

**TESTIMONY IN SUPPORT OF ARTICLE 13, 21-H 6122,
RELATING TO HUMAN SERVICES
April 8, 2021**

The ACLU of Rhode Island strongly supports Article 13's provisions that are designed to promote criminal justice reform in the state. The justice reinvestment initiatives approved by the General Assembly four years ago were an important start for the state in dealing with the problem of mass incarceration and seeking to incorporate more justice in our system of "criminal justice." Although there is much more work still to be done, the provisions in Article 13 take us another step away from an overly harsh, highly discriminatory and extremely expensive prison-industrial complex.

Although we are not in a position to comment thoroughly on many of the details in the Article and how some of the provisions could be strengthened (we defer to other testimony you will be receiving in that regard), we do wish to offer some general comments on the various sections. We have also attached to our testimony a short summary of data that was contained in a report the ACLU issued in 2019 entitled "Blueprint for Smart Justice," which, in addition to offering numerous suggestions for change, collected alarming statistics showing the discriminatory impact of many of the state's criminal justice policies, including some of those that Article 13 seeks to ameliorate. We hope the inclusion of this information in our testimony will generate an even greater commitment to passage of additional criminal justice reforms in the future.

Section 1. The ACLU supports this provision which would limit the wasteful and harmful incarceration of individuals for technical violations of their probation or parole. This has been a long-standing problem that these proposed changes address in a very positive way.

Section 2. This section would codify some standards for considering parole for individuals whose crimes were committed when they were juveniles. We appreciate the thrust of this provision, which seeks to encourage the release of those incarcerated at a young age, in recognition of the fact that crimes committed by minors often reflect an immaturity which they often quickly grow out of.

Section 3. The ACLU supports the provision in this section which would grant "compliance credits" to parolees to help reduce the amount of time that they must serve on parole.

With one important amendment, the ACLU also supports Section 13-8-12, which addresses young people who are sentenced to long terms of imprisonment and authorizes their parole consideration after ten years. Specifically, we strongly oppose the exemption it contains for juveniles who are serving life without parole sentences. They deserve the same chance for reevaluation. We therefore urge an amendment on Page 5, line 25 to read "other than a person serving life without parole for an offense committed as an adult..."

The psychological research is clear that juveniles have an underdeveloped sense of responsibility, are more vulnerable to peer pressure, are less capable than adults of perceiving and comprehending long term consequences and have much less control of their environment in ways that

change with age. The imposition of very long prison sentences on juveniles – particularly life sentences, with or without parole – constitutes, in our view, cruel and unusual punishment and violates basic human rights standards.

While the Parole Board would continue to have discretion to deny parole to anyone they determine should not be returned to the community, this provision, with our suggested amendment, would ensure that children sentenced as adults have the opportunity after a decade – a lifetime for a young person – to demonstrate how they have matured and changed since their childhood offense.

It is worth noting the incredibly broad range of national organizations that support parole eligibility for children who are sentenced as adults. They include the American Bar Association, the American Correctional Association, the American Probation and Parole Association, the American Psychological Association, the National PTA, and the United States Conference of Catholic Bishops. Support of this provision and amendment would also place Rhode Island in line with reforms adopted in more than twenty other states, including our nearby states of Connecticut, Massachusetts, and Vermont. In short, no person under the age of 18 should be treated as irredeemable and locked away automatically for the majority of their life. We urge the committee's support and passage of this section with the amendment we have proposed so as to ban life imprisonment without parole for juveniles.

Section 4 would commendably amend the medical parole statute and expand it to include geriatric parole. This legislation would allow consideration of early parole for inmates who are cognitively incapacitated or elderly and suffering from “functional impairment, infirmity, or illness.” From the perspective of both national and statewide campaigns to examine the financial and social impacts of mass incarceration, we believe that this proposal is an effective start to dealing with the unnecessarily lengthy prison sentences handed down in the past.

Our *Blueprint* report noted that, as of June 2018, 34% of the ACI population was serving sentences over 10 years. The length of those sentences, in addition to the steep decline in parole release considerations – from 44% granted in 2008 to a 22% grant rate by 2014 – has contributed to the overly-long incarceration of too many individuals. And, as sentence rates have increased and parole grants have decreased, corrections costs ballooned 211% between 1985 and 2017. With a little over 20% of the current sentenced population aged 50 years and up, this proposal can begin to favorably impact both the aging incarcerated population and the DOC budget in upcoming years.

