



THE UNGERS, 5 YEARS AND COUNTING

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

ACKNOWLEDGMENTS

THIS REPORT IS THE RESULT OF THE COLLABORATIVE AND CUMULATIVE EFFORTS OF SEVERAL ORGANIZATIONS AND INDIVIDUALS OVER SEVERAL YEARS. THE “UNGER STORY” WOULD NOT BE POSSIBLE WITHOUT THE VISION OF UNIVERSITY OF MARYLAND (UMB) CAREY SCHOOL OF LAW PROFESSORS MICHAEL MILLEMAN AND JEROME DEISE, THE GUIDANCE AND SUPERVISION OF CLINICAL SOCIAL WORKER REBECCA BOWMAN-RIVAS, AND A FIVE-YEAR INVESTMENT FROM OPEN SOCIETY INSTITUTE-BALTIMORE.

THIS PARTNERSHIP SUPPORTED THE CREATION OF “THE UNGER CLINIC,” THE CLINICAL LAW PROGRAM THAT FIRST DEVELOPED AND THEN IMPLEMENTED COMPREHENSIVE RE-ENTRY PLANS FOR THOSE WHO WERE ELIGIBLE FOR RELIEF UNDER UNGER V. MARYLAND (2012). THE WORK OF THE CLINIC PAVED THE WAY FOR THE SUCCESSES WE HAVE SEEN OVER THE PAST FIVE YEARS, RESULTING IN THE SAFE RELEASE AND REENTRY OF ALMOST 200 INDIVIDUALS BACK INTO THE COMMUNITY.

OSI-BALTIMORE FURTHER SUPPORTED PROFESSOR MILLEMAN AND HIS SOCIAL WORK COLLEAGUES IN WRITING UP THE UNGER EXPERIENCE SO IT COULD BE USED TO LEVERAGE CHANGE MORE BROADLY WITH OLDER INCARCERATED INDIVIDUALS. TO AUGMENT THE UNGER STORY, OSI-BALTIMORE COMMISSIONED DR. JAMES AUSTIN TO CONDUCT A FISCAL ANALYSIS DOCUMENTING THE SAVINGS FROM RELEASING THE UNGERS TO THE COMMUNITY.

THE INFORMATION COMPILED BY PROFESSOR MILLEMAN AND DR. AUSTIN COMPLEMENT THE INFORMATION THAT THE JUSTICE POLICY INSTITUTE (JPI) WAS ABLE TO COLLECT AND DOCUMENT WITH A GRANT FROM THE ABELL FOUNDATION, INCLUDING QUALITATIVE INTERVIEWS OF THE UNGERS, AS WELL AS THE WORK JPI HAS DONE WITH MARYLAND-BASED ADVOCATES, LEGISLATORS AND PAROLE REFORM EXPERTS TO CRAFT THE POLICY RECOMMENDATIONS IN THIS REPORT.

SUPPORT FROM THE ABELL FOUNDATION HAS ALSO ALLOWED JPI TO INCLUDE STANLEY MITCHELL, AN UNGER RELEASEE, AS PART OF THE PROJECT TEAM. STANLEY HAS CONTRIBUTED SIGNIFICANTLY TO THE PROJECT, FROM FACILITATING INTERVIEWS OF THE OTHER UNGERS TO PROVIDING HIS PERSPECTIVE AND EXPERTISE IN HOW MARYLAND’S PAROLE SYSTEM WORKS (OR FAILS TO WORK). FINALLY, JPI IS GRATEFUL FOR THE PARTNERSHIP THE ABELL FOUNDATION HAS FACILITATED WITH WIDE ANGLE YOUTH MEDIA (WAYM). FOUNDED IN 2000 BY AN OSI-BALTIMORE COMMUNITY FELLOW, WAYM IS DEVELOPING A VIDEO THAT TELLS THE POWERFUL STORY OF SOME OF THE UNGERS.

THE JUSTICE POLICY INSTITUTE IS DEDICATED TO REDUCING THE USE OF INCARCERATION AND THE JUSTICE SYSTEM BY PROMOTING RESEARCH-BASED, FAIR, AND EFFECTIVE POLICIES. THE JUSTICE POLICY INSTITUTE ENVISIONS A SOCIETY WITH SAFE, EQUITABLE AND HEALTHY COMMUNITIES; JUST AND EFFECTIVE SOLUTIONS TO SOCIAL PROBLEMS; AND THE USE OF INCARCERATION ONLY AS A LAST RESORT.

After nearly 40 years of sustained prison population growth, states have taken steps over the last decade to push back against mass incarceration. Lawmakers and the public alike awoke to a wasteful system that costs billions of dollars and does little to deliver on promises of public safety, while disproportionately impacting people of color and destroying the lives of individuals, families, and communities. Some states, like California and New York, took deliberate policy and practice steps to reduce the number of people incarcerated and have reaped substantial benefits. Maryland has joined that list in recent years; in 2017, the state led the nation in reducing the incarceration rate, experiencing a 10 percent decline in its prison population.¹ Since 2007 the prison population has declined by 19 percent, and the crime rate has declined by 33 percent.²

The recent decline in the number of people in Maryland prisons, coupled with sensible policy reforms intended to expand treatment options and strengthen community supervision, offers a reason to celebrate. However, there is much work that remains to be done. There have been recent policy reforms focused on long sentences through Maryland's Justice Reinvestment Act (2016), including improvements to medical and geriatric parole. However, they were limited in scope, lowering the age threshold for geriatric parole from 65 to 60 and excluding those convicted of a sex offense. Since its implementation, it has been infrequently used. The data in Maryland, and across the country, point to a system increasingly defined by people serving prison terms in excess of 20 years. Extreme sentencing coupled with either restrictive release policies or the outright abolition of parole lead to a "stacking effect" by which people serve ever increasing terms in prison with diminishing opportunities for release. These policies largely target those incarcerated for violent offenses.

Current sentencing policy targets harsher and longer sentences to prevent crime through incapacitation. Consequently, this emphasis has led to explosive prison growth.³ The number of people serving life sentences is four times what it was in 1984—currently imposed on one in every seven individuals in a U.S. prison.

Over the years we have normalized life sentences. As the death penalty became more controversial, decision makers relied on life sentences.⁴ Maryland ranks amongst the highest in the country with a 6 percent increase in overall life sentences since 2000.⁵ These increases will continue to impact the geriatric population. As of 2015, Maryland's prison population of individuals 55-years-old and older doubled over the last decade to 1,875.⁶ While 55-years-old may not be considered geriatric in the general population, decades in prison age the body faster, leading to more health ailments at a younger age.⁷

For policymakers in Maryland—and across the U.S.—to significantly reduce the growing and costly prison population, reform to long sentences for people sentenced for violent crimes must be addressed. Although Maryland has been

celebrated for shrinking its prison population by 10 percent, its incarcerated population continues to include many who could be safely released, which would also result in substantial cost savings for taxpayers. This includes almost 3,200 geriatric individuals who remain incarcerated for sentencing decisions that were made decades ago.

OPPORTUNITY FOR REFORM

A landmark court case, *Unger v. Maryland*, offers powerful lessons for policymakers and stakeholders interested in tackling mass incarceration. The 2012 case centered on remedying improper jury instructions and applied to a cohort of people who had been sentenced prior to 1981. The decision resulted in the potential release of 235 people from Maryland prisons who had served more than 30 years, and their release story created a natural experiment from which other states can learn. What makes the Unger decision particularly unique is that private philanthropy, through the Open Society Institute–Baltimore, provided specialized reentry programming to be made available to those individuals upon release. In the six years since the decision, we have learned a number of important lessons. These include:

We can safely release people who have committed a serious, violent offense: The Unger group was convicted of homicide and rape; however, after serving decades in prison they have safely been reintegrated into the community, arguing for a reconsideration of policies that continue to lock people up based solely on the severity of their underlying offense.

Public safety will not be greatly impacted when rethinking our approach to violence: The research is clear that individuals generally age out of crime, and the Unger group is no different. As of today, they have posted a less than 1 percent recidivism rate, a fraction of the overall Maryland rate of 40 percent.

