

Aging in Prison
Reducing Elder
Incarceration
and Promoting
Public Safety



A publication of the

CENTER FOR
JUSTICE
AT COLUMBIA UNIVERSITY

The continued imprisonment of a group of people who have significantly aged out of crime, who pose little public safety risk and could in fact contribute to our communities, expresses clearly the revenge principle. It tells us that for some people—especially people of color—growth and change do not entitle you to a second chance.

Soffiyah Elijah, Esq.

Executive Director, the Correctional Association
of New York

Aging in Prison: Reducing Elder Incarceration and Promoting Public Safety

November 2015

Edited by Samuel K. Roberts
Director of Policy at the Center for Justice
at Columbia University 2013–2014

A publication of the Center for Justice
at Columbia University

Acknowledgments

This publication is the product of a symposium held in March, 2014, organized by:

Be the Evidence Project/Fordham University
Center for Justice at Columbia University
Correctional Association of New York
Florence V. Burden Foundation
Mailman School of Public Health/Columbia University
Osborne Association
Release Aging People in Prison/RAPP

Thank you

Lilliam Barrios-Paoli, Colin Bernatsky, Kathy Boudin, Ariane Davisson, Annette Dickerson, Geraldine Downey, Robert B. Harris, Shoshana Jarvis, Clinton Lacey, Reverend N.J. L'Heureux, Jr., Lisa Metsch, Karen Murtagh, Michael Naft, New York City Department for the Aging, Cameron Rasmussen, Danylle J. Rudin, Skye Ross, Lisa Sangoi, Isaac Scott, Kimberly Spencer, Carin Tinney, Laura Whitehorn, Cheryl Wilkins.

Thank you for generous support from the Tow Foundation and Columbia University.

And thank you to all the symposium presenters and facilitators. We would particularly like to thank Soffiyah Elijah, Executive Director of the Correctional Association of New York, who first suggested that the Center for Justice hold this symposium.

Contents

Executive Summary VIII

Introduction X
 Recommendations for Reform XVIII

Identifying the Roots of the Problem **1**

1. An Unnecessary Crisis: How Resolving the Problem of Aging in Prison Will Help Dismantle Mass Incarceration in the United States – “If the risk is low, let them go!”
Mujahid Farid, *Lead Organizer, Release Aging People in Prison/RAPP* 2

2. Aging Behind Bars: Prison, Punishment, Parole, and Human Rights
Jamie Fellner, *Senior Advisor, U.S. Program, Human Rights Watch* 10

3. The Growth and Politicization of Life Imprisonment
Marc Mauer, *Executive Director, The Sentencing Project* 15

Experience Inside and Consequences **23**

4. Older Adults in the New York State Prison System
Brian Fischer, *Former Commissioner, New York State Department of Corrections and Community Supervision* 24

5. The Prospect of Aging in Prison: A Long-termers’s Perspective
Larry White, *Hope Lives for Lifers Project* 31

6. The High Fiscal Costs of Incarcerating the Elderly
William Bunting, *Economist, American Civil Liberties Union* 35

Reviewing Barriers to Release **43**

7. A Perspective on Some Procedures that Unfairly Delay Prisoner Release
Edward R. Hammock, Esq., *Former Chair, New York State Board of Parole* 44

Challenges to Re-entry **53**

8. The High Costs of Low Risk: The Crisis of America’s Aging Prison Population (Abridged)
Elizabeth Gaynes, *President & CEO, the Osborne Association* 54

9. Let Those Who Have Been There Guide Reentry
Gloria Rubero 59

10. New York State Department of Corrections and Community Supervision Discharge Planning Barriers: Potential Strategies
Lynn Cortella, *formerly of NYS Department of Corrections and Community Supervision* 62

11. Combating Employment Discrimination to Reduce Barriers to Reentry
Sandra Pullman, *Office of the New York State Attorney General, Civil Rights Bureau* 67

12. Co-constructing Community: A Conceptual Map for Reuniting Aging People in Prison to Families and Communities
Tina Maschi, *Professor, Fordham University* 71

13. Elders Behind Bars in the Broad Scope of Reducing Incarceration
Soffiyah Elijah, *Executive Director, the Correctional Association of New York* 78

Appendix: A Model Plan for Elder Reentry **83**

Community Re-integration Pilot Case Management Model
The Aging Reentry Task Force (*Be The Evidence Project/Fordham University; The Center for Justice at Columbia University; Florence V. Burden Foundation; NYC Department for the Aging; Osborne Association; Release Aging People in Prison/RAPP; and 30 other organizations and individuals*) 84





Executive Summary

Columbia University's Center for Justice, with Release Aging People in Prison/RAPP, the Correctional Association of New York, the Osborne Association, the Be the Evidence Project/Fordham University, and the Florence V. Burden Foundation, coordinated a symposium in Spring of 2014 to discuss the rapidly growing population of elderly and aging people in prison. In attendance at the symposium were researchers, policy advocates, current and former policy makers and administrators, elected and appointed officials, and those who have directly experienced incarceration.¹

All agreed that while the overall prison population of New York State has declined in the past decade, the number of people aged 50 and older has increased at an alarming rate. The symposium provided the time and space for key stakeholders and actors to think critically about how best to address the phenomenon of New York's aging prison population without compromising public safety.

A series of papers emerged from the symposium. Together, they provide a rich overview and analysis of aging people in prison from some of the best thinkers in this field. While the authors differ in opinion over some issues, they share several key observations and recommendations:

In New York State, the aging prison population continues to rise. The population of incarcerated people aged 50 and older has increased by 81% since the early 2000's. Currently, people aged 50 and older comprise more than 17% of the prison population. The well-documented racial disparities in the criminal justice system are also reflected in the aging prison population—a vastly disproportionate percentage of aging people in prison are Black men and women.

Prisons were not meant to be nursing homes and are poorly equipped to house an aging population. Basic structural limitations create formidable dif-

1 Presenters include: Soffiyah Elijah, Executive Director of the Correctional Association of New York; Brian Fischer, former Commissioner of the New York State Department of Correction & Community Supervision; Edward Hammock, former Chair of the New York State Parole Board; Marc Mauer, Executive Director of The Sentencing Project; Jamie Fellner, JD, Human Rights Watch Senior Director of U.S. Program; Lilliam Barrios-Paoli, former Deputy Mayor for Health and Human Services and former Commissioner, NYC Department for the Aging; Larry White, Advocate, rights of people in prison; Mujahid Farid, Lead Organizer, Release Aging People in Prison/RAPP; Will Bunting, American Civil Liberties Union; Danylle Rudin, Florence V. Burden Foundation; Elizabeth Gaynes, Executive Director of the Osborne Association; Gloria Rubero, Aging Reentry Task Force member; Tina Maschi, PhD, LCSW, ACSW, Founder and Executive Director of the Be The Evidence Project/Fordham University; Karen Murtagh, Executive Director of Prisoners' Legal Services of New York; Lynn Cortella, formerly of NYS Department of Corrections and Community Supervision; Sandra Pullman, Office of the New York State Attorney General, Civil Rights Bureau; Rev. N.J. L'Heureux, Executive Director of the Queens Federation of Churches; and Clinton Lacey, Director of the District of Columbia Department of Youth Rehabilitation Services (DYRS); former Deputy Commissioner of Adult Operations of the NYC Department of Probation.

difficulties for elderly people in prison who often have limited mobility. The lack of medical or correctional staff with specialized knowledge in geriatric care significantly impairs prisons from providing appropriate care to people experiencing chronic medical problems.

Incarcerating the elderly has serious financial implications. The cost of incarcerating someone aged 50 and older is two to five times the cost of incarcerating someone 49 and younger. An economist who presented at the symposium estimated that the United States spends at least \$16 billion annually on incarcerating elderly people.

The explosion in the aging prison population undermines basic fairness, justice, and compassion.

The boom in the aging prison population is largely the result of tough-on-crime sentencing laws and release policies. Legislators across the political spectrum are rethinking such policies because they have proved ineffective at addressing crime and have a deleterious impact on the wellbeing and safety of poor people and people of color.

Public safety does not require that we keep aging people in prison when they pose no risk to society. People in prison aged 50 and older are far less likely to return to prison for new crimes than their younger counterparts. For example, only 6.4% of people incarcerated in New York State released age 50 and older returned to prison for new convictions; this number was 4% for people released at the age of 65 and older. Nationally, arrest rates are just over 2% for people aged 50+ and are almost 0% for people aged 65+.

There are several measures New York State should implement to reform parole policy and release aging people from prison. These measures are consistent with public safety and will result in significant cost savings for New York State. In addition, there are several measures New York State must implement if it is to provide humane care for its aging prison population. Lastly, reentry services specifically tailored to elders released from prison will help ensure the protection of their human rights and dignity, as well as enhancing public safety and preventing any risk of recidivism.

We are pleased to report that the symposium resulted in the creation of a model pilot project for discharge planning and reentry—the report on this pilot is attached to this series of papers as an appendix. We hope that the knowledge collected in the symposium, the pilot on reentry, and our continued commitment to improving New York State's justice system serve as resources for you in your efforts to create a safer and healthier New York for all its residents. The groups and individuals who participated in the symposium and the Aging Reentry Task Force remain ready to provide expertise and resources to help our policy makers in these efforts. ■

Reducing Incarceration and Endless Punishment, and Moving Toward Release and Successful Reentry

Samuel K. Roberts and Lisa K. Sangoi²

Overview

The crisis of mass incarceration in the United States is now well documented. We incarcerate a greater percentage of our population than any other country in the world—with only 5% of the world’s population, we have 25% of the world’s prison population. The effect of mass incarceration on Black communities is particularly severe. One in seventeen white men are expected to serve time in prison during their lifetime, but this number jumps to one in three for African-American men. New York State is not immune: while New York’s prison population has declined over the past decade and a half, it still incarcerates a large and growing number of people aged 50 and older.³

This reflects a national trend, which experts on criminal justice have called the epidemic “graying” of the prison population. The sheer number of people aging in prison, and their particular needs, already presents a formidable challenge to the ability of correctional facilities to provide adequate care, and to state budgets to keep pace with the exponentially increasing costs of providing health care for aging people.

2 Samuel K. Roberts is Associate Professor of History at Columbia University, Associate Professor of Sociomedical Sciences at Mailman School of Public Health, and Director of the Columbia University Institute for Research in African-American Studies. From 2013 to 2014 he was Director of Policy at the Center for Justice at Columbia University. Lisa K. Sangoi graduated from NYU Law School in 2015 as an Arthur G. Hays Fellow. She is currently a staff attorney and Ford Foundation Public Interest Fellow at National Advocates for Pregnant Women.

3 Because of the added health burdens of incarceration, most experts agree that incarcerated people age at a rate approximately 10 years in advance of their non-incarcerated peers. While some studies and experts use age 55 or 60 as the threshold for categorizing incarcerated people as “older,” the symposium followed the recommendation of former New York State Department of Corrections and Community Services Commissioner Brian Fischer to set the starting age at 50.

The social, economic, health, and moral and ethical implications of this crisis were the impetus for this symposium.⁴ We brought together some of the foremost experts on aging in prison, including academics, practitioners, advocates, and formerly incarcerated people, to share their analysis and consider simple but meaningful steps that New York State could take to move towards a more just and humane system of punishment.

We learned that harsh sentencing policies and consistent underuse of release mechanisms such as parole, clemency, and medical release have significantly contributed to the rise of aging people in prison. We learned that aging people in prison, especially those who are convicted of committing the most serious violent crimes (and are thus serving long sentences), are often perceived as presenting a high risk of reoffending. Yet, the statistics bear out the opposite: aging people convicted of murder present the lowest risk of re-convictions of any prison population,⁵ and among people convicted of all categories of crimes, people aged 50 and older present the lowest risk of committing a new crime. In New York State, between 1985 and 2010, only 6.4% of incarcerated people released from prison at age 50 or older returned for new convictions within three years (compared with the total for all age groups: 14.9%).⁶ Nevertheless, this population comprises a large and growing percentage of the prison population.

We learned that incarcerating elderly people comes at a significant cost to the state: almost double the cost of housing younger people. We learned from formerly incarcerated elderly people that while many older incarcerated people are very ill and in need of medical release, many others are healthy and rehabilitated women and men who have contributed immeasurably to their correctional institutions and could become valuable, productive members of society. Lastly, we learned from New York State officials themselves who have played critical roles in parole and release planning that New York State could take several simple but courageous steps to reform parole and release policy. These steps not only represent good criminal justice, public health and fiscal policy, but are also what compassion and justice demand.

4 The contributions in this report constitute the recommendations and observations of some of the most well informed individuals in the area of aging people in America's criminal justice (CJ) system, including experts on aging, researchers, formerly incarcerated persons, reentry specialists, and members of the corrections profession. They also represent the collaborative thinking done during a day-long symposium on the subject, titled "Reducing Incarceration: Endless Punishment, Long-Term Sentences, and Aging in Prison – Or Release and Reentry," held on 28 March 2014 at Columbia University's Mailman School of Public Health and sponsored by Columbia University's Justice Initiative (since renamed the Columbia University Center for Justice), the Correctional Association of New York, Release Aging People in Prison/RAPP, the Osborne Association, Be the Evidence at Fordham School of Social Services, and the Florence V. Burden Foundation.

5 State of New York Department of Corrections and Community Supervision. 2010 Releases: Three Year Post Release Follow-Up. Retrieved from http://www.doccs.ny.gov/Research/Reports/2014/2010_releases_3yr_out.pdf.

6 *Id.*

While the symposium presentations—and the essays in this book—concentrate on the New York prison system, the conclusions can be applied nationally. In “Recommendations for Reform,” beginning on page XVIII, we list just a few of the policy recommendations the symposium speakers made for New York State. Other states (and the Federal Bureau of Prisons) will need to address the crisis in ways specific to the applicable laws and regulations.

Who Are Aging Long-Termers in Prison?

Mujahid Farid,⁷ director of Release Aging People in Prison/RAPP, notes that while the movement against mass incarceration has resulted in rethinking the nation’s treatment of people convicted of nonviolent offenses, and has even produced a perceptible dip in the overall number of people in prison, the number of aging people behind bars has skyrocketed. In New York State over the past thirteen years, while the overall prison population has decreased by 23%, the population of incarcerated people aged fifty and over has increased by 81%. This group now represents more than 17% of New York’s incarcerated population—up from 11% in 2007.⁸ Nationally, the prison population aged 55 and older quadrupled while the overall prison population increased by 41%.⁹

The author, a formerly incarcerated individual who in his time in prison was exemplary and earned multiple degrees, was denied parole release time and time again due to an immutable factor: the nature of the offense for which he was convicted. He represents an expanding demographic of the elderly prison population—individuals sentenced many years ago to 15 or 25 years to life who now remain in prison into old age. Many, like Farid, were convicted of a violent offense at a young age, and have since spent decades in prison becoming model citizens and excellent candidates for parole, except that the nature of the offense itself will prevent any meaningful opportunity for release.

Farid notes that many of these older people could make major contributions to their communities upon release. Indeed, this very fact has been noted by prison administrators who have effectively utilized the skills of these elders to strengthen programs on the inside.

How Did We Get Here And What Are the Consequences?

Jamie Fellner,¹⁰ a senior advisor at Human Rights Watch, presents a legal and philosophical analysis on the human rights implications of denying parole

7 Symposium speaker and author of *An Unnecessary Crisis: How Resolving the Problem of Aging in Prison Will Help Dismantle Mass Incarceration in the United States*.

8 State of New York Department of Correctional Services. (2012). Profile of Inmate Population Under Custody on January 1, 2007. Retrieved from http://www.doocs.ny.gov/Research/Reports/2007/Hub_Report_2007.pdf.

9 Human Rights Watch. (2012). Old Behind Bars: The Aging Population in the United States. Retrieved from <http://www.hrw.org/reports/2012/01/27/old-behind-bars-0>.

10 Symposium speaker and author of *Aging Behind Bars: Prison, Punishment, Parole, and Human Rights*.

release based solely on the seriousness of the offense of conviction. She concludes that keeping someone in prison beyond his or her minimum sentence on this basis may violate the basic human right to be free from cruel punishment (punishment that is disproportionate to the crime).

Fellner proposes a more humane and rational approach. In an indeterminate sentence, she suggests, the minimum should constitute the punishment or retribution. Once that is fulfilled, concerns for public safety—including a real evaluation of a person’s risk of reoffending—would determine how many, if any, extra years should be spent in prison. Fellner brings these points home with a vivid description of a visit to elders with dementia in a New York prison. She asks: if they have served time and experienced punishment for their offenses, and they pose no risk to public safety, what is the point of keeping them in prison?

Marc Mauer,¹¹ Executive Director of the Sentencing Project, contextualizes the growing number of elderly people in prison within the historical and social landscape of America’s criminal justice system. The increased use of lengthy prison sentences corresponded with the expansion of the prison system in the 1970’s and tough-on-crime political environment in the 1980’s and 1990’s. The rapid state and federal level enactments of mandatory minimum provisions, “three strikes and you’re out” laws, and the contraction of parole and pardon/commutation discretion not only caused the prison population to boom, but also created a rise in the number of elderly people in prison.

As Mauer points out, long-term incarceration can actually be counter-productive to public safety. Specifically, he points to the abundance of research, dating back to 1983, that older people “age out” of crime. He notes that any meaningful reduction in the incarcerated population must take this evidence into account, along with fundamental notions of justice and liberty demanding that prison sentences should never exceed the term necessary to achieve the objective of punishment.

Brian Fischer,¹² former Commissioner of New York State’s Department of Corrections and Community Supervision, examines the situation of elders incarcerated in the New York State system. New York operates Regional Medical Units for its most seriously ill inmates. Over 78% of the people incarcerated in these units are over the age of 50, and expenditures can exceed \$130,000 per patient because of the added cost of security coverage in addition to medical needs specific to aging, such as chronic illnesses, acute infections, and cognitive impairment.



11 Symposium speaker and author of *The Growth and Politicization of Life Imprisonment*.

12 Symposium speaker and author of *Older Adults in the New York State Prison System*.

Fischer suggests avenues for reform. Within the system, he recommends creating programming designed specifically for aging incarcerated people, and training all prison staff, including medical professionals, security and counseling staff, and field parole officers on the needs of this aging population. He also recommends better equipping facilities to accommodate the physical limitations and vulnerabilities of the elderly. Lastly, Fischer recommends the expanded use of parole and medical parole or compassionate release paired with programming and funds that ease the transition of terminally ill people back into the community.

What is the Experience of a Long-Termer in Prison?

Larry White,¹³ an organizer at the American Friends Service Committee, walks the reader through a convicted person's experience of joining the prison population for the long haul. The reader gets a sense of the extraordinarily painful mental adjustment a person facing a long prison sentence must make at the very outset to acclimate to the realities of prison life. White then fast-forwards fifteen years, to a person approaching their first opportunity for release and navigating an opaque parole process. White's Kafkaesque description of the routine, yet arbitrary, denial of parole to even the most exemplary incarcerated person illustrates the total agency-stripping nature of the parole process. Having worked towards parole release for the past fifteen years, the applicant must now face the reality that most long-termers are routinely denied parole, instead becoming geriatric prisoners. White leaves the reader wondering how people in prison can maintain momentum to engage in rehabilitative efforts when the chances for parole release are so bleak and the process itself can break the spirit.

White depicts what health journals have long documented: that aging people in prison are generally more sick than their counterparts on the outside, because incarceration itself damages health and well-being. The ailments that accompany aging are compounded by the effects of incarceration, resulting in a prison population that has higher rates of chronic and communicable diseases, greater risk of mental illness, dementia, and other cognitive impairments.

What Are the Financial Costs of Keeping Aging People in Prison?

William Bunting,¹⁴ an economist with the American Civil Liberties Union, provides a national overview of the impact of incarcerating the elderly, connecting the rise in the number of older inmates to escalating medical costs. Taking into account the increase in medical conditions experienced by people as they age and the need for longer and more frequent hospitalizations; the correctional environment itself which is not designed to house and care for aging popula-

13 Symposium speaker and author of *The Prospect of Aging in Prison: A Long-Termers Perspective*.

14 Symposium speaker and author of *The High Fiscal Costs of Incarcerating the Elderly*.

tions (and thus exacerbates the effects of aging); and transport off site to receive medical care, Bunting arrives at the conservative nationwide estimate of \$16 billion per year to incarcerate elderly prisoners. This exceeds the expenditure of the federal Department of Education on school improvements. Bunting concludes that as this population presents an extremely low risk of recidivism, states should consider enacting legislation allowing prisoners of a certain age who have served a minimum number of years to be considered for parole.

What Are the Structural Barriers Long-Termers Face Preventing Release?

Edward R. Hammock,¹⁵ former chair of the New York State Parole Board, discusses the statutory and regulatory barriers to release of long-termers from prison. He identifies the tendency of parole boards to deny release solely based on the seriousness of the crime of conviction. Hammock stresses that the gravity of the offense was already taken into account by prosecutors and judges at sentencing. He compares prosecutors and judges to parole board officials, arguing that because the former have a fuller knowledge of the case and the defendant, they are better situated to determine the extent to which the seriousness of the offense should factor into sentence length. He mentions several ideas for parole reform but focuses on one in particular: the adoption of public standards to govern parole decision making so that all stakeholders could contribute to a rational, regulated decision making process.

Hammock also identifies determinate sentencing and New York's prison disciplinary proceedings as obstacles to decreasing the population of elders in the prison system. In his professional observation, determinate sentencing has significantly increased sentence lengths; and, the disciplinary process is arbitrary and weighted against the individual, resulting in a loss of good time and unfavorably affecting the record a parole applicant presents to the board.

What Challenges do Aging Long-Termers Face Upon Release?

Elizabeth Gaynes,¹⁶ President and CEO of the Osborne Association, enumerates the additional burdens of older people attempting to return to the community, including difficulties securing housing and employment, as well as psychological and medical problems. Some medical problems, she says, may remain undetected amid prison conditions, emerging only upon release into the community. Few models for reentry for older people exist, Gaynes says, but effective models can be built by incorporating the knowledge and experience of correctional reentry experts with those of geriatric experts. She recommends steps towards

15 Symposium speaker and author of *A Perspective on Some Procedures that Unfairly Delay Prisoner Release*.

16 Symposium speaker and author of *The High Costs of Low Risk: The Crisis of America's Aging Prison Population (abridged)*.

successful reentry programs and argues that robust reentry models can provide an alternative to the perpetual incarceration of the elderly, allowing us to save money, meet standards of human rights, and provide effective protection for public safety.

Ultimately, Gaynes says, the swollen numbers of incarcerated elders reflect fundamental problems in the prison system as a whole, and show why it is necessary to reexamine and reform the purposes of incarceration and our society's approach to punishment. Resolving problems in the situation of aging people in prison, she argues, provides a way to begin to do that.

Gloria Rubero,¹⁷ a formerly incarcerated person, provides a first-hand account of the challenges an older person faces upon release from prison. Rubero was granted release at her fifth parole board appearance and reentered society after 26 years in a New York State prison. However, the joy of her newfound freedom was tempered by the obstacles she faced in securing basic life necessities such as employment and housing on the outside. Rubero's story illustrates how barriers to reentry discourage integration and can even foster unhealthy behaviors. Rubero argues that the input of formerly incarcerated people is critical to building an infrastructure to support those persons exiting prisons.

Lynn Cortella,¹⁸ formerly of the New York State Department of Corrections and Community Supervision (DOCCS), identifies several elements critical to effective discharge planning for the elderly, including implementing a thorough and consistent assessment protocol to identify facts relevant to reentry such as medical and family history and receipt of government benefits prior to incarceration; effective and regular communication across correctional staff including, but not limited to, medical care providers; and ensuring that medical planning upon discharge reflects a continuum of care so that, for example, people released into the community receive medication with no interruption. She notes the connection between community safety and successful reintegration of formerly incarcerated people and provides examples of programs that have addressed the needs she has identified on a small scale, either through providing a continuum of care for reentering people with HIV or HCV, or by initiating Medicaid applications prior to release.

Sandra Pullman,¹⁹ Assistant Attorney General with the New York State Civil Rights Bureau, focuses on the particular challenge employment presents for those reentering their communities, given widespread employment discrimination practices against formerly incarcerated people. She outlines New York State's legal framework for prohibiting discrimination in employment against people with criminal histories, which is more robust than the federal protec-

17 Symposium speaker and author of *Let Those Who Have Been There Guide Reentry*.

18 Symposium speaker and author of *New York State Department of Corrections and Community Supervision Discharge Planning Barriers: Potential Strategies*.

19 Symposium speaker and author of *Combating Employment Discrimination to Reduce Barriers to Reentry*.

tions currently in place. She also notes that some localities such as Buffalo have taken steps to provide even stronger protection than that offered by the state, such as prohibiting private employers with 15 or more employees from questioning applicants about their criminal histories prior to the first interview. Pullman notes that these protections are critical to reducing the collateral consequences of incarceration and reintegrating those who have served time into the community.

Tina Maschi,²⁰ founder and Executive Director of Be the Evidence Project, brings the voices of formerly incarcerated men and women and correctional staff to the page to discuss their first hand experiences with release into the community. Through the voices of those most affected, Maschi challenges the reader to confront the societal costs and moral implications of incarcerating seriously ill, frail and elderly people. She notes a paradox: though older people pose the least risk of recidivism after release, they nonetheless face some of the greatest barriers in rejoining their communities, as aging compounds the structural and societal stigma of incarceration.

Maschi effectively captures the voices of those affected and provides their perspectives on much of what is discussed in this symposium. One man's story of the empathy and guidance he received at a young age from a police officer in his neighborhood gives meaning and content to the concept of social support. Another man's account of the extreme difficulty he faced in obtaining a personal identification card, which then created obstacles to gaining government assistance, is a window into the world of the structural barriers formerly incarcerated people face every day. In bringing the reader so close to those affected, Maschi forces us to ask whether we can envision means of seeking accountability that are also compassionate and just.

Soffiyah Elijah,²¹ Executive Director of the Correctional Association of New York, provides the context and framework for thinking about change. A discussion of reforms, she argues, should be had with elderly incarcerated people themselves, who could provide critical guidance as we search for rational and humane answers to some of our nations most challenging public health and safety challenges. While adjustments within correction facilities could ameliorate the situation of older incarcerated people, Elijah says, it is only by renouncing our culture of harsh punishment—most specifically directed at people of color—that we will resolve the problem of the rising population of incarcerated elders.

20 Symposium speaker and author of *Co-Constructing Community: A Conceptual Map for Reuniting Aging People in Prison to Families and Communities*.

21 Symposium speaker and author of *Elders Behind Bars in the Broad Scope of Reducing Incarceration*.

Recommendations for Reform

Amidst the data and academic research, practitioner reports, and testimony and ideas of formerly incarcerated people themselves, one thing becomes clear: the continuing incarceration of the elderly makes little sense. Older people in prison face the greatest hardships given the challenges of their age and health; the general rigors of the correctional environment make it unsuitable to caring for the elderly; older people in prison cost correctional institutions far more than any other cohort; and, last, older people pose the least danger to public safety.

