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Bay State Banner

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Gray Matters Behind Bars

Forty years ago, the nation got tough on crime. It is now paying the price as the skyrocketing cost of incarcerating aging inmates is haunting state and federal prison budgets.

Howard Manly

The nation's aging prison population is not considered to be among the major issues of the criminal justice system facing federal and state governments. It should be.

The numbers alone are startling. In 1981, there were 8,853 prisoners age 55 and older in all of the nation's prisons and jails. That number is now 246,600. By 2030, corrections experts estimate, there will be more than 400,000 such prisoners, amounting to a third of the prison population. Human Rights Watch calculates that the number of sentenced federal and state prisoners 65 or older grew an astonishing 94 times faster than the total population of sentenced prisoners between 2007 and 2010. The elderly prison population increased by 63 percent, while the overall population of inmates grew by less than 1 percent during that period.

For some individual states, the numbers have skyrocketed. In California, for instance, the percentage of inmates 55 or older increased by more than 500 percent between 1990 and 2009; the growth of the state's total imprisoned population over the same period was about 85 percent. In Ohio, between 1997 and 2010, the number of prisoners 50 years old or older increased by 126 percent. In Colorado, inmates in the same age range increased by 720 percent between 1991 and 2009, compared to the total inmate population growth of 208 percent.



Gray Days

Lonnie Laney (center) chats with two other unidentified aging inmates on the grounds of the McCain Correctional Hospital in Raeford, North Carolina. This scene is taken from the short documentary film, Gray Days, directed by Katherine Leggett and produced in 2005, about the exploding population of incarcerated elderly. Laney was 81 years old when the film, which follows his life and the life of a 67-year-old female inmate, was shot. The state prison hospital, which was a minimum security facility, has since closed. Below, Laney is pictured in a close-up from the film. Photos courtesy of Katherine Leggett and Fanlight Productions.



These unprecedented numbers pose a significant financial burden in the health care costs of incarcerating older men and women. It is estimated that the cost of older inmates is about double that of the younger population. Nationally, according to the American Civil Liberties Union (ACLU) in its 2012 report, *At America's Expense: The Mass Incarceration of the Elderly*, inmates 50 or older cost an average of \$68,270 a year, versus \$34,135 for all prisoners. In all, the ACLU reports that “states spend \$16 billion in taxpayer funds per year to incarcerate the 246,600 prisoners over age 50.”

According to data gathered by Human Rights Watch, that spending total is conservative. The organization estimates that annual medical expenditures can be as high as nine times greater for older state prisoners. A recent effort to assess the impact of aging on health care costs nationally concluded that the average annual expenditure per prisoner was \$5,482, but that for prisoners age 55 to 59, the amount was \$11,000, and the figure steadily increased with age, reaching \$40,000 for prisoners age 80 or over.

One thing is clear. The costs are steadily rising. In California, according to the Human Rights Watch report, inmates 55 and over constitute about 7 percent of the prison population but consume about 38 percent of medical bed resources. In Florida, the 16 percent of the prison population that is 50 or over accounts for 40 percent of all episodes of care and nearly 48 percent of all hospital days. In Georgia, incarcerated individuals 65 or older had an average yearly medical cost of \$8,565, compared to \$961 for those under 65. Those 50 and older constituted 14 percent of Georgia’s prison population in 2009 but accounted for 40 percent of outside medical expenditures.

The reason for the steep price tag is the same as that for elderly residents outside of prison—greater medical needs. Older prisoners are susceptible to the same chronic diseases and infirmities associated with age, including heart and lung problems, diabetes, hypertension, cancer, ulcers, poor hearing and eyesight, and a range of physical disabilities. According to several studies, older prisoners are more likely to develop cognitive limitations, including dementia. Older prisoners are also more likely to have chronic, disabling, and terminal illnesses, ultimately requiring assisted-living and nursing-home levels of care while incarcerated.

The demographics of older state prisoners show greater percentages of men and greater percentages of whites than in the overall incarcerated population. There were about 21 times more men age 55 and older than women of that age in prisons among the states that reported prison population data to the National Corrections Reporting Program (NCRP) for 2009. With regard to race, the Human Rights Watch report states that whites accounted for nearly 54 percent of prisoners 55 or older and blacks 39 percent in the NCRP reporting states in 2009.

