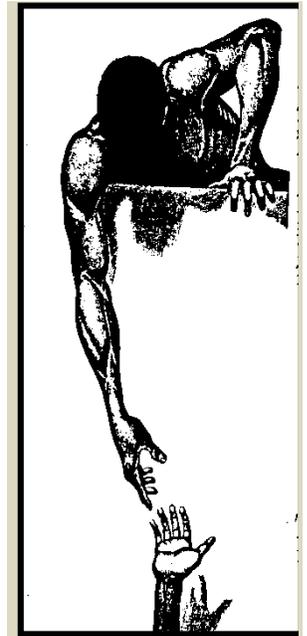


CURE-NY Newsletter

To Reduce Crime and Uplift Society

Fall 2012

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“He ain’t Heavy”
By Gilbert Yong

The Elderly in Prison – a national look A Report from the ACLU

(American Civil Liberties Union 125 Broad Street, New York, NY 10004 www.aclu.org)

In June of this year, the American Civil Liberty Union released a report “**At America’s Expense: The Mass Incarceration of the Elderly**”. The report detailed the extraordinary growth and cost of imprisoning the elderly noting:

“In 1981, there were 8,853 state and federal prisoners age 55 and older. Today, that number stands at 124,900, and experts project that by 2030 this number will be over 400,000, amounting to over one-third of prisoners in the United States. ... State and federal governments spend approximately \$77 billion annually to run our penal system. Over the last 25 years, state corrections spending grew by 674%, substantially outpacing the growth of other government spending, and becoming the fourth-largest category of state spending.... and incarcerating aging prisoners costs far more than younger ones... this report finds that it costs \$34,135 per year to house an average prisoner, but it costs \$68,270 per year to house a prisoner age 50 and older

The report accounts for the growth to the “tough on crime” policies and “war on drugs” of the past 30 years with longer sentences and fewer releases leading to the ever expanding number of the elderly. It has occurred even though the great majority of those elderly pose no threat to the public and it calls for states to:

“implement mechanisms to determine which aging prisoners pose little safety risk and can be released”, and “estimates that releasing an aging prisoner will save states, on average, \$66,294 per year per prisoner, including healthcare, other public benefits, parole, and any housing costs or tax revenue”.

In addition to the ACLU report, James Ridgeway a long time experienced reporter has written for Mother Jones on elderly incarceration, looking at Massachusetts. His article was supported by [MetLife Foundation](#) Journalists in Aging Fellowship, a collaboration of [New America Media](#) and the [Gerontological Society of America](#), demonstrating the concern of organizations that focus on the elderly.

The Elderly in New York’s prisons

Assemblyman Jeffry Aubry, Chair of the Assembly Corrections introduced Assembly Bill A9696 “The New York state program for older prisoners act”. **The act calls for authorization of geriatric parole release for inmates 60 years or older who have served at least one half of their minimum sentence or determinate sentence.**

Aubry’s bill cited the low risk and increasing costs of imprisonment for the elderly, such as 24 hour nursing home care and hospice care. The bill notes:

“Care for a gravely ill inmate costs the state approximately \$150,000 a year. Older people outside of prison are eligible for federal Medicare or Medicaid benefits and home health aid, and may also have help from families and friends. In prison, the state bears the entire cost of medical care as a prisoner ages”

Boxed In The True Cost of Extreme Isolation in New York’s Prisons NEW YORK CIVIL LIBERTIES UNION

125 Broad Street, 19th Floor New York, NY 10004 www.nyclu.org

After a year of intensive study researching 23 hour lock down and interviewing prisoners, family members and DOCCS staff, the NYCLU released its report on NY’s practice of 23 hour lock-down for inmates a practice the report describes as “extreme isolation”. The report’s purpose:

“We explored the history that led to the emergence and expansion of the practice in New York. We asked who New York subjects to extreme isolation, for what reasons, and for how long. We sought to understand and articulate its effects on prisoners and their families, as well as an often-overlooked population – the

corrections staff assigned to watch them. We compared New York's use of extreme isolation with practices in other states and asked if the widespread use of the practice violates legal standards. Finally, we considered how reforming the use of extreme isolation would affect the safety of New York's prisons and communities"

The SHU sweeps in a wide swath of prisoners, including those uniquely vulnerable to conditions of extreme isolation, such as juveniles, the elderly, and people with mental illness or substance abuse issues.

According to the report, about 4,500 persons are held in NY's extreme isolation units in solitary confinement or in double celling. Between 2007 and 2011 over 68,000 inmates were placed in the units, with an average stay of 5 months. Some are held for years.