Another thing that becomes clear is that a rich source of expertise to help fix these problems already exists: people now in the community after serving long sentences, older people still behind bars, and the families of both groups offer a wealth of ideas and strategies. The symposium drew on that expertise, and it is recommended that all the processes for change should do so as well.

The American public is experiencing a sea change in its perception of criminal justice and mass incarceration, and the state and federal government are implementing proposals for reform that have emanated from both the left and right. Now is a ripe moment to reform the manner in which New York State incarcerates its aging prison population. The symposium speakers identified several key reforms that can be swiftly implemented with support from the executive branch.

Release Mechanisms²²

Utilize and expand mechanisms that promote and permit release on parole for older incarcerated people; modify parole regulations to give added weight to age in determining release, using age-related risk evaluations as a guide; do away with the parole board's reliance on the "nature of the crime" as the primary factor in parole decisions.

Increase utilization of compassionate release and medical parole policies, and expand these policies to incorporate elders with serious medical conditions that are neither terminal nor totally disabling; adopt the standard for release articulated in federal regulations: "chronic or serious medical conditions relating to the aging process [that] substantially diminish [one's] ability to function

22 It should be noted that almost every speaker at the Symposium urged the Department of Corrections and Community Supervision, the New York State executive and legislative branches, and the New York State Board of Parole to implement policies and practices to release many more aging people in the state prison system.

in a correctional facility;” remove statutory language that bars people convicted of some classes of offense from such release, and base decisions instead on individual evaluations.

Implement parole reforms such as the pending New York State Safe and Fair Evaluation (SAFE) Parole Act (S01728/A02930) to eliminate the continued reliance on the nature of the original crime as a basis for perpetual parole denial after completion of the minimum sentence.

Within Correctional Facilities

Adapt and enforce the United Nations Standard Minimum Rules for the Treatment of Prisoners²³ to preserve the dignity and human rights of incarcerated people; train prison staff in geriatric care and knowledge so that they can respect and advance such rights.

Give special consideration to the needs of older people in the design of prison spaces and programs; take age into account in classification (and re-classification) of incarcerated people to allow access to lower security institutions.

Ensure the provision of age-appropriate healthcare for older people both during incarceration and upon their release into the community; design and implement geriatric assessment care plans to evaluate the needs of older incarcerated people well in advance of their release, and connect them to appropriate community-based service providers.

Post-Release Services

Create reentry plans for older people, utilizing a “buddy” system through which formerly incarcerated elders can guide new releases through the reentry process.

Ensure continuity of care through specialized transitional planning and follow-up for the aging population, including connection to health insurance and care coordinators; bring together the expertise of two distinct groups of service providers: geriatric and correctional/reentry specialists.

Develop infrastructure within communities to receive and care for returning individuals, including enhancing the capacity of senior centers and elder services to effectively serve formerly incarcerated elders; educate communities to facilitate their support for older incarcerated people returning to communities.

23 See <http://www.ohchr.org/EN/ProfessionalInterest/Pages/TreatmentOfPrisoners.aspx>.

Conclusion: Changing the Punishment Paradigm

These essays challenge us to critically examine the current punishment paradigm. The economic, social, moral, and ethical implications of how we treat older incarcerated people are not anomalies in the system. Rather, they are representative of endemic problems in the charging, sentencing, and prison systems. The punishment paradigm, favoring retribution over rehabilitation and intolerance over mercy, has produced a bloated system of criminal justice that incarcerates far too many people for far too long. It criminalizes social vulnerability such as poverty and mental illness, and tells people that despite your best efforts at making amends, you are no better than your very worst moment. It perpetuates and expands racial injustice and destroys the ability of entire communities to be recognized as equal under the law. As spending on corrections begins to rival spending on education and healthcare, the punishment paradigm speaks to the type of society we are. We must take responsibility for this and ask ourselves if we really believe that prisons carry the same transformative potential as access to quality education, housing, employment and healthcare.

We cannot bring meaningful reform to the comprehensive system of mass incarceration by tinkering at the edges. A myopic, exclusive focus on nonviolent, low level convictions fails to address the larger ills that plague our criminal justice system and ignores the very root of the problem: an ideologically unsound attachment to punishment and tough-on-crime policies that have, ironically, made communities less secure and less prosperous. The symposium calls on leaders in the New York State government to have the courage to admit the failings of our system of punishment and to craft a system of justice built on the decades of evidence-based research that clearly tell us what we are doing right and what we are doing wrong. This research tells us that our criminal justice policy cannot and should not be guided by fear, but rather by hope, compassion, and mercy.

Appendix: The Aging Reentry Task Force

We are pleased to report that the symposium resulted in the creation of a task force²⁴ that produced the design for a pilot project for reentry of incarcerated people aged 60 and above, incorporating some of the reform recommendations of the symposium panelists. The report, titled *Community Re-integration Pilot Case Management Model*, appears in this collection of papers as an appendix. ■

24 The Aging Reentry Task Force was chaired by 5 groups: New York City Department for the Aging (DFTA), the Center for Justice at Columbia University, Release Aging People in Prison/RAPP, the Osborne Association, and Be The Evidence/Fordham University. Some 30 organizations, individual service providers, and formerly incarcerated individuals comprised the task force, with funding from the Florence V. Burden Foundation.

By establishing innovative policies providing for early release of more of the elderly prison population, leaders in New York State can effect important change in addressing the problem of mass incarceration in the United States—effecting considerable cost-savings while ensuring the safety of the community.


Brian Fischer

Former Commissioner, New York State Department
of Corrections and Community Supervision



“A whole lot of people are still incarcerated that deserve to be out on parole. They serve their sentence, go to school, stay out of trouble, and do all the required programs. But the parole board denies them release with no explanation of how to become a better candidate for parole.”

Aaron Talley, re-entry consultant
Age: 64 | Years in prison: 43

A photograph of a classical building facade with a person in the distance, overlaid with an orange text box. The building features a prominent column with a decorative capital and a balcony with a black metal railing. The scene is brightly lit, suggesting a sunny day. The orange text box is positioned on the right side of the image, containing the text "Identifying the Roots of the Problem".

Identifying the Roots of the Problem

An unnecessary crisis: How resolving the problem of aging in prison will help dismantle mass incarceration in the United States - *"If the risk is low, let them go!"*

Mujahid Farid

Lead Organizer, Release Aging People in Prison/RAPP

Across the country, politicians, officials, academics, journalists, and just about everyone else is pondering how the United States can end its international embarrassment: "Leader of the Free World," yet number one among nations in the rate at which it incarcerates its citizens.

A little more than a year ago, some other formerly incarcerated people and I joined with justice advocates to consider a salient piece of the puzzle. In the wake of reforms to the state's unnecessarily harsh drug laws, New York's overall prison population had fallen since 2000. Yet the number of incarcerated people over the age of 50 had risen and showed no signs of tapering off.²⁵

Our theory at that time, now borne out by the past year of work, was that a fever of tough-on-crime, unforgiving policies and attitudes sweeping the country over the past several decades has produced an irrational result: the very people whose release from prison would not threaten public safety are being kept behind bars as they age and grow infirm. While some advocates and correctional officials considered the crisis of the aging population in U.S. prisons by suggesting ways to make prisons more elder-friendly, we felt there was a more sensible approach to the problem—one more likely to enhance public safety, save public resources, and even help reduce the rates of incarceration for younger people.

Release Aging People in Prison/RAPP was created to accelerate the release of elderly people in New York State prisons. Currently, New York's incarcerated elders are denied release despite extensive evidence showing that they pose the very least risk to public safety. This is one of the ways mass incarceration has grown into an economic, social, and moral crisis. RAPP shows how this crisis is unnecessary and can now be remedied.

25 State of New York Department of Corrections and Community Supervision. (2000). Under Custody Report: Profile of Inmate Population Under Custody on January 1, 2000; and (2013). Under Custody Report: Profile of Inmate Population Under Custody on January 1, 2013. Retrieved from http://www.doccs.ny.gov/Research/Reports/2013/UnderCustody_Report_2013.pdf.

In the past few years, countless activists and campaigns across this nation have taken up the responsibility of dismantling mass incarceration. Many believe that these struggles together have generated some signs of progress. Nationally, there has been a slight dip in the overall number of people in prison.²⁶ Yet, the United States still leads the world in the rate at which it imprisons its people. Currently, more than 700 out of every 100,000 people are locked up in the United States.²⁷

Quite significantly, there still exists in the United States a widespread and prevailing thirst to punish. In the states and jurisdictions where downsizing of prison populations occurred, it was a result of budgetary and fiscal concerns, and of excising from prison systems the “low-hanging fruit”, i.e., those convicted of minor property and drug-use offenses. Even amidst a modest reduction in the overall U.S. prison population, the number of aging men and women expected to die behind bars has skyrocketed in a system ill-prepared to handle them and still oriented towards mass incarceration.

...a fever of tough-on-crime, unforgiving policies and attitudes sweeping the country over the past several decades has produced an irrational result: The very people whose release from prison would not threaten public safety are being kept behind bars as they age and grow infirm.

If something does not happen to cause a major shift, the facts and figures forecast an even bleaker future:

- Between 1995 and 2010, the number of state and federal prisoners aged 55 and over nearly quadrupled to 124,400, while the population as a whole grew by about 42%.²⁸
- At the current rate of growth, by 2030 there will be more than 400,000 older people behind bars, a 4,400 percent increase from 1981 when only 8,853 of state and federal prisoners were elderly.²⁹
- In New York State over the past 13 years, the overall prison population decreased by 23%—from 71,466 in 2000 to 54,865 in 2013. At the same

26 Goode, E. (2013, July 25). U.S. Prison Populations Decline, Reflecting New Approach to Crime. *New York Times*. Retrieved from http://www.nytimes.com/2013/07/26/us/us-prison-populations-decline-reflecting-new-approach-to-crime.html?_r=0.

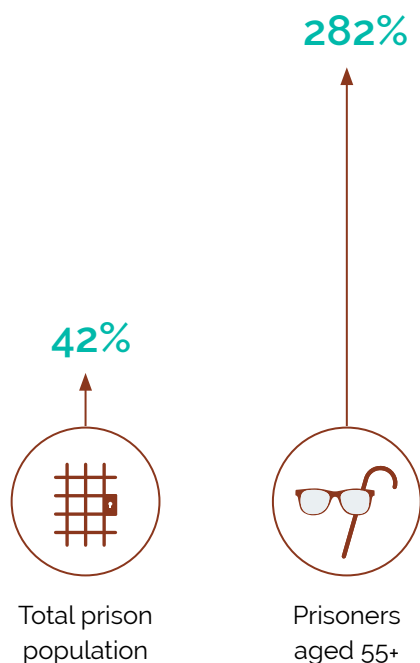
27 The Hamilton Project. (2014). Ten Economic Facts About Crime and Incarceration in the United States. Retrieved from http://www.hamiltonproject.org/files/downloads_and_links/v8_THP_10CrimeFacts.pdf.

28 Human Rights Watch. (2012). Old Behind Bars: The Aging Population in the United States. Retrieved from <http://www.hrw.org/reports/2012/01/27/old-behind-bars-0>.

29 American Civil Liberties Union. (2012). At America's Expense: The Mass Incarceration of the Elderly. Retrieved from <https://www.aclu.org/americas-expense-mass-incarceration-elderly>.

Between 1995–2015

...the number of state and federal **prisoners aged 55 and over** nearly **quadrupled**,
While the population as a whole grew 42%.



Source: Human Rights Watch

time, the population of incarcerated people aged 50 and over increased by 81%—from 5,111 in 2000 to 9,269 in 2013.³⁰

Much of this astronomical growth can be attributed to decades of expanding criminal statutes and a desire to lengthen sentences for people convicted of crimes of violence. “Truth in sentencing,” “three-strikes-you’re-out,” and similar initiatives have resulted in longer prison sentences for thousands, meaning many will hit 50 and older while still serving their sentence. In New York and elsewhere, the ballooning population of elders in prison can also be directly tied to the failure of correctional and parole systems to utilize existing release mechanisms such as parole and compassionate release to avoid imprisoning people past the time when incarceration serves any purpose.

In May 2013, the RAPP Campaign was officially launched and entered the fray. RAPP was initiated and is led by formerly incarcerated people, most of whom are in their 60’s and 70’s.

My experience is emblematic. In 1978, at age 28, I entered the New York State prison system with a sentence of fifteen years to life after being convicted of attempted murder in the first degree as the controlling charge. At the time of my arrest, I had little formal education, lacking a high school diploma. While preparing for trial on the charges lodged against me, I also prepared for and passed the G.E.D. test. Six months after arrest and conviction, I entered the state prison system with a diploma in hand.

By the time I had reached the fifteen-year mark (becoming eligible for parole) I had gone on to earn four college degrees: (1) Associate in Business; (2) Bachelors in Liberal Arts; (3) Masters in Sociology; and (4) Masters in Ministry. In addition, I had earned numerous certificates in areas such as paralegal; tax preparer; employment counselor; and HIV/AIDS peer counselor. Furthermore, at that time, I had been one of a trio who created, proposed, and organized the first HIV/AIDS peer education program in the prison system, which later developed into the widely acclaimed program (still existing in the New York prisons) called PACE (Prisoners AIDS Education & Counseling).

However, upon appearing before the parole board for release at that fifteen-year mark in 1993, not one bit of my progress and rehabilitative efforts mattered. How I changed over the years was an insignificant non-issue in the parole process. I was denied parole then, and I was denied parole again and

30 State of New York Department of Corrections and Community Supervision. (2000). Under Custody Report: Profile of Inmate Population Under Custody on January 1, 2000; and (2013). Under Custody Report: Profile of Inmate Population Under Custody on January 1, 2013. Retrieved from http://www.doccs.ny.gov/Research/Reports/2013/UnderCustody_Report_2013.pdf.

again, eight more times (every two years), all for the same reason: “the nature of the offense” for which I was convicted—an immutable factor.

In 2011, at my tenth parole board appearance, I was finally released—approaching 62 years of age. The closer I got to the release date, the more I looked around at the men I would be leaving behind, many of whom had, like me, been incarcerated since their teens and twenties and who were now, like me, more than 60 or 70 years of age. I became more sharply aware of the increasing infirmities they faced; the frailties of age; the illnesses affecting them; and their loss of hope through repeated parole denials. Like me, they had spent their entire adult lives in prison, and most were different from the person who had first entered the system. Unlike me, they were not going home.

RAPP was created because of the commitment and belief that this situation can and must be altered: release mechanisms for aging people in prison must either be created or, where they exist, utilized. The RAPP campaign (RAPPCampaign.com) embraces a large group of people in prison ignored by or excluded from efforts to challenge mass incarceration: long-termers convicted of serious crimes; people who constitute the bulk of the aged-50-and-over prison population. Many of these human beings have taken responsibility for their crimes; have transformed their lives and developed skills and abilities they lacked before incarceration; and could be released from prison with no threat to public safety.

In New York and elsewhere, the ballooning population of elders in prison can also be directly tied to the failure of correctional and parole systems to utilize existing release mechanisms such as parole and compassionate release to avoid imprisoning people past the time when incarceration serves any purpose.

RAPP combines public education, direct policy proposals, and evidence-based advocacy to promote the release of elderly men and women, including those seeking compassionate medical release in New York State. This group is generally classified as “low risk” for recidivism, yet referred to as “high risk” in most government and criminal justice publications simply because of their original crime—mostly crimes of violence. Significantly, the RAPP approach does not seek to expand release opportunities for certain classes of offenses by denying opportunities for others. Rather, RAPP insists that parole decisions be based on a person’s individual merits and experiences inside. This principle makes the RAPP Campaign effective as an approach to decreasing New York’s prison population. If approaches to de-carceration do not include people convicted of crimes of violence, the prison population (especially people over the age of 50)



will continue to grow: In New York State, as of early last year, 64 percent of the prison population was serving sentences for violent felony offenses.³¹

RAPP's approach to this question also allows us to challenge a fundamental pillar of mass incarceration: **the reliance on a system of permanent punishment, a culture of retribution and revenge rather than rehabilitation and healing.** RAPP upholds the principle that when a person, regardless of the crime or sentence, has duly paid for his or her offense against another person or against the society, and he or she no longer poses a risk to public safety, it is inhumane to keep the person caged simply to satisfy a primordial thirst for vengeance—especially when there may never be a way to satisfy the thirst. We argue that the culture of permanent punishment thrives on (as well as extends) the power of racism, disproportionately targeting people of color and deeming them unworthy of a second chance.

Keeping the elderly confined when they pose no risk is a costly proposition, both economically and socially. In 2010, the United States spent over \$80 billion for the upkeep of prison populations with the bulk of the cost being borne by state and local governments.³² These costs translate into increasing tax levies on the working population and reduced funding for other, potentially more effective, strategies such as addressing crime-generative factors in the communities most impacted by mass incarceration. Research has shown that addressing many of the crime-generating factors in underprivileged communities is more cost-effective in producing public safety than expanding incarceration rates.³³

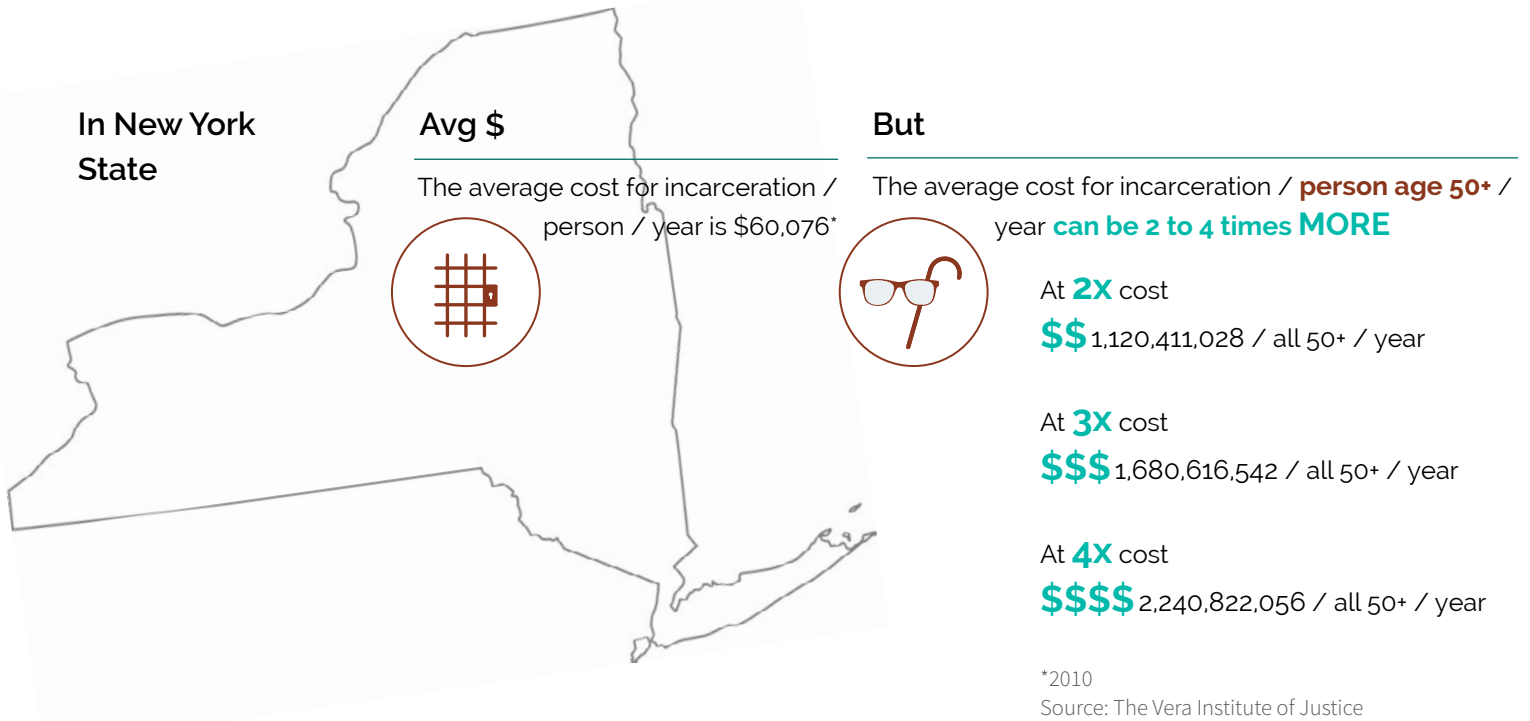
In New York State in 2011, where the annual budget for corrections was about 3.6 billion dollars, the estimated cost for housing the average person in a prison population that was at 59,237 came to about \$60,000. When we consider that it can cost from 2 to 4 times more to house an elderly person over the age of 50, the dollars spent for that segment of the population can be staggering.

One irony of promoting mass incarceration as a way to protect public safety is that it creates broader negative collateral consequences that affect entire communities, ultimately damaging public safety. High rates of incarceration can have devastating effects on families and communities. This happens mostly in those communities of color where mass incarceration has its most widespread and potent negative effects.

31 State of New York Department of Corrections and Community Supervision. (2013). Under Custody Report: Profile of Inmate Population Under Custody on January 1, 2013. Retrieved from http://www.doccs.ny.gov/Research/Reports/2013/UnderCustody_Report_2013.pdf.

32 The Hamilton Project. (2014). Ten Economic Facts About Crime and Incarceration in the United States. Retrieved from http://www.hamiltonproject.org/files/downloads_and_links/v8_THP_10CrimeFacts.pdf.

33 The Sentencing Project. (2013). Annual Report 2013. Retrieved from http://sentencingproject.org/doc/publications/AR_2013_FINAL.pdf.



Professor Todd R. Clear, in his research on the issue, identified six separate areas where mass incarceration has negatively impacted disadvantaged communities:³⁴

- It has weakened labor markets and earning power;
- It has contributed to the reduction of marriage rates;
- It has imposed economic strain on families;
- It has damaged life chances for the children of people being confined;
- It has elevated problems with health and the prevalence of STD's; and
- It has promulgated negative attitudes towards the justice system.

There is a basis to believe that mass incarceration actually diminishes public safety. In his research, while Clear acknowledges that there are “considerable methodological challenges” to trying to establish a causal link or association to reduced public safety, he finds that “as empirical evidence of the negative consequences of incarceration grows, the case that concentrated incarceration has become criminogenic in its effects on involved communities has become stronger.”³⁵

Are there Essential Elements for Disrupting Bleak Prognostications of Mass Incarceration?

Given the fact that mass incarceration has deeply embedded roots in economic, social, and racial factors, any drive to de-construct must follow myriad strategic tracks. There must be projects and campaigns launched which address every

34 Clear, T. R. (2003). The Problem with ‘Addition by Subtraction’: The Prison-Crime Relationship in Low Income Communities. In Marc Mauer and Meda Chesney-Lind, eds., *Invisible Punishment: The Collateral Consequences of Mass Imprisonment*. 181-194. NY: The New Press.

35 *Id.*

clearly identifiable aspect that negatively affects communities and institutions “from the cradle to the grave.”

There will be a need to recognize that, contrary to some popular claims, mass incarceration was not simply a response to crime. History shows that the carceral spirit is motivated by class, economic, and racial concerns. Michelle Alexander eloquently explained the dynamics of mass incarceration and debunked the myth that it was impelled by street crime when she illustrated that President Reagan actually declared his administration’s “War on Drugs” before the so-called crack epidemic had taken root and the U.S. Justice Department had announced the cutting in half of the personnel assigned to the prosecution of white-collar crimes.³⁶ There is also academic evidence suggesting that most of the growth in the incarceration rate can be attributed to changes in official policies.³⁷

Now, a fast-dropping crime rate has been a growing phenomenon. Crime in America has dropped to a 30-year low and there is no question that Americans are safer now than they have been in decades. So one question that needs to be asked is: “why is there such a cultural lag with respect to the punishment paradigm?” There are still some policy makers who support and uphold harsh punitive policies. Even when this excessive spending on caging people threatens sound fiscal budgets, they refuse to implement ameliorative measures where it involves people convicted of serious offenses. They follow this course even when these elderly people have already served very long sentences; are legally eligible for release; and are officially classified as low-risk. This is a policy and practice that contradicts the philosophy of parole.

When released from prison, the vast majority of people over the age of 50 do not return. Compared to a recidivism rate of 40-60% amongst the general prison population, the return rate of long-termers convicted of murder (most commonly people of advanced age) is the lowest (6.6%) system-wide, with only 1.3% returning for a new commitment.³⁸ Dangerous behavior diminishes with age. The very few elderly people who do return to prison generally do so because of a technical parole violation such as failing to report to a parole officer or moving without notifying the officer.

There is often a misconception that when we refer to elderly people in prison being released, we are only talking about those who have been severely damaged (either psychological or physically) by the prison experience, and who would require some intense level of senior care. The truth is that there is a

36 Alexander, M. (2010). *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. New York: The New Press.

37 Raphael, S., Stoll, M. (2013). *Why Are So Many Americans in Prison?* New York: Russell Sage Foundation.

38 State of New York Department of Corrections and Community Supervision. (2007). 2007 Releases: Three Year Post Release Follow-up. Retrieved from http://www.doccs.ny.gov/Research/Reports/2012/2007_releases_3yr_out.pdf.

large segment of low-risk elderly people in confinement who could make major contributions to our communities and societies upon release. Prison administrators have long been aware that older people who have served long sentences are often the best resources behind the walls. They frequently serve as role models, facilitate rehabilitation programs, and provide leadership—having found meaning in life through service to others. The same would hold true were these individuals released on parole into their communities. There are countless examples of formerly incarcerated people, including elders, who play prominent leadership roles in some of the most widely known and effective re-entry programs.

Finally, there is a need to recognize that we will never dismantle mass incarceration by tinkering at the edges, i.e., opening the population spigot by discharging people with low-level convictions, many of whom, perhaps, should never have been imprisoned in the first instance. A solution requires getting to the essence of the punishment paradigm and building strategies for change based on such a foundation. By urging that elders who pose no risk to public safety be released despite continued calls for perpetual punishment, RAPP presents policy makers with a rational strategic plan. Our slogan: “If the risk is low, let them go,” offers a rallying cry for this sensible answer to the crisis of aging in prison.

For policy makers to embrace this thinking and fight for laws and regulations that reflect it, they will have to challenge some wrong-headed but popular notions of crime. To do so will require commitment and leadership. RAPP and other prison justice campaigns will do our best to provide popular support for all who exhibit such leadership and commitment. Together we can change the current crisis of aging in prison and, by extension, our country’s reliance on mass incarceration to hide the very real social issues that face us. ■

Mujahid Farid is the lead organizer for Release Aging People in Prison/RAPP (RAPPCampaign.com; rappcampaign@gmail.com). He served 33 years in New York prisons, during which time he earned degrees from Syracuse University, SUNY/New Paltz, and New York Theological Seminary. He helped create the first HIV/AIDS peer education program in NY prisons and a college certificate program sponsored by New York Theological Seminary. He was a 2013 Soros Justice Fellow.

Aging Behind Bars: Prison, Punishment, Parole, and Human Rights

Jamie Fellner

Senior Advisor, U.S. Program, Human Rights Watch

Two years ago, I was at Fishkill Correctional Facility in New York, visiting a unit for aging incarcerated people who had dementia. They were playing bingo, and some of them had such advanced dementia that they needed staff to help them put the markers on the cards. They were unable to do that for themselves.

