



Memo: Recommendations Regarding Expanding the Elderly Prisoner Parole Program

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RECOMMENDATION

Older prisoners have reduced recidivism and arrest rates, and higher parole success. Furthermore, California voters have demonstrated willingness to reduce sentences for a large number of prisoner populations through the passage of at least four voter mandated propositions and legislators have passed several sentencing reform policies in the interest of public safety.

We therefore recommend that persons aged 50 years and older, who have served at least 15 years of their sentence, be eligible to petition for advance parole suitability hearings through an Elderly Parole Program. These terms should be codified by the Legislature to amend Sections 3041, 3046 and 3055 to Penal Code §§ 3000 et seq., and implemented by the California Department of Corrections and Rehabilitation (CDCR) in the California Code of Regulations, Title 15. We maintain that all people who meet the modified age and timed served requirements, regardless of conviction type, should be eligible and that the law requires the Board of Parole Hearing to schedule the next parole consideration within 1 or 2 years after any hearing at which parole was denied."

EXISTING LAW

On February 10, 2014, a three-judge court overseeing the California prison overcrowding class action lawsuit, *Plata v. Brown*, issued an order that required the Board of Parole Hearing (BPH) to put in place a new parole process for persons 60 years of age or older, who have been imprisoned for at least 25 years.¹

Under this process, people meeting the age and time-served criteria may request an Elderly Parole Hearing. The BPH may deny parole if they feel an elderly person's release will pose an unreasonable risk of danger to public safety. For all Elderly Parole Program hearings, the BPH risk assessments will consider how age and physical condition reduce an elderly person's risk of future violence.

The 2014 Elderly Parole Program applies to prisoners serving life with the possibility of parole terms, as well as prisoners serving set length terms, including prisoners sentenced under the Three Strikes Law. It does not apply to prisoners who are serving under the death penalty. Although we are still working under the 2014 Elder Parole Program while under the three-judge court order, in October 2017, Governor Brown

¹ "Elderly Parole Hearings." *California Department of Corrections and Rehabilitation*, www.cdcr.ca.gov/bph/elderly-parole-hearings-overview/ Accessed 31 October 2019.

signed AB 1448 (Weber) into law. This bill codified and narrowed the 2014 program by making a person who was sentenced pursuant to the Three Strikes Law, a person who was sentenced to life in prison without the possibility of parole or death, and a person who was convicted of the first-degree murder of a peace officer or a person who had been a peace officer, as provided, exempt from the Elder Parole Program.

The 2014-2015 California Budget Act allocated \$3.1 million to the General Fund to comply with the court order. These funds were to be utilized to expand medical parole, establish a parole process for some second strikers, and implement the Elderly Parole Program.²

According to a CDCR Monthly Update dated March 16, 2020: “From February 11, 2014 through January 31, 2020, the Board held 4,232 hearings for inmates eligible for elderly parole, resulting in 1,173 grants, 2,640 denials, 419 stipulations to unsuitability, and there currently are no split votes that require further review by the full Board. An additional 1,951 hearings were scheduled during this time period but were waived, postponed, continued, or cancelled.”³ Though these hearings have yielded a nearly 28% rate of release, because a large proportion of hearings were waived or cancelled, the release rate for the total population eligible for elder parole is only 19%.

ANTICIPATED SAVINGS AND POPULATION IMPACT

In March 2015, the Senate Appropriations Committee estimated that “for every 50 inmates released to parole, first-year net cost savings could range from a minimum of \$300,000 to over \$1.5 million” in the General Fund.⁴ A more recent analysis for AB 1448, a bill enacted in Fall 2017 to codify the existing Elder Parole Program, stated that “costs associated with geriatric medical needs begin to accumulate at 50 years of age.”⁵ The average annual cost to incarcerate an inmate in prison in California in 2019 was approximately \$81,000.⁶ According to data from other states, it is estimated that it costs two to three times more to incarcerate elderly people than non-elderly individuals.⁷

BACKGROUND

Elder prisoner parole is a reasonable step toward reducing the number of people in prison, a goal that CDCR was mandated to focus on as a result of the *Coleman-Plata*

² Brown, Edmund G. “California State Budget, 2014-15.”

<http://www.ebudget.ca.gov/2014-15/pdf/Enacted/BudgetSummary/FullBudgetSummary.pdf> Accessed 20 January 2020, p. 35.

