

Aging Inmates: Correctional Issues and Initiatives

By Aging Inmate Committee

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The Aging Inmate Population Problem

The explosive growth of the U.S. prison population from 1980 to the present is well documented and well known by the legal community and the general public. Less well known, but of profound significance, has been the dramatic growth of the aging inmate population. The imprisonment of elderly inmates presents serious concerns to society and to prison management. States spend more than \$60 billion per year to incarcerate their inmates. Geriatric

prisoners are the biggest growing segment of special needs prisoners and the average cost for housing them is sometimes up to three times higher than housing their younger counterparts.

Demographics

A small portion of individuals in the criminal justice process are older offenders, and make up only about 1 percent of the prison population. This number is rising due in large part to sentencing policies such as mandatory minimum sentences, "three-strikes" laws and higher arrest rates. In 2009, for every 100,000 people in the U.S., there were 1,481 prisoners in state and federal prison. In Maryland, one out of every 27 adults is under correctional control, with 27 percent of those actually incarcerated.¹ A large number of middle-aged prisoners are approaching old age. For instance, almost 45 percent of the federal

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prison population is over the age of 51. During the past 20 years, the number of older prisoners has grown by 750 percent. Maryland saw the number of prisoners older than age 50 rise 137 percent from 1990 to 2000.²

Definitions of Aging

The issue of older inmates has been examined using two different qualifiers, “aging” and “elderly.” Aging is preferred because, although hard to define, the term “elderly” inmate is even more ambiguous. The U.S. Census Bureau uses the age of 65 to define “elderly” or “senior citizen,” but the National Commission on Correctional Health Care uses 55 as its threshold. The National Institute of Corrections defines “elderly” as any inmate above the age of 50, because the average prisoner is often physiologically older than their years, with significant health problems exacerbating their age. Prisoners in Maryland are deemed elderly after age 60. To better study the needs and management of elderly prisoners, a uniform national definition of an elderly inmate should be developed.³

Causes of the Growth in the Elderly Inmate Population

There are varied causes for the rise in the elderly inmate population during the last few years. Most can be attributed to tough-on-crime policies. In Missouri, as a result of tough-on-crime legislation, the prison population grew six times from 1979 to 2011, including a disproportionate rise in elderly prisoners from four percent in 1990, to 15 percent in June 2010.⁴ The abolishment of parole in many states and the federal system has led to overcrowding and the plight of an ever increasing aging population.

In 2008, there were 140,610 inmates serving life sentences and almost 30 percent are ineligible for parole. The number of those sentenced to life without parole has increased at a rate more than four times the number of sentences for those who are eligible for parole. In Maryland, more than 2,500 inmates in the Maryland Division of Correction (DOC) are serving life sentences. In addition to life without parole, other sentencing schemes have increased inmate counts: mandatory minimums, determinate sentencing schemes and lengthier sentences. Additionally, “three-strikes” laws enacted across the U.S. have placed correctional systems in a crisis of overcrowding as more individuals face longer sentences without parole.

Health Care and Costs

The biggest issue regarding elderly prisoners is the cost of health care. Prisoners age faster than the average population due to risky behavior, past drug and alcohol abuse,

high-stress lifestyles and improper medical care. Also, individuals in the criminal justice system have disproportionately high rates of chronic disease and behavioral health disorders when compared to the general population. *Estelle v. Gamble*, 429 U.S. 97 (1976), is the seminal U.S. Supreme Court opinion which requires prison authorities to provide health care to inmates. This case, as well as other factors, has vastly increased the access to medical care in prisons and consequential costs. Health care is a major issue for state budgets.

A study of federal elderly inmates found that each inmate averaged about 24 medical situations each year. Other studies have found that elderly inmates suffer from an average of three chronic illnesses while in prison. A survey of state and federal inmates found that in 2004 almost 70 percent of inmates aged 45 and older reported some type of physical or mental health problem.⁵

The National Center of Institutions and Alternatives estimated annual incarceration costs for an elderly inmate at \$69,000, compared with an average of \$22,000 for their younger counterparts. Maryland spent more than \$1.19 billion on corrections, according to the National Association of State Budget Officers. The primary reason for the high costs associated with elderly inmates is health care, and if elderly inmates are released, the savings in the first year would be greater than \$175 million. Alternatively, community nursing home placement costs taxpayers about \$57,000 a year, much of which, according to the Federal Interagency Forum on Aging-Related Statistics, comes from Medicaid and Medicare. Other community-based options such as electronic monitoring reap even greater savings, costing only about \$3,600 a year.⁶

