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IN THE SUPREME COURT OF PENNSYLVANIA

NO. 34 EAP 2026

COMMONWEALTH OF PENNSYLVANIA,

v.

JEROME COFFEY,

Appellant.

BRIEF OF *AMICUS CURIAE* MARIE "MECHIE" SCOTT

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IDENTITY AND INTEREST OF *AMICUS CURIAE*

Pursuant to Pennsylvania Rule of Appellate Procedure 531, Marie "Mechie" Scott ("Ms. Scott"), *amicus curiae*, submits this brief in support of Appellant. Ms. Scott's undersigned counsel prepared this brief on a *pro bono* basis and no interested person or entity paid for this brief or helped prepare it. Ms. Scott is a Pennsylvania resident who was serving a sentence of life without the possibility of parole before Governor Josh Shapiro commuted her sentence in 2025. Peter Hall, *Gov. Josh Shapiro Commutes Sentence for Marie Scott, who Led Push to End Life Without Parole, Penn Capital Star* (June 17, 2025) (attached as Exhibit 1).[1] Ms. Scott had been incarcerated for a 1973 robbery of a Philadelphia gas station that ended in tragedy when her boyfriend at the time, Leroy Saxton, shot and killed the attendant. Ms. Scott did not fire the weapon or kill the victim, yet due to her participation in the robbery, the court imposed a sentence of life without parole for felony murder. At the time of the crime, Ms. Scott was 19 and her boyfriend was 16. In 2012, the U.S. Supreme Court held that mandatory life without parole sentences for minors violate the Eighth Amendment prohibition on cruel and unusual punishments. *Miller v. Alabama*, 567 U.S. 460 (2012). Four years later the Supreme Court made the *Miller* ruling retroactive. *Montgomery v. Louisiana*, 577 U.S. 190 (2016). After these rulings, Mr. Saxton was released from prison in 2020. It took Ms. Scott another five years to earn her release.

Before her release, Ms. Scott had spent over fifty-two years in state prison and suffered a breast cancer diagnosis while serving her sentence. Ms. Scott agrees that a mandatory sentence of life without parole for felony murder violates the Article I, Section 13 prohibition on cruel punishments, as this Court held in *Commonwealth v. Lee*, 357 A.3d 356 (Pa. 2026). Given her

[1] Available at https://penncapital-star.com/civil-rights-social-justice/gov-josh-shaprio-commutes-sentence-for-marie-scott-who-led-push-to-end-life-without-parole/.

personal experience as a former lifer, Ms. Scott has an interest in ensuring that other Pennsylvania citizens who are serving mandatory life sentences have their constitutional right to be free of cruel punishments safeguarded.

Ms. Scott agrees with Appellant that this Court's ruling in *Lee* should have retroactive effect. Ms. Scott feels compelled to submit this *amicus curiae* brief because there are other incarcerated people in Pennsylvania who, like Ms. Scott, were convicted of felony murder before 1974, when Pennsylvania reclassified felony murder from first degree to second degree. Ms. Scott believes this is a distinction without a difference for the issues presented in this appeal, and *Lee* therefore should apply retroactively for individuals like her who were given unconstitutional sentences before 1974.

INTRODUCTION

In *Commonwealth v. Lee*, 357 A.3d 356, 391 (Pa. 2026), the Court found that mandatory life in prison without parole for individuals convicted of felony murder violates Article I, § 13 of the Pennsylvania Constitution. While *Lee* addressed the Pennsylvania felony murder rule as it stands today, classified as second-degree murder, the Court considered the historic underpinnings of felony murder, including that a specific intent to commit the felony was sufficient to sustain a felony-murder conviction, even in cases where there was no specific intent to commit homicide—indeed, even in cases, such as Ms. Scott's, where the defendant did not kill the victim.

Some people incarcerated for life without parole in Pennsylvania were convicted of felony murder before Pennsylvania reclassified felony murder from first degree to second degree in 1974. For those incarcerated people, however, the constitutional concerns remain. Whether before or after 1974, felony murder did not require the Commonwealth to prove a specific intent to commit homicide. As a result, incarceration for life without parole can be an unconstitutionally cruel punishment for a felony murder, whether the conviction happened before or after the 1974 reclassification. Ms. Scott respectfully urges the Court to find that *Lee* has retroactive application for ***all*** felony murder convictions.

ARGUMENT

I. The pre-1974 felony murder rule is the same as the modern rule in all but classification.

As the Court noted in *Lee*, felony murder is classified as second-degree murder. 357 A.3d at 364. Prior to 1974, felony murder was classified as first-degree murder. *See Commonwealth v. Matlock*, 393 A.2d 26, 28 (Pa. 1978). In 1974, the Pennsylvania legislature changed felony murder's classification, but the change was of little substantive consequence. Both before and after the 1974 reclassification, felony murder requires the Commonwealth to prove the same basic

elements beyond a reasonable doubt. First, the Commonwealth must prove the defendant committed an underlying felony. *Compare Commonwealth v. Yuknavich*, 295 A.2d 290, 293 (Pa. 1972) (noting that pre-1974, a defendant may be convicted of felony murder where they committed a lesser felony such as robbery); *with Lee*, 357 A.3d at 358 (noting that modern felony murder convictions require proof that a defendant committed a felony listed in 18 Pa.C.S. § 2502(d)). Second, the Commonwealth must prove that an individual died during the commission of the underlying felony. For purposes of a felony murder conviction, it does not matter whether the defendant was the killer, a participant, or a lookout—all participating defendants are guilty of murder. *Compare Yuknavich*, 295 A.2d at 293 (in a pre-1974 felony murder case, "where a killing occurs in the commission of a felony, all who participate therein are equally guilty of murder"); *with Lee*, 357 A.3d at 393 (noting that an individual "who did not kill" can be convicted of felony murder).

The Commonwealth must prove only that the defendant had the requisite intent to commit the underlying felony and does not need to prove a specific intent to kill. As this Court concluded in *Yuknavich*, "felony-murder is a means of imputing malice where it may not exist expressly. Under this rule, the malice necessary to make a killing, even an accidental one, murder, is constructively inferred from the malice incident to the perpetration of the initial felony" (citations and internal quotations omitted). *Yuknavich*, 295 A.2d at 292. What was true before 1974 remains so today: "the only relevant intent is that to commit the underlying felony." *Lee*, 357 A.3d at 358.

In sum, the 1974 reclassification of felony murder effected no substantive changes to the underlying elements or theoretical underpinnings of the crime. Perhaps this is why this Court relied on both pre- and post-1974 felony murder precedents when considering the unconstitutionality of the mandatory sentence. *See generally Lee*, 357 A.3d at 358 (citing

Commonwealth ex rel. Smith v. Myers, 261 A.2d 550, 553 (Pa. 1970)); *Yuknavich*, 295 A.2d at 292.

II. If the Court applies *Lee* retroactively, its retroactivity should apply to felony murder convictions from before 1974.

Ms. Scott agrees with Appellant that *Lee* should apply retroactively. In *Montgomery v. Louisiana*, 577 U.S. 190, 200 (2016), *as revised* (Jan. 27, 2016), the United States Supreme Court held that new, substantive constitutional rules affecting sentencing are retroactive. The rule announced in *Lee* is substantive, for it "forbids 'criminal punishment of certain primary conduct' or prohibits 'a certain category of punishment for a class of defendants because of their status or offense.'" *Montgomery*, 577 U.S. at 206 (quoting *Penry v. Lynaugh*, 492 U.S. 302, 329 (1989)). In *Montgomery*, the Supreme Court held that its prior ruling in *Miller v. Alabama*, 567 U.S. 460 (2012), was a new substantive rule, for it had found unconstitutional a mandatory sentence of life in prison without the possibility of parole for juvenile offenders. *Id.*, at 209-10. *Miller* had established a rule that juvenile defendants cannot be subjected to mandatory life without parole (a certain category of punishment), because of their status as juveniles. *Id.*, at 210-12. Likewise, the Court's decision in *Lee* applies retroactively because it prohibits a certain category of punishment for individuals convicted of felony murder: mandatory life in prison without parole. 357 A.3d at 364.

There is no logical reason to hold the *Lee* rule retroactive only for post-1974 felony murder convictions. A primary concern animating this Court's decision in *Lee*—that a felony-murder defendant "who did not kill, attempt to kill, or intend to kill" was nonetheless subject to mandatory life without parole, 357 A.3d at 393—is true regardless of when the felony murder occurred. As this Court found, ***mandatory*** life in prison without parole cannot "be reasonably justified by any of the traditional theories for punishment." *Lee*, 357 A.3d at 395. This is true whether felony

murder carries the classification of first-degree ***or*** second-degree murder. A mandatory life sentence for felony murder is cruel and unconstitutional because the Commonwealth need not prove intent to kill to secure a conviction; even defendants who did not kill or have an intent to kill the victim faced mandatory life under the pre-*Lee* regime.

Applying *Lee* retroactively to pre-1974 felony murder convictions is especially justified because mandatory life in prison without parole was the *lighter* sentencing option for felony murder defendants before the 1974 reclassification. An individual could be sentenced to death even if they had no intent to kill and did not kill anybody. *See Com. ex rel. Hough v. Maroney*, 167 A.2d 303, 306 (Pa. 1961) (finding a felony-murder defendant was eligible for a death sentence even though he had not shot or killed an off-duty police officer during the course of a robbery). Pennsylvania still has the death penalty on the books, although in practice, defendants sentenced to death serve life in prison without parole because of executive moratoriums on the Pennsylvania death penalty. *See Commonwealth v. Laird*, 331 A.3d 579, 591 n.21 (Pa. 2025). As Ms. Scott personally experienced, individuals convicted of felony murder both before and after 1974 are subjected to the same unconstitutional sentencing and convictions. *See Yuknavich*, 295 A.2d at 292-93. Accordingly, the logic animating *Lee* applies with equal force to pre-1974 felony murder convictions.

III. Individuals convicted before 1974 are the ones suffering most from unconstitutional mandatory life without parole sentences.

Incarcerated people convicted of felony murder prior to 1974 are almost certainly now in their seventies or older. Scholars have long recognized that elderly incarcerated people face unique health challenges that place substantial financial strains on prison systems. *See* John D. Burrow & Barbara A. Koons-Witt, *Elderly Status, Extraordinary Physical Impairments and Intercircuit Variation Under the Federal Sentencing Guidelines*, 11 Elder L.J. 273, 274 (2004); Dawn Miller,

Sentencing Elderly Criminal Offenders, 7 NAELA J. 221 (2011). Ms. Scott herself suffered from breast cancer while serving her unconstitutional sentence. Applying *Lee* retroactively to individuals convicted of pre-1974 felony murder addresses the fundamental injustice of elderly people suffering from illness while unconstitutionally incarcerated, but it is also good fiscal policy.

The Pennsylvania Department of Corrections estimates that, on average, it spends about $59,598 per inmate per year. Pa. Dep't of Corr., *House Appropriations Follow Up Questions* (last visited Oct. 12, 2026) (attached as Exhibit 2).[2] The DOC further estimates that at facilities with large elderly populations, the average housing cost nearly doubles to $112,625 per inmate per year. *Id.* The ACLU estimates that nationally, prison systems pay around $8.2 billion per year to provide medical care for elderly incarcerated patients. Alyssa Gordon, et al., *Trapped in Time: The Silent Crisis of Elderly Incarceration 38* (Am. Civ. Liberties Union Nat'l Prison Project and the Prison & Jail Innovation Lab, Lyndon B. Johnson Sch. of Pub. Affs., Univ. of Tex. at Austin, Sept. 2025) (attached as Exhibit 3).[3]

Seventy-three percent of incarcerated people over the age of fifty report that they have at least one chronic condition. *Id.*, at 27. Elderly people are more likely to suffer from serious conditions such as heart disease and arthritis. *Id.* Elderly people with chronic health conditions also struggle with unique difficulties in prison such as managing multiple medications, using cumbersome medical devices such as oxygen tanks, and moving around the facility while suffering from degenerative disorders that limit mobility. *Id.* Chronic, life-threatening medical conditions such as heart disease often require extensive treatment; not only is prison healthcare expensive,

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[2] Available at https://houseappropriations.com/files/Documents/Corrections%20Response.pdf.

[3] Available at https://www.aclu.org/publications/trapped-in-time-the-silent-crisis-of-elderly-incarceration.

but often prison healthcare facilities are understaffed and lack the equipment and resources of outside hospitals. *Id.*, at 27-30.

Elderly people are also at higher risk for cognitive disorders such as dementia and with that comes unique challenges. The risks of dementia and other cognitive impairments increase substantially for incarcerated people over the age of 55, with 21% reporting cognitive ailments (compared with 8% of under-55 incarcerated people). *Id.*, at 31. The isolating nature of incarceration can delay the ability to recognize and treat symptoms of dementia or other cognitive impairments. *Id.* Elderly incarcerated people with dementia and related conditions often struggle to follow official and unofficial prison rules due to the conditions' effects on memory and cognition. *Id.* This can lead to discipline issues and altercations with other inmates, potentially putting them at risk of harm. *Id.*

Apart from specific medical conditions, the effects of aging make it especially difficult for elderly incarcerated people to function in everyday prison conditions. For example, prison cells often have bunk beds which elderly people struggle to climb due to mobility issues. *Id.* Elderly people also generally have more dental issues than younger people and as a result require more dental work, which is both costly to the prison and often unavailable. *Id.*, at 31-32. Incarcerated people are also often required to stand for large periods of the day, for example when waiting in long lines for medicine, showers, and food, which can be especially difficult for elderly inmates. *Id.*, at 31.

The Court already determined that mandatory life without parole is an unconstitutional punishment for individuals convicted of felony murder. *Lee*, 357 A.3d at 391. Applying *Lee* to individuals who have been serving mandatory life sentences for felony murder for more than fifty years will put an end to unconstitutional punishments and is good fiscal policy.

CONCLUSION

For the reasons set forth above, the Court should find both that *Lee* applies retroactively and that it applies retroactively to felony murder convictions regardless of whether the convictions occurred before or after 1974.

Dated: November 9, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH PENNSYLVANIA RULE OF APPELLATE PROCEDURE 2135(a)(1)

This brief complies with the word count limits of Pa. R. App. P. 2135(a)(1) because, according to the word processing software used to prepare this brief, it contains fewer than 7,000 words.

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I, Will Sachse, hereby certify that on this 9th day of November 2026, I caused a copy of the foregoing Brief of *Amicus Curiae* in Support of Appellant to be served via the Court's PACFile system and Federal Express upon the following counsel of record noted below in a manner that satisfies the requirements of Pa. R. App. P. 121:

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EXHIBIT 1

PENNSYLVANIA CAPITAL-STAR

Gov. Josh Shapiro commutes sentence for Marie Scott, who led push to end life without parole

Scott has been in prison for more than 50 years for her role in a robbery where her boyfriend killed a man

BY **PETER HALL** - JUNE 17, 2025 8:12 PM



Photos of Marie Scott taken 25 years apart. (Photos courtesy of Howard Zehr)

After spending almost all of her adult life in prison for her role in a robbery-murder, 71-year-old Marie "Mechie" Scott has hope for freedom.

Gov. Josh Shapiro signed an order Friday commuting Scott's life without parole sentence for the 1973 murder of a gas station attendant as she and her boyfriend robbed the business. In six months, Scott will be able to go before the Pennsylvania Parole Board to make her case for release.

Scott had an outpouring of support at the May 9 public hearing where the Pennsylvania Board of Pardons recommended clemency, said Rupalee Rashatwar, staff attorney at the Abolitionist Law Center, which has represented Scott.

"I think that's one of the most exceptional things about Mechie's case – the whole movement that's behind her," Rashatwar said.

In a recording on the Abolitionist Law Center's Instagram page, Scott described how her cries of joy upon learning of Shapiro's decision spread among others at SCI Muncy, where she is incarcerated. Scott said she couldn't find words to describe how she felt.

"There was not even an expression that I could have picked, that would have brought out and made you understand and feel what I felt," she said in the recording.

Pennsylvania and Louisiana are the only states that impose mandatory life sentences without parole for felony murder. Under Pennsylvania law, that's when a person commits a crime that leads to another person's death, even if they didn't directly cause or intend the killing.

Scott, then 19, and her boyfriend, 16-year-old Leroy Saxton, plundered a Philadelphia gas station's safe amid a string of robberies while high on sedative pills. Saxton shot the attendant, Michael Kerrigan, but because Scott took part in the robbery, she was also held responsible for Kerrigan's murder under the felony murder rule.

Kerrigan was a Philadelphia firefighter and father of three who was filling in at the gas station for a friend who was sick. Saxton, who was a minor at the time he killed Kerrigan, was released in 2020 after the U.S. Supreme Court ruled mandatory life sentences for juveniles violate the U.S. Constitution.

In Pennsylvania, some 1,100 people are incarcerated for felony murder; more than two-thirds of them are Black, according to the Felony Murder Reporting Project.

Scott's case has been a focal point for those working to end what advocates call "death by incarceration." With a moratorium on executions that began with Gov. Tom Wolf and continues under the Shapiro administration, life without parole is effectively the most severe criminal penalty Pennsylvania courts can apply.

In 2020, Scott led a group of six Pennsylvania prisoners serving life sentences for felony murder in a lawsuit, arguing that mandatory life without parole for those who did not kill or intend to kill violates the state constitution.

That case was thrown out when the state Supreme Court found it was improperly filed as a civil lawsuit in Commonwealth Court, which lacked jurisdiction over the plaintiffs' criminal cases.

In October, the state Supreme Court heard arguments in the case of Derek Lee, who is also serving life without parole for felony murder. His lawyer, Bret Grote, also with the Abolitionist Law Center, told the Capital-Star he anticipates a decision this summer.

Lee, now 36, was convicted of felony murder in 2016 for his role in a 2014 Pittsburgh home-invasion robbery, when his accomplice fatally shot the homeowner.

Lee's appeal challenges mandatory life without parole based on the Eighth Amendment to the U.S. Constitution, which prohibits cruel and unusual punishment, and the state Constitution's bar on cruel punishment.

Lee's attorneys are joined by two former state secretaries of corrections who say keeping people who did not intend or cause the death of another in prison for the rest of their lives is financially insensible, prevents finite resources from being used for rehabilitation of those who could benefit, and has little effect on public safety.

Like the backing Scott received before the Board of Pardons, Grote said the support for Lee has been remarkable. Lee's case drew the friend-of-the-court briefs from state officials, organizations, victims and former lifers who argued the court should end death by incarceration.

They included Shapiro.

"It is certainly unprecedented for a governor of Pennsylvania to submit an amicus brief supporting striking down the life sentence of a person convicted of felony murder," Grote said.

In a friend of the court brief on behalf of Shapiro's office, General Counsel Jennifer Selber urged the court to find mandatory life without parole for felony murder in violation of the state Constitution, but cautioned against making the new rule retroactive. Doing so would place too great a strain on the legal system, the brief says.

Grote said the effect of striking down all 1,100-plus felony murder sentences should not be burdensome. Like Scott, each would be resentenced to a minimum that would make many eligible for parole soon after.

With Scott's felony murder sentence commuted, she must still serve an aggregate sentence of six months for escaping from prison decades ago.

While noting Kerrigan's daughters have opposed her release, according to The Philadelphia Inquirer, Rashatwar remains hopeful that the Parole Board will consider how Scott has changed for herself and helped others during her decades of incarceration.

"She has countless people supporting her," Rashatwar said, noting the Board of Pardons received letters from people who served sentences alongside Scott saying she taught them what she had learned about herself in prison. State House Speaker Joanna McClinton (D-Philadelphia) was among those who wrote in Scott's support.

"It's pretty amazing the amount of support that she had that led to this outcome," Rashatwar said.

EXHIBIT 2

pennsylvania
DEPARTMENT OF CORRECTIONS

PA Department of Corrections
House Appropriations Follow Up Questions

1. **How many incarcerated individuals have what is considered a "chronic medical condition"?**

Below is a breakdown per facility of individuals diagnosed with a chronic medical condition which is defined in DOC policy as "a disease process that requires care and treatment over a long period and usually is not cured. Examples of chronic illness include asthma, heart disease, diabetes, hypertension, and some physical disabilities that limit a person's normal functions".

Summary of Chronic Inmates Per Site

	Total Population	Chronic DX Count	Percent
Albion	1,991	994	50%
Benner	1,677	871	52%
Cambridge Springs	824	547	66%
Camp Hill	2,188	1,020	47%
Chester	1,083	543	50%
Coal Township	1,575	763	48%
Dallas	1,751	980	56%
Fayette	1,941	1,015	52%
Forest	2,095	883	42%
Frackville	990	478	48%
Greene	1,458	660	45%
Houtzdale	2,280	1,081	47%
Huntingdon	1,535	774	50%
Laurel Highlands	1,137	710	62%
Mahanoy	2,021	1,077	53%
Mercer	923	514	56%
Muncy	1,004	663	66%
Phoenix	2,922	1,532	52%
Pine Grove	901	330	37%
Quehanna	380	181	48%
Rockview	1,766	913	52%
Smithfield	1,170	542	46%
Somerset	1,868	951	51%
Waymart	779	490	63%
DOC Total	36,259	18,512	51%

2. **What is the total average cost of a DOC employee, including all benefits?**

Total average salary for DOC employees who are eligible to retire at age 50/55 and have care custody and control of the incarcerated population.			
AVERAGE SALARY - Age 50/55			**TOTAL**
OPTION 1	**TOTAL SALARY**	**TOTAL BEN**	**SALARY & BEN**
H1 - COT	$42,273	$39,368	**$82,000**
H1 - CO1	$62,509	$50,185	**$113,000**
H1 - CO2	$77,096	$57,981	**$135,000**
H3 - CO3	$83,589	$61,452	**$145,000**
H3 - CO4	$101,902	$71,240	**$173,000**
H3 - CO5	$120,861	$81,374	**$202,000**
All Other H1	$62,777	$50,328	**$113,000**
All Other H3	$107,569	$74,269	**$182,000**

Total average salary for DOC employees who are eligible for retirement at age 60/65 and do not have care custody and control of the incarcerated population.			
AVERAGE SALARY - Age 60/65			**TOTAL**
OPTION 1	**TOTAL SALARY**	**TOTAL BEN**	**SALARY & BEN**
Medical Care (10011)	$ 70,882	$ 51,442	**$ 122,000**
Education (10012)	$ 69,350	$ 50,692	**$ 120,000**
SCI (10013)	$ 62,449	$ 47,317	**$ 110,000**
GGO (10014)	$ 81,951	$ 56,856	**$ 139,000**
OVA (10014)	$ 64,811	$ 48,472	**$ 113,000**
GGO - Parole (10014)	$ 66,066	$ 49,086	**$ 115,000**
Supervision (11116)	$ 65,758	$ 48,936	**$ 115,000**
Board (11117)	$ 81,984	$ 56,872	**$ 139,000**
SOAB (11119)	$ 73,489	$ 52,717	**$ 126,000**
CI (20234)	$ 70,297	$ 51,156	**$ 121,000**

3. **How many employees used the full 60 day COVID leave authorized under Act 17?**

To date, three employees have used the full 60 day COVID leave.

4. **What was the average length of leave used under Act 17?**

Average length of days: 9.31 days
Average length for hours: 74.45 hours

5. **What is the average cost of a geriatric incarcerated person?**

DOC calculates average costs of our population per facility. We are not able to do so specifically for a certain age group; however we can compare our total statewide average cost per day of **$163. 28 / day ($59,598/year)** with a facility like Laurel Highlands which has a high percentage of geriatric individuals which is **$308.56/ day ($112,625/year).**

6. **What was the total spend on COVID from DOC?**

In FY20-21, the DOC was allocated **$1.275B in Coronavirus Relief Fund** dollars to cover salaries and benefits for staff performing duties that have significantly changed due to COVID-19 mitigation efforts. We have also received **$4M (FY19-20) from the Department of Justice (DOJ)** for reopening SCI-Retreat as our intake and quarantine prison at the beginning of the pandemic. We will receive **approximately $30M from the DOH/CDC** for COVID-19 testing of staff and inmates. Finally, we are projecting to receive a total of **$198M** for COVID-19 related costs that were reimbursed through FEMA.

7. **What are the costs of the long-term care units**

The Department determines costs per facility and not per housing unit so we do not have specific costs for just the long-term care units. However, SCI Laurel Highlands has more skilled care and personal care beds than any other SCI. The average cost per individual housed at SCI Laurel Highlands is $308.56 per day or $112, 625 annually. Statewide average cost per person is $163.28 per day or $59,598 annually.

EXHIBIT 3



ACLU AND PJIL RESEARCH REPORT

Trapped in Time

The Silent Crisis of Elderly Incarceration

ACLU

The University of Texas at Austin
Prison and Jail Innovation Lab
Lyndon B. Johnson School of Public Affairs

ACLU AND PJIL RESEARCH REPORT

Trapped in Time

The Silent Crisis of Elderly Incarceration

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ACLU

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Dedication

We dedicate this report to the thousands of incarcerated people who have spent, and continue to spend, decades of their lives suffering behind bars.[1] To achieve true, transformative justice, and collective safety for all, we must create a system that not only holds people accountable for the harms they commit, but also gives them a meaningful chance to make a better way for themselves. Until then.

Acknowledgements

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Executive Summary

America's prison population is aging — and aging faster than ever. The graying of America's prisons is transforming the landscape of the nation's correctional systems, presenting myriad operational and fiscal challenges for prison systems across the country. Of most importance, though, is that the ballooning elderly incarcerated population,[3] coupled with correctional agencies' inability to adequately address their distinct needs, has created conditions that are ripe for a multitude of civil rights violations, the exacerbation of chronic medical conditions, and ultimately, needless suffering and preventable deaths. These problems are only getting worse.

NOTE

When this report utilizes language such as "elderly," "geriatric," or "aging," we are referring to an incarcerated person over the age of 55, unless otherwise specifically noted.

As the human costs, fiscal costs, and operational challenges of managing a rapidly aging prison population continue to grow exponentially, it is incumbent upon policymakers nationwide to address the epidemic of aging behind bars. Though this issue has received traction in some state legislatures, there is still much to be done. This report provides the research, data, and roadmap necessary for state and federal lawmakers to create lasting change. It collects data gathered from a 50-state survey, analyzes the human and operational costs of incarcerating elderly people, and provides a panoply of recommendations.

Through state public records requests and other publicly available data from state departments of correction, we analyzed demographic trends in the elderly incarcerated population, as well as the fiscal impact of elderly incarcerated people on correctional budgets. We also researched historical criminal law trends, current sentencing and parole laws, and model statutes and programs among states to better inform our recommendations.

Some key questions analyzed in the report include:

- What are the population trends of aging incarcerated people in America?;
- What is the gender and race of elderly incarcerated people in America?;
- How much time has the elderly incarcerated population served in prisons?;
- What types of offenses have the elderly incarcerated population committed?;

- What are the recidivism rates for elderly people released from prison?;
- What harms do elderly people experience while incarcerated?; and
- What are the fiscal costs of incarcerating the elderly?

Some key findings include the following:

- Across the United States, incarcerated people aged 55 and over represent 15.7% of the national prison population as of 2022, meaning that about one in every six incarcerated people is considered elderly;
- The racial breakdown of the national elderly incarcerated population is about 32% white, 32% Black, and 22% Latine;
- As of 2021, an estimated 114,601 people aged 55 and older were living in a state or federal prison and nearly 16,000 of them had spent over half their lives serving their sentence;
- As of 2021, more than half of the incarcerated elderly population (over 58,000 people) has been behind bars for 10 years or more, and 18,210 people have spent over 30 years in prison;
- Elderly incarcerated people have much higher rates of serious and chronic health care needs than their younger counterparts — needs that correctional systems are ill-equipped to address;
- Elderly incarcerated people are suffering high rates of adverse health outcomes because of deficient and dysfunctional correctional health care systems;
- Elderly incarcerated people are more vulnerable to the worst outcomes of natural disasters, environmental challenges, and other emergencies; and
- In 2012, a court ruling led to the negotiated release of 178 elderly, life-sentenced people in Maryland who, on average, had already served almost 40 years in prison for violent offenses. Researchers from the University of Maryland Carey School of Law found that in the four years following the court ruling, not a single person was rearrested for a crime more serious than a traffic offense, establishing that it is possible to safely release aging, long-incarcerated people without putting public safety at risk.

In light of this report's findings, we recommend that state correctional departments:

- Substantially reduce the number of elderly people in our nation's prisons by:
    1. significantly expanding compassionate release programs to allow sick elderly people to secure release;
    2. augmenting existing parole infrastructure to give non-sick elderly people a meaningful opportunity for release;
    3. enacting second look legislation without statutory barriers to eligibility; and

4. repealing or greatly modifying "tough-on-crime" laws that created the aging behind bars crisis.

- Address elderly returnees' complex reentry needs by:

5. enhancing reintegration services available to elderly incarcerated people before release from prison;
6. establishing steady pipelines for reentry housing, including community-based hospice housing; and
7. creating community reentry centers to serve as drop-in hubs that offer essential services.

- Better protect elderly people who remain incarcerated by:

8. increasing access to necessary medical treatments through regular preventative assessments and individualized treatment plans;
9. amending institutional policies that restrict advance care planning in prison;
10. ensuring all prisons are fully compliant with the Americans with Disabilities Act;
11. enacting or amending emergency protocols to address the safety needs of older incarcerated people during emergencies;
12. addressing extreme temperatures in carceral facilities;
13. training correctional staff on how to interact with older incarcerated people;
14. providing safe reporting mechanisms to protect elderly people from harm;
15. providing hospice services for people facing terminal illness; and
16. addressing the need for dementia care.

Introduction

> "I've been in a medical unit now for over 10 years. I have chronic health issues. [Incarcerated people] like me fight every day for basic reasonable health care. I'm alone now and I feel like giving up. I'm just tired. Pray for me — anyone...everyone." —*an elderly person incarcerated for 32 years*[4]

The aging of America's prison population is a crisis unfolding in slow motion. For more than three decades, the growth of older people in U.S. prisons has far outpaced the growth of their younger counterparts. In 1991, elderly people made up just 3% of the total state and federal prison population; by 2021, that number had shot up to 15%.[5] In other words, aging people now make up five times as much of the prison population as they did three decades ago.[6] Between 2009 and 2019, the total U.S. prison population decreased by 11.4%.[7] However, over the same period, the number of elderly people incarcerated in state and federal prisons more than doubled.[8] What this means is that, despite a decade-long downward trend in nationwide prison populations, the rate of elderly people incarcerated in our nation's prisons continued to grow. If the current trends remain, researchers predict that by 2030, as much as one-third of the American prison population will be over 50 years old.[9]

The incarceration of elderly people comes at a heavy human cost. Studies show that elderly incarcerated people pose little threat to public safety because the vast majority of them "age out" of crime as they grow older, and therefore are at minimal risk of reoffending.[10] Because incarcerated elders no longer pose a threat to public safety, are nearing the end of their lives, and have already served decades behind bars, this raises fundamental questions about the morality of an elderly person's continued incarceration —especially when there is no compelling societal justification to do so other than punitive or retaliatory reasons.

The growth of the elderly prison population also comes at a hefty financial cost. The ACLU's prior report, "At America's Expense: The Mass Incarceration of the Elderly,"[11] estimated that in 2012, the average cost to incarcerate an elderly person was $68,270 per year — roughly double the average annual cost at the time

of incarcerating their younger counterparts.[12] Since then, these costs have continued to rise as warnings by correctional budget analysts have gone almost entirely unheeded.[13] These cost disparities make sense: just as in the community, as incarcerated people age, they are more likely to experience health challenges and a corresponding need for augmented health care services, such as increased hospitalizations and a greater need for costly medications.[14] For this reason, corrections agencies nationwide struggle to balance the constitutional requirements and demands of providing minimally adequate health care with the realities of overburdened prison systems and limited budgets.

As the human costs, fiscal costs, and operational challenges of managing a rapidly aging prison population continue to grow exponentially, it is incumbent on policymakers nationwide to address the epidemic of aging behind bars. Though this issue has received traction in some state legislatures, there is still much to be done. This report provides the research, data, and roadmap necessary for lawmakers to create lasting change. It collects data gathered from a 50-state survey, analyzes the operational and human costs of incarcerating elderly people, and provides a panoply of recommendations.

The human costs, fiscal costs, and operational challenges of managing a rapidly aging prison population continue to grow exponentially.

Part I begins by setting up how we got here as a country. It explains the policies and practices of the past three decades that led to an extraordinary growth in the aging prison population. Next, it analyzes the data and presents a detailed profile of the elderly incarcerated population in America. Then, the report turns to a discussion of the numerous harms elderly people experience in prison, including health complications, medical neglect, and heightened susceptibility to natural disasters and national health emergencies. Part I concludes with an analysis of the extraordinary financial costs associated with the incarceration of the elderly. Part II analyzes current release mechanisms available to the elderly prison population, including compassionate release and second look review, and explains why these measures have been ineffective in reducing the tide of elderly incarceration. Finally, Part III recommends a host of decarceral strategies to reduce the staggering number of older people incarcerated in the United States.

