

Postcards From a Prison Pandemic

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Moon Shot: Part 2
The Elderly Question

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Jerry is 69 years old. He has spent more than half of his life inside Massachusetts state prisons serving a sentence of life without the possibility of parole. The murder that led to Jerry's life sentence was the first crime he was ever accused of committing. He never even had a traffic ticket. During his 39 years of incarceration, Jerry also has never had a disciplinary ticket. He has actively participated in educational and rehabilitative programs and has held a job. Jerry has also helped to lead charitable initiatives, such as the once popular toys program that allowed prisoners to make toys that were donated to children's hospitals.

Once a year, a correctional program officer schedules Jerry for his annual classification hearing. By policy, three staff members should participate in Jerry's hearing. But there are never three staff members present because the outcome of Jerry's hearing has been predetermined by both state law and DOC policy. Jerry is a low risk elderly prisoner serving life without parole. Therefore, Jerry will remain housed at the medium security prison MCI-Norfolk. Jerry will stay there until he dies.

While Jerry's story is heartbreaking, it is far from exclusive. In fact, Massachusetts has a lot of stories similar to Jerry's. Thanks to the draconian sentencing laws put into place during the "Tough on Crime" era, America's prisons are full of people like Jerry who have been incarcerated for decades, who pose no risk to society, and who contribute to Massachusetts having one of the oldest prison populations in the United States.

If a person from the free world could walk into some of the housing units at MCI-Norfolk, that person might easily believe that they had made a wrong turn had entered not into a prison, but into an elder care facility. MCI-Norfolk is one of the largest nursing homes in Massachusetts. And like

those living in elder care facilities in the free world, the people in Norfolk's prison nursing home, as well as the hundreds of elderly prisoners in the state's other prisons, comprise the population most at risk from COVID-19. When you add in the danger posed by the way prisons can serve as a perfect petri dish for the coronavirus, it is fair to say that the elderly prisoner population is among the most vulnerable people in our country today.

One of the challenges in the COVID-19 world is how a system built for equitable justice treats the elderly. That is the focus of this edition of Postcards From a Prison Pandemic's "Moon Shot" series.

Dirk Greineder, my colleague at Lifers' Group Inc., has written extensively on the aged population of Massachusetts prisons. Earlier this year, he released a report which showed that over the last twenty years, the Massachusetts state prisoner population has aged rapidly. He wrote, "Prisoners aged 50 and over increased from less than 5 percent [of the Massachusetts prison population] in 1999 to almost 30 percent in 2019." When you look at those prisoners serving life without parole, like Jerry, the numbers as of January 2020 show that almost half are age 50 or older. According to Greineder, "Many are one-time offenders who have served 25 years or more."

Why do we hold onto all of these elderly prisoners? It is not for public safety reasons. While a 23 year old in Massachusetts has a 40 percent chance of either committing a new crime or committing a technical parole violation (such as drinking) after release, those who are age 50 - 54 have only an 18 percent chance; those age 60 or older have a scant 6 percent chance. This data clearly demonstrate the concept of aging out of crime. The older a person is, the less likely he or she is to engage in crime, even if the person has already been to prison. Yet, Massachusetts continues to house thousands of people like this.

COVID-19 forces us to re-think where members of the elderly population can live and what those spaces should look like. The coronavirus has already taught us that it is not safe to house vulnerable populations, like the elderly and chronically ill, in close congregation. On the outside, that is going to force a change in places like nursing homes. On the inside, it must force a change in the housing of older prisoners.

The future starts by asking: What is the purpose of housing any prisoner who can demonstrate both rehabilitation and that he or she is not a threat to society?

Since the COVID-19 outbreak, DOC administrators have been quick to process medical releases. The state's Supreme Judicial Court ruled earlier this year that medical release, which was put into place by the state legislature in 2018, should be extended to all prisoners who are either terminally ill or permanently incapacitated and who are considered not to be a threat to society. The definition of terminally ill is fairly straight forward. The definition of permanently incapacitated is bit more squishy. Thankfully, that squishiness has allowed the DOC to release a number of prisoners in recent weeks who are suffering from a range of chronic illnesses. But it is far from enough.

In a COVID-19 world, being elderly is itself a permanent incapacitation. Therefore, the DOC should immediately begin to review every prisoner age 50 and older, regardless of sentence, for medical release. The department should give priority in their review to the hundreds of elderly prisoners who suffer from chronic conditions. This group of people are the most vulnerable to a deadly outcome from COVID-19, and they are the least likely to be a threat to society.

The smartest thinkers researching and reporting on the coronavirus and COVID-19 all say the same thing: Things will never be the way they were before the virus. We are moving slowly toward a new normal. The rules of yesterday do not apply. So, what do we want the new rules to be?

One of the new rules should be that we value the lives of all of our seniors. That means that we must begin releasing the seniors trapped inside prisons. In a COVID-19 world, prisons can no longer be nursing homes.