The state and federal governments have little choice but to provide a minimum of care for those serving time. “It may seem strange,” wrote U.S. District Chief Judge Mark Wolf in a decision that allowed a male inmate to receive a sex change operation at taxpayers’ expense, “that in the United States citizens do not generally have a constitutional right to adequate medical care, but the Eighth Amendment promises prisoners such care.”

Wolf cited the 2011 U.S. Supreme Court decision in *Brown v. Plata* that ordered California to reduce its prison population: To incarcerate, society takes from prisoners the means to provide for their own needs. Prisoners are dependent on the State for food, clothing and necessary medical care. A prison’s failure to provide sustenance for inmates may actually produce physical torture or a lingering death. Just as a prisoner may starve if not fed, he or she may suffer or die if not provided adequate medical care. A prison that deprives prisoners of basic sustenance, including adequate medical care, is incompatible with the concept of human dignity and has no place in civilized society.

Outside of prison, being 50 or 55 would not necessarily be considered “older.” But incarcerated men and women typically have physical and mental health conditions that are associated with people at least a decade older in the community. This accelerated aging process is in part due to the high rate of disease and unhealthy lifestyles common in people from poor backgrounds, who comprise the majority of the prison population. These factors, Human Rights Watch reported, are often further worsened by substandard medical care, either before or during incarceration.

“Prisons were never designed to be geriatric facilities,” observed Jamie Fellner, senior adviser to the U.S. Program at Human Rights Watch and author of the report. “Yet U.S. corrections officials now operate old age homes behind bars.”

And the numbers continue to grow. The Sentencing Project reported that the number of offenders serving life sentences in state prisons quadrupled between 1984 and 2008, increasing from 34,000 to 140,610. In the federal system, the growth in the number of prisoners with life sentences grew even more markedly. From 410 lifers in 1998, the number grew to 4,222 in 2009, a tenfold increase, according to data from the Federal Justice Statistics Program.

The explosion in the number of lifers in the United States since the 1970s represents a dramatic change in U.S. penal policy. For much of the last century, life in prison never really meant a death sentence, primarily because of the significant penal reforms during the Progressive Era. These reforms were rooted in the then growing enthusiasm for the ideals of rehabilitation and rewarding good behavior behind bars.

In 1913, a life sentence in federal prison was officially defined as 15 years. Until the early 1970s, writes University of Pennsylvania political science professor Marie Gottschalk, a life sentence typically meant 10 years and 6 months. But that changed almost overnight, in historical terms. In 1973, lawmakers in Louisiana, for example, raised the minimum to be considered for clemency to 20 years. Three years later, they raised it to 40 years. And in 1979 they mandated that all life sentences meant life without parole. In 1970, just 143 people were serving life without parole in Louisiana. By 2009, it had mushroomed to 4,270—or to about 11 percent of the state’s prison population.

In Tennessee, a lifer must serve a minimum of 51 years before he or she is eligible for parole. In Kansas, the minimum prison term before parole eligibility is 50 years, while in Colorado the minimum is 40 years. A 2004 report by the Sentencing Project estimated that individuals sentenced to life can expect on average to serve nearly three decades in prison before they are released on parole. Life sentences have become so commonplace, Gottschalk reports, that about 1 out of 11 people imprisoned in the United States is serving one.

Lengthy prison terms that exceed an individual's life span are designed to send the very public message that the offender will never be released. In one high-profile case, Willie Clark, a habitual criminal convicted of killing Darrent Williams of the Denver Broncos during a drive-by shooting, was sentenced to life without parole, plus 1,152 years. Clark received the additional 1,152 years in prison for the 16 attempted murder charges and the sentencing enhancements for his habitual criminal history. Those enhancements allowed prosecutors to triple the 24-year penalty for each of the 16 attempted murder counts for which Clark has been convicted. The total: 1,152 years, on top of the life sentence.

"In just the last 30 years," wrote Adam Liptak in the *New York Times* in 2005, "the United States has created something never before seen in its history and unheard of around the globe: a booming population of prisoners whose only way out of prison is likely to be inside a coffin."

It is often said that "crime is a young person's game," and, for the most part, older inmates are far less likely to be rearrested, reconvicted, or returned to prison than younger inmates, several studies have reported. In New York, data on releases from 2000 to 2006 reveal that inmates who were younger than 55 at the time of release were at least twice as likely to return to prison within three years of release, due to a new offense, than prisoners released at 55 and over. A 2010 Ohio study found that about 27 percent of former prisoners commit new crimes within three years of their release. But fewer than 6 percent of offenders released between ages 65 and 69 commit new crimes, and fewer than 3 percent between ages 70 and 74 commit new crimes after release.

