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POSITION ON PROPOSED LEGISLATION

BILL: House Bill 1123 – Medical and Elder Parole

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: February 21, 2025

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on House Bill 1123.

This bill is a well-intentioned effort to improve aspects of the parole system, but as currently written it will have the opposite effect and will increase costs to the state without a commensurate benefit. The problems stem from the mandate for additional risk assessments and the omission of important reforms to medical parole.

The Problem with Mandating Risk Assessments

For a number of years, the Maryland Parole Commission (MPC) has employed a psychologist to conduct risk assessments of people with life sentences when, following a parole hearing, the panel determines that the person may be suitable for parole but would like the benefit of a risk assessment before the MPC makes its final decision. These risk assessments are in-depth evaluations that take considerable time to complete. A psychologist doing these full-time would be hard-pressed to complete more than six per month. The MPC currently has one psychologist doing risk assessments full-time. As a result, people who have been referred for a risk assessment face very lengthy delays, with some waiting up to two years from the referral until the risk assessment is done.

As currently written, HB 1123 will exacerbate these delays. It requires the Department of Public Safety and Correctional Services (DPSCS) to submit to the MPC the names of every incarcerated individual who “(1) is at least 60 years old; (2) has been incarcerated for a continuous period of at least 20 years; (3) has had no major disciplinary infractions within the previous 3-year period; and (4) is not serving a sentence of life without the possibility of parole.” That is likely to be a large number of people. When DPSCS submits that long list of names to the MPC on or shortly after the effective date of the bill, the MPC will be required by this bill to conduct risk assessments of all of those individuals within 60 days.

The MPC does not currently have the bandwidth to do this. Not even close. The requirement that it conduct the risk assessments mandated by this bill within 60 days would appear to require that it

prioritize those individuals over the people who have been previously referred for risk assessments after a parole hearing and have been waiting for months or years.

Additionally, by *mandating* risk assessments *before* the parole hearing, this bill will increase the sheer number of risk assessments the MPC must do by requiring them for people whom the MPC otherwise would not refer for risk assessments. At present, the parole hearing panel refers an incarcerated individual for a risk assessment after making a preliminary determination that the person may be suitable for parole and a risk assessment would aid it in making the final determination. There are good reasons why the parole hearing panel at the conclusion of the hearing may opt not to refer a person for a risk assessment, including:

- The parole hearing panel does not believe that the person is presently suitable for parole;
- The person does not have a life sentence and would not ordinarily be subject to a risk assessment; and
- The person does have a life sentence but the panel concludes that a risk assessment is unnecessary because of case-specific circumstances (e.g., the person has been a model citizen behind bars for decades).

This bill will require risk assessments in these circumstances even though the MPC would not ordinarily request one.

To cope with the sharp increase in the number of risk assessments, MPC will need to increase its bandwidth. Past efforts to hire and retain an additional psychologist have proven unsuccessful because the few psychologists who do these can make much more in the private sector than the state pays. The MPC conceivably could contract with private psychologists to do these, but this would be costly (and could make it less attractive for a qualified psychologist to do this full-time as a state employee when they could make more on a contractual basis). There are not that many private psychologists with experience conducting such risk assessments, and it is not unusual for them to bill \$6,000 to \$7,000 per evaluation.

The bill attempts to address the cost problem by authorizing the Justice Reinvestment Oversight Board to distribute some of the savings from reductions in the prison population to the MPC for the purpose of hiring psychologists to conduct the risk assessments mandated by the bill. Specifically, the funding provision says that this money would be “for the purpose of hiring psychologists to perform risk assessments of candidates for elder parole under § 7–310 of the Correctional Services Article,” the new statute that this bill creates. The problem is that this provision (a) is limited to the risk assessments mandated by the bill, which, as explained above, may be unnecessary or unwarranted, (b) does not authorize those psychologists to help with the backlog of risk assessments that the MPC has and will continue to request in other cases, and (c) potentially diverts money from other important programs, such as post-secondary education and workforce training programs for incarcerated individuals and the Correctional Ombudsman.

The Omission in the Medical Parole Provision

There are two main problems with the current law on medical parole: (1) the retention of the role of the Governor in the medical parole process for lifers (an oversight in the 2021 bill that otherwise removed the Governor from the lifer parole process), (2) standards for release that are unclear and

sometimes conflicting that result in too few people being eligible for medical parole despite their very serious health conditions and (3) a process that does not give the Maryland Parole Commission the comprehensive information it needs to make informed decisions and does not give incarcerated individuals an opportunity to meet directly with the Maryland Parole Commission while under consideration.

There are other bills before the General Assembly this session that have broad support and fix all of these problems. House Bill 1123 is not one of them. Although it removes the Governor from the process, it does not address the other problems with Maryland's medical parole system. While there may be other areas of the parole system that require reform, incarcerated individuals who are sick or elderly are among the most vulnerable in the Department of Corrections and must be a priority if we are to move closer to a humane parole system.

Suggestions to Address Some of These Concerns

We recognize and appreciate the good intent underlying this bill, and suggest that the following steps could address some of the foregoing concerns:

- Risk assessments for those satisfying the elder parole criteria should be required only if, after a parole hearing, the panel determines that the person may be suitable for parole and that a risk assessment would aid the MPC in making its decision;
- The reforms to the medical parole system in House Bill 190 and Senate Bill 181 should be included to address the significant concerns underlying those bills;
- The increased funding for risk assessments should be available for all risk assessments requested by the MPC, and not limited to "elder parole" cases; and
- Additional funding for risk assessments should not come from funding needed for post-secondary education and workforce training programs (which help prepare people for release on parole) or the funding of the Correctional Ombudsman.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on House Bill 1123.

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

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