We need to emphasize the importance of reentry: The success of the Unger group has been the direct result of an ambitious reentry effort. The University of Maryland began its reentry approach while the Unger group was still inside the facility and followed through with individualized treatment and services in the community.

Incarcerating the geriatric population is associated with increased costs with little public safety benefit: There are thousands of geriatric-aged individuals still in the prison system, many with the same profile as those in the Unger group. Maryland could save an estimated \$100 million in the first year if it reduced its low-risk geriatric population.

The Unger group and others sentenced to long prison terms were deeply impacted by racial discrimination: Almost 90 percent of the Unger group are black, despite only 18 percent of Maryland's population being black at the time of their convictions. Like today, the U.S. was facing a deep racially divided country at the time when many individuals were sentenced to long-term sentences, increasing the racial disparity within the system.

The practice of extreme sentencing has been justified in the name of public safety, but the evidence suggests those motivations have been misplaced. Maryland can significantly reduce the size of its prison population, and the impact on its budget, without negatively affecting public safety by rethinking parole strategies, particularly for those people who have served long prison terms. The current approach to parole is too heavily focused on the offense. Too often, the state fails to appropriately take into consideration a research-based assessment of the risk of reoffending when making release decisions.

Moreover, current law requires all parole recommendations for those sentenced to life to pass through the governor's desk, a practice that has resulted in only one person having been granted parole since 1995. The consistent denial of parole is not a public safety decision, but one that has been politically motivated and continued across administrations. Former Governor Parris Glendening, the originator of the practice, has denounced the "absolute nature" of the policy.⁸ By pivoting away from an approach that focuses solely on the crime committed to one that assesses the current risk of re-offending, Maryland can lead by example, safely reducing its prison population and cost to taxpayers.

THE IMPACT OF LONG PRISON TERMS AND AGING ON MARYLAND PRISONS

Maryland currently imprisons nearly 19,000 people, which reflects a decline of 19 percent since 2007. As mentioned above, the recent decline in the Maryland prison population has been celebrated by leaders and used as evidence that the state is making strides toward a more targeted and effective criminal justice system. However, a deeper dive into the data reveals that the decline has been driven exclusively by reforms in policy and practice for non-violent offenses. This limits the potential impact on the overall prison population. In fact, increasing time served, particularly for violent offenses, continues to grow sharply and threatens to obscure any recent gains in tackling mass incarceration.

Long Prison Terms Increasingly a Driver of the Maryland Prison Population

Maryland spends more than \$1 billion a year on its prison system,⁹ with an increasing portion of that budget dedicated to locking up people who have already been incarcerated for decades. Time served in Maryland prisons for nonviolent offenses has stayed relatively flat since 2000, hovering around two years. However, time served across all offense types in Maryland prisons has grown by more than 20 percent during that same period. A recent study by the Urban Institute found that Maryland had the fifth highest average time served in prison.¹⁰

Extreme sentencing and restrictive parole release policies have resulted in an even starker contrast at the upper-bound of time served. The average time served for the bottom 90 percent of the prison population increased by 14 percent, or about 5 months. Meanwhile, the average time served for those persons serving the top 10 percent of sentences has grown 36 percent, or almost 7 years.

The population share of individuals serving 25 or more years in Maryland prisons has increased 211 percent between 2000 and 2012 and 66 percent for those serving 20–25 years. People who have served at least 20 years in prison now account for more than 7 percent of the population, or 1,577 individuals. About one in six people in a Maryland prison had served at least a decade in 2012 (3,857 individuals). This was a 23 percent (3,128 individuals) increase since 2000.

INCREASE IN TIME SERVED SINCE 2000

TOP 10%

7 YEARS

BOTTOM 90% 5 MONTHS

The impact of long prison terms “stacking” up in Maryland prisons is felt most acutely among communities of color. Due to racially-charged practices that are inherent in our criminal justice system, the demographic of Maryland’s incarcerated population is 70 percent Black.¹¹ Nearly eight in 10 people who are currently serving the longest prison terms in Maryland are Black, many of whom were sentenced as a young adult before the age of 25 and are now 55 years old or older.

Of all people sentenced before their 25th birthday, serving at least a decade, two out of five are a Black man.¹² Even though we know people have a high probability of aging out of crime, we continue to subject many to long sentences. Continuously taking young Black men out of their community hinders their economic stability, and strains family and community relationships.

Long Prison Terms Result in a Rapidly Growing (and Costly) Population of Aging Prisoners

The effect of imprisonment on people’s health means that individuals in prison experience the impacts of aging earlier than the general public. A study in Pennsylvania concluded that incarcerated individuals with an average age of 57 had similar health ailments to men in the general public with an average age of 72. And in many cases, those serving long sentences have worse health ailments than similarly-aged individuals outside the criminal justice system. This greatly increases their cost of confinement. The stress of incarceration, decades of poor nutrition, inadequate health care, and the damaging effects of a pre-incarceration lifestyle can speed up the effects of aging.¹³

For this reason, the National Commission on Correctional Healthcare and the U.S. Department of Justice¹ defines the baseline age of “geriatric” for people who are incarcerated as 55 years old and older, whereas the United States Census defined being “geriatric” for the general public as people over 65.¹⁴

Across the country, the increasing size of the aging prison population has been in the making for decades. In 1995, there were 32,600 incarcerated individuals over 55 years old; by 2010 that number had increased 283 percent to 124,900. With the United States’ continued commitment to long sentences, it is estimated that by 2030

¹ Maryland law defines those 60 or older as geriatric for the purposes of geriatric parole eligibility.

I MUST SAY IN ALL CANDOR, I WAS WRONG...
IF I WAS IN OFFICE RIGHT NOW, I WOULD [WORK]
WITH THE LEGISLATURE TO CHANGE THAT PROCESS INCLUDING
REMOVING THE GOVERNOR FROM IT. - FORMER
GOVERNOR PARRIS GLENDENING



that number will have increased by 220 percent to more than 400,000 geriatrics incarcerated.¹⁵

Maryland's prison system incarcerates an increasing number of people of geriatric age. Currently, there are approximately 3,150 incarcerated individuals over 50 years old, with 834 over 60.¹⁶ This population will continue to grow as 2,400 people are currently serving life with parole sentences.

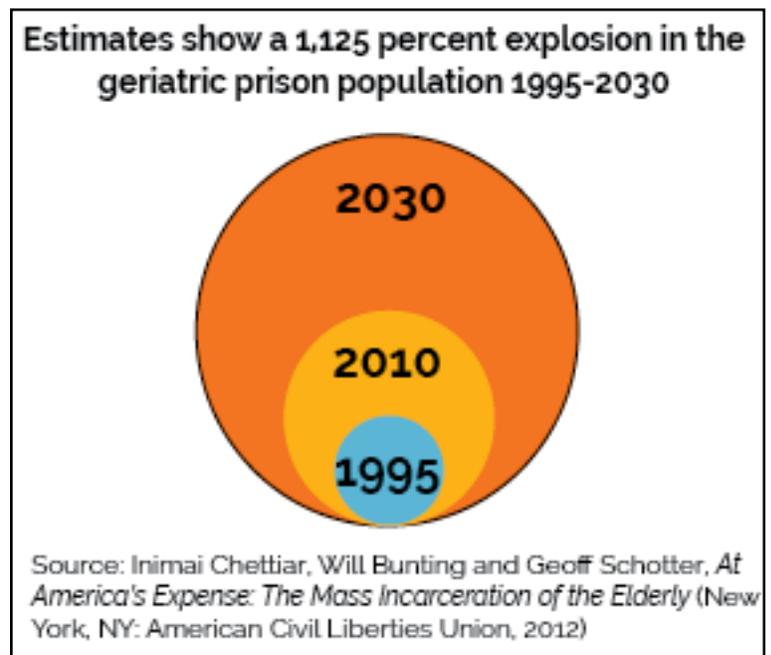
Of those people serving the longest prison terms (i.e., the top 10 percent of time served), 77 percent are Black, one-third are over 55, and half were incarcerated before 25 years of age. The racial disparity in Maryland is by no means unique. The Bureau of Justice Statistics found that of those incarcerated in the U.S. in 2016 at a geriatric age, 30 percent are Black,¹⁷ compared to a 2016 estimate that less than 10 percent of the total U.S. geriatric population was Black.¹⁸

The growth in the size of the geriatric prison population is not indicative of their risk to public safety should they be released, but rather reflects a combination of policy decisions resulting in long sentences and restrictive parole release policies.