NOTE

Citations are linked to explanatory endnotes. For more detail on the text, click a note number to jump to its corresponding endnote, and click the note number again to return to your place in the report.

Findings

Part I. The Problem

We begin with an analysis of the policies that birthed, supercharged, and continue to fuel the aging behind bars epidemic today, before turning to a comprehensive data profile on the thousands of elderly people that American prisons warehouse. We then examine the harms of incarcerating aging people and the recidivism rates for elderly people released from prison. We conclude Part I with an analysis of the hefty financial costs of elderly incarceration.

A. How Did We Get Here?

> "The time that an older person has to serve gets harder and harder each and every day." —*an elderly person serving life in prison*

A principal driver of the exponential growth in elderly incarceration in America is the panoply of so-called "tough-on-crime" laws of the late 20th century. Numerous laws were passed during this time to buttress multiple national and state administrations' "law and order" political platforms, which operated under the since-debunked premise that harsher criminal sentences effectively deter crime.[15] During this era, various punitive policies were enacted across the country and converged to create a super-machine of carceral control, resulting in exponentially longer prison sentences for people. These laws — many of which are still on the books in numerous states today — include mandatory minimums, the abolition of parole, "truth-in-sentencing" laws that severely limit or remove the ability to earn good-time credits for early release, "three strikes" sentencing statutes, and the increased use of life sentences, among others.



Photo: Shutterstock

Mandatory minimums are predetermined sentences that require a person to serve a specific minimum number of years for certain offenses, regardless of the individual circumstances of the offense or the defendant.[16] The federal Sentencing Reform Act of 1984 opened the floodgates for these types of laws, establishing mandatory minimum sentences for numerous federal offenses.[17] Before the Act, federal judges were able to consider various factors when fashioning criminal sentences, such as a defendant's upbringing, role in the offense, and perceived risk to the community.[18] With mandatory minimum laws, judges cannot sentence below the legislated mandatory minimum, even if mitigating factors are present. By limiting the exercise of judicial discretion, the Sentencing Reform Act of 1984 severely hamstrung judges' power to determine fair sentences. After the Act was passed at the federal level, state governments quickly followed suit, enacting mandatory minimum laws at the state level across the country.[19] Lengths of state and federal prison sentences increased enormously, forcing people to spend decades of their lives behind bars.

By limiting the exercise of judicial discretion, the Sentencing Reform Act of 1984 severely hamstrung judges' power to determine fair sentences.

The Sentencing Reform Act of 1984 also abolished virtually all forms of discretionary parole for federal crimes committed after November 1, 1987.[20] State governments once again followed suit, enacting their own versions of the law. By the end of 2000, 16 states had abolished discretionary parole in favor of determinate sentencing schemes — fixed sentencing structures where courts impose specific, predetermined sentences with inflexible release dates and no opportunity to apply for parole, despite good conduct while in prison.[21] As of 2019, the number had not changed: 16 states have no discretionary parole system, or otherwise operate systems that are severely curtailed.[22]

Relatedly, the Federal Violent Crime Control and Law Enforcement Act of 1994, known more commonly as the 1994 Crime Bill, was and remains the single largest piece of federal criminal justice legislation in U.S. history.[23] The law further eroded judicial discretion already slashed by the Sentencing Reform Act of 1984 by incentivizing states to enact so-called "truth-in-sentencing" (TIS) laws, which require people to serve a specific percentage of their sentence (e.g., 85%) behind bars, and eliminates the incentive or ability to earn credit towards an earlier release date due to good behavior behind bars.[24] To encourage states to adopt harsher sentencing practices, the 1994 Crime Bill included a provision that conditioned the availability of federal funding to build more state prisons on a state's successful enactment of TIS laws.[25] To be eligible for these coveted federal funds, states must have enacted a TIS statute and sentenced a higher percentage of "violent" people to prison time, among other requirements.[26] Because people sentenced under TIS are ineligible for early release until they serve the required percentage of their sentence, TIS laws greatly limit an incarcerated person's ability to reduce time in prison through good behavior and completion of rehabilitative programming.[27] The shift away from indeterminate sentencing in favor of TIS laws was swift. People who were released in 1996, for example, served an average of 44% of their sentence.[28] By 1999, 29 states had implemented TIS laws,[29] requiring thousands of people to remain incarcerated for much longer periods of time than they otherwise would have been. TIS schemes directly

contributed to the growth of the aging prison population. As of 2023, there has been a resurgence in TIS legislation,[30] foreshadowing the reality that the problems discussed in this report are likely to get even worse in coming years absent strategies to address them.

The 1994 Crime Bill also included a "three strikes" provision that further eroded judicial discretion by mandating life in prison without the possibility of parole at the federal level for people convicted of a violent felony after two prior felony convictions, one of which had to be a violent offense.[31] States quickly followed suit; as of 2022, 24 states have enacted three strikes laws.[32] For example, California's infamously draconian (and since partially reformed) "Three Strikes and You're Out" law imposed a life sentence for almost any crime, no matter how minor, if the defendant had two prior convictions for offenses defined as serious or violent under the California Penal Code.[33] Severe measures such as these have resulted in a drastic increase in the number of elderly incarcerated people, many of whom are serving life or long-term sentences for a "third strike."

There has been a **66% increase** in the number of people serving an LWOP sentence in a state or federal prison.

Finally, over the last four decades, sentences of life imprisonment without the possibility of parole (LWOP) have become much more common.[34] The majority of people serving an LWOP sentence as of this writing have been convicted of murder, but an increasing number of people serving LWOP sentences have been convicted of crimes not involving death of a victim.[35] The expanded use of LWOP sentences means that many more people are growing old in prison and serving time for offenses that would not previously have mandated such long sentences. According to a survey conducted by The Sentencing Project, since 2003, there has been a 66% increase in the number of people serving an LWOP sentence in a state or federal prison.[36] Many of those people are now elderly and still behind bars, having spent decades of their lives languishing in prison after being ensnared in America's punishment machine at the height of the nation's "tough-on-crime" era.[37]

But we note that it is not just decades-old policies that have gotten us into this situation — current practices are contributing to the growth of the elderly incarcerated population as well. More elderly people are being arrested now than in previous years. According to an analysis of U.S. crime data by the Prison Policy Initiative, in 2000, 3% of all adult arrests involved people aged 55 or older, and by 2021, this older population accounted for 8% of all adult arrests.[38] As a result, the population of people entering prisons now includes a higher portion of elderly people. However, they still account for quite a small portion of overall arrests, and as discussed in Part I(D) *infra*, there is overwhelming research to establish that elderly people are much less likely to reoffend than their younger counterparts. The small uptick in elderly arrests could be due to a number of factors,[39] but it does not negate the numerous studies that show that people tend to "age out" of crime as they grow older.

These policies and practices, taken together, drastically increased the number of elderly people trapped in state and federal prisons across the United States, as more people were — and are — forced to

spend decades of their lives behind bars. Now, prison systems are buckling under the weight of elderly incarceration.

America's "tough-on-crime" era was largely a failed experiment. Despite the onset of mass incarceration (ostensibly to curb crime), recidivism rates remained stubbornly high,[40] signifying that increased punishment was not meaningfully deterring crime[41] nor actually rehabilitating people.[42] It is not "tough" to imprison people long past their proclivity — or even *physical ability* — to commit crime;[43] to the contrary, it is a short-sighted, inhumane, and inefficient use of resources that instead should be reinvested in community systems of care that actually address the root causes of harm and promote collective well-being.

We now turn to a data profile of the elderly incarcerated population in America.

B. A Data Profile: Who Are the Elderly People Incarcerated in Our Nation's Prisons?

The report next analyzes the following questions:

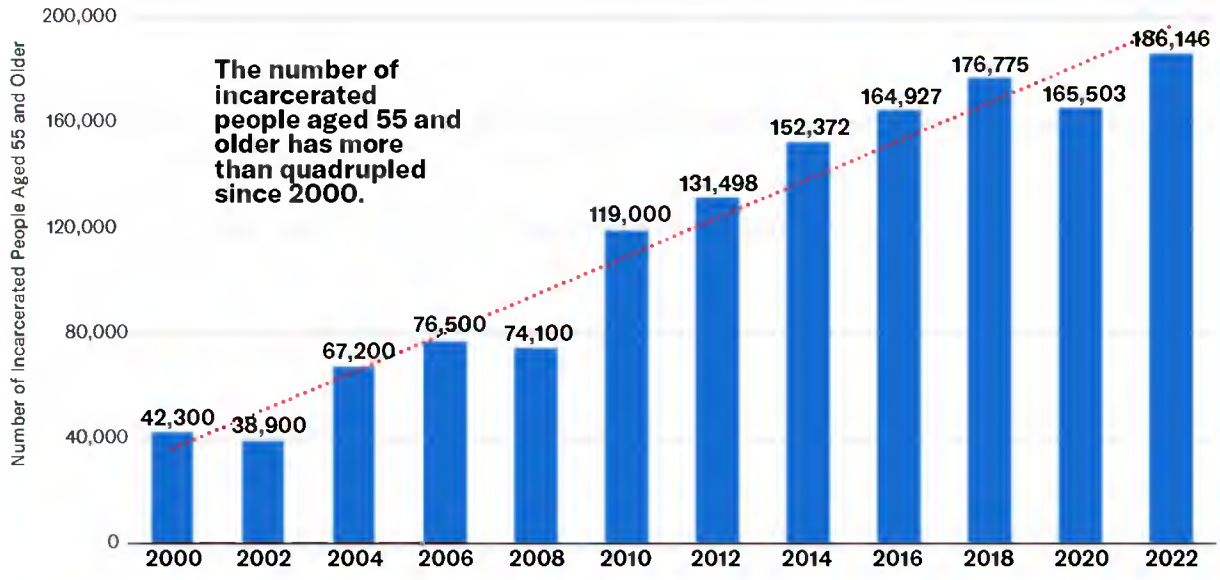
- What are the population trends of aging incarcerated people in America?;
- What is the gender and race profile of elderly incarcerated people in America?;
- How much time has the elderly incarcerated population served?; and
- What types of offenses have the elderly incarcerated population committed?[44]

What are the population trends of aging incarcerated people in America?

As Figure 1 below shows, the number of incarcerated people aged 55 and older in the United States has increased significantly since 2000.[45] Starting at approximately 42,300 in 2000, that population grew to 186,146 by 2022 — more than four times its size at the start of the century. This reflects an exploding trend that continues to shape the U.S. prison system.

FIGURE 1

Number of Elderly Incarcerated People (Aged 55+) Across the U.S. (2000–2022)



Source: Bureau of Justice Statistics, Prisoners 2000–2022

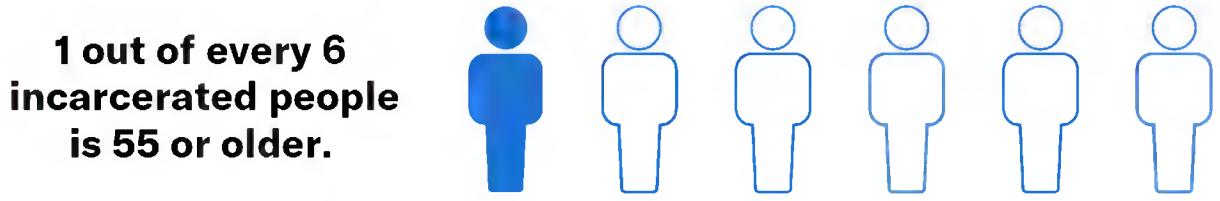
Charts by: The Prison and Jail Innovation Lab and the ACLU

As discussed in Part I(A) above, this increase in the elderly prison population correlates with the increase in "tough-on-crime" policies that led to longer prison sentences and greater numbers of people growing old behind bars.

Figure 2 shows that across the United States, incarcerated people aged 55 and over now represent 15.7% of the national prison population, meaning that about one in every six incarcerated people is considered elderly.

FIGURE 2

Percentage of Elderly Incarcerated People (Aged 55+) Across the U.S., 2022



Source: Bureau of Justice Statistics, Prisoners In 2022

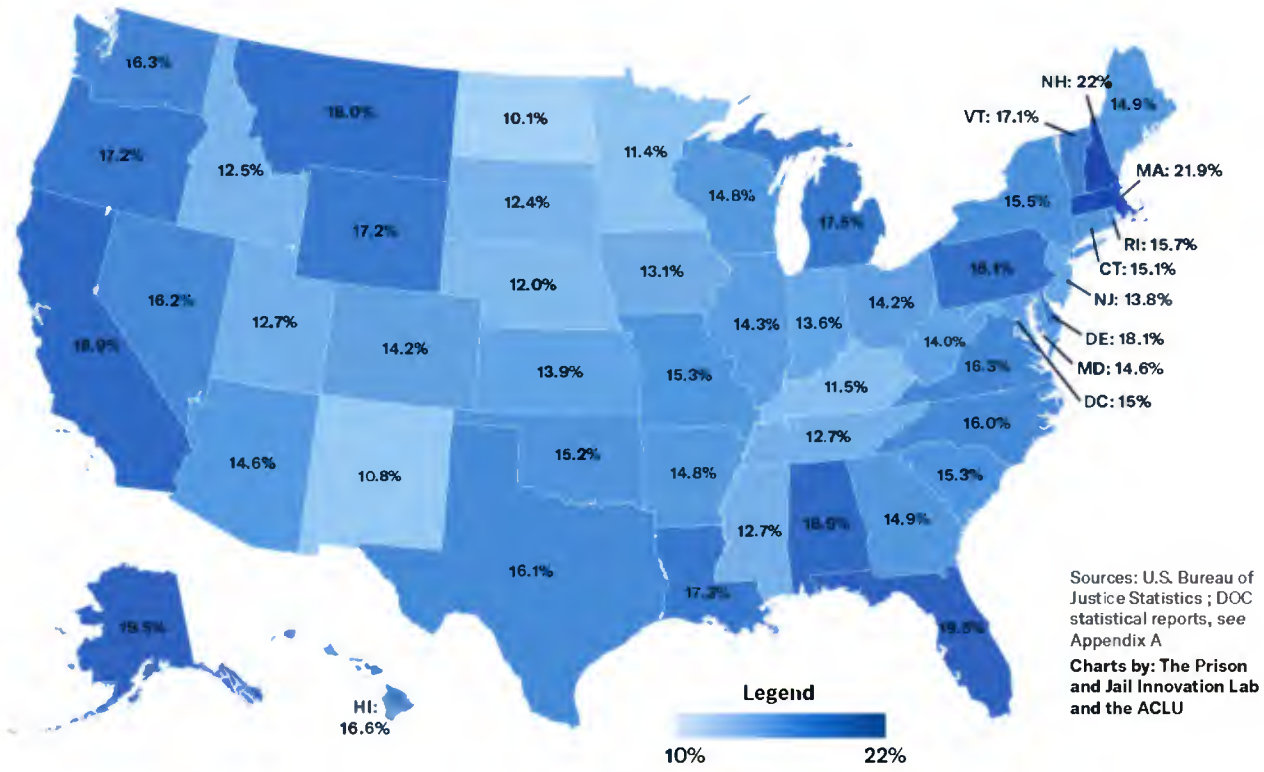
Charts by: The Prison and Jail Innovation Lab and the ACLU

And as Figure 3 below shows, the overall percentage of incarcerated people aged 55 and older varies significantly by state, according to the U.S. Bureau of Justice Statistics and statistical reports from Departments of Corrections in some states (see Appendix A). In New Hampshire and Massachusetts, for example, people aged 55 and over make up 22% of the prison population, while in North Dakota and New Mexico, they account for less than 11%. This wide range suggests that states may be experiencing

different aging trends within their prison populations, likely influenced by factors such as sentencing practices, parole policies, and community demographic differences. For example, if a particular state has a higher share of elderly people in the non-incarcerated community, that state might also have a higher share of elderly incarcerated people merely because of its community demographics.

FIGURE 3

Percent of Incarcerated People Aged 55+ by State, 2021 [46]



Sources: U.S. Bureau of Justice Statistics ; DOC statistical reports, see Appendix A

Charts by: The Prison and Jail Innovation Lab and the ACLU

Figure 4 below provides data on the specific number of elderly people incarcerated in each state's prisons.

FIGURE 4

Size of Elderly Incarcerated Population (Aged 55+) by State[47]

State	Aged 55+	Total Pop.	55+ %
Alabama	4,720	25,032	18.9%
Alaska	905	4,639	19.5%
Arizona*	5,203	35,554	14.6%
Arkansas	2,510	17,022	14.8%
California	19,167	101,441	18.9%
Colorado	2,252	15,865	14.2%
Connecticut	1,495	9,889	15.1%
Delaware	869	4,810	18.1%
Florida	15,701	80,417	19.5%
Georgia	7,015	47,010	14.9%
Hawaii	682	4,102	16.6%

Idaho	1,110	8,907	12.5%
Illinois	4,073	28,475	14.3%
Indiana	3,359	24,716	13.6%
Iowa	1,124	8,562	13.1%
Kansas	1,188	8,521	13.9%
Kentucky	2,140	18,560	11.5%
Louisiana	4,515	26,074	17.3%
Maine	235	1,577	14.9%
Maryland	2,203	15,134	14.6%
Massachusetts	1,345	6,148	21.9%
Michigan*	5,643	32,186	17.5%
Minnesota	912	8,003	11.4%
Mississippi	2,203	17,332	12.7%
Missouri	3,576	23,422	15.3%
Montana	776	4,313	18.0%
Nebraska	672	5,600	12.0%
Nevada	1,649	10,202	16.2%
New Hampshire	467	2,127	22.0%
New Jersey*	1,789	12,978	13.8%
New Mexico*	787	7,276	10.8%
New York	4,716	30,338	15.5%
North Carolina	4,646	28,995	16.0%
North Dakota	170	1,689	10.1%
Ohio	6,377	45,029	14.2%
Oklahoma	3,407	22,391	15.2%
Oregon	2,270	13,198	17.2%
Pennsylvania	6,730	37,194	18.1%
Rhode Island	352	2,238	15.7%
South Carolina	2,410	9,282	15.3%
South Dakota	417	5,682	12.4%
Tennessee	2,800	19,417	12.7%
Texas	21,464	27,179	16.1%
Utah	752	12,824	12.7%
Vermont	220	9,436	17.1%
Virginia	4,951	26,348	16.3%
Washington	2,228	3,800	16.3%
West Virginia	816	9,982	14.0%
Wisconsin	2,985	23,082	14.8%
Wyoming	366	1,794	17.2%

States with the largest prison populations, such as California, do not have the highest percentages of elderly incarcerated people. It could be that states like California have more effectively implemented parole reforms, sentence reductions, or early release programs for older people, leading to a reduction in the elderly incarcerated population. The more likely reason, though, is that the percentage of California's elderly incarcerated population remains relatively smaller than other states because California is still

incarcerating younger people — especially people from heavily policed communities — at a much higher rate,[48] making the elderly population a smaller share of the overall correctional pie. The same is true for states like Texas and Florida. Though these states do not incarcerate the highest percentages of elderly people, they still warehouse a much higher number of elderly people than most states do (e.g., compare Texas' elderly population of 22,000 to New Hampshire's elderly population of 417). Why, then, is New Hampshire at the top of the list in terms of elderly incarceration? Texas has one of the largest and most active prison systems in the country; New Hampshire, by contrast, has a much smaller system with lower annual admissions — meaning, people who were locked up years or decades ago may still be incarcerated, aging in place, with fewer younger people entering the system to shift the age distribution. New Hampshire could also have a higher percentage of people 55 and up in its general, non-incarcerated population than Texas does, leading to more elderly people coming into the system.

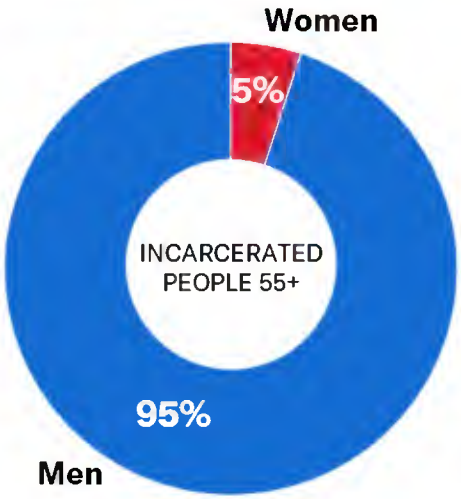
With limited prospects for release, this population will continue to age behind bars, creating heightened financial and operational pressures on the correctional agencies that incarcerate them.

What is the gender and race profile of elderly incarcerated people in America?

In 2022, 93% of the total incarcerated population (people of all ages) in state and federal prisons were men, and 7% were women.[49] This vast gender discrepancy is even more pronounced among the elderly population; as Figure 5 below shows, 95% of elderly incarcerated people in 2022 were men, while elderly women represented only 5% of that group.[50]

FIGURE 5

Percent of Incarcerated People Aged 55+ Across the U.S. by Gender, 2022



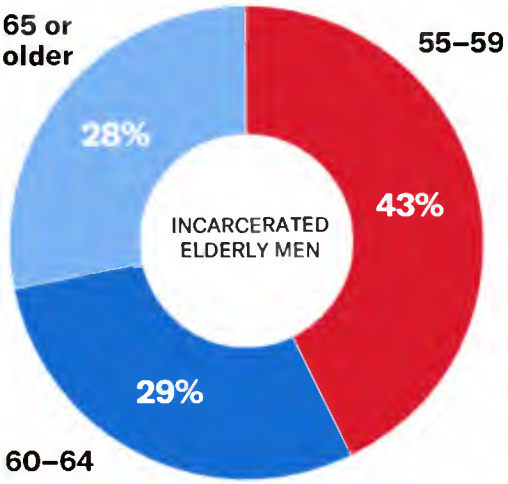
Source: Bureau of Justice Statistics, Prisoners in 2022

Charts by: The Prison and Jail Innovation Lab and the ACLU

Gender differences are also seen when the age breakdown of the elderly population is examined in more detail. As Figures 6 and 7 indicate, incarcerated men tend to be older than incarcerated women, with a higher percentage of men in the "65 or older" age category and a higher percentage of women in the "55-59" age category.

FIGURE 6

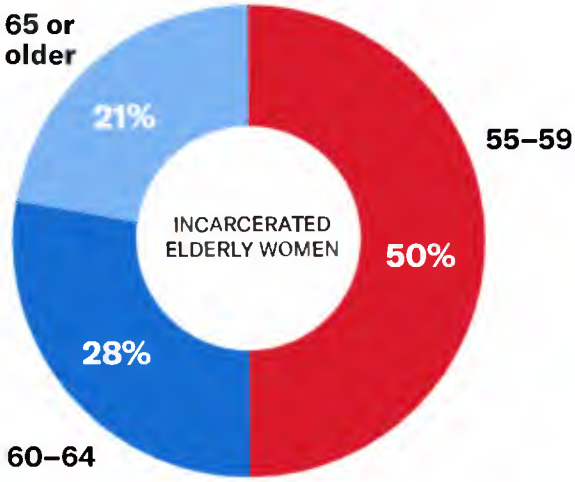
Percent of Elderly Incarcerated Men Across the U.S. by Age, 2022



Incarcerated elderly men in prison are, on average, older than elderly incarcerated women.

FIGURE 7

Percent of Elderly Incarcerated Women Across the U.S. by Age, 2022



Incarcerated elderly women in prison are, on average, younger than elderly incarcerated men.

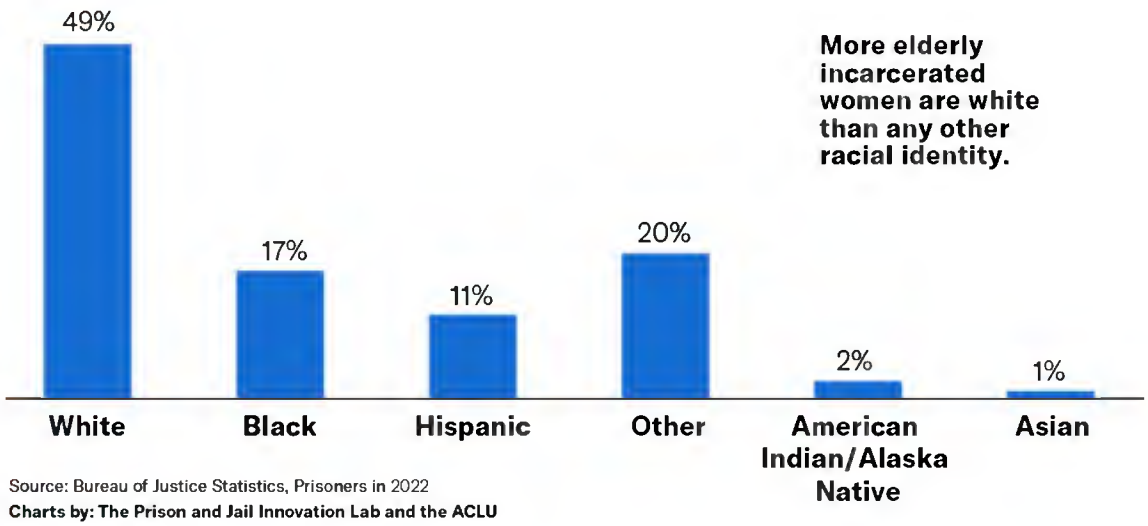
Source: Bureau of Justice Statistics, Prisoners in 2022
Charts by: The Prison and Jail Innovation Lab and the ACLU

The racial breakdown of the national elderly incarcerated population, including the federal and state prison population, roughly mirrors the racial breakdown of the overall state prison population, with 32% of the 55+ population being Black, 32% white, and 22% "Hispanic."[51]

But there is a notable difference when considering the intersectionality of race and gender. As seen in Figure 8 below, white women make up 49% of the total elderly "female" incarcerated population, while those identified as "other" make up 20%.[52] This striking racial disparity — that is, that the racial breakdown of elderly incarcerated women is quite different from the racial breakdown of the overall incarcerated population — is not present for men, however. Figure 9 shows that white men make up 39% of the elderly incarcerated "male" population, compared to Black men who make up 30% of this group.

FIGURE 8

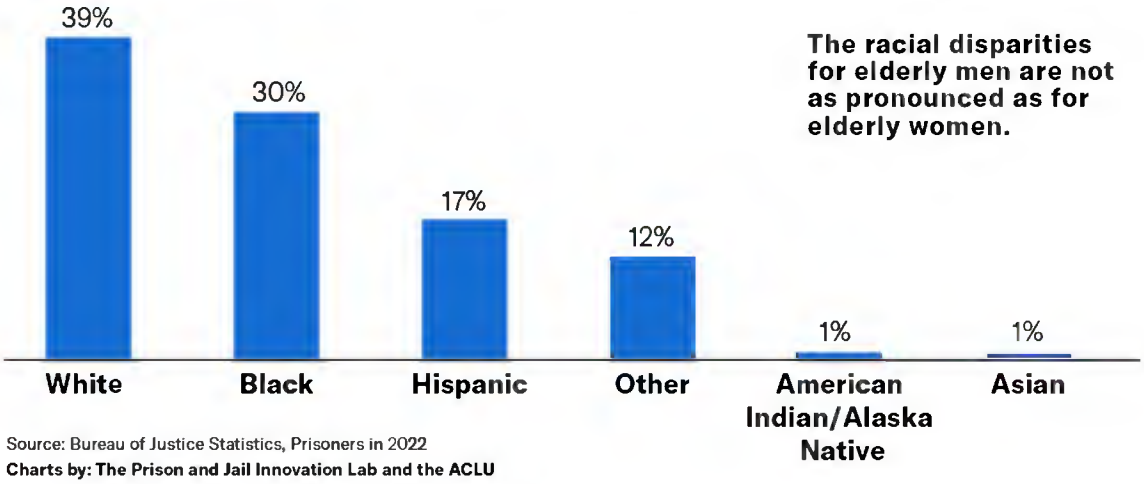
Percent of Elderly Incarcerated Women Aged 55+ Across the U.S. by Race, 2022



Source: Bureau of Justice Statistics, Prisoners in 2022
Charts by: The Prison and Jail Innovation Lab and the ACLU

FIGURE 9

Percent of Elderly Incarcerated Men Aged 55+ Across the U.S. by Race, 2022



Source: Bureau of Justice Statistics, Prisoners in 2022
Charts by: The Prison and Jail Innovation Lab and the ACLU

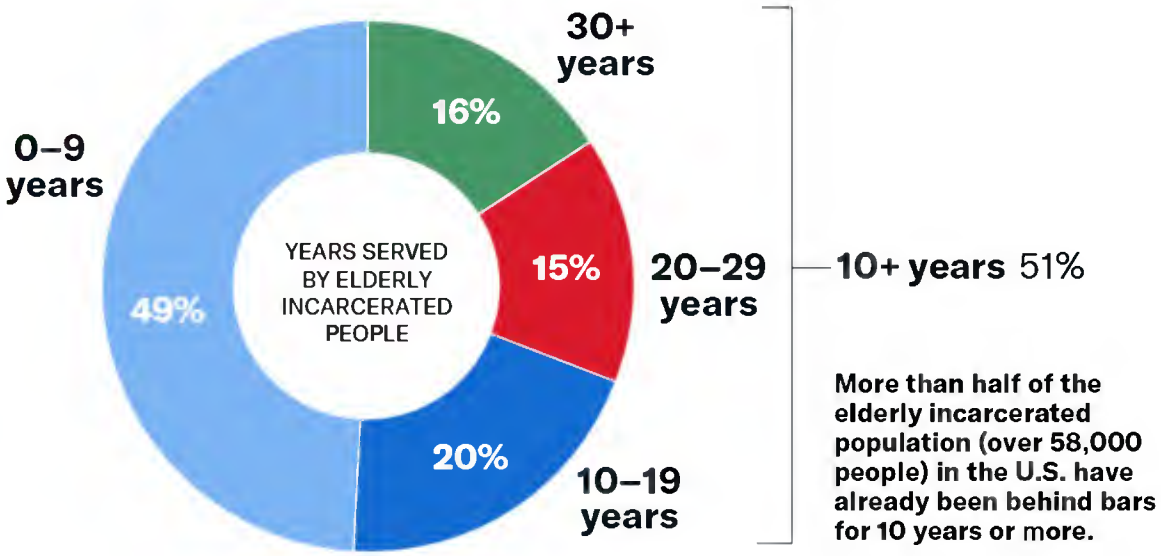
In other words, compared to Figure 8 (women), in Figure 9 we do not see stark racial disparities for elderly men; the numbers there essentially mirror the population makeup in the general prison population.

How much time has the elderly incarcerated population served?

As of 2021, an estimated 114,601 people aged 55 and older were living in a state or federal prison, and nearly 16,000 of them had spent over half their lives serving their sentence.[53] Figure 10 shows the breakdown of time served by incarcerated people across all 50 states. While data on the amount of time served by currently incarcerated people is not systematically tracked by the federal government nor maintained by and readily available from state prison systems, estimates were calculated using the Bureau of Justice Statistics (BJS)' Corrections Statistical Analysis Tool (CSAT) to compare the year and age at which elderly people began their sentences.[54]

FIGURE 10

Years Served by Elderly Incarcerated People (Aged 55+) Across the U.S., 2021



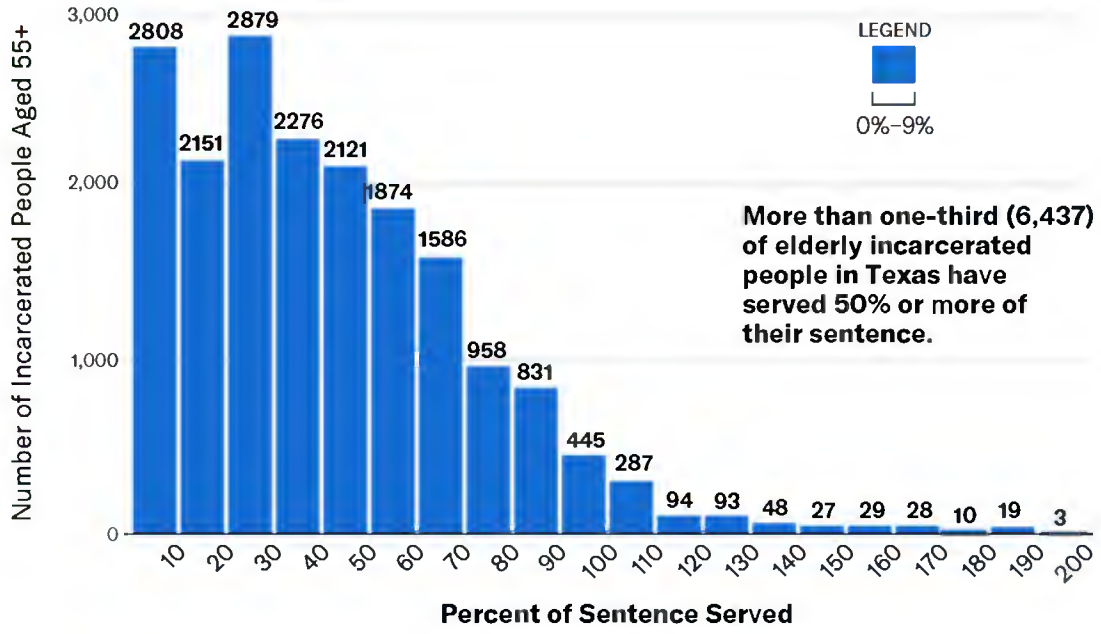
Source: Bureau of Justice Statistics, Corrections Statistical Analysis Tool (CSAT)
Charts by: The Prison and Jail Innovation Lab and the ACLU

Based on these estimates, we conclude that more than half of the incarcerated elderly population (over 58,000 people) have been behind bars for 10 years or more.[55] Of this group, 18,210 people have spent over 30 years in prison. And as of 2021, 11 of these people were initially incarcerated in 1965 — *60 years ago* — when they were young teens or emerging adults, long before their prefrontal cortexes had fully developed.[56] Contemporary research shows that young people are still navigating critical stages of psychological and emotional development, making them more responsive to rehabilitation.[57] And still, countless young people have been — and continue to be — condemned to spend the rest of their lives in prison for choices they made before they had a chance to fully grow up.