Yet they were still in prison. I think that symbolizes the tragedy of—and the lack of any rationale for—keeping people in prison past a certain point. To unravel the crisis of the rising population of older people behind bars, we need to think about the purposes of punishment. We need to go back to first principles.

Holding people accountable for crime, especially a crime that has injured someone in a very real and direct way, is indispensable to a criminal justice system. But committing a crime or being convicted of a crime does not give the state license to impose whatever punishment it wants.

There's no flogging anymore, and we certainly don't draw and quarter people. But we do routinely, consistently, and continually impose punishments that are nonetheless still cruel. From a human rights perspective, a prison sentence can be cruel and inhuman punishment if it is disproportionately long relative to the crime committed and the culpability of the individual. The principle of parsimony is included in the concept of proportionality: the sentence imposed should be no longer than necessary to achieve the purposes of punishment. Excessively long sentences are perhaps most obvious with regard to drug crimes. Drug trafficking warrants concern, but selling drugs should not routinely be considered a crime that demands sentences of 10, 20, or 30 years—much less life without parole.

Crimes of violence get a little trickier. What kind of sentence is proportionate for murder? We have to understand the grief, rage, and endless loss of people who have lost loved ones to criminal violence. Their feelings deserve attention and respect. But that does not answer the question of how much time in prison is long enough for a just punishment but not so long as to become unjust. To do so, we should begin by looking at the purposes of sentencing.

Those begin with retribution: someone should be punished because they have done a terrible thing. Then we have incapacitation: we want to protect public safety by keeping a person who has committed a crime locked up so he or she cannot commit another crime. Deterrence: we want to send a message to the

offender or others that engaging in the criminal conduct will be punished, so don't do it. And finally, rehabilitation: we want people who commit crimes to change so that they are less likely to do so again.

All of these purposes should factor into a sentence. But the balance among those purposes of punishment changes as someone becomes old and infirm. For instance, if somebody can't even put the markers on a bingo card, are they really a threat to society? If a former bank robber is permanently bedridden, are prison bars necessary to keep him from robbing again? The need for incapacitation changes with aging.

From a human rights perspective, a prison sentence can be cruel and inhuman punishment if it is disproportionately long relative to the crime committed and the culpability of the individual.

In terms of deterrence, do we truly think that telling a 30 year-old: "you're going to get out after 20 years," as opposed to 30 years, makes much of a difference? Research suggests the length of sentences has minimal deterrent impact. So we are back to retribution. How much is enough? I think we need to engage with that conversation directly, not by minimizing the crimes that were committed, but by saying human rights require respect for the human dignity of every person, including people who have raped, maimed, and murdered. At some point, respect for human dignity means a chance to reintegrate with society, a chance to make amends, and a chance to have the criminal justice system acknowledge personal changes, whether those changes were due simply to growing up and aging, or to more intentional efforts at personal development. Even if you have committed a crime as an older person—and unfortunately there are many crimes committed by 50, 60, and 70 year-olds—you still can change. That possibility of change has to be recognized in sentencing.

For starters, then, we object to disproportionately long determinate sentences, including life sentences without the possibility of parole.

This brings us to problems with the parole system. The theoretical possibility of parole is inherent in what are called indeterminate sentences in which the sentence is typically set for a minimum and a maximum. After the minimum has been served, the individual is eligible for release on parole up to the time the maximum sentence has been served, when release is mandatory. In many cases, a sentence is set for a fixed number of years as a minimum, with life as a maximum. So, absent parole, the individual will die behind bars.

As best I can tell, parole boards often do not recognize a person's capacity for change over time. They frequently deny parole based on the original crime of conviction, regardless of how long ago it was committed or evidence that the person who committed the crime has changed.

If indeterminate sentences are used, I would suggest a model based on the purposes of punishment to determine actual time that someone should serve. Take a sentence of 20 years to life imposed on an adult for a homicide. The first 20 years is for retribution. It is the punishment imposed as “just desserts” because of the crime. Once the minimum 20 years has passed, decisions whether to grant parole should be based solely on considerations of public safety. The “nature of the offense” alone should not be a sufficient basis to deny parole. This is the way it is in some countries in Europe—a sentence that consists of a “punishment tariff,” followed by continued incarceration only as necessary for public safety.

Take a sentence of 20 years to life imposed on an adult for a homicide. The first 20 years is for retribution. It is the punishment imposed as “just deserts” because of the crime. Once the minimum 20 years have passed, decisions whether to grant parole should be based solely on considerations of public safety—and the “nature of the offense” alone should not be a sufficient basis to deny parole.

If parole decision makers are going to deny parole for an individual, they should be required to explain why the individual remains a public safety risk by pointing to specific evidence of events or conduct subsequent to the crime. They should be required to explain why, for example, the individual remains at risk of recidivism if released despite good conduct in prison, the completion of educational programs, and, where relevant, current physical or mental disabilities. The burden of proof that decision makers have to satisfy to deny parole should become harder and harder to satisfy the longer the time the person has spent in prison.

My research suggests this is not how parole processes typically work today in New York or across the country. That is shown, perhaps most tellingly, in connection to medical parole. Most (though not all) states and the federal government have something called compassionate release or medical parole. These are laws or regulations that are supposed to take into account age and infirmity. The actual decision makers vary in different jurisdictions, e.g. a parole board, the director of corrections, or a governor. Regardless of the process, my sense is that all too often, the nature of the crime trumps any other consideration, including the person’s current physical or mental condition. Many reasons lie behind the paucity of medical parole releases. Prosecutors work hard to secure convictions, and they are often opposed to early release regardless of whether the person is no longer capable of engaging in crime. Many politicians still embrace a “tough on crime” attitude that will not accept the reality of individual change and rehabilitation. Some victims’ families and victims’ associations also oppose any early release, believing someone who has killed should never leave prison except “in a pine box.”

I realize that deep convictions may lie behind such beliefs, but criminal justice must be about more than retribution—or politics and pandering to fear. It must include rational, careful, and individualized decisions about the public safety risk an individual might pose if released from prison.

Assessing the risk that someone released from prison will commit another crime is neither easy nor foolproof. Indeed, risk assessment instruments used today by criminal justice agencies are still quite flawed in the accuracy of their predictions. They give, for example, too much weight to the crime of conviction. Yet research has shown that people who commit violent crimes such as murder tend to have the lowest rates of recidivism. In other words, they're the lowest risk. And the likelihood of criminal conduct also declines markedly with age, which is something that the instruments also sometimes fail to properly weigh. There are also important factors that may not be captured in risk assessment instruments but that nonetheless bear on the likelihood of recidivism, e.g. health status, mental wherewithal, or the desire to spend remaining days with children or grandchildren.

Parole decision makers also reject parole requests because they are not willing to tolerate any risk—even an infinitesimally small risk—that the parolee might commit a horrific crime. The shadow of Willie Horton colors the parole process (even though Horton had been released on furlough, not parole). Yet risk is inherent in the human condition. If we did a risk assessment of everyone in this room, for example, who knows what we would find? We have to start becoming a little more comfortable with the idea that there's always going to be some risk, since human beings are mysterious. Our futures cannot be foretold just by adding up some numbers, and the past is not always the best predictor of the future.

I'm not saying that there shouldn't be risk assessments. But we should use risk assessment instruments with caution, and the process should retain a role for human judgment—flawed as it also is—in making release decisions.

Even if parole decision makers are required to pay due attention to post-incarceration conduct and circumstances and not rely on the crime of conviction, how would we know if they have in fact done so? The parole process lacks transparency. The general public may not attend parole hearings, and hearing transcripts are not public. Parole decision makers usually do not have to explain their decisions—they simply vote thumbs up or thumbs down.

They do not have to articulate why they believe a person who has completed the lower end of a sentence continues to pose a risk and should remain behind bars—often despite age and infirmity. We, the public, have no way of knowing whether principle or prejudice motivated their decisions; whether their vote was arbitrary or based on careful consideration of all the evidence.



The importance of parole and early release decisions is growing as the prison population ages. In a 2012 report, *Old Behind Bars*, Human Rights Watch reported the soaring number and percentage of aging people in prison.³⁹ For example, between 1995 and 2010, the prison population aged 55 or older nearly quadrupled, and grew at seven times the rate of the overall prison population. Yet, as we documented, prison is especially punishing for the elderly. Prisons are not designed for people who need wheelchairs, walkers, portable oxygen tanks; who cannot get dressed without help or haul themselves to the top bunk; who are incontinent; who have Alzheimer's; or who are permanently bedridden. Since illness tends to increase with age, older incarcerated peoples' medical costs are three to nine times as high as those for younger incarcerated people.

Cost is part of the crisis of the aging population in prison. Those men who needed help placing markers onto a bingo card are costing New York State an enormous amount.

But cost is not the fundamental argument for ensuring (through parole, medical parole, and compassionate release processes) that people do not remain in prison after continued incarceration no longer serves the purposes of punishment. The fundamental argument is one of human rights. The United States is party to key human rights treaties that set boundaries on punishment, including the length of sentences, but they are not self-executing. You cannot go into court and say, "I have a human right to a just sentence or to early release." But the human rights framework offers a way of reminding ourselves—and public officials—that we are dealing with human beings who, by virtue of their humanity, have rights, including the right to a fair sentence that is proportionate to the crime and their culpability.

While a prison term may have been proportionate at the time it was originally imposed, increasing age and infirmity may change the calculus against continued incarceration in favor of some form of medical or compassionate release. If the sentence was indeterminate, age and infirmity should factor heavily into a parole decision. Unfortunately, I suspect most state legislators and corrections officials here in New York and elsewhere have no idea that they have human rights obligations—much less what they require. I believe putting forward practical, sensible, and rights-respecting alternatives to the current system of sentencing and release will enhance human rights in this country over time, and is essential to reducing not only the scope of incarceration overall in this country, but also the growth of our aging prison population. ■

39 Human Rights Watch, *Old Behind Bars: The Aging Prison Population in the United States*, 2012, available at <http://www.hrw.org/reports/2012/01/27/old-behind-bars-0>.

The Growth and Politicization of Life Imprisonment

Marc Mauer

Executive Director, The Sentencing Project

I first began working on prison and sentencing issues in Michigan in the 1970s. I spent quite a bit of time over the years visiting at Jackson Prison, described at the time as “the largest walled prison in the world,”⁴⁰ which then held about 5,000 people behind bars. Over time I got to know many of the lifers at the prison, some of whom had developed an advocacy and support group: the National Lifers Association. Because of their desire to educate the public about the issues revolving around life imprisonment, we jointly developed a prison visitation program that involved bringing members of church or community groups to spend an afternoon with the lifers and to learn something about their lives. I believe that every person who participated in the program was significantly changed by the experience.

Two things emerged from that experience for me: first, visitors were changed by their interactions with the lifers, because the visitations allowed them to break down their stereotypes of lifers and incarcerated people in general—in particular, to address common prejudices many people share regarding this population. Rather than being defined as “armed robbers” or the perpetrators of some other serious crime, they became 30- and 40-year old men who had committed serious harm at one point in their lives, but who (in most cases) were now very different from the 19-year olds who had been sentenced to life in prison. To varying degrees, they expressed remorse, insight, and generally a strong desire to have a second chance in life.

Second, in a significant number of cases, those men actually *did* have an opportunity to gain a second chance. At the time, it was not unusual for a person sentenced to life with the possibility of parole to be granted release after serving 15-18 years with good behavior. Judges, prosecutors, and defense attorneys all knew of this policy on the day of sentencing, and there was little debate about its merits. Even among those sentenced to life without parole, release was occasionally possible through a gubernatorial commutation. One such person I came to know well over the years, who was incarcerated for felony murder, was granted release after serving 21 years in prison. He went on to earn a Ph.D. in African Studies and is now a tenured professor at a major Midwestern university.

Of course, many lifers are never released from prison, or they are released only after decades behind bars. But as we look at the landscape of American prisons

⁴⁰ Experience Jackson. *Experience Jackson's Prison History*. Retrieved from <http://www.experience-jackson.com/things-to-do/attractions/prison>.

today, one of the most striking features of mass incarceration is the degree to which the number of sentences of life imprisonment has exploded in recent decades. One of every nine people in prison is now serving a life sentence—nearly a third of them life without parole.⁴¹ The implications of these developments for public safety, control of prison growth, and societal compassion are quite profound. In this essay I trace the expansion of the use of life sentences, the effects of these changes on the prison population, and their significance for long-term incarcerated people.

The Growth of Life Sentences

Life sentences have been included in most states' sentencing structures for well over a century. While there is little comprehensive data on the use of life sentences until recent decades, it is apparent that for much of this period life sentences were imposed with the assumption of the possibility of parole release within a reasonable period of time.⁴² In the federal prison system, for example, as far back as 1913, parole reviews took place after an individual served 15 years in prison.⁴³ Today, since the advent of the federal sentencing guidelines in 1987, all federal life sentences are now imposed without parole.⁴⁴

Data in recent decades demonstrate the high growth rate of life imprisonment. In 1984, about 34,000 people were serving life sentences. Today, more than 159,000 are serving such prison terms.⁴⁵ As a result of these changes, 10.6% of persons in state or federal prisons are currently serving a life sentence.⁴⁶

Moreover, this has been a disproportionate increase in the number of people sentenced to life without the option of parole. Nearly a third of incarcerated persons serving life sentences are not eligible for parole. In just four years, from 2008 to 2012, these figures increased by 22%; during the same period, the overall prison population and the rate of violent crime actually declined. Among the 49,000 persons serving life sentences without the option of parole, an estimated 2,600 were sentenced for crimes that were committed when they were under the age of 18. Currently, the United States is the only country in the

41 Nellis, A. (2013). Life Goes On: The Historic Rise in Life Sentences in America. *The Sentencing Project*. Retrieved from http://sentencingproject.org/doc/publications/inc_Life%20Goes%20On%202013.pdf.

42 Mauer, M., King, R. S., Young, M. C. (2004). The Meaning of "Life": Long Prison Sentences in Context. *The Sentencing Project*. Retrieved from http://www.sentencingproject.org/doc/publications/inc_meaningoflife.pdf.

43 Fulwood, I. (2003, May). History of the Federal Parole System. *U.S. Department of Justice*, 7. Retrieved from <http://www.justice.gov/sites/default/files/uspc/legacy/2009/10/07/history.pdf>.

44 Nellis, A. (2010). Throwing Away the Key: The Expansion of Life without Parole Sentences in the United States. *Federal Sentencing Reporter*, 23(1). Retrieved from http://sentencingproject.org/doc/publications/inc_federalsentencingreporter.pdf.

45 Nellis, A. (2013). Life Goes On: The Historic Rise in Life Sentences in America. *The Sentencing Project*. Retrieved from http://sentencingproject.org/doc/publications/inc_Life%20Goes%20On%202013.pdf.

46 *Id.*

world to continue the practice of sentencing children to life in prison without parole.⁴⁷

Unfortunately, in many states, people sentenced to life with the possibility of parole have found that being granted parole is increasingly unlikely. Whereas previously a judge may have sentenced a defendant to life with parole for an armed robbery with the belief that the individual might earn release after 15-20 years, in many instances, such a possibility has now been all but erased. In California, in recent decades, it has not been uncommon for lifers to go before the parole board with a letter of support from their sentencing judge and still be denied parole release.⁴⁸

We have also seen an unfortunate and sharp decline in the use of the power of pardon and commutation by executives at the state and federal levels. Previously, governors and presidents exercised their powers of mercy to recognize either the injustice of excessive sentences or individual rehabilitation. Today, however, political considerations trump humanitarian ones. The scale of this decline can be seen quite dramatically at the presidential level, where the proportion of such requests approved by the White House declined from 33% during the Reagan era to 12% under Bill Clinton, to 3% under George W. Bush, and just 2% during the first term of the Obama administration.⁴⁹ While the Obama administration has recently issued a call to the defense bar to submit more commutation requests for consideration, during the first five years of his administration, the President issued only 52 pardons and 9 commutations. Meanwhile, the federal prison population exceeds 200,000 people.⁵⁰

Some international context and comparison may help to provide perspective on the exceptional nature of American policies on life sentences. A 2013 ruling by the European Court of Human Rights found that the penalty of life without parole in the United Kingdom violated human rights norms by not permitting the consideration of release at some point.⁵¹ At the time of the ruling, 49 persons were serving such sentences in the U.K. This contrasts with the 49,000 people serving such sentences in the U.S. (or 1,000 times as many as in the U.K.),



47 Sheriff, N. (2015, March 9). UN Expert Slams US as Only Nation to Imprison Kids for Life Without Parole. *Al Jazeera America*. Retrieved from <http://america.aljazeera.com/articles/2015/3/9/un-expert-slams-us-as-only-nation-to-sentence-kids-to-life-without-parole.html>.

48 See Weinstein, H. (2007, August 4). Battered Woman to Be Freed after Killing Man in '86. *Los Angeles Times*. Retrieved from <http://articles.latimes.com/2007/aug/04/local/me-battered4>.

49 Linzer, D. (2012, November 2). Obama Has Granted Clemency More Rarely Than Any Modern President. *ProPublica*. Retrieved from <http://www.propublica.org/article/obama-has-granted-clemency-more-rarely-than-any-modern-president/>.

50 Federal Bureau of Prisons. *Population Statistics*. Retrieved from http://www.bop.gov/about/statistics/population_statistics.jsp.

51 *Case of Vinter and Others v. The United Kingdom* (Applications nos. 66069/09, 130/10 and 3896/10). European Court of Human Rights (9 July 2013).

even though our population is only four times as large.⁵² To date there have been no successful legal challenges to such prison terms in the U.S. aside from the significant but relatively modest number of people affected by rulings on juveniles serving sentences of life without the option of parole.⁵³

In addition to the dramatic increase in the number of incarcerated people serving life sentences in the U.S., there are a substantial number of people currently in prison who are serving sentences that essentially equate to a life prison term (known colloquially as a “virtual” or de facto life sentence). A sentence of 60 years or more imposed on a defendant in his or her 20’s or 30’s essentially means that that individual will never be released from prison. There are no hard data on the number of people serving such terms, but anecdotal evidence suggests that these figures are rising as well.⁵⁴

The Driving Forces of Life Imprisonment

The growing number of people serving long-term and life sentences in the United States results from several factors. Foremost among these is the overall expansion of the prison system since the early 1970s.⁵⁵ As a result of the “tough on crime” political environment during the 1980s and 1990s, revised sentencing policies had the effect of lengthening sentences for most offenses. Life sentences also proliferated.

In the mid-1990s, these sentencing trends were magnified by the implementation of “three strikes and you’re out” laws that generally mandated a life sentence upon the conviction of three violent offenses. Originally introduced in the state of Washington in 1994, a rush to develop similar policies took hold around the country. By the end of the decade, half of the states had enacted such measures.⁵⁶ The California “three strikes” policy was by far the most extreme. In that state, the first two strikes had to be “serious or violent” felonies as defined by statute, but the third strike could be *any* felony offense, no matter how minor. The third strike conviction would result in a mandatory prison term of 25 years to life. In one of the two cases which challenged the constitutionality of the law in the U.S. Supreme Court, the individual’s third strike was for stealing three golf clubs from a sporting goods store;⁵⁷ the plaintiff in the second case was convicted of stealing \$153 worth of videotapes from a K-Mart

52 Nellis, A. (2013). Life Goes On: The Historic Rise in Life Sentences in America. *The Sentencing Project*. Retrieved from http://sentencingproject.org/doc/publications/inc_Life%20Goes%20On%202013.pdf.

53 *Graham v. Florida*, U.S., 130 S. Ct. 2011 (2010), *Miller v. Alabama*, U.S., 132, S. Ct. 2455 (2012).

54 Villaume, A. C. (2005). ‘Life Without Parole’ and ‘Virtual Life Sentences’: Death Sentences by Any Other Name. *Contemporary Justice Review*, 8(3).

55 Pettit, B., Western, B. (2004). Mass Imprisonment and the Life Course: Race and Class Inequality in U.S. Incarceration. *American Sociological Review*, 69(2).

56 Lucken, K., Blomberg, T. G. (2012). American Corrections: Reform without Change. In *The Oxford Handbook of Sentencing and Corrections*, ed. Petersilia, J., Reitz, K. R.

57 *Ewing v. California*, 538 U.S. 11 (2003).

store.⁵⁸ The Court rejected the argument that the policy represented “cruel and unusual punishment” under the Eighth Amendment, deferring instead to the legislature’s prerogative to set penalties to meet public safety objectives. It was not until 2012 that the state law was amended through a ballot measure that now requires that the third strike be of the same severity as the first two strikes.⁵⁹

The movement toward the more frequent use of life sentences was spurred in part by the U.S. Supreme Court’s striking down capital punishment in 1972.⁶⁰ Although that ban only lasted for four years, legislative bodies in some states reacted to this perceived gap in harsh sentencing by creating life sentences without the option of parole. Many of these states had been ones in which all life sentences previously had included a parole option. This trend accelerated throughout the 1990s, and today all states except Alaska have a life without parole statute.⁶¹

Support for the policy of life without parole has been employed as a campaign strategy not only by “tough on crime” hardliners, but by death penalty abolitionists as well. In state campaigns to end the death penalty, a number of which have been successful in recent years, leaders have frequently sought to assuage the fears of the public by arguing that life sentences without the option of parole will ensure that convicted individuals will never be released from prison. While such arguments are understandable when dealing with an issue as fraught with emotion as the death penalty, such policies have still led to excessive punishments in many cases. An examination of the expansion of life sentences without the option of parole demonstrates that these sentences are applied in cases well beyond those in which the defendant might have been subject to a death sentence. Now they are frequently imposed in cases in which people would previously have been eligible for parole consideration.

Ironically, the expansion of life sentences has at times been bolstered by the criminal justice reform movement. This has come about as some advocacy campaigns have developed sentencing reform proposals that categorize the prison population in terms of the offenses of conviction. Thus, proponents of schemes to divert people convicted of low-level drug offenses from incarceration have often framed their proposals with the reasoning that such diversion is needed in order to create institutional space for people convicted of violent crimes “who need to be there.” In one of the more extreme of such instances, a spokesperson for the 2012 “three strikes” reform campaign in California argued that “[w]hat voters wanted in the first place was to make sure the

58 *Lockyer v. Andrade*, 538 U.S. 63 (2003).

59 State of California Attorney General. Proposition 36. Retrieved from <http://vig.cdn.sos.ca.gov/2012/general/pdf/36-title-sum-analysis.pdf>.

60 *Furman v. Georgia*, 408 U.S. 238 (1972).

61 Nellis, A. (2013). Life Goes On: The Historic Rise in Life Sentences in America. *The Sentencing Project*. Retrieved from http://sentencingproject.org/doc/publications/inc_Life%20Goes%20On%202013.pdf.

truly most violent *monsters* are locked up forever” (emphasis added).⁶² If the advocates for reform describe people serving long-term sentences as “monsters,” one can only imagine how such people are portrayed by individuals and groups that oppose efforts to reduce prison populations.

Consequences of Excessive Sentences

Excessive long-term incarceration is counterproductive to public safety goals and contributes to a system that is unjust and lacking in compassion. While long-term sentences are premised in large part on considerations of public safety (to incapacitate persons who present a serious threat to the community), this rationale produces diminishing returns over time. It is well established that older people, including those in prison, largely “age out” of crime. For example, arrest rates for violent crime within three years of release from prison for persons aged 40 or older are half that of released persons who are 24 or younger.⁶³ In addition, incarceration costs for an increasingly elderly prison population continue to rise, in large part due to the health care needs of persons over 50.⁶⁴ Thus, lengthy incarceration does little to protect the public, at an increasingly high cost.

While long-term sentences are premised in large part on considerations of public safety—to incapacitate persons who present a serious threat to the community—this rationale produces diminishing returns over time. It is well established that older people, including those in prison, largely ‘age out’ of crime.

Some might argue that such expenditures are worthwhile even if they provide only a modest impact on public safety. Public safety resources, however, are finite, and excessive spending on incarceration diverts resources from other efforts, which, whether within the criminal justice system or through socioeconomic interventions that have been demonstrated to produce more cost-effective results, may be equally or more productive.

Recent trends in state prison populations show that long-term incarceration also challenges efforts to reduce the nation’s rates of imprisonment by any substantial amount. With regard to drug offenses, a combination of sentencing reforms and various programs that divert people from prison to drug treatment centers has resulted in a modest decline in prison populations sentenced for such offenses. Substantial declines may be seen, for example, in states such

62 Lagos, M. (2011, November 28). ‘3 Strikes’: Proposed Law Tries to Restore Intent. *San Francisco Chronicle*. Retrieved from <http://www.sfgate.com/politics/article/3-strikes-Proposed-law-tries-to-restore-intent-2296566.php>.

63 Durose, M. R., Cooper, A. D., Snyder, H. N. (2014, April). Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010. *US Department of Justice*. Retrieved from <http://www.bjs.gov/content/pub/pdf/rprts05p0510.pdf>.

64 Williams, B., Abalades, R. (2007). Growing Older: Challenges of Prison and Reentry for the Aging Population. In *Public Health Behind Bars*, ed. Greifinger, R. NY: Springer.

as New York.⁶⁵ The overall result is a decrease in the number of people serving sentences for drug offenses. Indeed, rates have declined from about one in four people in state prisons to one in six.⁶⁶

Conversely, because of increasing numbers of individuals sentenced to life imprisonment and long-term sentences, with declining parole rates in many jurisdictions, the proportion of the national prison population that consists of people serving terms for violent offenses has now risen to half of that current population.⁶⁷ Therefore, without policy reforms, prison reduction strategies will be necessarily limited.

Finally, excessive incarceration is an affront to common notions of justice itself. The deprivation of liberty may be justified on the grounds of public safety or notions of just punishment, but this should never be greater than necessary to achieve such objectives. Current policy and practice regarding long-term incarceration falls short of those principles. In the 21st century we should do better. ■

Marc Mauer is one of the country's leading experts on sentencing policy, race and the criminal justice system. He has directed programs on criminal justice policy reform for more than 30 years and serves as Executive Director of The Sentencing Project, a national non-profit organization engaged in research and advocacy on criminal justice policy. Mr. Mauer has written extensively and testified before Congress and other legislative bodies. His critically acclaimed book, *Race to Incarcerate*, was named a semifinalist for the Robert F. Kennedy Book Award, and he is the co-editor of *Invisible Punishment*, a collection of essays that examine the social costs of incarceration. Mr. Mauer frequently lectures before a broad range of national and international audiences, appears regularly on television and radio networks, and has served as an adjunct faculty member at George Washington University and Payne Theological Seminary. Mr. Mauer is the recipient of the Donald Cressey Award for contributions to criminal justice research, the Alfred Lindesmith Award for drug policy scholarship, and the Maud Booth Award for correctional services.

65 Mauer, M., Ghandnoosh, N. (2014). Fewer Prisoners, Less Crime: A Tale of Three States. *The Sentencing Project*, 5. Retrieved from http://sentencingproject.org/doc/publications/inc_Fewer_Prisoners_Less_Crime.pdf.

