



Written Testimony of Molly Gill
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In Support of SB 562
Maryland Senate Judicial Proceedings Committee
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I thank the Chair, Vice-Chair, and members of the Senate Judicial Proceedings Committee for the opportunity to provide written testimony in support of SB 562, a bill to improve Maryland’s medical and geriatric parole programs. I write on behalf of FAMM, a national sentencing and corrections reform organization. We unite currently and formerly incarcerated people, their families and loved ones, and diverse people working to improve our system of justice.

For more than two decades, FAMM has been a leading voice for measures that allow for the safe release of medically vulnerable, aging, and dying individuals from our nation’s prisons. Our system incarcerates people to deter crimes, punish those who commit them, protect the public, and rehabilitate those who will return home one day. FAMM believes that people should have a meaningful opportunity to leave prison when their continued incarceration no longer advances those purposes of punishment. At a minimum, we should consider people who are dying, aging, and those who are too debilitated to offend, too compromised to benefit from rehabilitation, or too impaired to be aware they are being punished.

Since 2018, FAMM has conducted comprehensive research into state compassionate release programs.¹ We maintain a set of memos on our website that document every program in the 50 states and the District of Columbia.² For each jurisdiction, we describe eligibility criteria, application requirements, documentation, and decision-making, as well as post-decision and post-release issues. We most recently updated these memoranda in December 2021.

We set out our findings in a report, “Everywhere and Nowhere: Compassionate Release in the States.”³ Our most disturbing finding was that while nearly every state, including Maryland, has some form of compassionate release, it is too seldom used. To understand why that is so, we examined and reported on the policies and practices that raise barriers to release.

¹ While we use the term “compassionate release” to describe this authority, we are aware that many jurisdictions have different names for programs that enable early release for qualifying prisoners. Because of what we have learned of the insurmountable barriers to early release programs encountered by many sick and dying prisoners, we believe every program could benefit from taking a compassion-based look at what it means to go through the process. We call these programs “compassionate release” so that the human experience is foremost in our minds and those of policy makers.

² FAMM, Compassionate Release: State Memos (Dec. 2021), <https://famm.org/our-work/compassionate-release/everywhere-and-nowhere/#memos>.

³ Mary Price, Everywhere and Nowhere: Compassionate Release in the States (June 2018), (Everywhere and Nowhere), <https://famm.org/wp-content/uploads/Exec-Summary-Report.pdf>.



We also explored those that exemplify best practices. Finally, we included a set of recommendations for states working to implement or update programs.⁴

That research and analysis informs our support of SB 562. It contains sorely needed reforms. **Medical parole in Maryland is among the most poorly designed programs in the country.** This has led to disappointing outcomes. Between 2015 and 2020, only 86 of 339 requests for medical parole were approved.⁵ That is an average of only 17 grants annually. Meanwhile, between March 2020 and June 2021, 31 people died in Maryland prisons of COVID-19 alone.⁶ Maryland’s Geriatric Parole is in even worse shape. We were baffled to learn that by law, only a tiny subset of the 650 elderly incarcerated people – those who have incurred multiple convictions for crimes of violence – are eligible to be considered for geriatric parole. **Maryland does not have functioning geriatric parole.**

Some features of SB 562 will address the barriers that exist in current law that have likely contributed to a poorly performing medical parole system. The bill also offers a comprehensive geriatric parole program. We commend this bill to the committee because we believe it will make possible the more efficient and robust use of medical and geriatric parole in Maryland.

Senate Bill 562 would create and standardize eligibility standards.

Senate Bill 562 will address one of the most significant problems with the Maryland medical parole program: Parole Commission regulations contradict the medical parole statute. On the one hand, the current Medical Parole statute makes certain people who are chronically debilitated or incapacitated eligible for consideration. However, Parole Commission regulations limit eligibility to people who are “imminently terminal” or have a condition making their continued incarceration purposeless.⁷ More confounding is that the Medical Parole statute does not mention terminal illness at all, much less imminent death.

In our nationwide assessment of barriers to medical release programs, we found that poorly defined or inconsistent criteria frustrate program objectives. Missing definitions, lack of clarity, and dissonance between definitions in statutes and those in program regulations, leave corrections and parole authorities to supply their own definitions of qualifying conditions. Without sufficient guidance, the people who assess incarcerated people for eligibility and those who make the final decision whether to release them cannot be confident they are identifying and/or releasing the right people at the right time. They may fail entirely to act on deserving individuals.

Senate Bill 562 would refine eligibility criteria and oblige the Parole Commission to adopt regulations to implement the statutory criteria and other reforms made by the legislation.

