AN END IN SIGHT: A CONFLUENCE OF PRACTICAL, FINANCIAL AND BENEFICENT STRATEGIES FOR MASSACHUSETTS LIFE WITHOUT PAROLE

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INTRODUCTION

The Department of Correction (DOC) average cost of incarceration rose 2.3-fold in 10 years, FY2016-FY2025, from $60,317 to $141,062/prisoner/year, with the budget ballooning 50% to $843 million even as prisoner numbers fell by 37% (1). A major factor is over-incarceration and aging of Life Without Parole (LWOP) prisoners (2), causing MA to have the oldest prison population (3) and highest percent (4) of LWOP prisoners in the US. Most MA LWOP prisoners have aged in prison; 60% are aged 50+ or have served over 15 years and 1/3 are aged 60+ or have served over 25 years (5). Here we explore opportunities and consequences of considering parole for these elderly cohorts whose release poses minimal risks to public safety.

BACKGROUND & FACTS

>> DOC annual costs of incarceration, $141,062 per prisoner, have risen every year to become the highest in the nation (6). Prisoners are considered elderly after age 50 because of stress and deficient health care (7), and costs are increased 2 to 5-fold over average as prisoners age (8). The Table shows age, time served, and minimum annual cost (at $141,062/yr) as well as the "Lowest Likely" annual cost (at 2 x average cost = $282,124/yr) for LWOP cohorts serving over 15 years.

EXORBITANT COSTS AS ELDERLY LWOP PRISONER COHORTS CONTINUE AGING UNDER DEATH-IN-PRISON SENTENCES

Age Range	Years Served	#	Minimum Annual Cost	Lowest Likely Annual Cost
50-59	15-24	75	$10,579,650	$21,159,300
	25+	113	$15,940,006	$31,880,012
Subtotal		188	$26,519,656	$53,039,312
60-89	15-24	58	$8,181,596	$16,363,192
	25+	208	$29,340,896	$58,681,792
Subtotal		266	$37,522,492	$75,044,984
Total		454	$64,042,148	$128,084,296

>> Average DOC medical costs per prisoner increased 3½-fold FY2016 to FY2024, from $9,964 to $35,312, even as quality of care deteriorated. Average DOC medical costs are now 3.4-times higher than costs for MA residents (9). Specialty care for elderly prisoners stresses prison resources and imposes high costs for treatment of diseases of aging (e.g. cancer, diabetes, heart disease, etc.).

>> The large cohort of aging MA LWOP prisoners serving death-in-prison sentences will require substantial increases in expenditures as they continue to age. Elder-care facilities will need to be upgraded or newly constructed and staffed. Already the DOC has expended over $20 million to retrofit prisons with alert systems for hard of hearing prisoners (10). Hospitalization costs also will markedly increase.

>> Most crimes, including murder, are committed by the young. Peak offenses occur in late adolescence and early 20s with offending declining rapidly thereafter. Criminal justice experts agree that "[d]esistence from violent crime [with age] is pervasive and occurs irrespective of gender, race, and ethnicity... and that... violence [is] rare and declines rapidly in early adulthood" (11).

>> Extensive data document that murderers have the lowest rates of recidivism and only very rarely kill again (12). In fact, violent offenders in general are the least likely to re-offend after imprisonment, and additional evidence supports the release of prisoners over 50 who have served long sentences (13). Notably, not one of 48 MA LWOP-sentenced murderers who, eligible for parole after a 2013 SJC decision banning LWOP for juveniles under 18, were released has re-offended (14).

>> Data also show that public safety is not improved by very long sentences. These neither deter nor prevent crime, in part because maturing older individuals naturally age out of crime (15). Recidivism after release from prison also decreases with age, dropping off sharply after age 40-45 (16).

>> It has been shown that important collateral consequences result from the destabilizing social effects of long-imprisoned family and community members who are missing from their neighborhoods and whose absence actually increases local crime rates (17).

>> International law argues that all persons have human dignity which must be protected, including for those who are subject to criminal punishment(18). These precepts conclude that "life sentences without a realistic possibility of release presuppose the offender is beyond redemption and cannot be rehabilitated. This is degrading in nature and incompatible with human dignity" (19) and "is an affront to human rights" (20). This has led the European Court of Human Rights (ECtHR) to summarize that "there is now also clear support in European and international law... that all prisoners including those serving life sentences, be offered the possibility of rehabilitation and the prospect of release if rehabilitation is achieved" (21). The Rome Statute of 1998, established under the International Criminal Court (ICC), provides that all life sentences shall be reviewed after 25 years (22).

>> International law has struggled dealing with the legitimacy of incarcerating the elderly. Russia and most former Soviet Union states prohibit life sentences for seniors over sixty-five. The ECtHR and ICC have expressed no uniform policy about life sentences for the elderly, but are largely bound by European human rights law that all, including life-sentenced prisoners, must have a realistic prospect of release after 25 years. Most nations have adopted a flexible approach, setting variable minimum sentences for elderly offenders sentenced to life, providing them with realistic prospects for life in the community before death (23). In the US some have argued for medical parole as a solution, but this has been remarkably ineffective (24). A recent report on MA medical parole emphasized these failings, noting the high rate of medical deaths in custody from chronic diseases (43%) and, more concerning, from acute illness, raising the added specter of inadequate medical care (25).