"The possible risk of crime posed by individual prisoners cannot, of course, be determined solely by age; other factors must be considered as well, including their physical and mental condition and recent conduct behind bars," Human Rights Watch reported. "Nevertheless, available data suggest that, as a general matter, public safety does not require the continued incarceration of geriatric prisoners, especially if they are infirm or incapacitated."

That is not to say that older inmates, once released, do not commit crimes. They do. Dominic Cinelli was one of them, and his tragic story illustrates a significant reason why the number of aging inmates will continue to grow—politics.

The backlash from some bad parole decisions has led politicians, heavily influenced by public opinion, to engage in a political calculus that weighs greatly against release. As a result, politically appointed parole boards and elected executive officers routinely deny parole to eligible individuals, leaving them instead to remain incarcerated until death. In short, no politician ever lost an election because he or she denied a parole application.

In Massachusetts, nearly one in five inmates are 50 or older, roughly 19 percent. At age 55, Cinelli, who was serving three concurrent life sentences for a series of armed robbery and attempted murder convictions, was right on the edge of being considered a safe bet for release back into society. In 2008, Cinelli appeared before the Massachusetts Parole Board and explained how he had changed. “I’m new and different,” he said during the videotaped November 2008 parole hearing. “... But I realize that deep inside me there is still that ugliness, and I know I have to deal with that and control that, and I’m doing a real good job of it.”

The board took note of Cinelli’s completion of an antiviolence course, his participation in church services, and his attendance in a 12-step alcohol- and drug-abuse program. He also completed his GED, including learning Microsoft 1997. “Overall, Mr. Cinelli has been proactive in addressing the board’s previous concerns, and has exhibited a strong motivation to achieve his rehabilitative goals,” read the November 2008 report. “He appears committed to conducting his life in a positive manner. He has not accrued any disciplinary reports or returns to higher custody since 1999. Moreover, his proactive participation in programs aimed at reducing his risk to recidivate is viewed positively by the board.”

Those “previous concerns” were substantial. Cinelli had an extensive history of substance abuse, beginning in grade school with marijuana and barbiturates. By the age of 15, the son of a Boston police officer was using heroin daily, police said. Cinelli claimed that

much of his criminal activity was to support his drug addiction, and the Parole Board noted that “much of his negative institutional behavior” stemmed from drug abuse.

Just three years earlier, the district attorney’s office opposed Cinelli’s 2005 bid for parole through a strongly worded letter sent to the Parole Board. In the letter, Lynn Rooney, an assistant district attorney in Middlesex County, wrote, due to “the uncertainty that he has overcome his addictions and is fully prepared for difficulties of life outside of prison walls, this office opposes the parole of Mr. Cinelli.” Rooney noted that Cinelli’s time behind bars included more than 50 disciplinary reports and two escapes. “Mr. Cinelli has not utilized his time in prison well, spending nearly 25 of those years using drugs, being violent towards others, disrespecting authority, and participating minimally in programming,” Rooney wrote.

But based in part on the ideals of rehabilitation and rewarding good behavior, the board—Mark Conrad, Doris Dottridge, Candace Kochin, Pamela Lombardini, Thomas F. Merigan Jr., and Leticia Munoz—agreed, with some reservations. “You’re a very, very, very high risk,” Merigan told Cinelli during their face-to-face meeting, according to video footage obtained by *The Boston Globe*. Nevertheless, the board voted unanimously to release Cinelli in 2008, declaring that it “would not be incompatible with the welfare of society.”

In February 2009, after serving the last 30 years behind bars, Cinelli was a free man. Less than two years later, Cinelli shot and killed Woburn police officer John “Jack” Maguire, a 60-year-old father of three, during a botched jewelry heist. The public outcry over the murder, the day after Christmas, of a respected police officer was immediate. “The outrage is universal,” Bruce Tarr, the Republican leader in the Massachusetts Senate, told reporters. “We have a great deal of anger and frustration,” opined the conservative *Eagle Tribune* in one of its editorials. The “Governor doesn’t get [the] outrage over Parole Board’s failings....When the justice system fails, when it cares more for the rights of criminals than the lives of the law-abiding, more than just public safety is compromised. People begin to believe that one of the underpinnings of civilized society has come undone.”

