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POSITION ON PROPOSED LEGISLATION

BILL: HB1063, Stopping Dangerous and Violent Criminals Act of 2022

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: 03/04/2022

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on House Bill 1063.

House Bill 1063 would effectively impose mandatory minimum sentences for all convictions for crimes of violence as defined in Md. Code, Crim. L. § 14-101. House Bill 1063 would add language to Md. Code Ann., Corr. Svcs. § 7-301 mandating that a person convicted of a crime of violence would not be eligible for parole until the person has served the greater of (a) 90% of the sentence for the crime of violence; or (b) one-quarter of the aggregate sentence.

If a person is convicted of a crime of violence and is serving multiple sentences, and is eligible for parole on some but not others, under House Bill 1063 that person would not be parole eligible until the person has served the greater of (a) 90% of the sentence for the crime of violence; (b) one-quarter of the aggregate sentence; or (c) a period equal to the term during which the person is not eligible for parole.

Currently, a person serving a sentence for a crime of violence that was committed on or after October 1, 1994 is only eligible for parole once the person has served the greater of (a) one-half of the person's aggregate sentence for violent crimes; or (b) one-fourth of the person's total aggregate sentence. Md. Code, Corr. Servs. § 7-301.

This bill would affect the majority of incarcerated people in Maryland. As of fiscal year 2019, 80.8% of incarcerated persons were convicted of one of the following: arson (.6%), assault

of some degree (14.4%), homicide (26.1%), kidnapping (1%), voluntary or involuntary manslaughter (1.2%), robbery (18.7%), sexual assault or offense of some degree (12.5%), and weapons charges (6.3%).¹ Aside from second degree assault and involuntary manslaughter, these offenses are all considered crimes of violence under Crim. L. § 14-101.

A critical fact of this bill is that parole eligibility and parole release are not the same. A person who is parole eligible may be considered for parole, but recommendation for parole is ultimately within the discretion of the Maryland Parole Commission. According to the Justice Reinvestment Coordinating Council, “just 37 percent of offenders in Maryland are paroled and those offenders who are granted parole are released, on average, nine months after their eligibility date.”² This statistic shows that the parole commission is already making measured, considered parole release decisions and does not grant parole to every person who is eligible—far from it. “A file review of offenders released on parole revealed that the extended prison terms are the result of multiple factors, including delays receiving programming in prison and decisions to postpone release until after the parole eligibility dates.”³ In this way, extending the period of time that a person must serve before being parole eligible is an unnecessary and harmful step towards mandatory minimums for all persons serving sentences for crimes of violence.

House Bill 1063 is especially problematic and punitive in conjunction with Md. Code Ann., Corr. Svcs. § 7-501(b), which states: “An inmate convicted of a violent crime committed on or after October 1, 2009, is not eligible for a conditional release under this section until after the inmate becomes eligible for parole under § 7-301(c) or (d)[.]” If this bill were to pass, a person convicted of a crime of violence would not be eligible for mandatory release until, in many cases, they had served 90% of their sentence. In other words, a person serving a sentence for a crime of violence will have no option for release before they have served 90% of their sentence.

¹ Department of Public Safety and Correctional Services, Md. Division of Correction, Operations, at 42 (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).

² Justice Reinvestment Coordinating Council, *Final Report* at 2 (Dec. 2015), <http://goccp.maryland.gov/jrcc/documents/jrcc-final-report.pdf>.

³ *Id.* at 9.

Consider a person serving a 10-year sentence for simple robbery. That person cannot be released on mandatory supervision until they are parole eligible, and House Bill 1063 would require the person to serve 9 years before becoming eligible. This would mean that a person could not be released using either avenue until at least year 9. Moreover, upon release that person would receive just a single year of supervision in the community until the sentence expires completely. This framework is a significant change to current law, which mandates only that a person in this circumstance must serve 5 years, permitting release via parole for the remaining 5 years, and mandatory release prior to year 9. Not only would House Bill 1063 steeply increase people's sentences, but would also create a significant disparity between persons convicted before October 1, 2022 and after.

The interaction with Corr. Svcs. § 7-501(b) also means that people would have far less incentive to earn diminution credits. The public's interest in rehabilitation is best served when incarcerated people are incentivized to work and engage in programming and maintain good conduct. Under the parole changes proposed in this bill, that incentive all but disappears for people serving sentences for crimes of violence—arguably the type of person most in need of making positive changes before re-entering the community.

Consider these scenarios: Two people are each serving 10-year sentences for simple robbery. Both would start out their sentences with 600 good conduct diminution credits. Md. Code Ann., Corr. Svcs. § 3-704(a) (“An inmate shall be allowed a [good conduct credits] deduction in advance from the inmate's term of confinement.”). They would each start out with 600 credits because under Md. Code Ann., Corr. Svcs. § 3-704(b)(2), a person serving a sentence for a crime of violence is allotted 5 good conduct credits per calendar month of their sentence. This would work out to 60 credits for each year of the sentence, and 600 credits total for a 10-year sentence.

Person 1 does everything right: gets a college degree, has no guilty infractions and has a perfect work history. Person 2, on the other hand, makes serious mistakes during their sentence and ultimately loses 250 good conduct credits for fighting and possession of contraband. Under this bill, both Person 1 and Person 2 would get released at the same time, after serving 9 years. Incarcerated people are thus less incentivized to follow Person 1's path over Person 2's. Upon

release, it is then less likely that incarcerated people who served sentences for crimes of violence will have availed themselves of education, work, and programming opportunities.

Does this outcome serve the public's interest in rehabilitation and community safety? We think not.

A person's parole eligibility also affects eligibility for release to Maryland Department of Health substance abuse treatment through Health Gen. §§ 8-505 and 8-507. Under these statutes, a person serving a sentence for a crime of violence is not eligible to even be evaluated for suitability for a substance abuse program until that person is eligible for parole. Md. Code Ann., Health Gen. § 8-505(a)(2)(i) ("If a defendant is serving a sentence for a crime of violence, as defined in § 14-101 of the Criminal Law Article, a court may not order the Department to evaluate a defendant under this section until the defendant is eligible for parole.").

Thus, under House Bill 1063, a person whose actions leading up to a 10-year sentence for simple robbery were influenced by addiction would not be eligible to be considered for an inpatient substance abuse treatment program until the person has served 9 years. It may be more likely, then, that the person would be released on mandatory release or parole than into an 8-507 substance abuse program. This would be an unfortunate result for people who may need intensive treatment for substance abuse before returning to the community, but would instead leave prison without receiving the help and tools they need to thrive.

This bill would unreasonably increase the retributive aspect of incarceration while disincentivizing the critical rehabilitative goal. Limiting parole so harshly for persons serving sentences for crimes of violence is harmful to incarcerated people and our communities at large.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on House Bill 1063.

Submitted by: Maryland Office of the Public Defender, Government Relations Division.

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