In Maryland, The Office of Treatment Services is responsible for the provision of medical, mental health, behavioral modification, substance abuse and social services to the offender population and handles most of the in-house health care at medical and nursing facilities in major institutions, the Maryland Penitentiary Hospital and hospitals in the community. In 2009, there were more than 1,546 emergency room admissions, 5,491 hospital bed days, 2,618 infirmary admissions and 5,168 outpatient consultations for offenders in the custody of the Maryland Department of Public Safety and Correctional Services (DPSCS).⁷

Accommodations for Elderly Inmates

There are significant logistical issues that arise from housing an elderly inmate population. One of the biggest problems for elderly prisoners is the design of prisons themselves. Prisons are made of steel and concrete, often with tiers and stairways, not readily navigable by people with disabilities or incapacities. Prisons can be too hot, cold or damp and have excessive noise levels. There is

little access to elevators or wheelchair ramps, and inadequate access to mental health programs, recreational services and specialized medical treatment. Amenities needed by the elderly such as bedrails, bathing equipment and other accommodations are either impractical in such a setting or rejected because of security concerns.

Older individuals also have certain dietary needs due to either disease, digestion or the lack of teeth.⁸ In addition, prisons, as public institutions, must comply with Title II of the Americans with Disabilities Act (ADA), which prohibits discrimination from the benefits, services, programs or activities of a public entity based on disability. The ADA, coupled with federal and state regulations, imposes a responsibility to accommodate disabled inmates. Therefore, states must spend money in order to accommodate these needs and thus increase the cost of incarceration.

Some older prisoners live in fear and suffer at the hands of younger inmates in prison, who have been known to hustle and cheat older inmates in a “wolf-prey” syndrome. Many older prisoners have reported that they live in isolation, are often ridiculed, frightened, depressed and anxious, and report an overall feeling of stress. These issues must be addressed through expenditures for security, health care and other accommodations.⁹

Mortality of Aging Inmates

A prison sentence can, in fact, amount to a death sentence for aging or geriatric inmates. Eighty-nine percent of the 12,129 deaths in state prison between 2001 and 2004 were attributed to medical conditions. The death rate of inmates age 55 and older was more than three times higher than that of inmates ages 45-54, and 11 times higher than those ages 35-44. Inmates 45 or older comprised 14 percent of state prisoners from 2001 to 2004, but accounted for 67 percent of all inmate deaths during the same period.

The longer inmates are in prison, the higher their chance of dying in prison. In a survey of state prisons, the Bureau of Justice Statistics found that the mortality rate of inmates who had served at least 10 years was triple that of those who had served less than five years in prison. More than half of prisoner deaths in Maryland during that period were due to illness.¹⁰

Recommendations

A national review discloses that more than half the states provide geriatric housing facilities for older inmates or have separate areas of housing. More than half the states support the older inmate population by running programs and recreational opportunities for the elderly. Ohio has wellness programs, nutrition programs and coping skills programs. One state permits inmates to “retire” from prison employment at 65 years of age. Surveys recommend that correctional personnel should receive training about the elderly to better understand the unique circumstances presented by geriatric inmates, such as their diminished physical abilities which impact their prison environment relating to steps and lighting.¹¹ The Maryland DPSCS should consider adapting the vacant Herman L. Toulson

Correctional Boot Camp to house geriatric inmates. The facility has the capacity to accommodate 250 inmates. Located in Jessup, Md., the unit has been vacant during the past 10 years.

Maryland has been working to get chronic diseases under control in the state’s prisons. Medical parole could assist with reducing the costs associated with the elderly and, more important, return to the community individuals who are at a very low risk of recidivism. One state proposed that geriatric inmates, defined as 65 years of age who no longer pose a risk to the public, may be medically paroled. Maryland has a medical parole law but underutilizes it. From 2004 to 2010, the average number of inmates released on medical parole was less than 10. In addition, post-release planning tailored specifically for elderly inmates should be beneficial to the released inmate and his or her community.¹² Maryland has not yet reached the crisis level as other states have, but there needs to be a commitment to address the 5,000 prisoners who are approaching elderly in the DOC.

A comprehensive report about elderly Maryland inmates published in August 2001 by the Maryland Commission on Criminal Sentencing Policy titled, *Aging Offenders and the Criminal Justice System*, finds that the level of services and care available for the elderly prisoners in Maryland appears to be sufficient. On April 11, 2011, the DOC reported 608 prisoners over the age of 60; 2,087 prisoners ages 51-60; and 5,045 prisoners ages 41-50 out of a total of 22,115 inmates. Thus, elderly inmates present a significant and growing concern. For these reasons, The Aging Inmate Committee of the Maryland State Bar Association Correctional Reform Council strongly recommends that a detailed study be undertaken to further explore the needs of elderly inmates.

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The Aging Inmate Committee is affiliated with the Maryland State Bar Association's Section on Correctional Reform.



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