



January 28, 2021

Chairman Luke Clippinger
House Judiciary Committee
House Office Building, Room 101
Annapolis, MD 21401

**RE: House Bill HB 426 – Favorable
Written Testimony - Olinda Moyd, Esq.**

Dear Chairman Clippinger and Judiciary members:

The Maryland Alliance for Justice Reform supports a favorable report on this bill for several reasons.

This bill would add to the existing statute an opportunity for people over 60 to be considered for parole consideration. It would also require:

- the development of a dynamic risk assessment instrument;
- the Maryland Parole Commission (hereinafter “the Commission”) to complete a risk assessment;
- that the Commission conduct a hearing 6 months after the assessment;
- the Commission to consider and give weight to factors that determine suitability of parole release for persons who qualify

Especially amid the spread of COVID in our prisons, we must make the release of elderly incarcerated people a priority. The DPSCS has reported twenty deaths due to COVID and most of them were persons over 60. Mr. Andrew Parker was in his early 60’s and had been in prison for 39 years and Mr. Charles Wright had been in for 30 years and was also in his 60’s – both died recently from the virus. Almost every week I receive letters from men and women who fit this age group who are afraid of dying from COVID in prison.¹

The bill creates an opportunity for release for elderly prisoners

Due to extreme sentencing, Maryland is experiencing growth in our aging prison population. Along with an aging population come increased costs for healthcare and other conditions associated with growing old. There are thousands of geriatric-aged individuals still in the prison

¹ DPSCS reports 3,842 positive tests among the population, updated 1-25-2021.

system. I see them on walkers and in wheelchairs as I cross the yard, as an education and self-help group volunteer.

It is estimated that Maryland imprisons approximately 3,000 people over age 50, and nearly 1,000 individuals who are 60 or older.² Based on data showing the geriatric population has higher care costs, a fiscal analysis concluded that continued confinement of this age group for an additional 18 years (based on the expected period of incarceration, the age at release and the projected life expectancy of the Ungers), would amount to nearly \$1 million per person, or \$53,000 a year. This is compared to the \$6,000 a year to provide intensive reentry support that has proven to successfully reintegrate them back into the community.³

For those individuals who continue to serve lengthy sentences, most individuals desist from crime as they get older, and they eventually present little threat to public safety. Experts agree that for persons otherwise ineligible, age-based parole is an appropriate consideration.⁴

The consideration of Dynamic risk factors is critical to give people a fair chance

For decades, most paroling authorities, including the Commission, have considered only static factors when making parole decisions. This bill would require the development of a dynamic risk assessment instrument with strength based needs assessment to assist with identifying conditions for release.

To look at one's static history is merely to examine factors that are not amenable to deliberate intervention, such as prior offenses and age at first offense. Whereas, dynamic factors include consideration for potentially changeable factors, such as substance abuse and employability. A fair evaluation of change in people requires a look at dynamic risk factors – those things that one can change.

Some of the static factors evaluated during the parole eligibility process include:

- The person's age when he or she was sent to a juvenile or adult facility
- Supervisory release history if applicable
- His or her past imprisonments
- Any revocations for felony offenses
- Employment history
- The offense for which the offender was last committed

Dynamic Factors

These factors are those that change during the time the person is in prison. They include:

- The person's current age
- Whether or not the parole petitioner is a member of a gang or a known security threat group

² Report by The Justice Policy Institute, *Rethinking Approaches to over Incarceration of Black Young Adults in Maryland*, (November 6, 2019).

³ Report by The Justice Policy Institute, *The Ungers, 5 Years and Counting: A Case Study in Safely Reducing Long Prison Terms and Saving Taxpayer Dollars*, November 2018.

⁴ E. Rhine, Kelly Lyn Mitchell, and Kevin R. Reitz, Robina Inst. of Crim. Law & Crim. Just., *Levers of Change in Parole Release and Revocation* (2018).

- What if any educational or vocational training he or she has completed in prison
- What certified on-the-job training the person has undertaken
- The person's disciplinary record in prison
- The person's current custody level
- Employability and marketable skills
- Community support and release plan

It is also imperative that the Commission carefully develop a dynamic risk assessment tool that does not contain inherent biases, as some have been criticized. The Correctional Offender Management Profiling for Alternative Sanctions (COMPAS) tool, which has been used by correctional officials for years, is designed to identify the likelihood of reoffending in the future. The COMPAS was found to have a higher false-positive rate for Blacks than whites, which meant that Blacks were more likely to have been misclassified as medium or high-risk by the COMPAS.⁵ In a report from the Pretrial Justice Institute, they concluded that “these tools are derived from data reflecting structural racism and institutional inequity.”⁶ Parole boards that use assessment tools must carefully scrutinize how each factor impacts African-Americans. To guard against biases, they should ensure that the development of assessment tools is transparent and implemented with independent oversight and that the tools are evidence-based and culturally responsive.

Maryland lags behind in providing for geriatric release opportunities

In the federal system persons may apply for geriatric parole pursuant to the US Parole Commission Rules and Procedures, Title 28, CFR, Section 2.78.

Medical and geriatric parole typically go hand-in-hand. Nearly every state has a policy allowing for people with certain serious medical conditions to be eligible for parole, known colloquially as medical parole. In 45 states, the authority for the release of these individuals has been established in statute or state regulation. Additionally, at least 17 states have geriatric parole laws in statute. These laws allow for the consideration for release when a person reaches a specified age. At least 16 states have established both medical and geriatric parole legislatively. We are delighted that Maryland will join them.

For these reasons, we urge a favorable report.

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⁵. Rhys Dipshan & Victoria Hudgins, *Risk Assessment Tools Aren't Immune from System Bias, So Why Use Them?*, (July 17, 2020).

⁶ Pretrial Justice Institute, *Updated Position on Pretrial Risk Assessment Tools* (Feb 7, 2020).