

RELEASE ELDERLY LIFERS TO REDUCE MASS INCARCERATION

BY JANE DOROTIK

While the overall prison population has decreased in recent years due to judicial and legislative interventions, the number of incarcerated individuals aged 50 and over has increased at an alarming rate.^{1,2} Between 1980 and 2010, the general population in the United States increased by 36 percent, whereas the overall population of incarcerated people increased by over 400 percent and the number of elderly incarcerated grew at an even faster rate.³

SOURCES PROJECT that if we continue down the same path, by 2030, the elderly population of incarcerated people (55 years and older) will be 4,400 percent greater than it was in 1981.⁴ Yet, this population re-offends at the lowest rate of any prison group.⁵ This growth in the elderly incarcerated population is largely due to the increase in long-term sentences. One in nine individuals in state and federal prisons in the United States are serving a life sentence; in California prisons, that number is about one in three or 34,000 people.⁶ California leads the nation in the size of its lifer population due to policies and practices in the last two decades that have increased the imposition of life sentences and delayed the granting of parole.⁷

Authors Mark Mauer and Ashley Nellis point out that long-term incarceration is counterproductive to public safety.⁸ People “age out” of crime, and any meaningful efforts to reduce incarceration should take this into account.⁹ Framed within a fundamental understanding of liberty and justice,



“California Institution for Women. State Department of Public Works, Division of Architecture, Sacramento.” 1930. Preliminary drawing of new women’s prison in Tehachapi. Design and drawing in pen and ink by Alfred Eichler. Source: Project for Department of Corrections.

Human Rights Watch further suggests that the continued incarceration of the aging and infirm constitutes disproportionately severe punishment and violates human rights.¹⁰ In order to reduce mass incarceration of the elderly, it is necessary to reduce lifers’ excessive prison terms in California. One of the most effective ways to do so is to change the existing elderly-parole policy and practice in order to release more elderly lifers.

As an elderly lifer who, until very recently, was incarcerated at the California Institution for Women (CIW) in Chino, California, I have experienced this situation firsthand. I am 73 years old and was behind bars for almost 20 years. I was also the chair of the Long Termer’s Organization (LTO), a group for people with long-term sentences,

and the chair of the Golden Girls, an organization for elderly incarcerated people, both at CIW. Because of my 25-years-to-life sentence, I had not yet been eligible to sit before the Board of Parole Hearings (BPH) for parole consideration. I am lucky to be relatively healthy, but I have watched many of my peers struggle to maintain dignity as they age behind bars. I have watched my peers go before the BPH, hoping against hope to be granted their freedom after years of incarceration. I see and feel all the fear, guilt, remorse, and tenuous hope each woman goes through when she sits before the BPH. This brief focuses on the experiences of incarcerated elderly women because that is the context with which I am most familiar, but my points are relevant for all elderly incarcerated people.

PROBLEM DESCRIPTION AND CRITIQUE

California's policies governing incarcerated elderly individuals are not cost-effective, nor do they advance public safety. In May 2019, CIW housed over 560 women aged 45 and up, close to 40 percent of the on-campus incarcerated population.¹¹ In California state prisons, the California Department of Corrections and Rehabilitation (CDCR) spends \$81,000 on average to keep an incarcerated person behind bars.¹² Research shows that elderly incarcerated individuals cost two to three times more to keep in prison than the average incarcerated person, resulting in an astronomical \$160,000 or more per person per year to keep these elderly people behind bars.¹³

California has had an elderly parole program in place since it was required by federal courts in February 2014.¹⁴ This federal court directive was eventually enacted into California law (with a few exclusions), and became effective in January of 2017.¹⁵ The elderly parole process then mandated that incarcerated people who are 60 years and older, and who have been incarcerated for 25 years, should be referred to the BPH for consideration for parole, regardless of their sentence. Very recently, AB 88 passed the California legislature and became effective on July 1, 2020. This bill modifies the elderly parole process by extending eligibility to those who are aged 50 and up, and have spent 20 years or more behind bars. This minor modification is still out of sync with the elderly parole policies of many other states, which require only 10 years of incarceration for individuals 50 and older.¹⁶ Prior to this modification, California's very conservative process for elderly release has not been effective in actually releasing a significant number of older incarcerated people, and there