No one needed to explain the consequences of a bad parole decision to Massachusetts Governor Deval Patrick. The story of Willie Horton and how his release helped to derail the 1988 presidential campaign of then Massachusetts governor Michael Dukakis was all too familiar. Horton was the convicted felon who, while serving life without parole for murder, fled while on a weekend furlough. While in Maryland, Horton pistol whipped a man and raped his girlfriend.

One of Dukakis' Democratic challengers, then U.S. Senator Al Gore, was the first candidate to raise publicly the controversial furlough program, but it was Republican political strategist Lee Atwater who made Horton a household name across the nation. Though Dukakis did not initiate the program—Republican Governor Francis Sargent started it in 1972—Dukakis did veto a bill that would have prohibited furloughs for first-degree murderers. He argued that it would cut the heart out of efforts at inmate rehabilitation. Dukakis paid the price and lost the presidential election to George H.W. Bush.

In the Cinelli case, the first to pay the price were lifers scheduled for parole hearings shortly after Maguire's death. Patrick immediately placed on a moratorium on all such potential releases. Next on the list was the Parole Board. Patrick engineered the resignations of all five board members who voted to free Cinelli. "I realize they have worked hard in a difficult job doing their best," Patrick declared about the shake-up. "I appreciate they have resigned in the interest of regaining the confidence of the public in parole itself." Those actions were well received. "He took direct action," Woburn Police Chief Philip Mahoney told reporters. "You can't ask any better than that of a public official."

Patrick then proceeded to stack the seven-member board with new members experienced in law enforcement, parole, or corrections. Quite naturally, the number of releases dropped. In 2009, the year Cinelli was released, the parole board held 8,828 face-to-face parole hearings, granting release to two thirds of the applicants. In 2011, the year the new members were installed, the board authorized the supervised release of just 435 prisoners, a decline of 58 percent from 2010. The year before, it had released 1,028.

Pardons, already dwindling, also became virtually impossible to obtain. Governor-granted pardons reached their height in 1970,

with 477 being granted in one year. Republican Governor Jane Swift was the last to approve pardons in Massachusetts, granting seven in 2002. Patrick's predecessor, Republican Mitt Romney, received 15 recommendations for pardons and three for commutations from the Parole Board. He granted none during his four years as Massachusetts governor. More than 170 pardon and 100 commutation requests were filed during this time.

In Patrick's first five years as governor, more than 280 pardon and 220 commutation petitions were filed in Massachusetts. Just one, a commutation request for convicted murderer Arnold King, made it to Patrick's desk, only to be denied.

Cinelli's release also renewed debate on parole in general and gave new life to the then languishing piece of legislation called Melissa's Bill, which would, among other sentencing changes, ban parole for three-time convicted felons. The bill was named after Melissa Gosule, a woman who was kidnapped, raped, and killed by a man whom prosecutors say offered to help her after her car broke down on Cape Cod in 1999. The convicted killer, Michael Gentile, had 27 previous convictions but had served only two years behind bars.

At the center of the furor over Cinelli was the provision in Massachusetts sentencing law that allowed some "lifetime" prisoners to become eligible for parole as long as they have served at least 15 years and did not commit first-degree murder. Cinelli qualified for a hearing because of his concurrent life sentences as a habitual armed robber.

That eligibility would change. After days of back and forth with the state legislature, Governor Deval Patrick agreed in 2012 to sign a controversial "three-strikes" bill, saying the bill was a "good start" on the way to more comprehensive criminal justice reforms. "I understand the concerns of those who worry we have taken judgment out of the justice system and the pain and frustration of the families of victims of violent crime," Patrick said in a statement. "For all those interests, and those of the public at large, this bill is a good start."

For Patrick, the issue was the elimination of judicial discretion. Patrick threatened to veto the bill unless a provision was adopted that enabled judges to have what he called a "safety valve" in sentencing. But Patrick did not have the numbers on his side. A year earlier, the

Massachusetts House voted 142 to 12 in support of a bill to deny parole to violent offenders who have been convicted three times. A similar three-strikes law was approved in the Senate.

As the deadline approached to enact Melissa's Law, the House voted 132 to 23 against the governor's new provision, while the Senate rejected it later in the same day. "I asked for a balanced bill," Patrick said in a statement, "and, after many twists and turns, the Legislature has given me one. Because of the balance between strict sentences for the worst offenders and more common-sense approaches for those who pose little threat to public safety, I have said that this is a good bill. I will sign this bill."