Focusing policy reforms on people of geriatric age in prison is an effective way to safely reduce the prison population. Research indicates they are the least likely to pose a risk to public safety. Criminal behavior typically peaks at 17 years old and then drops as an individual develops into adulthood.

The Office of Juvenile Justice and Delinquency Prevention showed that only 8 percent of youth engaged in violent crime persisted in offending, while for 83 percent that initial encounter was the only criminal episode in their lives.

Unless Maryland addresses the sentencing and parole practices driving the growth of the geriatric population, the state's aging prison population will continue to increase, as will the cost of their incarceration. This requires decision makers to shift the conversation of criminal justice reform priorities to those serving long prison terms. Fortunately, a landmark court case in Maryland provides a blueprint for safely and smartly reducing length of stay, mitigating the harmful impacts of mass incarceration, and saving taxpayer money.



UNGER V. MARYLAND

This brief provides an overview of a group of individuals who are typically forgotten: those who are incarcerated for a violent offense and have served extremely long prison sentences. This population is known as the Unger group, named for the case that resulted in their release. One hundred and eighty-eight of the Unger group have been released since a 2012 Maryland appellate court decision that found the jury instructions used at their trials were constitutionally flawed. All of these individuals had served extremely long terms and would have otherwise likely died in prison.¹⁹ Instead, 188 people have been released to the community and, thanks to effective reentry support, almost none have re-offended. Over the last five years, the Unger group has provided evidence in Maryland that releasing older individuals—regardless of their initial committing offense—can be successful, particularly if provided adequate support.

With the partnership of philanthropy, the legal community, and organizations run by formerly incarcerated people, the Unger group received enhanced reentry support. The reentry model resulted in extraordinarily low recidivism rates as well as significant savings for Maryland taxpayers. Despite the success, there continues to be laws and policies in Maryland and across the country that result in too many people being locked up in prisons and held far beyond any meaningful public safety benefit. A look at the Unger story provides evidence of how states can more effectively approach the incarcerated aging population.

WHO IS THE UNGER GROUP?

The Unger group is a cohort of formerly incarcerated individuals convicted of violent crimes before 1981. Almost all were sentenced to life with parole, and subsequently became eligible for release after decades of incarceration due to a lawsuit and related court ruling. As a result of unconstitutional convictions, 235 people tried before 1981 and still in prison were eligible for retrial. Due to case evidence and witness testimony being at least 30 years old, many prosecutors negotiated conditional releases with probation time.²⁰ As a result, since 2012, 188 people have been released,²¹ the first as early as December 17, 2012, with a near-zero recidivism rate. The Unger

group is a natural experiment on how states can safely reduce their aging prison population regardless of their committing offense.

Most of the Unger group were incarcerated in their 20s. At their point of release, the members of the Unger group ranged from 51 to 85 years old, with an average age of 64.²² Eight in 10 members of the Unger group were Black, and only one was a woman. More than 80 percent of the Unger group were convicted of murder and 16 percent were convicted for rape. They were incarcerated for an average of 39 years.²³

Many of the Unger group were recommended for parole, but due to the Maryland parole process requiring the governor's approval for people serving life sentences, they were never released. Across 16 years and various leadership changes, Republican and Democrat, parole of a life sentence was approved only once.²⁴ This was the result of a policy Governor Parris Glendening announced in 1995. Following a high-profile crime, he proclaimed that "life means life" and ignored the possibility of parole, setting a precedent that has been followed by all Maryland governors since.



Prior to this change, the average period served on a life with the possibility of parole sentence in Maryland was about 20 years.²⁵ Until the 2012 ruling, this practice rendered the Unger group's sentences as a life without the possibility of parole. Governor Glendening has since stated that his statement and decision in 1995 were a mistake based on the politics of the time. He has also stated his belief that legislators should remove the governor from the parole process in Maryland.

The Unger Group Faced Racial Discrimination in the Justice System

Nearly 90 percent of the Unger group is Black even though Black people comprised only 18 percent of Maryland's population at the time of the convictions.²⁶ This comparison reflects the significant racial bias in the Maryland criminal justice system. For example, during many of the Unger group's initial court proceedings, judges utilized "key men," friends of the judges who nominated the entire pool of possible jurors for criminal trials. In 1969, the last year this jury selection system was legal, Black people comprised only 4 percent of the jurors.²⁷ The result was that most of the Unger group were convicted at trial in cases where the judges, prosecutors, and juries were typically all white.

The experiences of the Unger group represent a pattern of excessively harsh sentences toward Black people. Maryland's first Black judge, Joseph Howard, found that in rape cases, convictions were more common and sentences were significantly harsher if the defendant was Black. The timing of the convictions also coincided with a particularly racially divisive period in American history. Democratic nominee George Wallace won Maryland white voters in the 1964 primaries with campaign slogans such as "segregation now, segregation tomorrow, segregation forever." These ideals embodied a culture that potentially influenced the convictions of Black people in the 1960s, including the Unger group.²⁸

Long Sentences Imposed on Populations Like the Unger Group Impact Prison Life

Over decades in prison, up to 60 years,²⁹ the members of the Unger group faced poor prison conditions and were frequently denied prison programming. There were few meaningful rehabilitation opportunities because only those with five or fewer years left on their sentence were eligible for work or apprenticeship programs. This prevented those with life sentences from taking advantage of these opportunities.³⁰ When made available, much of the work and recreational activity was too physically demanding for older individuals. There is also a dearth of programming for the aging population being released, who have different needs than younger individuals.³¹

This is problematic because programming has been shown to reduce recidivism and be cost-effective. The RAND Corporation reported that educational programs in prisons reduce the odds of returning to prison by 43 percent.³² Those who join work release programs reduce their odds of re-arrest by 16 percent.³³ It is critical to extend these resources to all incarcerated individuals, including the geriatric population serving long sentences, regardless of their release date.

Developing A Reentry Strategy for Long Prison Terms

Due to the lack of programming for individuals with long sentences, it is especially challenging to maintain educational and employment achievements. An analysis of Maryland's parole population by the Urban Institute found that on average, the returning population has between a sixth and eighth grade reading level and less than half have a GED or high school diploma. Securing employment post-release raises challenges as one typically loses work skills and workplace connections while incarcerated.³⁴ Due to their age, some employment sectors are no longer suitable, shrinking already limited options.³⁵

Those leaving confinement also face an overburdened parole system. About 89 percent of people released from Maryland prisons are under some sort of

THAT'S A WASTE OF TAXPAYER MONEY, AND NOT ONLY THAT, IT'S A POSITIVE RESOURCE FOR THEIR COMMUNITY AND THEIR FAMILIES. IT'S A WASTE OF RESOURCE AND A WASTE OF MONEY TO KEEP THEM IN THERE 30, 40, 50 YEARS. SOME PEOPLE IN WHEELCHAIRS AND GOT CRUTCHES. WHAT THREAT IS THEY? EXCEPT DRAINING THE SYSTEM OF MONEY. - MR. WILLIAM GARDNER



community supervision, with many subject to parole restrictions. Parole officers can oversee hundreds of cases that range from simple to complicated with a wide range of risk profiles.³⁶ Parole officers are frequently assessed by the amount of contact they have with their clients. Although more contact may seem appropriate, these frequent meetings during work hours make it difficult to maintain a job and ultimately make it more likely that a parole violation will occur.

Additionally, returning citizens typically face gaps in their mental and physical health care. More than half of the state prison population has at least one symptom of serious mental illness,³⁷ and many others suffer from physical impairments that are exacerbated by age.³⁸ In many cases, returning citizens lose their access to care upon leaving prison and face the challenge of finding their own affordable health care.³⁹

In a 2015 survey done by the Justice Policy Institute, formerly incarcerated individuals noted their biggest concerns were unemployment, finding housing, obtaining job skills, drug addiction, mental health support, repairing family relationships, and obtaining their GED.⁴⁰ Those who return to Baltimore City, including 60 percent of the Ungers,⁴¹ face high unemployment rates and a low median household income. These are all factors that create obstacles to reentry and drive recidivism.⁴²

WHAT WAS DIFFERENT FOR THE UNGER GROUP?

