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POSITION ON PROPOSED LEGISLATION

BILL: HB 11377—Correctional Services—Parole Eligibility— Sexual Offenses Against Minors

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 1137.

House Bill 1137 would effectively impose mandatory minimum sentences for all convictions for any of the many sexual crimes under Title 3, Subtitle 3 of the Criminal Law Article or sexual abuse of a minor under Md. Code, Crim. Law § 3-602 involving a child under 17 years old.

House Bill 1137 would add language to Md. Code, Corr. Svcs. § 7-301 mandating that a person convicted of any sexual crime under Title 3, Subtitle 3 of the Criminal Law Article or sexual abuse of a minor under Crim. Law § 3-602 involving a person under 17 years old would not be eligible for parole until the person has served three-fourths of the person's aggregate sentence.

If a person is convicted of any sexual crime under Title 3, Subtitle 3 of the Criminal Law Article or sexual abuse of a minor under Crim. Law § 3-602 involving a child under 17 years old and is serving multiple sentences, and is eligible for parole on some but not others, under House Bill 1137 that person would not be parole eligible until the person has served the greater of (a) three-fourths of the aggregate sentence; or (c) a period equal to the term during which the person is not eligible for parole.

If a person is convicted of any sexual crime under Title 3, Subtitle 3 of the Criminal Law Article or sexual abuse of a minor under Crim. Law § 3-602 involving a child under 17 years old and is serving a life sentence, that person would not be parole eligible until they had served 30 years day for day, without the application of diminution credits.

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.”¹ 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.”² In this way, extending the period of time that a person must serve before being parole eligible is an unnecessary and harmful step.

House Bill 1137 is especially problematic and punitive in conjunction with Md. Code, 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)[.]” Some, but not all, sexual crimes in Subtitle 3 are crimes of violence as defined Crim. Law § 14-101. Under certain circumstances, sexual abuse of a minor under Crim. Law § 3-602 is a crime of violence as defined in Crim. Law § 14-101(a)(15).³ If this bill were to pass, a person convicted of any sexual crime that is considered a crime of violence would not be eligible for mandatory release or parole until, in

¹ Justice Reinvestment Coordinating Council, *Final Report* at 2 (Dec. 2015), <http://goccp.maryland.gov/jrcc/documents/jrcc-final-report.pdf>.

² *Id.* at 9.

³ Md. Code, Crim. L. § 14-101(a)(16) states that “sexual abuse of a minor under § 3-602 of this article [is a crime of violence] if: (i) the victim is under the age of 13 years and the offender is an adult at the time of the offense; and (ii) the offense involved: 1. vaginal intercourse, as defined in § 3-301 of this article; 2. a sexual act, as defined in § 3-301 of this article; 3. an act in which a part of the offender's body penetrates, however slightly, into the victim's genital opening or anus; or 4. the intentional touching of the victim's or the offender's genital, anal, or other intimate area for sexual arousal, gratification, or abuse[.]”

many cases, they had served 75% of their sentence. In other words, that person will have no option for release before they have served 75% of their sentence.

This framework is a significant departure from current law. Currently, a person serving a sentence for a nonviolent crime is eligible for parole once the person has served one-fourth of the person's sentence. Corr. Svcs. § 7-301(a)(2). 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. Corr. Svcs. § 7-301(c)(1).

Under current law, people serving parole-eligible life sentences are generally eligible for parole after either 15 years or 20 years with the application of diminution credits, depending on the date of their sentencing. Corr. Svcs. § 7-301(d)(1)(i)-(ii). House Bill 1137 would require a person convicted of any sexual crime under Title 3, Subtitle 3 of the Criminal Law Article or sexual abuse of a minor under Crim. Law § 3-602 involving a child under 17 to serve 30 years before becoming parole eligible, without the application of diminution credits. 30 years exceeds the maximum sentence for several sexual crimes under Subtitle 3, and the maximum sentence for sexual abuse of a minor under Crim. Law § 3-602(c) (“A person who violates this section is guilty of a felony and on conviction is subject to imprisonment not exceeding 25 years.”).

Not only would House Bill 1137 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 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 is lessened for people serving sentences for sexual crimes—arguably a type of person greatly in need of making positive changes before re-entering the community.

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,

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 1137, a person whose actions leading up to a 10-year sentence for a sexual crime were influenced by addiction would not be eligible to be considered for an inpatient substance abuse treatment program until the person has served 7.5 years. It may be more likely, then, that the person would be released on mandatory release or parole instead of 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.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on House Bill 1137.

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

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