



**Testimony before the House Judiciary Committee**

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**HB1391 – Correctional Services – Geriatric Parole**  
**HB 1480 – Correctional Services – Elder Parole**

**March 6, 2020**

My name is Ryan King. I am a resident of Montgomery County and the Director of Research and Policy at the Justice Policy Institute (JPI). I have two decades of justice policy experience, including: managing data analysis for a number of justice reinvestment states, developing correctional performance measures, and helping states develop and implement evidence-based practices in community corrections. I recently authored a report for the Office of Victim Services and Justice Grants in the District of Columbia, which includes recommended best practices in release decision making and supervision. The focus of that report included identifying best practices in other jurisdictions and highlighting effective practices to reduce revocations from supervision. I consulted with experts from a number of organizations that provide technical assistance to help states improve their parole practice. I also reviewed existing research in academic peer-reviewed journals, technical white papers, and state agency reports. Finally, I interviewed practitioners in Washington, D.C. to learn how the current system functions and how best to build upon its strengths. This extensive experience in the field of parole informs my testimony today.

Please accept my statement in support of both HB 1391 and HB 1480, either of which would expand options for parole release for people in prison who are at least 60 years old.

Maryland prisons currently house 18,800 individuals sentenced for a felony conviction. Nearly 1 in 5 (18 percent) are 50 years of age or older and 1,145 (6 percent) are 60 years of age or older. Six in 10 individuals beyond the age of 60 are Black, compared to two in 10 Marylanders beyond the age of 60 in the general population. Over 200 individuals in Maryland prisons are 70 years of age or older. Most of these people have served decades in prison; long beyond any benefit to public safety. One in three people in Maryland prisons over the age of 60 has served at least 30 years behind bars. With nearly half of the population serving sentences of 15 years or more (35 percent) or life (13 percent), the number of geriatric individuals in Maryland prisons is sure to increase rapidly in the coming years.

Long prison terms are purely punitive and do little to make communities safer. In fact, recent experiences in Maryland strongly suggest that these extreme sentences actually harm public safety by

missing opportunities to enlist allies in the struggle to make our communities safe places to live. The 2012 Maryland Court of appeals decision in *Unger v. State* mandated that 235 individuals convicted under unlawful jury instructions before 1981 were entitled to new trials. As of today, over 200 have been released with extremely low recidivism. Crime is a young person's endeavor and research is clear that people age out of crime beginning in their early 40s. By the time people are in their 50s and 60s, rates of reoffending drop below that of the general population. The overall rate of recidivism in Maryland is 40 percent, while the rate for the Unger group is below five percent.

The Unger group is comprised of people who were an average age of 64 years old and had served an average of four decades in prison. Since their release, many of those individuals have returned to their communities and are working to mentor youth, stop violence, and strengthen reentry services in order to smooth the transition out of prison. The Unger group has largely gone on to get jobs, get married, and reconnect with families. In addition, many have become mentors. Some of the Unger group 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. These individuals should be partners in our push for safe neighborhoods. Instead, they are left to languish in prison at a significant cost to taxpayers.

According to a recently released JPI report *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 beyond 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.

Nationally, the aging, or graying, of state prison populations in recent decades has placed enormous strain on prisons and state resources. Between 1993 and 2013, the proportion of people in state prisons aged 55 and older jumped 400 percent. Estimates predict that by 2030, one in every three incarcerated individuals will be 55 years of age or older. According to the National Conference of State Legislatures, states are spending over \$8 billion on prison health care. Those numbers will rise. Like older people outside prison, the incarcerated elderly require more medical care than the young, with costs running as much as nine times higher than expenses for younger people in prison. In addition, as people age, their risk of reoffending drops. Data from one study showed that 13 percent of people who were aged 65 or older when released from prison were rearrested, compared with 65 percent of those released prior to age 21.

Each of these bills incorporates some important elements of geriatric parole that JPI strongly recommends Maryland adopt. However, JPI urges the committee to go further. First, there should be no limitations on eligibility based on offense type or sentence type. HB 1391 would permit all parole-eligible individuals to apply for geriatric parole, except those convicted of a sex offense. HB 1480 permits people convicted of a sex offense to apply, but denies all individuals who received a life sentence. JPI believes strongly that any geriatric parole provision should be made available to the entire prison population, regardless of offense type or sentence. Four in 10 individuals in Maryland prisons who are over 60 years of age are serving a life sentence. Excluding them from a geriatric parole provision would result in people like the Unger group remaining behind bars. Most people who are in prison beyond the age of 60 committed serious crimes. And most have already served decades. A blanket prohibition on eligibility based on offense or sentence type would undermine the purpose of a geriatric parole provision and is inconsistent with what research has shown about recidivism rates among this population.

In addition, JPI recommends that Maryland adopt a rebuttable presumption for parole release for all individuals over the age of 60, as outlined in HB 1480. Every person who is 60 years of age or older should be automatically entitled to a hearing. This is consistent with recent reforms in Alaska and Mississippi. It is also the recommendation of a recent report by the Vera Institute of Justice, which reviewed compassionate release and geriatric policies and practices for a 2017 report. Maryland has the opportunity to take these reforms a step further by making geriatric parole hearings automatic and available to all individuals regardless of offense type. This would align Maryland with the recommendations in the Vera report and put the state at the forefront of elder parole.

Finally, JPI would like to comment on the dynamic risk and needs assessment tool that is called for in HB 1391. This type of instrument is consistent with best practices in other states. We envision this tool informing the deliberations of the Maryland Parole Commission (MPC) as it considers “whether there is reasonable probability that the inmate, if released on parole, will remain at liberty without violating the law.” (Correctional Services Section 7-305). As the MPC considers whether there is some “factor or factors under Section 7-305 . . . mak[ing] the inmate unsuitable for parole” as outlined in HB 1480, it should do so with a validated and strength-based risk and needs instrument. Current practice by the MPC lacks the use of a tool of this type, thus leading to results that lack transparency or consistency and provide no opportunity for meaningful oversight of the actions of the Commission. Research over the past 20 years has shown that such actuarially-based instruments can assess a person’s risk of future criminal behavior far better than the judgment of individual parole board members.

Decisions to delay parole beyond the initial point of eligibility should be based only on a finding by the MPC that a person represents an unacceptable risk of reoffending upon release. More specifically, such findings should be anchored in credible factors—such as risk assessments and in-prison conduct—that research has linked with readiness for release.

In many states, parole boards use their discretion to essentially reexamine decisions of sentencing judges and determine whether further incarceration is needed to ensure what board members consider

sufficient punishment for a given crime. Often, these decisions turn on the “too much crime” rule, meaning that the severity of the offense tends to overwhelm all other considerations.

To ensure confidence in risk assessments and their use in parole decisions, Maryland should make public the factors measured in such evaluations, how risk is calculated, and the risk scores. Researchers also advise that parole boards examine their risk assessments closely to identify any variables that may be influenced by race, and then determine how the removal of such variables would affect accuracy. This should include opportunities for input from experts in the field as well as the public.

Maryland is one of 17 states that has an existing geriatric parole provision. The Maryland General Assembly has an opportunity to take a modest but important step to turn the tide on decades of failed “tough on crime” policies by expanding the underutilized existing provision. This will help reduce mass incarceration, save the state millions of dollars, and contribute to safer neighborhoods. It is truly a “win-win-win” for all parties.