Despite the systematic neglect, the Unger group was released with virtually no negative impact on public safety. This was, in large part, due to a reentry model developed and delivered through a philanthropic-funded reentry partnership of 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. Providing successful reentry services comes with associated costs—in this case, they were privately funded. The funding stream should be provided through the state budget, as adequate reentry services are a necessary ingredient to a successful transition back to the community.

Recognizing the challenges of reentry, the Clinical Law Program of the University of Maryland and the School of Social Work developed a reentry strategy specifically for the Unger group that utilized a combination of lawyers and social workers. The strategy included services targeting trauma, stress, and the emotional impairment

caused by having been incarcerated. The social workers also assisted with obtaining identification documents, benefits, and medical care.

There were multiple stages of assistance. The first two stages were prior to release:

First Stage: Create an individualized release plan for how best to address each barrier. The release plans contained relevant information they would need, including how to obtain identification cards, SSI benefits, food stamps, housing vouchers, and paperwork for continued medication.⁴³

Second Stage: Coordinate with institutional staff, family members, and service providers in preparation for release. The law students provided pre-court briefings with family and friends and developed packets of relevant information about useful community resources. Prior to release, there was a review of all information in the individualized release plan to assure accuracy in paperwork and medication.

The third stage followed their release:

Third Stage: The social workers developed a strategy for successful reentry during the first 90 days following release. The post-release stage aimed to provide the individuals with support, cultivate independence, and create high expectations. As part of the process, the social workers conducted mentor meetings, life skill trainings, and technology instruction. They continued assistance to help the individuals obtain identification documents and helped with their medical and mental health appointments. There were workshops to provide job training and personal budgeting education. These services can also extend to financial assistance. In the most extreme cases when an individual did not have money or was waiting for benefits, funding was allocated to help pay for housing, medical care, transportation, and/or groceries.

Any follow-up case management service was then tied to an individual's needs and circumstances of his or her reentry experience. Those who had family support typically required less assistance than those without family or those with serious mental or medical health issues. To determine the correct dosage of support, the 138 members of the Unger group who required assistance were divided into seven tiers:⁴⁴

LEVEL OF SERVICE	DESCRIPTION	NUMBER OF ENGAGED CLIENTS
<i>TIER I</i>	INCLUDES THE MOST COMPLEX AND HIGHEST NEED CLIENTS. IN MANY CASES, IT INCLUDES EXTREME MEDICAL OR HOSPICE SUPPORT. INTENSIVE EDUCATION ON LIFE AND SOCIAL SKILL DEVELOPMENT WAS IMPERATIVE DUE TO JUVENILE INCARCERATION. TIER I INCLUDES THOSE IN NEED OF ACCESSIBLE HOUSING, SPECIALIZED CARE, OR SUPPORTIVE HOUSING/NURSING CARE.	11
<i>TIER II</i>	INCLUDES THOSE THAT REQUIRE EXTENSIVE HANDS-ON CASE MANAGEMENT FOR A PROLONGED PERIOD AFTER RELEASE FOR ONE OR TWO MAJOR CHALLENGES. TYPICALLY FACE FINANCIAL CHALLENGES AND DO NOT HAVE THE FAMILY STRUCTURE OR OTHER COMMUNITY SUPPORT TO ASSIST THEM.	20
<i>TIER III</i>	INCLUDES THOSE THAT REQUIRE LOW LEVELS OF ASSISTANCE AS THEY CONTINUE TO HAVE FAMILY OR COMMUNITY SUPPORT. CASE MANAGEMENT'S PRIORITY IS MAINLY CONNECTING THE INDIVIDUAL TO THE APPROPRIATE REENTRY SERVICES TO CREATE INDEPENDENCY FROM THEIR FAMILY.	31
<i>TIER IV</i>	INCLUDES THOSE THAT REQUIRE LOW LEVELS OF ASSISTANCE AS FAMILY IS ABLE TO PROVIDE LONG-TERM FINANCIAL SUPPORT, AS WELL AS HOUSING.	37
<i>TIER V</i>	INCLUDES THOSE THAT HAVE VERY LIMITED NEEDS REQUIRED UPON RELEASE, AND PRIMARILY REFERRED OUT TO OTHER COMMUNITY RESOURCES THAT ASSIST WITH REENTRY.	5
<i>TIER VI</i>	INCLUDES THOSE FOR WHOM THE UNIVERSITY OF MARYLAND IS AVAILABLE FOR CRISIS SUPPORT AND MONTHLY CHECK-INS.	11
<i>TIER VII</i>	INCLUDES THOSE WHO WERE EITHER RELEASED INTO COUNTIES WHERE THE UNIVERSITY OF MARYLAND DID NOT PROVIDE SERVICES, OR DID NOT REQUEST SUPPORT UPON RELEASE.	23

EVERYBODY THAT I TALKED TO,
NOBODY WAS ASKING FOR A HANDOUT.
EVERYBODY THAT I TALKED
TO, THAT WAS PHYSICALLY
CAPABLE, THEY JUST WANTED A JOB.
AND A JOB THAT THEIR
BACKGROUND WOULDN'T BE HELD
AGAINST THEM. - STANLEY MITCHELL



ENHANCED REENTRY SERVICES SUPPORTED THE UNGER GROUP AND RESULTED IN LOW RECIDIVISM RATE

After decades in prison, the Unger group was challenged with returning to a community that had moved on without them. For the first time, many members of the Unger group experienced the advancements of 21st century technology and had to assimilate into a society that was very different than the one they had left. However, with the assistance of the University of Maryland's supporting partnership, they accomplished success far beyond most returning citizens. Recidivism for the Unger group is extremely low. Out of the 188 people released, only one has been rearrested for an overall recidivism rate of less than 1 percent.⁴⁵ This is much lower than the 40 percent rate of recidivism for all persons released from Maryland prisons; even lower than what was experienced in New York and Virginia.

The Unger group is a small sample size, but with the right type of support, they outperformed the broader prison population upon release. This is likely due to the fact that they were given outstanding reentry support coupled with the reality that they are part of an aging demographic with generally low recidivism rates. For example, New York reported a 7 percent re-conviction rate after release for those between 50 and 64 years old and only a 4 percent rate for those 65 or older. Virginia reported a 1 percent reconviction rate for those 60 and older.⁴⁶ Another measure of public safety is arrest rates. The Bureau of Justice Statistics tracked the rates of re-arrests in the nine years following an individual's release. For those aged 60 or older, the arrest rate was 43 percent as compared to an overall rate of 85 percent.⁴⁷

RELEASING THE UNGER GROUP SAVED MILLIONS OF TAXPAYER DOLLARS

Due to the conditions of living decades in confinement without sufficient health care, the Unger group's health deteriorated faster than the general population. Some of the health concerns include impaired movement, mental illness, and increased risk of a major disease. This is not unique to the Unger group and is likely the case for the great majority who have served long sentences—including the 3,000 others over 50 years old in Maryland.⁴⁸

A recent analysis by Dr. James Austin of JFA Associates found that the release of the Unger group will save millions of dollars, which could potentially be reinvested.⁴⁹ Releasing the Unger group resulted in a projected savings of \$185 million for Maryland taxpayers. At the time of release, the

average age of the Unger cohort was 64 years old. According to the Centers for Disease Control and Prevention, the life expectancy for the Unger group would be 81 years old, which would mean an additional 18 years in prison had they not been released.⁵⁰

According to Maryland's Department of Public Safety and Correctional Services (DPSCS), the per diem cost of incarceration is approximately \$46,000 per year, which includes a \$7,956 allocation for medical and mental health services. However, including the additional resources the aging population demands, the cost of imprisoning the Unger group is even higher.

Based on estimates that 34 percent of the total health care related costs in the United States is accounted for by individuals 65 and over, and assuming the percentage of health care costs to the general public is the same for the Unger population, the variable health care share for the Unger group is \$18,361 per year. This increases the annual cost to incarcerate an Unger group member to \$53,832.^{51 2}

The Associated Costs of Reentry Services are a Fraction of Incarceration

As of 2016, the University of Maryland's program has served 138 members of the Unger group. Not everyone requires the same resources, since they returned home needing varying levels of support. While the services were privately funded, if a similar approach was offered to all people released from Maryland prisons, the government's annualized cost would be an estimated \$6,000 per individual, a fraction of the cost for continued incarceration.