66 Carson, E. A., Golinelli, D. (2013, July). Prisoners in 2012: Advance Counts. *US Department of Justice*. Retrieved from <http://www.bjs.gov/content/pub/pdf/p12ac.pdf>.

67 Nellis, A. (2013). Life Goes On: The Historic Rise in Life Sentences in America. *The Sentencing Project*. Retrieved from http://sentencingproject.org/doc/publications/inc_Life%20Goes%20On%202013.pdf.



"I hope my story will get the parole board to reconsider denying older people parole and instead give them a chance to come home and contribute to society in a meaningful way."

Gloria Rubero, member of the Aging Reentry Task Force
and caring for elderly parent
Age: 65 | Years in prison: 26

The image shows a close-up of a brick wall at the top, with a stone wall below it. The stone wall has several layers of flat, greyish stones with visible mortar joints. Some of the stones have small red marks or scratches. A teal-colored rectangular overlay covers the right side of the image, containing white text.

Experience
Inside and
Consequences

Older Adults in the New York State Prison System

Brian Fischer

Former Commissioner, New York State Department of Corrections and Community Supervision

This paper presents a brief discussion of how best to address the needs of the elderly prison population in New York State. Elderly incarcerated individuals (described herein as those 50 years of age and older) make up approximately 17% of the total prison population in New York State, and the number of elderly incarcerated individuals increased by 266 people between 2013 and 2014.⁶⁸ Relevant constituencies in the prison system and the community must work together and take appropriate steps to meet the particular needs, discussed below, of this special population in the prison system. While there is encouraging evidence that some of the salient issues unique to the elderly incarcerated are receiving increased attention within the New York State Department of Corrections and Community Services (“DOCCS”),⁶⁹ more can and should be done to care appropriately for older adults in the prison system. In this paper, I will describe the principal challenges that the elderly incarcerated present to the prison system, and propose three policy initiatives that, if adopted, will begin to address exigencies related to this special population.

Like many of those of advanced age in the community, elderly incarcerated individuals often face significant health issues related to the normal aging process. Notably, recent research indicates that the elderly incarcerated often suffer worse health outcomes than those in their age cohort in the general population.⁷⁰ For example, members of the elderly incarcerated population experience chronic illnesses (e.g., cardiovascular, musculoskeletal, and psychiatric illnesses) at higher rates than older adults who are not incarcerated.⁷¹ Moreover, the elderly incarcerated are significantly more likely to suffer from certain lifestyle-related medical conditions (e.g., advanced liver disease due to alcohol use and/or viral hepatitis, end-stage renal disease due to drug use and/or HIV) than those in the general population, and are especially vulnerable to

68 State of New York Department of Corrections and Community Supervision. (2014). Under Custody Report: Profile of Under Custody Population As of January 1, 2014. Retrieved from http://www.doccs.ny.gov/Research/Reports/2014/UnderCustody_Report_2014.pdf.

69 Cortella, L. (2015). New York State Department of Corrections and Community Supervision (DOCCS) Discharge Planning Barriers: Potential Solutions. Center for Justice at Columbia University.

70 Fazel, S., Hope, T., O’Donnell, I., Piper, M., Jacoby, R. (2001). Health of Elderly Male Prisoners: Worse Than the General Population, Worse Than Younger Prisoners. *Age and Aging*, 30(5), 403-407.

71 *Id.*

acute infections within the prison setting (e.g., influenza and pneumonia).^{72,73} Indeed, findings from several scholars suggest that incarcerated individuals are medically as much as 10 years older than their chronological age.^{74,75}

Moreover, many in the elderly prison population suffer from cognitive deficits associated with advanced age.⁷⁶ Court liaison referrals for incarcerated people over the age of 60 have found estimates for rates of dementia nationally ranging from 19 to 30%.⁷⁷ Although there is limited data regarding the prevalence of age-related cognitive impairments among incarcerated individuals in New York State, it is reasonable to assume, based on rates of dementia and related conditions in the general population, that as older populations in the New York State prison system continue to age, the number of cognitively impaired incarcerated individuals will grow.^{78,79}

Finally, data from DOCCS provide further evidence of the heightened health risks and accelerated aging of the elderly incarcerated. For example, from 2001 to 2012, the highest rate of prison mortality (by age group) due to illness was among those aged 51 to 60 years.⁸⁰ In addition, of the 115 individuals who died in the New York State prison system in 2012, 34 were between the ages of 55 and 64 (30%), and 17 were 65 or older (15%).⁸¹

DOCCS operates special Regional Medical Units for the most seriously ill in the prison population, including those who suffer from hepatitis C, AIDS, terminal cancer, and chronic lung disease.⁸² In 2010, of the 306 people receiving care in these units, 71% were over 50 and 34% were over 65.⁸³ Costs associated with the care of this elderly prison population are significantly higher than those as-

72 *Id.*

73 Williams, B., Abraldes, R. (2007). Growing Older: Challenges of Prison and Reentry for the Aging Population. In *Public Health Behind Bars* (56-72). New York: Springer.

74 Loeb, S. J., Abudagga, A. (2006). Health-Related Research on Older Inmates: An Integrative Review. *Research in Nursing & Health*, 29(6).

75 Aday, R. H. (2003). *Ageing Prisoners: Crisis in American Corrections*. Westport, CT: Praeger Publishers.

76 *Id.*

77 *Id.*

78 Williams and Abraldes. (2007).

79 Maschi, T., Kwak, J., Ko, E., Morrissey, M. B. (2012). Forget Me Not: Dementia in Prison. *The Gerontologist*, 52(4).

80 Noonan, M.E., Ginder, S. (2014). *Mortality in Local Jails and State Prisons, 2000-2012 – Statistical Tables*. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.

81 State of New York Department of Corrections and Community Supervision. (2013). Inmate Mortality Report: 2009-2012. Retrieved from http://www.doccs.ny.gov/Research/Reports/2013/Inmate_Mortality_Report_2009-2012.pdf.

82 Roth, A. N. (2012). Aging in Prison: A look at Prison Health Care Facilities. *Utica Observer-Dispatch*.

83 Murphy, J. (2011). Older Inmate Population Grows, Puts Strain on System. *Auburn Citizen*.

sociated with the younger prison population, and will likely grow as the prison population continues to age.⁸⁴

Meeting the special needs of the elderly prison population will require careful and coordinated planning by DOCCS, the government, and partners in the community. To this end, I propose three approaches to address the special needs of our aging prison population in New York State: (i) ensuring the provision of age-appropriate healthcare, both for our elderly incarcerated population and elderly parolees upon their release into the community; (ii) giving special consideration to the needs of the elderly incarcerated in the design of prison spaces and programs; and (iii) parole board, legislative, and/or executive planning and action providing for the early release of elderly incarcerated individuals in appropriate circumstances under both extant and wise new policies. I discuss each of these approaches below.

Provision of Age-appropriate Healthcare

The New York State prison system sponsors several programs tailored to address special needs of various members of the prison population. For example, DOCCS provides mental health units, treatment programs for sex offenders, educational programs, rehabilitative programs related to drug and alcohol abuse, and transitional programs.⁸⁵ However, there are few programs that specifically address issues unique to the elderly incarcerated. Moreover, although elderly incarcerated individuals receive medical check-ups, the concept of geriatric medicine is still relatively new in the prison setting.⁸⁶ Moreover, whereas health services staff in our prisons are given training related to illnesses like AIDS and hepatitis,⁸⁷ every effort should be given to provide training related to conditions associated specifically with the elderly population, including age-related cognitive and physical deficits and other illnesses that affect the aged at high rates.

For elderly incarcerated people with serious medical needs, there are Regional Medical Units and the Walsh Medical Unit at Mohawk Correctional Facility.⁸⁸ Each handles cases where constant medical attention is required. There is a need to expand this unit to include an Assisted Living Unit for those who are physically, cognitively, or otherwise unfit for general prison population units. Whether or not such a unit is established will depend upon sufficient funding by the state. We must build broad coalitions in the prison system and the com-

84 Anno, B. J., Graham, C., Lawrence, J. E., Shansky, R. (2004). *Correctional Health Care: Addressing the Needs of Elderly, Chronically Ill, and Terminally Ill Inmates*. Middletown, CT: Criminal Justice Institute.

85 State of New York Department of Corrections and Community Supervision. Executive Directive #4803.

86 See generally, Williams and Abraldes. (2007).

87 Cortella. (2015).

88 State of New York Department of Corrections and Community Supervision. Executive Directive #0095.

munity to educate relevant stakeholders and policymakers about the necessity of this expansion.

In addition, the prison system must take appropriate steps to meet the continuing, age-specific needs of elderly parolees upon their release into the community. For example, upon release from prison, many parolees do not have sufficient connections to community-based medical resources, including those that provide access to medications that may be necessary for parolees' health and well-being.⁸⁹ Through appropriate discharge planning, we can better serve the immediate medical needs of elderly parolees and ensure that they have the resources and knowledge to provide for their continuous care after release. Moreover, parole officers who are called upon to assist elderly parolees as they transition back into their local communities should receive education and training in order to better understand the needs of this aging population. Parole officers are in an especially good position to observe the physical and psychological conditions of elderly parolees. Education about conditions that might affect elderly parolees, including cognitive and physical deficits, could enable parole officers to discharge their duties with appropriate care.

Consideration of Needs of the Elderly Population in Prison Design and Programming

Physical conditions affecting the elderly prison population can present additional challenges in correctional settings. Indeed, many prison facilities, including especially those that were built prior to passage of the Americans with Disabilities Act of 1990, are poorly suited to house individuals with age-related physical limitations. Many prisons in New York State have large cellblocks that require incarcerated people to climb up and down narrow stairways in order to navigate the premises: a difficult and often painful process for many in our elderly population. Moreover, in many of our medium-security prisons, individuals are required to walk considerable distances to and from their dormitories in order to participate actively in daily life.^{90,91} These prison conditions may take a particularly significant toll on the elderly incarcerated population, exacerbating existing physical medical conditions—and, for some, leading to isolation and related depression. In addition, in some cases, exposure to the general prison population can present challenges for the elderly incarcerated. Although contact with younger people can be beneficial for a number of



89 Cortella. (2015).

90 Williams and Abralles. (2007).

91 Williams, B. A., et al., (2006). Being Old and Doing Time: Functional Impairment and Adverse Experiences of Geriatric Female Prisoners. *Journal of the American Geriatrics Society*, 54(4).

reasons (e.g., receipt of informal caregiving,^{92,93} respect, and prestige⁹⁴), studies have found that older incarcerated individuals often fear and/or are vulnerable to victimization at the hands of their younger counterparts.^{95,96} Prison staff should be aware of those in the prison population who are of more advanced age, and make appropriate efforts to monitor their safety.

Moving forward, DOCCS and other policymakers should address these special needs of the elderly by, among other things, providing living units better equipped to accommodate functional limitations associated with those of more advanced age. In addition, if new correctional facilities are built in New York State in the future, consideration for the placement and particular needs of elderly people should be factored into their design. In the meantime, to the extent possible, efforts should be made by DOCCS and prison staff to provide programming and resources in close proximity to the dwelling spaces of the elderly population.

Early Release of the Elderly Incarcerated

New York State's Compassionate Release Program currently provides, in certain circumstances, for early release of the most seriously ill in the prison population.⁹⁷ Pursuant to the Compassionate Release Program, some incarcerated individuals suffering from terminal and some non-terminal illnesses (as well as people who are cognitively incapable of presenting a danger to society) may qualify for release before the completion of their sentences.⁹⁸ According to Lynn Cortella, a Healthcare Classification Analyst at DOCCS' Central Office, DOCCS is increasingly proactive in its efforts to ensure the appropriate application of this program.⁹⁹ This is an important step in addressing the end-of-life needs—and respecting the dignity—of a portion of the elderly incarcerated population.

However, more should be done to provide for the early release of many of the elderly incarcerated, both under this provision and pursuant to the establish-

92 Mara, C. M. (2003). A Comparison of LTC in Prisons and in the Free Population. *Long-Term Care Interface*.

93 Crawley, E., Sparks, R. (2006). Is There Life after Imprisonment? How Elderly Men Talk About Imprisonment and Release. *Criminology and Criminal Justice*, 6(1).

94 Lemieux, C. M., Dyeson, T. B., Castiglione, B. (2002). Revisiting the Literature on Prisoners Who Are Older: Are We Wiser? *The Prison Journal*, 82(4).

95 Aday (2003).

96 Kerbs, J. J., Jolley, J. M. (2007). Inmate-on-Inmate Victimization Among Older Male Prisoners. *Crime & Delinquency*, 53(2).

97 NY Executive Law. Section 259-R, Release on Medical Parole for Terminally Ill Inmates; Section 259-S, Release on Medical Parole for Inmates Suffering Significant Debilitating Illnesses.

98 Although most terminally ill inmates are eligible for consideration, sections 259-R and 259-S of the NY Executive Law deem any inmate serving a sentence for murder in the first degree, or an attempt to commit murder in the first degree, or conspiracy to commit murder in the first degree, ineligible for medical parole.

99 Cortella. (2015).

ment of wise, compassionate, and cost-saving policies by DOCCS and the legislative and executive branches of government in New York State. First, notwithstanding efforts described by DOCCS, in too many cases, the Compassionate Release Program is not applied to qualified individuals, including those receiving care in long-term medical units and/or the Unit for the Cognitively Impaired (Alzheimer's Unit).¹⁰⁰ This leaves those who present the least risk to the safety of the general population in correctional custody,¹⁰¹ at great expense to taxpayers.

...more should be done to provide for the early release of many of the elderly incarcerated...pursuant to the establishment of wise, compassionate, and cost-saving policies by DOCCS and the legislative and executive branches of government in New York State.

In addition, in their application of the Compassionate Release Program, DOCCS and Board of Parole must consider, among other things, whether people subject to early parole have appropriate places to go upon release, which, too often, are not available. In many cases, hospitals and nursing homes are not eager to accept these potential parolees due to the stigma related to criminal identity, as well as potential costs related to care that might not be covered by Medicaid or other applicable insurance. Thus, in some instances, seriously ill people subject to release remain in prison longer than necessary because of lack of an acceptable residence in the community. DOCCS should continue and expand important efforts to educate the community about both the continuing needs of our elderly parolees and the low risk they present to the community. Education and collaboration with our partners in the community are important means through which we can meet the needs of elderly incarcerated individuals qualified for compassionate release.

Given the lack of appropriate community placement options, DOCCS and the legislature should consider novel and cost-effective solutions to the problem of providing housing and care for those qualified for early release, including, e.g., state or joint state/private-funded arrangements. Pursuant to such an initiative, the cost of caring for someone released on medical parole could be shared among Medicaid and state and private funding. Moving individuals out of prisons in this manner could save taxpayers money and lead to the appropriate release of qualified elderly individuals.

But the most ill among the elderly incarcerated are not the only people who should be considered for early release. Research has shown that rates of recidivism decrease significantly with age, with the elderly incarcerated presenting

100 Haverty, N. (2013). Dying Inmates in NY Struggle to Get Home. *North County Public Radio*.

101 Travis, J., Western, B., Redburn, S. (2014). *The Growth of Incarceration in the United States: Exploring Causes and Consequences*. Washington, DC: The National Academies Press.

the lowest risk of offending after release from prison.^{102,103} In both medical and non-medical parole proceedings, the advanced age of the incarcerated individual should thus be given considerable attention. In addition, policymakers should consider the promulgation of wise laws providing, in appropriate circumstances, for the early release of members of the elderly incarcerated population regardless of their medical condition. By establishing innovative policies providing for early release of more of the elderly prison population, leaders in New York State can effect important change in addressing the problem of mass incarceration in the United States, effecting considerable cost-savings while ensuring the safety of the community.

By establishing innovative policies providing for early release of more of the elderly prison population, leaders in New York State can effect important change in addressing the problem of mass incarceration in the United States—effecting considerable cost-savings while ensuring the safety of the community.

Because research has shown that individuals who serve long sentences and may be considered elderly have the lowest rate of recidivism among all incarcerated groups,^{104,105} several speakers and symposium participants called for the release, by the Board of Parole, of elderly parole applicants at their first board hearing. While on the surface such calls for action seem reasonable, a more careful case-by-case assessment should be emphasized. Factors such as the age of the individual at the time of the crime; his or her behavior while in prison; and post-release planning options must be considered. Just as the nature of the crime should not be automatically held against the individual, his or her age should not automatically be seen as the rationale for release.

In this paper, I have outlined policy proposals directed at providing for the special needs of the elderly incarcerated population in New York State. Through effective communication and collaboration among relevant constituencies in the prison system, government, and the community, we can take important steps to meet the needs of those of advanced age in the justice system and the safety of the community. ■

102 Pew Center on the States. (2011). *State of Recidivism: The Revolving Door of America's Prisons*. Washington, DC: Pew Center on the States.

103 American Civil Liberties Union. (2012). *At America's Expense: The Mass Incarceration of the Elderly*. Retrieved from <https://www.aclu.org/americas-expense-mass-incarceration-elderly>.

104 Pew Center on the States. (2011). *State of Recidivism: The Revolving Door of America's Prisons*. Washington, DC: Pew Center on the States.

105 American Civil Liberties Union. (2012). *At America's Expense: The Mass Incarceration of the Elderly*. Retrieved from <https://www.aclu.org/americas-expense-mass-incarceration-elderly>.

The Prospect of Aging in Prison: A Long-termers' Perspective

Larry White

Hope Lives for Lifers Project

A major problem facing the New York State prison system is the increase in both numbers and financial costs of long-term and elderly segments of the prison population. The aged and elderly in prison come from two primary sources: those who enter the prison system when they are already elderly or aging, and those who grow old and elderly during their prison confinement.

The rising number of elderly and geriatric persons in the prison system is due to the extended confinement of persons sentenced to long-term sentences and continual parole denials. The high human and financial costs of long-term incarceration can be attributed to the Prison Aging Process. The Prison Aging Process refers to a dynamic of physical and mental decline involving three specific segments of the prison population: persons serving long-term sentences (15 years or more); persons 55 years and older classified as “elderly”; and elderly persons who suffer infirmities that require special care and are classified as “geriatric.”

The Prison Aging Process is a natural consequence of: (1) lengthy prison sentences; (2) extended periods of time served in prison; and (3) health-related decline associated with the rigors of prevailing prison conditions. The pervasive use of long prison sentences is certainly a major cause of the problem, as are current parole release policies that result in extended periods of confinement served in prison. A third and critical cause of the problem relates to the rigors of prevailing prison conditions that entail the pains and deprivation of imprisonment, and the daily stress and strains a long-termer must endure, including the invasion of his/her privacy and the long-term loss of autonomy.

One of the most stressful aspects of time in prison is the prospect of growing old and vulnerable there. For the person serving a long-term sentence, aging in prison presents serious questions regarding survival throughout the various stages of the sentence. That struggle for survival begins upon admission into the prison system as a “novice long-termer.” A “novice long-termer” is a person who is beginning a long-term prison sentence that entails the service of 15 years or more before becoming eligible for release. As a novice, a long-termer must adjust to the prison setting as well as come to grips with the prospect of surviving an extended period of confinement. At the novice stage of confinement, long-termers begin the process of socialization within the prison setting while considering how to construct a life in prison. Confinement in a prison setting for an extended period of time entails a form of secondary socialization in which the long-termer has to learn to adapt to prison as a way of life. Old

definitions are shattered and he/she has to learn to adjust to the deprivations of prison. He/she might do this by conforming or, on the other hand, by continual rebellion.

This is often a painful process, entailing a mortification of and assault on the self—resulting from invasion of privacy and social definition as a number. These are the various forms of what a long-termer experiences as “disrespect,” in which the symbolic meaning of events in the prison setting fail to corroborate his/her prior conception of self. The period of being a novice long-termer generally lasts about three to five years.

A novice long-termer gradually becomes a “seasoned long-termer” as he or she adjusts to the prison setting and begins to construct a prison lifestyle that will sustain and guide him/her to the release consideration phase of the sentence. Adjustment to the prison setting does not mean a mere acceptance of the fact that one will be confined for an extended period of time and therefore must become accustomed to such a condition; it entails more than a perception of reality that the prison is home for an extended period of time.

To adjust is not to merely endure. True adjustment entails a struggle to establish a sustaining relationship between the long-termer and the prison setting. A sustaining relationship is one in which the long-termer is able to make adjustments in behavior as well as make improvements to his or her environment. Both the personal adjustments as well as the improvements in the prison setting are for the purpose of sustaining the wellbeing of the long-termer.

Appearance before the parole board for release consideration is a critical juncture in the confinement of a seasoned long-termer. It marks not only the culmination of years of rehabilitative efforts, but is a longed-for opportunity to be evaluated on the merits of those efforts.

The need to construct a prison life derives from the fact that a seasoned long-termer will spend a major portion (if not all) of the minimum term of sentence preparing for parole release consideration. For persons serving a long-term sentence, parole is one of the most sought-after avenues of release from confinement. Parole release determinations are based upon consideration of such factors as the seriousness of the crime, criminal history, program participation, disciplinary behavior, and risk and needs assessments. Of these primary release factors, participation in rehabilitation programs and positive behaviors are activities that fall within the discretion of the long-termer, and which command his/her utmost attention in planning for parole release.

A seasoned long-termer constructs a prison lifestyle by setting goals and adapting behaviors that will sustain and guide him/her to release from confinement. These goals and behaviors are rehabilitative in nature and are designed to indicate positive change in both cognitive thinking and social behavior. It should

be noted that the minimum term of a long-term sentence is the statutorily designated period of time (the rehabilitative phase) within which the long-termer must indicate reversal of the propensity to commit the crime(s) for which he/she was sentenced.

It is at the rehabilitation phase that seasoned long-termers must make a concerted effort through program participation and positive behaviors to manifest their rehabilitation. Program participation and positive behaviors are rehabilitative in nature in that they both indicate constructive personal change. There is little or nothing long-termers can do to mitigate the seriousness of their crime or criminal history. As primary factors in making parole release decisions by the board of parole, both the seriousness of the crime and criminal history are static factors that cannot be changed by reform deeds of the incarcerated individual and therefore are not subject to rehabilitation.

Appearance before the parole board for release consideration is a critical juncture in the confinement of a seasoned long-termer. It marks not only the culmination of years of rehabilitative efforts, but is a longed-for opportunity to be evaluated on the merits of those efforts. Although a determination of release on parole is akin to hitting the jackpot, repeated denials of parole release have the effect of changing the status of a seasoned long-termer. Both the number of denials and the stated reasons for such denials can and do change the status of a long-termer from a seasoned long-termer to a “standing long-termer.”

As is most often the case for a person serving a long-term sentence, the reasons for denial of parole release by the parole board are invariably stated in the following language: “Your outstanding program accomplishments and exemplary behavior are noted, however your release at this time would be incompatible with the welfare of society”; or, “Release would so deprecate the seriousness of your crime as to cause disrespect for the law”; or, **“Given your criminal history, there is a reasonable probability that you would not remain at liberty without violating the law.”**

In setting forth the reason for denial, the parole board never provides any indication, either directly or indirectly, as to what act or actions the parole candidate should take to address either the failure, neglect, deficiency, or wrong implicit in the stated reason. Without specific guidance and direction regarding reform measures to address the reason for denial, the parole board’s decision takes the form of a penalty rather than an evaluation, and the seasoned long-termer who receives the denial is at a standstill as to how to prepare for reconsideration at the next parole board appearance. It is at this point that a “seasoned long-termer” begins the process of becoming a “standing long-termer.”

From the perspective of a “standing long-termer,” the only responses to a parole board denial perceived as a penalty are: (1) to redouble the standard



approaches to rehabilitation (program participation and positive behavior); (2) to take legal action against the discretionary decision of the parole board; or (3) to endure as a penalty the period of time to be served until the next scheduled reappearance before the parole board, in the hope of receiving a just and fair evaluation. However, the full predicament of a “standing long-termer” involves more than withstanding numerous unjust parole board denials; it must be remembered that each parole denial involves the service of an extended period of confinement—often in increments of two years: a factor that makes the aspect of aging a dominant issue.

A “standing long-termer” is at the stage of confinement when the prospect of aging is an impending reality. He/she has served the minimum term of sen-

With each denial of parole the “standing long-termer” experiences the despair of becoming a “geriatric long-termer,” destined for commitment to one of the nursing home facilities euphemistically entitled “Units for the Cognitively Impaired,” located within designated prisons, where terminal infirmity and death await.

tence (15 years or more) and must now weigh the existence of peers who are known to have experienced as many as five or more parole denials, each separated by a period of two years. Considering the fact that a long-termer is classified as “elderly” at 55 years of age, and that an “elderly” long-termer is almost destined to eventually be classified as “geriatric,” with the onset of medical and mental infirmities associated with old age, the “standing long-termer” faces the overwhelming problem of trying to slow the process of aging and at the same time hasten the process of gaining release from confinement.

With each denial of parole, the “standing long-termer” experiences the despair of becoming a “geriatric long-termer,” destined for commitment to one of the nursing home facilities euphemistically entitled “Units for the Cognitively Impaired”—located within designated prisons, where terminal infirmity and death await. ■

The High Fiscal Costs of Incarcerating the Elderly

W.C. Bunting

Economist, American Civil Liberties Union

Over the past twenty-five years, the number of elderly people incarcerated in state and federal corrections facilities has risen rapidly. The needs and demands placed upon state and federal corrections facilities by these elderly people differ markedly from those of younger people in prison. In particular, it is significantly more costly for state and federal governments to incarcerate aging or elderly people as compared to those who are non-elderly.

To manage these escalating fiscal costs, one sensible response is to allow elderly people in prison who do not pose a substantial safety risk to the public to apply for early release. Although releasing an elderly person (or, an “aging parolee”) will surely impose a fiscal cost upon state governments (e.g., by increasing the costs of parole, housing, public assistance benefits (including healthcare), and emergency-room visits), the conditional release of aging people has the potential to raise tax revenue and, importantly, will save governments the high

...it is significantly more costly for state and federal governments to incarcerate aging or elderly people as compared to those who are non-elderly. To manage these escalating fiscal costs, one sensible response is to allow elderly people in prison who do not pose a substantial safety risk to the public to apply for early release.

costs associated with incarcerating the aging prison population. In particular, taking all of the relevant fiscal impacts into consideration, it has been calculated that the fiscal benefits of a policy designed to grant conditional release to a defined subset of elderly incarcerated people far exceed the aforementioned fiscal costs.¹⁰⁶ This paper focuses on one aspect of this larger fiscal impact analysis, namely, the relatively high fiscal costs associated with the incarceration of the elderly.

