



TESTIMONY BY Keith Wallington

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House Bill 724

Criminal Procedure – Petition to Motion to Reduce Sentence

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Chairperson and committee members, thank you for your attention to this important issue. I am Keith Wallington, the Director of Advocacy for the Justice Policy Institute (JPI). JPI is a national research and policy advocacy organization working with communities most impacted by crime and the criminal legal system to build better safety solutions. I am here today to testify in support of House Bill 724, which would allow an individual who is serving a term of confinement to petition a court to reduce the sentence if the individual has served at least 20 years of the term of confinement and at least three years have passed since the court decided any petition previously filed by the individual for a reduced sentence.

When there Is harm, there needs to be repair

JPI recently released [*Safe at Home: Improving Maryland's Parole Release Decision Making*](#), a comprehensive look at Maryland's parole system. Between 2017 and 2021, the average parole grant rate was 40 percent, but that rate dropped precipitously as time was served and the petitioner's age increased. After 20 years of incarceration, the grant rate is 20 percent and continues to drop to 6 percent after 50 years of time served. Emerging adults (ages 24 and younger) report a grant rate of 37 percent. The grant rate increases to a high of 43 percent for people between the ages of 31 and 35 and then steadily declines as individuals age. People over 60 are paroled at a rate of 28 percent. As a result of bureaucratic delays and perpetual recommendations for "re-hearings," long-sentenced, parole-eligible individuals are often subjected to multiple parole hearings throughout their incarceration, despite rehabilitative success and program completion. *That* is a broken parole system.

Parole grant rates that decline with age run counter to everything we know about trends in criminal offending

The aging prison population poses a low public safety risk due to their age, general physical deterioration, and low propensity for recidivism. Research has conclusively shown that by age 50, most people have significantly outlived the years they are most likely to commit crimes. For example, arrest rates drop to just over two percent at

age 50 and are almost zero percent at age 65.¹ Nationally, aging people return to prison for new convictions at a rate between 5 and 10 percent, and often far lower.²

The story of the people released from prison due to the *Unger* court decision best exemplifies the aging population's low risk to public safety. In 2012, a Maryland court determined a series of cases involved unconstitutional jury instructions. This resulted in 235 individuals, many of whom had committed serious violent offenses, becoming eligible for release. The average age of those released due to the *Unger* decision was 64, and they had served an average of 40 years in prison. These individuals have posted a recidivism rate of under 5 percent since the ruling. This is much lower than the 40 percent rate of recidivism after three years for all persons released from Maryland prison. The rate for the aging *Unger* population is so low that the cohort is five times more likely to pass away from old age than to recidivate for a new crime.³

We have witnessed a similar pattern with the passage of the Juvenile Restoration Act (JRA). Individuals who have been granted a resentencing are thriving as community members, and to date, only one individual has recidivated. Nationally, people who have been released through second look laws have extremely low rates of reoffending, and many are now working to improve their community's safety by serving as mentors to the highest-risk youth.

Other states have had a similar experience. New York reported a 7 percent reconviction rate for those 50 to 64 years old and only a 4 percent for those 65 and older; Virginia experienced a 1 percent reconviction rate for those 60 and older.⁴ Overall, the benefit of medical or geriatric parole to incarcerated individuals comes at a very low cost to public safety.

Long prison terms drive shameful racial disparities

Without HB724, there are few other release valves for Maryland's longest-serving, most infirm, and most expensive population, which has devastating consequences for Black and brown citizens. According to data collected in 2020, of the men over 60 years old in Maryland's prison system who have served at least 20 years, 54 percent are Black. More than 70 percent of Maryland's prison population is Black, compared to 31 percent of the state population. The latest data from the Department of Justice show that the proportion of the Maryland prison population that is Black is more than double the national average of 32 percent. This alarming racial disparity persists even though the Maryland prison population has declined sharply since 2014, resulting in thousands fewer people incarcerated. These inequalities affect the entire population but are most pronounced among those first incarcerated as emerging adults (18 to 24 years old) who are serving lengthy prison terms. Nearly eight in 10 people sentenced as emerging adults who have served 10 or more years in a Maryland prison are Black. This is the highest rate of any state in the country and a shame that all Marylanders must bear.