To be clear, not everyone in the geriatric population may be suitable for immediate release because some may still pose a risk to public safety. However, a previous analysis of people 55 years old or older released from Maryland prisons in 2013 found that only 1 in 5 individuals returned to prison and only 7 percent came back for a new crime.⁵² If we apply this 80 percent success rate to assume that 4 in 5 geriatric individuals still in Maryland prisons could be released safely, taxpayers would save an estimated \$120 million in the first year, and more than a billion in a decade.

2 According to Maryland's Department of Public Safety and Correctional Services, the annual cost per incarcerated individual is \$45,876. That includes funding for food services, facility costs, as well as medical and health care services, which are \$10,405 on average. Medical and healthcare services are the largest portion, accounting for \$7,956 per individual. However, with the increasing cost of the aging population, we estimated the medical and healthcare services to increase to \$15,912. Therefore, the full variable cost for that population is \$18,361, increasing the annual cost for the geriatric population to \$53,832.

THIS PROBLEM IS NOT UNIQUE TO MARYLAND

Each state is experiencing a growing aging population in their prison system. With the expanding costs associated with serving this population, tax dollars around the country are too often spent on unnecessary confinement for geriatric individuals who pose little threat to public safety. Using a similar set of assumptions from the Maryland analysis, JPI estimated the cost breakdown for their health care compared to the rest of the prison population. This analysis demonstrates that states would be well-served by rethinking reentry and shifting wasteful prison resources to the development of sound reentry supports for this population, as seen in Maryland.

STATE	TOTAL HEALTH CARE BUDGET IN 2015	TOTAL HEALTH CARE COST PER INDIVIDUAL OVER 55	TOTAL HEALTH CARE COST PER INDIVIDUAL 55 AND YOUNGER
ALASKA	\$43,412,600	\$16,408.52	\$5,620.91
ALABAMA	\$100,785,027	\$7,330.92	\$2,511.28
ARKANSAS	\$73,508,037	\$9,487.43	\$3,250.02
ARIZONA	\$148,662,395	\$7,998.10	\$2,739.83
CALIFORNIA	\$2,340,203,000	\$44,871.29	\$15,371.14
COLORADO	\$110,335,557	\$12,183.06	\$4,173.44
CONNECTICUT	\$96,348,893	\$12,615.00	\$4,321.40
DELAWARE	\$57,682,085	\$19,059.19	\$6,528.93
FLORIDA	\$366,124,529	\$8,252.03	\$2,826.82
GEORGIA	\$199,359,072	\$8,182.98	\$2,803.17
HAWAII	\$23,465,881	\$9,382.49	\$3,214.07
IOWA	\$41,704,035	\$11,534.98	\$3,951.43
IDAHO	\$42,121,101	\$11,757.94	\$4,027.81
ILLINOIS	\$171,468,287	\$8,163.10	\$2,796.36
INDIANA	\$93,019,644	\$7,357.78	\$2,520.48
KANSAS	\$57,822,490	\$13,515.96	\$4,630.04
KENTUCKY	\$79,253,567	\$8,529.17	\$2,921.76
LOUISIANA	\$74,791,140	\$4,544.95	\$1,556.92
MASSACHUSETTS	\$96,447,502	\$20,281.50	\$6,947.64
MARYLAND	\$153,970,380	\$18,361.00	\$6,184.23
MAINE	\$15,534,162	\$16,767.03	\$5,743.72
MICHIGAN	\$368,557,916	\$18,783.54	\$6,434.50
MINNESOTA	\$75,897,019	\$18,492.23	\$6,334.71
MISSOURI	\$156,965,966	\$11,075.51	\$3,794.03
MISSISSIPPI	\$67,770,994	\$7,878.06	\$2,698.71

MONTANA	\$37,113,391	\$18,323.61	\$6,276.95
NORTH CAROLINA	\$261,634,369	\$15,691.32	\$5,375.23
NORTH DAKOTA	\$11,955,832	\$15,978.71	\$5,473.67
NEBRASKA	\$46,175,690	\$19,454.44	\$6,664.32
NEW HAMPSHIRE	\$1,820,623	\$1,439.40	\$493.08
NEW JERSEY	\$163,305,683	\$17,655.23	\$6,047.99
NEW MEXICO	\$42,865,600	\$13,888.23	\$4,757.56
NEVADA	\$41,270,369	\$7,357.73	\$2,520.47
NEW YORK	\$374,745,588	\$15,972.31	\$5,471.48
OHIO	\$231,124,783	\$10,383.79	\$3,557.08
OKLAHOMA	\$71,501,736	\$5,991.30	\$2,052.38
OREGON	\$122,936,099	\$19,166.05	\$6,565.53
PENNSYLVANIA	\$231,123,000	\$10,309.33	\$3,531.57
RHODE ISLAND	\$21,960,881	\$15,643.62	\$5,358.89
SOUTH CAROLINA	\$75,728,018	\$7,883.63	\$2,700.62
SOUTH DAKOTA	\$19,910,914	\$12,578.43	\$4,308.87
TENNESSEE	\$122,114,655	\$9,340.39	\$3,199.65
TEXAS	\$608,068,075	\$9,240.39	\$3,165.39
UTAH	\$31,797,675	\$10,336.26	\$3,540.79
VIRGINIA	\$171,281,948	\$10,016.23	\$3,431.17
VERMONT	\$22,132,931	\$31,160.23	\$10,674.27
WASHINGTON	\$115,311,761	\$15,197.89	\$5,206.20
WISCONSIN	\$126,202,347	\$12,947.35	\$4,435.25
WEST VIRGINIA	\$23,377,603	\$7,666.27	\$2,626.16
WYOMING	\$24,976,866	\$26,742.67	\$9,160.98

The story of the Unger group makes it clear that the prison population that accounts for most of the correctional health care budget can be safely reduced. Millions of dollars can be saved, and the resources can be invested in effective reentry supports similar to the program implemented by the University of Maryland to assure that any individual leaving the system after decades in prison can successfully and safely return to the community.

HOW WE CAN IMPROVE REENTRY: THE UNGER EXPERIENCE

The reentry system is flawed, and even with support, the Unger group still faced a series of barriers. The challenges can be primarily attributed to the inadequate release preparation offered by the DPSCS. In order to more fully understand the challenges faced by the Unger group upon release, as well as what worked best, JPI conducted a series of 15 individual interviews of members of the Unger group to discuss their reintegration into the community after decades of incarceration.

The Reentry Support Resulted in Success

Despite many obstacles, the Unger group has experienced significant success since their release. Beyond the low recidivism rate, they had very little difficulty continuing their medical care, and all of those interviewed indicated they have made an effort to volunteer their time to give back to their community.

Because the average age of the Unger group members upon release was 64 years old, many required daily medication. Every one of the Unger group interviewed agreed that the continuation of medical care and medication was not a problem, mostly due to the assistance of the University of Maryland program.

“Social workers [from the University of Maryland] has been a tremendous help, because I am diabetic and I have high blood pressure, high cholesterol, I have a cataract behind my eye, and vertical veins on my left leg. They have been very instrumental in that particular area as far as making sure I get all my medicines recharged, and they have been very helpful with the medical part and I have been able to maintain my diabetes because of the service I receive from them.”

Although there were some initial hurdles, all of the Unger group members JPI interviewed were able to apply for and receive social security benefits in order to maintain their medical care.

After being incarcerated for years, the Unger group has given back to their community

As one Unger describes:

“Each year since I’ve been home, which is two years, I volunteer my services

WHEN I WENT TO PRISON I HAD A LIFE SENTENCE, A PAROLABLE LIFE SENTENCE, THE GOVERNOR STEPPED IN AND CHANGED MY SENTENCE, WITHOUT GIVING ME ANY KIND OF HEARING. THE ONLY THING I ASK IS APPLY THE RULES THAT APPLIED WHEN I CAME IN. - MR. MARVIN MOORE



with my daughter to help feed the less fortunate a Thanksgiving dinner, and I volunteer my services with the community to help a basketball team with coaching. Also with another organization, they had a little baking class, and I just showed them how to bake a few cakes and cupcakes. Any time that I could do something positive with volunteering, I will."

