

**THE CONTINUING PROBLEM OF  
AMERICA'S AGING PRISON POPULATION  
AND THE SEARCH FOR A COST-EFFECTIVE  
AND SOCIALLY ACCEPTABLE MEANS OF  
ADDRESSING IT**

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*The age of America's prison population continues to rise. Mr. Curtin examines the nature of this trend and addresses how to efficiently and adequately address the problem. The root causes of the problem are examined by looking at the types of offenses elderly prisoners commit, their physical and mental conditions, and their adjustment to prison life. Mr. Curtin then highlights the challenges of accommodating elderly prison inmates in the prison health care system, as well as the proposals to separate the elderly inmate population and implement early-release programs. Next, Mr. Curtin analyzes how telemedicine and congregate housing can reduce costs, save resources, provide health care access, and create a healthier prison environment. Mr. Curtin also shows how the efficiency of early-release programs is not as certain. Finally, Mr. Curtin encourages more public debate on the problems associated with aging prison populations and improved funding.*

**I. Introduction**

In a recent *Wall Street Journal* article, Gary Fields shared the story of an aging inmate at Louisiana's Angola

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Prison.<sup>1</sup> Fifty-three years old at the time of the story, Richard Leggett was convicted of killing a man and a woman during a store robbery in 1971.<sup>2</sup> By 2005, Leggett, then a diabetic with a bad heart valve, served his time as, among other things, the prison's chief coffin-maker.<sup>3</sup> In this capacity he was increasingly busy. An increasing number of his fellow inmates needed to be buried on prison grounds because their long incarcerations had led to a disintegration of ties to the outside world.<sup>4</sup> Leggett himself was only able to locate one relative: his son who was serving time in a Texas prison.<sup>5</sup>

Leggett's story is in many ways emblematic of the crisis facing the American correctional system today. It describes a prisoner, not traditionally considered elderly, whose environment and chronic health conditions have aged him beyond his years, living in a setting designed to house and regiment the lives of young, active men. Regardless of the mission of correctional institutes, the graying of America's prisons creates serious questions about how they can efficiently and cost-effectively accomplish their goals.

The causes of the increasing elderly inmate population are discussed in Part II. The remainder of this Part takes a closer look at the characteristics of elderly inmates and at three issues which have a particular impact on this unique group: the nature of the prison health care system; whether elderly inmates should be housed separately from younger inmates; and, whether early-release programs are a viable option. Part III analyzes three potential strategies to confront and effectively address the unique circumstances of elderly inmates. Finally, Part IV advocates a proactive approach to treating elderly prisoners with the dignity they deserve.

## II. Background

The United States has the highest reported incarceration rate in the world with more than 2.1 million inmates,<sup>6</sup> about 10% of whom

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1. Gary Fields, *Life and Death: As Inmates Age, a Prison Carpenter Builds More Coffins*, WALL ST. J., May 18, 2005, at A1.

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. International Centre for Prison Studies, Prison Brief for United States of America, [http://www.kcl.ac.uk/depsta/rel/icps/worldbrief/north\\_america\\_records.php?code=190](http://www.kcl.ac.uk/depsta/rel/icps/worldbrief/north_america_records.php?code=190) (last visited Sept. 29, 2007).

are over fifty-five years-of-age.<sup>7</sup> Fifty-five is a critical age; at first glance it seems too young to be characterized as “elderly,” but prisoners are an unusual group.<sup>8</sup> Unsurprisingly, prison inmates often have a history of drug and alcohol abuse.<sup>9</sup> If an inmate comes from an impoverished background, he may have had only limited access to health care prior to incarceration.<sup>10</sup> Along with the rigors of prison life, these factors give many inmates a physiological age ten to fifteen years older than their contemporaries.<sup>11</sup> Most of the literature that considers the health-damaging effects of prison life in combination with the lifestyle and poor health care of many inmates prior to incarceration suggests that age fifty-five or even fifty be considered elderly for prisoners.<sup>12</sup>

