Written Testimony of Mary Price
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In Support of Senate Bill 98
Maryland Senate Judicial Proceedings Committee
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I thank the Chair, Vice-Chair, and members of the Senate Judicial Proceedings Committee for the opportunity to provide testimony today in support of Senate Bill 98, a bill to improve Maryland's medical and geriatric parole programs. I write on behalf of FAMM, a national sentencing and corrections reform organization. We unite currently and formerly incarcerated people, their families and loved ones, and diverse people working to improve our system of justice.

For more than two decades, FAMM has been a leading voice for measures that allow for the safe release of medically vulnerable, aging, and dying individuals from our nation's prisons. Our system incarcerates people to deter crimes, punish those who commit them, protect the public, and rehabilitate those who will return home one day. FAMM believes that people should have a meaningful opportunity to leave prison when their continued incarceration no longer advances those purposes of punishment. At a minimum, we should consider releasing people who are dying, aging, and those who are too debilitated to offend, too compromised to benefit from rehabilitation, or too impaired to be aware they are being punished.

Since 2018, FAMM has published comprehensive research into state compassionate release programs.[1] We maintain a set of memos on our website that document every program in the 50 states and the District of Columbia.[2] For each, we describe eligibility criteria, application requirements, documentation, and decision-making, as well as post-decision and post-release.

Last year, we produced compassionate release report cards for every state.[3] Nearly two-thirds of the states flunked compassionate release. **Maryland received the third-worst grade in the nation.[4]** Its Medical Parole program received a grade of 9, of a possible 100, failing in every

[1] While we use the term "compassionate release" to describe this authority, we are aware that many jurisdictions, including Maryland, have different names for programs that enable early release for qualifying prisoners. Because of what we have learned of the insurmountable barriers to early release programs encountered by many sick and dying prisoners, we believe every program could benefit from taking a compassion-based look at what it means for the elderly, ill, and dying to go through the process. We call these programs "compassionate release" so that the human experience is foremost in our minds and those of policy makers.
[2] FAMM, Compassionate Release: State Memos (Dec. 2021), https://famm.org/our-work/compassionate-release/everywhere-and-nowhere/#memos.
[3] FAMM, State Compassionate Release Report Cards (Oct. 2022), https://famm.org/our-work/compassionate-release/everywhere-and-nowhere/#memos.
[4] Maryland Compassionate Release Report Card (Oct. 2022), https://famm.org/wp-content/uploads/md-report-card-final.pdf.

grading category, including eligibility criteria, policy design, release planning support, and data collection.

Our research and analysis informs our support of SB 98. It contains sorely needed reforms. The legislation would revise and standardize eligibility criteria; ensure that a variety of people, including the incarcerated person, could begin the application process; refine standards and consideration steps; direct involved agencies to make conforming changes to rules and regulations; build out Geriatric Parole, and require data reporting. These important reforms align with many that FAMM identified as necessary to overcome barriers to compassionate release and outlined in our comprehensive report, "Everywhere and Nowhere: Compassionate Release in the States."[5]

It is high time to make these changes. Maryland's poorly designed Medical Parole program has led to disappointing outcomes. Between 2015 and 2020, only 86 of 339 requests for medical parole were approved.[6] That is an average of only 17 grants annually, including in the midst of a pandemic – between March 2020 and June 2021 – when 31 people died in Maryland prisons of COVID-19 alone.[7] Maryland's Geriatric Parole is in even worse shape. We were baffled to learn that by law, only a tiny subset of the 650 elderly incarcerated people – only those who have incurred multiple convictions for crimes of violence – are eligible to be considered for geriatric parole.[8] Maryland does not have functioning geriatric parole.

We commend this bill to the committee because we believe it will make possible the more efficient and robust use of medical and geriatric parole in Maryland.

Senate Bill 98 would create and standardize eligibility standards

SB 98 will address one of the most significant problems with the Maryland medical parole program: Parole Commission regulations that contradict the medical parole statute. On the one hand, the current Medical Parole statute makes certain people who are chronically debilitated or incapacitated eligible for consideration. However, Parole Commission regulations limit eligibility to people who are "imminently terminal" or have a condition making their continued incarceration purposeless.[9] More confounding is that the Medical Parole statute does not mention terminal illness at all, much less imminent death.