Other members of the Unger group interviewed informally volunteer their time to act as a role model with kids in their community:

"I like to talk to them, I like to see where they are at. I like for them to have some type of insight of what they're facing in the world when they get older. So they prepare themselves now. Like if you see kids hanging on the corner, eventually you know if there are four kids hanging on a corner; three or four might wind up in prison at a later date in time. So my main purpose is to try change that and make sure those young kids have a good idea of what the future really holds for them."

Even if Unger group members are unable to find suitable employment, they volunteer what time they have to better the community to which they returned.

Lastly, the Unger group learned many lessons after their release. They came out of prison with a sense of maturity, responsibility, and knowledge about themselves. Others felt they adopted a broader perspective on life and a desire to better themselves. When asked whether the incarceration caused this change, one Unger group member said:

"...it comes from self... you have to make that choice, the system doesn't play a role with anything. The only thing the system did was keep me confined."

Another describes his transformation:

"Well, yes I'm different because back then, you know, I was angry, you know, and wouldn't let nobody tell me nothing—wouldn't listen. I was a hothead. I mean incarceration just gave me time to sit down and think, start thinking first before I reacted... [the facility] didn't change me... I always wanted to do something different but I was too impatient to go through that process. But jail, like I said, it helped some. It helped me stop, it slowed me down. You know, don't think about getting it right now, think about the long run."

Any parole reform needs to be coupled with the type of services the Unger group received by the University of Maryland to effectively navigate the barriers that typically lead to recidivism.

WHILE THEY RECEIVED BETTER REENTRY PLANNING OVERALL, MANY UNGER GROUP MEMBERS IDENTIFIED CHALLENGES

Recent research indicates that 43 percent of the returning geriatric population will be arrested again within nine years of release.⁵³ Although the increased reentry support provided a better pathway for the Unger group, the challenges that impact all returning citizens were still present. Having an appropriate identification card is the foundation for a successful reentry. It can lead to stable housing, employment, and health care. However, to obtain a social security card or a driver's license, the applicant needs a birth certificate. This can pose a real challenge for an individual after serving decades behind bars. In many cases, the DPSCS does not provide any reentry assistance prior to release, including something as basic as obtaining identification, which further complicates the process. Without any pre-release help, one Unger group member noted that it can take as much as a year to get any identification.

The interviews also revealed concerns around the availability of housing and the lack of post-release services. Even if the Unger group members were successful at quickly obtaining identification, there are laws in place to deny housing for those who are formerly incarcerated. One of the Unger group members interviewed said he was denied housing by three apartment buildings based on his background.

Many returning citizens attempt to find relief in government-run programs, like housing vouchers. However, the overburdened system has left many in need without a suitable place to live.

"I tried to apply for housing, and they told me that to get Section 8 would take me five years, so where am I supposed to go live now? Under a bridge?"

All of the Unger group members interviewed by JPI indicated that they had some family support upon return. In many cases though, they refused to rely on family for temporary housing, furthering the financial strain.

"I can contribute by not becoming a liability for real, instead of me living with my family, I live on my own with my wife. Now I am not a burden on my family."

One of the largest barriers for any returning citizen is employment. Although the University of Maryland provided job training and placement services to help overcome these challenges, all returning citizens are at a disadvantage in securing

adequate employment. Similar to housing, the Unger group had to deal with the stigma of incarceration. Many were terminated from a position solely due to their past criminal record, and others failed to find any positions suited to their skill set and age.

When asked what the biggest challenge was when returning to the community, one of the Ungers responded:

“Employment. Cannot find employment. I’ve been home for four years now. Four years I’ve had to collect food stamps. That \$192 a month. You know what I mean, I’m a grown man! I’d rather go to work for 40 hours a week and receive a check for the work.”

Another Unger group member responded to the same question by observing that his experience should qualify him for a series of opportunities, but his past overshadows his potential.

“My hands are tied. I am not asking for a lot. I’ve earned a bachelor’s degree in prison. All kinds of certifications—I could do any of those things.”

Regardless of the effort of the increased reentry resources, it cannot eliminate the systematic barriers that block thousands of returning citizens every year from gaining adequate employment.

Besides the systematic barriers to housing and employment facing the Unger group, 40 years of technological advancements create a further handicap. Most received little to no technology training before their release, and many did not know how to use a smartphone or the internet. Some even indicated that the culture shock was so challenging that they needed support and training to help them adjust.

WHAT OTHERS CAN LEARN FROM THE UNGER EXPERIENCE IN IMPLEMENTING MORE EFFECTIVE PAROLE POLICIES AND PRACTICES

While many states have undertaken efforts to tackle mass incarceration in recent years, rates of imprisonment remain stubbornly high. This is increasingly the result of long prison sentences and restrictive parole release policies that obscure efforts to improve prosecutorial practice and divert people from prison who have committed low-level, nonviolent offenses. Louisiana, New York, California, Pennsylvania, Florida, and Texas rank among



the states bearing the highest financial health care cost for incarcerating the geriatric population. Throughout the years, each state had varying levels of criminal justice reform, but very few resulted in parole reform that would ease the barriers of reentry for the aging population.

Louisiana

Louisiana engaged in comprehensive criminal justice reinvestment in 2017, including parole reform.⁵⁴ As a result of these reforms, the state expects a 10 percent drop in its prison population and a savings of \$78 million over the next decade. The projected savings are intended to be reinvested in community-based prison alternatives, increased funding for victim services, and additional programs and services in juvenile and adult facilities.⁵⁵ In 2017, lawmakers expanded parole eligibility, including for those facing health risks, which could potentially impact individuals over the age of 60.⁵⁶ However, lawmakers excluded standard geriatric parole from their reforms even though the Justice Reinvestment Taskforce recommended its establishment.⁵⁷ Although Louisiana policymakers have taken strides to better serve those in the criminal justice system, these reforms have been met with backlash from prosecutors in the state.⁵⁸ Through requests from the Louisiana District Attorneys Association, several bills have been proposed to roll back the reforms made in 2015. One piece of legislation would ban medical release for those convicted of murder.⁵⁹

New York

New York proposed "geriatric parole," but it has been infrequently used and thousands of individuals over 50 years old remain behind bars.⁶⁰ Although a recent proposal seeks to expand geriatric parole, it excludes individuals based on their convicted crime. These exclusions focus on violent crimes, including first-degree murder and aggravated murder.⁶¹

California

California made strides by expanding geriatric parole in 2017—but failed to include people convicted of violent offenses. California voters overwhelmingly passed Proposition 57, which increases parole opportunities only for those convicted of nonviolent crimes.⁶² Additionally, the California Assembly passed a bill establishing an elderly parole program but excluded those convicted under the three strikes rule.⁶³

In the meantime, California has greatly increased the parole of people sentenced to life with the possibility of parole. To date more than 3,000 people have been released under Governor Brown's revised parole policies. The re-conviction rate for those released from a parole-eligible life sentence is only 4 percent as compared to an overall rate of 46 percent.⁶⁴

OTHER STATES HAVE MEDICAL OR GERIATRIC PAROLE, BUT UNDER VERY LIMITED CIRCUMSTANCES

Pennsylvania

Pennsylvania lifers are not eligible for parole, so the long-sentenced geriatric population's only relief is commutation. There is an application process for a gubernatorial commutation that includes an initial recommendation from the parole board. Although the parole board has recommended some for parole, only one application has been approved by the governor since 1995.⁶⁵

Florida

Florida has compassionate release, but it is limited to terminal illness. Many lifers in Florida are barred from release unless they have a terminal condition with a life expectancy of 18 months or less.⁶⁶

Texas

Texas' geriatric parole only includes the "oldest and sickest." Doctors in the Texas system have recommended thousands of aging individuals for geriatric parole, but the state parole board has denied nearly 75 percent of the recommendations. These denials continue despite research showing that the individuals who are not released can cost up to \$1 million a year in health care cost.⁶⁷

Federal Bureau of Prisons

The Bureau of Prisons (BOP) compassionate release program has existed for decades but is rarely used. The BOP has failed to appropriately utilize compassionate release, only granting 306 petitions, while denying more than 2,400 others since 2014.⁶⁸ While the GRACE Act, which would increase accountability and transparency in compassionate release, was introduced in the 115th Congressional Session, it failed to move beyond the Senate Judiciary Committee.⁶⁹ Ignoring adequate compassionate release is costly. In a recent analysis, BOP spent 19 percent of its entire budget incarcerating the aging population.⁷⁰

Despite parole reform being part of the legislative agenda in multiple states, much of the geriatric population has been left out of the reforms based on prohibitions for people convicted of violent offences.⁷¹ As a geriatric population convicted of violent crime, the Unger group is a case study of the population many state lawmakers repeatedly neglect in criminal justice reform conversations. It is clear from the research and the experiences of older individuals who have been released around the country that elderly individuals can be safely returned to the community. It is

also clear that reentry services tailored for this population, akin to those developed by the University of Maryland, could further reduce the already low public safety risk, and save millions of dollars for states and the federal government.

