law I began my legal career over twenty years ago with the Maryland Office of the Public Defender. During that time, I served on the Governor’s Commission on Children and also chaired the Baltimore City Bar Association’s Juvenile Justice Committee. I spent eight years as a staff attorney with the Youth Law Center, a national civil rights law firm, where I advocated at the national and state level on issues related to conditions of confinement, racial disparities, indigent defense and other juvenile justice issues. Then, I held several leadership roles within the DC Department of Youth Rehabilitation Services (DYRS), Washington, DC’s juvenile corrections agency, including serving as General Counsel, Chief of Staff and Interim Director between 2005 and 2010. Prior to joining JPI, I was a partner with Venture Philanthropy Partners (VPP), a Washington-based philanthropic organization. While there I led VPP’s Social Innovation Fund youthCONNECT initiative – a five year \$40 million dollar innovative philanthropic effort aligning public-private capital, evaluation, and high performing non-profit organizations to improve the education, employment and health outcomes of 14-24 year old disconnected youth in the Washington metro region.

The governor’s current power to control the fate of a person’s future, through approval or rejection of a parole recommendation made by the Maryland Parole Commission significantly undermines the role of the parole commission; ignores outcomes from individuals released under *Unger v. State*; makes taxpayers responsible for the cost of excessively long stays of incarceration; diverts funds away from important services like education and healthcare; and, further perpetuates the Maryland justice system’s disproportionate impact on African Americans. The proposed legislation before you today is not aimed at the current administration; rather it is aimed at the parole process. Despite previous legislative efforts, including legislation passed in 2011 requiring the governor to actively approve or

deny Parole Commission decisions within a certain time period – there has been virtually no change to the parole process. If anything the Parole Commission has found a loop hole by now recommending commutations to skirt the 180-day rule.

Beginning in 1995 the unwritten policy of “absolute life” was politically injected in the parole process for all individuals serving life sentences; including those serving parole eligible life sentences. By ushering in that new policy, the executive branch began the practice of ignoring the spirit and intent of judicial branch decisions. Many individuals, at the advice of their attorneys accepted life sentences with the possibility of parole instead of a set number of years. They did this under the assumption that they would have a meaningful chance of release after they have been rehabilitated and served their time. Many of those individuals would have been released by now if the intent of their sentencing judge had been honored.

There is no meaningful reason for warehousing so many people well beyond the time when they have aged out of crime. While we support HB 1219 and its intent [to remove the governor from the parole process], we have very serious concerns with the requirement that a person serve 30 years “without application of diminution of confinement credits” before parole consideration. The 30-year language is arbitrary and does not reflect research. If anything it is counter to existing research that shows longer prison sentences do not improve public safety; rather they drive up prison cost. The American Law Institute (ALI) recently undertook an extensive review of the Model Penal Code criminal sentencing provisions, with particular attention paid to releasing authority. The ALI settled on a “Second Look” provision that entitled every individual to apply to have their sentence reviewed after having served 15 years in prison. At that point, the drafters of the provision concluded, an individual will have served enough time to show that they have changed and should be given an opportunity to demonstrate their suitability to return to the community. The 15-year threshold is also important as it is short enough to provide incentive for people in prison to participate in treatment and rehabilitation programming and provides hope for those in prison. These are powerful motivators for positive change, which is a necessary ingredient for a safe and successful transition out of prison. To move the requirement for eligibility for parole review to 30 years, twice as long as what was recommended by the ALI, runs counter to current research and legal thinking on the issue of release.

As you are aware, a 2012 Maryland Court of appeals decision in *Unger v. State* mandated that 232 individuals convicted under unlawful jury instructions before 1980 were entitled to new trials. As of today, 199 have been released with extremely low rates of recidivism, of about 3%. In fact, there have been 13 Ungers who have died since being released, which means that 6% of the Ungers released have died, or twice as many than have recidivated. The Unger group offers powerful lessons for national and state policymakers interested in tackling mass incarceration. The success of this population cannot be overstated and reinforces research that shows that people age out of crime and we can safely allow people who have served excessively long sentences to come home at a much cheaper cost than warehousing them.