Findings

- ***New York's use of extreme isolation is arbitrary and unjustified.*** *is too frequently used as a disciplinary tool of first resort. Prisoners can be sent to the SHU for prolonged periods of time for violating ... prison rules, including minor, non-violent misbehavior.... including those uniquely vulnerable to conditions of extreme isolation, such as juveniles, the elderly, and people with mental illness or substance abuse issues. This same discretion permits bias ..., as suggested by the disproportionate number of black prisoners in the SHU.*
- ***Extreme isolation harms prisoners and corrections staff.*** *Extreme isolation causes emotional and psychological harm... even among the healthy and mentally stable. For the vulnerable, particularly those with mental illness, extreme isolation can be devastating and potentially life-threatening. The emotional and psychological harm prisoners experience in extreme isolation is compounded by the formal and informal deprivation of basic necessities, including food, exercise and basic hygiene. ... For corrections staff, working in extreme isolation has lasting negative consequences that affect their lives at work and home.*
- ***Extreme isolation negatively impacts prison and community safety.*** *People in extreme isolation find its psychological effects fuel unpredictable and sometimes violent outbursts. Prisoners with mental health issues fare even worse, some resorting to self-harm and suicide. Prisoners carry the effects of extreme isolation back into the general prison population. They also carry them home. Nearly 2,000 people in New York are released directly from extreme isolation to the streets each year. While in the SHU, prisoners receive no educational, vocational, rehabilitative or transitional programming, leaving them less prepared to successfully rejoin society.*

Recommendations

New York's ... use of extreme isolation has led to an urgent human rights crisis. ... Corrections officials can separate and remove violent or vulnerable prisoners ... without subjecting them to the punishing physical and psychological deprivation of extreme isolation – a point of consensus among corrections officials in other states, legal scholars and international human rights bodies.

New York must end its use of extreme isolation by:

(1) adopting stringent criteria, protocols and safeguards for separating violent or vulnerable prisoners, to ensure that prisoners are separated only in limited and legitimate circumstances for the briefest period and under the least restrictive conditions practicable; and

(2) auditing the current population in extreme isolation to identify people who should not be in the SHU, transitioning them back to the general prison population and reducing the number of SHU beds.

These steps will align New York's prisons with smart and effective evidence-based corrections practices. They will improve the safety of our prisons and communities, bring New York into compliance with international human rights law and emerging legal standards, and reaffirm our commitment to respecting human dignity.

The NYCLU report was released in the first week of October at a press conference and events which highlighted the concerns. The National Religious Campaign Against Torture and the New York State Council of Churches endorsed the report, while the New York State Catholic Conference has a long standing statement opposing the practice.

FELONY MURDER There is a call for a symposium to change NY's Felony Murder Statute. The problem as described in the proposal: "*lies in allowing prosecutors to bypass proving intent, mental awareness, or premeditation that is specific to a homicide that occurs in connection to a lesser felony. ...circumvents requirements in proving guilt and results in murder convictions and life sentences of those who, although may have actively engaged in a lesser felony, did not intend, aid, anticipate, or concur with any lethal aggression occurring during or immediately after the lesser felony*" The contact information Sam Petit at: fmreform@gmail.com. No address was given.

What's Going on with Parole? - Mixed Reports

On one hand, there is the parole release rate for A1 felons at 33% in July (see chart) and 19% in August, on the other there are reports from inmates of ignorance or improper use of the Risk Assessment and TAP as well as continual use of boiler plate language for denials with nothing cited but the crime and danger to the public and this for people over 50 with 20 or more years inside and positive risk assessments and records.

Developments in the Courts

Attorney General's Office -Urges Court to Upset Parole Interview Decision (*John Caher NY Law Review September 20,2012*)

In December, Orange County Supreme Court Justice Lawrence Ecker granted a de novo hearing to Douglas Thwaites who had been denied release in 2010. He ruled that the revision of Exec. Law 259 (c) not only required the parole board to put more weight on the rehabilitation of the inmate rather than the instant offense, but he also applied the revision retroactively. Judge Ecker later made similar rulings in at least six other cases. His argument has been rejected by two trial courts and by the Appellate Division, Third Department, in *Matter of De Los Santos v. Division of Parole*, 96 AD3d 1321 (2012). Now the Attorney General's Office is urging the Appellate Division, Second Department, to overturn the ruling. Saying that the ruling "stands to wreak havoc on the parole system." by entitling scores of inmates to new parole interviews,

Duffy V Evans - US Southern District Court (Duffy V Evans 11 Civ. 7605) before Judge Jesse Furman John Duffy serving a 20-Life sentence had been denied parole 6 times when his case was heard . While parts of his appeal were rejected, the following claims were affirmed..