Since the 1980s, corrections expenditures as a percentage of total state expenditures have steadily risen nationwide, with fourteen states doubling public spending on corrections and thirty states increasing public spending on corrections by at least half.¹⁰⁷ According to a report by the Pew Center on the States,

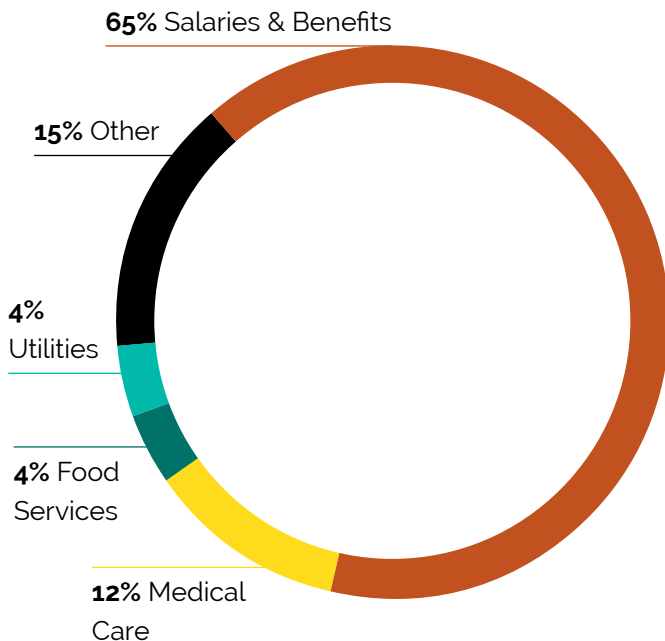
¹⁰⁶ American Civil Liberties Union. (2012). *At America's Expense: The Mass Incarceration of the Elderly*. Retrieved from <https://www.aclu.org/americas-expense-mass-incarceration-elderly>.

¹⁰⁷ Leachman, M., Chettiar, I., Geare, B. (2012). *Improving Budget Analysis of State Criminal Justice Reforms: A Strategy for Better Outcomes and Saving Money*. *Center On Budget & Policy Priorities and ACLU*, 4. Retrieved from https://www.aclu.org/files/assets/improvingbudgetanalysis_20120110.pdf.

overall state spending on corrections increased from \$11 billion in 1988 to \$52 billion in 2008. Add expenditures by the federal government on corrections, and the number climbs to \$68 billion.¹⁰⁸ A significant proportion of the increased expenditure on corrections has been allocated to healthcare. The Bureau of Justice Statistics (BJS), for example, has estimated, as depicted in **Figure 1**, that 12% of state prison operating expenditures comprises spending on the medical needs of incarcerated people.¹⁰⁹

Figure 1

State prison operating expenditures (2001)



Source: Stephan, *State Prison Expenditures, 2001* (2004).

In other words, **Figure 1** shows that the second largest expenditure on state corrections’ operating budgets, behind salary and benefits, is spending on prison healthcare.

As total expenditures have increased, so too has the average annual incarceration cost per person. Although there is some amount of variance in the various estimates, \$34,000 represents, in our view, a reasonable estimate of the average annual incarceration cost per person in 2013. The average annual incarceration cost per *aging* or *elderly* person is even higher. **Figure 2** summarizes three estimates of the average annual incarceration cost per elderly individual (as calculated in a longer report on the subject published by the ACLU), denoted as: (1) Low Estimate, (2) Middle Estimate, and (3) High Estimate.¹¹⁰

The “low estimate” naturally corresponds to the lowest reasonable estimate of the true cost of incarcerating an elderly person. In this case, annual incarceration costs are roughly the same for both the average incarcerated person and the average elderly incarcerated person. The elderly individual, under this scenario, may be relatively healthy and might not require additional staff or healthcare services. Next, employing a methodology specifically endorsed by the National Institute of Corrections, the “middle estimate” sets the incarceration cost of an elderly person at approximately two

108 Pew Center on the States. (2009). *One in 31: The Long Reach of American Corrections*, 11, (estimating that 90% of spending on corrections is devoted to incarceration as opposed to probation, parole, or non-incarceration alternatives).

109 Stephan, J. J. (2004). *State Prison Expenditures, 2001*. U.S. Department of Justice, Bureau of Justice Statistics, 4, 6 (tables 3, 5). Retrieved from <http://www.bjs.gov/content/pub/pdf/spe01.pdf>.

110 American Civil Liberties Union. (2012). *At America’s Expense: The Mass Incarceration of the Elderly*. Retrieved from <https://www.aclu.org/americas-expense-mass-incarceration-elderly>.

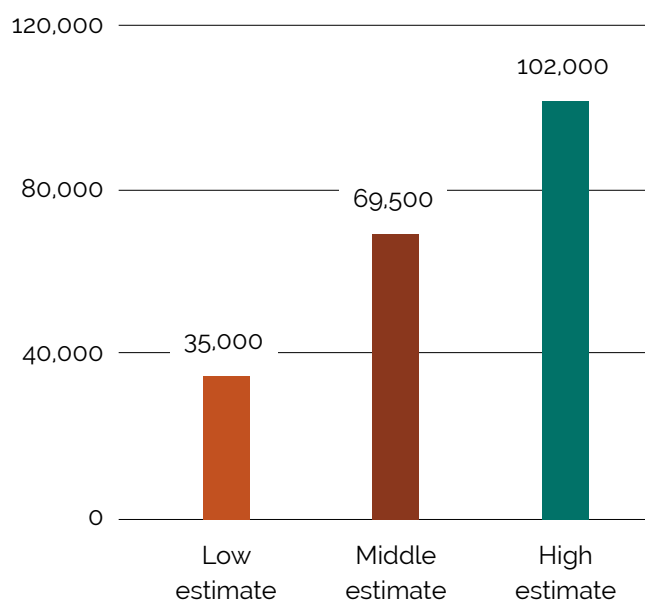
times the incarceration cost of the average person.¹¹¹ In our view, the “middle estimate” represents the *best* estimate of the true fiscal cost of incarcerating an elderly person. Finally, the “high estimate” equates the cost of an elderly individual at roughly three times the cost of the average person; this estimate represents the highest reasonable estimate of what it costs to incarcerate elderly people. These people may require additional staff and substantially higher levels of care to meet their daily physical or medical needs.

As an initial matter, it should be noted that health-care costs are relatively high here not because elderly incarcerated people (or incarcerated people in general for that matter) enjoy superior levels of healthcare as compared to the rest of society. In fact, most prison facilities offer only a constitutionally minimal level of care, meaning that state prisons, under the Eighth Amendment, cannot show “deliberate indifference to serious medical needs” of prisoners.¹¹² Prison facilities, however, often fall short of even this minimal constitutionally mandated floor, failing to provide a constitutionally adequate level of medical care until compelled to do so by court order.¹¹³

There are a number of reasons why a disproportionate share of prison healthcare expenditures is devoted to aging people. *First*, an elderly person in prison is relatively more likely to suffer from a variety of medical conditions and require more contacts with healthcare providers. According to a study by BJS, the percentage of all people in state prisons who reported any type of medical condition increased dramatically with age: approximately 48% of people aged 45 and older reported some kind of medical ailment (excluding physical injury), compared to only 24% of people aged 24 and younger.¹¹⁴ In Florida, for example, incarcerated people aged 50 or older accounted for a disproportionate share of all medical contacts; specifically, while only 11% of the total prison population was aged 50 or older, the subset of the prison population aged 50 or older constituted

Figure 2

Estimated annual incarceration cost per aging or elderly prisoner (2013)



Source: ACLU State Fiscal Impact Analysis

111 Anno, J. B., et al. (2004). Correctional Health Care: Addressing the Needs of Elderly, Chronically Ill, and Terminally Ill Inmates. *U.S. Department of Justice, National Institute of Corrections*, 11. Retrieved from <http://static.nicic.gov/Library/018735.pdf>.

112 *Estelle v. Gamble*, 429 U.S. 97, 104 (1976).

113 *E.g., Riker v. Gibbons*, No. 3:08-cv-00115-LRH-VPC, 2010 WL 4366012 (D. Nev. Oct. 28, 2010).

114 Maruschak, L. M., Beck, A. (2001). Medical Problems of Inmates, 1997. *U.S. Department of Justice, Bureau of Justice Statistics*, 3 (table 2). Retrieved from <http://www.bjs.gov/content/pub/pdf/mpi97.pdf>.

38% of all medical contacts for hypertension; 44% for diabetes; 21% for asthma; and 36% for general medicine.¹¹⁵ Moreover, elderly incarcerated people often require longer and more frequent hospitalizations, further contributing to the elderly prison population's disproportionate share of prison healthcare expenditures.¹¹⁶

Second, the prison environment is, by design, an extremely poor place to house and care for individuals as they grow old or become increasingly disabled or ill. Most prison facilities were designed with younger persons in mind and, as such, are often not suitably equipped to accommodate the varied needs and requirements of the elderly prison population (e.g., prison facilities, at present, generally do not have good systems in place to monitor chronic medical issues or to implement sensible preventative measures). Often, correctional and healthcare staff lack suitable medical training and technical expertise and have not been properly prepared to treat age-related illnesses such as hearing loss, vision problems, arthritis, hypertension, and dementia. Similarly, many prison facilities have not been architecturally designed for people requiring special services and devices such as walkers, wheelchairs, and hearing or breathing aids.¹¹⁷

Third, as a direct result of poorly designed prison facilities and under-trained medical staff, elderly people are often required to leave the prison grounds to receive medical treatment. When this occurs, the government is required to pay for the specialized treatment itself, any additional transportation costs incurred, and the salary costs of the corrections officers (who must accompany the incarcerated person at all times while outside the prison facility, often at overtime pay).¹¹⁸ Transporting people off-site for medical care is expensive and can represent a sizeable proportion of the total healthcare budget for the corrections department. North Carolina, for example, spent \$18.1 million on external healthcare costs for all people aged 50 or older—an amount that represented 72% of all healthcare expenditures made in connection with aging incarcerated people and accounted for 34% of the total external healthcare costs incurred by the state prison system as a whole.¹¹⁹ Similarly, in Florida, although

115 Florida Correctional Medical Authority. (2005). Report on Elderly and Aging Inmates in the Florida Department of Corrections, 8.

116 Aday, R. H. (2003). *Aging Prisoners: Crisis in American Corrections*. Westport, CT: Praeger Publishers, 91.

117 Anno, J. B., et al. (2004). Correctional Health Care: Addressing the Needs of Elderly, Chronically Ill, and Terminally Ill Inmates. *U.S. Department of Justice, National Institute of Corrections*, 47. Retrieved from <http://static.nicic.gov/Library/018735.pdf>.

118 Gubler, T., Petersilia, J. (2006). Elderly Prisoners Are Literally Dying for Reform. *California Sentencing & Corrections Policy Series Stanford Criminal Justice Center Working Paper*, 7. Retrieved from https://www.law.stanford.edu/sites/default/files/child-page/266901/doc/slspublic/TGubler_06.pdf.

119 Price, C. (2007). Aging Inmate Population: 2007 Addendum Report. *North Carolina Department of Correction, Division of Prisons*, 16.

individuals aged 50 or older comprise only 18% of the total state prison population, the aging prison population accounted for approximately 34% of the total cost to the state of all outsourced healthcare services.¹²⁰

Taking the middle estimate as the true incarceration cost of an elderly person, it can be shown that it costs state taxpayers roughly \$16 billion each year to incarcerate the approximately 250,000 individuals aged 50 or older currently behind bars¹²¹—a relatively low-risk population.¹²²

As a point of comparison, this amount exceeds the total budget of the federal Department of Energy or what the federal Department of Education spends each year to fund all state elementary and secondary school improvements. Notably, an argument can be made that this \$16 billion estimate is low insofar as it is the case that not all state expenditures on healthcare are categorized as a healthcare expense line item in the state budget. Overtime and regular pay for officers accompanying incarcerated people in connection with external healthcare treatments, for instance,



...[using a low estimate], it costs state taxpayers roughly \$16 billion each year to incarcerate the approximately 250,000 individuals aged 50 or older currently behind bars—a relatively low-risk population. As a point of comparison, this amount exceeds the total budget of the federal Department of Energy or what the federal Department of Education spends each year to fund all state elementary and secondary school improvements.

is unlikely to be included as a healthcare expense in the budget, but, rather, is more likely to be reported as a salary expense. In addition, as detailed in a report published by the Vera Institute, certain expenses are excluded from the corrections budget altogether and are instead recorded under entirely different state spending categories. For example, in some states, such as New York, a significant proportion of prison costs (such as underfunded contributions to retiree health care for corrections employees; current employee benefits such as health insurance, pension contributions for corrections employees; and certain capital costs) is located outside the corrections budget and is typically provided

120 Florida Correctional Medical Authority. (2005). Report on Elderly and Aging Inmates in the Florida Department of Corrections, 8.

121 American Civil Liberties Union. (2012). At America's Expense: The Mass Incarceration of the Elderly, 28. Retrieved from <https://www.aclu.org/americas-expense-mass-incarceration-elderly>.

122 E.g., Hirschi, T., Gottfredson, M. (1983). Age and the Explanation of Crime. *American Journal of Sociology*, 89(3), 552.

by a “central administrative fund” or through a “central account.”¹²³ Since the middle estimate does not consider expenses allocated outside of the corrections budget, our \$16 billion estimate will tend to *understate* the true total fiscal cost incurred in meeting the healthcare needs of the elderly prison population.

Notwithstanding these additional considerations, \$16 billion per year is still far too much to spend on the incarceration of the elderly. If the number of elderly people in prison continues to rise steadily (as projected by numerous experts), state governments may have difficulty funding other important public services, such as K-12 education, Medicaid, and infrastructure improvement projects, without increasing revenue (e.g., through increased state taxes) or cutting state spending on other vital public programs and social services. As I noted at the outset of this paper, moving forward, one possible response to the specter of future budgetary shortfalls, realized as a direct consequence of steadily increasing corrections expenditures, is to follow the lead of states such as Virginia and Maryland and enact legislation allowing incarcerated individuals above a certain age threshold (typically ranging from 50 to 60) who have already served a minimum number of years in prison (typically ranging from 5 to 15) to go before a parole board and request to be released onto parole.¹²⁴

While there is not space here to expand upon such recommended legislation in greater detail, any conditional release program should incorporate, at a minimum, the following five best practices, which, if adopted together, would help maximize the program’s overall effectiveness: (1) use a valid and reliable risk assessment instrument to determine the average level of risk (i.e., the propensity to commit future crimes) when making the decision to release;¹²⁵ (2) omit certain eligibility restrictions placed on participation in the conditional release program (e.g., completion of a high-school equivalency exam or other such programming that might not be offered in all state prison facilities); (3) provide a simple, easy-to-read form during the parole hearing, describing public assistance programs available upon release; (4) arrange for a provisional 30-day

123 Vera Institute of Justice. (2012). *The Price of Prisons: What Incarceration Costs Taxpayers*, 6, 8. Retrieved from <http://www.vera.org/sites/default/files/resources/downloads/price-of-prisons-updated-version-021914.pdf>.

124 Virginia law requires incarcerated people 65 or older to serve five years and those 60-64 to serve ten years before applying for geriatric release. Va Code Ann. § 53.1-40.01 (2011). In Maryland, in order to qualify for eligibility for release, incarcerated people must be over 65 and have served at least 15 years of the sentence imposed. Md. Code Ann. Crim. Law § 14.101(g) (2012). See generally Chiu, T. (2010). *It’s About Time: Aging Prisoners, Increasing Costs, and Geriatric Release*. Vera Institute of Justice, 6. Retrieved from <http://www.vera.org/sites/default/files/resources/downloads/Its-about-time-aging-prisoners-increasing-costs-and-geriatric-release.pdf>.

125 For more detail on the use of risk-assessment instruments in parole determination, see Austin, J. (2004). The Proper and Improper Use of Risk Assessment in Corrections. *Federal Sentencing Reporter* 16(3), 1. Retrieved from <http://www.jfa-associates.com/publications/pcras/proper%20userand%20misuse%20of%20risk.pdf>; Glazebrook, S. J. (2010). Risky Business: Predicting Recidivism. *Psychiatry, Psychology and Law*, 17(1), 88 and 93.

supply of basic and essential medications at release; and (5) mandate that parole be strictly voluntary, with elderly people in prison retaining the individual right to choose whether to apply for parole or early release. ■

Will Bunting is an economist at the American Civil Liberties Union. He received his Ph.D. in Economics from Yale University in 2012. Prior to this, he worked as an attorney at a corporate law firm in New York City and as a law clerk to the Honorable Theodore Katz in the Southern District of New York.



“For the person who must survive under it, punishment after an extended period of time is no longer punishment, it becomes something else. And so does that person.”

Larry Luqmon White, founder of “Hope Lives for Lifers” project

Age: 80 | Years in prison: 32



Reviewing Barriers to Release

A Perspective on Some Procedures That Unfairly Delay Prisoner Release

Edward R. Hammock, Esq.

Former Chair, New York State Board of Parole

This paper discusses the barriers to the release of elders from prison that arise from statute or regulation. More specifically, the three barriers to be discussed are the New York State Parole Board, determinate sentencing, and the disciplinary process of the New York State Department of Corrections and Community Supervision.

The Parole Board

In recent months, a significant number of individuals and organizations¹²⁶ have made a strong effort to bring to the attention of the Governor, the legislature, and the people of the state the propensity of the parole board to deny release to many incarcerated people based primarily on the board's determination that the applicant's crime is so serious as to warrant a denial of release.

Some of these determinations fly in the face of judicial sentencing and sentences that flow from plea agreements between the court, counsel for the defendant, and the prosecutor. When an individual has been convicted at trial or pleads guilty to crimes set forth in their indictment, the court is in control of the sentence to be imposed. Generally, the court has full knowledge of the facts of the case and, therefore, can make both an intelligent and informed decision regarding the sentence to be imposed. Most sentences flow from plea agreements crafted by prosecutors who are familiar with the facts and circumstances of the case, and the minimum period of an indeterminate sentence should define the time of the individual's release unless the board identifies a valid reason for a delay in release.

What the Board uses more often than not to support its denial decisions is the seriousness of the parole applicant's offense...In far too many cases, the Board panel offers no support for its predictive conclusions denying release on this basis.

Yet, what the board uses more often than not to support its denial decisions is the seriousness of the parole applicant's offense and the prediction that there is a reasonable probability that, if released, the individual will not live and remain at liberty without violating the law.¹²⁷ In far too many cases, the board

¹²⁶ Including Prison Action Network, Prisoner's Legal Services, Correctional Association of New York, The Fortune Society, The Center for Sentencing Alternatives, and Hope Lives for Lifers.

¹²⁷ Caher, J. (2013, December 5). Advocates Recite Shortcomings of N.Y. Parole Review Process. *New York Law Journal*.

panel offers *no* support for its predictive conclusions denying release on this basis. A parole board decision based alone on the seriousness of the offense is problematic, since the court and/or prosecutor already took this issue into account at sentencing.

In the types of cases referenced above, the parole board panels are effectively re-sentencing people to additional time in prison based on no new or additional information. Indeed, this information was already taken into account by the sentencing court or the prosecutor in arriving at the final plea offer. This has been raised in the courts by incarcerated people requesting review of parole board decisions. Until recently, judges have been reluctant to find that the board re-sentences offenders. However, judges are increasingly finding that the board does, in fact, re-sentence people by withholding parole, thereby increasing the individual's prison stay for no stated valid reason.¹²⁸

There has been much discussion recently regarding improving parole board performance. Suggestions include denying those with law enforcement backgrounds eligibility to serve on the board; selecting board members who have experience in the social sciences; and/or enacting the SAFE Parole Act (S01728/A02930). I have advocated for the board to adopt standards for its decision-making that are rational, public and consistently adhered to by the board members. I believe the board should be a collegial body that, through a reasoned process, reaches conclusions regarding the exercise of its statutory authority. The board developing and sharing its official standards of review with all interested parties would put release for most parole eligible people in their own hands. Judges, prosecutors, defense lawyers, and defendants would have clear expectations regarding board processes. Consistent, rational decisions made by the board would ultimately result in an increase in public confidence in the board and its decisions.

Determinate Sentences

Over the past few decades, many jurisdictions have adopted determinate sentencing schemes. California, for example, adopted a form of determinate sentencing called “presumptive sentencing,” and the state retained its parole boards in order to deal with people sentenced to life terms. Over the years, as should have been anticipated, the sentence lengths became longer and longer. In addition, California dramatically increased the number of persons sentenced to life terms by enacting their now infamous “three strikes” law.¹²⁹

In 1987, the federal sentencing system rejected the concept of a parole board and shifted to a form of determinate sentencing through the use of sentencing guidelines. Similar to presumptive sentencing, the guidelines have persisted

128 *Douglas v. NYSDCCS*, 6213-13, Supreme Court, Columbia County, Justice Richard Mott, J. (2013); *Matter of Zarro v. NYSDCCS*, 6073-13, Supreme Court, Columbia County, Justice Richard Mott, J. (2013).

129 Dansky, K. (2008). Understanding California Sentencing. *University of San Francisco Law Review* 43, 45.

and their complexity has continuously grown over the years. In an effort to control increasing sentence lengths, the federal system has provided federal judges with the authority to sentence defendants outside the guidelines and to accept recommendations from prosecutors for lesser sentences in deserving cases.¹³⁰

Currently, Governor Jerry Brown of California is taking significant steps to deal with California’s enormous incarcerated population, which has overcrowded all of their prison facilities.¹³¹ Recently, we have heard the former U.S. Attorney General, Eric Holder, call for sentencing reform that will serve, if implemented, to reduce the federal prison population.¹³²

New York State moved to determinate sentencing through the Sentencing Reform Act of 1995¹³³ and the Sentencing Reform Act of 1998 (commonly referred to as “Jenna’s Law”).¹³⁴ These laws require that certain people convicted of violent crimes serve their “full” sentences except for a small amount of good

130 Cappellino, A., Meringolo, J. (2014). The Federal Sentencing Guidelines and the Pursuit of Fair and Just Sentences, *Albany Law Review* 77, 0771.

131 St. John, P. (2014, February 10). Gov. Jerry Brown Wins Two More Years to Reduce Prison Crowding. *LA Times*.

132 United States Department of Justice. (2014). Attorney General Holder Urges Changes in Federal Sentencing Guidelines to Reserve Harshes Penalties for Most Serious Drug Traffickers. *Office of Public Affairs*.

133 Lyons, D., Yee, A. (1995). Crime and Sentencing State Enactments 1995. *State Legislative Report* 20(16). Retrieved from <https://www.ncjrs.gov/pdffiles1/Digitization/161460NCJRS.pdf>.

134 New York State Department of Corrections and Community Supervision. *The Sentencing Reform Act of 1998 – Jenna’s Law*. Retrieved from <https://www.parole.ny.gov/legislation-jl.html>: “The Sentencing Reform Act of 1998 - also known as Jenna’s Law - was passed by the Legislature and signed into law by Governor George Pataki in August 1998. The law establishes determinate sentences for first-time violent felony offenders and requires their incarceration for longer periods by mandating that they serve at least six-sevenths of their determinate sentences. By requiring that first-time violent felony offenders receive determinate sentences, the law eliminates discretionary release from prison. For class B, C and D violent felony offenses, the law increases the minimum sentence of imprisonment that a court can impose. To provide greater protection to the public, the law also specifies that all violent felony offenders must serve a period of post-release supervision and establishes guidelines for the administration of post-release supervision. The law also expands victim notification when persons convicted of violent felonies and other offenses are released, abscond or escape from prison, or are released to the supervision of the Division of Parole. The law adds a new section to the Penal Law (§70.45) that establishes the terms of post-release supervision and the methods for calculating the terms of post-release supervision.

- A term of post-release supervision must be a part of every determinate sentence.

- Violations of post-release supervision may result in reincarceration for a fixed term between six months and the unserved balance of the post-release supervision term, not to exceed five years.

Sentencing Structure for First-time Violent Felony Offenders

Offense Grade	Incarceration Period (in months?)	Supervision Period (in months?)
Class B	5 to 25	2 1/2 to 5
Class C	3 1/2 to 15	2 1/2 to 5
Class D	2 to 7	1 1/2 to 3
Class E	1 1/2 to 4	1 1/2 to 3

The period of post-release supervision for all second-time violent felony offenders is five years. The conditions of post-release supervision are established by the Parole Board similar to the Board’s authority over parolees and offenders on conditional release.”

time. Discretionary release through a parole board was abolished for these people. The determinate sentences contrasted with the indeterminate sentences that allowed for the “early” release of individuals long before their sentences had been fully served. Indeterminate sentences were continued for defendants in non-violent cases and those convicted of the most serious offenses. Whereas the state legislature was unwilling to trust the parole board to exercise its discretion appropriately in the case of violent felony offenders serving determinate sentences, it was more than willing to allow the board to continue to make discretionary release decisions for those serving indeterminate sentences, i.e., those convicted of our most serious and violent crimes.

...what the Parole Board panels effectively do is re-sentence people to additional time in prison based on no specific new or additional information and certainly based on information that was already taken into account by the sentencing Court or the prosecutor in arriving at the final plea offer.

Presently, in the State of New York, the prison population is dropping, paralleling a national trend of an overall decrease in the prison population. Governor Cuomo has closed a number of prisons and, while this is a positive development, the impact on incarcerated women has been dramatic and unfortunate. We have reduced the number of prisons accommodating women from five to three. As a result, many women from the downstate areas of New York must serve their time in Albion, which is a great distance from downstate New York.¹³⁵

We have yet to see the impact of determinate sentencing on the prison population in New York. However, by all accounts and my own professional observation, these sentences’ lengths have increased significantly.^{136,137} We need only look at the sentences for Class B violent felony offenses to note how the prison population will be affected in the future. Under the indeterminate sentencing, the maximum prison time for a first-time defendant sentenced to the maximum term for a Class B violent felony was sixteen years and eight months. Under determinate sentencing, the same person will spend more than twenty years in prison. And there is no way to mitigate the sentence. We see more judges imposing longer and more consecutive determinate sentences that result in very long periods of incarceration. Those defendants will have to serve 85% of those sentences. It is clear to me that it will only be a matter of time be-

135 Kaplan, T. (2011, June 30). Cuomo Administration Closing Seven Prisons, Two in New York City. *New York Times*.

136 Tonry, M. (1999). Reconsidering Indeterminate and Structured Sentencing. *Sentencing & Corrections: Issues for the 21st Century (No. 2)*. Retrieved from <https://www.ncjrs.gov/pdffiles1/nij/175722.pdf>.

137 Petersilia, J. (2009). *When Prisoners Come Home: Parole and Prisoner Reentry*. Oxford University Press.

fore we see that the inability to mitigate lengthy determinate sentences, along with current rates of parole, together produce an increase in the prison population. In many cases it will obviously appear that the continuation of some determinate sentences years after their imposition will result in holding people in our prisons for months and years beyond a time when they could, and in some cases should, have been released to the community.

Tier Three Superintendent's Proceedings

Those more familiar with the efforts of our prisons to control incarcerated people's behavior are acquainted with the Department of Corrections and Community Supervision's disciplinary process and procedures. Today, there is more attention being paid to these proceedings, especially those that result in confinement to special housing units. Studies have shown the impact special housing units have on the mental health of incarcerated people.¹³⁸ I have seen people ordered to spend as many as two years in special housing. There is no doubt that the impact on many of these people is substantial and largely negative regarding their mental health and subsequent behavior.