According to “*The Ungers, 5 Years and Counting: A Case Study in Safely Reducing Long Prison Terms and Saving Taxpayer Dollars*” the cost to continue to house the parole eligible geriatric population is well over the price of effective reentry support. Due to the stresses of prison, incarcerated individuals

over the age of 50 are generally considered “geriatric.” Based on data showing the geriatric population has higher health care costs (see “*Building on the Unger Experience: A cost-benefit analysis of releasing aging prisoners*”, by the JFA Institute and The Pandit Group for Open Society Institute-Baltimore) a fiscal analysis concluded that continued confinement of the Ungers for an additional 18 years (based on the expected period of incarceration using projected life expectancy of the Ungers), would have amounted to nearly \$1 million per Unger, or \$53,000 a year. This is compared to the \$6,000 a year to provide intensive reentry support that has proven to successfully and safely reintegrate the Ungers back into the community.

It’s also worth noting that many of those released under the Unger decision who are out and doing well, were recommended for parole by the Commission but were not approved by the governor. This resulted in extending their stay well beyond any public safety benefit at a high cost to taxpayers. The research is clear that individuals generally age out of crime, and the Unger group is no different. As of today, they have approximately a three percent recidivism rate; a fraction of the overall Maryland recidivism rate of 40 percent.

The Unger class also allowed us to examine the factors that have contributed to their successful reentry and inform us as to where resources should be focused to allow for successful reentry for others who have served very long sentences.

The success of the Unger population was driven by reentry support provided to the Ungers by a team of social workers, lawyers and formerly incarcerated people who provided them an intensive level of support. The case management approach included “*reaching-in*” and working intensively with people before they were released from prison to help them plan their reentry, and support after they were released to ensure they connected to the service they needed.¹ The Unger releases received specialized assistance in obtaining state identification cards, Social Security cards, birth certificates, SSI benefits, Temporary Disability Assistance, food stamps, Medicare or other medical assistance, transportation assistance, housing assistance, employment assistance, referrals to reentry programs, and case managers were involved in the Ungers everyday life. The Maryland Office of the Public Defender and the Clinical Law Program’s Law and Social Work Services Program at the University of Maryland’s School of Law staffed different phases of the reentry process, and both organizations partnered with groups staffed by Unger releasees so that peers could help each other through the reentry process.²³ The approach was funded by private philanthropy and donors.⁴ As of 2016, 8 out of 10 Ungers released have received specialized reentry services.⁵

¹ *Report of the Law and Social Work Services Program of the University of Maryland School of Law’s Clinical Law Program to the Open Society Institute-Baltimore on the Unger Project*, p.18-19, November 19, 2016.

² *Report of the Law and Social Work Services Program of the University of Maryland School of Law’s Clinical Law Program to the Open Society Institute-Baltimore on the Unger Project*, p.12, November 19, 2016.

³ The social worker was responsible for longer-term post-release case-management services, while the OPD was primarily responsible for pre-release services and brief post-release services. *Ibid.*, 15.

⁴ “They were also provided with hygiene supplies, clothing, a monthly support group with speakers, and family breakout sessions.” See, “Justice Roundtable On ‘Moving Beyond the Offense,’” *Justice Policy Institute and Justice Roundtable*, Dec. 20, 2016.

⁵ As of 2016, 130 of the 159 released received the specialized reentry services. *Ibid.*, 3.

Not only have many of those paroled under the Unger decision successfully reintegrated into society, they have added value back to the community. The Unger class have largely gone on to get jobs, get married, and reconnect with families. In addition, many have become mentors. Some of the Unger class members formed the Creating Responsible Youth organization, while others have volunteered with Out for Justice, Living Classroom, Maryland Restorative Justice Initiative, and Mothers of Murdered Sons. They are contributing to the community, working to prevent others from making the same mistakes they made, and aiding the healing process for families impacted by crime. Under the current parole policy, however, these outcomes could not have occurred.

The Unger ruling provided Maryland a unique look at a forgotten population that became political prisoners at a high cost to Maryland taxpayers and provides solid evidence as to whether this population can safely be returned to the community. In order for Maryland to ensure a fair and effective parole process, the governor should be removed from the proceedings to allow the Parole Commission sole jurisdiction over release decisions.

We respectfully ask for favorable consideration for HB1219 and HB300.