

**MARYLAND GENERAL ASSEMBLY
JUDICIARY COMMITTEE
HOUSE OF DELEGATES TESTIMONY IN SUPPORT OF HB 1219
MARCH 3, 2020**

Submitted by Genevieve Bresnahan, Russell Bruch, and Anna Washburn, Student Attorneys, Re-Entry Clinic at the American University Washington College of Law, with Professor and Clinic Director, Margaret Martin Barry.

We write today in support of HB 1219, legislation to remove the Governor from the parole process. We are currently law students working as student attorneys in the Re-Entry Clinic at the American University Washington College of Law. At the Re-Entry clinic, law students provide pro-bono parole assistance to people in prison in Maryland who were convicted of a crime as juveniles and sentenced to life with parole – “juvenile lifers”. At the Re-Entry Clinic, our clients have been in jail from twenty to over forty years for murders committed when they were as young as 14 years old. One of our clients did not commit the murder at all – but was present in the commission of the murder and – due to felony-murder – received the same sentence as the actual killer.

A life sentence is a severe punishment for any person. As the Supreme Court recognized in *Graham v. Florida*, however, a life sentence is especially harsh for a juvenile. As the Court pointed out, since they are so young when they begin their sentence, they will serve “on average more years and a greater percentage” of their life in prison than an adult with a life sentence.¹ Unfortunately, the current parole system in Maryland, where the Governor serves as the ultimate decision-maker, has resulted in a de facto life *without* parole sentence for many offenders, including juveniles, who demonstrably are ready to re-enter society.

This past November, Governor Larry Hogan granted parole to three juvenile lifers. It was the first time in 24 years that a juvenile lifer was granted parole. Still, only three juvenile lifers were paroled in this action – despite the fact that the Supreme Court held in 2012 that sentencing a minor to life without the possibility of parole was cruel and unusual and therefore unconstitutional. Furthermore, this action came as a result of legal pressure to conform with constitutional law. Still, there are currently more than 300 juvenile lifers in prison in Maryland, or fifteen percent of the 2000 lifers in prison in the state; several of these juvenile lifers are currently represented by the Re-Entry Clinic. One of our clients has been sent to the Governor twice with a recommendation of parole by the Maryland Parole Commission and has been rejected for parole by the Governor each time. This is so despite the explicit parallel factors with regard to juvenile lifers that each applies. This demonstrates that additional factors that should not be considered come into play at the Governor’s office.

¹ *Graham v. Florida*, 560 U.S. 48, 50 (2010). As for the punishment, life without parole is “the second most severe penalty permitted by law,” *Harmelin v. Michigan*, 501 U.S. 957, 1001, 111 (2001), and is especially harsh for a juvenile offender, who will on average serve more years and a greater percentage of his life in prison than an adult offender, see, e.g., *Roper v. Simmons*, 543 U.S. 551 at 572 (2005).

The Governor should not be the final say on whether a person is granted parole. Whether or not a person is granted parole should be based on the facts that indicate readiness for parole, including his or her record while incarcerated and evidence of rehabilitation. For any governor, however, no matter their political leanings, there is nothing but political risk involved in granting parole to any person. Even former Maryland Governor Parris Glendening, famous for his "life means life" speech, later admitted that this edict was "much more political than it should be."² According to the Baltimore Sun, a month after his "life means life" speech, Governor Glendening's approval rating increased by 16 points. In 2018, Governor Glendening regretted his stance.³ "If I was in office right now," he said, "I would [work] with the legislature to change that process including removing the governor from it."⁴

We would like to talk personally about some of the things we, along with our classmates, have experienced in our work. Most of our clients experienced very difficult childhoods often marked by significant abuse, at home and on the streets, abandonment, developmental challenges, hunger, and various other traumas. These experiences, combined with the science of adolescent brain functions, makes for a world in which children like our clients have little chance for success. Furthermore, our clients have served their time. When they plead life, they anticipated 15 years in prison if they worked hard to rehabilitate. Instead, they are serving 20, 30, 40 or more years - regardless of their efforts. This is inconsistent with their sentences and is simply unconstitutional as applied to juveniles.

Finally, beyond the inhumanity of keeping someone in prison in this hope-crushing system, it is a waste of money. One study estimates that in Maryland the cost per inmate is approximately \$46,000 per year.⁵ According to a 2015 report from the American Civil Liberties Union (ACLU) of Maryland, the detention of more than 2,000 individuals with life sentences costs the state more than \$70 million per year.⁶ However, a 2018 Justice Policy Institute report estimates that re-entry services would cost the government about \$6,000 per inmate per year.⁷

² Dan Rodricks, *Glendening: 'Life means Life' Absolutism Was Wrong*, Baltimore Sun (Feb. 20, 2011), <https://www.baltimoresun.com/opinion/bs-xpm-2011-02-20-bs-ed-rodricks-glendening-oped-20110220-story.html>.

³ Angela Jacob, *Governor Should Be Removed From Parole Process, Former Md. Gov. Says*, NBC News 4 Washington (March 8, 2018),

<https://www.nbcwashington.com/news/local/former-md-gov-says-should-be-removed-from-parole-process/163565/>.

⁴ *Id.*

⁵ *Building on the Unger Experience: A Cost-Benefit Analysis of Releasing Aging Prisoners*, OSI Baltimore (Jan. 2019),

<https://www.osibaltimore.org/wp-content/uploads/2019/01/Unger-Cost-Benefit3.pdf>.

⁶ *Still Blocking the Exit*, ACLU Maryland (Jan. 20, 2015),

<https://www.aclu-md.org/en/publications/still-blocking-exit>.

⁷ *The Ungers: Five Years and Counting*, Justice Policy Institute (Nov. 2018),

http://www.justicepolicy.org/uploads/justicepolicy/documents/The_Ungers_5_Years_and_Counting.pdf (noting that out of the 188 people released, only five have returned to prison for a violation of parole or a new crime, an overall recidivism rate of less than 3 percent).

This interminable isolation from family and community is also a waste of life. Juvenile offenders in particular have increased odds for rehabilitation, and Maryland's system of parole should be able to forgive and trust those who have properly rehabilitated and are ready to re-enter society. If they have done everything in their power to rehabilitate, and there is no evidence that they are the highly unusual offender who is decidedly incorrigible,⁸ there is no reason to keep them in prison.

The decision on whether or not a person is suitable for parole should be based on demonstrated rehabilitation – not politics. The time to act is now. This bill corrects a longstanding wrong that has made Maryland an outlier, one of three states that bring the governor into a process that should avoid political calculation. We therefore urge you to pass HB 1219, without amendment.

⁸ *Graham supra* note 1 at 72.