>> The US Supreme Court has acknowledged that "[p]risoners retain the essence of human dignity inherent in all persons. Respect for that dignity animates Eighth Amendment prohibition against cruel and unusual punishment" (26). The US Supreme Court also repeatedly relies on international human rights standards, arguing, e.g., that "within the world community, the imposition of the death penalty for crimes committed by mentally retarded offenders is overwhelmingly disapproved" (27) and applied the same standards to prohibit the death penalty for those under 18 (28). And, in Graham v Florida the Supreme Court applied international standards to decide that LWOP sentences for juvenile non-homicide offenders was unconstitutionally cruel and unusual (29). There the US Supreme Court again references that "evolving standards of decency that mark the progress of a maturing society" determine which punishments are so disproportionate as to be cruel and unusual (30). These same arguments are also prominent in decisions about LWOP for juveniles (31), establishing that both international law and "evolving standards of decency" animate the Eighth Amendment.

>> LWOP sentences exact a severe emotional toll on prisoners. Many prisoners and criminologists are agreed that LWOP sentences are harsher than the death penalty because they are a delayed death penalty, subjecting the offender to a lifetime of deprivation, permeated with fear of a slow, lingering death in prisons ill-equiped to care for ailing, elderly prisoners. It also deprives LWOP prisoners of the robust legal safeguards and assistance afforded those facing the death penalty, none of which are available for LWOP prisoners. This is akin to psychological torture, creating a deep sense of hopelessness and despondency in LWOP prisoners which, at times, can spread through prisons, de-energizing and handicapping all, impeding rehabilitation (32).

>> In addition to the rights to rehabilitation and release, the ECtHR, in Vinter, voiced support for a "right to hope", which is closely related to the inherent human capacity to change: "...hope is an important and constitutive aspect of the human person. Those who commit the most abhorrent and egregious acts...nevertheless retain their fundamental humanity... someday, they may have atoned for the wrongs which they have committed. They ought not to be deprived entirely of... hope. To deny them the experience of hope would be to deny a fundamental aspect of their humanity and, to do that, would be degrading". (33). Notably, the MA Mattis decision, which opened parole doors for MA murderers aged 18-20, has had a profound effect on the life-sentenced, demonstrating the power of hope to foster prisoners' desire for rehabilitation and to uplift the human spirit (34).

A PRACTICAL FINANCIAL AND BENEFICENT INTERVENTION

Viewing MA LWOP data in the context of worldwide and regional imprisonment is very revealing. While putatively "progressive", the MA imprisonment rate per 100,000 population is greater than 145 of 173 countries polled throughout the world (35).

The rate for MA exceeds rates for conflicted regimes like Saudi Arabia, Mexico, China, Iraq, and Syria, only lagging behind mostly notorious and repressive governments like El Salvador, Cuba, Turkmenistan, Russia, and Turkey (36). On top of this high imprisonment rate, MA also has the highest percentage of LWOP prisoners in the US (37), which itself has the dubious distinction of incarcerating 56,245 (38), equalling 80% (39), of the world's LWOP population. Regionally, MA imprisons 4 times as many LWOP prisoners as the 5 other New England states combined, and 3 times more than NY State, whose population is 3 times greater (40). This large percentage of LWOP is a major reason MA houses the oldest state prison population in the country (41), with many having aged in prison so that the majority have already served decades.

LWOP sentences are generally reserved for violent crimes, typically involving loss of life. Some believe that violent tendency is a fixed dispositional character trait. However, rates of violence, even by individuals, are subject to wide variations, suggesting that causes of violence are more likely situational, i.e. modified by sociological and environmental influences (42). Nonetheless, it is argued that the tendency for violence is based on personal disposition, justifying endless sentences like LWOP. The Age-Crime curve, however, demonstrates that criminal proclivities wane rapidly with age and life experience (43).

International and US law recognize the fundamental dignity of human life. International standards accept that rehabilitation is possible and expected, justifying a requirement for release and limitation of life sentences to no more than 25 years (44). The US, also, recognizes that juveniles under 18 (and in MA now also emerging 18-20 y/o adults) are different in terms of neurophysiological development and therefore should not be forever sanctioned, even for violent acts including homicide (45). The international experience with successful rehabilitation as well as the Age-Crime curve confirm that tendencies for violence and offending evolve over time, age, circumstance and environment (46). Moreover, our growing experience with Restorative Justice principles and practices provide further evidence that criminality, including violence, is subject to change and that incorrigibility cannot be predicted (47). This provides a rational basis for arguing that commission even of violent crimes offers few, if any, justifications for mandatory and interminable punishments like LWOP. This, however, is the exact, unfortunate situation with the profligate use of LWOP sentences in MA.