In our nationwide assessment of barriers to medical release programs, and in our review of Maryland's Medical Parole, we found that poorly defined or inconsistent criteria frustrate program objectives. Missing definitions, lack of clarity, and dissonance between definitions in

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[5] Mary Price, Everywhere and Nowhere: Compassionate Release in the States (2018), https://famm.org/wp-content/uploads/Exec-Summary-Report.pdf.
[6] Justice Policy Institute, Recommendations for Improving Medical and Geriatric Parole, 1 (Jan. 2022), https://justicepolicy.org/wp-content/uploads/2022/02/Maryland-Compassionate-Release.pdf.
[7] The Marshall Project, A State-by-State Look at Coronavirus in Prisons (July 1, 2021), https://www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons.
[8] This is by no means to imply that those with convictions for violent crime do not deserve geriatric parole consideration, only that this important program should be available to all elders in Maryland prisons.
[9] *Compare* Md. Code Ann., Corr. Servs. § 7-309 (b) and Dep't of Public Safety and Correctional Services, Division of Correction Case Management Manual 100.0002, § 22 (D) (2) *with* Md. Code Regs. 12.02.09.04 (A).

statutes and those in program regulations, leave corrections and parole authorities to supply their own definitions of qualifying conditions. Without sufficient guidance, the people who assess incarcerated people for eligibility and those who make the final decision whether to release them cannot be confident they are identifying and/or releasing the right people at the right time. They may fail entirely to act on deserving individuals.

Senate Bill 98 would refine eligibility criteria and oblige the Parole Commission to adopt regulations to implement the statutory criteria and other reforms made by the legislation. Requiring the Commission to conform its regulations with the improvements in the statute will remove some impediments to medical parole.

FAMM is especially happy to see the legislation would ensure that terminally ill people are eligible for medical parole. Presently, Medical Parole does not recognize terminal illness among its eligibility criteria. In our nationwide review, we located only three other states that do not provide release based on terminal illness.[10] We also are pleased to see the definition of terminal illness would track the language used in the federal compassionate release statute.[11] A person would be considered eligible if they have a disease or condition with an "end-of-life trajectory." That language is supported by medical professionals as the gold standard. It is well-known in medical circles that predictions about when a person will die are notoriously inaccurate. Physicians hesitate to predict life spans, or they err on the side of a generous prognosis out of concern for their patient's emotional wellbeing.[12] This definition ensures that people who are dying can be considered for medical parole.

We commend as well the bill's definitions for **chronic debilitation and incapacitation.** Using clear definitions ensures that everyone assessing a person's eligibility are working with the same standard. Debilitation would be assessed by determining whether the individual is unable to perform two or more activities of daily living. This measure is a standard used in a number of states and is understood by medical professionals to evaluate a person's functional impairment. For example, **Alabama** uses daily activities in its definition of "permanently incapacitated." A person is eligible if they, among other things, are (1) unable to perform at least one "necessary daily life function" (eating, breathing, toileting, walking, or bathing) and requiring assistance with one or more of those daily life functions or is completely immobile.[13] **Georgia** similarly uses in its standard, "entirely incapacitated," that the individual (1) requires assistance to perform two or more daily life functions (such as eating, breathing, dressing, grooming, toileting, walking, or bathing) or is completely immobile.[14]

[10] FAMM, Compassionate Release, Delaware, https://famm.org/wp-content/uploads/Delaware_Final.pdf, Compassionate Release, Utah, https://famm.org/wp-content/uploads/Utah_Final.pdf, FAMM, Compassionate Release, Washington, https://famm.org/wp-content/uploads/Washington-Final.pdf.
[11] 18 U.S.C. § 3582 (c) (1) (A) (1).
[12] Brie A. Williams et al., Balancing Punishment and Compassion for Seriously Ill Prisoners, 155 Ann. Intern. Med. (July 19, 2011), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3163454/.
[13] FAMM, Compassionate Release, Alabama at 1, https://famm.org/wp-content/uploads/Alabama_Final.pdf.
[14] FAMM, Compassionate Release, Georgia at 1, https://famm.org/wp-content/uploads/Georgia_Final.pdf.

Senate Bill 98 would standardize application, documentation and assessment steps.

The current medical parole statute and the regulations published by the Parole Commission describe very different procedures for initiating a request and documenting eligibility and other factors, such as public safety. Senate Bill 98 would establish one standard for these procedures and oblige the Commission to adopt conforming regulations.

For example, the Parole Commission operates under a regulation that provides that only the Warden can initiate the Medical Parole consideration. Current law and SB 98 allow the incarcerated individual, their counsel, a prison official, or any other person to file a request directly to the Commission.[15] Similarly, the documentation and assessment stages are inconsistent in current law and Commission rules.[16] Senate Bill 98 would set out a single procedure for gathering and reviewing the essential documents.

Senate Bill 98 also provides for a meeting, if requested, between the applicant, or their representative, and the Commission before the Commission decides whether to formally consider the applicant. We think this is a smart addition and especially commend the provision requiring such a meeting for incarcerated individuals who are or who have frequently been housed in a prison infirmary or hospitalized in the community. This forward-thinking provision would make Maryland a pioneer by ensuring the Commission meet with applicants who are most medically vulnerable. We know of no other state that provides for such a presumptive meeting.

Senate Bill 98 would establish comprehensive geriatric parole in Maryland

Senate Bill 98 will ensure Maryland joins 25 states nationwide that provide early release eligibility to people who are aging in their prisons. Doing so will help the state identify individuals who are among the most expensive to incarcerate and the least likely to pose a public safety concern.

