

COMPASSIONATE RELEASE

"Then And Now"

by Timothy J. Muise

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In the Summer of 2000 the New England Journal on Criminal and Civil Confinement^{1/} ran a comprehensive legal expose by Nadine Curran which, in Nostradamus like fashion, layed out the future of the elderly prison population(s) and the landscape of corrections yet to come if we did not act in an expedient fashion. Her piece entitled, "Blue Hairs In The Big House: The Rise In The Elderly Inmate Population...", should have acted as a harbinger of plans to prepare the system for this crisis but her fact based warnings went unheeded across the nation. Massachusetts, which at this time is in the top five (5) states housing elderly prisoners^{2/}, did its best to place an ostrich head in the sand concerning the specific warnings Ms. Curran's expose layed out.

In 2000 it was estimated that the cost of housing elderly prisoners was three (3) times that of housing younger prisoners (those under fifty years of age)^{3/}, and even today it is reported that in most states that cost of housing elderly prisoners is at least double the standard cost.^{4/} Today the national average for housing a prisoner under the age of fifty is \$34,100.00 per year, while an elderly prisoners care rings in at \$68,270.00.^{5/} Financial distress is far from the only negative impact this aging prison population has upon the prison system, and ultimately society in general.

The overcrowding that keeping these "Blue Hairs" in the big house results in severe stress upon services, employees, and the prisoner himself/herself. Overcrowding limits the amount of prisoners who can access reentry programs and preparations. Prisoners return to the streets

fully unprepared sustaining the mean recidivism of 47% in Massachusetts.^{6/} Prison guards have the highest suicide rate in law enforcement and have been reported to be responsible for 50% of the sexual assaults in prison.^{7/} The American Medical Association reports that prison overcrowding results in increased rates of heart disease and high blood pressure.^{8/} This dire hopelessness embeded by old men/women being held past their dangerousness negatively impacts the entire prison system; top to bottom. Not only do you, the taxpayer, "pay" out of pocket you also pay through sustained crime levels being the results of the ineffective corrections system.

At this time about 19% of Massachusetts' prison population is in the elderly catagory.^{9/} Governor Patrick himself has predicted that by the year 2020 we will have far more elderly prisoners requiring acute care than we could ever have bed space for. Republicans call for more prisons in which to house the elderly; compassion calls for a viable release vehicle. Politics and the "tough on crime" rhetoric of those state legislators proved folly here in the Bay State as the overcrowding it created and ineffectiveness of the long-term sentence, especially for the non-violent offender, has recently had to be repealed through bills calling for sentence restructuring. Modern incarceration demands more.

The Pew Charitable Trusts, through its Health Care Spending Project, reports a 52% jump in costs in prison healthcare spending in the 42 states it researched for the time period between 2001 and 2008;^{10/} an increase which Nadine Curran predicted in 2000 as we report herein.^{11/} The Pew study revealed that the states covered spent \$6.5 billion on prisoner healthcare

in 2008, which was a glaring \$2.3 billion increase compared to 2001.^{12/} The Study also reported a 94% increase in the number of state and federal prisoners during the same time period (2001 to 2008).^{13/} Healthcare costs were two to three times higher for elderly prisoners with chronic illnesses than they were for the younger prisoners.^{14/} The American Civil Liberties Union echoed the Pew findings in a report from 2012. The ACLU reports that of the nation's 1.5 million state and federal prisoners, around 246,000 were age 50 and over.^{15/} This is about 16% of the total prison population. Massachusetts currently runs at about 19% of its population at 50 years of age or older,^{16/} and this is one of the fastest growing demographics in the system with 55 years of age and older being the fastest.^{17/}

By the year 2030 nearly a third of the entire prison population in the United States will be elderly; upwards of 400,000 prisoners.^{18/} The cost of keeping these aging prisoners incarcerated is about \$16 billion per year with \$3 billion of that money for healthcare costs alone.^{19/} To keep these aging prisoners, the vast majority of which no longer pose any type of threat to society, (the ACLU reports that the majority of prisoners who are serving "life sentences" are not incarcerated for murder but have received life/long-term sentences under "tough on crime" measures from the apex of that era: 1986 to 1995),^{20/} behind bars is pure economic irresponsibility, but it is also morally reprehensible. Once you know that this ongoing incarceration does not reduce or deter crime, and you continue to allow it to go on unabated, you are now in the category of "perpetrator" as you are perpetrating a crime against justice, humanity,

and decency.

ACLU research has shown that the arrest rate for people over 50 years of age is about 2%. It is just about zero for over 65.^{21/} The aging prisoner is the safest release demographic; hands down. The immediate cost impact of "legislating" these sick and dying, chronically ill, prisoners into private managed care would be eliminating security costs. Massachusetts spends 68% of its half-billion dollar corrections budget on salaries (that rings in at about \$350,000,000.00 or so) while spending 18% of its budget (another \$95,000,000.00) on prisoner healthcare.^{22/} This does not leave too much money for the "corrections" department to "correct" those in its care. Spending so much money on the aging prisoner demographic promotes recidivism (Massachusetts has a mean 43% recidivism rate as of 2007)^{23/} and does absolutely nothing to deter crime and most likely promotes it as prisoners cannot receive quality services for reentry due to the portion of the DOC budget spent on salaries and healthcare. The time has come to force the hand of the legislature to mandate the release of these sick and dying prisoners.

The Massachusetts legislature has proposed bills on the topic of medical release since at least 1993.^{24/} They have failed to pass such a measure as there has not been enough public backing. Most recently State Senator Patricia Jehlen (D. Somerville) authored the brave measure S.B. 1139, "An Act For The Medical Release Of Prisoners".^{25/} Even though this bill was backed by effective groups like CURE-ARM, Bread & Water Prisoners, Inc., and the Norfolk Lifers Group (it was even supported by the DOC although zealously opposed by the guards union), it died in

committee this last legislative session. A new bill will be authored in the next session and must be supported by the citizenry. The Judiciary also needs to be pushed to act. The extraordinary powers afforded that comprehensive body would allow them to fashion release orders for those prisoners determined to be too ill to pose a threat to society. We must act in as aggressive fashion as possible before the dire situation is beyond reasonable repair. We are nearing that point.

We need you to get involved. Please contact the organizations listed below to find out what you can do to bring compassionate medical release to fruition. U.S. Attorney General Eric Holder announced in August of 2013 that the Bureau Of Prisons would institute new and effective compassionate release policies.^{26/} The commonsense pendulum is started to swing the right way but the effort truly needs your involvement. We must embrace the concept of justice tempered with mercy as we are a nation of fairness and compassion. Actions speak far louder than words. Please get involved. I ask you to contact;

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- 24/ See H.R. 4139 (1993).
- 25/ See S.B. 1139, "An Act For The Medical Release of Prisoners", (2013)
- 26/ Id at 17.