POLICY RECOMMENDATIONS

Many states have seen meaningful parole reform left out of the policy conversation. As stakeholders continue to grapple with what 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. While every state will be faced with their own challenges, the research and the experiences of the Unger group have provided guidance on what parole reform can look like in Maryland and across the country.

Remove the governor from the parole process for lifers in Maryland and make all parole boards independent.

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.⁷² 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.

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 contrary to the purposes of having parole as part of the process. 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.

WHENEVER I'M CALLED I GO DO SOME MENTORING
OVER AT SECOND CHANCE, AND ALSO GO DOWN TO ANNAPOLIS,
WHEN THE GENERAL ASSEMBLY MEETS TO SEE IF WE CAN GET
SOME TYPE OF BILLS PASSED FOR THE BENEFIT OF
INCARCERATED PEOPLE, AND JUST
PEOPLE OUT HERE IN SOCIETY AS WELL. - DONALD SHAKIR



Participating in prison programming or work release opportunities is the best way to demonstrate to a parole board that you have transformed 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. Opportunities for programming need to be disentangled from the 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 major disciplinary infractions. This would help shift the burden to the state to demonstrate that someone is not suitable for release on public safety ground, 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.

Parole boards place too much weight on the underlying offense when considering an application for release. For example, Maryland uses a 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.

All parole boards should use a validated dynamic risk and needs assessment instrument that is grounded in 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 a parole board to 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 board.

In addition, parole boards 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. A parole board can also improve its effectiveness by increasing transparency in justifications for denial and providing opportunities for appeal when parole is denied.

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

Before an individual's release, departments of corrections should collect identification documents, assist with any processes for continued health insurance, and provide needed social services. When working 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.

In preparation for an individual's release, there should be an established partnership with housing providers to offer a supportive housing placement. 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 health care 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 often significant eligibility barriers for an individual applying for compassionate, geriatric, and/or medical parole. The primary obstacle is the committing offense. Policymakers should expand eligibility to include those who have committed more serious offenses.

Recently changed Maryland law provides that all people over 60—excluding those convicted of a sex offense—who have served 15 years or more of their sentence should be eligible for geriatric parole. Those attempting to receive medical parole must be "chronically" ill. While the law has changed, many barriers still remain, including the governor's approval following a recommendation for release by the parole board, for individuals similar to the Unger group seeking to be released.

In order to better understand those serving long sentences, Maryland and other states must continue to collect data and conduct necessary research to better inform the parole process. In addition, to establish sustainability in the process, parole boards should implement an immediate, validated, dynamic risk and needs assessment of any individual over 50 years old to consider whether they are appropriate for release.

CONCLUSION

Those sentenced to life with the possibility of parole in Maryland have been unfairly treated since 1995. The current practice of denying parole to virtually all persons serving a life sentence prevented the entire Unger group from being safely released until the intervention of the courts. The experience of the Unger group, with 188 people who were incarcerated for decades for serious violent crimes having been safely released to the community, demonstrates that this country locks up too many people for too long. If it were not for Maryland's Appellate Court, Maryland taxpayers would have continued paying millions to incarcerate older individuals who are at extremely low risk of further criminal behavior. It is time for a change in Maryland and across the country, and the experiences of the Unger group provide a powerful example of a different pathway forward. Through a philanthropic-funded reentry program, 188 geriatric individuals were able to safely leave prison and begin the process of rebuilding their lives and joining their community. The experiences of the Unger group demonstrate why we should treat our aging incarcerated population differently. They are also a stark reminder that we must rethink our approach to violence to further reduce our reliance on incarceration. To significantly reduce the growing and costly prison population, reform to long sentences and parole for those incarcerated for violent crimes must be part of the criminal justice agenda moving forward.

1 Oliver Hinds, Jacob Kang-Brown, Olive Lu, *People in Prison in 2017* (New York, NY: Vera Institute of Justice, 2018).

2 James Austin, *Reforming Maryland's Correctional System* (Washington, DC: The JFA Institute, 2018).

3 *The Growth of Incarceration in the United States: Exploring causes and consequences* (Washington, DC: National Research Council of the National Academies, 2014).

4 Ashley Nellis, *Still Life: America's Increasing Use of Life and Long-Term Sentences* (Washington, DC: The Sentencing Project, 2017).

5 Leigh Courtney et al., *A Matter of Time: The Causes and Consequences of Rising Time Served in America's Prisons* (Washington, DC: Urban Institute, 2017), https://apps.urban.org/features/long-prison-terms/a_matter_of_time.pdf

6 Rebecca Silber, Alison Shames, and Kelsey Reid, *Aging Out: Using Compassionate Release to Address the Growth of Aging and Infirm Prison Populations* (New York, NY: Vera Institute of Justice, 2017), https://storage.googleapis.com/vera-web-assets/downloads/Publications/compassionate-release-aging-infirm-prison-populations/legacy_downloads/Using-Compassionate-Release-to-Address-the-Growth-of-Aging-and-Infirm-Prison-Populations%E2%80%9494Full-Report.pdf

7 Tina Chui, *It's About Time: Aging prisoners, increasing costs, and geriatric release* (New York, NY: Vera Institute of Justice, 2010).

8 Dan Rodricks, "Glendening: 'Life means life' absolutism was wrong," *The Baltimore Sun*, February 20, 2011.

9 Department of Public Safety and Correctional Services *Fiscal 2017 Budget Overview* (Annapolis, MD: Maryland Department of Public Safety and Correctional Services, 2018).

10 Leigh Courtney et al., *A Matter of Time*

11 Maryland Division of Corrections *Annual Report FY 2017* (Annapolis, MD: Maryland Division of Corrections, 2018).

12 Leigh Courtney et al., *A Matter of Time*

13 Michael Millemann, Rebecca Bowman-Rivas, and Elizabeth Smith, "Releasing Older Prisoners," *Reforming Criminal Justice* 4, (2017): 325-339.

14 Tina Chui, *It's About Time*

15 Inimai Chettiar, Will Bunting, and Geoff Schotter, *At America's Expense: The Mass Incarceration of the Elderly* (New York, NY: American Civil Liberties Union, 2012), https://www.aclu.org/files/assets/elderlyprisonreport_20120613_1.pdf

16 James Austin et al., *Cost Benefit Analysis*, (2018). Unpublished data.

17 E. Ann Carson, *Prisoners in 2016* (Washington, DC: U.S. Department of Justice Bureau of Justice Statistics, 2018).

18 *Annual Estimates of the Resident Population by Sex, Single Year of Age, Race, and Hispanic Origin for the United States: April 1, 2010 to July 1, 2016* (Washington, DC: U.S. Census Bureau Population Division, 2017).

19 Robert Siegel and Matt Ozug, "From A Life Term To Life On The Outside: When Aging Felons Are Freed," *National Public Radio*, February 18, 2016.

20 Millemann, Bowman-Rivas, and Smith, "Releasing Older Prisoners," 325-339.

21 Rebecca Bowman-Rivas and Elizabeth Smith, "The Maryland Unger Project: Safe De-carceration of Older, Life-Sentenced Prisoners." (New Orleans, LA: Nation Social Work Conference, June 20, 2018). Presentation.