- **Predetermination** - *"the sole question here is whether the complaint plausibly alleges that the Board predetermined Duffy's parole decision. It does. because, as Duffy notes, a portion of the Commissioner's Worksheet that was completed by the Board during the parole hearing - most notably, the portion that begins "Parole is denied" - is typewritten and, according to the complaint, the Board did not have a typewriter or computer at the hearing. . It may be that the typewritten portion is part of some pre-printed form that is not specific to Duffy, ... But that is not self evident from the form itself as, among other things, the crucial portion of the form ("Parole is denied...") appears to be in a typeface different from the portion that precedes it. Thus, at this stage of the proceedings, the Court must accept as true Plaintiff's contention that the Board brought to the hearing a Worksheet reflecting a predetermined decision to deny him parole."*
- **Retaliation** - *"Duffy alleges that in retaliation for having filed an Article 78 proceeding in state court, he was denied a fair and impartial parole hearing in 2011.... The Board may well have had a valid non-retaliatory motive for denying parole; indeed, the Board noted that public safety concerns animated its decision. But the question of the Board's motivation in this case is factual and may not be decided as a matter of law at this early stage of the proceeding."*
- **Equal Protection** *"Duffy has stated a valid class of one equal protection claim... that he was similarly situated to six other individuals who were granted parole on the same day as his 2011 hearing - all had been convicted of murder in the second degree, none had served more time than Duffy, and, according to the complaint, none had better institutional records than Duffy - and that he was denied parole in retaliation for his previous challenges to his parole denials...Duffy may not be able to establish his claim for purposes of summary judgment or trial, as the standard for doing so is much more difficult to meet. But his existing allegations are sufficient at this stage"*

CIVIL Commitment of sex offenders As a result of 2007 legislation, NY's Office of Mental Health has 2 sites for secure confinement - Central New York Psychiatric Center in Marcy and the St. Lawrence Psychiatric Center in Ogdensburg. *"As of October 31, 2011, 93 respondents were in secure treatment pre-trial awaiting adjudication, 192 were in secure treatment as dangerous sex offenders requiring confinement,. and 74 were under active SIST orders"*(*Sex Offender Management and Treatment Act- 2011 Report OMH*) Costs have been estimated at \$175,000 per person per year confinement. The CURE Civil Commitment Chapter publishes a free quarterly newsletter PO Box 2310, Washington DC 20013.

JULY 2012 PAROLE BOARD RELEASES – A1 VIOLENT FELONS – DIN #s through 1999, unofficial research from parole database.

Total Interviews	# Released	# Denied	Rate of Release
23 Initials	4	19	17%
88 Reappearances	32	56	36%
111 Total	36	75	33%

CURE-NY

The New York Chapter of National CURE
Citizens United for the Rehabilitation of Errants
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City, State & Zip Code _____
Phone _____
E-mail _____
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Please check type of membership and Annual Dues.

- | | | | |
|--|----------|-------------------------------------|-----------|
| <input type="checkbox"/> Incarcerated person | \$ 2.00 | <input type="checkbox"/> Sustaining | \$ 50.00 |
| <input type="checkbox"/> Basic | \$ 10.00 | <input type="checkbox"/> Life | \$ 100.00 |
| <input type="checkbox"/> Family | \$ 20.00 | <input type="checkbox"/> Benefactor | \$ 500.00 |

Reflection on Restorative Justice---Include the victims.

Margot Van Sluytman (a victim active for years in working for restorative justice) has appealed to those working with offenders. This is an excerpt from a blog posted on Howard Zehr’s website.

“My own journey with life from murder to healing... is akin to Restorative Justice, though I was offered nothing. Zero. And it was a stroke of grace that the man who murdered my Dad, read about my work, thirty years after the murder, and contacted me. For a time, Glen and I were as pariah by “official” Restorative Justice associations ... This affected neither of us, nor our commitment to sharing our story ...to plant a seed of hope, ... where more questions would be ... be birthed; a seed ..., inviting deepened and necessary dialogue.

As the dialogue deepens about what Restorative Justice really means, I believe that more concrete places and spaces will be created for victims. Places and spaces they can go, while in /our life-sentences. Places and spaces at which to receive support, in both the practical, the psychological, and the spiritual, so that they too can accepted and accompanied in the company of those who teach, write, and work in this area. Inclusiveness is a must in order for Restorative Justice to truly be informed and balanced.”

Check out the CURE NY web site www.curennewyork.wordpress.com

**We are sorry, but CURE-NY is not able to offer
legal advice in individual cases**