⁴ Everywhere and Nowhere, Executive Summary, <https://famm.org/wp-content/uploads/Exec-Summary-2-page.pdf>.

⁵ Fact Sheet: Medical/Geriatric Parole in Maryland, n.4.

⁶ The Marshall Project, A State-by-State Look at Coronavirus in Prisons (July 1, 2021),

<https://www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons>.

⁷ Compare Md. Code Ann., Corr. Servs. § 7-309 (b) and Dep’t of Public Safety and Correctional Services, Division of Correction Case Management Manual 100.0002, § 22 (D) (2) with Md. Code Regs. 12.02.09.04 (A).

Requiring the Commission to conform its regulations with the improvements in the statute will remove some impediments to medical parole.

FAMM has offered a **friendly amendment** to SB 562, attached at the end of this statement. Our suggestions will, if adopted, bring Maryland more in line with other states. For example, **the amendment would ensure terminally ill people are eligible for medical parole.** Neither the Medical Parole statute nor the current bill include terminal illness in eligibility criteria. In our nationwide review, we located only three other states that do not provide release for the terminally ill.⁸ Note that our proposed amendment defines terminal in a way that does not include a prognosis of time left to live. Instead, it tracks the language used in the federal compassionate release statute.⁹ A person would be considered eligible if they have a disease or condition with an “end-of-life trajectory.” That language was offered by medical professionals with whom we have consulted. It is considered the gold standard because, as is well-known in medical circles, predictions about when a person will die are notoriously inaccurate. Physicians hesitate to predict life spans, or they err on the side of a generous prognosis out of concern for their patient’s emotional wellbeing.¹⁰ Our proposed language ensures that people who are dying can be considered for medical parole.

In the event the legislature would prefer a prognosis of time left to live, we urge that it be long enough to account for the time gathering and considering documents, and undergoing two stages of Parole Commission reviews. We believe anything shorter than 18-24 months might not give the process time to work. Time matters for people nearing the end of life.

Our amendment also suggests definitions for chronic debilitation and incapacitation, so that everyone assessing a person’s eligibility are working with the same standard. For example, one offered definition would measure these conditions by determining whether the individual is unable to perform two or more activities of daily living. This measure is a standard used in a number of states and is understood by medical professionals to measure a person’s functional impairment.

Senate Bill 562 would standardize application, documentation and assessment steps.

The current medical parole statute and the regulations published by the Parole Commission describe very different procedures for initiating a request and documenting eligibility and other factors, such as public safety. Senate Bill 562 would establish one standard for these procedures and oblige the Commission to adopt conforming regulations.

⁸ FAMM, Compassionate Release, Delaware, https://famm.org/wp-content/uploads/Delaware_Final.pdf, Compassionate Release, Utah, https://famm.org/wp-content/uploads/Utah_Final.pdf, FAMM, Compassionate Release, Washington, <https://famm.org/wp-content/uploads/Washington-Final.pdf>.

⁹ 18 U.S.C. § 3582 (c) (1) (A) (1).

¹⁰ Brie A. Williams et al., Balancing Punishment and Compassion for Seriously Ill Prisoners, 155 Ann. Intern. Med. (July 19, 2011), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3163454/>.

For example, the Parole Commission operates under a regulation that provides that only the Warden can initiate the Medical Parole consideration. Current law and SB 562 allow the incarcerated individual, their counsel, a prison official, or any other person to file a request directly to the Commission.¹¹ Similarly, the documentation and assessment stages are inconsistent in current law and Commission rules.¹² Senate Bill 562 would set out a single procedure for gathering and reviewing the essential documents.

Senate Bill 562 also provides for a meeting, if requested, between the applicant or their representative and the Commission before the Commission decides whether to formally consider the applicant. That meeting must be held within 30 days of the request. We think this is a smart addition and especially commend the inclusion of a deadline for that meeting. We found in our evaluation of states, that establishing deadlines for steps in the process helped ensure that applications advance in a timely manner.

Senate Bill 562 would establish comprehensive geriatric parole in Maryland.

Senate Bill 562 will ensure Maryland joins 25 states nationwide that provide early release eligibility to people who are aging in their prisons. Doing so will help the state identify individuals who are among the most expensive to incarcerate and the least likely to pose a public safety concern.

