

**Testimony in SUPPORT OF HB 3 – Remove the Governor from Lifer Parole**

*Submitted by*

**The Re-Entry Clinic, American University Washington College of Law**

The **Re-Entry Clinic at the American University Washington College of Law** represents child offenders serving life sentences in Maryland prisons. Through its work, the Clinic is acutely aware of the impact that the Governor's role in parole decisions has on its clients and their families. Thus, the Clinic strongly SUPPORTS passage of HB 3.

The Governor's involvement in the parole process makes the possibility of parole little more than a fleeting illusion in Maryland. Re-Entry Clinic student attorneys work for months to prepare deserving clients for their parole hearings. The very few who gain parole recommendations can look forward to the Governor's denial. The likelihood of an individual sentenced to life being granted parole in the State is so marginal that one may reasonably question the purpose of the parole process for this cohort. Life sentences are not meant to be life without parole as Governor Glendening famously converted them through his policy stated back in 1995, a policy carried forward by his successors, with minor exceptions by the current Governor. A life sentence means eligibility for parole after approximately fifteen years in prison. Clinic clients have been in prison for twenty, thirty, forty, and more years. You might think that their records demonstrate poor rehabilitation to justify such lengthy stays, but the opposite is true.

A large part of the problem for people serving life sentences in Maryland is the process of gaining parole. Our client's come up for parole review before the Maryland Parole Commission two, three, four, and more times, at intervals of one to ten plus years. They get little insight as to what the Commission finds lacking in their applications. We have seen a series of positive comments such as "remain infraction free" and "shows true remorse" resulting in rehearings set years later. If at the end of this discouraging process, a recommendation for parole is made, what additional insight might the Governor reasonably add?

The Governor's office has argued that his role fosters greater accountability because it puts the final decision in the hands of an elected official who must answer to the voters.<sup>1</sup> This is the very reason why the Governor has no place in this process. He supplants the review of the well-funded and excessively deliberative Parole Commission, *for admittedly political reasons*. This has no place in the review of someone who is eligible for parole.

Though the State of Maryland may be turning a blind eye to the purpose of parole, the U.S. Supreme Court has not. In *Morrissey v. Brewer*, the Court referred to parole as an "integral part of the penological system."<sup>2</sup> The Court went on to highlight that the purpose of parole is to "*help individuals* reintegrate into society as constructive individuals *as soon as they are able*, without being confined for the full term of the sentence imposed."<sup>3</sup> (emphasis added). The highest Court of the land has spoken unequivocally, offering the definition and parameters of parole, but as of now, the State of Maryland has yet to recognize parole's significance for those serving life sentences.

The Supreme Court has also spoken with clarity on the fate of individuals who were children at the time of their offense. In *Miller v. Alabama*, the Court declared - "youth matters."<sup>4</sup> Sentencing schemes that fail to take an offender's youthfulness into account are in violation of the Eighth Amendment of the United States Constitution.<sup>5</sup> Maryland's high court likewise addressed juvenile offenders in *Carter v. State*, determining that "although there need not be a guarantee of release on parole, a sentence imposed on a juvenile offender must provide 'some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.'"<sup>6</sup>

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<sup>1</sup> Baltimore Sun, [Get governors out of parole decisions](https://www.baltimoresun.com/opinion/editorial/bs-ed-parole-20170220-story.html) (Feb. 20, 2017), <https://www.baltimoresun.com/opinion/editorial/bs-ed-parole-20170220-story.html>.

<sup>2</sup> *Morrissey v. Brewer*, 408 U.S. 471, 477 (1972).

<sup>3</sup> *Id.*

<sup>4</sup> *Miller v. Alabama*, 567 U.S. 460, 473 (2012).

<sup>5</sup> *Id.*

<sup>6</sup> *Carter v. State*, 461 Md. 295, 306 (2018).

There is no meaningful opportunity for release in Maryland. Four hundred (400) child offenders sit in prison serving life sentences; 87% of them have already served 20 or more years.

HB 3 is an important step towards Maryland's recognition of not only the "integral" nature of parole as affirmed in *Morrissey* but also the Court's declaration that "youth matters" in *Miller*. Maryland is behind the curve—it is one of only three states that requires approval from the governor as part of the parole process.<sup>7</sup> The Governor's direct involvement in Maryland's parole process only exacerbates Maryland's position as the leading incarcerator of Black men.<sup>8</sup> The portion of Maryland's prison population that is Black, 70%, is more than double the national average, 32%.<sup>9</sup>

Maryland's current parole process for lifers ensures that most will die in prison. A large part of the problem is gaining a recommendation of parole. The reality is, as of now, the Governor's almost certain recommended denial of parole is inescapable. "Mercy without justice is the mother of dissolution; justice without mercy is cruelty."<sup>10</sup>

If Maryland is committed to the fight for racial justice, it must recognize the human possibility of the people it so relentlessly continues to confine. If it is to heed the mandates of the federal as well

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<sup>7</sup> Cal. Const. art. 5, § 8 (noting California's statute that requires the governor's approval for parole); Okla. Const. art. 6, § 10 (indicating Oklahoma's statute that grants the governor power to make parole determinations).

<sup>8</sup> [Rethinking Approaches to Over Incarceration of Black Young Adults in Maryland](http://www.justicepolicy.org/research/12702?utm_source=%2fMarylandYoungAdult&utm_medium=web&utm_campaign=redirect), JUSTICE POLICY INSTITUTE (Nov. 2019), [http://www.justicepolicy.org/research/12702?utm\\_source=%2fMarylandYoungAdult&utm\\_medium=web&utm\\_campaign=redirect](http://www.justicepolicy.org/research/12702?utm_source=%2fMarylandYoungAdult&utm_medium=web&utm_campaign=redirect).

<sup>9</sup> *Id.*

<sup>10</sup> Randy Lee, Justice Benjamin Nathan Cardozo and his Two Most Important Questions: Reflectionson the Choice of Tycho Brahe, 34 *Touro L. Rev.* 237, 242 (2018) (quoting Thomas Aquinas).

as its own constitutions, and if it cognizant of parole's fundamental aim to *help individuals*, then HB 3 must pass.