Though most states do not provide data on the average percentage of their sentences served to date by the elderly, Texas does.[58] Our analysis of this data is reflected in Figure 11 below, which shows the percentage of time served by the older incarcerated population in Texas. Importantly, the chart excludes people serving life sentences, who are analyzed separately in Figure 12.[59]

FIGURE 11

Percent of Sentence Served by Elderly People (Aged 55+) Incarcerated in Texas, 2024[60]



Source: Texas Department of Criminal Justice, 2024
Charts by: The Prison and Jail Innovation Lab and the ACLU

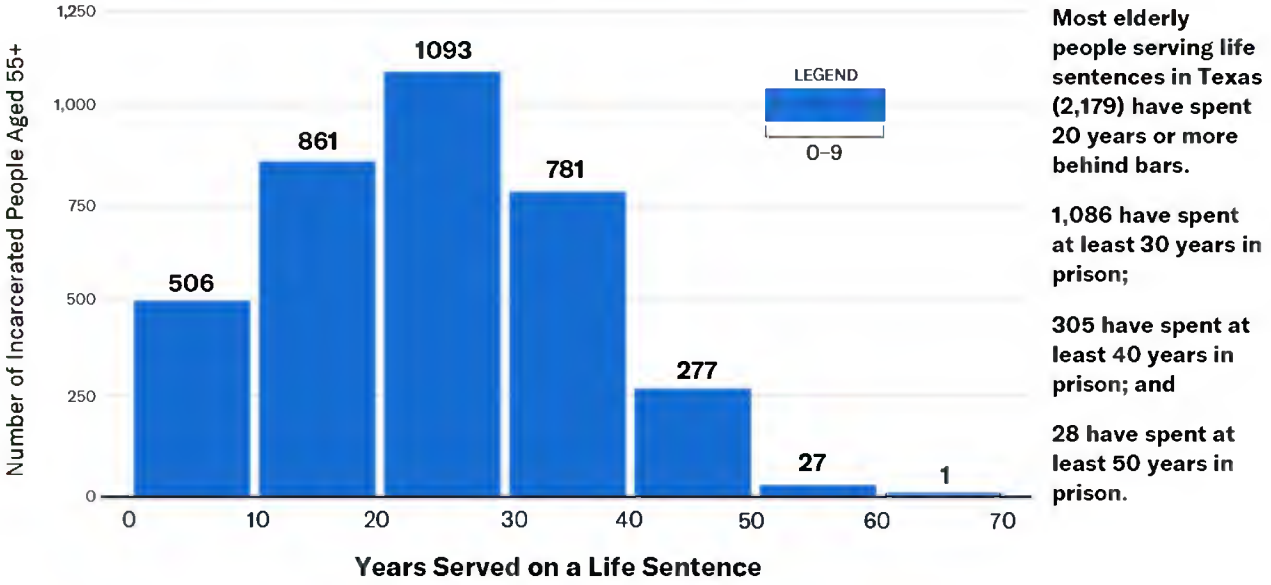
Figure 11 tells us that more than one-third of elders in Texas prisons have already served 50% or more of their sentences, suggesting that a substantial "tariff" has already been imposed for their crimes. While Figure 11 also indicates that many elderly incarcerated people have served less than half their sentence, it is important to consider the length of these sentences. The data above, which excludes life sentences, includes sentences of up to 199 years. Because of this, an incarcerated person who has served even 20 to 30% of such an extreme sentence has already served a substantial number of years in prison.

Figure 11 also shows that some people have been incarcerated for longer than their original sentences, including some outliers who have served up to two times the length of their original sentence. [61] Presumably, these are people serving consecutive sentences or people who had additional sentences imposed while incarcerated, rather than people who were improperly kept beyond their release date. However, the dataset provided by the Texas Department of Criminal Justice did not provide any context for the sentences of each incarcerated person.

Next, Figure 12 analyzes the length of time served by elderly people serving life sentences in Texas; the vast majority of them have already served well over 20 years of their life sentences. Additionally, 1,086 people have served 30 years or more, 305 have served 40 years or more, 28 have served 50 years or more, and one person has served more than 60 years.

FIGURE 12

Years Served Toward a Life Sentence by Elderly People Aged 55+ Incarcerated in Texas, 2024 [62]



Source: Texas Department of Criminal Justice, 2024
Charts by: The Prison and Jail Innovation Lab and the ACLU

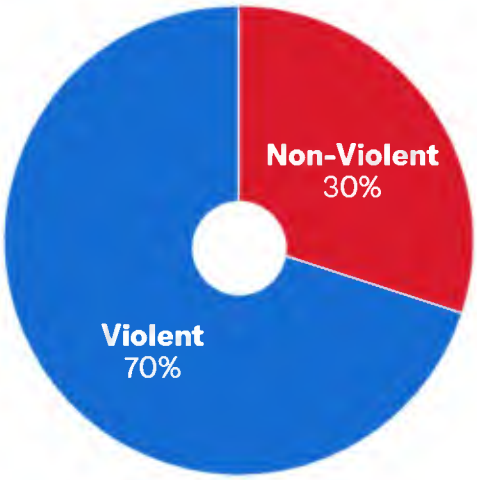
What types of offenses have the elderly incarcerated population committed?

As Figure 13 below illustrates, most elders are in prison for violent offenses. BJS data from 2016 (the most recent available year for which the federal government has data) shows that about 70% of the state corrections population aged 55 and older committed a violent crime.[63] BJS defines a "violent" offense as one involving murder, rape and sexual assault, robbery, or assault.[64] On the other hand, about 30% of elderly incarcerated people are there for a non-violent offense.[65] Non-violent offenses include public order, drug, and property offenses.[66]

While most offenses for which the elderly incarcerated population is serving time are classified as violent, it is critical to note that not all so-called "violent" crimes are, in fact, violent, nor does this designation always adequately convey what occurred during the offense. For example, under the felony murder rule adopted in many jurisdictions, if a person was present during a felony (e.g., a drug deal) and someone was inadvertently killed during the offense's commission, a person who did not cause the death can be convicted of murder and be branded as a "violent" criminal — even if they did not personally harm anyone or wish to harm anyone.[67]

FIGURE 13

Breakdown of Elderly Incarcerated People (Aged 55+) by Offense Type, 2016



The majority of elderly people in state prisons were convicted of violent offenses.

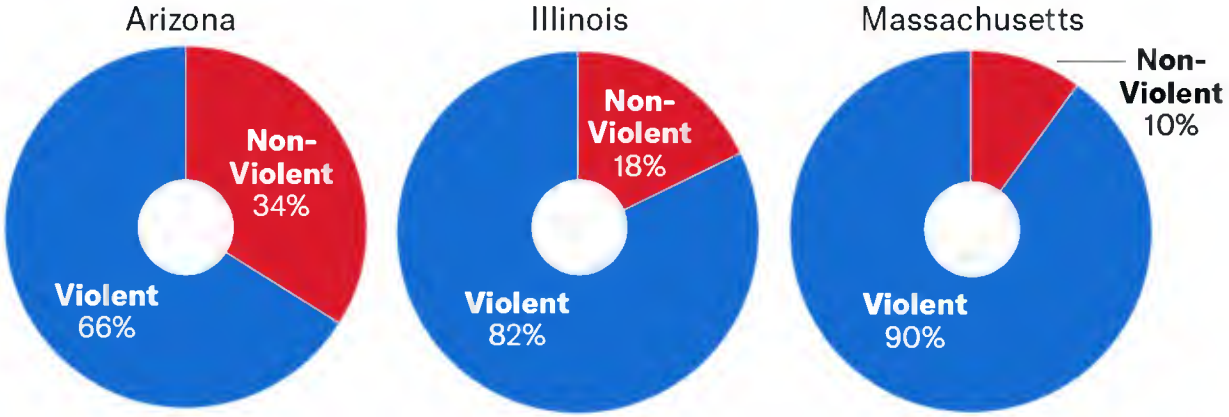
Source: Bureau of Justice Statistics, Survey of Prison Inmates, 2016 (See Appendix A)
Charts by: The Prison and Jail Innovation Lab and the ACLU

While up-to-date annual national data on offense type is not available from BJS more recently than 2016, some state corrections departments publicize and update data much more regularly.[68] This data allowed for an analysis of the types of crimes committed by the elderly incarcerated population in Massachusetts, Arizona, and Illinois, as shown in Figure 14 below.[69] This analysis reveals that there is significant variation among states when it comes to the breakdown of offense types for which elderly individuals are serving time.[70]

FIGURE 14

Offense Types Committed by Elderly Incarcerated People in a Sampling of States, 2024

There is significant variation among states.



Source: State DOC Data (see Appendix A)
Charts by: The Prison and Jail Innovation Lab and the ACLU

C. The Harms of Aging Behind Bars

> This year I passed an extravagantly grim milestone: I've now been in captivity longer than I'd been alive when I was arrested. . . . You can only lose your twenties once. Still, I can't shake the feeling that I'm locked into some Sisyphean enterprise, serving the same years again and again, losing the same life repeatedly, for all time.[71]

Only a tiny fraction of people convicted of crime are sentenced to death. Yet far too often a prison sentence becomes a death sentence for innumerable incarcerated people across the country, due to substandard medical and mental health care. Though prison conditions are undoubtedly harrowing for everyone who is incarcerated, elderly incarcerated people are especially vulnerable to the harms created by the prison environment and correctional agencies' traditional approach to operating these facilities. Moreover, managing the distinct needs of the aging incarcerated population presents major operational and management challenges to prison officials, wardens, prison health care staff, and line correctional officers. Adapting prison policies and procedures to reduce the harm elderly people experience in prison and alleviate operational hurdles requires a thorough understanding of this population's everyday experience, as discussed below.

1. **Elderly incarcerated people have higher rates of serious and chronic physical health care needs than their younger incarcerated counterparts that correctional health care systems are ill-equipped to address.**

All incarcerated people have a constitutional right to basic health care — a right guaranteed by the Eighth Amendment's prohibition against cruel and unusual punishment.[72] Because incarcerated people are under the complete control of the state, they have no opportunity to seek health care on their own when illness strikes, as people in the community theoretically do. And because the state provides an aging incarcerated person's only option for health care, a correctional department's failure to provide basic health care in carceral settings can lead to illness, injury, and, in cases of life-threatening medical conditions, death.

> "I went blind [because] my vision and other medical problems were diagnosed 14 years ago, but never treated. I am in unbearable pain 24/7. I can no longer walk because of the pain." —*a person over the age of 70, incarcerated for over 25 years and serving a life sentence*

Not only do elderly people in prison experience higher rates of serious and chronic health problems than their younger incarcerated counterparts, they also have higher rates of such health conditions compared to their age cohort of non-incarcerated people. According to BJS, and based on survey data from 2011-2012 (the most recent comprehensive data available from the federal government), 73% of people in state or federal prison aged 50 or older reported having one or more chronic medical conditions.[73]

Research shows that this population is significantly more likely to suffer from one or more chronic health conditions or disability than their non-incarcerated counterparts.[74] Arthritis, hypertension, heart problems, tuberculosis, diabetes, and hepatitis are some of the most common chronic diseases among elderly incarcerated people.[75] Due to multiple chronic conditions, aging incarcerated people often require heightened medical resources and take more medications than their younger counterparts.[76] For example, to manage various degenerative disorders that cause limited mobility, elderly incarcerated people may need wheelchairs, walkers, or portable oxygen tanks — medical equipment that can be hard to come by in prisons.



Photo: Shutterstock

Despite the constitutional mandate to provide health care, prison health care systems are ill-equipped to adequately treat their elderly charges. For example, correctional nurses — who drive health care in most correctional facilities — are often profoundly overstretched and understaffed, causing delays in identifying the onset or complications of chronic illnesses common among elderly people.[77] Further exacerbating the situation, few correctional nurses receive targeted education or certifications in gerontological nursing, and thus are not specially trained to recognize early symptoms of illnesses and impairments that are common among elderly people.[78]

As detailed in the next section, the widespread lack of adequate correctional staffing and specialized health care in prisons for elderly people, compounded by environmental challenges, leads to preventable physical and mental health problems for a vulnerable population, greatly diminishing their quality of life and creating a host of human rights violations.

2. Because of deficient and dysfunctional correctional health care systems, there are higher rates of adverse health outcomes among elderly incarcerated people.

Every year that someone spends in prison cuts their life expectancy by two years.[79] This harrowing statistic, in part, exists because prisons nationwide fail to provide incarcerated people with adequate health care for acute and chronic conditions, leading to medical neglect, injury, and ultimately, death. This violates the U.S. Constitution's mandate against cruel and unusual punishment. While a full exposition on the topic is beyond the scope of this report, countless studies, lawsuits, and personal accounts alike establish that state correctional departments across the country are sorely lacking in the provision of health care. Why?

First, health care staff at many prisons operate amidst dangerously high vacancy rates. Health care professionals often do not wish to work in correctional environments for various reasons, including lower pay than working in community health care facilities, safety concerns, lack of prior exposure to correctional work, the geographically remote locations of correctional facilities, the stigma surrounding incarcerated people, and the increasingly common trend of publicly-traded or private equity corporations contracting with states to provide health care in prisons.[80] As one scholar wrote, "One of the greatest challenges in ensuring access to care is that it is extremely hard to find qualified and motivated clinicians who are willing to work inside a correctional facility."[81] And with high vacancy rates, people suffer.[82]

Some prisons, operating at a staff vacancy rate of over 50%, keep incarcerated people on "mandatory lockdown" due to staff shortages.[83] On lockdown, incarcerated people are confined to their cells for months on end, with little to no access to showers, family visits, recreation, or medical care.[84] This is an all-too-common occurrence in jails and prisons across the country; indeed, many facilities operate with even fewer health care staff on-site.

Some prisons, operating at a staff vacancy rate of **over 50%**, keep incarcerated people on "mandatory lockdown" due to staff shortages.



Photo: ACLU

Incarcerated people waiting for medical and mental health intake screenings at the overcrowded Los Angeles County Jail in California, 2022.



Photo: ACLU

Incarcerated men sleeping on the floor at Los Angeles County Jail as they await medical intake screenings, 2022.

Another reason incarcerated people (and by extension, elderly incarcerated people) experience adverse health outcomes in prison is due to what has been dubbed the "medical profit motive." Prisons — and the private, for-profit companies they often contract with to run their health care systems — are built on a model of employing lower-level health care workers in order to minimize staffing costs and maximize profits.[85] The companies often operate under capitation contracts, where the state pays a health care contractor a fixed amount of money per incarcerated patient, creating a financial incentive to minimize health care spending.[86] These private health care providers are motivated to spend less than the fixed rate on an incarcerated person's medical care, which allows them to maximize profits. For example, a 2025 Prison Policy Initiative report found that, to keep costs down and revenue up, many prison providers restrict access to health care by denying, limiting, or delaying necessary treatment.[87] When incarcerated people's medical conditions are not adequately diagnosed and treated, the result can be needless suffering, deterioration of the patient's condition, and sometimes death.

> "The state has relied on 'for-profit' medical contractors who receive [money] for each [person] in the system. . . . To make a profit, these companies do little or nothing related to medical care. We, with serious life-threatening medical conditions, have to rely on their treatments. . . . A long prison sentence equals a death sentence." —*an elderly person serving life in prison*

3. Elderly incarcerated people are living with serious mental health challenges that prison health care systems are ill-equipped to address.

In addition to medical conditions, the prison environment — characterized by violence, instability, and harsh conditions — exacerbates mental health conditions that, left untreated, put both the people living with the condition and those around them at risk of harm. Despite the prevalence of mental health diagnoses and conditions among elderly incarcerated people, prisons are ill-equipped to offer the care they need.



Photo: ACLU

Incarcerated people have some of the highest rates of mental illness in the country, making mental health care a critical component of a functioning correctional health care system. Statistics show that more than 70% of people in U.S. jails and prisons have at least one

diagnosed mental illness, substance use disorder, or both, and up to one in three incarcerated people have a serious mental illness such as schizophrenia, bipolar disorder, or PTSD.[88] A review of records of incarcerated people in one state revealed that nearly 81% of incarcerated people aged 55 and older had been diagnosed with a substance use disorder over their lifetime.[89] This, coupled with the fact that incarcerated people are diagnosed with serious mental illnesses at a much higher rate than the general population,[90] illustrates how vital it is to offer mental health care in prisons for older people, yet state correctional departments nationwide are failing to meet the need.


Photo: ACLU

Part of the reason for this is, similar to correctional medical care, there is a widespread workforce shortage of behavioral health professionals — professionals who are responsible for assessing, diagnosing, and treating mental health and substance use disorders — in correctional settings.[91] Most carceral facilities in the United States simply do not employ enough mental health professionals to meet the mental health needs of their incarceration populations, leading to undue suffering, acts of self-harm, and preventable suicides.[92] Regarding aging people specifically, research shows that only one out of every three elderly incarcerated people with a mental health diagnosis has access to mental health treatment in prison.[93] To make matters worse, elderly incarcerated people can be incarcerated in solitary confinement, often as punishment for behavior that is rooted in their untreated mental illness and/or the onset of other mental conditions associated with aging (e.g., dementia). The use of solitary can greatly exacerbate their existing mental illness, leading to increased risk of self-harm and suicide.[94]

> "Can someone even imagine being locked down 20 hours a day [and] only let out two hours in the morning and two hours in the evening . . ., never to count the stars at night or look up and see the light of the moon?" —*an elderly person incarcerated in Arizona*

4. Cognitive impairments such as dementia make it difficult for elderly incarcerated people to understand and follow instructions, leading to unwarranted discipline that fails to account for cognitive difficulties.

Older incarcerated people are more likely than their younger and non-incarcerated counterparts to develop cognitive impairments: an analysis of nationally representative survey data from the American

Community Survey showed that from 2008 through 2022, nearly 21% of incarcerated people aged 55 or older reported a cognitive challenge compared to less than 8% of their non-incarcerated counterparts.[95] And some researchers have estimated that by 2050, the number of incarcerated people living with dementia will triple.[96]

Cognitive impairments can be severely debilitating, making standard prison institutional rules and policies ill-suited for older people who must live within these regulations. They may not be able to keep up with their daily routines, interact appropriately with others while living in congregate living settings such as shared cells or open dormitory spaces, or understand instructions given by correctional staff. As a result, they may unknowingly violate written prison rules or unwritten codes of conduct.[97] For example, an older person with mild dementia may unknowingly wander into an "out of bounds" area or not understand instructions from correctional officers. When confronted about the rule violation, they may become emotionally charged and engage in behaviors mistaken for disobedience or aggression, which can subject them to disciplinary actions such as solitary confinement, loss of privileges, and retaliation, further compromising their well-being. Older people with cognitive impairments caused by aging may also inadvertently violate unwritten collective codes of behavior in interactions with other incarcerated people, such as touching other people or their property, or behaving inappropriately, which can leave them vulnerable to physical injury, retaliation, or exploitation by other incarcerated people.

Yet prisons are not designed or operated to house or adequately care for elderly people living with a cognitive impairment. Research has found that, among incarcerated people, mild cognitive impairments may go unrecognized for some time due to the regimented lifestyle of prison and the lack of close interpersonal contacts who, in community settings, are often the first to identify signs of dementia and bring them to the attention of a medical provider.[98] However, even if correctional health care systems were able to screen all elderly incarcerated people for cognitive impairments, prison health care systems typically are not equipped to provide the specialized care this population requires, which could include 24/7, around-the-clock supportive or nursing care.[99]

5. **Elderly people struggle to keep up with daily activities in prison due to functional impairments.**

Separate from chronic medical or mental health illnesses, elderly incarcerated people are more likely than their non-incarcerated counterparts to experience functional impairments that make routine aspects of daily life extremely challenging. Common tasks in prisons like standing for extended periods of time (such as waiting in long lines for medication, food, or showers), climbing to upper bunks, lifting heavy objects on a work detail, or even chewing tough foods — tasks that younger incarcerated people do not have to think twice about — can be exceedingly difficult for elderly incarcerated people. Though non-incarcerated elderly people may also have these difficulties, aging people in the free world have control over their movements and daily functioning, while elderly incarcerated people do not. For example, if correctional staff deny an elderly person's request for a bottom bunk, that person must continue climbing up and down their assigned bunk, risking a fall every morning and evening, while an elderly person in the community can choose where and how they sleep. A 2022 meta-analysis of studies in U.S. prisons found

Photo: ACLU



Bunk bed that is difficult for an incarcerated person with mobility impairments to access.

that up to one-fifth of incarcerated older adults have functional impairments that impede their ability to perform daily activities.[100]

Some elderly incarcerated people also have serious dental problems. For example, research has shown that only a small portion of older incarcerated people report having a full set of teeth.[101] Without a full set of teeth, older people may have to adjust what they are able to consume, which can limit their diets at a time when adequate nutrition is important for maintaining their health.[102] Elderly people may also need more time to consume their meals, but the strict, regimented nature of prison schedules may not accommodate the additional time it takes for them to eat.[103] All of these functional impairments compound the difficulties of incarceration.

Photo: ACLU



Meal tray at a Maryland jail, contents difficult to identify.

6. Many prisons are inaccessible to elderly people with disabilities, in direct violation of the Americans with Disabilities Act.

Countless prisons across the country violate the Americans with Disabilities Act (ADA) by operating prison programs and activities that are inaccessible to people with disabilities. The ADA (and its predecessor applicable to federal facilities, the Rehabilitation Act of 1973)[104] applies with as much force in U.S. prisons, jails, and other carceral facilities as it does in any other public institution.[105] Under the ADA, prisons must ensure that all incarcerated people with disabilities have equal access to programs, services, and activities, such as education, visitation, work assignments, and health care.[106] They also must provide reasonable accommodations and modifications for people with disabilities (e.g., mobility aids, hearing aids, sign language interpreters, and accessible showers).[107] Despite these legal requirements, many prisons routinely violate the ADA, especially when it comes to providing services for elderly and chronically ill incarcerated people.[108]

For example, state prisons repeatedly fail to make modifications to the physical plant of prisons or to their operations to provide accessible housing, services, and programs to incarcerated people with disabilities. Almost any official activity in which incarcerated people participate is within the scope of the ADA. The most common "programs, services, or activities" in jails or prisons include dayroom activities, access to cafeterias and religious services, education, drug treatment groups/programs, legal and personal visits, phone calls, toilets and showers, health care services, recreational services, yard time, disciplinary and classification hearings, jobs, and the library.[109] Common ADA violations in prison include a lack of ramps for people in wheelchairs; failure to provide interpreters for deaf and blind individuals (leaving them unable to communicate with staff, participate in disciplinary hearings, or understand medical



Photo: ACLU

Partially inaccessible toilet at a Maryland jail, creating daily barriers for incarcerated people who use wheelchairs.



Photo: Shutterstock

Prison cell that is inaccessible for incarcerated people in wheelchairs.

information); and exclusion from educational, work, vocational, and religious programming due to inaccessible spaces or failure to provide reasonable accommodations.

In 2012, the most recent year for which there is comprehensive data from across the country, incarcerated people in state and federal prisons were about twice as likely to report a hearing disability and about three times as likely to report a vision disability as the general population in the community.[110] The same analysis found that 19% of people in prison had a cognitive disability, which negatively affects their ability to comprehend and respond to written and legal documents.[111] These statistics demonstrate why it is important to comply with the ADA in carceral facilities, but many prisons do not.

7. **Elderly incarcerated people are more vulnerable to the worst outcomes of natural disasters, environmental challenges, and public health emergencies.**

Elderly incarcerated people overwhelmingly experience the worst outcomes of public health crises. Not only have many aging incarcerated people been left to die during natural disasters, but they have also often been at the highest risk of death during public health emergencies like the COVID-19 pandemic.

During natural disasters or public health emergencies, inadequate (or nonexistent) prison emergency protocols that affect all incarcerated people are compounded among the older population due to their inherent physical susceptibility from chronic health conditions and limited mobility. To the extent a given prison has evacuation protocols, these protocols often result in frantic incarcerated people, poor organization and directives by staff, and difficult physical demands.[112] Past natural disasters have shown that many correctional agencies' emergency response plans are patently deficient — and deadly. For example, during Hurricane Katrina in 2005, thousands of incarcerated people were infamously left trapped behind bars while prison staff evacuated.[113] Thousands

Many aging incarcerated people have been left to die during natural disasters.



Photo: Shutterstock

Families protesting COVID-19 conditions in Texas prisons.

of men, women, and children were abandoned at Orleans Parish Prison in the days after the storm.[114] As floodwaters rose in the prison, power was lost and entire buildings were plunged into darkness.[115] Deputies left their posts wholesale, leaving behind incarcerated people in locked cells, with some standing in sewage-tainted water up to their chests.[116] Similarly, during Hurricane Milton in 2024, multiple Florida correctional facilities refused to evacuate nearly 28,000 people in prisons and jails despite being located in evacuation zones.[117] And during the 2024-25 wildfires in Southern California, Los Angeles County jails refused to evacuate incarcerated people — despite mandatory evacuation orders for the general public in those areas.[118] Concerns about correctional departments' emergency response protocols to natural disasters, or the lack thereof, are especially pressing as climate change is increasing the prevalence of weather-related disasters.

Another dangerous environmental challenge that disproportionately affects elderly incarcerated people is extreme temperatures. Many correctional facilities do not have air conditioning, despite being located in geographical areas that reach extreme temperatures.[119] This leaves incarcerated people trapped in dangerous conditions, as they have little access to resources such as cool water, open air, or clothing to help regulate temperatures.[120] More specifically, this leaves the elderly — who already suffer from health conditions or are on medications that cause heightened temperature sensitivity — extremely prone to life-threatening conditions, such as heat stroke and hyperthermia.[121]



Photo: Shutterstock

Families protesting extreme heat in Texas prisons.

The physical structure and architecture of prisons and the requirements of prison life can make incarcerated people more vulnerable to heat. Prisons are normally built using heat-retaining materials, such as concrete or cement, which increase internal prison temperatures. Prison buildings and cells often have few windows (if any) that can open to potentially create a cross-breeze or to circulate air. As a result, the temperatures inside prisons often exceed the ambient outdoor temperature. For example, a 2014 report by the University of Texas School of Law found that the summer heat index inside Texas prisons could exceed 149 degrees Fahrenheit.[122] And in 2025, in the federal class action Tiede v. Collier, the presiding judge noted that approximately 96,500 of Texas' 142,240 prison beds were un-airconditioned, that outdoor heat indexes had been as high as 134 degrees Fahrenheit, and that indoor temperatures were above 85 degrees Fahrenheit in prisons nearly every day

from May 1, 2023 to September 30, 2023.[123] The dangerous impact of poor prison design amid extreme temperatures is a widespread problem across the United States, with states unwilling to create infrastructure to ensure prisons are equipped with adequate heating and cooling systems.[124]

Prison outbreaks accounted for some of the nation's largest COVID-19 clusters, with case rates in state prisons reaching **three to 16 times** the community rate.

When Texas experienced a snowstorm in 2021 that shut down the power grid for several days, 33 prisons lost power and 20 prisons had water shortages.[125] Correctional officials were severely underprepared to deal with the effects of such frigid temperatures, and elderly incarcerated people were the most vulnerable amid conditions such as inadequate food and water supply, icy walkways, overflowing toilets, rapidly spreading sickness, violence, and understaffing.[126]

As happens during natural disasters, older people in prison are the most at risk during public health crises. The large number of older people who have pre-existing health conditions, coupled with overcrowding and a lack of open space in prisons, means that incarceration can become a death sentence when a public health crisis strikes. The demographic trend of rising elderly incarceration came to a head as COVID-19 entered correctional facilities in 2020. It is impossible to socially distance in prison. Our nation's prisons, jails, and immigration detention centers were hotspots for the spread of COVID-19; prison outbreaks accounted for some of the nation's largest COVID-19 clusters with case rates in state prisons reaching three to 16 times the community rate.[127]

The following photos were taken by the ACLU during a visit to an Arizona prison at the height of the pandemic. [128]

Older incarcerated people were especially ravaged by COVID-19. For example, 83% of the incarcerated people who died from COVID-19 in Texas prisons during the pandemic were over the age of 55, despite this age group making up only 15% of the Texas prison population.[129] Shockingly, in one Texas prison that had a predominantly elderly population, almost 6% of residents died during the peak COVID-19 period.[130] That meant that one out of every 18 residents in that facility died of COVID-19 during a five-month timespan.[131]



Photo: ACLU

Other states reported equally devastating and disproportionate impacts upon older incarcerated populations.[132] A study by gerontologists and researchers at the University of California San Francisco (UCSF) School of Medicine compared COVID-19



Photo: ACLU

outcomes between older and younger adults in California state prisons from March 1, 2020 to October 9, 2021, and found that while people age 55 and older represented 17.3% of the total prison population, they accounted for 85.8% of the prison system's COVID-19 related deaths.[133] People older than 75 had a fifteen-fold increased likelihood of hospitalization and a sixty-two-fold increased likelihood of death compared to incarcerated persons younger than 75.[134] Yet the UCSF researchers found that a smaller percentage of older adults than younger adults were released from California state prisons during the pandemic, concluding that "[d]espite serious age-related risks, population reduction as a public health mitigation measure was not preferentially targeted towards older adults."[135]

Similarly disproportionate rates of infection and death occurred among older people in the Arizona state prison system. From April 2020 to mid-2022, the ACLU tracked the deaths of all people whom the Arizona Department of Corrections had announced had died of COVID-19. In the first six months of the pandemic (between April 2020 and October 2020), 12 people housed in the Tucson special needs unit, pictured above, died of COVID-19. The oldest was Horace Sublett, who died on June 30, 2020 from complications from COVID-19, just a month shy of his 99*th birthday.*[136]

Horace Sublett died in prison on June 30, 2020 from complications from COVID-19, just a month shy of his **99th birthday.**

In sum, elderly people have distinct needs that prisons were never designed to accommodate. Because of this, natural disasters, environmental challenges, and public health emergencies exacerbate the many harms that older people already experience in our nation's carceral facilities.

D. What Are the Recidivism Rates for Elderly People Released from Prison?

Not only do elderly people suffer substantial harms in prison, but they are also the population least likely to reoffend, making their continued incarceration a questionable policy choice. Research overwhelmingly shows that elderly people are significantly less likely than their younger counterparts to be arrested for an offense.[137] This "age-crime curve," illustrating how people "age out" of crime, is well-documented by the Prison Policy Initiative.[138]

Given the sharp decrease in violent crime as people age, it is no surprise that recidivism rates for elderly people released from prison are also low. In another analysis by the Prison Policy Initiative that visually

recreated rearrest data of different age groups from 2012 to 2017, the data illustrated that people aged 24 and younger had the highest recidivism rates, while those 50 and older had the lowest rates.[139]

These findings are confirmed by data from states that track recidivism by age. Our research and survey of all 50 state prison departments revealed that very few systems meaningfully track recidivism rates in a way that permits breakdown and analysis by demographic factors such as age.[140] Figure 15 below highlights three-year recidivism data we gathered for the population of formerly incarcerated people aged 50 and over from Colorado, South Carolina, and Florida. In each state, the recidivism rates for elderly people were well below the current national three-year rearrest rate of 66%,[141] with Florida's elderly recidivism rate just over 6%.