22 Bowman-Rivas and Smith, "The Maryland Unger Project"

23 Millemann, Bowman-Rivas, and Smith, "Releasing Older Prisoners," 325-339.

24 Millemann, Bowman-Rivas, and Smith, "Releasing Older Prisoners," 325-339.

25 Millemann, Bowman-Rivas, and Smith, "Releasing Older Prisoners," 325-339.

26 U.S. Bureau of the Census, *Census of Population: 1970 Vol 1, Characteristics of the Population Part 22, Maryland* 32.

27 Millemann, Bowman-Rivas, and Smith, "Releasing Older Prisoners," 325-339.

28 Stephan Leshner, *George Wallace: American Populist* (Massachusetts: Addison-Wesley, 1994).

29 Bowman-Rivas and Smith, "The Maryland Unger Project"

30 Millemann, Bowman-Rivas, and Smith, "Releasing Older Prisoners," 325-339.

31 Ronald H. Aday and Jennifer J. Krabill, "Aging Offenders in the Criminal Justice System," *Marquette Elder's Advisor* 7, no. 2 (2006): 237-258; See also, Jamie Fellner, *Old Behind Bars: The Aging Prison Population in the United States* (New York, NY: Human Rights Watch, 2012), https://www.hrw.org/sites/default/files/reports/usprisons0112webwcover_0.pdf

32 Lois Davis et al., *Evaluating the Effectiveness of Correctional Education* (Santa Monica, CA: RAND Corporation, 2013), https://www.rand.org/pubs/research_reports/RR266.html

33 Grant Duwe, "An Outcome Evaluation of a Prison Work Release Program Estimating Its Effects on Recidivism, Employment, and Cost Avoidance," *Criminal Justice Policy Review* 26, no. 6 (2015): 532-544.

34 Nancy Vigne and Vera Kachnowski, *A Portrait of Prisoner Reentry in Maryland* (Washington, DC: The Urban Institute, 2003), <https://www.urban.org/sites/default/files/publication/42771/410655-A-Portrait-of-Prisoner-Reentry-in-Maryland.PDF>

35 Roy Maurer, "Nearly half of employers continue to ask about criminal history on job application," *Society for Human Resource Management*, August 23, 2017.

36 *Parole Perspectives in Maryland: A survey of people who returned to prison from parole and community supervision agents* (Washington, D.C.: Justice Policy Institute, 2015), <http://www.justicepolicy.org/uploads/justicepolicy/documents/paroleperspectivesinmaryland.pdf>

37 Sarah Varney, "By the Numbers: Mental illness behind bars," *PBS News Hour*, May 15, 2014.

38 Vigne and Kachnowski, *A Portrait of Prisoner Reentry*

39 Vigne and Kachnowski, *A Portrait of Prisoner Reentry*

40 *Parole Perspectives*, Justice Policy Institute

41 James Austin et al., *Cost Benefit Analysis*, (2018). Unpublished data.

42 *Parole Perspectives*, Justice Policy Institute

43 Millemann, Bowman-Rivas, and Smith, "Releasing Older Prisoners," 325-339.

44 Bowman-Rivas and Smith, "The Maryland Unger Project"

45 Millemann, Bowman-Rivas, and Smith, "Releasing Older Prisoners," 325-339.

46 *At America's Expense: The mass incarceration of the elderly* (New York, NY: American Civil Liberties Union, 2012).

47 Mariel Alper and Matthew Durose, *2018 Update on Prisoner Recidivism: A 9-Year Follow-up Period (2005-2014)* (Washington, DC: Bureau of Justice Statistics, 2018), <https://www.bjs.gov/content/pub/pdf/18upr9yfup0514.pdf>

48 Bowman-Rivas and Smith, "The Maryland Unger Project"

49 James Austin et al., *Cost Benefit Analysis*

50 E. Arias, M. Heron, and J. Xu, *United States Life Tables* (Hyattsville, MD: The National Center for Health Statistics, 2017).

51 James Austin, et al., *Cost Benefit Analysis*

52 *DPSCS 2013 Prisoner Release/Recidivism Data File*, analysis completed by James Austin (JFA Institute).

53 Alper and Durose, *2018 Update*

54 Lisa Graybill, "Even After 'Historic' Criminal Justice Reform in Louisiana, Our Work Is Not Yet Done," *Harvard Law Review Blog*, last modified October 17, 2017, <https://blog.harvard-lawreview.org/even-after-historic-criminal-justice-reform-in-louisiana-our-work-is-not-yet-done/>

55 *Louisiana Justice Reinvestment Package* (Baton Rouge, LA: State of Louisiana, 2017), <https://perma.cc/3BV5-RVY8>

56 *Louisiana's 2017 Criminal Justice Reform: The most incarcerated state changes course* (Washington, DC: The PEW Charitable Trusts, 2018); See also, *Louisiana Justice Reinvest-*

ment Package (Baton Rouge, LA: State of Louisiana, 2017). <https://perma.cc/3BV5-RVY8>

57 Elain Ellerbe, "Geriatric Parole Should Be Considered in Louisiana," *Right on Crime*, August 3, 2017.

58 Julia O' Donoghue, "District attorneys want to roll back some of Louisiana's sentencing, parole changes," *The Times-Picayune*, March 20, 2018.

59 Julia O' Donoghue, "Louisiana lawmakers introduced bills to chip away at criminal justice overhaul: Here's a list" *The Times-Picayune*, March 20, 2018.

60 "Cuomo Propose Changes to New York State Parole System," *NBC New York*, March 5, 2018.

61 Dave George, "Release Aging People in Prion Campaign," (Testimony, presented before members of the New York State Legislature: 2018 Public Protections Budget Hearing, January 30, 2018). http://rappcampaign.com/wp-content/uploads/RAPP-2018-Budget-Hearing-Testimony_FINAL.pdf.

62 Proposition 57: Public Safety and Rehabilitation Act of 2016 – Fact Sheet (Sacramento, CA: California Department of Corrections and Rehabilitation, 2018).

63 "California Legislative Information," Assembly Bill No. 1448 – Elderly Parole Program, last modified October 12, 2017. https://leginfo.ca.gov/faces/billTextClient.xhtml?_afid=1448&_afid=1448; See also, Neil Shouse, "Who is eligible for parole under California's 'elderly Parole Program'?" *Shouse California Law Group (Blog)*, last modified April 11, 2018. <https://www.shouselaw.com/who-is-eligible-for-parole-under-californias-elderly-parole-program>

64 California Department of Corrections and Rehabilitation, 2017 Outcome Evaluation Report, accessed October 12, 2018. <https://sites.cdcr.ca.gov/research/wp-content/uploads/sites/9/2018/04/2017-Outcome-Evaluation-Report.pdf>

65 "Report of the Advisory Committee on Geriatric and Seriously Ill Inmates," *Joint State Government Commission*, accessed July 11, 2018. http://jsg.legis.state.pa.us/publications.cfm?JSPU_PUBLN_ID=40.

66 Florida's Aging Prisoner Problem (Tallahassee, FL: Florida Tax Watch, 2014).

67 Emily Ramshaw, "Dying on the State's Dime," *The Texas Tribune*, June 3, 2010. <https://www.texastribune.org/2010/06/03/few-texas-inmates-get-released-on-medical-parole/>

68 "Grace Act Fixes Long-Standing Issues with Compassionate Release," *Families Against Mandatory Minimums*, last modified February 28, 2018. <https://fam.org/grace-act-fixes-long-standing-issues-with-compassionate-release/>

69 "S.2471 – Grace Act," *Congress.gov*, accessed October 10, 2018. <https://www.congress.gov/bills/115/congress/senate/bills/2471>

70 N.A., *The Impact of an Aging Inmate Population on the Federal Bureau of Prisons* (Washington, DC: Office of the Inspector General, The U.S. Department of Justice, 2015).

71 Georgian governor proposed adoption of recommendations from the Georgia Council on Criminal Justice Reform. Governor Wolf of Pennsylvania has called for an increase in parole supervision and parole to be based on risk to society. As a part of Senate Bill 66, Ohio lawmakers have proposed eliminating mandatory prison sentences for minor parole violations, potentially reducing the prison population by 3,400 people and saving \$20 million annually.

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