Mandatory prison sentences and truth-in-sentencing laws mean that more people are serving prison terms, and those terms are longer and cannot easily be shortened. Our prisons are graying. While state prison populations overall are generally falling, the same cannot be said for their elderly populations.¹³ It is estimated that by 2030, prisons will house more than 400,000 people who are 55 years old and older, making up nearly one-third of the prison population.¹⁴

Prisons face special challenges trying to meet the special needs of a geriatric population, many of whom have multiple chronic age-related medical conditions and disabilities. Elderly individuals need targeted supports such as ramps, lower bunks, and grab bars.¹⁵ They need help getting to pill line, commissary, or the food hall, or in and out of wheel chairs and beds, and those with cognitive impairments need additional support.¹⁶

¹¹ Compare Md. Code. Ann., Corr. Servs. § 7-309 (c) (2) with Md. Code Regs. 12.02.08.05 (B) and SB 562.

¹² FAMM, Compassionate Release in Maryland 2-3 and notes, https://famm.org/wp-content/uploads/Maryland_Final.pdf.

¹³ E. Ann Carson, U.S. Dep't of Justice/Bureau of Justice Statistics, Prisoners in 2018, at 1 (Jan. 2018), <https://bjs.ojp.gov/content/pub/pdf/p18.pdf>.

¹⁴ George Pro and Miesha Marzell. Medical Parole and Aging Prisoners: A Qualitative Study, 23 J. of Correctional Health Care 162, 162 (2017), <https://www.liebertpub.com/doi/abs/10.1177/1078345817699608?journalCode=jchc.1>.

¹⁵ Human Rights Watch, Old Behind Bars: The Aging Prison Population in the United States 48-52 (Jan. 2012), https://www.hrw.org/sites/default/files/reports/usprisons0112_brochure_web.pdf.

¹⁶ Steve Berry, et al., The Gold Coats – An Exceptional Standard of Care: A Collaborative Guide to Caring for the Cognitively Impaired Behind Bars 4-5, 31-32 (2016).

The cost of care for aging people in prison is between three and nine times more than for younger people.¹⁷ **In Maryland, medical costs double for incarcerated people over the age of 60.**¹⁸

Among the other smart features of the geriatric parole provision is the requirement that the Commission annually identify and assess people who might be eligible for parole. Ensuring that potentially eligible people are identified and considered is an innovative reform, adopted by a growing number of states, such as North Carolina.¹⁹ This requirement will ensure that no elder in prison is left without a chance to be considered for parole.

Many of the elders in Maryland's prisons have been locked up for years or decades. Geriatric parole will give the Commission the chance to assess whether their continued incarceration is in the public interest, using an evidence-based risk assessment tool and taking into account the impact of an individual's age on reducing their risk of recidivism.

Conclusion

FAMM is happy to support SB 562 and urges the Committee to consider suggested friendly amendment language that we believe will strengthen the Medical Parole Program.

Proposed Friendly Amendment to SB 562

Strike lines 26 through 32 of page 2 and lines 1 and 2 of page 3, insert the following text, and re-designate remaining subsections of Section 7-309 accordingly:

(a) This section applies to any inmate who is sentenced to a term of incarceration for which all sentences being served, including any life sentence, are with the possibility of parole.

(b) Under this section:

(1) "Terminal illness" means a disease or condition with an end-of-life trajectory

(2) "Chronically debilitated or incapacitated" means having any diagnosable medical condition – including dementia and a severe, permanent medical or cognitive disability – that is unlikely to improve noticeably in the future and prevents the individual from completing more than one activity of daily living without assistance. Activities of daily living include such activities as eating, breathing, dressing, grooming, toileting, walking, or bathing.”

¹⁷ Cyrus Ahalt, et al., Paying the Price: The Pressing Need for Quality, Cost, and Outcomes Data to Improve Correctional Health Care for Older Prisoners, 61 J. of the Am. Geriatrics Society 2013, 2014 (2013), <https://pubmed.ncbi.nlm.nih.gov/24219203/>.

¹⁸ Open Society Institute, Baltimore, Building on the Unger Experience: A Cost-Benefit Analysis of Releasing Aging Prisoners, 8 (Jan. 2019), <http://goccp.maryland.gov/wp-content/uploads/Unger-Cost-Benefit3.pdf>.

¹⁹ FAMM, Compassionate Release, North Carolina, at 1 (Dec. 2021), https://famm.org/wp-content/uploads/North-Carolina_Final.pdf.

(c) An inmate who

(1) is chronically debilitated or incapacitated by severe illness or medical condition or who suffers from a terminal illness, or

(2) requires extended medical management, with health care needs that would better be met by specialized community services, or

(3) who has been rendered by a medical or mental health condition, disease, or syndrome, physically incapable of presenting a danger to society

may be released on medical parole at any time during the term of that inmate's sentence, without regard to the eligibility standards specified in § 7-301 of this subtitle.