FIGURE 15

Recidivism Rates for Elderly People (aged 50+) in a Sampling of States

State	Total 3-year Recidivism Rate (aged 50+)	Year (Most recent data)
Colorado	18%	2020
South Carolina	12%	2021
Florida	6%	2022

Source: State DOC Data (see Appendix A: State DOC Data)
Charts by: The Prison and Jail Innovation Lab and the ACLU

Academic studies have reached similar conclusions about the low risks presented by releasing elderly people — and these low risks are true even for those convicted of violent offenses.[142] For example, a regression analysis conducted by researchers at the University of Michigan Law School looking across a number of states found that there was a very low risk for further violent offending by older people who had been imprisoned for a prolonged time following a violent conviction.[143]

Another study by University of Maryland Carey School of Law researchers focused on recidivism in Maryland. That state, in effect, conducted a court-imposed experiment that established that it is possible to safely release aging, long-incarcerated people without putting public safety at risk. In 2012, a court ruling led to the negotiated release of 178 elderly, life-sentenced people in Maryland who had already served an average of almost 40 years in prison for violent offenses.[144] This mass release led to an opportunity for researchers to follow and analyze what happened to the 178 — known as the Unger group — upon reentry. On average, members of the Unger group were 63 years old, had served 39 years in prison, and had been out in the community for two years and six months. [145] There were 177 men and one woman, and 87% of those for whom racial data was available were Black.[146] Researchers followed this cohort and analyzed recidivism data after their mass release. They found that in the four years following the court

In the four years following the court ruling, **not a single elderly person** was rearrested for a crime more serious than a traffic offense.

ruling, not a single person was rearrested for a crime more serious than a traffic offense.[147] Indeed, none of the elderly returnees even had their probation revoked for violations of the terms of their release.[148]

Some factors that may have led to such an astonishingly low re-offense rate include the availability of social workers to help the *Unger* group successfully reenter the free world, as well as the remarkable formation of a reentry program by students at University of Maryland Carey School of Law.[149] Social workers and students, with assistance from the Maryland Public Defender's Office, helped the *Unger* group obtain housing, state identification cards, Social Security cards, and birth certificates, as well as Medicare benefits, public transit assistance, prescriptions, referrals to reentry programs, and more.[150] The extraordinary success of the 178 members of the *Unger* group — once deemed "violent" — strongly suggests that thousands, if not tens of thousands, of elderly incarcerated people across the country can be safely released, and with public confidence.

In short, elderly incarcerated people do not pose a significant public safety risk upon release. The data and criminal justice research resoundingly show that the older someone becomes, the less likely they are to commit another offense. These findings establish that the older incarcerated population is a prime group for policymakers to target for release, without compromising public safety.

E. The Costs of Housing Elderly People in Prison

Not only does elderly incarceration cause harm to people on the inside while offering no significant benefit to public safety, but it is also quite a costly endeavor, providing yet another reason for policymakers to prioritize the release of incarcerated elders. In this section, we work to answer: To what degree is the elderly incarcerated population a driver of correctional spending?

Spending varies dramatically by state.[151] For example, spending on corrections in 2021 ranged from $48.94 per person per day in Arkansas to $773.45 per person per day in Massachusetts. A number of factors contribute to the overall costs of incarceration: (1) security (including staffing, equipment, construction, and upkeep of prison facilities); (2) housing costs (including food, clothing, furnishings, and programming); (3) administrative costs for operating the agency; and (4) health care.[152] A number of sources have attributed the rise in correctional spending to mounting costs associated with health care, especially the costs associated with older patients.[153] As noted earlier in the report, the growth in the elderly incarcerated population over the last 30 years has been staggering. This burgeoning older population has an increased need for expensive medical services. Indeed, in our previous report on aging behind bars, we found that in 2009, older incarcerated people accounted for $8.2 billion per year in medical costs alone.[154] As just one example of the extraordinary costs that the older population imposes

on a single correctional agency, the U.S. Department of Justice's Office of the Inspector General reported that in 2013, the Federal Bureau of Prisons (BOP) spent 19% of its budget (over $881 million) on the costs of incarcerating elderly people.[155]

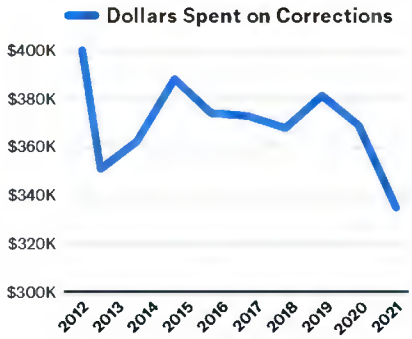
To examine how the elderly population is a driver of state spending on incarceration, our analysis compares changes in the percentage of a state's incarcerated population that is older than 55 to changes in the average daily per-person cost of incarceration. Similarities between these trends suggest that the elderly population is more costly to incarcerate.[156] Figure 16 examines this pattern in Arkansas. It shows how the changes in per-person corrections costs compare to the changes in the size of the elderly population from 2012 to 2021. While the total state corrections costs (depicted on the left side of the chart) remain between $300 and $400 million for the period studied, comparing the year-to-year changes in costs reveals that those costs track the trend in the size of the elderly incarcerated population. Put another way, annual spending on corrections in Arkansas is related to the age distribution of the incarcerated population each year. When the proportion of the incarcerated population over 55 years old increases, state spending per person also increases.[157]

FIGURE 16

Change in Per Person Corrections Costs* Compared to Change in Size of Elderly Incarcerated Population in Arkansas from 2012 to 2021



Total Corrections Costs in Arkansas*



When the proportion of the incarcerated population over 55 years old increases, state spending per incarcerated person increases.

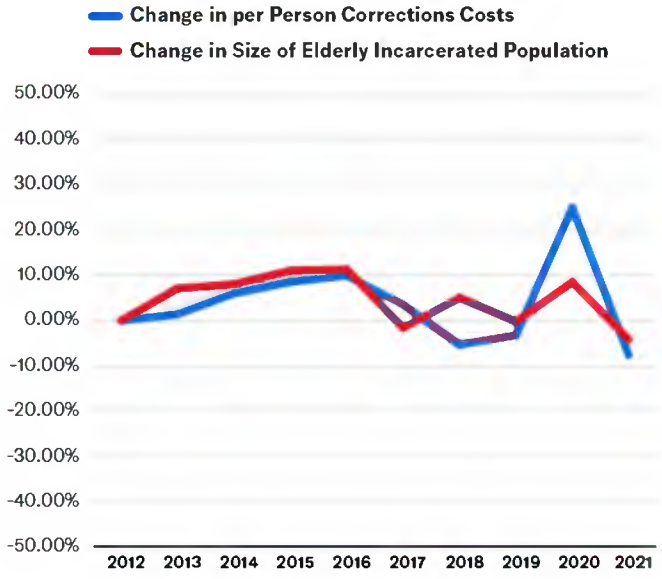
Source: Census Bureau Annual Survey of State and Local Government Finances, Bureau of Justice Statistics Corrections Statistical Analysis Tool
*Spending data were converted to 2021 dollars using the Implicit Price Deflator for Gross Domestic Product included in the Bureau of Economic Analysis' National Income and Product Accounts.

Charts by: The Prison and Jail Innovation Lab and the ACLU

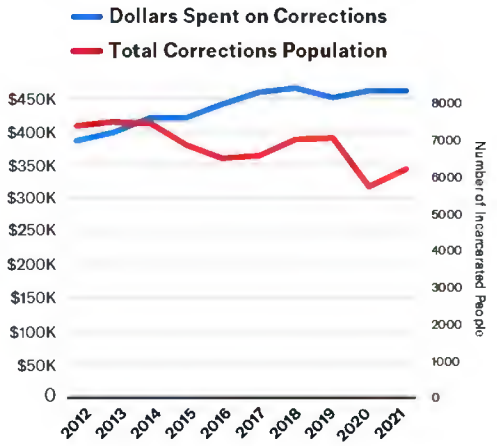
This trend holds even in states that have reduced their total incarcerated population, like Utah. Figure 17 (Utah) illustrates the same trend as Figure 16 (Arkansas), but in Figure 17, we also layered onto the left graph the total population incarcerated from 2012-2021.

FIGURE 17

Change in Per Person Corrections Costs* Compared to Change in Size of Elderly Incarcerated Population in Utah from 2012 to 2021



Total Incarcerated Population in Utah Compared to Total Corrections Costs* from 2012 to 2021



From 2012 to 2021 in Utah, the size of the elderly incarcerated population was a driver of the state's total corrections costs even as the size of the total incarcerated population declined.

Source: Census Bureau Annual Survey of State and Local Government Finances, Bureau of Justice Statistics Corrections Statistical Analysis Tool
*Spending data were converted to 2021 dollars using the Implicit Price Deflator for Gross Domestic Product included in the Bureau of Economic Analysis' National Income and Product Accounts.

Charts by: The Prison and Jail Innovation Lab and the ACLU

Figure 17 suggests that even a small growth in the size of the elderly incarcerated population can drive consistent growth in state spending on corrections.[158] While the size of the incarcerated population in Utah declined from 2012 to 2021, total state spending on corrections continued to increase, which is counterintuitive. But if we compare annual changes in state spending on corrections to annual changes in the size of the elderly population, adjusted for inflation, we see that the patterns track very closely, providing a potential (but not definitive) explanation for the increasing costs. The proportion of the incarcerated population in Utah over the age of 55 increases yearly except in 2017, 2019, and 2021. The small decline in the elderly population in 2017 preceded a decline in spending on corrections in Utah in 2018, even as the total incarcerated population increased from 2017 to 2018. A likely explanation is that the cost savings from a reduction of the size of the elderly population were significant enough to offset any increased spending from a larger total population.

Heightened costs in relation to the incarcerated elderly population are primarily a result of aging incarcerated people requiring expensive medical care that is more costly than the medical expenses of the average incarcerated person. As detailed previously in the report, incarcerated older people frequently are diagnosed with chronic diseases, mental health challenges, cognitive decline, and mobility issues. Treatments for diseases such as hepatitis, HIV, and cancer, which are prevalent among the incarcerated population both young and older, are expensive.[159] Previous research on incarcerated elderly people found that elderly people, aged 55 and older, cost two to three times more than their younger counterparts to incarcerate in large part because of the differences in health care spending

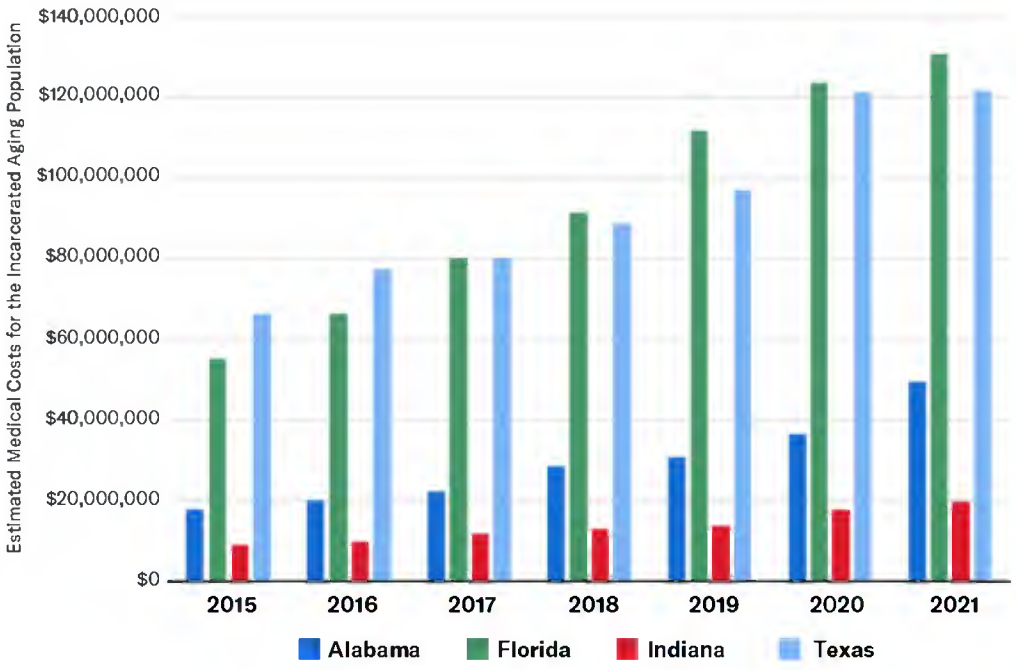
between the two age groups.[160] However, this finding, while frequently cited in the literature, comes from a 2004 National Institute of Corrections (NIC) study that references an analysis from a 1999 article in a prominent news magazine to determine the cost differential.[161] A comprehensive fiscal analysis of the cost of incarcerating elderly people nationwide — including all 50 state prison agencies and the BOP — has not been published since NIC released its landmark 2004 report.

To analyze the costs associated with incarcerating elderly people in more recent years, our team requested from all 50 state prison systems the amount of money spent each year on health care for older incarcerated people. However, this type of data is not systematically tracked or maintained by many states. As a result, we used publicly available data on health care spending by prison systems to create an extremely conservative estimate of how much each agency's health care budget is attributable to the elderly population. Figure 18 presents these estimates in a sample of four states: Alabama, Indiana, Florida, and Texas. We calculated the aging population's medical costs by multiplying the total number of elderly incarcerated people (ages 55+) in each state by the average cost of medical care per incarcerated person. This provides only the lowest-end estimate of the total health care costs for the incarcerated aging population in each of the states sampled.

FIGURE 18

Estimated Medical Costs* for the Incarcerated Aging Population (Ages 55+) in a Sampling of States

From 2015 to 2021, the elderly population accounted for significant increases in overall prison healthcare costs in the states that we sampled.



Source: Census Bureau Annual Survey of State and Local Government Finances, Bureau of Justice Statistics Corrections Statistical Analysis Tool
*Spending data were converted to 2021 dollars using the Implicit Price Deflator for Gross Domestic Product included in the Bureau of Economic Analysis' National Income and Product Accounts.

Charts by: The Prison and Jail Innovation Lab and the ACLU

The data shows a general upward trend in medical costs across all states for the aging incarcerated population, with significant increases year over year. By 2021, costs are notably higher than 2015 for

each of the reported states. This increase aligns directly with the increased need for medical care of an aging incarcerated population. Throughout the years analyzed here, Florida and Texas consistently have notably higher overall medical costs compared to Alabama and Indiana. This is presumably due to the significantly larger incarcerated populations in both states.

Lastly, differences in correctional spending across states could also reflect varying state policies regarding health care and early release programs for elderly people. For example, states with underutilized compassionate release programs may see higher correctional costs because they keep elderly people incarcerated longer, thus bearing more of their health care costs. Overall, the increasing costs for the aging incarcerated population reflect a significant financial burden on state budgets, especially as the incarcerated population continues to age and becomes more costly.

Part II. Existing Measures to Release Aging Populations

Considering the myriad operational, fiscal, and human rights challenges endemic to aging behind bars, what measures exist as of 2025 to help alleviate America's crisis of elderly incarceration, and how do aging people reintegrate back into society? What happens after an older incarcerated person is released, and how can this inform the reforms we seek? In this Part, we analyze existing mechanisms for elderly release and why they are ineffective in addressing the magnitude of the problem, before recommending a number of strategies to address these deficiencies in Part III.

A. Existing Legislative Mechanisms for Elderly Release

Almost every jurisdiction in the United States has an existing measure that would allow for an older person's early release.[162] Compassionate release programs are common, and so-called "second look" laws have recently become more prevalent.[163] While these measures are well-intentioned in theory, in practice, there are barriers that prevent swaths of older incarcerated people from ever actually accessing the promised relief. Moreover, compassionate release and second look review measures are often not carried out at all or are otherwise used so sparingly that they have little to no benefit.[164] The report turns now to a look at both measures and a discussion of why more effective alternatives are necessary to achieve meaningful progress towards reducing the size of the elderly incarcerated population.

1. Compassionate or early release programs

Compassionate or early release is one measure for releasing elderly incarcerated people, but compassionate release laws across the country come in many different forms. Generally, these laws allow incarcerated people facing imminent death, advanced age, or debilitating medical conditions to secure compassionate or early release.[165] As of 2018, 49 states and the District of Columbia provide one or more forms of compassionate release.[166] The compassionate release process varies tremendously between states, but the basic framework is the same: an incarcerated person requests compassionate release (or custody or medical staff refer a person for release), a medical professional (usually at the physician level)

evaluates the patient and opines on the person's condition and prognosis, and, based on the physician's recommendation and other factors, prison administrators or members of the state's parole board grant or deny compassionate release. [167]

In theory, compassionate release is a way for incarcerated older people to secure early release. In practice, though, compassionate release in the United States "is not a transparent and linear process, but an unpredictably ordered series of obstacles" that ends up killing the vast majority of compassionate release petitions.[168] Given that incarcerated people who apply are almost always terminally ill or profoundly incapacitated, the arbitrary and confusing nature of compassionate release means many elderly incarcerated people die before resolution of the request or are denied release.[169]

The arbitrary and confusing nature of compassionate release means many elderly incarcerated people die before resolution of their request.

One of the most significant flaws in compassionate release policy in the United States is that, while many incarcerated elders have health conditions that qualify them for compassionate release, states rarely, if ever, grant their petitions, severely frustrating the purpose of compassionate release.[170] For instance, the state of Alaska granted zero compassionate release applications between 2016 and 2023,[171] and Kansas granted compassionate release to only seven people between 2009 and 2016.[172] Such statistics raise the question: why enact compassionate release statutes if state departments of correction will not meaningfully employ them?

These statistics only capture part of the story. There are many reasons that compassionate release is not used nearly as widely as it could be, including:

- strict eligibility requirements in terms of qualifying medical conditions and estimated life expectancy;
- categorical exclusions based on convictions or commitment offense, which bar otherwise eligible incarcerated people from relief;
- missing or contradictory procedural guidance on how to administer compassionate release; and
- complex and time-consuming review processes that often result in a sick incarcerated person's death before their compassionate release request is ever decided.[173]

Some states have eligibility requirements that are so strict that few, if any, incarcerated people qualify for relief. In California, for instance, an elderly incarcerated person is not eligible for medical parole unless they are unable to perform "activities of daily living" and require around-the-clock care.[174] In Texas, a person convicted of a sex offense can be granted compassionate release only if they are in a vegetative

state.[175] Provisions like these render compassionate release virtually meaningless and impossible for many elderly incarcerated people to obtain.

Compassionate release laws are further limited in effectiveness because many provide little, if any, guidance that prison staff, corrections officials, facility medical staff, or final decision-makers can use to implement compassionate release.[176] In many states, an incarcerated person cannot even initiate a compassionate release request on their own — instead, a state actor who may have little knowledge of an applicant's medical or other history must do it for them.[177] Some state compassionate release laws also include contradictory language, causing officials to apply the law inconsistently or fail to apply it at all.[178] For example, Arizona requires incarcerated people seeking compassionate release to be facing "imminent death," but provides three conflicting definitions of what "imminent" means: death within three months, four months, or six months.[179] These guidelines ignore that oftentimes predicting prognosis or life expectancy in light of a particular diagnosis is more of an art than a science, dependent upon multiple factors beyond the disease itself. Moreover, there are multiple slower-moving debilitating and degenerative diseases that do not have imminent terminal prognoses and would not qualify under such strict medical criteria (e.g., dementia, neurodegenerative disorders, respiratory disorders, or paralysis). The drafters of these laws often do not seek the advice of medical professionals as they attempt to define medical concepts (e.g., what constitutes a terminal illness or imminent death), resulting in arbitrary eligibility requirements based on ill-informed criteria.

Further complicating things, many states categorically exclude certain incarcerated people from applying for compassionate release based on the sentence received. For example, in South Carolina, if an incarcerated person is sentenced to life without the possibility of parole, they are automatically ineligible for medical parole,[180] even though compassionate release schemes were enacted ostensibly to provide back-end relief for this very class of incarcerated people: those who have no opportunity for early release and would otherwise grow old and die behind bars. People are also excluded based on the nature of the crime itself. For example, the eligibility requirements of the compassionate release law in Maryland are so restrictive that only seven people might have qualified in 2023.[181] In other words, although compassionate release became popular as a method to release elderly incarcerated people, many compassionate release statutes exclude from consideration the very offenses and sentences that keep people incarcerated into old age.

Finally, some state review processes are so arduous and time-consuming that an incarcerated person will often die before their compassionate release request is ever decided. Reviewing a compassionate release petition can take weeks or months when multiple decision-makers are required to grant approval, which is especially detrimental to incarcerated applicants in states that don't allow for compassionate release unless the applicant is likely to die within 30 or 60 days.[182] In Kansas, for instance, an incarcerated person must be expected to die within 30 days of the time of application to be eligible for terminal medical release.[183] Obviously, if it takes twice as long to fully review an application, these bureaucratic obstacles render the compassionate release statute meaningless, and lead to far fewer grants of release (and far more rates of death before relief).

The result of these limitations is that incarcerated people are forced to rely on confusing procedures, contradictory policies, and untrained staff to determine their already precarious fates in the quagmire that is compassionate release in America.

CASE ILLUSTRATION

COVID-19 & Compassionate Release

In the first several months of the COVID-19 pandemic, incarcerated people were infected at a rate **5.5 times** higher than the general U.S. population due to immense overcrowding, a dearth of preventative and medical resources, and the high prevalence of comorbidities.[184] The effects of COVID-19 were significantly worse for elderly incarcerated people.[185]

In response, at the federal level, people were released on compassionate grounds 17 times more frequently than prior to the start of the pandemic.[186] When ruling on compassionate release motions, federal courts considered an incarcerated person's preexisting health conditions (that the Centers for Disease Control and Prevention identified as increasing the risk of severe illness from COVID-19) as well as outside risks, including overcrowding, lack of resources, and other structural inadequacies.[187] As a result, 2,601 people incarcerated at a federal prison were approved for release, compared to just 145 people released in 2019 and 24 people released in 2018.[188] However, state agencies did not follow suit. Generally, states released people on compassionate grounds at a rate very similar to, or lower than, previous years.[189]

As detailed above, applications for compassionate release are futile in many cases, and this release mechanism is consistently underused. In its current form, compassionate release is ineffectual as a meaningful strategy for releasing broad swaths of incarcerated elderly people and addressing the harms they experience in prison. Alternatives, as discussed in Part III of the report, are necessary to achieve meaningful change.

2. Second look review

Second look review is a relatively new reform[190] that, like compassionate release, may in some instances be used to release elderly incarcerated people from prison. A second look law authorizes judges to review an incarcerated person's sentence after they have served a prolonged period of time in prison.[191] Depending upon the law in place in each state, such reviews may be initiated by petition of the incarcerated person, specialized units within public defender offices (and/or on rarer occasions within district attorney offices), or by the prison agency itself. Second look review was designed to grant judges the ability to assess an incarcerated person's need for continued incarceration and current public safety risk.[192] These reviews originally applied only to people sentenced as juveniles to life without parole, but have since been expanded in many jurisdictions to include other populations.[193] If a judge finds that an incarcerated person has served a sufficient amount of time in prison, they are authorized to resentence or release them by way of second look provisions. As of March 2025, 13 states, the District of Columbia, and

the federal government have enacted laws allowing for second look review,[194] and an additional 37 states have proposed second look legislation.[195]

Second look laws differ greatly by jurisdiction regarding eligibility, initiation processes, and the individual rights associated with review.[196] Though a promising avenue for reform, second look frameworks are not without their flaws. Similar to many state compassionate release provisions, some second look mechanisms offer little guidance on how to conduct the sentence review process or the criteria for review, or they operate outside of any second look statute,[197] which creates serious disparities in how second look relief is applied. Additionally, some states require prosecutors or judges to initiate a second look petition themselves, when they may not have incentives to do so.[198] Moreover, if a person is denied second look relief, these laws typically include waiting periods of up to five years before the person becomes eligible for a subsequent review.[199] And the person is rarely provided with an explanation of why their application was denied.[200]

Second look relief is largely ineffective in tackling extreme sentences for people convicted as adults.

Most critically for our purposes, elderly people in prison are rarely eligible for second look review.[201] Many second look laws apply only to incarcerated people who (1) were in their early youth (that is, usually under the age of 18) at the time of their offense and (2) have served at least 15 to 20 years in prison.[202] As a result, many elderly incarcerated people who committed their offense after the age of 18 are categorically ineligible for judicial review of their sentences. A considerable number of second look laws also do not apply retroactively — meaning if an incarcerated person committed an offense before the statute was passed, they are ineligible for relief.[203] Colorado's second look framework, for example, only applies to offenses that occurred after the 2023 law was passed,[204] meaning not a single elderly incarcerated person (or anyone) locked up in Colorado before 2023 may access its relief. Thus, second look relief is largely ineffective in tackling extreme sentences for people convicted as adults — that is, the vast majority of the national prison population.[205]

B. Existing Post-Release Resources for Formerly Incarcerated Elderly People

The perennial question many legislators have when considering reforms that release incarcerated people into the community is this: what happens to returnees after release? This is an important question that must be addressed before any state legislature will realistically embrace wide-scale relief for older incarcerated people. State legislatures must pair reforms that release older people from prison with increased resources and stronger infrastructure — like those provided for the Unger group[206] — to ensure their successful reentry. To facilitate this, the report turns now to an analysis of current resources available to elderly returnees, and why they are ineffective.

Infrastructure centered on elderly reentry initiatives is sparse — largely because elderly people (and especially formerly incarcerated elderly people) are seen as an afterthought in American society. Older returnees face more hurdles to successful reentry than younger people released from prison.[207] The most immediate challenge an older adult leaving prison faces is finding a place to live.[208] Formerly incarcerated people are 10 times more likely to experience homelessness than people in the general community, and the rate of homelessness among formerly incarcerated elderly people is even higher.[209] After being locked up for decades, many aging returnees have no family or home to return to upon release. The lack of stable housing severely jeopardizes their physical safety, mental health, and access to health care and other social services; it also increases the risk of reincarceration.[210]

Formerly incarcerated people are **10 times** more likely to experience homelessness than people in the general community.

Further exacerbating the elderly homelessness crisis, there are virtually no state-funded nursing homes that will accept formerly incarcerated elderly people. While the availability of housing options aimed at supporting reentry varies by state, there is limited availability of state-funded nursing homes specifically for elderly people after incarceration. There are currently only two facilities in the nation that specialize in providing nursing care for formerly incarcerated people, and they have been in operation since 2022.[211] Because many aging parolees exit prison with serious health care needs that require a skilled nursing facility, they are sometimes cleared for medical parole only to spend months, or even years, further deteriorating in prison while they wait for a bed at a nursing facility that will accept parolees.[212] Some states also have complex procedures for accessing Medicaid or nursing home resources, which are difficult for older returnees — who are often reentering society after decades of confinement — to navigate on their own and without professional assistance.[213] Finally, many halfway houses[214] for formerly incarcerated people are unavailable to the elderly because they cannot provide supportive health care services (such as assistance with activities of daily living) or they have infrastructure barriers and cannot accept people with mobility disabilities.[215] Many halfway houses also have strict employment requirements. As a result, parolees who are disabled, sick, or otherwise too weak to hold a job cannot live in such places.[216] These factors, combined with the fact that many elderly incarcerated people do not have a family to return home to, make it incredibly difficult for them to secure necessary support once released from prison.

Releasing elderly incarcerated people into the community with no plan and no infrastructure is unwise and inhumane. Expanding access to suitable housing and health care services, especially state-funded programs, is crucial to realize the full potential of reforms to release the elderly, to prevent the risk of reoffending, and to prevent further harms to people who have nowhere else to go. To mitigate aging people's risk of harm or reincarceration, state legislatures urgently must scale up their infrastructure for this vulnerable population.

Part III. Recommendations

What is to be done to reverse the aging behind bars crisis and its magnifying ripple effects? This Part provides a potential roadmap, centering decarceral reforms[217] as the way forward. First, we must substantially reduce the number of elderly people in our nation's prisons. Second, we must invest in and fully support the elderly incarcerated population's complex reentry needs so they are set up for success upon release. Finally, we must better protect elderly people still left on the inside, with particular emphasis on providing constitutionally adequate medical care and humane conditions of confinement responsive to their needs.

However, as a threshold matter, we must address two themes that repeatedly came up in preparing this report: the abject failure of correctional systems to meaningfully track or measure the particulars of the aging populations in their facilities, and the need for a comprehensive, peer-reviewed academic study of the costs of incarcerating the elderly population that is national, or even statewide, in scope.

First, as outlined in the Methodology section at the end of the report, numerous state departments of correction do not track basic data on the aging incarcerated population, such as race and gender, the annual cost of housing this population, the annual cost of providing health care, and recidivism rates after release. Effective data tracking and analysis exposes systemic patterns, informs public understanding, and helps protect the rights of those existing behind the veil of incarceration. Effective data tracking is also necessary to help external organizations and members of the public conduct meaningful oversight of carceral facilities, and it assists lawmakers in their efforts to enact policy solutions for issues brought to light by data trends. If we cannot first measure or name a problem, it is impossible to fully address it. Thus, to increase transparency and better inform policy solutions, it is imperative that state correctional departments do more to track the trends of the distinct populations they incarcerate, including the elder population.

Second, to our knowledge, no organization has ever conducted a robust fiscal analysis of the costs of incarcerating elderly people in all 50 states and the BOP. Though some organizations have done case studies of a single state or a handful of states, none of these studies have been peer-reviewed or rigorously evaluated by other experts in the field, and none of them use recent data. There is a large gap in available literature on the issue, and this is likely because state correctional departments, for the most part, have not published the data on elderly incarceration costs, making it quite difficult for organizations to conduct strong academic analyses. Policymakers could fix this issue by mandating that state departments of correction publicly report essential information regarding the costs of incarcerating the elderly population, and what drives these costs. We recommend a large-scale, national, or statewide fiscal analysis of the financial impact of incarcerating elderly people. Again, if we cannot first accurately measure a problem, it is impossible to fully address it.

A. Strategies to Substantially Reduce the Number of Older People in Prison

The most important reform recommended in this report is to substantially reduce the elderly incarcerated population. Not only does this address the lack of purpose and inhumanity of imprisoning older people who pose little or no risk to public safety, but it would also reduce many of the financial costs to correctional agencies from incarcerating aging people.

Further, ending the mass incarceration of older people can yield substantial cost savings, which can be reinvested in the community. As we reported in our 2012 analysis of this issue, releasing elderly people could save $66,294 annually per person on average and $28,362 per person on the low end.[218] When adjusted to 2024 dollars, state correctional departments can save $92,217 annually per person on average and $39,452 per person on the low end.[219] These vast savings could meaningfully lessen the burden on correctional budgets and be repurposed to implement community-based solutions.

Ending the mass incarceration of older people can yield substantial cost savings, which can be reinvested in the community.

Though these figures show there is a significant financial gain to be had in releasing elderly incarcerated people, it is important to note that there are some difficult-to-calculate costs associated with releasing incarcerated elders that would offset some of the savings. First, there would be costs associated with supervising people on parole. Those costs vary by state; however, parole supervision costs are minuscule compared to incarceration costs.[220] Some costs would shift to other state agencies, including social service and health departments, while other costs would shift to the federal government through Medicare or Medicaid reimbursements. And there would likely be the need for some spending on housing for people without a home to return to. But those housing costs would still be a fraction of the cost of housing in a state prison, given the high costs of security, staffing, and infrastructure as discussed previously in the report. Further, the medical costs for the state would be substantially reduced if elderly incarcerated people were shifted to federal health care programs like Medicare or Medicaid. Most of these shifted costs pale in comparison to the costs associated with keeping aging people in prison past the point when they present a public safety risk, given the extreme costs of the security infrastructure in prisons.

Policymakers and correctional departments must work together to: (1) significantly expand compassionate release as a back-end lever for sick elderly people to secure release; (2) augment existing parole infrastructure to give non-sick elderly people a meaningful opportunity for release; (3) enact second look legislation without statutory barriers to eligibility; and (4) repeal or greatly modify draconian "tough-on-crime" laws.

1. **Significantly expand medical/compassionate release infrastructure as a back-end lever for releasing ailing elderly people from prison**

To meaningfully increase the number of compassionate release grants, state lawmakers must expand medical and offense eligibility requirements to encompass a much broader population of elderly incarcerated people. As detailed above in Part II(A)(1), most compassionate release policies require people to have a terminal illness, severe medical condition, or a specified "geriatric" age to be eligible for compassionate release, or they have offense exclusions. For humanitarian reasons, compassionate release statutes should be amended to eliminate categorical exclusions and permit eligible incarcerated people to apply for compassionate release — notwithstanding their offense, sentence (including sentences of life without the possibility of parole), or amount of time left to serve. Removing eligibility requirements that are unduly strict, cruel, or otherwise unwarranted (e.g., a requirement that one be in a vegetative state to qualify for compassionate release, such as Texas' statute for people convicted of sex offenses[221]) ensures that eligibility criteria are fair and just, ultimately allowing more elderly people to access relief. This also serves to alleviate exorbitant medical expenses for the state associated with incarcerated people whose chronic conditions render their continued incarceration inhumane.