Critics of the new law were not happy. They had argued that the new law would funnel more people into an already crowded prison system, cost taxpayers hundreds of millions of dollars, eliminate judicial discretion, and harm communities of color. "We've been opposed to this bill for a long time," said Christopher Ott, communications director of the American Civil Liberties Union (ACLU) of Massachusetts. "We think it's bad public policy that politicians are so concerned about looking tough on crime in an election year that they're willing to sacrifice justice, public safety, and economic savings."

Given the violent consequences and political impact of Willie Horton and Dominic Cinelli, it is not all that surprising that the struggle to maintain a sense of human dignity for aging inmates is lost in all the sensational media coverage. That struggle was underscored by Amy Zeittlow. One of her friends, a ballet dancer and college senior, was raped and murdered. "It was the first time death, violence, and evil intent collided with my sheltered world," she wrote in an essay for *Atlantic* magazine.

But Zeittlow is a humanitarian, and as such, works as a leader of the Hospice of Baton Rouge, a groundbreaking program at Louisiana State Penitentiary in which inmates, most of whom are ineligible for parole, volunteer to train as caregivers for their fellow inmates who are dying. In the essay, she raised a profound question. Her friend's killer is now behind bars and may one day need hospice care. "I asked myself," she wrote, "What if we were asked to care for [my friend] Juli's killer? What would I do?"

Her answer was that she would provide such care but only as a last resort. “I would be honest with our hospice team about my conflicts and make clear that I should be the last team member to serve him, and only if absolutely necessary,” she wrote. “Every inmate convicted of a violent crime carries with him the precious memory of those he has hurt, people like my friend Juli. But if in our freedom we choose to treat prisoners with care and dignity, we are not imprisoned by the memories of what they have done. His terrible wrong has not been forgotten nor negated; rather, it is simply not being held against him by caregivers as he dies. He has died a man and not a prisoner.”

Prison rights advocates expect that, due to the Great Recession, the United States will begin to empty its cells. They argue that as the world’s leader in incarceration, with about 2.2 million people presently in the nation’s jails and prisons, the United States can no longer afford to keep so many people behind bars for so long. As U.S. Attorney General Eric Holder told the American Bar Association in August 2009, the country’s extraordinary level of incarceration is “unsustainable economically.” In Massachusetts, the word “unsustainable” was also used to describe the current state of affairs in its prison system. A nearly 400-page report explained that the state would need some \$2 billion in capital improvements and \$120 million more in annual operating costs just to meet current demands. The report estimated that by 2020, without major policy changes, the state would need an additional 12,000 beds, and expanded regional facilities to treat female, mentally ill, and elderly prisoners. “We cannot build our way out of this problem,” then Public Safety Secretary Mary Beth Heffernan said at the time. “We need to have a better, common sense operating approach to who we put in our beds.”

As it is now, Massachusetts prisons have no hospice programs to manage the care of terminally ill prisoners. In recent years, according to a 2010 report from the Vera Institute for Justice, at least 15 states and the District of Columbia had programs allowing some form of “geriatric release,” especially for imprisoned elders with terminal or serious illnesses or disabilities. The Vera report notes, though, that jurisdictions rarely use these provisions because of political considerations, public opinion, and narrow eligibility criteria.

Among its recommendations, Human Rights Watch urged state and federal officials to review sentencing and release policies to determine which could be modified to reduce the growing population of older prisoners without risking public safety. Human Rights Watch also called for the development of comprehensive plans for housing, medical care, and programs for the current and projected populations of older prisoners.

In its detailed analysis, the ACLU concluded that prison officials are hard-pressed to provide conditions of confinement that meet the needs and respect the rights of their elderly prisoners. They are also ill-prepared—lacking the resources, plans, commitment, and support from elected officials—to handle the even greater numbers of older prisoners projected for the future, the ACLU stated.

For Zeittlow, it is about more than the numbers. “As our nation’s aging prison population explodes, we have not only a financial but also a moral imperative to confront the consequences of our system of mass incarceration,” she wrote. “As a society, we must bring justice on behalf of those who have been grievously wronged. At the same time, the vulnerability of aged prisoners imposes a renewed responsibility for us to take a hard look at our criminal justice system, how we lock people up and when, and if, we set them free.”

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