is reason to believe that the provisions of AB 88 will do little to change this fact. According to the Prison Law Office, between 2014 and 2018, the parole suitability rate for those referred under the Elderly Parole Program was 26 percent.¹⁷ This is actually lower than the overall suitability rate, which is 34 percent.¹⁸ CDCR's own records show that between the years 2000-2011, more California lifers convicted of murder died in prison than were released on parole.¹⁹ Mortality rates for incarcerated people aged 55 and over are three times higher than for any other age group, and the vast majority of those deaths are due to age-related illnesses.²⁰ For many lifers, then, the likelihood of dying in prison is higher than the likelihood of being released on parole.²¹

The average time served for released lifers remained relatively stable from the 1970s to the 1990s, and then began a dramatic ascent in the 2000s. Time served for those paroled lifers averaged 12.3 years between 1984 and 2001, and then doubled to 24.3 years by 2013.²² In the vast majority of cases, this is not because elderly lifers are not worthy of parole or are any risk to public safety, but because of social and political factors. First, BPH commissioners require a performance of deference, humility, and remorse from the person coming before the board that punishes those who claim innocence and those who cannot provide such a performance (note that *performing* deference, humility, and remorse does not necessarily equate to *feeling* those sentiments). Second, victims' rights groups that agitate for strengthening punishments track BPH parole rates and put a great deal of pressure on the legislative committee that reviews BPH denials and on the Governor. Commissioners are appointed by the Governor and confirmed by the California Sen-

ate, and thus their ability to keep their positions are dependent on scrutiny by these bodies.

Most lifers at CIW are incarcerated for a single crime, committed many years ago, often under the duress of domestic violence; many have no other criminal history. Most of these women have spent their years in prison free of disciplinary infractions and working towards bettering themselves and their community. They pose little to no risk to public safety. Prison systems do not take these low-risk, high-needs incarcerated persons into consideration. Prisons are designed for younger incarcerated people, and security is the highest priority. The physical design of the facility, the staff training, and the rehabilitative emphasis on post-incarceration employment are all designed for younger incarcerated people. For instance, emergency horns (which at CIW happen up to five times daily) require that incarcerated people get down on the ground instantly, under penalty of disciplinary action. This is very challenging for the elderly.

Other challenges include transportation off prison grounds which requires shackling, per CDCR policy. Feet are shackled together and hands are shackled to a waist chain, resulting in skin bruising and, worse, the risk of an unprotected fall while attempting to walk. For the elderly, falls can result in broken hips, fractured facial bones, and other serious internal injuries. While elderly people require medical care more frequently, the fear of being injured while shackled is the main reason they refuse medical transport. Claiming that shackling is a necessary precaution against escape, CDCR refuses to modify this policy or allow discretion in consideration of the elderly. Yet, I conducted an informal review over a recent period of three years and

found there were 13 falls to zero escape attempts.

Retirement is also not an option in prison, as everyone is required to work regardless of their age. All elderly incarcerated people struggle to find a work assignment they can physically manage. They are often ridiculed or derided by other incarcerated persons and staff. They are more likely to lose track of time, and their hearing can be compromised due to age, causing difficulty with following and understanding directions and orders. Elderly incarcerated people often isolate because of the stress of prison life and to protect themselves from younger, more aggressive, incarcerated people or from guards. This isolation can exacerbate loneliness and dementia.

I have watched so many of my peers struggle to maintain some kind of dignity as they age behind bars. The following three glimpses exemplify the challenges of aging in prison:

GG #1 is a 73-year-old who has been behind bars for 38 years, has no prior criminal history, has completed approximately 30 self-help programs while incarcerated, has been disciplinary-free for 36 years, and currently has a job assignment in the prison kitchen which requires lifting industrial-size pots and pans. She recently fell on a medical visit due to shackling and is now, a month later, in a wheelchair, awaiting a comprehensive diagnostic to assess her injuries.

GG #2 is a 72-year-old who has been behind bars for 33 years on a 25-to-life sentence. She also has no prior criminal history, no disciplinary infractions in 26 years, and has completed multiple self-help programs. She gets around with the help of a walker and still manages to work in the sewing

factory despite her physical limitations and serious medical problems, including undergoing open-heart surgery three years ago. She works because retirement is not permitted, and being unassigned for medical reasons means placing herself at risk for transfer up north to the other California state prison for women, California Correctional Women's Facility (CCWF), in Chowchilla. This is because policy states that everyone incarcerated at CIW must do some sort of "programming," either work or school.