We also recommend that state legislators enact laws that allow ailing incarcerated people to bring their compassionate release applications directly to a judge, taking parole boards, departments of correction, and other administrative entities out of the decision-making process entirely given the medical urgency of the situation. The 2018 First Step Act, enacted by Congress with bipartisan support, is an instructive model. The First Step Act, among other reforms, enables people in federal prison to directly petition a federal court for compassionate release 30 days after filing a petition with the BOP.[222] It allows incarcerated applicants to seek compassionate release for "extraordinary or compelling" reasons, a phrase purposely left undefined so that courts may exercise discretion in defining what "extraordinary or compelling" means according to the life circumstances of each applicant.[223] Granting incarcerated people the ability to personally petition a federal court for compassionate release is a substantial departure from previous federal policy, which mandated that only the director of the BOP could file a motion on an incarcerated person's behalf.[224] This, of course, rarely occurred.[225]

States may use the federal First Step Act as a model in enacting similar statutes, the benefits being streamlined decision-making, heightened efficiency, and greater protections against the politicized nature of parole board release decisions.[226] Such state laws should also include a right to appointed counsel for indigent older incarcerated people to assist them in navigating the compassionate release process. In many parole board hearings, incarcerated people are not entitled to an attorney. If compassionate release petitions were required to go through the courts, an incarcerated elder could (and necessarily should have the right to) have legal counsel argue the petition on their behalf. Many elderly incarcerated people are too incapacitated to navigate the compassionate release process or court system on their own. We therefore recommend that incarcerated people filing compassionate release petitions in court be entitled to legal representation and due process. We also recommend that their attorneys, loved ones, and other relevant advocates be informed at each stage of the compassionate release process so they are able to provide effective assistance. In the end, allowing incarcerated people and their attorneys to petition a court directly not only removes the bottleneck of having to rely on an official to file on one's behalf, but it also allows vulnerable incarcerated people to navigate the process with vital help.

2. Enact or augment existing geriatric parole policies to give non-ailing elderly people a meaningful opportunity for release

While the last section focused on implementing compassionate release reforms to make it easier to release older people struggling with illness, this section centers on release strategies for older people who are otherwise healthy (and therefore do not qualify for compassionate release). Regardless of their health, the overwhelming majority of elderly people in prison are unlikely to recidivate, do not pose a threat to the public, and can be safely released but for laws that limit their eligibility for existing parole mechanisms.

Many elderly people are ineligible for parole because they are serving prolonged sentences and have not yet reached their required "minimum" of time served before parole eligibility, even though many have already served decades in prison. Others are not eligible for parole consideration or compassionate release because of their offense of conviction, or because they are not terminally ill. Thus, because compassionate release schemes do not encompass the entire elderly incarcerated population, we recommend that state legislators implement so-called "geriatric parole" laws so that effective relief may be accessed by all. Geriatric parole statutes typically do not require an applicant to be terminally ill, and allow for early release if the applicant is over a certain age and has served a specified number of years or percentage of their sentence.[227] Many states already have geriatric parole laws in place; they have been legislatively authorized in at least 24 states and the District of Columbia.[228]

We recommend that states enact geriatric parole statutes that make consideration for geriatric release automatic after an incarcerated person has turned 55 and served a quarter of their sentence or 10 years — whichever occurs first. This recommendation is informed by existing state practice. New Mexico and North Carolina, for example, set their geriatric parole eligibility at 55 years old.[229] Some states do not set a specific age;[230] in Washington, for instance, the geriatric release provision refers only to "advanced age."[231] And in most states, an incarcerated person must serve a minimum of 10 years of a sentence before they are eligible for geriatric parole consideration.[232] Geriatric parole schemes, similar to compassionate release provisions, should also be implemented without offense-based exclusions.

Due to statutory reforms, incarcerated elderly people in the following states are eligible to be considered for geriatric parole when they turn 55,[233] and are not required to have served a specific number of years in prison before they are eligible to apply.

FIGURE 19

Geriatric Parole Laws in a Sampling of States, 2025

State	Statute	Age Requirement	Required Time Served
New Mexico	N.M. Stat. Ann. § 31-21-25.1	55	None
North Carolina	N.C. Gen. Stat. § 15A-1369	55	None
Washington	RCW 9.94A.728	None ("advanced age")	None

Other states should follow their example.

3. **Reform ordinary parole frameworks to focus parole release determinations on forward-looking factors, and to ensure parole boards are educated about the elderly incarcerated population**

If for some reason elderly incarcerated people in a given state must go through the ordinary parole process (rather than going through the compassionate release or geriatric parole process) to obtain relief,[234] decision-makers should prioritize forward-looking factors when determining whether to grant parole. Research shows that parole determinations produce more reliable outcomes when they are based on forward-facing factors, like readiness for release and current risk to public safety.[235] However, parole boards often focus on the opposite — retrospective factors, such as the facts of an offense that may have occurred decades ago — when making their parole decisions.[236] Such logic is deeply flawed. Retrospective factors are immutable; no matter how much or how vigorously an incarcerated person works in the present to rehabilitate themselves, they cannot change their past. Offense-related facts also do not account for a person's rehabilitation or the inverse relationship between age and recidivism; these are critical inquiries in making accurate release determinations.[237] To make matters worse, current parole decisions rely heavily on facts that may be rooted in racial disparities and class inequality.[238]

In contrast, forward-looking risk factors are tied to post-offense facts, such as current age, prison disciplinary history, and educational, vocational, or treatment programs completed in prison.[239] Focusing on post-offense factors helps better predict a person's current level of risk and readiness for release. Because post-offense, rehabilitation-based factors are most important in accurately determining whether an incarcerated person will be successful upon release, we recommend that parole boards weigh forward-looking factors more heavily than offense-related factors when making decisions on whether to grant parole. State departments of correction should also provide rehabilitative services prior to parole review.[240] Because we all evolve as people as we age, it is cruel and counterproductive to define someone solely by what they did in the past, plus the sentencing determination already took those past factors into account. Elderly incarcerated people deserve to be looked at through the lens of who they are now, not who they once were.

Finally, since many appointed parole board members are not familiar with the elderly prison population, their low risk to the public, and the harm they face in prison,[241] the composition of parole boards ends up affecting the strength of parole determinations. Policymakers should therefore ensure that parole boards include members with a broad range of relevant knowledge and experience, including expertise on elder issues, and that board members without this background are educated about the matter.[242] Additionally, state legislatures should depoliticize and increase the transparency of parole boards, as the boards function in a quasi-judicial role.[243] They can do this by mandating that guidelines and/or reports on parole decision-making be provided to the public, or allowing applicants to appeal a denial of release.[244] Together, these recommendations can make parole an effective release mechanism for elderly people in prison who do not pose a risk to the public.

4. **Enact second look legislation without statutory barriers to eligibility**

Beyond reforms to compassionate release and parole policies, we also recommend that state policymakers enact or reform their existing second look laws to allow more elderly incarcerated people to

access relief. As of May 2024, 12 states have passed — and more have proposed— second look legislation that broadens eligibility requirements to create a more effective means to release elderly incarcerated people who do not pose a public safety risk.[245] In keeping with this trend of state legislatures broadening the scope of their second look laws, we recommend the following.

Second look relief should not be limited to incarcerated people who committed their offenses as juveniles, since the capacity for transformative change does not stop at age 18. State policymakers should expand second look eligibility to apply to incarcerated people who were any age at the time of their offense and have served a minimum number of years or percentage of their sentence.

Many state second look laws only apply prospectively, not retroactively. In other words, there are thousands of people currently locked up in our nation's prisons, who — if they were sentenced today — could be considered for release, but are barred from doing so because their offense occurred before the second look law was enacted. For this reason, policymakers should enact or amend their existing second look statutes to apply retroactively. Without a provision ensuring that currently incarcerated people can benefit from these statutes, it will be decades before second look laws have any impact at all.

States should also adopt second look legislation without creating categorical exclusions for violent offenses, which prevents rehabilitated incarcerated people who pose a low public safety risk from qualifying for review.[246]

5. Repeal laws that keep people incarcerated into old age

The United States has long utilized incarceration as a one-size-fits-all solution to harm. As discussed in Part I(A), lawmakers in the late 20th century began enacting "tough-on-crime" laws ostensibly to reduce crime and improve public safety. But, in reality, these laws have led to prison systems that are overcrowded and overburdened, do not reform nor rehabilitate citizens who committed harmful offenses, and do not make our communities safer. Rather, these laws have unfairly and unjustly shackled generations of marginalized people, while also burdening state budgets and graying the nation's prisons. These laws have had sweeping ripple effects that have been felt throughout the nation — effects that are still playing out today.

Faced with mounting incarceration costs and swelling elderly prison populations, lawmakers should take a hard look at the "tough-on-crime" sentencing laws that are still in operation today. These laws include extremely long prison sentences, mandatory minimums, convictions that are nearly impossible to challenge, "three strikes" laws, truth-in-sentencing, and the elimination of parole. These policies keep people behind bars long past their crime-prone years and into the later phases of life, leading to the costly and inhumane graying of our prisons. Lawmakers in every jurisdiction should repeal or modify laws in their state that contribute to this pattern so they can, at the bare minimum, ensure a more sensible, humane, and cost-effective prison system.

B. Strategies to Address Elderly Returnees' Complex Reentry Needs

Reintegration into society is a critical step for elderly returnees yet it is quite a challenging process, particularly for those who are medically compromised. To address barriers to elderly reentry, we offer three policy recommendations: enhancing reintegration services available to incarcerated people before release, establishing steady pipelines for reentry housing, and creating community reentry centers to serve as drop-in hubs offering essential services.

1. Offer reintegration services for elderly people at least 90 days before their release

Correctional officials can lay the groundwork for a smoother transition to the community by prioritizing reintegration services at least 90 days before an elderly person's release, including personalized counseling, assistance in obtaining vital identification documents, enrollment aid in Medicaid, and support accessing Social Security benefits.[247] We recommend that six services be offered in correctional reintegration programs: (1) one-on-one counseling; (2) future-planning workshops; (3) essential document assistance; (4) health care and benefits enrollment; (5) housing support; and (6) peer mentorship programs.

Elderly incarcerated people nearing release often experience prolonged periods of institutionalization, physical health decline, and a lack of preparation for reintegration into society. Many suffer from chronic illnesses, mobility challenges, and mental health conditions exacerbated by years of incarceration. It is therefore essential for policymakers and correctional departments to implement comprehensive reintegration programs tailored to this population's needs. Reintegration services are also essential for elderly incarcerated people who lack social support. Extended incarceration greatly erodes an individual's outside social networks, and aging incarcerated people may be unfamiliar with modern technology and significant societal changes. Reintegration services can help address these gaps by offering essential life skills, coping mechanisms, and strategies for adapting to a vastly different society than the one an elderly person left behind when they first went to prison.

One-on-one counseling can help individuals process the trauma of incarceration and develop a personalized reintegration plan. Counseling should also prioritize addressing fears about reentry, setting realistic goals, and teaching conflict resolution and social skills. Similarly, future-planning workshops should cover essential topics like budgeting, navigating public transportation, and understanding tenant rights to prepare individuals for independence. Next, reintegration services offering essential document assistance are necessary to help elderly incarcerated individuals obtain important documents before their release. Without proper identification, access to housing, and modes of financial security, elderly individuals are at a heightened risk of experiencing homelessness and poverty. Services that assist with obtaining state-issued IDs, birth certificates, and Social Security cards can serve as a critical foundation to help them rebuild their lives. These documents are vital for securing housing, employment, and medical care.

Fourth, we recommend that correctional officials provide services to help elderly incarcerated people with health care and public benefits. This includes assisting with SNAP food stamps, Social Security

benefits, disability benefits, and Medicaid or Medicare applications. Connecting people before release to health care benefits programs and connecting them to prescriptions and primary care appointments will reduce barriers to accessing health care. Reintegration services that connect aging incarcerated people with health care providers and Medicare/Medicaid resources can ensure continuity of care, which would reduce the risk of crises and medical or mental health emergencies upon release. Fifth, establishing programs that offer assistance with navigating transitional housing could prevent homelessness and provide a supportive environment during an elderly person's adjustment period.[248] And lastly, peer mentorship programs could help guide aging individuals long after their release. Pairing elderly people with peers who have successfully reintegrated can provide guidance, encouragement, and a sense of community.

A prison in Butler County, Pennsylvania offers an instructive example of what a reintegration program could look like.[249] The Community Reintegration Program (CRP) at Butler County Prison provides reentry support to incarcerated people, recognizing that many will return to their communities with unmet needs and substantial barriers when working to reintegrate.[250] CRP is run by Butler County government officials and reportedly offers participants opportunities to engage in support networks that aid their transition back into society. The program states that it works to (1) address substance use dependency, mental health challenges, and other personal struggles; (2) foster healthy family relationships; and (3) ensure that participants secure stable housing, proper documentation, and access to health care.[251] CRP also reportedly provides one-on-one counseling to help assess the individual needs of each person, whether it be housing, drug treatment, medical and mental health care, or other concerns. Ultimately, the CRP model, if it functions as it says it does, has strong potential to help foster safer communities while providing returning citizens with a meaningful chance to rebuild their lives.

2. **Increase the availability of reentry housing for elderly returnees with the collaboration and oversight of multiple state agencies**

Reform programs that aid in navigating the rigors of securing transitional housing, as discussed above, cannot be maximally effective without first increasing the availability of transitional housing to begin with, specifically in relation to elderly returnees. To that end, government agencies, nonprofit organizations, and private entities should work together to leverage government funding and private resources to provide a greater range of housing options for elderly returnees. As discussed in Part II, many elderly and medically vulnerable incarcerated people are difficult to place in traditional reentry housing programs or nursing homes given their unique needs. And without proper housing, elderly people face homelessness, poor health outcomes, and a higher risk of returning to prison. We recommend that state governments invest more resources into increasing reentry housing infrastructure specifically for elderly returnees. With the collaboration and oversight of multiple state entities, this would ensure a stable living environment and reduce the risk of recidivism.

A Connecticut-based skilled nursing care center, 60 West, provides transitional care to elderly people released from prison.[252] 60 West is a nursing home that offers both housing and medical care for aging people and people released from prison who are challenging to place in traditional nursing homes.[253] 60 West, a 95-bed home, opened in 2013 and includes a memory care unit for people with Alzheimer's,

dementia, and other cognitive issues, as well as a neurobehavioral rehabilitation unit for those with acquired brain injuries.[254] The program operates in partnership with Connecticut government agencies through a utilization management committee composed of representatives from the Connecticut Department of Mental Health, Aging and Addiction Services, Department of Corrections, and other state agencies.[255] Other actors that work together to make program referrals include acute care hospitals, mental health hospitals, community case managers, other nursing homes, and correctional institutions.[256]

60 West, if it functions as it says it does, could potentially operate as a model highlighting the fruits of intersectional advocacy on behalf of elderly returnees. This program could be an example of how housing can meet both health and reentry needs through specialized services and wraparound care — a program brought into being by the productive collaboration of multiple state agencies. A new federal rule, passed in November 2024, will expand Medicare eligibility to elderly people on probation or parole, or in halfway houses, benefiting over 340,000 older adults.[257] Previously, Medicare excluded these groups. This change is a big step towards addressing health disparities, as many elderly incarcerated people who are released have limited access to health care on the outside. It marks a victory for advocates working to enhance reentry support and health equity for formerly incarcerated individuals, and it can provide a vehicle to help fund programs like 60 West.

3. Create non-residential community reentry centers for elderly returnees

Finally, for elderly returnees not housed in long-term nursing facilities, states should establish non-residential community reentry centers (CRCs) that provide flexible support services tailored to meet the physical, mental, and social needs of recently incarcerated elders. These centers could serve as drop-in hubs offering essential services, such as technology support and skills training, operating to empower aging returnees to rebuild their lives with dignity and purpose. CRCs could also fill in any gaps left by reintegration services provided to elderly people before they left prison. They also can serve as centralized spaces designed to help aging returnees navigate important challenges through various programmatic offerings. For example:

- Technology support could be a cornerstone of community reentry centers, helping elderly people navigate a world increasingly reliant on digital tools. Many elderly people leaving incarceration are unfamiliar with smartphones, computers, and online platforms, which are essential for accessing telehealth appointments, applying for benefits, and staying connected with family. Thus, CRCs could offer hands-on workshops and one-on-one guidance to teach basic technology skills, ensuring individuals can engage with modern systems confidently and independently.
- Health care support could address the physical and mental health challenges common among elderly people reintegrating after incarceration. Partnerships with local clinics and hospitals might connect people to geriatric care providers, while CRCs could assist with setting up telehealth appointments or arranging transportation to in-person medical visits. Mental health counseling and substance use resources could also be facilitated, either on-site or through referrals to external programs, ensuring people receive the specialized care they need.

- Community reentry centers could foster social and community reintegration, addressing the heightened risk of isolation many elderly people face after incarceration.[258] These centers might offer peer support groups, where people can share experiences and build meaningful connections. Community events could also be organized to create an inclusive environment. To further support social engagement, CRCs could connect people with other local organizations and faith-based groups. For those with strained family relationships, centers could facilitate access to external counseling services to help repair connections when appropriate.
- Community reentry centers could also assist elderly people in finding meaningful opportunities for employment or engagement. Unlike younger reentry populations, many elderly people face physical limitations or lack contemporary job skills.[259] CRCs could help elderly returnees explore part-time roles or even volunteer opportunities that align with their abilities and interests, fostering a sense of purpose and independence. Job readiness support might include workshops on workplace skills or assistance with creating resumes that highlight transferable life experiences. Additionally, centers could partner with employers willing to hire elderly reentry populations, advocating for their inclusion and combating the stigma associated with incarceration.
- Finally, centers could help elderly people navigate the legal and administrative hurdles that often complicate reintegration. Challenges might include meeting parole requirements, addressing discrimination in housing or employment, or resolving other legal issues that arise during the transition. They could also provide access to legal aid through on-site advisors or partnerships with pro bono organizations, ensuring people receive the guidance needed to overcome these barriers.

For community reentry centers to succeed, collaboration amongst multiple entities will be essential. State departments of corrections and departments of health and social services should collaborate with nonprofit organizations, private foundations, and colleges or universities — among other entities — to adequately fund, staff, and run these centers. By investing in community reentry centers, states can build a comprehensive support system tailored to elderly citizens reentering life on the outside.

C. Strategies to Better Protect Older People Who Remain Incarcerated

Our final set of recommendations includes strategies to better protect vulnerable aging people who remain incarcerated.[260] To reduce the myriad harms that elderly people experience in prison, we recommend that correctional departments: (1) increase access to necessary medical treatments through regular preventative assessments and individualized treatment plans; (2) amend institutional policies that restrict advance care planning in prison; (3) ensure all prisons are fully compliant with the ADA; (4) enact or amend emergency protocols to address the safety needs of older incarcerated people during emergencies; (5) address extreme temperatures in carceral facilities; (6) train correctional staff on how to interact with older incarcerated people; (7) provide safe reporting mechanisms to protect elderly people from harm; (8) provide hospice services for incarcerated elders facing terminal illness; and (9) address the need for dementia care.

1. **Increase access to necessary medical equipment, treatments, and medications through regular preventative assessments and individualized treatment plans, including medical care specific to meet the needs of aging women**

To meet community standards of care, we next recommend that prisons increase the availability of necessary medical equipment, specialty treatments, and medications for elderly incarcerated patients. Correctional providers should conduct routine screenings for chronic conditions, disabilities, cognitive impairments, sleep disturbances, and mobility limitations. For example, a geriatric assessment is a multidimensional, multidisciplinary assessment designed to evaluate an older patient's functional ability, physical health, cognition and mental health, and socioenvironmental circumstances.[261] It evaluates specific elements of health, including nutrition, vision, hearing, sleep disturbances, fecal and urinary continence, and balance.[262] Geriatric assessments aid in the diagnosis of medical conditions; development of treatment and follow-up plans; coordination and management of care; and evaluation of long-term care needs.[263] Geriatric assessments differ from standard medical evaluations by including nonmedical inquiries and emphasizing functional capacity and quality of life.[264]

The Federal BOP has developed specific programming recommendations for the management of incarcerated aging people that can serve as a guide for state prisons as well.[265] For example, the agency recommends preventive visits with medical personnel annually for incarcerated individuals who are 50 years or older.[266] These visits should include screenings for cancers, chronic and infectious diseases, sensory deficits, and cognitive impairments.[267] Correctional providers should implement these assessments to improve the quality of patient care. Prisons should also develop individualized treatment plans that align with community standards of care.[268] These treatment plans should be developed by properly licensed medical doctors with training in treating chronic conditions and geriatric patients, and the treatment plans should take into account the unique correctional environment.[269] Through geriatric assessments, medical assessments at intake, and check-up assessments that take place at regular intervals, correctional health care providers can better care for elderly incarcerated people and provide them with the medical equipment, medications, and resources they need.

Finally, because women make up a much smaller percentage of the total incarcerated population in America than incarcerated men do (roughly 10%),[270] their individual health care needs are often overlooked by correctional departments around the country. However, even this small percentage amounts to over 16,000 elderly women in U.S. prisons.[271] Correctional agencies should therefore prioritize the provision of medical care for aging incarcerated women who have unique medical needs that aging men do not. For example, menopausal symptom management and complimentary menstrual hygiene products should be available for all aging women. And given the higher rates of gynecological conditions amongst incarcerated women, the American College of Obstetricians and Gynecologists recommends screenings



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for cervical cancer to occur every three to five years for all women between the ages of 50 and 65.[272] Mammograms should also be provided every two years for women between the ages of 50 and 74.[273] And because most incarcerated women have histories of sexual, physical, and emotional trauma, and medical screenings have the potential to be quite traumatic for them, these screenings should be provided in a sensitive, trauma-informed manner.[274]

2. Amend institutional policies that restrict advance care planning in prison

Advance care planning (ACP) is a process whereby individuals discuss and document their future health care preferences and decisions in case they later become unable to make such decisions for themselves due to illness, injury, or other circumstances.[275] During this process, participants can also write living wills that are notarized and outline their wishes for end-of-life care. For non-incarcerated people, ACP usually occurs between a patient and their health care provider during a medical visit.[276] In prisons, however, ACP is far less common because of numerous barriers, including institutional policies that restrict ACP use, patients' isolation from the counsel of family and friends, provider uncertainty about the legal validity of documents, patients' distrust of the health care team, and more.[277] To make matters worse, incarcerated people often do not have access to their own health records and are unjustly locked out of their own medical care.

We recommend that correctional authorities amend institutional policies that restrict ACP in prison. Tenets of human rights support the notion that incarcerated people, like other human beings, should retain the right to make decisions about their own bodies and end-of-life care. Incarcerated people should have greater access to information about their health status and sufficient knowledge about the treatment options available to them. This includes access to basic information that correctional providers often fail to supply, such as what stage their illness is in, symptoms to be aware of, standard treatment protocol, and what to expect as the disease progresses. Medical professionals working in prisons must actively involve patients in medical decision-making, providing consistent access to medical records, and expanding access to ACP, including notaries, in prison.

3. Ensure all prisons are fully compliant with the Americans with Disabilities Act

Alongside efforts to address inadequate medical care, we next recommend that correctional departments ensure that all prisons are fully compliant with the ADA to guarantee that people with disabilities can navigate the prison environment with the same level of access as their non-disabled counterparts. This includes ensuring accessibility in the places they eat, sleep, use restrooms, receive health care, exercise, participate in programming and work, meet with visitors, and interact with other incarcerated people.

To remedy the ADA violations discussed in Part II supra, we recommend that prison officials perform regular ADA audits of prison facilities, using qualified ADA experts to assess compliance and help remedy uncovered violations. These experts can assess a prison's physical infrastructure, programmatic offerings, and communications services for accessibility. They can also aid prison officials in fashioning corrective action plans: remedial plans that outline the steps a correctional agency should take to remedy violations and prevent future occurrences.[278] This might involve making changes to policies, procedures,

training, or equipment to address specific issues.[279] Prison officials could also mandate disability rights training for staff. For example, they could provide training on the rights of incarcerated people under the ADA, training on how to recognize and respond to disability-related needs, and training on how to combat disability discrimination.

Prison administrators should also give older people preferential access to housing areas closest to essential facility services (like medical services) to better facilitate their participation in these activities. Prison administrators must also ensure that housing assignments match incarcerated people's medical accommodations by guaranteeing, for example, that elderly people are not assigned to upper bunks or to cells that do not accommodate their mobility devices. People who need to use CPAP machines or oxygen pumps while sleeping also need easy access to a secure power source near their beds. The facility infrastructure also must address the needs of people with vision and hearing loss, for example, by ensuring that phones and video visitation monitors are equipped with assisted listening devices.

4. **Enact or amend emergency protocols to address the safety needs of older incarcerated people during emergencies and natural disasters**

Emergency protocols must be drafted or modified to address the specific safety needs of aging populations. Elderly individuals are at greater risk of death and adverse health outcomes during emergencies because of age-related physical limitations, chronic illnesses, and weakened immune systems, making it essential that prison emergency protocols provide for their safety.

One example of an essential emergency protocol is a policy requiring prison facilities to maintain emergency medical supply reserves that include prescriptions, oxygen tanks, mobility aids, and adult incontinence supplies, amongst other things. Another is to require prisons to equip housing units with back-up power for medical devices such as CPAP machines and ventilators in the event of an emergency. Correctional authorities should also involve gerontologists, disability rights advocates, and local and state emergency preparedness offices in their planning. Further, departments of correction should create standing agreements with local hospitals to receive elderly and high-risk patients swiftly during emergencies, especially in response to natural disasters, such as wildfires or hurricanes, that require evacuation. And when doing so, correctional departments should "[f]ormalize all mutual aid agreements into written contracts that clearly define the terms, roles, responsibilities, contact information, authority, and scope of assistance to be provided by each party."[280]

Prison protocols for public health emergencies should also include preventive care such as vaccination access and education for all older people,[281] ensuring that they are prioritized for flu shots, COVID-19 vaccines, and other critical immunizations that may be life-saving. Additionally, prison emergency plans should account for the physical limitations and medical dependencies of older incarcerated people. Extra time allotments and assistance for elderly people during evacuations are critical for preventing injuries and ensuring that everyone can safely relocate.[282] Protocols for ensuring continuity of medications and critical medical care are also essential. For non-evacuation situations, prisons should enhance protections for elderly people by providing increased supervision, emergency supplies of medication and food, and psychological support to alleviate stress and trauma. Priority access to medical care during

such crises can mitigate the impact of injuries, further underscoring the importance of protocols tailored to the elderly population.

When viewed in light of emergencies like Hurricane Katrina, COVID-19, and other natural disasters that pose special risks to the elderly incarcerated population, it is clear why robust prison disaster planning specifically in relation to aging people is of utmost importance. Such planning must take place before — not during — a public health emergency, as it may become, quite literally, a matter of life or death.

5. Address extreme temperatures in carceral facilities

To ensure the safety of older people in cases of extreme temperatures, prisons should account for the heightened temperature sensitivity that they experience (which is often due to medications, hormone changes, and medical conditions).[283] Accordingly, all prisons should be equipped with the air conditioning and heating infrastructure needed to maintain a constant temperature of 65 to 85 degrees Fahrenheit, which is widely recommended by experts to ensure safe prison conditions.[284] Reliable climate control is essential to maintaining a stable environment that minimizes temperature-related health risks. At the very least, elderly people should be prioritized for placement in facilities that are temperature-controlled.[285]

If a prison's infrastructure fails to adequately regulate temperatures, emergency provisions should already be in place that provide for access to blankets, portable battery-powered fans and heaters, water, and more to prevent elderly people from experiencing life-threatening health complications.

6. Train correctional staff how to interact with older incarcerated people, especially people with cognitive and physical impairments

Elder abuse is a serious problem, both inside and outside of prison. To keep older incarcerated people safe, prison staff must be vigilant in protecting them from harms such as sexual exploitation, assault, and financial exploitation. The reduced physical strength, cognitive decline, and dependence on others that many older people experience can make them easy targets for abuse or exploitation. Active monitoring by prison staff is essential to identify and address these risks before harm occurs. Regular training programs should ensure staff are equipped to recognize physical, emotional, and behavioral signs of abuse and exploitation.[286] Awareness of warning signs, such as unexplained injuries, withdrawal, or changes in financial transactions, can enable early intervention.[287] Routine medical check-ups should also provide opportunities to identify signs of abuse or neglect.

Prison staff should be trained to recognize common age-related challenges, such as decreased mobility, hearing and vision impairments, and cognitive changes, so that they can become more aware of the impact of these disabilities and better support the aging population in their facilities.[288] For example, an older incarcerated person who seems to be disobeying orders may actually have a hearing impairment; through improved training and awareness, officers will know to not discipline the person and to potentially request a referral for medical evaluation of the person.[289]

Staff should also be trained in age-related behavioral changes, so they are equipped to respond empathetically to mood changes, memory loss, hearing/vision impairments, frustration, or anxiety, which are common in older people.[290] If discipline is absolutely necessary, it should prioritize redirection or education over punitive measures, recognizing that an elderly incarcerated person's misunderstandings or noncompliance may stem from confusion rather than willful defiance. Physical limitations must also be considered, ensuring that any disciplinary action does not exacerbate health issues or impair mobility.

Finally, many prison jobs require incarcerated people to be on their feet for long periods of time, to work in dangerous settings, or to endure challenging environmental conditions such as extreme heat or noise. Many elderly incarcerated people are not physically capable of work assignments that require such intense physical labor, and many assignments could compromise their health. Some elderly people with cognitive decline may also have difficulty following instructions from work supervisors. Accordingly, elderly incarcerated people should not be assigned to tasks that are physically demanding, and they should not face discipline if they are unable to perform assigned tasks. Instead, older individuals should be given job assignments that match their physical abilities.

7. Provide safe reporting mechanisms and independent oversight bodies to protect elderly people from harm

Due to their heightened vulnerability, elderly people in prisons must have access to safe ways to report dangers or harms they face. Fear of retaliation or skepticism about the effectiveness of reporting mechanisms often prevents them from seeking help. To address this, lawmakers should establish or expand the role of independent oversight bodies specifically designed to facilitate reporting of unsafe conditions. Policymakers should also create mechanisms that ensure such reports will be thoroughly investigated and acted upon.

Each state should develop an independent corrections oversight body that monitors conditions in state prison facilities and addresses concerns of incarcerated people and their loved ones. As of June 2025, at least 19 states, along with the District of Columbia and the federal system, have some form of external prison oversight mechanism,[291] and legislative bills to establish oversight bodies are pending in a number of other states. These correctional oversight bodies, if given adequate authority, can help ensure the safe treatment of elderly individuals in prison and can also identify needs that are not being met.

To provide an extra layer of correctional oversight, lawmakers should consider tapping other types of oversight bodies for assistance with addressing the needs of elderly incarcerated people. Specifically, the federal Older Americans Act mandates that each state establish an Ombudsman Program that addresses complaints and advocates for improvements in systems providing long-term care for vulnerable populations, such as nursing homes and assisted-living facilities.[292] Typically, these responsibilities fall to Long-Term Care Ombudsmen who work under the Department of Health and Human Services.[293] Congress should expand the mandate in the Older Americans Act and allow these ombudsmen to also handle similar responsibilities for elderly individuals in prisons, jails, and other places of detention.

Similarly, every state has a Protection and Advocacy (P&A) agency, as mandated by federal law, that advocates for the rights of people with physical and mental disabilities.[294] Since many elderly people

in prison meet those criteria, P&A organizations can also be encouraged to support the needs of this population by addressing their complaints. P&A organizations hold great authority; that power needs to be exercised much more robustly in carceral settings than is currently the case in most jurisdictions. For example, unlike attorneys, P&As have the power to enter prisons and other carceral facilities unannounced, where they can interview incarcerated people, review records, document systemic violations, and advocate for the rights of people with disabilities.[295] Through a formal partnership with corrections agencies, and ideally with additional funding from lawmakers, P&A organizations (as well as Long-Term Care Ombudsmen) could conduct regular prison visits to meet with elderly incarcerated people and operate a hotline for incarcerated people and their loved ones, providing them with a trusted, neutral party to report concerns. Such partnerships could enhance transparency and accountability to ensure that the specific needs and concerns of elderly people are heard and acted upon.

8. Provide hospice services for elderly incarcerated people facing terminal illness and implement peer caregiver programs

We recommend that state departments of correction provide increased hospice services for incarcerated elders facing terminal illness. First, correctional agencies should establish hospice units for qualifying elderly people to receive palliative care. Correctional agencies should also implement peer caregiver programs in hospice and dementia facilities, and provide appropriate training, support, and supervision of peer caregivers.

