



POSITION ON PROPOSED LEGISLATION

BILL: HB 426 — CORRECTIONAL SERVICES - GERIATRIC PAROLE
POSITION: FAVORABLE WITH AMENDMENT
DATE: January 29, 2021

TESTIMONY BEFORE THE HOUSE JUDICIARY COMMITTEE

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My name is Elise Desiderio. I am a resident of Baltimore City and an Assistant Public Defender with the Post Conviction Defenders Division of the Maryland Office of the Public Defender. Our division represents indigent defendants in every jurisdiction in Maryland who have already been convicted. We regularly serve clients who are seniors, many of whom are serving decades-long sentences.

On behalf of the Public Defender's Office I am submitting this statement in support of HB426, which would expand parole release options for Maryland's seniors, with a proposed amendment to include individuals sentenced to life *without* the possibility of parole in the bill.

Across the country, elderly populations within prison systems are increasing.¹ Since 2003, the fastest growing age group in the prison system has been persons aged 55 and older.² The Maryland Department of Public Safety and Correctional Services reports that as of fiscal year 2019, 18,244 people were housed within the Division of Correction.³ Of those, 2,362 were between the ages of 51 and 60 and 962 were over 60. *Id.*

¹ Brie A. Williams, et al., Addressing the Aging Crisis in U.S. Criminal Justice Healthcare, 45 J. Am. Geriatric Soc. 1150-56, author manuscript at *3 (2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3374923/pdf/nihms363409.pdf> (citing U.S. Dep't of Justice, Bureau of Justice Statistics, Office of Justice Programs, Prisoners Series 1990 – 2010, <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbse&sid=40>).

² U.S. Dep't of Justice, Bureau of Justice Statistics, Aging of the State Prison Population, 1993-2013 (May 2016), <https://www.bjs.gov/content/pub/pdf/aspp9313.pdf>.

³ Maryland Department of Public Safety and Correctional Services, Division of Correction, Operations, 41 (Nov. 14, 2019), [http://dlslibrary.state.md.us/publications/Exec/DPSCS/DOC/COR3-207\(d\)_2019.pdf](http://dlslibrary.state.md.us/publications/Exec/DPSCS/DOC/COR3-207(d)_2019.pdf).

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I'd like to address several considerations specific to incarcerated seniors that demonstrate the need for legislation directed at expanding options for their release. First, elderly persons have particular health and safety concerns that living in prison exacerbates. Second, elderly persons are less likely to reoffend upon reentering the community than younger persons. Third, incarcerating elderly persons is more expensive for the State and its taxpayers than incarcerating younger persons.

First, elderly inmates' health needs are more complex than those of younger inmates. Elderly persons in prison are more likely to be living with chronic health conditions than their younger counterparts.⁴ "On average, older prisoners nationwide have three chronic medical conditions and a substantially higher burden of chronic conditions like hypertension, diabetes and pulmonary disease than both younger prisoners and older non-prisoners."⁵

Research suggests a correlation between prison life and decline in health. In a 2007 study, researchers interviewed 51 incarcerated men in prison in Pennsylvania with an average age of 57.3 years as well as 33 men in the community with an average age of 72.2.⁶ The researchers compared the rates of high cholesterol, high blood pressure, poor vision, and arthritis between the two groups, finding that the data suggested that the health of male inmates was comparable to men in the community who were 15 years older. *Id.* A similar study published in 2018 of 238 participants similarly found that "[a]mong older adults in jail with an average age of 59, the prevalence of several geriatric conditions was similar to that found among community[-]dwelling adults age 75 or older."⁷

Additionally, elderly incarcerated persons, particularly those with elevated health concerns, "are at an elevated risk for physical or sexual assault victimization, bullying, and extortion from other prisoners or staff compared to their younger counterparts."⁸ Older prisoners also report higher stress and anxiety than their younger counterparts, "including the fear of dying

⁴ Tina Maschi, Deborah Viola, & Fei Sun, The High Cost of the International Aging Prisoner Crisis: Well-Being as the Common Denominator for Action, 53 *The Gerontologist* 543-54 (2012), <https://academic.oup.com/gerontologist/article/53/4/543/556355>.

⁵ Brie A. Williams, et al., Addressing the Aging Crisis in U.S. Criminal Justice Healthcare, *J. Am. Geriatric Soc.* 1150-56, author manuscript at *3 (2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3374923/pdf/nihms363409.pdf>.

⁶ Susan J. Loeb, Darrell Steffensmeier, & Frank Lawrence, Comparing Incarcerated and Community-Dwelling Older Men's Health, *West J. Nurs. Res.* 234-49 (2008), <https://pubmed.ncbi.nlm.nih.gov/17630382/>.

⁷ Meredith Greene, et al., Older Adults in Jail: High Rates and Early Onset of Geriatric Conditions, *Health & Justice* (2018), author's manuscript at *4, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5816733/pdf/40352_2018_Article_62.pdf.