GG #3, age 65, has been incarcerated for 31 years. She also had no prior criminal history, has had no serious rule infractions ever, and has completed about 30 self-help educational and vocational programs. GG #3 has been in front of the parole board five times, and has always maintained her innocence. BPH commissioners acknowledge her "low risk" psychological evaluation and applaud her rehabilitation efforts and lack of disciplinary violations. In her most recent hearing, after being told she was denied parole again, she said, "I don't know what you want me to do or say, I truly don't." The commissioners had written in her denial recommendation, "Stay write-up free; participate in self-help." These are the same boiler-plate recommendations they make in many denials, recommendations GG #3 has followed for years to no avail. In five years (her next opportunity for parole consideration), she will be 70 years old. I can guarantee she will by then have at least 35 self-help educational/vocational completions in her file. I am confident that she will continue to have no disciplinary infractions. I do not know if she will finally measure up in their eyes, since they maintain she has no insight and shows no remorse because she claims innocence. I wonder if she will be yet another statistic, dying in prison

before she is found suitable for parole.

RECOMMENDATIONS

The incarcerated elderly population is cast aside, discounted, and damaged by the prison system, despite having as low as a 3 percent recidivism rate when provided appropriate reentry support.²³ Multiple studies of aging in prison have made similar recommendations: find ways to release the elderly. In order to do so, we must:

- 1) change the existing elderly parole policy so that all those 50 and over who have served 10 years or more are automatically allowed parole consideration review.
- 2) mandate that the BPH prioritize risk to public safety over ambiguous and subjective factors like "insight" as criteria for release, and continue to track the parole suitability rate for this population until it reflects what all research shows—that this is the safest population to release.
- 3) diversify BPH commissioners, as the regulations require, so that they are not all people with law enforcement backgrounds.

Only with these changes will elderly incarcerated people have any fair chance for release.



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She had been incarcerated for almost 20 years on a wrongful conviction that she relentlessly works to overturn. She was recently released pending COVID-19 concerns and is fighting her case from the outside. She is a member of the California Coalition for Women Prisoners (CCWP), a current mem-

ber of the Board of Directors of Californians United for a Responsible Budget (CURB), and a former board member of Justice Now. She also founded Compassionate Companions, an organization within the California Institution for Women (CIW) that provides care and companionship for terminally ill incarcerated people, and founded and published the CIW newsletter Strive High for eight years. She advocates for prison abolition as well as dignity and compassion for her fellow prisoners, especially those who are terminally ill.

NOTES

1. Gramlich, John, “America’s incarceration rate is at a two-decade low,” Pew Research Center, May 2, 2018, <https://www.pewresearch.org/fact-tank/2018/05/02/americas-incarceration-rate-is-at-a-two-decade-low/>.

2. Because of the added health burdens that come with being imprisoned, many experts agree that incarcerated people age at a rate approximately 10-12 years ahead of their non-incarcerated peers. The designation of 50 and up as “elderly” is used by the majority of studies on this population and is recommended by a 2015 Columbia University study on aging in prison.

Aging in Prison: Reducing Elder Incarceration and Promoting Public Safety, Center for Justice at Columbia University, ed. Samuel K. Roberts (November 2015), <https://www.issuelab.org/resources/22902/22902.pdf>.

The state of California designates those aged 55 and up as elderly.

Older Inmates: The impact of an Aging Inmate Population on the Correctional System: An Internal Planning Document for the California Department of Corrections, California Department of Corrections, 1999.

3. *At America’s Expense: The Mass Incarceration of the Elderly*, American Civil Liberties Union, June 2012, i, <https://www.aclu.org/report/americas-expense-mass-incarceration-elderly>.

4. *At America’s Expense*.

5. Hunt, Steven Kim, and Billy Easley II, *The Effects of Aging on Recidivism Among Federal Offenders*, United States Sentencing Commission, December 2017, <https://www.uscc.gov/sites/default/files/pdf/research-and-publications/>

[research-publications/2017/20171207_Recidivism-Age.pdf](https://www.uscc.gov/sites/default/files/pdf/research-and-publications/2017/20171207_Recidivism-Age.pdf).