Elderly people in prison who are terminally ill often require palliative care to assist with debilitating pain and to help cope with adverse side effects from medical treatments. Whenever possible, elderly people facing the need for end-of-life care should be given compassionate release to a community-based hospice facility or otherwise be allowed to return home to their loved ones on humanitarian grounds. As previously discussed, prisons are ill-equipped to provide the specialized care needed for terminal patients.

As a much less desirable alternative, prison agencies could designate hospice care units within the prison. At the time of this publication, there exist only an estimated 75-80 prison hospice programs in the United States, including the well-known hospice program at California Medical Facility.[296] Put differently, fewer than 5% of American prisons have designated hospice care available for elderly incarcerated people.[297] As the national prison population ages and more people are serving life without parole sentences, the need for hospice care is ever more urgent. Prison hospice facilities should have a dedicated and caring multidisciplinary team of service providers equipped to provide end-of-life care, including peer caregivers[298] and specially trained staff members. The hospice facilities should have liberal visitation policies, flexible policies for treatment, and computer-based learning interventions.[299]

Correctional agencies should also implement peer caregiver programs in hospice and dementia facilities and provide peer caregivers with appropriate training, support, and supervision. Peer caregiver programs train incarcerated people to serve as hospice and palliative caregivers and grief companions to their aging and dying peers.[300] The peer caregiving approach can create a supportive environment for all members of the prison community. For example, the Humane Prison Hospice Project operates peer caregiver

programs in prisons across California, building upon established communities of care that already exist among incarcerated people within facilities.[301]

Peer caregiver programs in prison hospice facilities offer numerous benefits for both patients and caregivers, but the caregivers need appropriate training, support, and supervision to ensure that they are equipped for their roles and are not traumatized by their experiences.[302] Prison officials could rely on community partnerships (with organizations such as the Humane Prison Hospice Project, for example) to provide training for peer caregivers. Training programs have been developed in other countries, including Australia and Great Britain, and researchers recommend a computer-based training template that includes courses on nursing, standard precautions, loss and grief, and the role of incarcerated caregivers in one's final hours.[303] This type of training should complement formal nursing training, supervision, and support.

9. Address the need for dementia care

Relatedly, people with dementia are particularly vulnerable in the prison setting because, due to the neurodegenerative nature of the disease, they often cannot follow directions from staff, cannot remember rules, are at risk of injuries, and are subject to exploitation from other people who are incarcerated. To protect them and ensure that they have the care they need, prisons should have dedicated memory care units with specially trained staff and peer caregivers. As with hospice facilities, it would be preferable for these dementia units to be located in community-based settings rather than in expensive, high-security prisons. But wherever the dementia units are located, it is critical to remove affected individuals from the general prison population and ensure that they have the care they need in a dignified environment.

Conclusion

Through the reforms recommended in this report, advocates, lawmakers, and correctional officials alike can work together to significantly shrink America's bloated prison population. By substantially reducing the elderly incarcerated population nationwide, effectively addressing their reentry needs, and better protecting aging incarcerated people left on the inside, we would reverse the tide of elderly incarceration in America, better protect the health and safety of an extremely vulnerable population, and create substantial cost savings to be reinvested into the community — all without putting public safety at risk. It's time to get to work.

Methodology

Approach to Current Research

Our research for this report focused on people aged 55 and over who are incarcerated at a state or federal prison across the United States. Due to resource constraints, we did not include data on elderly incarcerated people in county jails, local detention facilities, or U.S. territories. To compare the population trends and demographic characteristics of the elderly incarcerated population in every state, we used publicly available data from the U.S. Department of Justice's Bureau of Justice Statistics (BJS) and annual statistical reports that were publicly available from state Departments of Correction (DOCs). Additionally, to analyze the fiscal impact of elderly incarcerated people on DOC budgets, this report uses publicly available data from state financial reports by DOCs to their respective legislatures.

BJS collects data from state prison agencies and the Federal Bureau of Prisons and reports it through various data tools, including the "Prisoners" series,[304] the Survey of Prison Inmates,[305] and the Corrections Statistical Analysis Tool (CSAT)[306] — the three BJS sources we used for several figures in this report. Data reported through these tools includes population trends and characteristics of incarcerated people (age, race, gender, etc.). The "Prisoners" series provided year-end population data, while the CSAT allowed us to generate queries using various point-in-time data, including year-end and admissions data. The CSAT and the Survey of Prison Inmates enabled us to glean data from each state about the incarcerated population housed at a state or federal prison. The source of data we used for each figure is cited in our report.

For information that could not be gleaned through BJS data, we supplemented our work with data we obtained directly from DOCs through public records requests. Again, the source of data for each figure is cited in our report. Specifically, in addition to asking for the percentage of people incarcerated in each state's system who are aged 50[307] and over, we requested the following data from all states about people aged 50 and over in their state prison systems:

- the gender breakdown;
- the racial and ethnic breakdown;
- the commitment offenses for this group of people aged 50 and over;
- recidivism rates of people aged 50 and over who were released from state prison custody from January 1, 2020, and onward;

- the average annual cost, per person, of incarcerating people aged 50 and over;
- the average annual cost, per person, of providing health care for people aged 50 and over;
- the average annual parole cost, per parolee aged 50 and over, under correctional supervision;
- the number of COVID cases of incarcerated people aged 50 and over from January 1, 2020 and onward; and
- the number of COVID-related deaths of all incarcerated people from January 1, 2020 and onward.

We mailed the above public records requests to each state's correctional department and received responses from 40 states; 10 states did not respond to our records request at all.[308] Of the 40 that responded, several did not submit datasets for all of the above requests, informing us that they do not track certain information. For example, oftentimes DOCs informed us that they do not track the cost of providing health care for incarcerated people 50 and up, the commitment offenses for this group, recidivism rates, or the average parole costs per aging parolee. We were therefore unable to obtain responsive records on each topic, and DOC responses to our records requests varied immensely. State responses to these public records requests are available upon request.

To ensure accurate analyses of our data, we consulted with Katherine Rittenhouse, an assistant professor at the Lyndon B. Johnson School of Public Affairs at The University of Texas at Austin and an applied microeconomist. We are grateful for the guidance she provided on the quantitative analyses that informed the data and cost sections of this report. While her expertise was extremely helpful for these analyses, any errors that remain are ours alone.

Limitations

The findings in this report are limited by the quality of the data we obtained from the above sources. While using publicly available sources allowed us to gather the most comprehensive data available about elderly people who are incarcerated across the United States, there were still notable inconsistencies that limited our analyses.

First, every figure in the report represents our analysis of the most recent available data on the elderly incarcerated population in the United States. However, the most recent year for which our sources collected and reported data differs by data type. For example, while most of the figures in our report that analyze *national* population trends draw on "year-end" data collected and reported by BJS in 2024, two of our national analyses draw on "admissions" data from 2021, the most recent year for which BJS collected and reported this type of data. The title of each figure in the report lists the year the data was collected and is cited accordingly.

Moreover, our state-by-state and state-specific analyses contain notable differences between data sources. Specifically, in the Data Profile section of our report, most of the state data represented in Figures 3 and 4 comes from data collected by BJS in 2021; however, the data we generated using the CSAT did not include data for four states. To develop a comprehensive, 50-state analysis of the elderly

incarcerated population, we gathered data about the incarcerated population in these four states — Arizona, Michigan, New Jersey, and New Mexico — from other sources, some of which reported data from years other than 2021. We gathered a year-end count of the incarcerated population in New Mexico for 2017, the most recent year for which BJS collected and reported the data. We gathered year-end population counts from 2024 that the prison agencies in Arizona and New Jersey collected and reported in their respective states' annual statistical reports from the same year — the only year the annual statistical report was available from those states. We gathered the year-end population count from 2021 that Michigan's Department of Corrections collected and reported in its annual statistical report that year. These differences are identified and explained in a footnote to Figure 3, and our sources for these figures are listed in Appendix A.

Our analyses were also limited by the way the publicly available sources report data about the age of the incarcerated population. BJS and many state DOCs report age data in ranges rather than in individual years, which limited our ability to analyze population trends and characteristics of elderly incarcerated people by single-year age. For example, BJS reports age data using the age ranges of 5-6 years, which meant we could only develop estimated totals in our analysis, represented in Figure 10. States also report age data in ranges, and there is wide variation between states on the size of these ranges. For example, Massachusetts reports age data about its incarcerated population in ranges that span 10 years or more (e.g., 50-59 and 60-61+), whereas Arizona reports age data in broad ranges (e.g., 41-54 years, 55-64 years, and 65+ years).

Additionally, BJS and many state DOCs do not report data on some of the queries we attempted to generate on two or more variables. For example, we could obtain data on the "age" and "offense type" variables from only a small sample of states whose DOCs include this data in their annual statistical reports. This limited our ability to conduct more comprehensive national analyses of the types of offenses for which elderly incarcerated people are serving sentences. Relatedly, the definition of "violent" and "non-violent" offenses varies among states. We accounted for these differences by including a description of each state's definition of these offense categories in Appendix A.

It is also important to note that the vast majority of our figures represent analyses that draw on data about incarcerated people aged 55 years and older, even though there is no established age at which incarcerated people are considered "elderly."[309] While the process of "accelerated aging," whereby the age threshold at which an incarcerated person is considered "elderly" or "geriatric" is lower than for people who are not incarcerated, is well-established in the research, researchers have yet to agree on an exact age at which incarcerated people should be considered "elderly."[310]

That said, because multiple studies have shown that, generally, people in prison appear 10-15 years older than their non-incarcerated counterparts,[311] we used 55 years old as the lower age limit for the analyses in this report, with one notable exception. In Figure 14, we analyze data from a sample of states to better understand the types of offenses for which elderly incarcerated people are serving a prison sentence. Massachusetts — one of the states whose data we analyzed — reports offense type in age ranges that span 10 years or more (e.g., 50-59 and 60-61+), limiting our ability to analyze the 55+ population in that state. Because so few states report data on both the "age" and "offense type" variables, we chose not to exclude Massachusetts from our sample. Nevertheless, we identified the difference in the lower age limit

in a citation for Figure 14. Because the percentage of elderly incarcerated people serving a sentence for a non-violent offense is significantly different from the percentage of elderly incarcerated people serving a sentence for a violent offense, we suspect that our findings would not significantly differ if we used the higher 55 years or older age limit.

Lastly, the publicly available sources we used for the report did not provide data on the fiscal cost of incarcerating elderly people that prison agencies bear. Instead, our fiscal analyses draw on state population data and a state's budget for its prison agency.

Appendices

Appendix A: Sources Of Data Regarding State-Level Prison Populations

In addition to state responses to our public records requests (available upon request due to the highly variable nature and format of each state's response, as discussed in the Methodology section above), the following publicly-available sources, primarily from state Departments of Corrections, were used for our statistical and descriptive analyses of elderly prison populations:

Figure 3: Percentage of Incarcerated People Aged 55+ by State, 2021

U.S. Department of Justice Bureau of Justice Statistics Corrections Statistical Analysis Tool, https://csat.bjs.ojp.gov/advanced-query (Date accessed: April 2025) (Retrieved from custom tables through the following query: Query Type: Offender Characteristics, Category: Year-end Population, Sex: All, Variable 1: Age on December 31 of the Reporting Year, Jurisdiction: All, Year: 2021.), plus the following sources:

Arizona

Arizona Department of Corrections Rehabilitation and Reentry (November 2024), p. 4, https://corrections.az.gov/sites/default/files/documents/reports/MonthlyDataReport/ADCRR_MDR%20-%20November%202024_FINAL.pdf.

Michigan

Michigan House Fiscal Agency (2022), "Michigan Department of Corrections 2021 Statistical Report," pp. C-69, C-70;

https://www.michigan.gov/corrections/-/media/Project/Websites/corrections/Files/Statistical-Reports/Statistical-Reports/2021-Statistical-Report.pdf?rev=771589b8a67d4beab1df90d5a359b8a4&hash=6DEAF68B2521637574AE97B2416ADEA7.

New Jersey

New Jersey Department of Corrections (2024), "Incarcerated Persons in New Jersey Correctional Institutions on January 1, 2024, By Age," p. 23, https://www.nj.gov/corrections/pdf/offender_statistics/2024/By_Age_2024.pdf.

Figure 4: Size of Elderly Incarcerated Population (Aged 55+) by State

U.S. Department of Justice Bureau of Justice Statistics Corrections Statistical Analysis Tool, https://csat.bjs.ojp.gov/advanced-query (Date accessed: April 2025) (Retrieved from custom tables through the following query: Query Type: Offender Characteristics, Category: Year-end Population, Sex: All, Variable 1: Age on December 31 of the Reporting Year, Jurisdiction: All, Year: 2021.), plus the following sources:

Arizona

Arizona Department of Corrections Rehabilitation and Reentry (November 2024), p. 4, https://corrections.az.gov/sites/default/files/documents/reports/MonthlyDataReport/ADCRR_MDR%20-%20November%202024_FINAL.pdf.

Michigan

Michigan House Fiscal Agency (2022), "Michigan Department of Corrections 2021 Statistical Report," pp. C-69, C-70;

https://www.michigan.gov/corrections/-/media/Project/Websites/corrections/Files/Statistical-Reports/Statistical-Reports/2021-Statistical-Report.pdf?rev=771589b8a67d4beab1df90d5a359b8a4&hash=6DEAF68B2521637574AE97B2416ADEA7.

New Jersey

New Jersey Department of Corrections (2024), "Incarcerated Persons in New Jersey Correctional Institutions on January 1, 2024, By Age," p. 23, https://www.nj.gov/corrections/pdf/offender_statistics/2024/By_Age_2024.pdf.

Figure 11: Percent of Sentence Served by Elderly People (Aged 55+) Incarcerated in Texas, 2024

Texas Department of Criminal Justice, High Value Data Set, available: https://www.tdcj.texas.gov/kss_inside.html

Figure 12: Years Served Toward a Life Sentence by Elderly People Aged 55+ Incarcerated in Texas, 2024

Texas Department of Criminal Justice, High Value Data Set, available: https://www.tdcj.texas.gov/kss_inside.html

Figure 13: Breakdown of Elderly Incarcerated People (Aged 55+) by Offense Type, 2016

Bureau of Justice Statistics, Survey of Prison Inmates Data Analysis Tool, https://spi-data.bjs.ojp.gov/. (Retrieved from custom charts with the following inputs: Population: State prisoners, Topic: Criminal justice, Variable: Offense type. Under "More Filters" Group 1: Age at time of the interview, Group 1 Variable: 55 or older.)

Figure 14: Offense Types Committed by Elderly Incarcerated People in a Sampling of States, 2024

The data comes from the following sources:

- Arizona Department of Corrections Rehabilitation and Reentry data, "Power Bi Report." Power BI. Accessed October 29, 2024, https://app.powerbigov.us/view?r=eyJrIjoiNzlmN2VhODktNTYzZS00YmUzLTlhYzEtZWI1ZTIzZTc1YjhlIiwidCI6IjE5MGVhN2RmLTg5MjctNDgwMi05OTZiLTVhM2I5YjQ4YTM5OSJ9 (Retrieved from ADCRR dashboard with following inputs: Under "Age Group," both 55-64 and 65+ are selected. "Under Year and Month," October 2024 is selected).
- Massachusetts Department of Corrections data, "January 1 Snapshot Dashboard." Mass.gov, https://www.mass.gov/info-details/january-1-snapshot-dashboard. Accessed October 19, 2024. (Retrieved from MA DOC Dashboard, "Gov Offense" tab, "Age on Report Date." Note: Inputs 50-59 and 60-61+ are added together.).
- Illinois Department of Corrections data, "Prison Population Data Sets." IDOC. Accessed October 29, 2024. https://idoc.illinois.gov/reportsandstatistics/prison-population-data-sets.html. (Retrieved from Prison Population Data Set, Prison Population. Crime type and age are filtered in the data set.)

The definition of "violent" and "nonviolent" offense categories vary by state. The definitions that each state uses come from the following sources:

Arizona

A "violent offense" in Arizona means any of the following offenses, as set forth in ARS § 13-706(F)(1): First degree murder, second degree murder; aggravated assault resulting in serious physical injury or involving

the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument; dangerous or deadly assault by prisoner; committing assault with intent to incite to riot or participate in riot; drive by shooting; discharging a firearm at a residential structure if the structure is occupied; kidnapping; sexual conduct with a minor that is a class 2 felony; sexual assault; molestation of a child; continuous sexual abuse of a child; and violent sexual assault; burglary in the first degree committed in an occupied residential structure; arson of an occupied structure; arson of an occupied jail or prison facility; armed robbery; participating in a criminal street gang; terrorism; taking a child for the purpose of prostitution; child sex trafficking; commercial sexual exploitation of a minor; sexual exploitation of a minor; unlawful introduction of disease or parasite as prescribed by section 13-292, subsection A, paragraph 2 or 3.

Massachusetts

A "violent" offense falls within the definition of a "Person Offense" or "Sex Offense," as set forth in Mass. Gen. Laws c. 265, § 1 1-60.

Illinois

As set forth in 720 ILCS 5/, a "violent" offense means an offense in which bodily harm is inflicted or force is used against any person or threatened against any person; an offense involving sexual conduct, sexual penetration, or sexual exploitation; an offense involving domestic violence; an offense of domestic battery, violation of an order of protection, stalking, or hate crime; an offense of driving under the influence of drugs or alcohol; or an offense involving the possession of a firearm or dangerous weapon

Figure 15: Recidivism Rates for Elderly People in a Sampling of States

Data from Colorado and South Carolina came from state responses to our public records requests by the Colorado Department of Corrections and South Carolina Department of Corrections. To define "recidivism," Colorado's correctional department provided the three-year return rates (that is, the return rate to prison) for incarcerated people who were age 50 and older at the time of release. South Carolina provided the three-year recidivism rates for incarcerated people who were age 50 and older at the time of release, but did not specify in their data how they defined "recidivism" (e.g., by rearrests, convictions, or return rate).

Data from Florida came from the Florida Policy Project: Florida's Aging Prison Population: Challenges and Policy Recommendations. November 2023, https://floridapolicyproject.com/wp-content/uploads/2023/11/Report-FPP-Elderly-Report_Final10.15.23.pdf; see also https://fdc-media.ccplatform.net/content/download/2003/file/FDC%20Recidivism%20Report%202018%20Cohort.pdf. The Florida Department of Corrections measures "recidivism" as a person's return to prison.

Appendix B

Explanation Of Calculations

Figure 10: Years Served by Elderly Incarcerated People (Aged 55+) Across the U.S., 2021

The estimated total number of elderly incarcerated people who are currently incarcerated:

To calculate the estimated total number of elderly people incarcerated in the U.S. as of 2021, we began by subtracting the year of admission from 2021, the year BJS collected the data, which gave us the number of years served. Then, we added the number of years served to the lower bound of their age range at admission (the lower bound of each range were 18 years old, 25 years old, 35 years old, 45 years old, 55 years old), which gave us the lower bound of their current age range. The lower bound is the youngest possible age in a given range. We also added the number of years served to the upper bound of their age range at admission (24 years old, 34 years old, 44 years old, 54 years old, and 55 years old using the ranges listed above) to determine the upper bound of their current age range. The upper bound is the oldest possible age in a given range (for the oldest range, we used age 55 as a proxy).

To determine the total number of elderly incarcerated people, aged 55 and older as of 2021, we added together the number of individuals in every current age range that had a lower bound age of 55 years or older. Because the lower bound of a given age range is the youngest possible age, the resulting total–114,601 people who are 55 years or older as of 2021–is the minimum number of elderly incarcerated people. This is likely an underestimate because it excludes people whose current age falls within ranges that have an upper bound age of 55 years or older but a lower bound range of younger than 55 years.

For example, the data showed that as of 2021, 1,925 incarcerated people were admitted to prison in the year 2000 and were between the ages of 25 and 34 at admission. If all 1,925 people were 34 years old when they were admitted to prison, they would have been 55 years old as of 2021 and included in our analysis. However, if all 1,925 people were 25 years old when they were admitted to prison, they would have been only 46 years old as of 2021 and excluded from our analysis.

By comparison, we calculated the total number of elderly incarcerated people using the number of individuals in every current age range that had an upper bound age of 55 years or older. Because the

upper bound of a given age range is the oldest possible age, the resulting total – 238,441 – is the maximum number of elderly incarcerated people. This is likely an overestimate because it includes an unknown number of people whose current age falls within a range with an upper bound age of 55 years or older but a lower bound age of younger than 55 years.

It is also important to note that the minimum number of elderly incarcerated people (114,601 people) more closely aligned with the total provided in other data sources (see the yearly totals in Figure 1).

The estimated total number of elderly incarcerated people who have spent at least half their life in prison:

To calculate the number of elderly incarcerated people who have spent over half their lives serving their sentence as of 2021, we began by subtracting the year of admission from 2021, the year BJS collected the data, which gave us the number of years served. Then, we added the number of years served to the lower bound of their age range at admission (the lower bound of each range were 18 years old, 25 years old, 35 years old, 45 years old, 55 years old), which gave us the lower bound of their current age range. We used the lower bound of each age range at admission in our calculation because it is a more conservative estimate for the same reasons described above (in our previous summary of our estimated calculation of the total number of elderly incarcerated people as of 2021).

To determine the number of years a person would have had to serve to reflect half of their life in prison, we divided the lower bound age of each person in half. We compared this value to the number of years served and included in our total count the people for whom the number of years served was equal to or greater than half of their age (as of 2021).

Endnotes

1 We use, whenever possible, the phrases "incarcerated person" or "incarcerated people" to refer to the human beings locked in carceral facilities. For an explanation about why words matter when applied to our prison systems, see The Marshall Project, *The Language Project*, https://www.themarshallproject.org/2021/04/12/the-language-project [https://perma.cc/M7NC-J9BN] (last visited Jul. 29, 2025).

2 For more on PJIL's work, see The Prison and Jail Innovation Lab (PJIL), https://pjil.lbj.utexas.edu/ [https://perma.cc/G574-5VRJ] (last visited Jul. 29, 2025). For more on NPP's work, see *Prisoners' Rights*, https://www.aclu.org/issues/prisoners-rights [https://perma.cc/HK4L-ZF6T] (last visited Jul. 29, 2025).

3 It is widely recognized that incarcerated people experience accelerated aging, brought on by the many stressors of life in prison (e.g., poor access to health care, inadequate nutrition, exposure to violence). Farah Acher Kaiksow, Lars Brown & Kristin Brunsell Merss, *Caring for the Rapidly Aging Incarcerated Population: The Role of Policy*, J. of Gerontological Nursing (2023), https://doi.org/10.3928/00989134-20230209-02. When this report utilizes language such as "elderly," "geriatric," or "aging," we are referring to an incarcerated person over the age of 55, unless otherwise specifically noted.

4 The quotes used in this report are from testimonials provided by incarcerated clients of the ACLU National Prison Project. The names, precise ages, and exact locations of incarcerated people quoted in this report are anonymized for privacy. They offered these testimonials to the National Prison Project during in-person prison visits, as well as through written letters, giving us express permission to include their comments anonymously.

5 Caroline Wolf Harlow, *Comparing Federal and State Prison Inmates, 1991*, U.S. Dep't of Just., Bureau of Just. Stats., Sept. 1994, at 2, https://bjs.ojp.gov/content/pub/pdf/cfspi91.pdf [https://perma.cc/2BFM-VU43]; E. Ann Carson, *Prisoners in 2021—Statistical Tables*, U.S. Dep't of Just., Bureau of Just. Stats., Dec. 2022, at 22, https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/p21st.pdf [https://perma.cc/RLN5-DBYU].

6 *See id.*

7 E. Ann Carson, *Prisoners in 2019*, U.S. Dep't of Just., Bureau of Just. Stats., Oct. 2020, https://bjs.ojp.gov/content/pub/pdf/p19.pdf [https://perma.cc/VHN7-2A94].

8 *Id.* at 3, 15. *See also* E. Ann Carson & William J. Sabol, *Aging of the State Prison Population, 1993-2013*, U.S. Dep't of Just., Bureau of Just. Stats., May 2016, at 27, https://bjs.ojp.gov/content/pub/pdf/aspp9313.pdf [https://perma.cc/GA33-HDBZ].

9 Ashley Nellis, *Nothing But Time: Elderly Americans Serving Life Without Parole*, The Sent'g Proj., June 23, 2022, https://www.sentencingproject.org/reports/nothing-but-time-elderly-americans-serving-life-without-parole/ [https://perma.cc/J7RS-PSXP].

10 *See, e.g.*, *The Effects of Aging on Recidivism Among Federal Offenders*, U.S. Sent'g Comm'n, Dec. 7, 2017, at 2, https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171207_Recidivism-Age.pdf [https://perma.cc/B8VB-64A9].

11 *At America's Expense: The Mass Incarceration of the Elderly*, Am. C.L. Union, June 13, 2012, https://www.aclu.org/publications/americas-expense-mass-incarceration-elderly [https://perma.cc/QDX7-R33S].

12 *Id.* at ii.

13 Nellis, *supra* note 9, at 2.

14 Kaiksow, Brown & Merss, *supra* note 3.

15 *See, e.g.*, Jamie Santa Cruz, *Rethinking Prison As A Deterrent to Future Crime*, JSTOR Daily (Jul. 18, 2022), https://daily.jstor.org/rethinking-prison-as-a-deterrent-to-future-crime/ [https://perma.cc/2Y92-LJGJ] ("A large body of research finds that spending time in prison or jail doesn't lower the risk that someone will offend again. In some instances, it actually raises the likelihood that they will commit future crimes."). *See also* Becky Feldman, *The Second Look Movement: A Review of the Nation's Sentence Review Laws*, The Sent'g Proj. (Mar. 24, 2025), https://www.sentencingproject.org/reports/the-second-look-movement-a-review-of-the-nations-sentence-review-laws/ [https://perma.cc/V2JT-RE2D] ("[R]esearch has established that lengthy sentences do not have a significant deterrent effect on crime and divert resources from effective public safety programs.").

16 *How Mandatory Minimums Perpetuate Mass Incarceration and What to Do About It*, The Sent'g Proj. (Feb. 14, 2024), https://www.sentencingproject.org/fact-sheet/how-mandatory-minimums-perpetuate-mass-incarceration-and-what-to-do-about-it/ [https://perma.cc/92AY-3JNL].

17 18 U.S.C. § 3551 (1984) et seq.

18 *See generally 2011 Report to the Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System*, U.S. Sent'g Comm'n, https://www.ussc.gov/research/congressional-reports/2011-report-congress-mandatory-minimum-penalties-federal-criminal-justice-system.

19 James Cullen, *Sentencing Laws and How They Contribute to Mass Incarceration*, Brennan Ctr. for Just. (Oct. 5, 2018), https://www.brennancenter.org/our-work/analysis-opinion/sentencing-laws-and-how-they-contribute-mass-incarceration [https://perma.cc/D25U-PZ3V] ("While mandatory minimums have been in place in some states since the 1950s, their use grew after the 1984 Sentencing Reform Act, which added significant mandatory minimums for many federal crimes and abolished federal parole. States followed, and soon mandatory minimums became a standard response to drug epidemics and crime spikes.").

20 18 U.S.C. § 3551 (1984) et seq.

21 Timothy Hughes, Doris James Wilson & Allen J. Beck, *Trends in State Parole, 1990-2000*, U.S. Dep't of Just., Bureau of Just. Stats., Oct. 2001, https://bjs.ojp.gov/content/pub/pdf/tsp00.pdf [https://perma.cc/6V7J-RYPX]; Cornell Law School, Determinate Sentence, Legal Information Institute, https://www.law.cornell.edu/wex/determinate_sentence#:~:text=A%20determinate%20sentence%20is%20a,by%20the%20Wex%20Definitions%20Team%20%5D [https://perma.cc/YB5C-YV22].

22 Jorge Renaud, Grading the parole release systems of all 50 states, Prison Pol'y Initiative (Feb. 26, 2019), https://www.prisonpolicy.org/reports/grading_parole.html [https://perma.cc/XJF9-KJC5].

23 Richard Rosenfeld, Overview and Reflections, Council on Crim. Just., https://councilofcj.foleon.com/reports/crime-bill/overview-and-reflections [https://perma.cc/E4TD-LAHL].

24 "Truth in Sentencing," Paying More Money to Make Our Communities Less Safe, Fams. Against Mandatory Minimums (Apr. 22, 2024), https://famm.org/wp-content/uploads/2024/04/FAMM-Truth-in-Sentencing-Fact-Sheet.pdf [https://perma.cc/63UU-89PF].

25 Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796, 1814–17 (1994); Violent Offender Incarceration and Truth-in-Sentencing Incentive Formula Grant Program, U.S. Dep't of Just., Bureau of Just. Assistance, May 17, 2022, https://bja.ojp.gov/program/voi-tis/overview [https://perma.cc/V8AL-V2UB] ("The Violent Offender Incarceration and Truth-in-Sentencing (VOI/TIS) Incentive Formula Grant Program provided states with funding to build or expand correctional facilities and jails. . . . VOI/TIS grant funds allowed states to build or expand correctional facilities to increase the bed capacity for the confinement of persons convicted of Part 1 violent crimes . . . . Funds could also be used to build or expand temporary or permanent correctional facilities, including facilities on military bases, prison barges, and boot camps; to confine convicted nonviolent offenders and criminal aliens; or to free suitable existing prison space for the confinement of persons convicted of Part 1 violent crimes.").

26 Violent Crime Control and Law Enforcement Act of 1994, supra note 25.

27 *"Truth in Sentencing," supra* note 24.

28 Paula M. Ditton & Doris James Wilson, *Truth in Sentencing in State Prisons*, U.S. Dep't of Just., Bureau of Just. Stats., Jan. 1999, https://bjs.ojp.gov/content/pub/pdf/tssp.pdf] [https://perma.cc/R7M7-X533].

29 *Id.*

30 *"Truth in Sentencing," supra* note 24 at 2 (discussing the high costs of Arkansas' and South Dakota's new TIS laws).

31 Cullen, *supra* note 19.

32 Mia Bird, Omair Gill, Johanna Lacoe, Molly Pickard, Steven Raphael & Alissa Skog, *Three Strikes in California*, Cal. Pol'y Lab at the Univ. of Cal. (Aug. 30, 2022), https://capolicylab.org/three-strikes-in-california/ [https://perma.cc/C24U-5QMF].

33 Stanford L. Sch., *Three Strikes* Basics, https://law.stanford.edu/three-strikes-project/three-strikes-basics/ [https://perma.cc/8S2T-AAUZ].

34 *Still Life: America's Increasing Use of Life and Long-Term Sentences*, The Sent'g Proj., May 3, 2017, https://www.sentencingproject.org/reports/still-life-americaos-increasing-use-of-life-and-long-term-sentences/ [https://perma.cc/D76N-8X8B].

35 Nellis, *supra* note 9.

36 Nellis, *supra* note 9. *See also No end in sight: America's enduring reliance on life imprisonment*, The Sent'g Proj., Feb. 17, 2021, https://www.sentencingproject.org/reports/no-end-in-sight-americas-enduring-reliance-on-life-sentences/?gad_source=1&gad_campaignid=11369514860&gbraid=0AAAAACMYpofG8RSa_IOdQ3I5pzbHXBBM.

37 For example, in May 2025, one of the oldest incarcerated people in the country died at William Donaldson Correctional Facility in Alabama, after spending decades of his life behind bars. He was 106 years old. ABC 33/40, 106-year-old convicted murderer dies in Alabama prison,

cause under investigation (May 22, 2025), https://abc3340.com/news/local/106-year-old-convicted-murderer-dies-in-alabama-prison-cause-under-investigation [https://perma.cc/5AF7-FWY6].

38 Emily Widra, The Aging Prison Population: Causes, Costs, and Consequences, Prison Policy Initiative (Aug. 2, 2023), https://www.prisonpolicy.org/blog/2023/08/02/aging/ [https://perma.cc/F9DA-PWZ6].

39 For example, the U.S. population of unhoused older adults has surged in recent years, and unhoused people face disproportionately high police contact. NPR, Seniors Are The Fastest-Growing Group Experiencing Homelessness. Why? (June 11, 2025), https://www.npr.org/2025/06/11/1253992705/1a-06-11-2025 [https://perma.cc/U7XF-5REW]; Kouyoumdjian et al., Interactions between Police and Persons Who Experience Homelessness and Mental Illness in Toronto, Canada: Findings from a Prospective Study, https://pmc.ncbi.nlm.nih.gov/articles/PMC6783665/ (last visited Aug. 23, 2025) ("The odds of any police interaction during the past 90 days was 47% higher for those who were homeless compared to those who were stably housed."). There is also some research supporting that the growth in elderly arrests is driven, in part, by drug law violations. For example, the John Jay College of Criminal Justice reports that, while the drug arrest rate for adults age 50 and older are still the lowest overall (124 arrests per 100,000 people as of 2018, compared to 1,610 arrests per 100,000 people for people age 18-20), elderly arrest rates for drug-related offenses have still increased. Jeffrey A. Butts, Older Adults Responsible for Total Growth in Drug Arrests Older Adults Responsible for Total Growth in Drug Arrests (Nov. 11, 2019), https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1431&context=jj_pubs. Determining the definitive cause of the small uptick in elderly arrests is outside the scope of this report.

