

## Study finds low recidivism, potential savings to releasing older prisoners

By: Heather Cobun Daily Record Legal Affairs Writer November 26, 2018

Though Maryland's prison population is down and legislative changes have reduced sentences for a number of nonviolent offenses, the reform discussion has not addressed a significant portion of the prison population: violent offenders who have served decades of their life sentences and not been paroled.

The national nonprofit Justice Policy Institute argues that "geriatric" inmates can be safely released even if they were incarcerated for a serious, violent crime. The group is armed with a report following the release of nearly 200 "Ungers," named for the 2012 Court of Appeals decision that held a jury instruction given before 1980 was an unconstitutional violation of due process rights and that defendants were owed new trials.

JPI Executive Director Marc Schindler said his organization has been looking at the issue of violent offenders in recent years and included a reference to the release of inmates under *Unger v. State* in a 2015 report. The more who were released and successfully reentered society, the more it appeared the group could be a natural case study for the release of older prisoners.

"As we sort of saw what was happening, that people continued to stay out of trouble, we thought now things are getting to a point now that we're five years into this, this is not just an interesting story, it's statistically significant," he said.

Most of the defendants were incarcerated in their 20s and were between 51 and 85 at the time of their release. The majority were convicted of murder and served an average of 39 years. A total of 193 have been released, according to data from the Maryland Office of the Public Defender. Five have been re-sentenced for a probation violation or new offense and six were re-tried and re-convicted.

### Adjusting to release

A grant from Open Society Institute-Baltimore allowed the OPD to partner with the University of Maryland Francis King Carey School of Law to use a clinic for law and social work students to create a reentry strategy geared toward the needs of individuals in their 50s and older.

Rebecca Bowman-Rivas, supervisor of the social work side of the clinic, said clients needed identification, plans for a seamless transfer of medications and assistance with adjusting to the world after decades in prison. Students explained everything from ATMs and cellphones to motion-activated toilets and sinks.

"Just the basics here I think were so important when you're trying to get used to a world that has moved on without you for the last 30-some years," Bowman-Rivas said.

Stanley Mitchell, now 70, was released in the first wave of Ungers in 2013. He said he's still learning new things or experiencing frustration because he has to ask for help understanding how something works.

"Every day, there's always something new and some things I still haven't adjusted to," he said. "I'm driving down the street and I see somebody having an animated conversation with themselves in their car and I think they're crazy but they're just on the phone."

Mitchell said the Ungers meet and stay in touch, sharing a bond and common goal of making sure no one returns to prison.



Deputy Public Defender Becky Feldman. (The Daily Record/Maximilian Franz)

"Freedom has its responsibility, it also has its stresses," he said. "But I tell everybody I'd rather live in a cardboard box than be in somebody's cell."

## Reentry support

There is usually very little social support for people coming out of prison, according to Deputy Public Defender Becky Feldman, who helped coordinate the release efforts for Ungers. The grant helped provide more robust reentry planning and coordination. Feldman said she hopes the results will persuade the state to invest its own funding in similar services.

"We ask for this all the time and now we have data to support it, which is this model successfully kept our clients on the right path and they reintegrated very well into society," Feldman said.

Gregg Bernstein, who was the Baltimore City state's attorney when the *Unger* decision came down, said he thought at the time the defendants were being released that it would be a good way to track the impact of more robust reentry support.



Former Baltimore City State's Attorney Gregg Bernstein. (File Photo)

"The recidivism rates, although very high for people who are released on parole, are substantially reduced if there are systems in place to help returning offenders to integrate themselves and become members of society," he said.

Schindler said he hopes the report starts a dialogue about Maryland's older prison population and both the public safety risks of paroling them and what reentry programs exist if they are released.

"I think it does raise the question of how do we move forward as a society with the understanding that there does need to be accountability, but when is it enough?" he said.

Baltimore County State's Attorney Scott Shellenberger said the issue of reentry support came up at the Justice Reinvestment Oversight Board's November meeting.

"Certainly, I'm in favor of that," Shellenberger said. "I think anything we can do to make someone enter society again with a more complete program, I think that's a good thing."

But Shellenberger said justice reinvestment has focused on nonviolent offenders and that's how he starts every discussion about reform.

"These are people who murdered someone," he said. "The question becomes what is the appropriate punishment?"



Baltimore County State's Attorney Scott Shellenberger. (File Photo)

Though he said he's pleased a number of individuals who were convicted of violent crimes have not committed more, Shellenberger said the analysis should be about more than recidivism data.

"It shouldn't be the only factor is are they going to commit a crime again," he said. "There's a reason a judge gave them life."

Bernstein said his takeaway from the Ungers is that individuals do not need to be incarcerated for 40 or 50 years out of a concern that they will re-offend on release.

"It becomes a great argument for criminal justice reform in terms of really looking at length of sentences and what are we really trying to accomplish here," he said.

## Cost savings

The JPI report argues geriatric prisoners can be safely released with the proper support and that it is more cost-efficient to supervise and assist their reentry than it is to incarcerate them.



Schindler said the Ungers are an example that should inform policy and practice. He said he hopes the state analyzes its older prison population and evaluates potential savings for who can be safely released.

The report determined a program similar to one that was offered to the Ungers costs approximately \$6,000 per prisoner. The cost of incarcerating geriatric prisoners, who tend to have more health care needs, is around \$54,000.

"I think we really have to pay attention to that and do a cost-benefit analysis," Schindler said.

But Shellenberger objected to bringing cost savings into the discussion of releasing violent offenders.

"When it comes to these kind of decisions, it should never be about money," he said.

Shellenberger said the Justice Reinvestment Act did lower the age for geriatric parole and expand options for medical parole, addressing some of the concerns raised in the report.

"There is a system for these people getting out," he said. "It's called the parole system."

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