⁸ Maschi, *supra*, at 545 (citing Stan Stocovic, Elderly Prisoners: A Growing and Forgotten Group Within Correctional Systems Vulnerable to Elder Abuse, 19 *J. of Elder Abuse & Neglect* 97-117 (2008)), https://www.tandfonline.com/doi/abs/10.1300/J084v19n03_06.

in prison and victimization or being diagnosed with a severe physical or mental illness.”⁹ Correctional institutions struggle to meet elderly prisoners’ health needs. “Prisons typically do not have systems in place to monitor chronic problems or to implement preventative measures.”¹⁰

The COVID-19 pandemic exacerbates these health concerns. The virus is spreading at an alarming rate and, as of January 27, 2021, 2020, has infected more than **25 million** people in the United States¹¹ and more than **346,559** Marylanders.¹²

People living in prisons are especially vulnerable to COVID-19. The CDC has cautioned that “[c]orrectional and detention facilities are high-density congregate settings that present unique challenges” to effective COVID-19 testing, mitigation, and treatment.¹³ Prisons are closed spaces in which detainees sleep, eat, recreate, and share hygiene facilities in close proximity to each other and do not have the freedom to distance themselves from their peers. Under these conditions, communicable diseases like COVID-19 spread more readily through touch inside correctional facilities.¹⁴ As of January 19, 2021, there have been **355,957** COVID-19 cases reported among incarcerated persons across state and federal prisons.¹⁵

⁹ Id. (citations omitted); see also Stephanie C. Yarnell, Paul D. Kirwin & Howard V. Zonana, Geriatrics and the Legal System, 45 J. of the Am. Academy of Psychiatry & the L. Online 208-17 (2017), <http://jaapl.org/content/jaapl/45/2/208.full.pdf>.

¹⁰ At America’s Expense: Mass Incarceration of the Elderly, Am. Civil Liberties Union, 28-29 (2012), <https://www.aclu.org/report/americas-expense-mass-incarceration-elderly>.

¹¹ COVID-19 Dashboard, Johns Hopkins University, Center for Systems Science and Engineering, <https://www.arcgis.com/apps/opsdashboard/index.html#/bda7594740fd40299423467b48e9ecf6> (last visited Jan. 27, 2020).

¹² Coronavirus Disease 2019 (COVID-19) Outbreak, Maryland Department of Health, <https://coronavirus.maryland.gov/> (last visited Jan. 27, 2020).

¹³ Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities, Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html> (last visited Dec. 8, 2020).

¹⁴ Dan Morse & Justin Jouvenal, Inmates Sharing Sinks, Showers and Cells Say Social Distancing is Impossible in Maryland Prisons, The Washington Post (Apr. 10, 2020), https://www.washingtonpost.com/local/public-safety/inmates-sharing-sinks-showers-and-cells-say-social-distancing-isnt-possible-in-maryland-prisons/2020/04/10/5b1d5cf8-7913-11ea-9bee-c5bf9d2e3288_story.html.

¹⁵ A State-By-State Look at Coronavirus in Prisons, The Marshall Project, <https://www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons> (last visited Jan. 27, 2021).

COVID-19 is especially dangerous for incarcerated **seniors**. The CDC cautions that “[t]he risk for severe illness with COVID-19 increases with age, with older adults at highest risk.”¹⁶ “An analysis of more than 114,000 COVID-19 associated deaths during May – August 2020, found that 78% of the people who died were aged 65 and older[.]”¹⁷ Those with underlying medical conditions, which seniors are more likely to have, are also at increased risk of severe illness with COVID-19.¹⁸ The mortality rate for persons with COVID-19 and certain comorbidities are significantly higher than the mortality rate among those without these comorbidities.

Maryland’s leaders recognize the threat of this virus to Maryland’s incarcerated populations and have taken steps to limit it. On April 14, 2020, Chief Judge Barbera issued an Administrative Order directing trial judges to take immediate steps to reduce the incarcerated populations in Maryland, noting that “the incarcerated and imprisoned populations of Maryland include individuals who, because of age or underlying medical conditions, are at a heightened risk of severe or fatal outcomes if they contract COVID-19.”¹⁹

Governor Hogan has directed the government to take steps to prevent the spread of COVID-19 by reducing the inmate populations in Maryland’s correctional facilities.²⁰ Methods of reduction include early release of inmates nearing the end of their sentences, expedited release to home detention, and expedited parole. *Id.* Governor Hogan recognized that “[t]o mitigate the effects of the spread of COVID-19 and protect the public health, welfare, and safety, especially of vulnerable workers or incarcerated persons at Maryland prisons, it is necessary and reasonable to implement protocols and procedures for transfer out of the State’s correctional institutions.” *Id.* Governor Hogan’s and Chief Judge Barbera’s Orders and their intent call attention to the importance of considering health concerns like COVID-19 when deciding whether to keep a person incarcerated.

I turn now to research demonstrating lower recidivism rates among elderly persons released from prison. The United States Sentencing Commission examined 25,431 federal offenders

¹⁶ COVID-19 Guidance for Older Adults, Centers for Disease Control and Prevention, <https://www.cdc.gov/aging/covid19-guidance.html> (last visited Dec. 16, 2020).