40 *See, e.g.*, *Recidivism Rates: What You Need to Know*, Council on Crim. Just., https://councilonj.org/recidivism_report/ [https://perma.cc/NG7R-WNXG] ("Rearrest rates remain stubbornly high. The cumulative five-year rearrest rate of people exiting prison in 2012, at 71%, was six percentage points lower than that of people released in 2005 (77%). The rate of rearrest for violent offenses was virtually unchanged, while rearrests for property offenses declined by three percentage points, rearrests for drug violations declined by six percentage points, and rearrests for public order offenses declined by four percentage points.").

41 See, e.g., Nazgol Ghandnoosh & Kristen M. Budd, *Incarceration and Crime: A Weak Relationship*, The Sent'g Proj., (June 13, 2024), https://www.sentencingproject.org/reports/incarceration-and-crime-a-weak-relationship/ [https://perma.cc/7JN6-GAZZ] ("Reviewing the four-decade period when incarceration levels increased without any consistent relationship with crime rates, the National Research Council . . . concluded that 'the increase in incarceration may have caused a decrease in crime, but the magnitude of the reduction is highly uncertain and the results of most studies suggest it was unlikely to have been large.'").

42 *Id.* ("Incarceration often fails to offer adequate rehabilitative services that can address factors such as economic disadvantage and/or trauma that contribute to crime, and sometimes exacerbates these problems through the experience of incarceration and its associated collateral consequences."). And because prisons focus on punishment over rehabilitation, oftentimes people leave prison worse off than when they entered.

43 *Still Life*, *supra* note 34.

44 We note the limitations of our analyses in the Methodology section at the end of the report.

45 Our research for this report focused on elderly people who are incarcerated at a state or federal prison in every state; it did not include elderly incarcerated people at county jails or other local detention facilities. See the Methodology section for more information.

46 While the Bureau of Justice Statistics (BJS) provided the most comprehensive national data on the elderly incarcerated population, the data we generated from the Corrections Statistical Analysis Tool (CSAT) covered only 46 states. To complete the national picture, we obtained data for three of the four remaining states—Arizona, Michigan, and New Jersey—from their respective Department of Corrections annual statistical reports. Of these, only Michigan made its 2021 report publicly available; data for Arizona and New Jersey comes from their 2024 annual reports. For the remaining state, New Mexico, we relied on a BJS population count as of December 31, 2017—the most recent year-end data available. We were unable to obtain an annual statistical report from the New Mexico Department of Corrections. See Appendix A for a more detailed description of our source data.

47 U.S. Bureau of Justice Statistics and state Department of Corrections statistical reports. For the states marked by an asterisk, see Note 45 and Appendix A.

48 *See generally Juvenile Justice in California: 2022*, Cal. Dep't of Just., https://data-openjustice.doj.ca.gov/sites/default/files/2023-06/Juvenile%20Justice%20In%20CA%202022f.pdf [https://perma.cc/9YS9-RVAU].

49 E. Ann Carson & Rich Kluckow, *Prisoners in 2022 – Statistical Tables*, U.S. Dep't of Just., Bureau of Just. Stats., Nov. 2023, https://bjs.ojp.gov/document/p22st.pdf [https://perma.cc/ZWQ8-54VX]. Note that the data presented here reflects a binary definition of gender as reported by correctional agencies.

50 *Id.*

51 *Id.* at 21. The term "Hispanic" comes directly from BJS reporting of the data, though we note that "Latine" is more accurate. In addition to the racial categories listed in the text, an additional 2% were American Indian or Alaska Native, and 1% were Asian,

Native Hawaiian or Other Pacific Islander. *Id.* The remaining 11% includes people of two or more races and other races that were not included in BJS's named categories. *Id.*

52 *Id.* The "Other" category includes people of two or more races and non-Latine races that are not already included in the other named categories.

53 Bureau of Just. Stats., *Corrections Statistical Analysis Tool (CSAT)*, https://csat.bjs.ojp.gov/advanced-query [https://perma.cc/JZ9R-R8W3]. The statistics provided in this section were calculated using the data generated from the "Age at Admission" and "Year Admitted" query listed in this citation. The data generated for this analysis is from 2021 because that is the most recent "Age at Admission" data that BJS collects and reports through CSAT. While CSAT provides the most comprehensive national data on currently incarcerated people, it does not report individualized age data. Instead, CSAT reported the number of people currently incarcerated (as of 2021) according to the year they were admitted to prison and their age range at admission using preset age ranges (18 to 24 years, 25 to 34 years, 35 to 44 years, 45 to 54 years, and over 55 years). For example, as of 2021, 11 people were incarcerated who were admitted to prison in 1965 and who were between 18- and 24-years-old at admission. Because the age data was reported to us in ranges, we were only able to estimate the total number of elderly people that are currently incarcerated. For a detailed explanation of our calculations, see Appendix B.

54 *Id.* (using "Age at Admission" and "Year Admitted" to generate the data used for this analysis). The ages in this dataset were provided in the ranges of 18 to 24 years, 25 to 34 years, 35 to 44 years, 45 to 54 years, and over 55 years. *Id.* By subtracting the year of admission from 2021, the year BJS collected the data, we were able to calculate the number of years elderly incarcerated people (aged 55+) had served.

55 As for the 49% of elderly people who have been incarcerated for less than ten years, see supra note 39 for a potential explanation.

56 The prefrontal cortex is responsible for judgment, impulse control, decision-making, and long-term thinking. Rami M. El-Baba & Mark P. Schury, *Neuroanatomy, Frontal Cortex*, Nat'l Library of Medicine (May 29, 2023), https://www.ncbi.nlm.nih.gov/books/NBK554483/ [https://perma.cc/8BEY-9PKN].

57 See Coalition for Juvenile Justice, National Standards for the Care of Youth Charged with Status Offenses, https://juvjustice.org/wp-content/uploads/2025/04/SOS-6-National-Standards-Brief2.pdf (last visited Aug. 23, 2025).

58 Texas Dep't of Crim. Just., *Inside TDCJ*, https://www.tdcj.texas.gov/kss_inside.html [https://perma.cc/BGR2-SCR3] (last visited Jul. 29, 2025).

59 People with life sentences are analyzed separately because it is not possible to calculate the percentage of a life sentence without knowing how long the individual will live.

60 *Inside TDCJ*, *supra* note 58.

61 An additional 105 elderly people incarcerated in Texas are serving 200%–400% of their sentences (two to four times the length of their original sentence), but they are not included in Figure 11 so as not to obscure the chart's scale. If we were to include them in our total, 6,437 elderly incarcerated people (aged 55+) in Texas have served at least 50% of their sentence.

62 *Inside TDCJ*, *supra* note 58.

63 Bureau of Just. Stats., *Survey of Prison Inmates Data Analysis Tool (SPI DAT)*, https://spi-data.bjs.ojp.gov/ [https://perma.cc/249Z-GU43] (last visited July 14, 2025).

64 Bureau of Just. Stats., *Violent Crime*, https://bjs.ojp.gov/topics/crime/violent-crime (last visited July 14, 2025).

65 See Figure 13.

66 Matthew R. Durose & Christopher J. Mumola, *Profile of Nonviolent Offenders Exiting State Prisons*, Bureau of Just. Stats., Oct. 2004, https://bjs.ojp.gov/library/publications/profile-nonviolent-offenders-exiting-state-prisons [https://perma.cc/5BEP-V5C5].

67 The felony murder rule is a legal doctrine that holds that anyone who is involved in a felony may be held liable for murder if someone dies during the commission of the offense — regardless of whether they played no role in the death or had no intention to kill, or whether another person was responsible for the actual death. Cornell L. Sch., *Felony Murder Rule*, https://www.law.cornell.edu/wex/felony_murder_rule [https://perma.cc/VK8D-4G3W] (last visited July 14, 2025).

68 For a list of offenses that BJS includes in its "Violent" offense category, see E. Ann Carson & Rich Kluckow, *supra* note 49 at 30.

69 Note that Massachusetts's data in Figure 14 shows the offense type of elderly incarcerated people aged 50 and older whereas data from Arizona and Illinois shows the offense type of elderly incarcerated people aged 55 and older. Massachusetts and Arizona provided their data in age ranges, though the ranges differed. Massachusetts used the ranges 50-59 years and 60-61+ years whereas Arizona reports age data using the ranges 41-54 years, 55-64 years, and 65+ years. Illinois provided age data by single years,

allowing us to use a lower age limit of either 50 or 55 years old, and we opted to use 55 years old to maintain consistency with the other analyses in this report.

70 For a list of offenses that each state considers "violent," see Appendix A.

71 Kevin Light-Roth, *On Aging and Dying in Captivity*, Inquest (Mar. 13, 2025), https://inquest.org/on-aging-and-dying-in-captivity/ [https://perma.cc/AS7A-URU9]. He is a freelance writer currently incarcerated in Washington.

72 U.S. Const. amend. VIII.

73 Laura M. Maruschak, Marcus Berzofsky & Jennifer Unangst, *Medical Problems of State and Federal Prisoners and Jail Inmates, 2011-12*, U.S. Dep't of Just., Bureau of Just. Stats., Feb. 2015, at 10, https://bjs.ojp.gov/content/pub/pdf/mpsfpji1112.pdf [https://perma.cc/F7J9-ZMV5]. Chronic conditions are illnesses that are of a prolonged duration and cannot be prevented or cured by a one-time treatment. Ctr. for Disease Control, *About Chronic Diseases*, https://www.cdc.gov/chronic-disease/about/index.html [https://perma.cc/GZ3E-UXDK] (last visited Jul. 29, 2025).

74 Brie Williams et al., *Addressing the Aging Crisis in U.S. Criminal Justice Healthcare*, J. of the Am. Geriatric Soc'y, 2012, at 2, https://pmc.ncbi.nlm.nih.gov/articles/PMC3374923/ [https://perma.cc/L5F5-ZBQH].

75 Skarupski et al., *The Health of America's Aging Prison Population*, Epidemiologic Revs., Mar. 23, 2018, at 158, https://academic.oup.com/epirev/article/40/1/157/4951841.

76 U.S. Dep't of Just., Off. Inspector Gen., *The Impact of an Aging Inmate Population on the Federal Bureau of Prisons*, 2015, at 14–15, https://oig.justice.gov/reports/2015/e1505.pdf [https://perma.cc/BBZ5-FRCJ].

77 Jonah Beleckis, *Perpetuating Poverty: Formerly Incarcerated People Warn of 'Agonizing' Choices Around Wisconsin's Prison Copays*, Wis. Pub. Radio (June 8, 2022), https://www.wpr.org/perpetuating-poverty-formerly-incarcerated-people-warn-agonizing-choices-around-wisconsins-prison [https://perma.cc/U69S-7543]. For detailed examples of the many harms that delays in medical care and chronic understaffing can create, see Am. C.L. Union, *Federal Judge Issues Sweeping Remedial Order to Arizona Prison Officials*, https://www.aclu.org/press-releases/federal-judge-issues-sweeping-remedial-order-arizona-prison-officials [https://perma.cc/AH4B-4JQQ] (last visited Jul. 29, 2025).

78 Erin Kitt-Lewis & Susan J. Loeb, *Emerging Need for Dementia Care in Prisons: Opportunities for Gerontological Nurses*, J. of Gerontological Nursing, Feb. 1, 2022, at 3–5, https://pmc.ncbi.nlm.nih.gov/articles/PMC10131623/ [https://perma.cc/KM6B-8WPJ].

79 Sam McCann, *Health Care Behind Bars: Missed Appointments, No Standards, and High Costs*, Vera Institute of Just. (June 29, 2022), https://www.vera.org/news/health-care-behind-bars-missed-appointments-no-standards-and-high-costs [https://perma.cc/9FAK-KU97].

80 Nathaniel P. Morris & Matthew L. Edwards, *Addressing Shortages of Mental Health Professionals in U.S. Jails and Prisons*, J. of Corr. Health Care, Nov. 4, 2022, https://fpamed.com/wp-content/uploads/Morris-and-Edwards-2022-Addressing-Shortages-of-Mental-Health-Professional.pdf [https://perma.cc/V5RK-YYM8].

81 *Id.*

82 When there are fewer workers than necessary to operate facilities as planned, correctional authorities cut back on the things staff are needed to manage, and conditions get worse: people are stuck in 'lockdown' conditions, they're transferred around, housing units are consolidated, access to services and programming is limited, and fights break out. Brian Nam-Sonenstein & Emmett Sanders, *Why jails and prisons can't recruit their way out of the understaffing crisis*, Prison Pol'y Initiative (Dec. 9, 2024), https://www.prisonpolicy.org/blog/2024/12/09/understaffing/ [https://perma.cc/7FQP-4EST] ("It has become clichéd for corrections departments and news media to blame understaffing for nearly every problem in jails and prisons; everything would be so much better (the thinking goes) if departments simply had enough workers. This framing conveniently overlooks mass incarceration as a policy choice, restricting the universe of available policy solutions to greater investments in locking people up."). Instead, reducing incarceration rates "takes incarcerated people (and workers) out of harm's way while freeing up resources for more constructive uses in the community, which are far more effective at deterring crime and ensuring safety than criminalization." *Id.*

83 *See, e.g.*, Mario Koran, *Inside a 'Nightmare' Lockdown at a Wisconsin Prison*, N.Y. Times (July 2, 2024), https://www.nytimes.com/2023/08/19/us/wisconsin-prison-lockdown.html.

84 *Id.*

85 Hannah Beckler & Nicole Einbinder, *The untimely death of Christopher Cox*, Bus. Insider (Dec. 24, 2024), https://www.businessinsider.com/prison-medical-health-care-neglect-2024-12?investigative=67589c0bdb9a57fe962f34c2 [https://perma.cc/U2DY-FAED]; Jason Szep, Ned Parker, Linda So, Peter Eisler & Grant Smith, *Special Report: U.S. jails are outsourcing medical care — and the death toll is rising*, Reuters (Oct. 26, 2020), https://www.reuters.com/article/world/special-report-us-jails-are-outsourcing-medical-care-and-the-death-toll-is-idUSKBN27B1D6/.

86 Natalia Pires de Vasconcelos, *The Constitutive Contradictions of Prison Health Care in the United States*, The Petrie-Flom Ctr. (Apr. 18, 2025), https://petrieflom.law.harvard.edu/2025/04/18/the-constitutive-contradictions-of-prison-health-care-in-the-united-states [https://perma.cc/U2J4-JBJL].

87 Brian Nam-Sonenstein, *Cut-rate care: The systemic problems shaping 'healthcare' behind bars*, Prison Pol'y Initiative (Feb. 2025), https://www.prisonpolicy.org/reports/healthcare.html [https://perma.cc/DX3B-2R5R].

88 State Just. Inst., *State Courts Leading Change: Report and Recommendations*, Oct. 2022, at 9, https://www.sji.gov/mental-health-task-force-mhtf/.

89 Haugebrook et al., *Trauma, stress, health, and mental health issues among ethnically diverse older adult prisoners*, J. Corr. Health Care, Jul. 2010, https://pubmed.ncbi.nlm.nih.gov/20472867/.

90 State Just. Inst., *supra* note 88.

91 *See, e.g.*, Morris & Edwards, *supra* note 80 at 1 ("In a survey of corrections representatives from six states, 17 of 20 (85%) respondents agreed that their facility had difficulty filling open behavioral health positions.").

92 *Id.*

93 Brie Williams et al., *Medication Prescribing Practices for Older Prisoners in the Texas Prison System*, Am. J. for Pub. Health, Apr. 2010, at 756–61, https://pmc.ncbi.nlm.nih.gov/articles/PMC2836339/ [https://perma.cc/49WC-4WGR].

94 *See Inmates in solitary confinement 7 times more likely to harm themselves: Study*, CBS News (Feb. 13, 2014), https://www.cbsnews.com/news/inmates-in-solitary-confinement-7-times-more-likely-to-harm-themselves-study/ [https://perma.cc/J4JC-GA9S].

95 Katherine Miller et al., *Prevalence of Disability Among Older Adults in Prison*, JAMA Network Open, Dec. 27, 2024, https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2828503 ("Most notably, this population was almost 3 times as likely [than their community-dwelling peers] to report cognitive difficulty (20.84% vs 7.13%.")).

96 Nicole Mushero et al., *Detained and Cognitively Impaired: Reevaluating Screening Recommendations in Carceral Settings*, J. of Gen. Internal Medicine, at 3339-41, https://link.springer.com/article/10.1007/s11606-024-08934-0 [https://perma.cc/MM2U-PXH8].

97 John J. Kerbs & Jennifer M. Jolley, *Senior Citizens Behind Bars: Challenges for the Criminal Justice System* 53 (Lynne Rienner 2014).

98 *Id.*

99 Kitt-Lewis & Loeb, *supra* note 78.

100 Michele DiTomas, Dallas Augustine & Brie A. Williams, *Growing Older: Challenges of Prison and Reentry for the Aging Population*, Pub. Health Behind Bars, Oct. 26, 2021, at 70, https://doi.org/10.1007/978-1-0716-1807-3 [https://perma.cc/KG75-SYCY]. For example, urinary incontinence is a common functional impairment among elderly incarcerated people. One study found that nearly 14% of incarcerated people aged 50-60 and nearly 38% aged 60 and older reported urinary incontinence. *Id.* In prison, urinary incontinence is especially challenging for older adults to manage. Prisons do not always carry supplies such as briefs or diapers, and even when they do, incarcerated people can be charged a co-payment for them that they cannot afford. Close living quarters provide little privacy for dealing with incontinence, and odors can lead to the person being ridiculed or becoming a target of violence. Access to showers in prison is also limited. Managing incontinence in prison is therefore much more challenging than it is on the outside.

101 Kerbs & Jolley, *supra* note 97 at 47.

102 *Id.*; see also Keri Blakinger, *Toothless Texas inmates denied dentures in state prison*, Chron. (Sept. 23, 2018), https://www.chron.com/news/houston-texas/houston/article/Toothless-Texas-inmates-denied-dentures-in-state-13245169.php.

103 DiTomas et al., *supra* note 100.

104 42 U.S.C. §§ 12101 et seq.; 29 U.S.C. §§ 791 et seq.

105 *See Pa. Dept. of Corr. v. Yeskey*, 524 U.S. 206 (1998).

106 28 C.F.R. §§ 35.130(b)(1), (h). Prison/jail officials may only exclude an incarcerated person from a service, program, or activity if exclusion is "necessary for the safe operation" of the facility, but such safety requirements must be "based on actual risks, not mere speculation, stereotypes, or generalizations about individuals with disabilities," and requires substantial individualized analysis. 28 C.F.R. § 35.139(b).

107 28 C.F.R. §§ 35.150(a)(3), 36.302. Public entities must provide "reasonable modifications" in policies, practices, or procedures unless they can show that making the modifications would fundamentally alter the nature of the service, program, or activity or cause an undue financial

and administrative burden. *Id.* Financial burden is not measured as to the single cost, but rather in the context of all resources available for use in the operation of the agency, for example, the cost of hiring and providing a qualified sign language interpreter for a deaf person in an educational class in a prison should be measured not against the class budget or educational program, but rather the entire prison system. *Id.*

108 To qualify as a "disability," the impairment must be one that "substantially limits one or more major life activities." 42 U.S.C. § 12102(1)(A). Major life activities include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. "Disability" includes not only mobility impairments, but also sensory disabilities (blindness/vision impairments), communication disabilities (deaf/hearing or speech impairments), and cognitive and intellectual disabilities. Mental illness and serious chronic medical conditions also qualify as disabilities under the ADA.

109 *See generally Armstrong v. Wilson*, 124 F.3d 1019 (9th Cir. 1997), *cert. denied*, 524 U.S. 937 (1998).

110 Jennifer Bronson, et al., Disabilities Among Prison and Jail Inmates, 2011-12, U.S. Dep't of Just., Bureau of Just. Stats. (Dec. 2015), www.bjs.gov/content/pub/pdf/dpji1112.pdf [https://perma.cc/NVF4-JJNR] (national survey of almost 40,000 people incarcerated in more than 200 state and federal prisons, including at least one facility located in each state).

111 *Id.*

112 Nat'l Prison Project of the Am. Civ. Liberties Union, *Abandoned & Abused: Orleans Parish Prisoners in the Wake of Hurricane Katrina*, Am. Civ. Liberties Union (Aug. 9, 2006), at 57-85, https://www.aclu.org/publications/abandoned-abused-complete-report [https://perma.cc/6YFG-PAJ9].

113 Am. Civ. Liberties Union of Louisiana, *ACLU Report Details Horrors Suffered by Orleans Parish Prisoners in Wake of Hurricane Katrina*, Am. Civ. Liberties Union (Aug. 10, 2006), https://www.aclu.org/press-releases/aclu-report-details-horrors-suffered-orleans-parish-prisoners-wake-hurricane-katrina [https://perma.cc/566J-BLG4].

114 *Id.*

115 *Id.*

116 *Id.* ("The Louisiana Society for the Prevention of Cruelty to Animals did more for its 263 stray pets than the sheriff did for the more than 6,500 men, women and children left in his care." (internal quotes omitted)).

117 Vera Inst. of Just., *When Disasters Strike, Incarcerated People Are Often Left Behind—Then...* (July 7, 2018), https://www.vera.org/news/when-disasters-strike-incarcerated-people-are-often-left-behind-then-tasked-with-dangerous-cleanup [https://perma.cc/8BYU-6ZU5].

118 Keri Blakinger, *Castaic jail complex in wildfire evacuation zone; officials plan to shelter in place*, Los Angeles Times (Jan. 22, 2025), https://www.latimes.com/california/story/2025-01-22/growing-wildfire-near-5-000-castaic-jail-complex-raises-concerns [https://perma.cc/2NJF-VKLC]; Weill-Greenberg et al., *LA's Wildfires Threaten Almost 40 Prisons and Jails. Here's How They're Responding*, The Appeal (Jan. 9, 2025), https://theappeal.org/los-angeles-wildfires-fires-threaten-prisons-jails/ [https://perma.cc/4HTX-W3MF].

119 The Marshall Project, *'Cooking Them to Death': The Lethal Toll of Hot Prisons* (Oct. 11, 2017), https://www.themarshallproject.org/2017/10/11/cooking-them-to-death-the-lethal-toll-of-hot-prisons [https://perma.cc/9H3Q-5DW2].

120 *Id.*

121 *See* Declaration of Dr. Susi U. Vassallo, M.D., M.S. (July 18, 2023), at 11, https://assets.aclu.org/live/uploads/2022/09/susi.pdf [https://perma.cc/K5XQ-J9YV]. Specifically, "[h]eat stroke carries a significant risk of death and permanent disability. Studies have shown heat stroke mortality rates ranging from 30-80%. Survivors of heat stroke may have significant heat-related morbidity, such as permanent inability to walk and talk[,]" as well as permanent neurological damage that leads to trouble with spontaneous breathing, and structural damage to the cerebellum. *Id.* See also Tiede v. Collier et al., No. 1:2023cv01004 (W.D. Tex. 2024) (lawsuit alleging dangerous conditions in Texas prisons due to excessive heat). In August 2024, a 65-year-old man with chronic health conditions incarcerated in a Texas prison filed suit against the Texas Department of Criminal Justice, alleging that his health had been endangered and he had suffered a stroke after the temperature of his cell reached nearly 120 degrees Fahrenheit. *Id.* The stroke left the plaintiff with permanent facial disfiguration from partial paralysis, ongoing chronic ear infections, and ongoing chronic health conditions related to heat. *Id.*

122 The University of Texas School of Law Human Rights Clinic, *Deadly Heat in U.S. (Texas) Prisons*, *https*://law.utexas.edu/wp-content/uploads/sites/11/2015/04/2014-HRC-USA-DeadlyHeat-USShadowReport.pdf (last visited July 29, 2025).

123 *See Bernhardt Tiede II v. Bryan Collier*, at 16, 63, Mar. 26, 2025, https://climatecasechart.com/wp-content/uploads/case-documents/2025/20250326_docket-123-cv-01004_order.pdf.

124 *'Cooking Them to Death,' supra* note 119.

125 Keri Blakinger, *Inside Frigid Texas Prisons: Broken Toilets, Disgusting Food, Few Blankets*, The Marshall Project (Feb. 19, 2021), https://www.themarshallproject.org/2021/02/19/inside-frigid-texas-prisons-broken-toilets-disgusting-food-few-blankets [https://perma.cc/ZE3X-A52X].

126 *Id.*

127 Eddie Burkhalter et al., *Incarcerated and infected: how the virus tore through the U.S. prison system*, N.Y. Times (Apr. 10, 2021), https://www.nytimes.com/interactive/2021/04/10/us/covid-prison-outbreak.html [https://perma.cc/A93M-FW7Y].

128 These photos were taken at a housing unit for people with serious medical needs at an Arizona prison. As the reader can see from the two photos, only a few people are wearing masks—at the height of the COVID-19 pandemic—and immunocompromised people had no way to socially distance. These photos are publicly available as a result of the ACLU's ongoing lawsuit against the Arizona Department of Corrections, *Jensen v. Thornell*. See Nat'l Prison Project of the Am. Civ. Liberties Union, *Jensen v. Thornell* , Am. Civ. Liberties Union (Apr. 7, 2023), https://www.aclu.org/cases/jensen-v-thornell [https://perma.cc/6LM9-8WPN].

129 Michele Deitch et al., *COVID and Corrections: A Profile of COVID Deaths in Custody in Texas* (Nov. 2020), at 16, https://hdl.handle.net/2152/83635 [https://perma.cc/P7VC-KJCH].

130 *Id.* at 15.

131 *Id.*

132 *See generally* Univ. of Cal. L.A. Law, *COVID Behind Bars Data Project*, https://uclacovidbehindbars.org/ [https://perma.cc/HEZ2-JS4G] (last visited July 28, 2025).

133 Ada Kwan et al., *The Impact of COVID-19 on the Health of Incarcerated Older Adults in California State Prisons*, HEALTH AFFAIRS 41 (Nov. 8 2022), at 1191, https://escholarship.org/uc/item/63z0540t [https://perma.cc/XT3C-T2VY].

134 *Id.* at 1197.

135 *Id.* at 1199.

136 Find a Grave, *Horace Sublett*, https://www.findagrave.com/memorial/221473449/horace-sublett (last visited July 28, 2025) [https://perma.cc/KN97-2R3X].

137 *See, e.g.*, United States Sentencing Commission, *The Effects of Aging on Recidivism Among Federal Offenders*, https://www.ussc.gov/research/research-reports/effects-aging-recidivism-among-federal-offenders#:~:text=Report%20Highlights,offenders%20age%2060%20or%20older [https://perma.cc/R6KT-G6YU] (last visited July 28, 2025); Sarah Rakes et al., *Recidivism among Older Adults: Correlates of Prison Re-entry*, Just. Pol'y J., https://www.cjcj.org/media/import/documents/recidivism_among_older_adults_correlates_of_prison_reentry.pdf (last visited July 28, 2025); Vera Institute, *Aging Out*, https://www.vera.org/publications/compassionate-release-aging-infirm-prison-populations [https://perma.cc/BE9F-M595] (last visited July, 28, 2025).

138 Wendy Sawyer, *Crime in the United States 2018 Table 38 and U.S. Census Bureau, Annual Estimates of the Resident Population by Single year of Age and Sex for July 1, 2018*, The Prison Policy Initiative, https://www.prisonpolicy.org/graphs/agecrimecurve.html [https://perma.cc/6LFL-56GR] (last visited July 28, 2025). This graph uses national data to compare crime rates by age group and shows that violent crime rates spike around age 24 before sharply declining over time. Adults aged 50 and over have the lowest arrest rates. *Id.*

139 Emily Widra, *Recidivism of Prisoners Released in 34 States in 2012: a 5-Year Follow-Up Period (2012-2017)*, The Prison Policy Initiative, https://www.prisonpolicy.org/graphs/65plus_rearrestrates.html [https://perma.cc/Y7T9-XNRT] (last visited July 28, 2025).

140 Efforts to track state recidivism data are compromised because states define and measure recidivism differently.

141 The Bureau of Justice Statistics, in its most recent report, found that "about 66% of prisoners released across 24 states in 2008 were arrested within 3 years, and 82% were arrested within 10 years." Bureau of Justice Statistics, Special Report: Recidivism of Prisoners Released in 24 States in 2008: a 10-Year Follow-Up Period (2008-2018) (Sept. 2021), at 1, https://bjs.ojp.gov/BJS_PUB/rpr24s0810yfup0818/Web%20content/508%20compliant%20PDFs [https://perma.cc/C8BY-W5UA]. But see Council on Criminal Justice, Brief: Recidivism Rates: What You Need to Know, https://councilоncj.org/recidivism_report [https://perma.cc/895F-XMFJ] (reporting a national recidivism rate of 39% using 2021 data, a percentage much lower than the BJS data indicates).

142 *See* Ashley Nellis and Breanna Bishop, *A New Lease on Life: Examining How Aging Prison Populations Impact Reentry, Sentencing, and Public Safety*, The Sentencing Project (June 30, 2021), https://www.sentencingproject.org/reports/a-new-lease-on-life/ [https://perma.cc/K4WS-ZVL7].

143 *See generally* J.J. Prescott et al., *Understanding Violent-Crime Recidivism*, 95 Notre Dame Law Review 1643-1698 (2020), https://scholarship.law.nd.edu/ndlr/vol95/iss4/9/.

144 Michael Millemann et al., *Releasing Older Prisoners*, in 4 Reforming Criminal Justice, at 330-331, 337 (Eric Luna, ed., Ariz. State Univ. Acad. for Just. 325-339 (2017)), https://law.asu.edu/sites/default/files/pdf/academy_for_justice/15_Criminal_Justice_Reform_Vol_4_Releasing-Older-Prisoners.pdf [https://perma.cc/2SS2-Z6VE] (citing *Unger* v. *State*, 48 A.3d 242, 261 (Md. Ct. App. 2012); see also *State* v. *Waine*, 122 A.3d 294 (reaffirming *Unger*)). Based on the *Unger* decision, over 200 elderly incarcerated people were entitled to new trials. Rather than retry the cases, prosecutors negotiated the conditional releases of 178 people, allowing them to be freed from prison.

145 *Id.* at 330-332.

146 *Id.* at 331.

147 *Id.* at 332.

148 *Id.*

149 *Id.* at 335.

150 *Id.*

151 See U.S. Census Bureau, *Annual Survey of State and Local Government Finances* (Aug. 28, 2024), https://www.census.gov/programs-surveys/gov-finances.html.

152 Vera Institute of Justice, The Price of Prisons: 2015 State Spending Trends – Prison Spending, https://www.vera.org/publications/price-of-prisons-2015-state-spending-trends/price-of-prisons-2015-state-spending-trends-prison-spending (last visited Aug. 3, 2025).

153 See, e.g., Maria Schiff, Examining State Prison Health Care Spending: Cost Drivers And Policy Approaches (Nov. 4, 2014), https://www.healthaffairs.org/content/forefront/examining-state-prison-health-care-spending-cost-drivers-and-policy-approaches ("The National Institute of Corrections said the annual cost of incarcerating prisoners age 55 and older with chronic and terminal illnesses is an average of two to three times the expense for all other inmates, particularly younger ones. More recently, other researchers have found that the cost differential may be wider.").

154 *At America's Expense*, *supra* note 11, at 28.

155 *The Impact of an Aging Inmate Population on the Federal Bureau of Prisons*, *supra* note 76.

156 The authors note that correlation does not necessarily equal causation.

157 It could be possible that other related factors may be driving both the cost trends and the elderly population trends, but such an analysis is outside the scope of this report.

158 Again, we note that correlation does not necessarily equal causation.

159 Davis Rich, *Texas Prison Health Costs Are Rising. Experts Cite an Aging Population*, *The Texas Tribune*, Nov. 25, 2019, https://www.texastribune.org/2019/11/25/texas-prison-health-care-budget-parole/ [https://perma.cc/33WT-NSRS].

160 Jaye Anno et al., Correctional Health Care: Addressing the Needs of Elderly, Chronically Ill, and Terminally Ill Inmates (Feb. 2004), https://www.ojp.gov/ncjrs/virtual-library/abstracts/correctional-health-care-addressing-needs-elderly-chronically-ill [https://perma.cc/5VLN-9FKB].

161 Cyrus Ahalt et al., Paying the Price: The Pressing Need for Quality, Cost, and Outcomes Data to Improve Correctional Healthcare for Older Prisoners, 61 J. Am. Geriatrics Soc'y (2013), https://pmc.ncbi.nlm.nih.gov/articles/PMC3984258/#R6 [https://perma.cc/EL9K-GVFY].