The toll of incarceration on individual health and health disparities

The prison system must provide adequate health services while incarcerated. The need for adequate access to care is not only a moral duty but is addressed as a legal requirement by the US Supreme Court. In 1976, the US Supreme Court ruling in *Estelle v. Gamble* found that deliberate indifference to healthcare for the incarcerated population constituted cruel and unusual punishment and was thus prohibited by the US Constitution. Because the

¹ Chettiar, I M, W Bunting, and G Schotter. 2012. "At America's Expense: The Mass Incarceration of the Elderly. American Civil Liberties Union, NYU School of Law." *Public Law Research Paper*, no. 12-38: 12-19.

² Chettiar, I M, W Bunting, and G Schotter. 2012. "At America's Expense: The Mass Incarceration of the Elderly. American Civil Liberties Union, NYU School of Law." *Public Law Research Paper*, no. 12-38: 12-19.

³ Stanley – as of this report, only two individuals have been re-arrested for a new crime, and 10 Ungers have passed away.

⁴ "The Ungers, 5 Years and Counting." 2018. Washington, D.C.

http://www.justicepolicy.org/uploads/justicepolicy/documents/The_Ungers_5_Years_and_Counting.

ruling mandated health care, doctors became integral to the correctional system. Despite this, conditions within corrections are often in direct conflict with optimal patient care.⁵

A large proportion of individuals who are incarcerated experience chronic medical and mental health illnesses. One study found the following:⁶

- 39 percent of federal prison population suffered from a chronic medical condition
- 26 percent of federal prison population received psychiatric medication before admission
- 43 percent of state prison population suffered from a chronic medical condition
- 30 percent of state prison population received psychiatric medication before admission
- 39 percent of jail population suffered from a chronic medical condition
- 39 percent of jail population received psychiatric medication before admission

Because such a large proportion of incarcerated individuals are impacted by chronic illness, it is even more important for them to have access to care. Older individuals who cannot access adequate health care in prison affect community healthcare systems because more than 95 percent are eventually released, many to urban communities where healthcare disparities are common and acute healthcare resources are overused.⁷

Economic impact of aging in the prison system

The criminal legal system cannot afford to ignore the expense associated with the anticipated growth in the aging prison population.⁸ The cost of incarcerating the older population is high. As a person advances in age, the likelihood of developing chronic health issues increases as well.

Medical expenditures within the prison industrial complex contribute substantially to the operating cost. Nationally, it costs about \$34,000 per year to incarcerate an individual, compared to an estimated \$68,000 per year for someone over the age of 50. This difference is primarily attributed to higher healthcare costs.⁹

The *Unger* population in Maryland provides a glimpse into the costs of the continued incarceration of the aging population. According to the Department of Public Safety and Correctional Services, the annual cost of incarceration is \$46,000 per year, which includes a \$7,956 allocation for medical and mental health services. Similar to how health insurance premiums increase with older age, the prison system's medical allocation rises 34 percent. This results in an \$18,361 allocation for the geriatric population, or a low estimate of \$36.5 million annually for the 650 individuals aged over 60.

The scope of ailing health within America's prison system is vast, and recent estimates indicate approximately 500,000 individuals have at least one of the following diseases: diabetes, asthma, or hypertension.¹⁰ As a result, it is estimated that older adults are three to five times more expensive to incarcerate than their younger counterparts.

⁵ Allen, Scott A, Sarah E Wakeman, Robert L Cohen, and Josiah D Rich. 2010. "Physicians in US Prisons in the Era of Mass Incarceration." *International Journal of Prisoner Health* 6 (3): 100–106.

<http://www.ncbi.nlm.nih.gov/pubmed/22049298><http://www.pubmedcentral.nih.gov/articlerender.fcgi?artid=PMC3204660>.

⁶ Wilper, Andrew P., Steffie Woolhandler, J. Wesley Boyd, Karen E. Lasser, Danny McCormick, David H. Bor, and David U. Himmelstein. 2009. "The Health and Health Care of US Prisoners: Results of a Nationwide Survey." *American Journal of Public Health* 99 (4): 666–72. <https://doi.org/10.2105/AJPH.2008.144279>.