6. Mauer, Mark, and Ashley Nellis, *The Meaning of Life: The Case for Abolishing Life Sentences* (New York: The New Press, 2019).

7. Ghandnoosh, Nazgol, *Delaying a Second Chance: The Declining Prospects for Parole on Life Sentences*, The Sentencing Project, January 31, 2017, 14, <https://www.sentencingproject.org/publications/delaying-second-chance-declining-prospects-parole-life-sentences/>.

8. Mauer, Mark, and Ashley Nellis, *The Meaning of Life: The Case for Abolishing Life Sentences* (New York: The New Press, 2019).

9. TRC Staff, “Paroling Grandpa: Study Finds 3% Recidivism Rate Among Elderly Ex-Inmates,” *The Crime Report*, November 19, 2018, <https://thecrimereport.org/2018/11/19/paroling-grandpa-study-finds-3-recidivism-rate-among-elderly-ex-inmates/>.

10. *Old Behind Bars: The Aging Prison Population in the United States*, Human Rights Watch, January 2012, 10, https://www.hrw.org/sites/default/files/reports/usprisons0112webcover_0.pdf.

11. *COMPSTAT DAI Statistical Report - 13 month*, California Department of Corrections and Rehabilitation, July 11, 2019, 95, https://www.cdcr.ca.gov/research/wp-content/uploads/sites/174/2019/10/2019_05_DAI-Female-Offenders.pdf?label=Female%20Offenders&from=https://www.cdcr.ca.gov/research/compstat/.

12. “How much does it cost to incarcerate an inmate? California’s Annual Cost to Incarcerate an Inmate in Prison 2018-10,” Legislative Analyst’s Office, accessed May 19, 2020, https://lao.ca.gov/PolicyAreas/CJ/6_cj_inmatecost.

13. *Elderly Inmates in California Prisons*, Legislative Analyst’s Office, May 11, 2010, https://lao.ca.gov/handouts/crimjust/2010/Elderly_Inmates_05_11_10.pdf.

14. “Elderly Parole Hearings,” California Department of Corrections and Rehabilitation, accessed April 2, 2020, <https://www.cdcr.ca.gov/bph/elderly-parole-hearings-overview/>.

15. AB-1448 Elderly Parole Program (2017-2018), California Legislative Information,

October 12, 2017, https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB1448.

16. *Information about Elder Parole*, Prison Law Office, April 2018, <https://prisonlaw.com/wp-content/uploads/2018/04/Elder-Parole-April-2018.pdf>.

17. *Information about Elder Parole*.

18. Life Support Alliance, personal email correspondence with the author, May 4, 2020. While CDCR claims that the overall suitability rate is only 18 percent, according to the Life Support Alliance, that rate is the percentage of grants for hearings that are scheduled. Because about half of all scheduled hearings are not held due to postponements, waivers, and other issues, the grant rate for hearings that were actually held was 34 percent.

Suitability Hearing Summary CY 1978-2019, California Department of Corrections and Rehabilitation, <https://www.cdcr.ca.gov/bph/2020/01/09/suitability-hearing-summary-cy-1978-through-cy-2018/>.

19. Ghandnoosh, Nazgol, *Delaying a Second Chance: The Declining Prospects for Parole on Life Sentences*, The Sentencing Project, January 31, 2017, 10, <https://www.sentencingproject.org/publications/delaying-second-chance-declining-prospects-parole-life-sentences/>.

20. Between 2006-2016, 52 percent of deaths in state prisons were among those aged 55 and older. Carson, E. Ann, and Mary P. Cowhig, “Mortality in State and Federal Prisons, 2001-2016 – Statistical Tables,” US Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, February 2020, <https://www.bjs.gov/content/pub/pdf/msfp0116st.pdf>.

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22. Ghandnoosh, Nazgol, 14.

23. TRC Staff, “Paroling Grandpa: Study Finds 3% Recidivism Rate Among Elderly Ex-Inmates,” *The Crime Report*, November 19, 2018, <https://thecrimereport.org/2018/11/19/paroling-grandpa-study-finds-3-recidivism-rate-among-elderly-ex-inmates/>.