162 Mary Price, Everywhere and Nowhere: Compassionate Release in the States (2018), at 12, https://famm.org/wp-content/uploads/2023/12/Exec-Summary-Report.pdf (last visited July 29, 2025).

163 *Id.*; Becky Feldman, *The Second Look Movement: A Review of the Nation's Sentence Review Laws*, The Sentencing Project (Mar. 24, 2025), https://www.sentencingproject.org/reports/the-second-look-movement-a-review-of-the-nations-sentence-review-laws/ [https://perma.cc/3MTG-S3RH].

164 Mary Price, Grading the States: The State Compassionate Release Report Card Project (October 2022), at 18, https://famm.org/wp-content/uploads/2022/10/compassionate-release-report.pdf (last visited July 29, 2025).

165 Price, *supra* note 162, at 6.

166 *Id.* at 12. ("Only Iowa has no specific compassionate release law.")

167 Emily Widra & Wanda Bertram, *Compassionate release was never designed to release large numbers of people*, *Prison Policy Institute* (May 29, 2020), https://www.prisonpolicy.org/blog/2020/05/29/compassionate-release/ [https://perma.cc/7HPE-JWGV].

168 *Id.*

169 *Id.*

170 Rachael Bedard et al., *Elderly, Detained, and Justice Involved*, at 3, https://academicworks.cuny.edu/clr/vol25/iss1/15/ [https://perma.cc/97RN-VD4Z] (last visited July 29, 2025).

171 Michelle Theriault Boots, *'Like a Nursing Home': The Realities of Alaska's Aging Inmate Population*, Anchorage Daily News (Sept. 27, 2023), https://www.adn.com/alaska-news/crime-courts/2023/09/23/like-a-nursing-home-alaskas-aging-inmate-population/ [https://perma.cc/FCS3-LLPV] ("The Alaska Board of Parole has considered only two applications for geriatric parole in the past seven years. Neither was granted.").

172 Mary Price, *Everywhere and Nowhere: Compassionate Release in the States*, https://famm.org/wp-content/uploads/2023/12/Exec-Summary-Report.pdf [https://perma.cc/REJ3-CJS7] (last visited July 29, 2025); see also Kansas Department of Corrections, *Annual Reports*, https://www.doc. ks.gov/publications/publications/Reports [https://perma.cc/JA3D-76K7] (last visited July 29, 2025).

173 Price, *supra* note 162, at 13.

174 *Id.*

175 Tex. Gov't Code Ann. § 508.146 (a) (1) (B). See Tex. Code of Crim. Proc., Ch. 62 for additional information on sex offenses. [https://perma.cc/CNZ6-PRCB].

176 Price, *supra* note 162, at 14.

177 Julie B. Cramer, Releasing Compassion in the States, at 317, https://law.ua.edu/wp-content/uploads/2024/12/Releasing-Compassion-in-the-States.pdf [https://perma.cc/W2BM-GEA6] (last visited Aug. 23, 2025).

178 Price, *supra* note 162, at 14-15.

179 Compare Ariz. Dep't of Corrections, Dep't Order Manual (2017), Chapter 1000-Releases/Community Supervision, Dep't Order 1002-Inmate Release Eligibility System, § 1.11.3, Definitions at 43, https://corrections.az.gov/sites/default/ les/policies/1000/1002-e ective_041017.pdf, *with* Ariz. Board of Executive Clemency, *Frequently Asked Questions*, https://boec.az.gov/helpful-information/frequently-asked-questions [https://perma.cc/T4TJ-WB4V] (last visited July 28, 2025); Arizona Board of Executive Clemency, *Commutation of Sentence Application*, at 2, https://boec.az.gov/sites/default/files/2024-12/Commutation%20Application%20-%20Rev.%2012.20.2024.pdf (last visited July 28, 2025); *and* Ariz. Board of Executive Clemency, *Pardon Application*, at 1, https://boec.az.gov/sites/default/files/documents/files/2017-Pardon-Application.pdf (last visited July 28, 2025).

180 Only people who are eligible for "general" parole can be granted medical parole. See S.C. Code Ann. § 24-21-715; South Carolina Board of Paroles and Pardons, Policy and Procedure Manual (Nov. 2019), Part II-Parole Process, § D (4), *Parole for Terminally Ill, Geriatric, or Permanently Disabled Inmates*. Based on a legal memo from the South Carolina Attorney General's office, this requirement means that people sentenced to death or to life without the possibility of parole are excluded from consideration for medical parole. Letter from Brendan McDonald, Assistant Attorney General, to Kela E. Thomas, Director, Department of Probation, Parole and Pardon Services (Aug. 24, 2015), available at http://2hsvz0l74ah31vgcm16peuy12tz.wpengine.netdna-cdn.com/wpcontent/uploads/2015/08/00733624.pdf; *see also* Price, *supra* note 162, at 14.

181 Breanna Bishop, *Second Look Laws Are an Effective Solution to Reconsider Extreme Sentences Amidst Failing Parole Systems*, The Sentencing Project (Mar. 22, 2024), https://www.sentencingproject.org/fact-sheet/second-look-laws-are-an-effective-solution-to-reconsider-extreme-sentences-amidst-failing-parole-systems/ [https://perma.cc/4V24-LG86].

182 Price, *supra* note 162, at 14.

183 Kan. Stat. Ann. § 22-3729 (a) (2) (2011); Kansas Department of Corrections, Internal Management Policies and Procedures 11-110-Application for Release of Functionally Incapacitated Inmates or Release Pending Imminent Death.

184 Jennifer James et al., *Covid-19 and the Reimaging of Compassionate Release*, International Journal of Prisoner Health (Mar. 16, 2023), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10134411/#sec004title [https://perma.cc/E6L4-6XL4].

185 *Id.*

186 *Id.*

187 *Id.*

188 *Id.*

189 *Id.*

190 Feldman, *supra* note 163; see also *Graham v. Florida*, 560 U.S. 48 (2010); *Miller v. Alabama*, 567 U.S. 460 (2012). The bulk of the second look movement began as a result of the U.S. Supreme Court's decisions in *Graham v. Florida* and *Miller v. Alabama*, two cases that significantly limited the use of life without parole sentences on juveniles.

191 Feldman, *supra* note 163.

192 *Id.*

193 *Id.*

194 *Id.*

195 Alice Galley, et al., *Data Automation and Expanding Resentencing Efforts*, Urban Institute (Oct. 19, 2023), https://www.urban.org/catalyst-grant-program-insights/data-automation-and-expanding-resentencing-efforts#:~:text=Resentencing%20is%20the%20review%20and,sentence%20has%20been%20served%20already.

196 Feldman, *supra* note 163 (describing numerous states differing second look laws).

197 *See, e.g., State v. Comer,* 266 A.3d 374 (N.J. 2022) (New Jersey has a judicially-created mechanism for second look relief, declared in a court case).

198 See Feldman, *supra* note 163.

199 *Id.* (noting Delaware, North Dakota, and Connecticut's five-year waiting period between applications).

200 Price, supra note 162 at 15.

201 *Id.* (noting barriers that limit use of second look laws).

202 Feldman, *supra* note 163.

203 *Id.*

204 *Id.*

205 For more information on second look statutes nationwide, see Becky Feldman, The Second Look Movement: A Review of the Nation's Sentence Review Laws, The Sentencing Project (Mar. 24, 2025), https://www.sentencingproject.org/reports/the-second-look-movement-a-review-of-the-nations-sentence-review-laws/ [https://perma.cc/CFR9-UT32] (discussing recommendations for second look laws to improve consistency, clarity, and meaningful application based on a review of current laws and court decisions).

206 See Part I(D) *supra*.

207 Georgia Burke et al., *Reducing Barriers to Reentry for Older Adults Leaving Incarceration* (May 2022), Justice In Aging: Fighting Senior Poverty Through Law, at 1, https://justiceinaging.org/wp-content/uploads/2022/05/Reducing-Barriers-to-Reentry-for-Older-Adults-Leaving-Incarceration.pdf [https://perma.cc/2U45-HXEG].

208 *Id.* at 2.

209 *Id.*

210 *Id.*

211 Hope Corrigan, *Why Elderly Incarcerated People Struggle to Find Care After Prison*, The Appeal (July 18, 2022), https://theappeal.org/elderly-prison-population-nursing-eldercare/ [https://perma.cc/RYZ6-7ERU].

212 *Id.*

213 Libby Doyle, *Four Ways to Support the Housing and Reentry Needs of Older Adults*, Housing Matters, (June 22, 2022), https://housingmatters.urban.org/articles/four-ways-support-housing-and-reentry-needs-older-adults [https://perma.cc/MY7U-YUW6].

214 A halfway house is a residence located in the community where people are placed to either (1) serve all or part of a sentence, or (2) serve a period of time after being released from federal prison, in order to prepare for reentering the community. *Frequently Asked Questions About Federal Halfway Houses & Home Confinement*, FAMM (Apr. 24, 2012), https://famm.org/wp-content/uploads/2018/04/FAQ-Halfway-House-4.24.pdf.

215 This raises important ADA concerns, especially for halfway houses operated by state or local governments.

216 For example, many of the more physically demanding jobs open to people with criminal records, such as working in warehouses or in janitorial settings, are jobs that a formerly incarcerated person in advanced age will likely have trouble with, making it much more difficult for them to keep a job (and, by extension, their housing). See Carlos Ballesteros, *'I Call it Pretend Freedom': Older Adults Coming Out of Illinois Prisons Face Steep Roadblocks In Their Reentry Journey*, Reentry, https://www.injusticewatch.org/criminal-courts/reentry/2023/older-adults-prison-reentry/ [https://perma.cc/ZSN9-CEK6]. Or, if a formerly incarcerated elderly person utilizes a wheelchair for daily living and a particular halfway house has no downstairs bedrooms, the individual is unfairly restricted from living at the home due to their inability to climb stairs.

217 On the one hand, carceral "reforms" are reforms that rely on surveillance, policing, and imprisonment as solutions to economic, social and political problems. *What is the PIC? What is Abolition?*, Critical Resistance, https://criticalresistance.org/mission-vision/not-so-common-language/ [https://perma.cc/S39C-Y5ZT] (last visited July 30, 2025). Carceral reforms reflect a punitive mindset where prisons and criminalization are championed as the primary ways to handle issues of poverty, violence, and substance use. See *id.* In contrast, decarceral reforms are ones that work to reduce reliance on the carceral state (that is, prisons, policing, surveillance, etc.) by seeking community-based alternatives to harm. See Ashlei Anderson, *Prison Abolition is Needed Now: Prisons and Jails Do Not Keep Anyone Safe*, Geo. J. of L. & Mod. Critical Race Persp. (January 23, 2023), https://www.law.georgetown.edu/mcrp-journal/blog/prison-abolition-is-needed-now-prisons-and-jails-do-not-keep-anyone-safe/ [https://perma.cc/7SRX-5N2B]. Decarceral reforms center the question: what would the United States look like if we took the millions of dollars spent on prisons and used that money towards education, housing, health care, and food? *Id.* Decarceral solutions operate under the theory that our communities would be much safer if everyone had their foundational needs met, given that many people commit offenses because they lack the resources to survive (or to thrive). For more information on decarceral paths forward, see *A Decarceral Brainstorm*, Inquest, https://inquest.org/topic/decarceral-pathways/ [https://perma.cc/EDM7-5Q53] (last visited July 30, 2025).

218 *At America's Expense*, *supra* note 11.

219 Values for 2024 inflated calculated with CPI *Inflation Calculator*, https://data.bls.gov/cgi-bin/cpicalc.pl [https://perma.cc/6UR7-AWX7] (last visited July 30, 2025).

220 Moreover, supervision costs do not strain the correctional budget nearly as much as continued incarceration does, because "in most states, those under supervision must pay a fee—either a flat sum or a monthly charge—for being under the supervision of a probation or parole officer. Additionally, in nearly every state, those on probation or parole must pay the costs of programming, classes, or 'services' that are conditions of their release or sentence." *50 State Survery: Probation & Parole Fees*, Fines & Fees Just. Ctr. Reform All.(May 2022) at 3, https://finesandfeesjusticecenter.org/content/uploads/2022/05/Probation-and-Parole-Fees-Survey-Final-2022-.pdf [https://perma.cc/4JTD-3ECN].

221 Tex. Gov't Code Ann. § 508.146 (a)(1)(B) (West 2017).

222 Liz Komar, *The First Step Act: Ending Mass Incarceration in Federal Prisons*, The Sent'g Project (August 22, 2023), https://www.sentencingproject.org/policy-brief/the-first-step-act-ending-mass-incarceration-in-federal-prisons/ [https://perma.cc/R8J7-4QEB] ("The First Step Act allows individuals who present extraordinary and compelling circumstances, such as severe illness and/or old age, and who pose little risk to the community, to bring their compassionate release applications directly to a federal judge 30 days after filing a petition with the BOP.").

223 See U.S. Sent'g Comm'n, Proposed Amend./ Pub. Comment 88 FR 7180 (2023)at 16–17, https://www.ussc.gov/sites/default/files/pdf/amendment-process/public-comment/202303/88FR7180_ public-comment.pdf [https://perma.cc/RC95-N4U2].

224 Komar, *supra* note 222.

225 In a 2016 report, the Office of the Inspector General chastised the Bureau of Prisons for its remarkably low grant rate: only 3% of compassionate release applications were granted in that year. *Id.*; see also U.S. Department of Justice, Office of the Inspector General (2017). *The Impact of an Aging Inmate Population on the Federal Bureau of Prisons*, U.S. Dep't of Just., OIG (2017), https://oig.justice.gov/reports/2015/e1505.pdf [https://perma.cc/A9V9-YT62].

226 Parole boards who are charged with deciding compassionate release motions often have great reluctance releasing incarcerated people due to political pressure. Courts are more insulated from the political nature of these decisions and can behave in a more neutral manner.

227 *State Medical and Geriatric Parole Laws*, NCSL (July 25, 2024), https://www.ncsl.org/civil-and-criminal-justice/state-medical-and-geriatric-parole-laws.

228 *Id.*

229 *Id. see also* N.M. Stat. Ann. § 31-21-25.1 (2023); N.C. Gen. Stat. § 15A-1369 (2023).

230 *Supra* note 227.

231 RCW 9.94A.728 (1)(d)(2021) ("The governor, upon recommendation from the clemency and pardons board, may grant an extraordinary release for reasons of serious health problems, senility, advanced age, extraordinary meritorious acts, or other extraordinary circumstances.").

232 *Supra* note 227.

233 Note that eligibility for consideration is not the same as approval.

234 Though they sound similar and deal with similar populations, compassionate release is to provide relief for sick people, geriatric parole is to provide relief for elderly people generally (regardless of illness), and ordinary parole is to provide relief for everyone incarcerated in the correctional agency, regardless of age or illness.

235 Alyssa Gordon et al., *Parole Reform in Texas: Recommendations to Achieve Forward-Looking Justice*, Univ. of Tex. at Austin C.R. Clinic Sch. of L. (2024), https://sites.utexas.edu/prc/files/UT-Parole-Report-FINAL.pdf [https://perma.cc/Q7KK-QARH].

236 *Id.*

237 *Id.*

238 *Id.*

239 *Id.*

240 *Safely Adjust Parole Practices to Reduce Massive Prison Budgets*, Tex. Crim. Just. Coal. (2021), https://www.texascjc.org/2021-session-safely-adjust-parole-practices-reduce-massive-prison-budgets [https://perma.cc/ZY2S-VTAD].

241 Emily Widra, The Aging Prison Population: Causes, Costs, and Consequences, Prison Policy Initiative (Aug. 2, 2023), https://www.prisonpolicy.org/blog/2023/08/02/aging/ [https://perma.cc/6QGM-JQLB].

242 Jorge Renaud, *Grading the Parole Release Systems of All 50 States*," Prison Pol'y Initiative (Feb. 26, 2019), https://www.prisonpolicy.org/reports/grading_parole.html#:~:text=Parole%20boards%20should%20issue%20yearly,and%20employment%20waiting%20for%20them [https://perma.cc/5248-H9ZC]; Marc Levin, "Ten Tips for Policymakers for Improving Parole," Right on Crime, May 2019, https://rightoncrime.com/wp-content/uploads/2019/05/Ten-Tips-for-Policymakers-for-Improving-Parole.pdf [https://perma.cc/6ZCZ-P5AV].

243 *Id.*

244 *Id.*

245 Becky Feldman, The Second Look Movement: A Review of the Nation's Sentence Review Laws, The Sentencing Project (May 15, 2024), https://www.sentencingproject.org/reports/the-second-look-movement-a-review-of-the-nations-sentence-review-laws/#recommendations [https://perma.cc/G2XA-C5QP].

246 *Id.*

247 These services can, and should, also be offered to soon-to-be returnees who are not elderly.

248 However, some federal laws limit people with drug convictions from accessing Section 8 subsidized housing or other public housing benefits. *See, e.g., Are Applicants with Felonies Banned From Public Housing or Any Other Housing Funded by HUD?*, HUD Exchange (Jan. 2022), https://www.hudexchange.info/faqs/4078/are-applicants-with-felonies-banned-from-public-housing-or-any-other/ [https://perma.cc/XG6T-VD9S].

249 The authors of this report make clear that we cannot endorse this program because we do not have a deep understanding of how the program works in practice (indeed, a number of prisons highlight reform programs that may look good on paper but are not actually carried out in practice). We provide this research for informative purposes only, and to show policymakers what is possible.

250 Butler County, Community Reintegration Program, https://www.butlercountypa.gov/175/Community-Reintegration-Program [https://perma.cc/9MWE-URGT] (last visited Aug. 24, 2025).

251 *See id.*

252 See 60 West, *Welcome to 60 West*, https://www.60-west.com/ [https://perma.cc/HXL2-8L32] (last visited July 31, 2025). Again, the authors of this report make clear that we cannot endorse this facility because we do not have a deep understanding of how it works in practice. We provide this discussion to readers for informative purposes only.

253 *Id.* ("[W]e care for individuals who may be transitioning from state care or who may be difficult to place in a traditional nursing home setting.")

254 Kathleen McWilliams, *Rocky Hills 60 West Nursing Home Named One of the Best by U.S. News and World Report*, Courant (Dec. 12, 2018), https://www.courant.com/2018/11/19/rocky-hills-60-west-nursing-home-named-one-of-best-by-us-news-and-world-report/ [https://perma.cc/ME7Y-AUTP]; *Welcome to 60 West*, *supra* note 252. Among other programming, 60 West offers art therapy, bingo, yoga classes, movies, and a walking group. Id.

255 *See MissionCare Health*, iCare Home Network, https://www.icarehn.com/programs/missioncare-health/#summary [https://perma.cc/R8N4-WLHY] (last visited Aug. 24, 2025); see *also* McWilliams, *supra* note 254. ("60 West also cares for select prison parolees and state mental health patients who are often referrals from the state Department of Mental Health and Addiction Services, as well as the state Department of Correction.").

256 MissionCare *Health*, *supra* note 255 ("Common referral sources for MissionCare Health"). MissionCare Health is the overarching group of care centers that includes 60 West. *Id.*

257 Mike Wessler, *New Rule Means People on Community Supervision Now Qualify for Medicare*, Prison Pol'y Initiative (Dec. 2, 2024), https://www.prisonpolicy.org/blog/2024/12/02/medicare-probation-parole/ [https://perma.cc/G33H-K4DW].

258 Lucas Espinosa, *The Struggle of Reentry: A Neglected Issue Concerning Older Adults*,45(6) Bifocal 151 (2024).

259 Jessica M. Grosholz et al., *Nobody Is Really Going to Hire a 69-Year-Old Man with a Felony Record: Challenges Finding Employment for Older, Formerly Incarcerated Individuals*, 63(6) Journal of Offender Rehabilitation, 347 (2024).

260 It is important to note that a large overhaul of a prison system's geriatric care services, or increased budgets, would not be necessary if state correctional departments instead opted to substantially shrink its elderly population—and at little risk to public safety.

261 Bassem Elsawy & Kim E. Higgins, The Geriatric Assessment, 83 Am. Fam. Physician 48 (2011), https://www.aafp.org/pubs/afp/issues/2011/0101/p48.html [https://perma.cc/BUS4-T9JY].

262 *Id.*

263 *Id.*

264 *Id.*

265 *See generally Management of Aging Offenders*, U.S. Dep't of Just., Bureau of Just. Stats. April 14, 2022, https://www.bop.gov/policy/progstat/5241_001.pdf [https://perma.cc/A5MN-CCD2].

266 *Preventative Health Care Screening*, U.S. Dep't of Just., Bureau of Just. Stats. July 2022 at 5, 5https://www.bop.gov/resources/pdfs/preventive_health_care_cg_2022.pdf [https://perma.cc/84HH-EA3B].

267 *Id.* at 2.

268 Donna Vanderpool, *The Standard of Care*, 18(7-9) Innovations in Clinical Neuroscience 50 (2021).; Josiah D. Rich, Scott A. Allen, Brie A Williams, *The Need for Higher Standards in Correctional Health care to Improve Public Health*, 30(4) *Journal of General Internal Medicine* 506 (2014).

269 Rich et. al., supra note 268, at 505.

270 *Women and Gender*, Prison Pol'y Initiative, https://www.prisonpolicy.org/research/women_and_gender/ [https://perma.cc/9LRZ-JCHH] (last visited Aug. 24, 2025).

271 Lisa C. Barry, *Health Care Needs of Older Women Prisoners: Perspectives of the Health Care Workers Who Care for Them*, 4(32) PubMed 183 (2019) [https://perma.cc/JE58-XE24].

272 Position Statement, National Commission on Correctional Health Care, *Women's Health Care in Correctional Settings*, at 2 (May 2020), https://www.ncchc.org/wp-content/uploads/Womens-Health-Care-in-Correctional-Settings-2020.pdf [https://perma.cc/62F9-7SEW].

273 See Breast Cancer: Screening (Apr. 30, 2024), https://www.uspreventiveservicestaskforce.org/uspstf/recommendation/breast-cancer-screening.

274 *Supra* note 272.

275 What is advance care planning?, https://www.advancecareplanning.org.au/understand-advance-care-planning/advance-care-planning-explained#:~:text=Advance%20care%20planning%20is%20the,%2C%20and%20substitute%20decision%2Dmaking (last visited Aug. 24, 2025); *see also* Erin Kitt-Lewis et al., *Advance Care Planning: Perspectives of People in Correctional Settings*, J. of Hospice & Palliative Nursing, (2024), https://journals.lww.com/jhpn/fulltext/2024/08000/advance_care_planning__perspectives_of_people.13.aspx.

276 *Advance Care Planning*, AAFP, https://www.aafp.org/family-physician/practice-and-career/getting-paid/coding/advance-care-planning.html [https://perma.cc/4TR3-A7AE] (last visited July 31, 2025).

277 Rachel Ekaireb et al., *We Take Care of Patients, but We Don't Advocate for Them: Advance Care Planning in Prison or Jail*, 66(12) J. Am. Geriatric Soc. 2382, 2382 (2018).

278 *See* Los Angeles County Sheriff's Department, Custody Division Manual § 410/055.00 (2025), http://pars.lasd.org/Viewer/Manuals/14249/Content/12977.

279 *Id.*

280 Amarik K. Singh & Shaun Spillane, Audit of the California Department of Corrections and Rehabilitation's Natural Disaster Emergency Preparedness and Mitigation Efforts, Audit Report No. 2401 (May 1, 2025), at 24, https://www.oig.ca.gov/wp-content/uploads/2025/05/Audit-of-the-California-Department-of-Corrections-and-Rehabilitations-Natural-Disaster-Emergency-Preparedness-and-Mitigation-Efforts.pdf [https://perma.cc/XU9L-JJ9D]. In Singh and Spillane's report, the California Office of the Inspector General conducted a comprehensive audit of the California Department of Corrections' emergency preparedness protocols. It provides a wealth of strong recommendations in various categories, including, for example, that correctional departments should: identify and designate alternative temporary relocation sites near each prison to use during emergency evacuations, including deactivated prisons when applicable; consider relocating current transportation hubs or adding additional transportation hubs to place fleet vehicles closer to more prisons to facilitate deployment in emergency evacuations; and develop training to prepare prison staff to plan and timely execute large-scale external evacuations of prisons. *Id.* at 15.

281 Emily F. Dauria et al., *Increasing Availability of COVID-19 Vaccine to Older Adults under Community Supervision*, 19(1) International Journal of Prisoner Health 88 (2022); National Commission on Correctional Health Care, *Care for Aging Patients in the Correctional Settings* (May 2024), https://www.ncchc.org/position-statements/care-for-aging-patients-in-the-correctional-setting/ [https://perma.cc/5ZMS-9GHE].

282 *4.2.6.1 Evacuation of Special Needs Evacuees* U.S. Dep't of Transp.: Fed. Highway Admin. (2021), https://ops.fhwa.dot.gov/publications/fhwahop08015/lit4_2_6_1.htm [https://perma.cc/B8AX-TM9M].

283 Failing to maintain appropriate temperature regulation poses serious health risks, including heat stroke, dehydration, hypothermia, and exacerbation of chronic conditions like cardiovascular and respiratory diseases. Julianne Skarhaet et al., *An Overlooked Crisis: Extreme Temperature Exposures in Incarceration Settings*, 110(1) Am.n J.l of Pub. Health 41 (2020). https://pmc.ncbi.nlm.nih.gov/articles/PMC6987924/ [https://perma.cc/D2AM-9RZ9].

284 *85 to Stay Alive,* Texas Prisons Community Advocates, https://www.tpcadvocates.org/85-to-stay-alive [https://perma.cc/859Q-SNN5] (last visited Aug. 24, 2025).

285 To its credit, the Texas Department of Criminal Justice does have a policy to this effect, but it is not always implemented in practice. Compare Texas Department of Criminal Justice, Enhanced Heat Protocols, https://www.tdcj.texas.gov/offender_info/enhanced_heat_protocols.html [https://perma.cc/FM53-BAWV] (last visited Aug. 24, 2025) with Hannah Grabenstein & Justin Stabley, *'I thought I was going to die there.' What it's like to live with rising temperatures in prison* (Aug. 19, 2022), https://www.pbs.org/newshour/nation/i-thought-i-was-going-to-die-there-what-its-like-to-live-with-rising-temperatures-in-prison.

286 National Commission on Correctional Health Care, Care for Aging Patients in the Correctional Setting (2024), https://www.ncchc.org/position-statements/care-for-aging-patients-in-the-correctional-setting/ [https://perma.cc/M3JG-7HD2].

287 *Spotting the Signs of Elder Abuse*, Nat'l Inst. on Aging, [https://perma.cc/3Y76-6WN5] (last visited Aug. 24, 2025).

288 Brie Williams et. al., Aging *in Correctional Custody: Setting a Policy Agenda for Older Prisoner Health Care Actions*, 102(8) Amer. J. Pub. Health 1475 (2012).

289 *Id.*

290 Gary Cornelius, Special Populations in Corrections: Elderly Inmates – Lexipol (March 22, 2024), https://www.lexipol.com/resources/blog/special-populations-in-corrections-elderly-inmates/ [https://perma.cc/3XY3-GUSV]. See also Brie Williams et al., Addressing the Aging Crisis in US Criminal Justice Health Care Actions, J. Am. Geriatric Society, 60: 1150-1156 (2012).

291 *See* National Resource Center for Correctional Oversight, Prison Oversight in the U.S., https://prisonoversight.org/oversight-bodies/prison-oversight/ [https://perma.cc/J63Z-A5DY] (last visited Aug. 24, 2025).

292 National Long-Term Care Ombudsman Resource Center, About Ombudsman Programs, https://ltcombudsman.org/about/about-ombudsman#:~:text=Under%20the%20federal%20Older%20Americans,the%20long%2Dterm%20care%20system (last visited Aug. 24, 2025) [https://perma.cc/K5UU-Q2N8].

293 *See, e.g.*, Texas Health and Human Services, HHS Office of the Ombudsman, https://www.hhs.texas.gov/services/your-rights/hhs-office-ombudsman (last visited Aug. 24, 2025).

294 National Disability Rights Network, Member Agencies (2025), https://www.ndrn.org/about/ndrn-member-agencies/ [https://perma.cc/C5VH-Q8RM] (last visited Aug. 24, 2025).

295 National Disability Rights Network, Protection and Advocacy's Role in Prison Litigation, https://www.ndrn.org/resource/protection-and-advocacys-role-in-prison-litigation/ ("P&As have federal authority to: (1) monitor prisons for compliance with laws concerning conditions and prisoner rights; and (2) conduct investigations of abuse and neglect in prisons. This access extends to the facility itself, the [incarcerated people], and [incarcerated] records.").

296 Michele DiTomas & Keith Knauf, Hospice in Prison Part 1: An Interview with Michele DiTomas and Keith Knauf, GeriPal (June 22, 2023), https://geripal.org/hospice-in-prison-part-1-an-interview-with-michele-ditomas-and-keith-knauf/ [https://perma.cc/U9VM-7L54]; see also Suleika Jaouad, The Prisoners Who Care for the Dying and Get Another Chance at Life, The New York Times (May 16, 2018), https://www.nytimes.com/interactive/2018/05/16/magazine/health-issue/convicted-prisoners-becoming-caregivers.html.

297 Johnson law ensures transparency and dignity in end-of-life care for incarcerated individuals (Aug. 18, 2025), https://www.senatoradrianejohnson.com/news/317-johnson-law-ensures-transparency-and-dignity-in-end-of-life-care-for-incarcerated-individuals.

298 We discuss peer caregivers in more detail below.

299 Christa McParland et al., Caring for people in prison with palliative and end-of-life care needs, (Sept. 2023), bhttps://journals.lww.com/co-supportiveandpalliativecare/fulltext/2023/09000/caring_for_people_in_prison_with_palliative_and.16.aspx.

300 Tom Chiodo, Peer Caregiving in Prisons: A Humane Response to a Growing Health Care Crisis, Forbes (Dec. 24, 2024), https://www.forbes.com/sites/tomchiodo/2024/12/24/peer-caregiving-in-prisons-a-humane-response-to-a-growing-health-care-crisis/ [https://perma.cc/Z7Z5-LQZ4].

301 *Id.*

302 Helen Kitchen Branson, Hospice in Prison, Office of Justice Programs (2001), https://www.ojp.gov/ncjrs/virtual-library/abstracts/hospice-prison [https://perma.cc/9Z7J-JMDR]; see also David Garland, Presentation at 2024 Deaths in Custody Conference, at 69-71, https://utexas.app.box.com/s/58yzkexb0sxrxfn8od0v3tjbvg2h3s20.

303 Warren Stewart & Stephanie Grace Prost, Supporting Older, Frail, and Vulnerable Adult Prisoners Through Peer Care: Observations, Reflections, and Recommendations Based on a UK/U.S. Researcher Exchange Visit (June 19, 2024), https://www.liebertpub.com/doi/10.1089/jchc.23.11.0095?url_ver=Z39.88-2003&rfr_id=ori%3Arid%3Acrossref.org&rfr_dat=cr_pub++0pubmed.

304 Publications List, https://bjs.ojp.gov/library/publications/list?series_filter=Prisoners [https://perma.cc/C8KP-GALL] (last visited Aug. 24, 2025).

305 Bureau of Just. Stats., *Survey of Prison Inmates Data Analysis Tool (SPI DAT)*, https://spi-data.bjs.ojp.gov/ [https://perma.cc/36E9-4GRL] (last visited July 14, 2025).

306 Corrections Statistical Analysis Tool (CSAT) – Prisoners, https://bjs.ojp.gov/announcement/corrections-statistical-analysis-tool-csat-prisoners [https://perma.cc/6359-BDYZ] (last visited Aug. 24, 2025).

307 Note that though we requested data for incarcerated people aged 50 and up, our report focuses on people aged 55 and up, as previously mentioned (and unless otherwise noted in the report text). We originally requested information for the 50+ population to obtain data that was as inclusive as possible of the aging population, but because most state responses only provided us with data on the 55+ population, we opted to focus our report on that group.

308 We did not receive responsive records from Connecticut, Hawai'i, Massachusetts, New Hampshire, New Jersey, New Mexico, North Dakota, Ohio, Rhode Island, and Wyoming. We also did not receive a response from the territory of Puerto Rico.

309 Human Rights Watch, Old Behind Bars: The Aging Prison Population in the United States (Jan. 27, 2012), https://www.hrw.org/report/2012/01/28/old-behind-bars/aging-prison-population-united-states [https://perma.cc/9J4K-GS7Y].

310 *Id.*

311 *See, e.g.*, Brie Williams et al., *Addressing the Aging Crisis in U.S. Criminal Justice Healthcare*, J. of the Am. Geriatric Soc'y, 2012, https://pmc.ncbi.nlm.nih.gov/articles/PMC3374923/ [https://perma.cc/9CXS-C48M] (describing research that shows people in prison appear 10-15 years older than their non-incarcerated counterparts).





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