



**Testimony to the House Judiciary Committee  
HB0003 Life Imprisonment — Parole Reform**

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My name is Marc Schindler. 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. Over the last decade, JPI has released over a dozen policy and research reports on the Maryland justice system. Please accept this statement in support of HB0003 Inmates –Life Imprisonment—Parole Reform.

By way of background, I have had the opportunity in my career to view the justice system from several different angles. I come to this issue today with perspective drawn from experiences both inside and outside the criminal justice system. After graduating from the University of Maryland School of Law, I began my legal career over 20 years ago with the Maryland Office of the Public Defender. I spent eight years as a staff attorney with the Youth Law Center, a national civil rights law firm. Then, I held several leadership roles within the Washington, DC Department of Youth Rehabilitation Services, 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.

These experiences inform my support for removing the governor from the parole decision-making process for people serving a life sentence. 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 (MPC) significantly undermines the role of the MPC; ignores the lessons learned from the successes of individuals released under the *Unger v. State* decision; makes taxpayers responsible for the cost of excessively long stays of incarceration with no demonstrable public safety benefit; diverts funds away from important services like education and healthcare; and, further perpetuates the Maryland justice system's disproportionate impact on people of color. 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 MPC decisions within 180 days – there has been virtually no change to the parole process. If anything, the MPC has found a loophole by recommending commutations to skirt the 180-day rule.

In 1995, the unwritten policy of "absolute life" completely upended the parole process in Maryland for all individuals serving parole-eligible life sentences. By ushering in that new policy for purely political gain, the executive branch was ultimately ignoring the spirit and intent of judicial branch decisions.

Many people simply followed the advice of their attorney when they accepted life sentences with the possibility of parole. 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 legitimate policy goal, least of all protecting public safety, that supports warehousing so many people well beyond the time when they have aged out of crime. Maryland, of all states, should have learned this lesson by simply observing the safe and successful release due to a court ruling of nearly 200 people who had served an average of 40 years in prison.

As you are aware, the 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. Many were merely released with time served rather than pursuing a new trial, which speaks volumes to the folly of their continued incarceration long past any public safety benefit. As of today, over 200 Ungers 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. This population’s success 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.

The cost to continue to house the parole-eligible geriatric population is well beyond the price of adequate reentry support, especially for the geriatric prison population, which has higher health care costs. A fiscal analysis by the JFA Institute and The Pandit Group for the Open Society Institute-Baltimore concluded that continued confinement of the “Unger group” for an additional 18 years (based on the expected period of incarceration using the projected life expectancy of those released), would have amounted to nearly \$1 million per individual, or \$53,000 a year. The report, *Building on the Unger Experience: A cost-benefit analysis of releasing aging prisoners*, found that a year of intensive reentry support cost only \$6,000. Moreover, these supports have been proven to contribute to the safe and successful reintegration of the “Unger group” back into the community.

As noted in JPI’s report, *The Ungers, 5 Years and Counting: A Case Study in Safely Reducing Long Prison Terms and Saving Taxpayer Dollars*, the reentry support provided by a team of social workers, lawyers, and formerly incarcerated people has had a profound impact on the reintegration of those released under the *Unger* decision. This case management approach included “reaching-in” and working intensively with people before they were released from prison to help plan their reentry and supports after they were released to ensure they were connected to the services they needed.<sup>1</sup> The “Unger group” 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 available to help with other challenges. The Maryland

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<sup>1</sup> 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.

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 people released under the *Unger* decision so that peers could help each other through the reentry process.<sup>2,3</sup> The approach was funded by private philanthropy and donors.<sup>4</sup> As of 2016, the majority of Ungers who have returned home received those specialized reentry services.

Not only have many of those released under the *Unger* decision successfully reintegrated into society, but they have also dedicated themselves to giving back to the community. 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 contribute to the community, work to prevent others from making the same mistakes they made, and aid in the healing process for families impacted by crime.

Not only do these individuals not represent a clear and present threat to public safety, they are actively working to make their neighborhoods safer. However, absent the action of the Court of Appeals, none of these deserving individuals would have ever had the opportunity to demonstrate the power of their transformational change. Because, under the current parole policy, none of the "Unger group" would have been released. We know this for a fact because many of these very individuals released under the *Unger* decision were recommended for parole by the MPC but ultimately not approved by the governor. This is the inevitable, corrosive effect of introducing politics into the parole process and why Maryland is one of only three states that retain a role for the governor in release decision making.

Finally, I would be remiss if I did not acknowledge that this hearing comes at a time when Maryland's COVID-19 numbers among the incarcerated population and staff are alarmingly high, with a recent spike in positive cases. For example, in the North Branch Correctional Institution in Allegany County between November 9th and December 7th, 224 incarcerated individuals and 92 staff tested positive. The positivity rate during that period was nearly 80 percent for staff and 23 percent for incarcerated individuals. From November 13th to November 16th, all tests – 56 incarcerated residents and three staff - were positive.

At the Eastern Correctional Institution in Somerset County, during that same period of November 9th to December 7th, 515 incarcerated individuals and 68 staff tested positive. The positivity rate during that period was over 50 percent for staff and incarcerated individuals versus an 8.7% positivity rate for the state.

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<sup>2</sup> *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.

<sup>3</sup> 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.

<sup>4</sup> "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.

Governor Hogan followed the advice of health care professionals in almost all aspects of his COVID-19 response except the incarcerated population. It is unconscionable to think the Governor has turned his back on the most vulnerable people during this pandemic. Many lawyers and even judges are working tirelessly to get people released. Still, Governor Hogan has handcuffed them with an extremely limited executive order and an unwillingness to sign off on parole board decisions for those who have been vetted and recommended for parole. This is what happens when you allow politics to take precedent over sound and humane policy. By leaving those in harm's way who the MPC has recommended for parole, the Governor has abdicated his responsibility to the most vulnerable population. The governor's role in the parole process in Maryland has always been problematic. COVID has uniquely highlighted the need to change this policy.

For Maryland to ensure a fair and effective parole process, the governor should be removed from the proceedings to allow the MPC sole jurisdiction over release decisions. The experience of the Ungers clearly shows that this population is low risk. Despite some effort from Governor Hogan to respond to the pandemic, the new wave of outbreaks will not dissipate without a meaningful response. Getting the governor out will not only help reduce a vulnerable population from facilities with climbing positive rates but aligns MD with best practices in parole and geriatric parole. We respectfully ask for favorable consideration for HB0003.