The New York State prisoner disciplinary process has procedures in place ostensibly to ensure that incarcerated people receive fair treatment in the determination of guilt or innocence when charges are filed in Misbehavior Reports. Offenses are graded, with Tier III offenses being the most serious and Tier I offenses being the least serious. Unfortunately, the procedures in place also allow for arbitrary decision-making in the assessment of the seriousness of the infraction. No guidance is provided to accused individuals or other interested parties to indicate the level at which an alleged infraction of a particular rule will be charged. We are told that the decision to charge an infraction as a level one, two, or three is left to the lieutenant or other Department official assigned to review the filed Misbehavior Report.

Only Tier III Superintendent's hearings can lead to a decision to order that an incarcerated person serve a period of time in special housing. The assigned hearing officer makes the initial determination of how long an individual must serve in special housing for violation of an inmate rule. A review process is also conducted by the Office of the Director of Inmate Discipline and Special Housing. There are times when the review process yields a decision favorable to the individual, but in our experience, that is quite rare. This review process

138 Arrigo, B. A., Bullock, J. L. (2008). The Psychological Effects of Solitary Confinement on Prisoners in Supermax Units: Reviewing What We Know and Recommending What Should Change. *International Journal of Offender Therapy and Comparative Criminology* 52(6); Metzner, J. L., Fellner, J. (2010). Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics. *Journal of the American Academy of Psychiatry and the Law* 38(1); Center for Constitutional Rights. Violations of the Convention Against Torture: Solitary Confinement in U.S. Prisons; Kamel R., Kerness, B. (2003). *The Prison Inside the Prison: Control Units, Supermax Prisons, and Devices of Torture*. Philadelphia, PA: American Friends Service Committee; Ridgeway, J. (2013 January). Three Strikes, You're Old. *Mother Jones*, 38(1); Ridgeway, J. (2012, October 1). The Other Death Sentence: Aging and Dying in America's Prisons. *The Louisiana Weekly*, 1-7.

is entitled to an automatic appeal. The Director permits attorneys, the accused, or other interested parties to submit supplemental materials that set forth evidence and arguments intended to persuade the reviewers that the decision of the hearing officer should either be reversed or his recommended punishments reduced.

More often than not, when someone is found guilty as the result of the disciplinary process, the hearing officer recommends a period of good time loss. The loss of good time for those sentenced to determinate terms results in those individuals spending time in prison beyond their anticipated and legally possible release date, i.e., the conditional release date. That recommendation is subject to review by the institutional Time Allowance Committee when the individual approaches his conditional release date. This is true for all incarcerated people, i.e., those sentenced to determinate terms and those sentenced to indeterminate terms. For those sentenced to indeterminate terms, a recommendation for the loss of good time will be first reviewed by the Time Allowance Committee. For these people who are about to meet with the board of parole for consideration of release, regardless of whether it is an initial or subsequent hearing, it is up to the board as to whether parole release should be denied based on the finding of the disciplinary process and the recommendation for the loss of good time. Very often the disciplinary process outcome affects parole decision-making in a negative way.

Four decades ago, the United States Supreme Court weighed in on prison disciplinary matters and ruled that incarcerated people charged for serious infractions are entitled to what is called “minimal due process.”¹³⁹ The Court spelled out the rules that must be followed by corrections agencies of disciplinary matters. As far as we know, on paper, the Department of Corrections and Community Supervision follows the Court’s recommendations. However, in practice, the provision of due process rights does not have the effect of ensuring that the burden of proving an accused individual’s guilt rests with the Department. A review of many cases makes it clear to us that the burden of proof lies with the accused. Existing rules and regulations on the procedures accompanying disciplinary matters in our prisons do not require the provision of counsel for people charged with infractions. Therefore, anyone so charged must represent him/herself and he or she is responsible for developing and presenting a defense. Meanwhile, the hearing officers admit any and all evidence offered to establish the guilt of the individual without serious effort to ensure that that evidence is appropriate under the circumstances of the case. For example, in one case, an inmate who was charged with violating the rule prohibiting drug use claimed that the positive drug test was a result of his ingestion of poppy seeds found in “everything” bagels. In order to counter



¹³⁹ Minimal due process in prison disciplinary matters was guaranteed to prison inmates by the United States Supreme Court in the landmark case *Wolff v. McDonnell*, 418 U.S. 539 (1974).

this defense, a Correction Officer from the package room who was called as a witness testified that he never admits bagels, though he had no recollection of the package submitted for review to the package room. The accused and his wife had a long history of participation in Family Reunion visitation program with no violations. Their testimony was given no weight against that of the Correction Officer, who had no recollection of the presence at the package room of the individual's wife.

In practice, the provision of due process rights [in NYS Department of Corrections and Community Supervision disciplinary hearings] does not have the effect of ensuring that the burden of proving an accused individual's guilt rests with the Department...The disciplinary process results in the denial of parole for many defendants...it is a little-discussed "barrier to the release" of incarcerated people.

The disciplinary process results in the denial of parole for many defendants and the denial of release for many of those sentenced to determinate sentences. It is a little-discussed "barrier to the release" of incarcerated people. The process requires closer review and restructuring in order to meet the minimum standards of fundamental fairness.

Conclusion

The Parole Board, determinate sentencing, and the prisoner disciplinary procedures all contribute to the bloating of the prison population and the prevention of the release of incarcerated individuals—in particular, the elderly—who are deserving of release. ■



"I speak in colleges and universities, churches, and reentry advocacy programs to show that a woman who committed a serious crime, but has changed, does not need to remain in prison."

Rosalie Cutting, participant in Account Manager/Job Developer Program at the Fortune Society
Age: 70 | Years in prison: 26



Challenges to Re-entry

The High Costs of Low Risk: The Crisis of America's Aging Prison Population (Abridged)

Elizabeth Gaynes

President & CEO, the Osborne Association

NOTE: This article is based upon Ms. Gaynes' symposium remarks and is significantly abridged from the Osborne Association's white paper of the same name, authored by Ms. Gaynes and Colin Bernatzky, to focus exclusively on reentry. The full version is freely available at www.osborneny.org.

The United States has taken part in the most sustained and widespread imprisonment binge known throughout recorded human history, and the “graying” of the prison population represents a national epidemic that has been decades in the making. From 1995 to 2010, the US prison population aged 55 or older nearly quadrupled. By 2030, this population is projected to account for one-third of all incarcerated people in the US, amounting to a staggering 4,400% increase over a fifty-year span. Even as crime has drastically declined and the US prison population has begun to shrink, the aging prison population continues to increase at a disproportionate rate: while the overall prison population grew 42% from 1995-2010, the aging population increased by 282% and shows no signs of slowing down.¹⁴⁰ Today, there are an estimated 246,600 people aged 50 or older behind bars in the United States and over 9,500 aging incarcerated individuals in New York—comprising over 17% of the state's total prison population.¹⁴¹

The Reentry Experience

While the reentry experience for aging individuals poses similar challenges to that of any other person returning home from prison, the elderly also face greater rates of homelessness and un(der)employment, increased anxiety, more fragmented community and family ties, chronic medical conditions, and

140 Fellner, J., Vinck, P. (2012). Old Behind Bars: The Aging Prison Population in the United States. *Human Rights Watch*. Retrieved from http://www.hrw.org/sites/default/files/reports/usprison-s0112webwcover_0.pdf.

141 Bernstein, D., Dworakowski, K. (2014). Under Custody Report: Profile of Under Custody Population As of January 1, 2014. *State of New York Department of Corrections and Community Supervision*, 4.

increased mortality rates.^{142,143,144,145,146} Upon release, returning individuals may not know how to reinstate their benefits and often experience a delay lasting months before their coverage is finally renewed.¹⁴⁷ This can exacerbate existing health conditions and increase the reliance on expensive and inefficient emergency services as a substitute for primary care.¹⁴⁸ The stigma of incarceration, coupled with limited work histories, can stifle employment prospects for *any* returning individual, let alone the aging population—for which the physical and mental health infirmities of old age turn even mundane activities of daily life into challenges. Furthermore, benefits such as Social Security and Supplemental Security Income are suspended during incarceration, and compensation for work in prison is staggeringly low. As a result, opportunities to build a financial cushion to help brace for the impact of reentry are all but nonexistent. Many who have been in prison since their twenties or thirties may not have paid into the Social Security system long enough to be eligible for Social Security or Medicare upon release and, unbelievably, even those who have Medicare are not able to receive care under the program as long as they are under parole supervision.¹⁴⁹ Social connectedness and community stability pose considerable challenges as well—particularly in terms of securing long-term geriatric-appropriate housing. Aging individuals may no longer have a family or community network to return home to and, even if they do, there is no guarantee that families are equipped to handle the staggering medical expenses and the high level of care required for chronic health conditions.¹⁵⁰ Furthermore, aging individuals with criminal records are often discriminated against or stigmatized by nursing homes and hospice care—leaving them with few options.

142 Binswanger, I. A., et al. (2007). Release from Prison—a High Risk of Death for Former Inmates. *New England Journal of Medicine*, 356(2).

143 Williams, B. A., et al. (2010). Coming Home: Health Status and Homelessness Risk of Older Pre-Release Prisoners. *Journal of General Internal Medicine*, 25(10).

144 Crawley, E., Sparks, R. (2006). Is There Life after Imprisonment? How Elderly Men Talk About Imprisonment and Release. *Criminology and Criminal Justice*, 6(1).

145 Stojkovic, S. (2007). Elderly Prisoners: A Growing and Forgotten Group within Correctional Systems Vulnerable to Elder Abuse. *Journal of Elder Abuse & Neglect*, 19(3-4).

146 Le Mesurier, N. (2011). Supporting Older People in Prison: Ideas for Practice. *Age UK*. Retrieved from http://www.ageuk.org.uk/documents/en-gb/for-professionals/government-and-society/older%20prisoners%20guide_pro.pdf?dtrk=true.

147 Wakeman, S. E., McKinney, M. E., Rich, J. D. (2009). Filling the Gap: The Importance of Medicaid Continuity for Former Inmates. *Journal of General Internal Medicine*, 24(7).

148 Mallik-Kane, K., Visher, C. A. (2008). Health and Prisoner Reentry: How Physical, Mental, and Substance Abuse Conditions Shape the Process of Reintegration. *Urban Institute*. Retrieved from <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/411617-Health-and-Prisoner-Reentry.PDF>.

149 Electronic Code of Federal Regulations. CFR Title 42: Public Health. Section 411.4(b): Special conditions for services furnished to individuals in custody of penal authorities. Retrieved from http://www.ecfr.gov/cgi-bin/text-idx?rgn=div5;node=42:2.0.1.2.11#se42.2.411_14.

150 Fellner, J., Vinck, P. (2012). Old Behind Bars: The Aging Prison Population in the United States. *Human Rights Watch*. Retrieved from http://www.hrw.org/sites/default/files/reports/usprison-s0112webwcover_0.pdf.

Reentry

Large gaps in knowledge regarding the health and healthcare needs for this population persist, and the existing evidence has not been effectively communicated to community healthcare providers.¹⁵¹ As such, there are very few existing models of care for formerly incarcerated elderly individuals living in the community. Beyond reentry-focused organizations like Osborne, some of the most promising models and services specifically targeting returning elders include San Francisco's Senior Ex-Offender Program,¹⁵² Ohio's Hocking Correctional Facility one-stop pre-release program,¹⁵³ the Transitions Clinic at Montefiore Medical Center, and Connecticut's Rocky Hill Nursing Home.¹⁵⁴ While State and Federal programming do not expressly target or meet the wide range of needs of this population, many formerly incarcerated aging men and women can benefit from government programs. Aging New Yorkers returning from prison may qualify for temporary cash assistance benefits such as Safety

The abundance of evidence is clear: aging people in prison experience greater hardships and worse health outcomes while incarcerated, possess unique needs that place enormous strain on correctional institutions, and comprise the most expensive cohort to incarcerate while posing the least danger to public safety, culminating in a financially unsustainable and morally precarious (if not wholly untenable) crisis that can no longer be ignored.

Net Assistance (SNA). Additionally, changes to national healthcare through the Affordable Care Act enable incarcerated people in participating states to reestablish benefits such as Medicaid prior to release to help ensure a more seamless transition home. Furthermore, medical services that cannot be delivered within prisons and require off-site travel are now covered by Medicaid in much of the country. It will, however, take some time to fully realize how the Affordable Care Act affects the criminal justice system.

The Work to Be Done

The issue of aging people in prison can be interpreted through several distinct lenses: whether as a matter of economic urgency, a public health crisis, a violation of human rights, or a reflection of the critical shortcomings of the criminal

151 Ahalt, C., et al. (2012). Confined to Ignorance: The Absence of Prisoner Information from Nationally Representative Health Data Sets. *Journal of General Internal Medicine*, 27(2).

152 Bayview Hunters Point Multipurpose Senior Services Inc. Senior Ex-Offender Program (SEOP). Retrieved from <http://bhpmss.org/senior-ex-offender-program/>.

153 Maschi, T., Viola, D., Sun, F. (2013). The High Cost of the International Aging Prisoner Crisis: Well-Being as the Common Denominator for Action. *The Gerontologist*, 53(4).

154 Drury, D. (2013, March 20). Fight over Rocky Hill Nursing Home Hinging on Definition of 'Prisoner'. *The Courant*. Retrieved from http://articles.courant.com/2013-03-20/community/hc-rocky-hill-nursing-home-letter-20130320-1_1_nursing-home-doyle-and-guerrera-medicaid-services.

justice system. Accordingly, any serious and sustainable attempt to resolve this crisis will require a multifaceted and cross-disciplinary approach that places the unique perspectives of gerontology, corrections, health and philanthropy in conversation with each other. In order to provide a launching point for further dialogue and action, we have identified the following recommendations for reentry:

- Ensure continuity of care through specialized discharge planning for the aging population, including “community placement orientation,”^{155,156,157}
- Conduct further research to identify the needs and concerns of the aging reentry population and the communities to which they will return; and
- Develop infrastructure within communities to receive and care for returning individuals.

Toward a New Paradigm of Punishment

The crisis inherent in the graying of the prison population serves as a microcosm for the broader issues at stake with the criminal justice system itself, as it forces us to grapple with the ideological underpinnings of America’s punishment paradigm and highlights the urgency of repealing mandatory minimum, truth-in-sentencing, and habitual offender laws. In light of mounting evidence that our criminal justice system cannot continue unabated along its current trajectory, we must force ourselves to reexamine the very purpose and intention of incarceration. The traditional criminal justice framework of the United States holds that punishment serves four distinct functions: retribution, deterrence, incapacitation, and rehabilitation. As has been described elsewhere in reports from the ACLU and Human Rights Watch, the perpetual incarceration of aging, low-risk men and women does not justifiably fulfill these purposes—nor does it serve the public good. Imprisonment is a method to be utilized in the interests of protecting public safety and preventing crime *in the absence of viable alternatives* to incarceration. But if the overarching purpose of the criminal justice system is indeed to protect public safety and prevent crime, what do we as a society gain by keeping the elderly and infirm behind bars?

The abundance of evidence is clear: aging people in prison experience greater hardships and worse health outcomes while incarcerated, possess unique needs that place enormous strain on correctional institutions, and comprise the *most expensive* cohort to incarcerate while posing the *least danger* to public



155 Williams, B., Abraldes, R. (2007). Growing Older: Challenges of Prison and Reentry for the Aging Population. In *Public Health Behind Bars*, ed. Greifinger, R. NY: Springer.

156 Aday, R. H. (2003). *Aging Prisoners: Crisis in American Corrections*. Westport, CT: Praeger Publishers.

157 Crawley, E., Sparks, R. (2006). Is There Life after Imprisonment? How Elderly Men Talk About Imprisonment and Release. *Criminology and Criminal Justice*, 6(1).

safety, culminating in a financially unsustainable and morally precarious (if not wholly untenable) crisis that can no longer be ignored. And with austerity-driven approaches to shrinking budgets en vogue and increasing public discomfort with mass incarceration, we have reached an opportune moment to begin to seriously address the epidemic of America's graying prison population. But where do we begin? Releasing people without a comprehensive plan for their reentry will not resolve the systemic dysfunction that pervades the criminal justice system. This interconnected complexity of the aging prison population demands a strategic response that is versatile, multifaceted, and seeks to address the issue at multiple points of intervention with involvement from all stakeholders.

The fields of gerontology, philanthropy, health and corrections are uniquely positioned and qualified to collectively inform and implement short-term and long-term solutions to this issue. Armed with critical interdisciplinary knowledge and backed by investment from the philanthropic community, this collaborative partnership possesses unparalleled opportunity to make lasting contributions to the policies and best practices affecting the aging prison population. This joint stakeholder alliance is particularly well suited to enrich the reentry process, first by identifying those factors that older, formerly incarcerated people require in order to thrive upon their release to the community and, subsequently, by creating resources and pathways for their success. The result will be tremendous cost savings, improved public health outcomes, economic growth, a commitment to human rights, and the freedom for our elders to live the remainder of their lives in their communities and to die with grace in the presence of friends and family.

Ultimately, any systemic change around this issue is contingent upon our collective willingness to examine the structural determinants that have caused so many to grow old behind bars, and our ability to deal with the impending surge of aging prisoners in rational, direct and effective ways that free up costs and lives—while recognizing the inherent dignity and worth of all people. ■

The Osborne Association offers opportunities for individuals who have been in conflict with the law to transform their lives through innovative, effective, and replicable programs that serve the community by reducing crime and its human and economic costs. We offer opportunities for reform and rehabilitation through public education, advocacy, and alternatives to incarceration that respect the dignity of people and honor their capacity to change. Osborne serves more than 8,000 currently and formerly incarcerated individuals and their families across several sites throughout the state, including the Bronx, Brooklyn, Poughkeepsie, Rikers Island, and in 22 state correctional facilities. www.osborneny.org | info@osborneny.org

Let Those Who Have Been There Guide Reentry

Gloria Rubero

I hope the personal experiences I outline below can help us figure out how to construct reentry services that work better for aging people who are released from prison.

I served 26 years in New York prisons. I went into prison when I was 30, and I came out when I was 56. In between, I earned a G.E.D. and a college degree. I did maintenance work while in prison, and I actually saved the system a lot of money by fixing everything that was broken. I also applied for parole five times, and I was denied parole five times. Inside the facility, I had two major strokes and one mini-stroke. Once, when I went to the board, I had had a stroke and did not even remember my case; did not remember my crime; could hardly even speak; but they denied me. But I was determined to show that I could survive; that I could walk and talk again—and I accomplished that.

I went into prison when I was 30, and I came out when I was 56. In between, I earned a GED and a college degree. I...applied for parole five times, and I was denied parole five times. Inside the facility, I had two major strokes and one mini-stroke. Once when I went to the board, I had had a stroke and did not even remember my case, did not remember my crime, could hardly even speak, but they denied me.

We long-termers change during those years in prison. And we have extra challenges when we are released.

For people who have children, it can be hard while they're inside, and hard when they get out. Some women are arrested while pregnant and subsequently give birth in prison, and their sentence might be 25 or 30 years in length. It is heart breaking for parents to have children and be unable to be with them. Then, when released from prison, it's 30 years later. Their child is now 30 years old. And while they may have had ties with their child while they were locked up (and potentially, were even lucky enough to have trailer visits) it's not the same as being there for them on the outside. When they hurt, they throw anything at you. They hurt you. They say: "You weren't there for me." So, when you are finally released, you try to repair that—and sometimes, you cannot.

When I got out nine years ago, it was like being thrown from the top of the stairs to the bottom—I had nothing. Nothing was familiar. I did not come out young. And it's harder for a person who is older when they're coming out, because it's even more difficult to retain new information and new skills (such as computer skills). Younger people learn more quickly. So, for me, it was like

evolving suddenly into a futuristic world compared to what we were dealing with inside. On the inside, nothing is advanced at all. It's more like living in 1950.

When I first got out, I couldn't understand why people were walking down the street talking to themselves. I had no idea they were having telephone conversations. I thought they were all crazy. And you will hear other people say this about their first impressions of the world when they leave prison at an older age, after serving a long sentence.

When I got out, I felt the world was small; there was no room for me. Things moved so fast, and I couldn't keep up. I felt like I did not belong. My family couldn't understand what I was feeling. They couldn't understand why I felt so paranoid; so pressured.

The world had moved beyond me, taking things from me while I had been in prison. I had lost a lot. When I got out, I was hit with the fact that a lot of my family members were old, too—and they were dying.

I lost my best friend—my co-defendant; my partner; my wife. We did most of our time together, and we shared everything. She got out a month before I did. She died five years after she was released. She had cancer, but nobody detected it while she was in prison.

I needed a job because it's hard to save money while in prison. The Department of Corrections gave me \$40 when I left. But it was hard to get a job. First, I was old. Second, I was gay. Third, I had a criminal background. Even though I did highly skilled maintenance and repair work (plumbing; electrical; all kinds of jobs) while I was in prison, I did not get a certificate or a license. That meant I couldn't get a job outside, even though I was good at my job. When I did get a job, I had to go through training programs that I did not really need—all because there had been no licensing inside. That also meant I got paid less than I should have.

Because I had been incarcerated, I had to pay an entire year's rent upfront in order to get an apartment. The landlord would not rent to me without it. It took me a year to work to get that money so I could get an apartment.

Many of these things could be avoided with better reentry systems in place, and with fewer rules that make reentry so hard. Especially for older people, reentry should begin long before a person actually walks out of prison.

First, the prison should assist released people with their paperwork. I left prison with nothing—no Medicaid; no connection to medical services; no connection to housing or a job. I was told I had to get my own medical records and pay for them. All those things present you with reasons to fail.

When I got out, I did receive Medicaid for a brief period. However, when I found a part-time job, Medicaid automatically ended. After six months in part-time work, I found a full-time position and remained there for six years. At

that particular job, there was a union, so I received health insurance. However, I still had to pay co-payments when I received treatment. Therefore, along with many other people I know who have insurance, I tried to avoid receiving treatment at hospital due to the high expense of the co-payment. If you've spent much of your life in prison, you do not have savings to fall back on, so the co-payment is far more difficult to meet.

Second, long-termers should be transferred to a low-security prison so they can become accustomed to operating on the outside before they are released. At a low-security prison, you can work in the community and get used to being there. At the moment, that is extremely rare, perhaps even non-existent. The rationale behind this is to prevent escape, since it is assumed that the individual will attempt to escape. But they will not—they want to be released from prison, not escape from prison. They only have a few years left of a long sentence; why would they jeopardize that? When you've done so much prison time, why would you attempt to escape right at the end and risk getting another seven or more years? Yet, instead of being gradually integrated back into society, elderly people are released directly from a maximum-security prison to the street.

It gets harder and harder as the years go by and your age advances. What is sorely needed is a rehabilitation center or a work release center for older people so that, upon release, they can obtain appropriate help, support and treatment—and, most importantly, so they can receive support from others who fully understand what they are going through. Other formerly incarcerated people could serve as guides or buddies. This would provide the released person with someone who can both “show them the ropes” and understand the internal struggle they go through when adjusting to life outside prison—someone who has been through it personally; someone who knows how it feels. They need someone like that simply to take them places and walk them through the steps: a true buddy system.

Unfortunately, the parole system has the reverse effect. While on parole, you are not allowed to associate with others who have served sentences, or were convicted of felonies. You are therefore unable to associate with the very people who could help you.

To reiterate, it must be recognized that younger people adapt faster upon release from prison. Their minds are quicker and they are able to learn and adapt to technology with far greater ease. For older people, however, we need somebody to teach us—and to have patience as we learn. We need someone who has been through the same experiences mentally and emotionally.

We are no harm to anyone except, perhaps, ourselves. We've paid our dues. Regardless of what we did, we are different people now. Everyone deserves a second chance, and that includes us aging long-termers. ■

New York State Department of Corrections and Community Supervision (DOCCS) Discharge Planning Barriers: Potential Strategies

Lynn Cortella, RN BSN, CCHP, CCM

Formerly of NYS Department of Corrections and Community Supervision

This paper presents a brief discussion of discharge planning for individuals being released from prison to the community in the State of New York. I argue that, while significant changes are underway in reentry programming and practice on both the state and federal levels, a great deal more needs to be done with regard to discharge planning in order to address the myriad needs of the formerly incarcerated and to better facilitate successful reintegration.

Upon release to the community, formerly incarcerated individuals face a daunting array of challenges. They often encounter major difficulties in securing housing, employment, and transportation, and they may be ineligible for public benefits.¹⁵⁸ Having been incarcerated frequently results in serious damage to one's personal relationships and community and social supports, and the stigma of a criminal record can negatively impact one's social standing. Moreover, discharge planning and the reentry process may be especially difficult for formerly incarcerated individuals who are released with chronic or complex medical and/or mental health issues.¹⁵⁹

There is growing recognition that efforts must be made to improve reentry outcomes given the significant number of individuals who are being released from federal and state correctional facilities (roughly 95% of all incarcerated men and women are eventually released);¹⁶⁰ the high rate at which many categories of formerly incarcerated people return to custody for technical violations or new offenses;¹⁶¹ and the fact that community safety is intrinsically related to the successful reentry of the formerly incarcerated. Indeed, the introduction to

158 Williams, B., Abraldes, R. (2007). Growing Older: Challenges of Prison and Reentry for the Aging Population. In *Public Health Behind Bars* (56-72). New York: Springer.

159 Gunnison, E., Helfgott, J. B. (2013). *Offender Reentry: Beyond Crime and Punishment*. Lynne Rienner Publishers.

160 Petersilia, J. (2003). *When Prisoners Come Home: Parole and Prisoner Reentry*. Oxford University Press.

161 Bureau of Justice Statistics. (2014, April 22). Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010, NCJ 244205. Retrieved from <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=4986>.

the “TPC (Transition from Prison to Community) Case Management Handbook: An Integrated Case Management Approach,” a publication of the National Institute of Corrections (NIC), highlights several current national initiatives related to improving reentry planning and outcomes—including the TPC model, the Serious and Violent Offender Reentry Initiative of the Bureau of Justice Assistance, the President’s Prisoner Reentry Initiative, the Reentry Policy Council and Justice Reinvestment efforts of the Council of State Governments, and the National Governor’s Association Reentry Policy Academy.¹⁶² According to the handbook, “these initiatives define a new strategic direction in the field and provide important support to leadership.”¹⁶³

Effective discharge planning requires the implementation of evidence-based assessment at multiple points in time in order to gather generative information about the particular continuous needs of an incarcerated individual who is subject to release from prison. An initial intake assessment with an incarcerated individual subject to release includes, in principal part, the collection of facts such as medical and psychosocial conditions, family history, various other support needs, and benefits and entitlements received prior to and to be received after incarceration. Although it is critical that such assessments be conducted prior to an individual’s reentry, for a variety of reasons (including complications related to geographical barriers and conflicts related to court dates and parole hearings), in current practice, it is not always possible to complete an assessment sufficiently early (three to six months prior to release date—to allow time for connection to needed services) for every potential person on parole. Furthermore, in some cases, late identification of an incarcerated person’s service needs may occur due to an unexpected early release. Accordingly, implementing a more thorough and consistent assessment protocol constitutes an important potential improvement in discharge planning. Considering the large number of individuals being released annually from New York State correctional facilities, it is important that substantial discharge resources be available.