A series of pending MA legislative bills are recommending that aging and long-serving LWOP prisoners should be eligible for parole or sentence revision after serving 25 years. If so, substantial savings would accrue. Releasing all of the 321 elderly who have served 25 years listed in the Table would save at least $45,280,902 every year. Many of the prisoners listed as serving between 15-24 years have served close to 25 years and almost all would cross 25 years by the time the initial 321 might be released. Thus, it is reasonable to consider the possibility that 450 might become eligible for parole.

If, however, all these LWOP prisoners are kept in prison, annual costs will amount to more than the $64 million calculated at the minimum average cost shown in the Table. As elderly prisoners typically cost at least 2 to 3 times (if not 5 times) more than the average(48), the Table also lists costs at 2-times the average. Notably, the $128 million listed represents only a lowest likely average annual cost for this LWOP cohort. The increase for the elderly arises because of extensive specialty needs, increased health care costs, and more frequent and expensive hospitalization (note, e.g., DOC average hospitalization cost of $572,423 per patient per year at Shattuck Hospital for the year 2023 (49)).

As of January 1, 2025, the MA LWOP population includes cohorts of 260 prisoners aged 50-59, 170 aged 60-69, 106 aged 70-79, plus 25 aged 80-89. The continued aging of these LWOP prisoners will likely create critical financial and management

problems for the DOC because increasingly older prisoners have substantially greater needs. For example, this year the DOC expended $20 million to retrofit state prisons with an alert system for the now numerous hard of hearing elderly (50). With a large number of prisoners aging up without any possibility of release (other than death), multiple requirements will almost certainly include the building of prison nursing-home and skilled nursing complexes. Increased capital costs plus increased skilled staffing and referrals to provide for the care and needs of this unparalleled surge of elderly prisoners will layer on top of the already very high annual costs listed in the Table.

An important benefit of paroling this surfeit of aging LWOP prisoners is that this may allow the closure of a medium prison. Closing, for example, NCCI (Gardner) would save at least $63 million per year (the operating cost for calendar year 2023 (51)). NCCI houses approximately 800 prisoners. With the LWOP population reduced, over time, by 450, the remaining 350 could be accommodated by other medium and minimum security prisons. In recent years, minimum prisons have been utilized at about 50% of operating capacity (52), housing only about 10% of total prisoners, even though over 65% are classified to minimum security (53). A reason is that most LWOP prisoners, although classified to minimum security, are excluded from minimum security by policy since 1989.

In short, the combination of savings resulting from prison closure, the marked reduction in daily expenditures of housing the large number of aging LWOP prisoners, and avoiding the need to construct and staff elder-care facilities can substantially decrease DOC operating costs over the next decade. An estimated savings of $150 to $200 million <u>every year</u> would not be unexpected.

There would be many other benefits, including important humanitarian and practical ones, besides the financial if, after long years of imprisonment, the LWOP population is allowed to glimpse into a future that includes possible parole. The recent 2024 <u>Mattis</u> decision has dramatically foreshadowed such an eventuality. By declaring unconstitutional the lifetime incarceration of offenders whose crimes were committed between the ages of 18 to 20 (54), the SJC fundamentally altered the emotional climate of MA prisons. This made available, for the first time and previously unimaginable, a path to parole, for over 200 LWOP prisoners, 100 of whom became immediately eligible for parole, having already served more than 15 years. When even <u>Mattis</u> beneficiaries, some having served more than 50 years without hope, can be released, prisoners, especially other lifers, can begin to visualize their own way out. This spark of hope is energizing many prisoners to seek out and dive into programming and education with avid eagerness. (See "Hope" (57)). An ongoing and steady efflux of parolees from this large reservoir of long-serving and previously hopeless and despondent LWOP prisoners would have the potential to re-create and perpetuate a positive prison climate, sustaining enhanced motivation and invigorated rehabilitation over time.

MA already has clear evidence that the paroling, since 2014, of 48 juvenile murderers (aged under 18 at the time of their crime) has had no adverse effect on public safety despite original concerns about the release of what were considered very high risk juvenile offenders. But not one of them has re-offended (56). At the same time, their paroling has saved the Commonwealth over $7 million this year (and likely close to $50 million overall) while simultaneously preventing others from endangering society. Many of these matured ex-offenders are now actively modeling positive attitudes and behaviors while counseling potential youthful offenders in their communities to prevent them from making the same mistakes. Independent evidence has shown that the release of rehabilitated, older prisoners into their neighborhoods stabilizes communities and decreases crime (57). The time is long overdue for MA to follow the evidence and stop the useless warehousing of

harmless, aging and long-serving LWOP prisoners who pose minimal risks to public safety if released, and instead redirecting the substantial savings into education, jobs, and constructive re-building of struggling communities, which will actually help to reduce the incidence of crime.

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ENDNOTES

DOC data is from public records requests, 2016-2025, published "Fact Cards" and "Population Trends" reports by the DOC. Calculations by author.

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