

WHY COMPASSIONATE RELEASE?
A Follow-Up To "What Is Compassionate Release?"

by Timothy J. Muise

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My article "What Is Compassionate Release" appeared in Volume 22, Number 2, of the 2013 Journal of Prisoners on Prisons^{1/}. Therein I did my best to describe what the compassionate medical release of prisoners is and how it has become what I feel is one the most pressing topics in criminology/penology. In this follow-up I will scratch the match against the striker of need in an effort portray the urgency for the medical release of prisoners as it is clear that the wheels of justice and humanity have spun for far too long on this topic.

In the Summer of 2000 the New England Journal on Criminal and Civil Confinement^{2/} ran a piece by Nadine Curran which, in Nostradamus like fashion, layed out the future of elderly prison populations and landscape of corrections yet to come if this dilemma of aging prison demographics was not aggressively addressed. Her piece, Blue Hairs In The Bighouse: The Rise In Elderly Inmate Population...^{3/}, should have been the harbinger of change, or at a bare minimum discussion about plans for change, but sadly her stark warnings went unheeded. As a result we are in the midst of a true crisis in the form of the aging prisoner population(s) and the negative impact it has on the daily quality of life for the American taxpayer cannot be discounted.

The estimated costs of housing elderly prisoners is three (3) times the cost of housing prisoners under fifty years of age.^{4/} These astronomical costs are driving state corrections budgets through the roof. In Massachusetts medical care takes up 18.5% of the total yearly corrections budget^{5/}, ringing in at about \$95,000,000.00. The added security costs of housing dying prisoners, coupled with the complicated

medical care that must be afforded the chronic conditions this population faces, makes caring for these "Big House Blue Hairs" untenable. In many of the individual case studies the elderly prisoner no longer poses any threat to society making security unnecessary, but in corrections security comes first as this need is what employs guards. Tail wags dog.

The detrimental effects of housing aging prisoners are not always discussed but are just a traumatizing to public safety as are the financial costs. Tough on crime policies, such as more widespread use of life-without-parole sentences, fuels prison overcrowding.^{6/} Such overcrowding is a great concern due to the fact that it so negatively impacts rehabilitation as well as the health and safety of prisoners and prison employees. Physical, spiritual and mental health are all negatively impacted by prison overcrowding.^{7/} Many times the end result in such overcrowding and the hopelessness of life sentences is increased suicide rates.^{8/} The state of Massachusetts, which has no compassionate/medical release, proves this as in 2010 Massachusetts rose to number one in per capita prison suicide rate^{9/} and as a result the Norfolk Lifers Group, of which I was a member of the board of directors at the time, met with Massachusetts Undersecretary for Criminal Justice Sandra McCroom and then Commissioner of Correction Harold Clarke, who both expressed at that meeting that overcrowding was thought to play a role in the suicides in Massachusetts. I personally presented the case for compassionate release to then Commissioner Clarke but he was unreceptive. His proposed solution was to build another maximum security prison; typical corrections minded thinking. Mr. Clarke is Virginia's problem now but the dilemma of the aging prisoner, and their social costs,

is still ours here in the Commonwealth.

The greater number of prisoners in any facility, the greater delay in receiving services, whether they be rehabilitative or medical.^{10/} The American Medical Association has also found that long term housing in overcrowded conditions accelerates heart conditions and high blood pressure,^{11/} again increasing medical costs. The AMA also found that the psychological effects of prison overcrowding decreases the immune system.^{12/} When you create an environment that is so unproductive to rehabilitation, to the quest for self-realisation as former Supreme Court Justice Thurgood Marshall put it,^{13/} you endanger the public that corrections was created to protect. Increasing prison populations ensure jobs for corrections employees but diminish the quality of life for the citizens who demand that public safety efforts actually make them safer.

There also exist legal ramifications to housing old and dying prisoners in an overcrowded and abusive prison environment. Elderly prisoners become the "prey" to younger/stronger prisoners. This wolf-prey concept constitutes cruel and unusual punishment,^{14/} as does housing them in overcrowded and services stressed conditions.^{15/} The United States Supreme Court has ruled that the Eighth Amendment to the United States Constitution not only guards against "torture and other barbarous methods of punishment", but also demands and protects, "broad and idealistic concepts of dignity, civilized standards, humanity, and decency..."^{16/} To keep an elderly prisoner, who no longer poses any threat to society, in overcrowded, undignified, and indecent conditions of confinement is actionable under the law, but more deflating is that it is morally

reprehensible. This once proud nation must hang its head in shame as we have out funded the prison/law enforcement complex before compassion, humanity and decency. The time is long overdue for the United States of America to be the shining beacon of justice tempered with mercy.

Both the judicial system and the legislature have powers to create and implement a viable system of compassionate release.^{17/} An advisory board of licensed, accredited, and peer reviewed professionals needs to be assembled to ascertain who would meet an objective set of criteria for immediate release to managed care facilities. The first direct savings financially would be the elimination of security costs. The direct social impact would be freeing up of services for prisoners seeking rehabilitation opportunities. The Courts have the power to issue "early release" orders if corrections and public safety officials are reluctant to abide by advisory board recommendations.^{18/} If the legislature cannot pass law in the required time frame the urgency demands then the court system may be the only viable remedy. Once the legislative branch enacts law the judicial branch would ultimately be charged with enforcing it, but if the House and Senate cannot pull themselves out of the political quagmire (they have been arguing medical release measures since 1993)^{19/} the burden must fall upon a brave judicial system. Such courage has been rare here in Massachusetts but public outcry would inject valor into the circulation of those wearing the robes. The gavel must bang for solutions.

Our society can no longer afford this massive criminal justice bureaucracy which has created the "prison industrial complex".^{20/} These prison revenues brought such big players into the "financial game" such as Goldman Sachs & Co. and Smith Barney Shearson, Inc., the game being the

prison construction game.^{21/} The focus must be placed back on rehabilitation and proven crime reducing programming and education. Learning is the cure for crime and compassion surely the elixer for all that ails the system.

Two organizations here in the Commonwealth of Massachusetts are working to make compassionate medical release a reality here in the state. To find out how you can get involved please contact;

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Both groups would love to hear from you with thoughts, ideas, commentary and support. Why compassionate release? Our human dignity demands it.

ABOUT THE AUTHOR

Timothy J. Muise is a prisoner rights activist who is serving an 18-20 prison term for a tragic manslaughter conviction. He works to enhance public safety through addressing negative confinement conditions, while also breaking prisoner stereotypes. He can be reached at:

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See More Of Tim's Work At:

<http://betweenthebars.org/blogs/101/>

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