Over the past twenty years, the population of elderly prisoners has increased by leaps and bounds.<sup>13</sup> This ever-growing segment of the prisoner population creates a disproportionate drain on the resources of the penal system due to the curious fact prisoners are the only people in the United States who have a constitutional right to health care.<sup>14</sup> As the prison population ages, the number of chronic health conditions suffered by the average inmate rises with a concomitant rise in the cost of their medical care.<sup>15</sup> In Wisconsin, health care costs for adult prisoners leapt from \$28.5 million in 1998 to \$87.6 million in 2005, during which time the prison population increased by only 25%.<sup>16</sup> In California, the amount of money spent on inmate

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7. George J. Bryjak, Op-Ed., *The Coming Prison Crisis*, SAN DIEGO UNION-TRIBUNE, Aug. 19, 2004, at B-9:7.

8. See Lincoln J. Fry, *The Concerns of Older Inmates in a Minimum Prison Setting*, in *OLDER OFFENDERS: PERSPECTIVES IN CRIMINOLOGY AND CRIMINAL JUSTICE* 164, 165 (Belinda McCarthy & Robert Langworthy eds., 1988).

9. Mike Mitka, *Aging Prisoners Stressing Health Care System*, 292 JAMA 423, 423 (2004).

10. *Id.*

11. *Id.*

12. Fry, *supra* note 8, at 165.

13. Bryjak, *supra* note 7 (“A study of [sixteen] [s]outhern states found that the number of inmates age [fifty-five] and older increased 480 percent between 1987 and 1997 while the total inmate population in the U[nited] S[tates] rose by only 147 percent during that same period.”).

14. Mitka, *supra* note 9, at 423.

15. RONALD H. ADAY, *AGING PRISONERS: CRISIS IN AMERICAN CORRECTIONS* 87 (2003).

16. Bob Purvis, *Cheaper Prison Options Sought; As Number of Older Prisoners Rises, So Do Costs for Care*, MILWAUKEE J. SENTINEL, Aug. 7, 2006, at A1.

medical care nearly doubled over seven years to \$676 million.<sup>17</sup> While many prison systems do not track medical costs by age group, the strong presumption is that this disproportionate increase is due to the rising percentage of elderly prisoners.<sup>18</sup>

The success of prison health care programs in reducing prison mortality has led to longer inmate life spans and ever-higher health care costs.<sup>19</sup> In fact, the Department of Justice recently released a study showing the mortality rate among state prison inmates has dropped below that of the general population owing to the accessibility of prison health care.<sup>20</sup> Eighty-nine percent of all state prisoner deaths were caused by medical conditions (with heart disease and cancer far outpacing less age-associated conditions such as AIDS), as opposed to 8% due to homicide or suicide.<sup>21</sup> This suggests prisoners are living longer in general. As prison health care programs improve, they seem to be becoming financial victims of their own success.

Prison health care is itself designed for young, healthy inmates and traditionally modeled after the military sick-call system, which does not lend itself to dealing with chronic illnesses.<sup>22</sup> One state found that inmates over the age of fifty-five suffered from an average of three chronic health problems.<sup>23</sup> The cause of this growing crisis is a combination of longer sentences and fewer chances of parole under state truth-in-sentencing laws.<sup>24</sup> States have struggled to find new

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17. Jenifer Warren, *The Graying of the Prisons; Incarceration: Longer Terms and Fewer Paroles Give the State a Growing Number of Old Inmates*, L.A. TIMES, June 9, 2002, at A1.

18. CHARLOTTE A. PRICE, N.C. DEP'T OF CORR., AGING INMATE POPULATION STUDY 11 (2006), available at <http://www.doc.state.nc.us/dop/Aging%20Study%20Report.pdf>.