Section 7. The ACLU supports the provisions in this section making individuals eligible for community confinement one year, instead of six months, from the completion of their sentence, and establishing a “compliance” provision, similar to that for parolees, to reduce the amount of time people must serve on probation. Finally, we also support the amendment to 42-56-38, which would alter the percent of an incarcerated individual's work release salary that will be used to pay for room and board from 30% of their gross salary to 30% of their net salary. This is an important first step towards an examination of the advancement of economic equity for incarcerated individuals and should serve as a springboard for a more thorough examination of these processes.

Although there is much more that needs to be done to fully fix our criminal justice and correctional systems, Article 13 represents an important movement forward in that goal. We commend the Governor for presenting these reforms, and the ACLU hopes it will encourage further reforms in coming years. Thank you for your consideration of our views.

Submitted by: Steven Brown, Executive Director

EXCERPTS FROM INTRODUCTION TO RHODE ISLAND BLUEPRINT FOR SMART JUSTICE REPORT

Over the past five decades, the United States has dramatically increased its reliance on incarceration, caused in large part by a failure to reconcile problems of drug addiction, mental illness, poverty, and inadequate education with effective and strategic non-punitive public policy.

As a result, the United States currently incarcerates more people, both in absolute numbers and per capita, than any other nation in the world. Millions of lives have been upended, and families torn apart. The mass incarceration crisis has transformed American society, damaged families and communities, and wasted trillions of taxpayer dollars.

We all want to live in safe and healthy communities, and our criminal legal policies should be focused on the most effective approaches to achieving that goal. But the current system has failed us. It's time for the United States to significantly reduce its reliance on incarceration, and instead invest in alternatives and approaches that are better designed to break the cycle of crime and recidivism and help people rebuild their lives.

In Rhode Island, the adult Black incarceration rate of the sentenced population is nine times higher than the state's adult white sentenced incarceration rate, and the Latino rate three times higher.

Between 1980 and 2008, Rhode Island's incarcerated population rose by a staggering 429 percent. It began to dip between 2008 and 2018, declining by 29 percent, although the incarcerated population was still nearly four times larger than it was in 1980. There were also 22,611 people sentenced to community corrections in 2018, and as of 2016, Rhode Island had the second highest adult probation supervision rate in the nation at 2,680 per 100,000 adults. One in six adult Black men in the state was on probation in 2015. Since then, there have been changes in court rules and the passage of a legislative package to partly address this issue.

In 2018, 13,271 people were admitted to correctional facilities in Rhode Island, including both people entering with sentences as well as those who were awaiting trial. 53 percent of men and 66 percent of women who entered one of those facilities that year had either been charged with, or convicted for, a nonviolent or drug-related offense. Until 2016, there were no caps on felony probation terms, leading to a large number of formerly incarcerated individuals bound to extremely long probation sentences. This was partially addressed by the state Supreme Court in June 2016, which announced the adoption of a three-year probation cap for probation terms for certain nonviolent offenses. Still, probation rates are high. For example, in Woonsocket, one in eight men aged 30-34 was on probation or parole in 2018.

In 2015, about one in five (18 percent) people in the sentenced population was serving time for a property offense. Other common offenses that year included assault (14 percent), drug

offenses (13 percent), and robbery (12 percent). In 2009 and 2012, Rhode Island legislators changed some of the laws related to sentencing for drug offenses, but as of June 2018, 11 percent of the sentenced population were serving time for a drug offense.

Sentence lengths have contributed to the size of Rhode Island's incarcerated population. The average sentence imposed on people committed to Rhode Island correctional facilities in 2018 was 23 months – 31 percent longer than the average in 2008.

Black Rhode Islanders are severely impacted by mass incarceration in the state. Despite only accounting for 6 percent of the state's adult population, they made up 29 percent of the sentenced population in 2017. Latino Rhode Islanders also suffer disproportionately. In 2017, the adult Latino incarceration rate of the sentenced population was over three times higher than the adult white sentenced incarceration rate. Mental health and drug treatment needs are also prevalent in Rhode Island correctional facilities. The Rhode Island Department of Corrections reports 70 to 90 percent of their population have substance abuse histories, of which 20 percent have issues with opioid use, and RIDOC reports that 15-20 percent of their population is "severe[ly] and persistently mentally ill."