



**MARYLAND
RECOMMENDATIONS**

THE UNGERS, 5 YEARS AND COUNTING

**A CASE STUDY IN SAFELY REDUCING
LONG PRISON TERMS AND
SAVING TAXPAYER DOLLARS**

UNGER REPORT: MARYLAND POLICY RECOMMENDATIONS

Despite a recent decline in the number of people incarcerated in Maryland prisons, significant work remains to be done in the state. This is particularly acute when it comes to parole, where policy and practice have combined to greatly restrict opportunities for people in prison to earn time off of their sentence and gain release. As policymakers continue to grapple with what parole policy reform should look like, it is important to address the barriers that have caused those serving long-term sentences, many for violent offenses, to remain behind bars. The research and experiences of the Unger group have provided guidance on what parole reform should look like in Maryland and across the criminal justice system.

Remove the governor from the parole process

In order for Maryland to ensure a fair and effective parole process, the governor needs to be removed from the proceedings to allow the Parole Commission sole jurisdiction over release decisions. Maryland is one of only three states that still require the governor's approval of a recommendation for release of people serving a life sentence, which politicizes the decision-making process.¹ This can lead to people remaining in prison despite being at low-risk of reoffending. The Parole Commission should be staffed with trained professionals, independent of any political leadership, and make decisions based on the best available data, assessments, and practice. The underlying offense should not be dispositive to the release decision. These are the factors that should determine whether an individual should be released from prison. Not the political calculations of an elected official.

Parole Commission should cease diverting parole applications to commutation review process

The involvement of the governor has also complicated the parole process by introducing the possibility of a commutation as a means of bypassing time limits for a decision on a parole recommendation. Maryland law gives the governor 180 days to act on a recommendation of parole for someone serving a life sentence. If s/he fails to respond during that window, the recommendation is presumed to be binding and the individual is released. However, commutation recommendations are not subject to the same 180-day limitation. Thus, it has become regular practice for the Parole Commission to divert individuals from parole consideration into the commutation queue. This subverts the intent of the law and improperly provides unilateral discretion to the Parole Commission to determine how an individual's application for release is processed. The Parole Commission needs to review an application as either parole or commutation but should not change the pathway during the process to avoid the 180-day time limit.

1 <https://www.abell.org/sites/default/files/publications/afr-stillblockingexit215.pdf>

Expand opportunities and incentives for release from prison

Everyone, including those serving long-term sentences with an indeterminate release date, should be provided an opportunity for meaningful review of their progress while incarcerated. Long prison terms, little programming, and no opportunities to earn expedited release from prison are a recipe for hopelessness and are inconsistent with the purpose of a parole-eligible sentence. Unfortunately, most correctional practices rely upon austerity as a means of punishment and, in doing so, miss important opportunities to improve the lives of the people in prison.

Participating in prison programming or work release opportunities is the best way for an individual to demonstrate to the Parole Commission that they have grown and are ready for release. However, these types of programs are typically under resourced and those with an indeterminate release date have to wait at the 'back of the line' for opportunities. By adequately funding programming, everyone serving would be able to gain good-time or earned-time credit to decrease their overall length of stay and reduce their parole supervision.

Even when adequately resourced, access to these programs can be limited by statute or practice. Most parole-eligible lifers are sent directly to a maximum-security setting that lacks the rehabilitative programming of minimum- and medium-security facilities. Current policy restricts any individual sentenced to life with the option of parole to serve their time in a minimum-security facility.² Opportunities for programming need to be disentangled from type of sentence so more lifers and people serving long prison terms would be eligible to participate and improve their profile for eventual release.

Moreover, to incentivize good behavior, presumptive parole should be afforded to those who have served at least 10 years and are actively participating in programs without incurring any disciplinary infractions. This would help shift the burden to the state to demonstrate that someone is not suitable for release on public safety grounds, rather than the current system that lacks the necessary transparency.

Release decisions must reflect an individual's conduct while incarcerated and risk of engaging in future criminal activity

The Parole Commission places too much weight on the underlying offense when considering an application for release. For example, Maryland uses a static risk assessment that only assesses the individual at the time of the crime and not the progress made while incarcerated. This results in people having their parole petition denied and remaining in prison long past any potential public safety benefit.