19. ADAY, *supra* note 15, at 89.

20. CHRISTOPHER J. MUMOLA, U.S. DEP'T OF JUSTICE, MEDICAL CAUSES OF DEATH IN STATE PRISONS, 2001–2004, at 3 (2007) available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/mc04.pdf>.

21. *Id.* at 1.

22. Michael Taylor, *California Grapples with Aging Prison Population*, S.F. CHRON., Aug. 2, 1993, at A1.

23. Bryjak, *supra* note 7 (“[E]lderly female inmates are at even greater risk than their male counterparts for developing serious health problems. Older women need regular breast and cervical cancer screening as well as treatment when complications arise.”).

24. See Diane Jennings & Bruce Tomaso, *Society to Face Rising Costs of Aging Prison Population; Experts Wonder Whether Texas System Can Keep Up as Inmate Numbers Swell Under Long-Term Sentencing*, DALLAS MORNING NEWS, Aug. 19, 1998, at 1A.

ways to deal with the problem while it is still manageable.<sup>25</sup> In response, many authors have suggested early release for low-risk convicts.<sup>26</sup> They point out that as the age of inmates increases the recidivism rate drops.<sup>27</sup> However, many authors also argue that early release only shifts the cost of caring for an uninsured, unemployable, elderly ex-prisoner from the prison system to other government programs.<sup>28</sup> Furthermore, older convicts are not only serving time for crimes committed in their youth; almost half of older prisoners serving long sentences were convicted of crimes committed within a few years of their imprisonment.<sup>29</sup> Additionally, early-release programs are a double-edged sword for reform-minded politicians.<sup>30</sup> Their opponents waste no time in branding them soft on crime, and proponents risk enraging victims' rights groups.<sup>31</sup> Reforms to parole laws have also been suggested.<sup>32</sup>

Another possible solution is to send low-risk prisoners into nursing homes.<sup>33</sup> This strategy can lead to unintentional behavioral problems.<sup>34</sup> Also, statutes may require nursing homes to make the criminal records of their residents public.<sup>35</sup> Public backlash against such

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25. GREG JONES ET AL., MD. ST. COMM'N ON CRIM. SENTENCING POL'Y, AGING OFFENDERS & THE CRIMINAL JUSTICE SYSTEM 1 (2001), <http://www.msccsp.org/publications/aging.html>.

26. E.g., Jason S. Ornduff, Note, *Releasing the Elderly Inmate: A Solution to Prison Overcrowding*, 4 ELDER L.J. 173, 199-200 (1996).

27. ADAY, *supra* note 15, at 212.

28. Bryjak, *supra* note 7.

29. Warren, *supra* note 17.

30. Gary Heinlein, *Governor's Prison Plan Not Locked In*, DETROIT NEWS, Feb. 22, 2007, at 5B (Michigan Senate Majority Leader Mike Bishop remarks, "[c]losing prisons, reducing our state police force and putting the public's safety in jeopardy is not the way to solve our budget shortfalls.").

31. Warren, *supra* note 17 ("The people who commit these heinous crimes have to be held accountable," said Harriet Salarno, chairwoman of Crime Victims United of California. Salarno said she might not fight low-security confinement for old, sick convicts whose offenses were minor, but she objects to changes for those with violent pasts, however distant.").

32. Jennings & Tomaso, *supra* note 24.

33. Purvis, *supra* note 16 (quoting Jim Greer, Director, Wis. Dep't of Corr., Bureau of Health Services).

34. Joanna Weiss, *Oldest Prison Inmates to be Moved; Warden Urges Parole for Some*, TIMES-PICAYUNE, Oct. 8, 1998, at A2. The author relates the story of a prisoner who had broken his neck and was paralyzed from the neck down. *Id.* The inmate was sent to a nursing home, where his family trashed his nursing home room and gave him illegal drugs. *Id.*

35. See, e.g., 210 ILL. COMP. STAT. 45/2-216 (2006) (stating every licensed facility shall provide to every resident and prospective resident written notice advising them of their right to ask whether any residents of the facility are identified offenders).