⁷ Ahalt, Cyrus, Robert L Trestman, Josiah D Rich, Robert B Greifinger, and Brie A Williams. 2019. "Paying the Price : The Pressing Need for Quality , Cost , and Prisoners." *Journal of American Geriatric Society* 11 (61): 2013–19. <https://doi.org/10.1111/jgs.12510>.

⁸ Maschi, Tina, Mary Beth Morrissey, and Margaret Leigey. 2013. "The Case for Human Agency , Well-Being , and Community Reintegration for People Aging in Prison : A Statewide Case Analysis." <https://doi.org/10.1177/1078345813486445>.

⁹ Pro, George, and Miesha Marzell. 2017. "Medical Parole and Aging Prisoners : A Qualitative Study" 23 (2): 162–72.

<https://doi.org/10.1177/1078345817699608>; see also, Chiu, Tina. 2010. "It's About Time: Aging Prisoners, Increasing Costs, and Geriatric Release," no. April.

¹⁰ Murolo, Angela Silletti. 2020. "Geriatric Inmates : Policy and Practice" 26 (1): 4–16. <https://doi.org/10.1177/1078345819898465>.

Medical care provided inside prison facilities is not covered by federal government health insurance (Medicaid or Medicare), so the correctional system absorbs the cost of providing medical services to the aging population.¹¹

The hardships continue in the community. Upon incarceration, individuals are generally suspended from public health benefit programs (Medicare, Medicaid, Social Security Insurance, Veterans Health Administration). After release, there is often a substantial lag until benefits are reinstated. During this time, a formerly incarcerated individual who experiences health problems must rely on costly emergency services for health care.¹² A survey of returning citizens of all ages found that one-third of those with physical or mental health conditions used emergency department care, and one-fifth were hospitalized within a year of release. Furthermore, because most state correctional departments provide only a one- to two-week supply of medication, many returning citizens have little or no access to medication while they await their initial healthcare appointment.¹³

Despite these barriers to receiving adequate healthcare in the community, leaving prison can give aging individuals access to community-based healthcare or end-of-life support at a fraction of the cost incurred behind bars. State criminal legal systems can use those savings toward other initiatives that increase public safety.¹⁴

Maryland needs a meaningful second look provision to repair these harms

There is widespread support for “second look” resentencing provisions. According to a 2022 poll conducted by political and public affairs survey research firm Public Opinion Strategies, American voters supported “second look laws” by a two-to-one margin, and by more than two-to-one, voters believe people should be considered for early release if they are unlikely to commit future crimes.¹⁵

Continuing to incarcerate people unnecessarily wastes taxpayer money that could otherwise be spent on things that prevent crime and protect public safety. HB724 would allow judges to consider individuals’ post-conviction conduct, including their disciplinary record and participation in rehabilitative programming before determining if a sentence reduction is justified. HB724 does not guarantee anyone will get out early. Instead, it allows incarcerated people to demonstrate how they have changed. The Justice Policy Institute urges this committee to issue a favorable report on HB724.

¹¹ Pro, George, and Miesha Marzell. 2017. “Medical Parole and Aging Prisoners : A Qualitative Study” 23 (2): 162–72. <https://doi.org/10.1177/1078345817699608>.

¹² Williams, Brie A., James S. Goodwin, Jacques Baillargeon, Cyrus Ahalt, and Louise C. Walter. 2012. “Addressing the Aging Crisis in U.S. Criminal Justice Health Care.” *Journal of the American Geriatrics Society* 60 (6): 1150–56. <https://doi.org/10.1111/j.1532-5415.2012.03962.x>.

¹³ Williams, Brie A., James S. Goodwin, Jacques Baillargeon, Cyrus Ahalt, and Louise C. Walter. 2012. “Addressing the Aging Crisis in U.S. Criminal Justice Health Care.” *Journal of the American Geriatrics Society* 60 (6): 1150–56. <https://doi.org/10.1111/j.1532-5415.2012.03962.x>.

¹⁴ Price, By Mary. 2018. “Everywhere and Nowhere.” Washington, D.C. <https://famm.org/our-work/compassionate-release/everywhere-and-nowhere/>.

¹⁵ “New National Polling on Support for Criminal Justice Reform.” 2022. Washington, DC. <https://www.fwd.us/wp-content/uploads/2022/10/FWD.us-Criminal-Justice-Release-Poll-Memo.pdf>