The Parole Commission should discard the current risk assessment tool and adopt a validated dynamic risk and needs assessment instrument that is grounded in

² N.A., Case Management Manual (Annapolis, MD: Department of Public Safety and Correctional Services, 2010).

the latest data and research in order to objectively determine who is a suitable candidate for release. This tool must account for an individual's conduct while incarcerated, including disciplinary record, program participation, and general service to the broader prison community, such as mentorship. This will help the Parole Commission move beyond dated information and "gut feelings" when assessing the public safety risk of releasing someone from prison, while more effectively taking personal transformation while incarcerated into consideration. Staff must be trained on appropriate techniques to conduct the assessment, and the results should be transparent and understandable to the individual who has filed the petition. This allows for meaningful tracking of implementation and provides real oversight of the actions of the Parole Commission.

In addition, the Parole Commission should be using a structured decision-making matrix in order to make data-driven decisions that treat all individuals equally. This means that there is guidance that takes into account not only the risk and needs assessment, but other relevant factors when determining whether to grant parole. The Parole Commission can also improve its effectiveness by increasing transparency in justifications for denial and providing opportunities for appeal when parole is denied.

Finally, the Maryland Department of Public Safety and Correctional Services (DPSCS) should use the updated risk and needs assessment instrument to conduct an assessment of all 3,150 people in state prisons who are over 50-years-old. This should be a comprehensive assessment of public safety risk and suitability for release.

The state should dedicate funding to establish specialized discharge planning and reentry preparation for people who have served long prison terms

Before an individual's release, the DPSCS should collect identification documents, assist with any processes for continued health insurance, and provide needed social services. When faced with someone over 50, leadership should create a geriatric assessment and care plan to evaluate their individualized needs and connect them to community-based service providers and trainings while still incarcerated. This may include something as minor as technology proficiency classes or something as important as job placement. A strong example of a successful reentry support model for people who have served long prison terms is the partnership between the Open Society Institute – Baltimore, The University of Maryland Carey School of Law: Clinical Law Office and Law and Social Work Services, the Maryland Office of the Public Defender, and the Maryland Restorative Justice Initiative (MJRI) that has had impressive results for the Unger group. A key component is the involvement of

formerly incarcerated individuals (through MJRI) and social workers who have the ability to form trusting relationships with those being released from prison.

The needs of people who have served long prison terms are very different than for the typical person who is released from prison. The DPSCS can acknowledge the specialized support that is necessary by developing a pre-release unit or dedicated minimum-security facility for people who have served long prison terms.

In preparation for an individual's release, there should be an established partnership with housing providers to offer a supportive housing placement. The DPSCS should be encouraging family and community connections throughout the term of incarceration, as those relationships are critical to a successful transition from prison. Financial subsidies should also be established for reentry programming to avoid the burden on the individual or their family. For those people over 50 and incarcerated for decades, there should be specialized transitional planning with healthcare coordinators, including allocation of Medicaid resources to nursing homes. If a nursing home is not necessary for the individual, there should be adequate support for community centers and other places that offer activities for older people.

Increase the use of compassionate release, geriatric and medical parole

There are a lot of eligibility barriers for an individual applying for compassionate, geriatric and/or medical parole release. The primary obstacle is the committing offense. Policymakers need to expand eligibility to include those who have committed more serious offenses.

Recently changed Maryland law declares that all people at least 60 years of age who have served 15 years are eligible for geriatric parole, unless they committed a sex offense. In addition, only those persons who are ineligible for the traditional parole process can apply for geriatric parole. In Maryland, that amounts to the 338 people serving life without parole sentences plus those persons serving 25 or more years without the possibility of parole. Everybody else is expected to raise any claims of age or infirmity during their traditional parole hearing along with any other supporting arguments. This dramatically limits the potential impact of geriatric parole. Maryland should expand eligibility to all people in prison, not just those individuals serving life without parole.

Medical parole decisions suffer from a different set of restrictions. Those attempting to receive medical parole must be 'chronically' ill, according to the statute. But, in practice, the standard is much more restrictive. Maryland relies on the Karnofsky Performance Status Scale,³ which measures functional impairment. A physician does an assessment of the individual and issues a short memo to the parole

3 <http://www.hospicepatients.org/karnofsky.html>

commissioners that includes the score. The parole commissioners then visit with the individual and make their own determination. In most cases, applicants must be permanently ill, not chronically ill as outlined in the statute, to receive a medical parole recommendation.

There is a provision in the law that allows a person to receive an outside medical assessment, but it is rarely used. Maryland should revisit the way it determines eligibility for medical parole release in order to ensure that the implementation is consistent with the intent of the law. In addition, Maryland should follow the lead of Connecticut, and construct a facility for geriatric individuals who have been released to parole.⁴ This will ensure a smooth transition from prison to the community and prevent lapses in care and medication that can contribute to negative health outcomes.