Mandatory prison sentences and truth-in-sentencing laws mean that more people are serving long prison terms that cannot be easily be shortened. Our prisons are graying. While state prison populations overall are generally falling, the same cannot be said for their elderly populations. The total population of individuals detained in state and federal prison systems decreased by 11.4% between 2009 and 2019 while the number of people over age 55 doubled from 75,300 to 180,836.[17] It is estimated that by 2030, prisons will house more than 400,000 people who are 55 years old and older, who will make up nearly one-third of the prison population.[18]

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[15] *Compare* Md. Code. Ann., Corr. Servs. § 7-309 (c) (2) *with* Md. Code Regs. 12.02.08.05 (B) and H.B 600.
[16] FAMM, Compassionate Release, Maryland 2-3 and notes, https://famm.org/wp-content/uploads/Maryland_Final.pdf.
[17] *See* E. Ann Carson, Bureau of Just. Stat., Prisoners in 2019 3, 15 (2020); E. Ann Carson & William J. Sabol, Bureau of Just. Stat., Aging of the State Prison Population, 1993-2013 27 (2016).
[18] George Pro and Miesha Marzell. Medical Parole and Aging Prisoners: A Qualitative Study, 23 J. of Correctional Health Care 162, 162 (2017), https://www.liebertpub.com/doi/abs/10.1177/1078345817699608?journalCode=jchc.1.

Prisons face challenges trying to meet the special needs of a geriatric population, many of whom have multiple chronic age-related medical conditions and disabilities. Elderly individuals need targeted supports such as ramps, lower bunks, and grab bars.[19] They need help getting to pill line, commissary, or the food hall, or in and out of wheel chairs and beds, and those with cognitive impairments need additional support.[20] A recent paper on the topic addressed the lack of, or failure to grant, geriatric parole: "With high denial rates, parole boards almost ensure that older incarcerated people with progressive medical issues will be less fit to care for themselves independently in the community when finally released, or end up de-facto condemning older incarcerated people to die awaiting release."[21]

Meanwhile, the cost of care for aging people in prison is between three and nine times more than for younger people.[22] In Maryland, medical costs double for incarcerated people over the age of 60.[23]

Among the other smart features of the geriatric parole provision is the requirement that the Commission identify and assess people who might be eligible for geriatric parole and provide them hearings bi-annually. Ensuring that potentially eligible people are identified and considered is an innovative reform, adopted by a growing number of states, such as **North Carolina**.[24] This requirement will ensure that no elder in prison is left without a chance to be considered for parole.

Many of the elders in Maryland's prisons have been locked up for years or decades. Geriatric parole will give the Commission the chance to assess whether their continued incarceration is in the public interest, routinely assessing them and taking into account the impact of an individual's age on reducing their risk of recidivism.

Finally, we are pleased to see that the bill would include **annual reporting** on outcomes, using a range of metrics, to the Justice Reinvestment Oversight Board. Transparency is essential if Maryland is to ensure the program works as intended. Lawmakers will be made aware of how many of those eligible for Geriatric Parole were granted and denied and for what reasons, as well as how much time passes between when a person is eligible for parole consideration and when they receive their hearing. Lawmakers should know when their laws are working as intended and when they are not. The data reporting requirement is an excellent addition and one that too few states have. Maryland will be showing the way with such comprehensive reporting.

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[19] Human Rights Watch, Old Behind Bars: The Aging Prison Population in the United States 48-52 (Jan. 2012), https://www.hrw.org/sites/default/files/reports/usprisons0112_brochure_web.pdf.
[20] Steve Berry, et al., The Gold Coats – An Exceptional Standard of Care: A Collaborative Guide to Caring for the Cognitively Impaired Behind Bars 4-5, 31-32 (2016).
[21] Rachael Bedard, et al., Elderly, Detained, and Justice-Involved: The Most Incarcerated Generation 5, The City University of New York L. Rev. 25:1 (Winter 2022), https://academicworks.cuny.edu/clr/vol25/iss1/15/.
[22] Cyrus Ahalt, et al., Paying the Price: The Pressing Need for Quality, Cost, and Outcomes Data to Improve Correctional Health Care for Older Prisoners, 61 J. of the Am. Geriatrics Society 2013, 2014 (2013), https://pubmed.ncbi.nlm.nih.gov/24219203/.
[23] Open Society Institute, Baltimore, Building on the Unger Experience: A Cost-Benefit Analysis of Releasing Aging Prisoners, 8 (Jan. 2019), http://goccp.maryland.gov/wp-content/uploads/Unger-Cost-Benefit3.pdf.
[24] FAMM, Compassionate Release, North Carolina, at 1 (Dec. 2021), https://famm.org/wp-content/uploads/North-Carolina_Final.pdf.

Conclusion

FAMM is happy to support Senate Bill 98.