Effective communication among correctional staff is also vital to discharge planning and the wellbeing of incarcerated individuals. This is especially the case for those with medical problems. The effective provision of healthcare within state correctional facilities often requires numerous interactions among many healthcare providers and staff. In order to best meet the particular needs of each parolee, it is necessary to facilitate effective communication among all parties relevant to successful reentry, including members of the healthcare staff, mental health services, security, parole officers, and outside community care providers. Greater levels of integration and communication among the different parts of the system are likely to foster competent discharge planning

162 Burke, P., Herman, P., Stoker, R., Giguere, R. (2010). *TPC Case Management Handbook: An Integrated Case Management Approach*. Retrieved from <https://s3.amazonaws.com/static.nicic.gov/Library/024393.pdf>.

163 *Id.* 1.

and thereby improve formerly incarcerated individuals' chances at successful reentry.

A study by Evelyn Patterson, a sociologist at Vanderbilt University, regarding the relationship between mortality and the amount of time served in prison provides some evidence of the consequences of inadequate discharge planning.¹⁶⁴

According to Patterson, a formerly incarcerated individual's risk of mortality spikes immediately after he or she is released from prison, but then declines over time.¹⁶⁵ A key problem related to this pattern is that people on parole often find it very difficult to secure proper healthcare in the immediate months after leaving the prison system. Moreover, while in many instances people on parole with chronic illness are given a short-term supply of necessary medications upon release, they are often released with no connection to community-based health services for follow up and continuous care.¹⁶⁶ Establishing a discharge plan that appropriately addresses the medical needs of people on parole is thus essential to providing appropriate care and resources for our large incarcerat-

We need to foster an environment of trust and engage in frank dialogue with the community to allay fears or concerns people may have regarding formerly incarcerated individuals who are reentering the community. We...encourage all community members to view our patients in the same manner as other patients and community-based care recipients.

ed population—especially as they age within the system. While there is no legislation requiring the provision of medical discharge planning for incarcerated people, the United States Supreme Court ruling in *Estelle v. Gamble* did impose the requirement that prison healthcare provide “timely access to care.”¹⁶⁷ In the years since *Estelle*, discharge planning has come to be seen as necessary to such care.¹⁶⁸

Several current initiatives attempt to address this piece of reentry planning. The New York State Department of Corrections and Community Supervision (DOCCS) has initiated programs designed to improve the healthcare component of the reentry process. Discharge planning initiatives for parolees with HIV and hepatitis C (HCV), for example, address important issues of post-release care for

164 Patterson, E. J. (2013). The Dose-Response of Time Served in Prison on Mortality: New York State, 1989-2003. *American Journal of Public Health* 103(3) 523-528.

165 *Id.*

166 *Id.*

167 *Estelle v. Gamble*, 429 U.S. 97 (1976).

168 Mellow, J., Greifinger, R. B. (2007). Successful Reentry: The Perspective of Private Correctional Health Care Providers. *The Journal of Urban Health*, 84(1), 85-98.

this sub-population within the prison system.¹⁶⁹ Specifically, DOCCS works in conjunction with the New York State Department of Health to provide HIV and HCV treatment for the formerly incarcerated. This initiative, while limited to these diagnoses, illustrates the importance of effectively coordinating patient care prior to release in order to ensure access to and continuity and cost-effectiveness of post-release care.

Second, DOCCS takes a proactive role with New York State's Compassionate Release Program, which provides for release from prison for people suffering from debilitating medical conditions, including some that are not terminal.¹⁷⁰ In particular, DOCCS is aggressive in attempting to identify appropriate candidates for release under the program. Indeed, we do not simply wait for a letter or a phone call to initiate a Compassionate Release request. We provide information and education to relevant parties in New York State prison facilities regarding the program, and encourage them to make appropriate referrals.

Third, DOCCS has begun initiating Medicaid applications for individuals prior to release. In addition, in appropriate circumstances, we complete other entitlement applications for those subject to reentry, including, e.g., Social Security Disability Insurance and Supplemental Security Income (SSDI/SSI). This is an important consideration in the placement of our patients who require ongoing medical follow-up and/or placement.

Recent DOCCS initiatives related to reentry revolve around "in-reach" as well as outreach activities. We visit nursing homes, assisted living facilities, and home healthcare organizations within the community to provide education about our facilities, healthcare, and patient population. DOCCS also invites these potential community partners to our correctional facilities to engage them in further education and to build greater understanding of both our system and the needs of our patient population. In addition, we provide follow-ups with the nursing homes and other facilities that assume care of our patients. We believe that these partners and colleagues in the community must know who we are, what our mission is, and how we can most effectively care for our patients.

We need to foster an environment of trust and engage in frank dialogue with the community to allay fears or concerns people may have regarding formerly incarcerated individuals who are reentering the community. We are establishing excellent, ongoing relationships with numerous community collaborators



169 New York State Department of Health and New York State Department of Corrections and Community Supervision. Hepatitis C Guidelines Continuity Program Protocol. Retrieved from <http://www.health.ny.gov/diseases/aids/providers/corrections/hepcprogram.htm/>.

170 New York State Department of Corrections and Community Supervision. (2014). Directive 4304, 04/08/2014. Retrieved from <http://www.doccs.ny.gov/Directives/4304.pdf>.

in order to encourage all community members to view our patients in the same manner as other patients and community-based care recipients. I am not always met with understanding and openness when visiting community sites and asking for consideration on behalf of DOCCS patients; however, direct engagement with community members is the best tool at our disposal for gaining their confidence and attention to our needs. With ongoing education and community involvement on the part of DOCCS, we will be better able to meet the needs of our aged and chronically ill patients as they reenter society, and we will better serve the public by fostering the best possible outcomes for formerly incarcerated men and women.

...greater emphasis must be placed on the role of discharge planning as preparation for the moment of release and as a mechanism for connecting the formerly incarcerated with appropriate services and support systems in their communities. This is in the best interest not only of the state Departments of Corrections and parolees, but of the general public as well.

While practically every state department of corrections across the country is engaged in some practice that could be termed “discharge” or “release” planning, the intensity and extent of such plans appear to be quite varied. Moving forward, in the State of New York and elsewhere, greater emphasis must be placed on the role of discharge planning as preparation for the moment of release and as a mechanism for connecting the formerly incarcerated with appropriate services and support systems in their communities. This is in the best interests not only of state departments of corrections and parolees, but the general public as well. ■

Combating Employment Discrimination to Reduce Barriers to Reentry

Sandra Pullman

Office of the New York State Attorney General, Civil Rights Bureau

The United States is notorious for incarcerating a larger percentage of its population than any country in the world.¹⁷¹ At current rates, approximately 6.6% of all persons born in this country in 2001 will serve time in prison during their lifetimes.¹⁷² In addition to these striking figures for the total population, there are stark racial disparities in incarceration rates, as African Americans and Hispanics are arrested at a rate that is 2 to 3 times their proportion of the general population.¹⁷³ Overall, 1 in 17 white men are expected to serve time in prison during their lifetime; this rate rises to 1 in 6 for Hispanic men and to 1 in 3 for African American men.¹⁷⁴

Upon release from prison, there are continuing collateral consequences of a criminal record, particularly in employment. Studies have found that 78% of employers now utilize criminal background checks to screen over 80% of their hires.¹⁷⁵ Erecting barriers to employment for formerly incarcerated people serves to frustrate the criminal justice goals of rehabilitation and reintegration into society—and even diminish public safety—as job instability is associated with higher crime and increased recidivism.¹⁷⁶ Further, persistent racial inequities in hiring practices compound the challenges people of color face in securing employment after release from prison, as Black applicants with criminal

171 Walmsley, R. (2013). World Prison Population List 1 (10th ed.). Retrieved from http://www.prison-studies.org/sites/default/files/resources/downloads/wppl_10.pdf.

172 Bonczar, T. P. (2003). Bureau of Justice Statistics, U.S. Department of Justice. Prevalence of Imprisonment in the U.S. Population, 1974–2001, 1. Retrieved from <http://www.bjs.gov/content/pub/pdf/piusp01.pdf>.

173 *Id.*

174 *Id.*

175 EmployeeScreenIQ. (2011). Trends in Employment Background Screening: 2011 Results 2. Retrieved from http://www.employeescreen.com/ESIQ_Trends_2011.pdf.

176 Morris, M.W., Sumner, M., Borja, J. (2008). A Higher Hurdle: Barriers to Employment for Formerly Incarcerated Women. Berkeley Law, Thelton E. Henderson Center for Social Justice, 7. Retrieved from <http://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1001&context=werc> (noting that, as unemployment increases, crime increases, and as wages go up, crime is reduced); see also New York City Bar Association Task Force on Employment Opportunities for the Previously Incarcerated. (2008). Legal Employers Taking the Lead: Enhancing Employment Opportunities for the Previously Incarcerated, 35. Retrieved from http://www.nycbar.org/pdf/report/Task_Force_Report08.pdf (“Providing secure employment with prospects for advancement to the formerly incarcerated will reduce recidivism, reduce the costs of maintaining a huge prison population (thereby lowering taxes or reducing the pressure to raise them), strengthen family ties, and enhance public safety—all of which are important social objectives”).

records are hired at lower rates than whites with the same criminal history, and Blacks without any criminal conviction are hired at rates similar to or even lower than whites with convictions.¹⁷⁷

...persistent racial inequities in hiring practices compound the challenges people of color face in securing employment after release from prison, as black applicants with criminal records are hired at lower rates than whites with the same criminal history...

The Equal Employment Opportunity Commission (EEOC) has addressed this problem by prosecuting employers who implement arbitrary criminal history bans for disparate impact discrimination, that is: the use of a neutral employment practice that disproportionately affects racial minorities and cannot be justified by business necessity.¹⁷⁸ In 2013, for example, the EEOC filed a nationwide class action lawsuit challenging the use of criminal background checks by Dollar General, on the basis that this practice was more likely to disqualify Black applicants and was unrelated to the requirements of the job.¹⁷⁹ The EEOC has also issued guidance to employers, recommending that they perform individualized assessments of applicants' criminal records in order to ensure their hiring policies are narrowly tailored to their business needs.¹⁸⁰ Under the EEOC guidelines, when evaluating applicants' criminal records, employers should consider: (1) the underlying facts and circumstances of the offense; (2) the number of convictions; (3) older age at the time of conviction or release; (4) evidence that the individual performed the same type of work, post-conviction, with no subsequent offenses; (5) the applicant's prior work history; (6) evidence of rehabilitation; (7) personal and employment references; and (8) coverage by a government bonding program.¹⁸¹

While federal law only prohibits hiring policies that disqualify prospective employees with criminal histories to the extent that they have an unjustified, disparate impact on racial minorities, New York State law prohibits employers from discriminating on the basis of criminal convictions—regardless of the applicant's race. New York Correction Law 23-A, which passed in 1976,¹⁸² requires an individualized assessment of all job applicants' criminal records. Under Article 23-A, an employer may not deny or terminate employment on the

177 Pager, D. (2003). The Mark of a Criminal Record, *American Journal of Sociology* 108(5), 937–75.

178 See generally *Griggs v. Duke Power Co.*, 401 U.S. (1971), 424, 431.

179 U.S. Equal Employment Opportunity Commission. (2013). Press Release, EEOC Files Suit Against Two Employers for Use of Criminal Background Checks. Retrieved from <http://www.eeoc.gov/eeoc/newsroom/release/6-11-13.cfm>.

180 U.S. Equal Employment Opportunity Commission. (2012). Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, EEOC Enforcement Guide No. 915.002. Retrieved from http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm.

181 *Id.*

182 New York Correction Law. (1976). Article 23-A. Sections 750-755. Retrieved from <https://www.labor.ny.gov/formsdocs/wp/correction-law-article-23a.pdf>.

basis of prior criminal convictions except when there is a direct relationship between the criminal record and the job sought, or when the applicant poses a threat to public safety or property.¹⁸³ In making this determination, employers must consider: (1) public policies in the state of New York that pertain to the licensure and employment of persons with prior convictions; (2) the duties of the job sought; (3) what bearing the conviction has on the applicant's ability to perform those job duties; (4) the time since the conviction; (5) the age of the person at the time of the conviction; (6) the seriousness of the offense; (7) any evidence of rehabilitation and good conduct; and (8) legitimate public safety concerns.¹⁸⁴ Article 23-A applies to all governmental employers and all private employers operating in New York State that employ ten or more individuals.¹⁸⁵

The Civil Rights Bureau of the New York State Attorney General's Office (OAG) has investigated and prosecuted numerous violations of Article 23-A in a variety of different contexts. In its 2008 investigation of Radio Shack, for example, the OAG found that Radio Shack used job kiosks and an online application that automatically rejected applicants who indicated that they had been convicted of a felony in the last seven years. The investigation revealed that RadioShack disqualified thousands of applicants for positions in New York without considering the factors required by state law and, furthermore, withdrew over 100 conditional offers of employment on the basis of sealed convictions, violations and infractions, and dispositions that were not convictions—all of this in violation of state law.¹⁸⁶ In 2009, the OAG investigated Aramark, one of the largest food service providers in the country, which advertised in job postings, at job fairs, and to referral agencies that applicants would not be hired if they had any criminal history within the last seven years. The investigation revealed that Aramark also evaluated conditional employees' criminal histories without considering the required statutory factors.¹⁸⁷ Next, in 2010, the OAG investigated ABM, one of the largest facilities services contractors in the United States, which was conducting criminal background checks of applicants and using a matrix to determine their eligibility, without considering the age of the applicant at the time of the offense. ABM also considered offenses that were not crimes, such as traffic infractions, and charges that had been dismissed, which employers may not inquire about or consider pursuant to state law. The OAG subsequently investigated Choicepoint, the consumer-reporting agency that had worked with ABM to create the unlawful matrix and had provided criminal background information that cannot lawfully be reported

183 *Id.* Section 752.

184 *Id.* Section 753(1).

185 *Id.* Section 751.

186 Office of the Attorney General of the State of New York: Civil Rights Bureau. (2009). *In the Matter of the Investigation of Andrew M. Cuomo, Attorney General of the State of New York, of Radioshack Corporation*, AOD No. 09-148, para 6.

187 Office of the Attorney General of the State of New York: Civil Rights Bureau. (2009). *In the Matter of the Investigation of Andrew M. Cuomo, Attorney General of the State of New York, of Aramark Corporation*, AOD No. 09-164, para 1.

in New York State. The office ultimately expanded this enforcement work with companies that provide criminal background reports to employers, by obtaining letter agreements from all four of the nation's largest consumer reporting agencies that prohibit them from automatically rejecting applicants with criminal histories on behalf of employers. Moreover, local governments have failed to fulfill their obligations under state law. For example, the OAG entered into an agreement with the City of Oswego, which ultimately agreed to revise a local law that disqualified anyone with a felony conviction from obtaining a taxi license.¹⁸⁸ Most recently, the OAG concluded its investigation of Bed Bath and Beyond and found that it lacked policies, procedures, and training of its hiring managers on the factors required to be considered in evaluating criminal records and, as a result, hiring managers were unlawfully refusing to hire any individuals with felony convictions. As part of the settlement, Bed Bath and Beyond agreed to remove its question about criminal convictions from its job application nationwide.¹⁸⁹

Although not required by federal law, some states and localities have required employers to remove criminal record disclosure questions from employment applications—an initiative sometimes referred to as “Ban the Box.” In Buffalo, for example, since January 1, 2014, employers with 15 or more employees may not question applicants about their criminal record prior to a first interview. Employers may then ask questions during the interview, but the applicant has a chance to provide additional information and will not automatically be excluded from consideration on the basis of a criminal conviction. While Buffalo is the first city in New York that has banned the box for private employers, New York City has done so for public employers since 2011.¹⁹⁰ Throughout the country, 100 jurisdictions have enacted such legislation.¹⁹¹

As we consider how to reintegrate those who have served time and reduce the collateral consequences of incarceration, continued enforcement of anti-discrimination laws, public education, and expansion of legal protections are necessary steps to reduce arbitrary barriers to reentry. ■

188 New York State Office of the Attorney General, Media Center, Press Release (2013). A.G. Schneiderman Helps Secure Access To Employment Opportunities For Taxi Driver Applicants In Oswego. Retrieved from <http://www.ag.ny.gov/press-release/ag-schneiderman-helps-secure-access-employment-opportunities-taxi-driver-applicants>.

189 New York State Office of the Attorney General, Media Center, Press Release (2013). A.G. Schneiderman Announces Settlement With Major Retailer To End Ban On Hiring Applicants With Criminal Convictions. Retrieved from <http://www.ag.ny.gov/press-release/ag-schneiderman-announces-settlement-major-retailer-end-ban-hiring-applicants-criminal>.

190 National Employment Law Project. (2014). Ban the Box: Major U.S. Cities and Counties Adopt Fair Hiring Policies to Remove Unfair Barriers to Employment of People with Criminal Records. Retrieved from <http://www.nelp.org/content/uploads/2015/03/Bantheboxcurrent.pdf?nocdn=1>.

191 National Employment Law Project. (2015). Ban the Box: U.S. Cities, Counties and States Adopt Fair Hiring Policies to Reduce Barriers to Employment of People with Conviction Records. Retrieved from <http://www.nelp.org/publication/ban-the-box-fair-chance-hiring-state-and-local-guide>.

Co-Constructing Community: A Conceptual Map for Reuniting Aging People in Prison to Families and Communities

Tina Maschi, PhD, LCSW, ACSW

Fordham University

Einstein said: “We cannot solve problems by using the same kind of thinking we used when we created them.” These words of wisdom suggest that we must think creatively about social problems, including the aging prison population crisis, in order to effect positive change. Today we are at a crossroads: we can either continue with current practice and policy, or we can define this crisis as an opportunity to identify the root of the problem and develop innovative solutions. Communities must assess the costs and benefits of supporting the dismantling of the strict sentencing and parole release policies that were adopted in the 1970’s and 1980’s—policies that have robbed many individuals, families, and communities of healthy and productive elders and have prevented sick and dying individuals with criminal conviction histories from receiving compassionate care.

This paper reports on a study of aging people released from prison. It challenges readers to think “outside the box” of the social structures and popular conceptions of the prison system to visualize communities of care that really do *care*. It conceptualizes prison release not as “community reintegration,” but rather as the “reunification” of older adults with their families and communities. Although there are many definitions of community, the common definitions most relevant to the current discussion are: (1) “A group of people living in the same location,” (2) “A feeling of fellowship with others, as a result of sharing common attitudes, interests, and goals,” and (3) “A unified body of individuals.”¹⁹² Collectively, these definitions suggest that a community is a place or state with physical, psychological, emotional, social, and spiritual dimensions. One formerly incarcerated older person described the internal and external experience of connecting with his community, which began by connecting with himself:

I mean, at the end of the day it’s about doing what I can do to help myself. It’s a process, it really is. To me it is a system within itself. Doing what I can do for myself, then my family, then that immediate community that I may

¹⁹² Community. (2014). In *Merriam-Webster.com*. Retrieved January 1, 2014, from <http://www.merriam-webster.com/dictionary/community>.

be in, and then subsequently, ultimately, the greater community, because, I mean, actually my mind says import, export.

Methods

This study was conducted from 2013 to 2014 and was a longitudinal mixed methods study of thirty formerly incarcerated men and women aged 50 and over. Participants reported varying levels of health, mental health, legal, and social care concerns. Participants' lengthiest individual prison sentences ranged from five to twenty five years and time since release ranged from one week to one year. During semi-structured interviews, participants shared their views on prison, the community, and the factors that influenced their individual community reunification processes. The ninety-minute interviews were digitally audio-recorded and transcribed verbatim. The qualitative data was analyzed using constant comparative methods to identify emergent categories and themes.

Findings

Thirty older men and women shared experiences of the factors that affected their individual processes of community reunification. The results of the constant comparative analysis revealed two major themes: (1) Person in the community-care context as both the root of the problem and the solution; and (2) Facilitators and barriers to success (internal and external resources). These themes are reviewed in that order below.

Person in the Community-Care Context

For many participants, the root of the problem *and* solution lies within the person in community-care context. One formerly incarcerated 61-year-old African-American man shared this view:

I think the community has to do a lot to help the younger people staying on the street and give them a reason, provide the resources to not even think about going to jail. Once they get into the criminal justice system that system is not designed to teach you to be a better person out there. So the community has to do its job, not the prison system. It starts in the community. It starts at home, then the community, and, if all else fails, the criminal justice system.

Lifetime Experiences with Care Providers

Participants also shared their lifetime experiences with informal and formal care providers, which included family members and professionals. As illustrated in the quotes below, participants described qualities of caregivers that were helpful, such as valuing human potential and conveying unconditional love, dignity, respect and belief in the worthiness of others; being authentic, empathic, compassionate, solution-focused, responsible, resourceful, and using positive communication (e.g., active listening); and providing guidance and

care linkages (when needed). When these characteristics were absent, participants perceived their social interactions with care providers as less helpful and in some cases neglectful and abusive. When these qualities were present, some participants felt loved and cared for, which then had focusing and motivating effects. One 59-year-old Latino participant described his experience with a police officer when he was a teenager:

My experiences with professionals have varied. As a teenager, when I first got into the system, I met some very nice officers. We don't even want to arrest you, you're soliciting. Call your parents. You know, give me your number, let me call your mom and dad. If they come get you we're not even going to fingerprint you. Ma's response was, I could care less, keep him. There's good and bad in all. There was one particular officer from my community that literally sat down and talked to me and listened to my problems. He's like, you know, here's what you can do. He was one of the first people I think within the system that reached out and said, you know, we can find a solution to this.

Another 51-year-old participant described a negative care experience with correctional staff during his most recent prison term:

The staff would be sending everybody a paper for birthday, to fill out to get a new birth certificate or social security card if you need it. However, they take these papers and they just sit in whoever's desk. So, you know, it's like they, they don't, they don't take care of nothing in there. So once you got out, though, you are expected to navigate your way around the city with no problems and get your documents, food stamps, medication, and see a doctor?

The Reunification Journey

Participants described the reunification journey as a physical, psychological, emotional, social, and spiritual experience that begins while one is still in prison. Their individual experiences varied based on their perceptions of safety and level of access to internal and external resources or supports to help them prepare, survive, and thrive in their reunification processes. In the narrative excerpts below, participants described factors involved in the processes of realizing and actualizing community reunification:

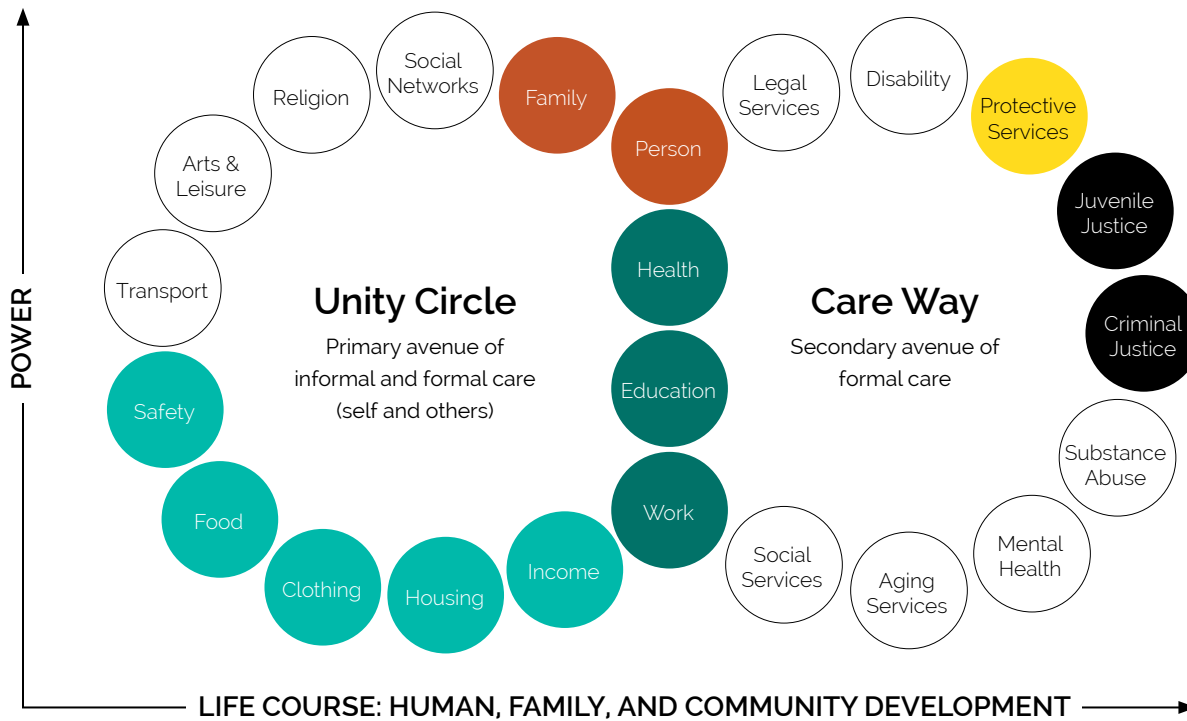
I prepared myself for my release date. So I wasn't, wasn't worried about anything because I had idea already. Uh, my friend, my, my best friend held all my clothes and property for me, so I really wasn't worried about that. Um, and even when I got home, like about a couple of days after I got home. I was worried about a place to stay, but then I didn't because my same best friend let me live at his apartment while he lived in his house.

After Release From Prison

Once released from prison, participants continued to access internal and external resources/supports to navigate their journey. Participants who managed to

Figure 1

Person in Community Environment: Prevention, Assessment, and Intervention Planning



thrive described internal resources that bolstered their resilience despite the adverse conditions in their respective environments. Key internal resources that participants reported utilizing included positive thinking, self-awareness, self-compassion, self-forgiveness, self-discipline, altruism, autonomy/independence, personal agency, self-determination, self-regulation, adaptability, and resourcefulness. Many described having used problem-solving strategies such as proactive planning, especially when faced with challenges. One 55-year-old African American man shared:

The only thing I'd say about prison is it can be a learning experience if you use it for that. It's negative, but it doesn't have to stay negative, because a lot of good, there's a lot of positive that can come out of it.

External Resources and Social Supports

Participants also described external resources (i.e., social supports) as an important asset that helped them navigate the reunification process. These resources and supports included family, mental health and other services, education, and training—such as basic living skills.

My family, right now my family's my biggest supporter because I can say that and I can say that freely because there was a time when I couldn't even go, the furthest I could go was on the stoop you know because of, you know, my behavior, you know, my behavior with the drugs and stuff like that you know.

The most important thing for me was getting in contact with people who have the resources for me to survive. Trainings, mental health care—I learned computer skills. I went back to college. I did the footwork and found people who can help me navigate living in my community. Basic living skills that I didn't have prior to my incarceration. And it took a long time, about a year, to put all this in place.

Getting employment was my biggest challenge. Finding a job that not only could help me pay my bills, but pay my way through life. But also have room for me to grow in. I've had messenger jobs. I've had—worked as a dishwasher, but all those jobs were nowhere jobs, because I had to learn some skills to make myself more employable.