¹⁷ *Id.*

¹⁸ People with Certain Medical Conditions, Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html> (last visited Dec. 16, 2020).

¹⁹ Administrative Order Guiding the Response of the Trial Courts of Maryland to the COVID-19 Emergency as it Relates to Those Persons Who are Incarcerated or Imprisoned (April 14, 2020), <https://mdcourts.gov/sites/default/files/admin-orders/20200414guidingresponseoftrialcourts.pdf>.

²⁰ Executive Order No. 20-11-17-03, Implementing Alternative Correctional Detention and Supervision, <https://governor.maryland.gov/wp-content/uploads/2020/11/Prisoner-Release-RENEWAL-11.17.20.pdf>.

released in 2005, using a follow-up period of eight years for its definition of recidivism.²¹ For the eight years after their release, the Commission calculated a rearrest rate of 64.8% for the released persons younger than 30, 53.6% for the released persons between the ages of 30 and 39, 43.2% for the released persons between 40 and 49, 26.8% for the released persons between 50 and 59, and 16.4% for the released persons older than 59. *Id.*

The Commission's data shows that the recidivism rate drops off most sharply after the age of 50. Moreover, before age 50, released persons are most likely to be re-arrested for assault. *Id.* After age 50, they are most likely to be re-arrested for a comparatively minor public order offense like public drunkenness. *Id.* The American Civil Liberties Union has also compiled data collected nationally and from various states demonstrating that older incarcerated persons across the country have a "lower propensity to commit crimes and pose threats to public safety."²²

It is also more expensive to incarcerate elderly persons than their younger counterparts. At the national level, "[b]ased on [the Bureau of Prisons'] cost data, [the Office of the Inspector General] estimate[s] that the [Bureau of Prisons] spent approximately \$881 million, or 19 percent of its total budget, to incarcerate aging inmates in [fiscal year] 2013."²³ "According to a National Institute of Corrections (NIC) study from 2004, taxpayers pay more than twice as much per year to incarcerate an aging prisoner than they pay to incarcerate a younger one."²⁴ These outsized costs are in large part due to the increased healthcare costs associated with elderly persons in prison.²⁵ Maryland feels this economic strain more acutely than many other states do. From 2010 to 2015, the national median spending per inmate on healthcare was \$5,720 per fiscal year, while the state of Maryland spent \$7,280 per fiscal year.²⁶ From 2001 to 2008, per-inmate healthcare spending rose 103% in Maryland from \$3,011 per fiscal year to \$5,117 per fiscal year.²⁷

²¹ Kim Steven Hunt & Billy Easley, U.S. Sent'g Comm'n, *The Effects of Aging on Recidivism Among Federal Offenders* (2017), https://www.usc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171207_Recidivism-Age.pdf.

²² *At America's Expense: Mass Incarceration of the Elderly*, American Civil Liberties Union (2012), <https://www.aclu.org/report/americas-expense-mass-incarceration-elderly>.

²³ Dep't of Justice, Office of the Inspector Gen., *The Impact of an Aging Inmate Population on the Federal Bureau of Prisons*, i (Feb. 2016), <https://oig.justice.gov/reports/2015/e1505.pdf>.

²⁴ *At America's Expense: Mass Incarceration of the Elderly*, Am. Civil Liberties Union, 27 (2012) (citing B. Jaye Anno et al., U.S. Dep't of Justice, Nat'l Inst. of Corr., *Correctional Health Care: Addressing the Needs of Elderly, Chronically Ill, and Terminally Ill Inmates*, 10 (2004)).

²⁵ *Id.*; Zachary Psick, et al., *Prison Boomers: Policy Implications of Aging Prison Populations*, *Int. J. Prison Health*, 57-63 (2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5812446/pdf/nihms940509.pdf>.

²⁶ Pew Charitable Trusts, *Prison Health Care Costs and Quality* (Oct. 18, 2017), <https://www.pewtrusts.org/en/research-and-analysis/reports/2017/10/prison-health-care-costs-and-quality>.

²⁷ *Id.*

The public policy interest in retribution has been satisfied by the many years most elderly persons have already spent in prison. Expanding options for parole release for seniors in prison is the right thing to do. Applying a dynamic risk assessment to parole-eligible seniors and giving significant weight to their age when evaluating parole suitability is a laudable step. **There are other things a geriatric parole bill could do to go even further. These include making a geriatric parole provision applicable to all age-eligible prisoners, regardless of sentence or offense and adopting a rebuttable presumption that persons over 60 are suitable for parole.** Maryland has the opportunity to reduce mass incarceration, save the state millions of dollars, contribute to safer communities, and allow Maryland's incarcerated seniors the opportunity they deserve to live their twilight years with dignity, breathing free air.

For these reasons, the Office of the Public Defender urges a favorable report for HB426, with a proposed amendment to include individuals sentenced to life *without* the possibility of parole in the bill.