

Written Testimony in Support of Senate Bill 202

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We write to strongly support the legislation that will remove the governor from the parole-review process for people serving life sentences with the possibility of parole. The parole commissioners are completely entrusted with independent parole review of all other parole-eligible sentences. Maryland is one of only three states in the nation that require the governor to approve parole for people sentenced to life. This approach is incorrect and unjust for two reasons. First, requiring executive approval of parole determinations simply serves to politicize the process. Second, in pursuit of a just and transparent criminal system, the legislature should seek to uphold truth in sentencing by providing a meaningful opportunity for people serving a life sentence to obtain release through parole. This can only be done if the governor is removed from the process.

As it currently stands, the governor has the power to veto a parole determination made by the very parole commissioners whom he has appointed. Thus, he has the power to deny the opportunity for a second chance that is inherent in a life with parole sentence, and which induces many defendants to plead guilty. In light of the governor's power to appoint the parole commissioners and the expertise that the commissioners develop, the governor's veto authority over that commission's decisions is redundant and inefficient. The COVID-19 pandemic highlights another problem with this system. The governor should be free to focus his energy on big-picture policy making to deal with the pandemic, the economy, and other crises and issues that affect the lives of all Marylanders. He should not be engaging in the deep and individualized analysis required to make parole decisions.

The governor's power under the current system also fosters distrust and undermines the goals of our criminal justice system. The possibility of parole offers a powerful incentive for incarcerated individuals to behave appropriately. Maryland's current system weakens these incentives by injecting a random variable—the governor's politics—that can render an inmate's efforts at rehabilitation meaningless to their chances of being released on parole.

Further, the arbitrariness resulting from the governor's role makes the process fundamentally unfair. Since *Graham v. Florida*, the Supreme Court has made it clear that states must provide nearly all juvenile lifers with "a meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." 560 U.S. 48 (2010). But this promise should not be restricted to juveniles. The state's promise of parole should mean a promise of the same meaningful opportunity for release, regardless of the age of the incarcerated individual.

The governor's involvement has removed meaningful opportunities for prisoners to obtain release. There was virtually no parole granted for people sentenced to life with parole between 1995 and

2016.¹ Governor Hogan’s recent decisions to allow certain lifers to be released on parole, while commendable, illustrates the dysfunction of the current system. Likelihood of parole should not depend on the extent to which a particular governor feels political pressure to appear “tough on crime.” Two people incarcerated for the same crime should not face vastly different parole prospects based on whomever occupies Maryland’s highest office.

SB 202 offers a meaningful step towards fairness for Maryland lifers by removing an unnecessary barrier to release. The recent movement for Black lives has made SB 202 even more timely and important. In Maryland, 70% of prisoners and 77% of juvenile lifers are Black, while only about 30% of the state’s population is Black.² The state owes a meaningful opportunity for release to all those it promised a chance. Without the passage of SB 202, incarcerated individuals and their families are forced to hold onto the hope of release, while in reality, a governor’s personal philosophy and political ambition could keep those who were promised a meaningful opportunity at parole in cages until they die. For these reasons, we respectfully urge the Committee to issue a favorable report on SB 202.

This testimony is submitted on behalf of the Juvenile Lifer Advocacy Clinic at the University of Maryland Carey School of Law and not on behalf of the School of Law; the University of Maryland, Baltimore; or the University of Maryland System.

¹ Ann E. Marimow & Erin Cox, *Gov. Larry Hogan granted parole to people sentenced as teenagers, rekindling calls for parole reform*, The Washington Post (Nov. 30, 2019), https://www.washingtonpost.com/local/legal-issues/gov-larry-hogan-granted-parole-to-people-sentenced-as-teenagers-rekindling-calls-for-parole-reform/2019/11/30/015d788c-107d-11ea-9cd7-a1becbc82f5e_story.html.

² *Still Blocking the Exit*, https://www.aclu-md.org/sites/default/files/field_documents/stillblockingtheexit_final.pdf.