Challenges

Participants also described challenges and barriers to reunification and to positive experiences of community. These challenges included living in unsafe housing and community settings, and lack of access to quality care. While many participants were able to overcome these hurdles, their statements reflected that their communities were not well prepared to recognize needs and provide basic care to formerly incarcerated senior citizens. Relevant excerpts from some of the participants' narratives about the challenges are as follows:

Well, I did have a lot of problems, um, as, as far as getting food, shelter, medications and all that. I, I did have problems. Uh, we had started the, the, the food stamp process while I was in prison. But even, this is months before, and by the time I got out, I still had problems getting it because of, um, information that I didn't have, like ID and, um, at that time, I didn't have my social security card or nothing. So I had to go start from the beginning. I had to go get ID. I had to go get social security card. I had to go get new birth certificate. And that's sad because without ID you don't exist. It is like you're not living, so it's important to have the ID.

Discussion

These findings also suggest that the onus of care and accountability is on the person and community care context in which community and service providers support conditions for safer and healthier living. High-ranking government officials recognize the importance of empowering communities to address crime and public safety and health disparities at the local level. In his 2014 State of the State Address, Governor Cuomo underscored grassroots community activities in reentry support and services as a key strategy to reduce crime and recidivism and make communities safer.¹⁹³ He reminded: “We are part of one community; one fabric.” New York is of significant concern because it has one of the five largest prison populations in the United States (roughly 54,000), of which 17% (9,188) are aged 50 and older. New York's numbers are surpassed

¹⁹³ Governor Cuomo, A. M. (2014, January 9). *2014 State of the State Address*.

only by the federal prison system, which has the largest sentenced prison population (196,600), followed by Texas (157,900), California (134,200), and Florida (101,900).¹⁹⁴ Co-constructing community at the local level via community members (including service providers) is best facilitated by engaging in interdisciplinary and cross-sector communication, cooperation, and collaboration, such that its citizens are protected across their lifespans and may realize their potential to become a part of caring communities.

Co-Constructing Communities for Holistic Well-Being and Justice Across the Life Course

How do we co-construct our own roadmap to promote holistic well-being and justice across the life course? The problems and solutions for providing quality care are situated in the relational community context of which corrections and prisons are an important part.

As illustrated in *Figure 1*, the community has a primary roadway, which is “Unity Circle,” and its secondary roadway is “Care Way.” Unity Circle is populated by informal care networks (e.g., family, peers, and other social networks) and foundational supports (e.g., food, housing, and transportation). In the Unity Circle, the two primary sectors of care that all individuals are entitled to are education and healthcare.¹⁹⁵ The Unity Circle of community is the place where most of the self-care and informal caregiving occurs and where individuals learn socially responsible behavior and accountability. Access to education is a key factor in future employment prospects and obtaining a meaningful vocation. Access to healthcare serves as a preventive measure; clinical intervention is similarly critical. People only enter Care Way if they need professional assistance or service, mental health or substance abuse treatment. The criminal justice system is positioned as the system of last resort. This model can be used to conceptualize and plan prevention and intervention strategies that will benefit community members, including elders released from prison.

Recommendations

This paper concludes with recommendations from elders released from prison as to how community care can be improved to facilitate the successful reunification of older adults with their families and communities.

Foundational Supports

- *As far as food, you need your social service referrals unless you have a way to support yourself.*
- *Clothing—I think they could help you better. I think we mentioned one time if you get picked up and it’s winter and you’re coming home and you’re*

194 Guerino, P., Harrison, P. M., Sabol, W. J. (2011). Prisoners in 2010. U.S. Department of Justice, Bureau of Justice Statistics. Retrieved from <http://www.bjs.gov/content/pub/pdf/p10.pdf>.

195 Maschi T., et al. (2010). Trauma, World Assumptions, and Coping Resources Among Youthful Offenders: Social Work, Mental Health, and Criminal Justice Implications. *Child and Adolescent Social Work Journal*, 27(6).

released in the spring and summer at least give you, nothing major, three changes of clothes that are I think weather appropriate.

- *Housing—I think coming out, unless you already have something that's been established and you've been in there short term or long term you definitely need housing help. It's difficult out there for housing and employment. And everybody's doing the background checks now. So it's difficult to get decent housing and a job. You need the referrals.*



Specialized Health and Mental Health Supports

- *Home care if they need it depending on both their physical and mental health. Those are the things that need to be setup before you release the person.*
- *In old age you need more mental—definitely more outreach for the mental health.*
- *You've got to look at their health history, their past mental health history, and they're going to need—there's Alzheimer's on the rise with prisoners in there. You have to work on that. You can't just send them back out cold. They especially need the support services.*

Family Engagement and Support

- *You've got to reach out to their family members, help the family members understand.*
- *Other Sources of Social Support, Guidance, and Representation*
- *The connections or what we need, positive connections out there.*
- *We need guidance. I think a lack of guidance is what's gotten us into this mess in the first place. And to stay out, the attitude, society needs to change the attitude. The workers need to change the attitude.*
- *We definitely need more senior reps. It's hard enough to deal with things. And with senior issues it's so much more complicated.*

Transformational Community Justice

- *Look at the environment they're going back to. Try to make changes. Let them spend their time knowing they are not going to just get sent back to the same situation.*
- *The way our country goes about its corrections, its crime and punishment, is different than let's say Norway. First of all you would never do the kind of time that we do in this country. You're only going to be able to do only to a certain point, and they consider that to me a lifetime, for example. The access to the computers, your living circumstance in there, and the professionalism of those folks who work there is like night and day.*

Elders Behind Bars in the Broad Scope of Reducing Incarceration

Soffiyah Elijah, Esq.

Executive Director, the Correctional Association of New York

Good afternoon, and thank you all for participating in this important symposium. I was going to say I am addressing the faithful few, but I am happy to amend that to *the faithful many*. There have been a lot of people in this room all day—and that’s important. It indicates the serious commitment our communities have to reversing the damage we’ve all sustained through mass incarceration and the over-use of prisons to address social problems in New York State, and especially our concern for elders trapped in those prisons long after they have ceased to pose a threat to public safety.

As director of an organization that is itself elderly (170 years and counting), and that has been mandated by the state to monitor the prison system, I have a bird’s eye view of the problems we have been discussing today. I would like to mention how the crisis of aging in prison, about which we have heard many details, fits into the larger picture, and to suggest a few essential things that I think would help us to move forward. None of these involve easy, feel-good answers. We have to work hard and rely not on rhetoric but on our ability to face and accept real challenges.

If we don't change the correctional system from one based on permanent punishment to one based on actually protecting public health and safety, we won't reduce incarceration. The continued imprisonment of a group of people who have significantly aged out of crime, who pose little public safety risk and could in fact contribute to our communities, expresses clearly the revenge principle. It tells us that for some people—especially people of color—growth and change do not entitle you to a second chance.

The bigger picture question is fairly straightforward. If we don't change the correctional system from one based on permanent punishment to one based on actually protecting public health and safety, we won't reduce incarceration. The continued imprisonment of a group of people who have significantly aged out of crime, who pose little public safety risk and could in fact contribute to our communities, expresses clearly the revenge principle. It tells us that for some people—especially people of color—growth and change do not entitle you to a second chance. That has serious implications for our youth and the future they can (or can't) expect from us. It also means we will never reduce prison

populations, because when we get to the large sector (65% in New York State)¹⁹⁶ of incarcerated people who committed violent crimes—some as many as 30 or 40 years ago, when they were in their teens and 20’s—we stop considering rehabilitation and release, and start spending money on building nursing homes behind bars. What a waste.

Today’s panelists have detailed the way the inexorable growth of the aging population in our prisons has contributed to the crisis of mass incarceration. We have heard the statistics and the projections for future growth of this segment of the incarcerated population if we don’t intervene. We have discussed the ways the crisis of aging reflects some fundamental problems that have produced the mass incarceration binge: first and foremost, the addiction to revenge and punishment and the denial of dignity to significant sectors of our communities—particularly people of color and poor people. We have witnessed in the panels today how many good ideas and strategies can arise when all stakeholders—the formerly incarcerated, former administrators, advocates, researchers, academics and clergy—sit together.

That brings me to my first proposal for steps on the way to the future. We should engage in roundtable discussions behind the prison walls. Let’s take all the policy makers, family members, and clergy, and go behind the walls to have regular monthly discussions about what the problems are and how to solve them. The people doing time and the people running the prisons know what the problems are, and they have some very smart ideas about how we can fix them. But there’s a divide: an *us* and a *them*. And until we change the dialogue so that it’s a *we* problem, we’re always going to come up with a failed solution. We’re all trying to address the concerns. We all want public safety. Incarcerated people don’t want to live in unsafe communities on either side of the walls. And if they are released, they don’t want to recidivate either. They and their family members want them to be successful. So everyone wants a reduction of recidivism, but we need all the voices to be heard together. Then we will come up with some concrete solutions that will be long lasting and successful.

We need to begin considering how people can and have changed, and base our decisions about who stays in prison and who gets out on the facts of their present—not just their pasts. We also have to support them when they do get out in order to help reduce recidivism.

There are some bold things we can do to get there.

The first is, we have to get rid of the stigma attached to incarceration. This has been discussed today, but I want to address it very directly. We have to get to the point where when someone says: “I’ve spent time in prison,” nothing flashes through your head other than: “I want to be supportive,” because we have a default response of judgment. If in the back of your mind you’re thinking:

196 State of New York Department of Corrections and Community Supervision. (2012). Under Custody Report: Profile of Incarcerated Offender Population Under Custody on January 1, 2012, ii and 16.

“well, what did you do,” even though you don’t ask it, you are going to limit that person’s options. If someone’s coming home from prison, the very first thing we need to look at is: what are all the support systems we can help put in place for them. We need to ask: “Has the community really been enriched to provide all the services that they need?”

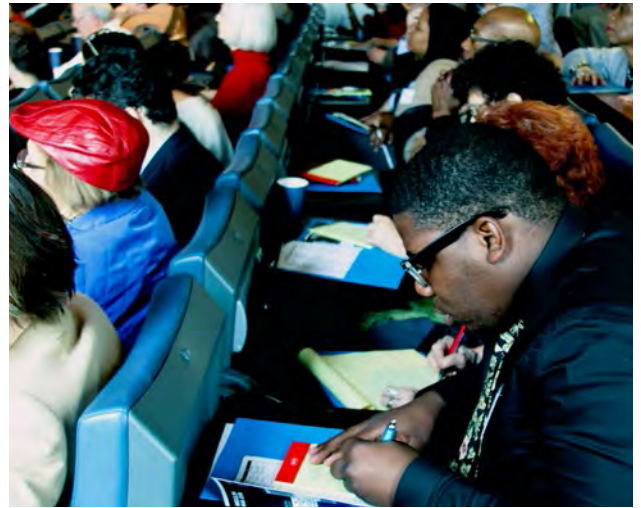
We have a very clear example in our country as to how this works for veterans. We take young people (men and women) and we train them to be military ambassadors to go around the world and fight wars for our country, often committing atrocities against the people of other countries. Then we bring them back to the United States and we have a Veteran’s Administration to provide them with all manner of services. They receive preferential treatment with respect to employment; they even receive preferential treatment with respect to boarding airplanes. There is a conversation happening now about the need to expand these services to provide more psychological support—and that is a clear and urgent necessity. But let’s make a comparison. Military service is about 4 years. For the people we’ve been discussing today, the aging people behind bars—long-term incarcerated human beings—we put them in cages for 10 years, 20 years, and 30 years, and when they come out there’s no formerly incarcerated people’s reentry administration to provide them with the same kind of services.

If we took the same mindset that creates support for military veterans and provided that wealth of support services to people who were formerly incarcerated, we would go far toward getting rid of recidivism. We’d also change the public discourse to prevent the default response to put people in cages in the first place. Alternatives to incarceration have been shown time and time again to be far more effective—giving us more “bang for our buck”—than putting people in cages.

Here is something we could do right now inside the prisons in New York. Every two years we should evaluate everyone who is incarcerated, and review their classification. People are originally classified primarily on the basis of the nature of the offense. So if someone is convicted of a violent offense, they are automatically classified as maximum security. That classification pretty much stays with them the whole time they are incarcerated. Any changes they go through—and in our experience, many people undergo significant, inspiring change—do not affect the initial classification.

There is another side to the issue of classification: it costs far more to hold someone in a maximum security facility. First of all, there are more correctional officers required per prisoner. So the correctional officers’ union has a vested interest in continuing to hold a person in maximum security, because that keeps their jobs safe. But the reality is that if we reviewed classification, it would help. Anyone who is involved in corrections, starting with superintendents, will tell you that the longer a person is in prison, the less danger they present and the less of a problem they cause. People “grow out of” being difficult on both sides of the prison wall.

If we reduce prisoners' classifications, they could move from a maximum security prison, to minimum security, to work release, and then home. And we would enable ourselves to guarantee more success stories, because it's much easier to transition from a minimum security prison or work release program (where you have fewer restrictions on liberty) to the street, than it is to make that transition straight from a maximum security institution. We could reduce recidivism, thus reducing our prison population significantly. Simply by reclassifying people, by reevaluating classifications every couple of years, we could help guarantee that they would not return to jail after they are released.



In addressing these problems, it is important to garner additional support and awareness by using economic analysis. The changes we have been discussing are cost-effective ones. But our first and foremost goal must be to put people before prisons. If we change the discourse such that we look at people as the most valuable American resource, then we will not be so quick to put them in cages. Appreciating the fact that people are our most valuable resource would also allow us to combat the widespread objectification of our fellow humans. The reason it is so easy for us to put people in cages is because we dehumanize certain sections of the community. What we must do is rid society of racism and be really honest about the fact that the reason we have this problem is because we feel comfortable locking up Black and brown people—and poor white people. If we can face that fact and begin to dismantle the elements supporting it, we will be taking steps in the right direction—and we won't have to have this conference again in a few years. ■

The Correctional Association of New York is a 170-year-old independent non-profit organization that advocates for a more humane and effective criminal justice system and a more just and equitable society. In 1846, the CA was granted authority by the New York State Legislature to inspect prisons and report its findings and recommendations to the public. The only private organization in New York with unrestricted access to prisons, the CA has remained steadfast in its commitment to inform the public debate on criminal justice and to expose abusive practices, educate the public and policymakers about what goes on behind prison walls, and advocate for systemic, lasting and progressive change.



Clinton Lacey
Deputy Commissioner of Adult Operations
New York City Office of Probation



Lynn...

Appendix: A Model Plan for Elder Reentry



Community Re-Integration Pilot Case Management Model

Aging Reentry Task Force

Steering committee: New York City Department for the Aging • Center for Justice at Columbia University • Release Aging People in Prison/RAPP • Osborne Association • Be the Evidence Project of Fordham University • Florence V. Burden Foundation

Task Force Members and Organizations: Deputy Mayor for Health and Human Services • Fortune Society • New York State Department of Corrections and Community Supervision • NYC Department of Correction • NYC Department of Probation • Office of the Public Advocate for the City of New York • Community Service Society of NY • Correctional Association of NY • Silberman Center of Excellence in Aging and Diversity, Hunter College • Montefiore Transitions Clinic • Coming Home Program, Spencer Cox Center for Health • Elders Share the Arts • Citizens Against Recidivism • HELP/PSI (Brightpoint Health) • Jamaica Service Program for Older Adults • Incarcerated Nation Campaign • Think Outside the Cell • New York Academy of Medicine • Bureau of Community Services, NYC • Bureau of Active Aging, NYC • Prisoner Reentry Institute, John Jay College • Carter Burden Center for the Aging • Council of Senior Centers and Services • National Lawyer's Guild, NYC • Center for NuLeadership on Urban Solutions • NYC Department of Health and Mental Hygiene • Bronx Defenders • Formerly Incarcerated Individuals • Family members of currently incarcerated elders • Individual service providers

This pilot Case Management model was designed for organizations to use to help incarcerated people more seamlessly re-integrate back into the community after a lengthy prison term. Using the notes, survey data, and resources shared by Task Force members in meetings over a period of seven months, we built flexibility into the model's parameters so that it could be adopted by a range of organizations. Primarily, this flexibility acknowledges that some organizations have access to incarcerated people while they are still in prison (awaiting release/parole), while other organizations do not. We also refrained from detailing every aspect of a program, as it's believed this will evolve over time—during the pilot phase.

In addition to the model, we want to acknowledge another outcome of the Aging Reentry Task Force: working relationships between providers, government agencies and advocates from the aging services and prison re-entry networks. We are hopeful that these connections and this work will move forward, long into the future.

Parameters for a Pilot Case Management Model

(Eligibility Criteria, Target Population and Scope)

In 2012, approximately 366 people aged 60 or older were released to New York City from New York State prisons. The majority of those have served lengthy prison terms. Some will need extensive assistance; some will require (or desire) very little support. Taking into consideration these factors, we propose the following criteria:

Eligibility criteria for the Pilot Program:

Age: 60 and older at time of release.

Rationale: Ultimately, programs based on this model will set criteria beginning at the age of 50. The pilot project sets the cut-off at 60 in order to remove as many obstacles as possible, to mesh more easily with existing services in the community. While eligibility varies by program (with few exceptions), aging services program providers serve New Yorkers aged 60 and over making access to aging services programs easier, thus increasing the likelihood of success—particularly during the pilot phase.

Length of Prison Term: 10 years or more spent in prison.

Rationale: Risk for recidivism decreases.

Prison: The person should be released or paroled from an ‘upstate’ prison. For the pilot, the organization should identify 4-5 prisons to work with so as to provide enough referrals but also allow for the ongoing management of systems/relationships during this groundbreaking period.

Nature of Crime: The Task force recommends that there be no exclusionary criteria related to the nature of the crime. However, the type of crime should be made known to the case manager as she/he may need to work within certain rules/laws to secure services like supportive housing. Case managers will not have discretion in accepting or rejecting clients.

Scope: With the eligibility criteria laid out above and the total population that could potentially be served known, we estimate—given the intensity of the model—that a NYC-focused program would serve anywhere from 20 or more individuals per year. The numbers served per year will certainly increase once information about this program spreads and referral to this program within the prison system prior to a person’s release begins.

Case Management Model Standards

Many city and state funded programs set program standards to ensure a degree of consistency among organizations operationalizing the model.

Caseload: We are recommending a caseload of 1:25-35. That is, one case manager for every 25-35 individuals being assisted over the course of a month. At

first, case manager caseloads will likely be much lower, however as news of the program spreads, caseloads are expected to increase.

- **[Recommendation to Support the Model:** to fully prepare an individual for seamless, successful re-integration into the community, we strongly recommend that beginning at the age of 50, every incarcerated person receive a health assessment and an annual reassessment or at the time of a significant change in health status.]

To help with successful coordination of a complex network of services for this population, for those participants who are not in health homes, each case manager should be paired with and assisted by a peer specialist/navigator (Community Health Worker/Navigator). This peer position could be funded by Title V or the Center for Health Equity. The model of case management for this project is based on the system for reintegration of incarcerated people living with HIV/AIDS. In that model, each case manager leads a team of 2-3 people including a peer navigator. This model has been shown effective in providing continuity of care as well as in preventing recidivism.¹⁹⁷ The case management team will liaise with a designee from NYS DOCCS.

Point of Contact: Ideally, the case manager will begin providing services and assisting in re-integration up to one year prior to his/her release date in order to secure documentation (birth certificates/ID), housing/living, Medicaid/health insurance, and employment opportunities (if applicable). Of note, if the program does not have access to (or is not frequently in) the prison, working with a person still in prison may prove challenging.

Referrals: Referrals to the pilot program may come from the prison, the family or the individual him/herself. Because the model establishes a caseload standard, the program/case manager has discretion to accept a new referral prior to the person having a confirmed release date (as it is not guaranteed she/he will be released).

Variations on the model: Ideally, there will be a discharge planner in facility (pre-release 'specialist') and community case manager (post release 'specialist'). Or one case manager that provides pre-release and post-release planning. Contact with the incarcerated person's family members is also necessary before and after release.

Approach to Providing Re-Integration Services

Much of the dialogue around key aspects of this model involved the values the case manager and program should espouse and the approach the case manager should use in working with the individual.

¹⁹⁷ Depending on how health homes and other Medicaid reform initiatives evolve and the likelihood that participants may be part of such programs, this model will adjust to meet new program standards.

- **[Recommendation to Support the Model:** A strong relationship, with on-going communication, between the DOCCS Health Services Unit/related prison staff and the program will be key to a seamless referral process and, ultimately, successful re-integration.]

This approach is outlined below.¹⁹⁸

- This is an intensive incubator program that brings the re-integrating senior together with key stakeholders including family members, service providers, mental health practitioners, career/employment counselors, and housing representatives.
- The social services case manager will have strong linkages to employment services, mental health, and substance abuse providers.
- Wherever possible, the case manager should empower an individual to connect/link to a service rather than the case manager securing a service.
- There must be formal connection to the prison—prison must allow communication between case manager and incarcerated individual and assist in the facilitation of the process.
- Successful re-integration begins while the individual is still in prison:
 - Assessment by in house staff prior to release or if the organization has access to the prison it could be conducted by them (NYC based organizations may not have access to upstate prisons).
 - Assessment: Bio-psycho-social, spiritual, legal, housing/environment, health, mental health, and substance abuse.
 - Tele-benefit conferences prior to discharge (like Community One-Stop centers do).
- Case manager provides case assistance, supportive counseling (not therapy), information and referral (when appropriate), advocacy on non-legal issues like securing housing, warm transitions to service providers/experts like legal aid, employment specialists, and mental health counseling. Once basic needs are stabilized, case manager assists the senior in identifying opportunities for leadership, cultural, arts, and civic engagement. Multidisciplinary team conferences are held monthly to discuss certain cases. (Team members: Employment/volunteer specialist, mental health specialist, health specialist, and housing specialist). Case management is guided by prevention philosophy consistent with public health models for justice and for prevention of recidivism.
- Wherever possible, services are provided by people that have first-hand experience.
- One key aspect of the program is “Buddy” groups/support groups with a goal of training a formerly incarcerated individual (preferably also an elder) to facilitate future groups (peer supports); these groups are sup-

198 Of note, some of the items listed in the “approach section” are echoed in the standards or in subsequent sections of this document.

portive in nature, provider support, forum for problem solving, and skills building.

- Volunteers (peer support) are encouraged in the program.

Case Manager Skills, Knowledge and Attitude/Values

Case managers are the lifeblood of the program; the primary mode of service delivery. Task force members at the initial meeting and in the subsequently held workgroups shared their thoughts on the skills needed to do this work; the knowledge set that would be required; and the attitude the case manager should have to be successful in this work. An overarching theme was that this work requires a case manager who possesses both aging and criminal justice knowledge sets, values, and skills. The ideal case manager should possess or seek to obtain the following knowledge, skills and attitudes/values:

Knowledge:

- Aging process;
- Aging services;
- Criminal justice system;
- Patterns and behaviors associated with people being released from prison;
- Social welfare benefits (how to obtain SNAP, Social Security Card and Birth certificate, Medicaid and/or Medicare);
- Substance abuse services/programs/system;
- Laws pertinent to and legal issues most commonly faced by formerly incarcerated individuals;
- Common health conditions in formerly incarcerated and general knowledge of those conditions;
- Health insurances/programs (Medicaid, health homes, health exchange, and services for the uninsured);
- Housing options and limitations; supportive housing (including less familiar or newer options such as home sharing and assisted living); regulations that could prohibit access to housing options by formerly incarcerated people;
- Community based resources.

Skills:

- Coordinate efforts - work with person, prison staff, and community based providers;
- Assessment (multi-dimensional);
- Intervention;
- Advocacy on behalf of and with the individual;
- Counseling (supportive);
- Group facilitation/presentation/teaching;
- Motivational interviewing;

- Relational skills to build and maintain linkages to community based providers;
- Care transitions.

Attitude/Values:

- Culturally competent;
- Free of ism's;
- Advocate;
- Team player.

Resource Directory

Due to the emerging nature of this work and the merging of traditionally un-communicative systems, a directory of services, supports, and standardized information would be helpful to those piloting the model. Some organizations have begun work on such a directory—so building on or further empowering the development of existing directories may be an approach worth exploring. The directory would primarily be for use by the case management program; however, portions of the information housed in the directory could be shared with incarcerated people via newsletters. Task force members thought the following resources should be included in a directory:¹⁹⁹

- List of housing options (definitions of options and actual programs);
- List of health care providers (friendly to formerly incarcerated);
- Definitions of health insurance options and eligibility guidelines (Medicaid, Medicaid LTC, Exchange, Medicare, Medicare SNPs, BHOs, Health Homes, etc.);
- List of educational/vocational opportunities (CUNY schools, vocational programs that offer supportive environment for seniors and formerly incarcerated);
- List of DFTA senior centers by geographic area (maps);
- Define workforce programs for older adults (including Title V and RSVP);
- List of legal aid providers/low cost and/or free legal services;
- List of all organizations that assist in re-entry or re-integration;
- Arts and cultural organizations and opportunities friendly to formerly incarcerated individuals.

Community Education

In addition to the case management provided to individuals, there were strong recommendations that community based providers receive training on working with older adults and formerly incarcerated individuals:

199 While this paper was in process, a directory was produced, as was a discharge planning assessment tool. Information about both of these is available from members of the steering committee. The assessment tool can be reviewed at https://docs.google.com/document/d/16qD9NLT97Lh_SV7SxvIKSPFwVTbPDAEoczoEZXapX5g/edit?pli=1.

- Identify community districts that have the highest rate of returning older adults from upstate prisons.
- Provide education and training to local aging services, health, and mental health providers in those areas about working with formerly incarcerated individuals.
- If re-entry services exist in those community districts, provide training and education to those programs on working with older adults.

Conclusion

We thank all participating task force members for their generous contributions to the development of this pilot model. It is clear that we are at a beginning. We are formalizing a program that is a long time coming, steeped in a history of grass-roots commitment to re-entry and aging support services, and will be a current and future need as incarcerated people age out of the system.

The Osborne Association is currently implementing a project based on the Aging Reentry Task Force model, and other organizations are also designing projects inspired by the Task Force model. ■

...aging people in prison experience greater hardships and worse health outcomes while incarcerated, possess unique needs that place enormous strain on correctional institutions, and comprise the most expensive cohort to incarcerate while posing the least danger to public safety, culminating in a financially unsustainable and morally precarious (if not wholly untenable) crisis that can no longer be ignored.

Elizabeth Gaynes

President & CEO, the Osborne Association



Notes

[Many] long-termers convicted of serious crimes, people who constitute the bulk of the over-50 prison population, have taken responsibility for their crimes, transformed their lives, and developed skills and abilities they lacked before incarceration. They could be released from prison with no risk to public safety.

Mujahid Farid

Lead Organizer, Release Aging People in Prison/RAPP

Aging in Prison: Reducing Elder Incarceration
and Promoting Public Safety ©

November 2015

A publication of the Center for Justice
at Columbia University

Design and layout by Paragini Amin

Symposium photos by Ana Singh; Photos of Aaron Talley (page XXII); Gloria Rubero (page 22); Larry White (page 42); and Rosalie Cutting (page 52) by Alexandra Martinez

An electronic copy of this report is available on the Center for Justice's website at <http://centerforjustice.columbia.edu/aging-in-prison>.