³ “Three-Judge Court Monthly Update: March 16, 2020 Update to the Three-Judge Court.” *California Department of Corrections and Rehabilitation*, 16 March 2020, www.cdcr.ca.gov/3-judge-court-update/ Accessed 18 March 2020.

⁴ Senate Committee on Appropriations. “SB 224 (Liu) - Elderly Parole Program.” *California Legislative Information*, March 19, 2015. leginfo.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201520160SB224# Accessed 31 October 2019.

⁵ Pagan, Gregory. “AB 1448 (Weber) - As Amended March 28, 2017.” *Assembly Committee on Public Safety*, salsa3.salsalabs.com/o/51040/images/201720180AB1448_Assembly_Public_Safety.pdf Accessed 5 November 2019.

⁶ “How much does it cost to incarcerate an inmate?” *Legislative Analyst’s Office*, January 2019, lao.ca.gov/PolicyAreas/CJ/6_cj_inmatecost Accessed 31 October 2019.

⁷ “Elderly Inmates in California Prisons.” *Legislative Analyst’s Office*, 11 May 2010, lao.ca.gov/handouts/crimjust/2010/Elderly_Inmates_05_11_10.pdf Accessed 31 October 2019.

ruling.⁸ The Legislative Analyst's Office has recommended providing early release for various prisoners over the age of 55 due to their relatively low risk of reoffending and high rates of parole success.⁹ Additionally, California voters have shown a willingness to overturn lengthy terms to reduce prison overcrowding and bloated prison budgets, passing initiatives such as Proposition 36, Proposition 47, Proposition 64, and Proposition 57. In the Governor's signing message, for AB 1448 he urged an expansion of the program, writing: *"This is an important bill, and I appreciate the Author and Legislature's willingness to take this step towards codifying responsible and durable reforms to our criminal justice system. I urge this and future legislatures to revisit this policy in future years, however, as I believe the pool of eligible inmates can and should be broadened. This can be done safely, as the current program has shown."*¹⁰

According to CDCR, the percentage of prisoners over 55 years of age more than doubled between 2000 and 2010, rising from 3% to 8% (or about 13,600 inmates), and was projected to grow to 12% of the population by 2015.¹¹ As of December 31, 2018, CDCR reported a total of 30,336 people over the age of 50, representing approximately 23.8% of the total in-custody population.¹² This growth in elderly prisoners is primarily due to various sentencing law changes that have increased the average length of stay in prison, such as the "Three Strikes Law."¹³

⁸ Ralph Colement et. al. v. Edmund G. Brown Jr. et. al. and Marciano Plata et. al. v. Edmund G. Brown Jr. et. al. "Three-Judge Court Order Granting in Part and Denying in Part Defendants' Request for Extension of December 31, 2013 Deadline."

web.archive.org/web/20190223084523/https://www.cdcr.ca.gov/News/docs/3jp-Feb-2014/Three-Judge-Court-order-2-20-2014.pdf Accessed 11 January 2020.

⁹ "Elderly Inmates in California Prisons." *Legislative Analyst's Office*, 11 May 2010, http://www.lao.ca.gov/handouts/crimjust/2010/Elderly_Inmates_05_11_10.pdf Accessed 31 October 2019, pg. 3.

¹⁰ Brown, Edmund G. "Signing Letter for AB 1448." *Office of the Governor*, 11 October 2017, web.archive.org/web/20171219113633/https://www.gov.ca.gov/docs/AB_1448_Signing_Message_2017.pdf Accessed 11 January 2020.

¹¹ "Elderly Inmates in California Prisons." *Legislative Analyst's Office*, 11 May 2010, http://www.lao.ca.gov/handouts/crimjust/2010/Elderly_Inmates_05_11_10.pdf Accessed 31 October 2019, pg. 1.

¹² Office of Research. "Offender Data Points: Offender Demographics for the 24-month period ending December 2018." *California Department of Corrections and Rehabilitation*, January 2020, cdcr.ca.gov/research/wp-content/uploads/sites/174/2020/01/201812_DataPoints.pdf Accessed 11 January 2020, pg. 20.

¹³ "Elderly Inmates in California Prisons." *Legislative Analyst's Office*, 11 May 2010, [lao.ca.gov/handouts/crimjust/2010/Elderly_Inmates_05_11_10.pdf](http://www.lao.ca.gov/handouts/crimjust/2010/Elderly_Inmates_05_11_10.pdf) Accessed 31 October 2019, pg. 1.

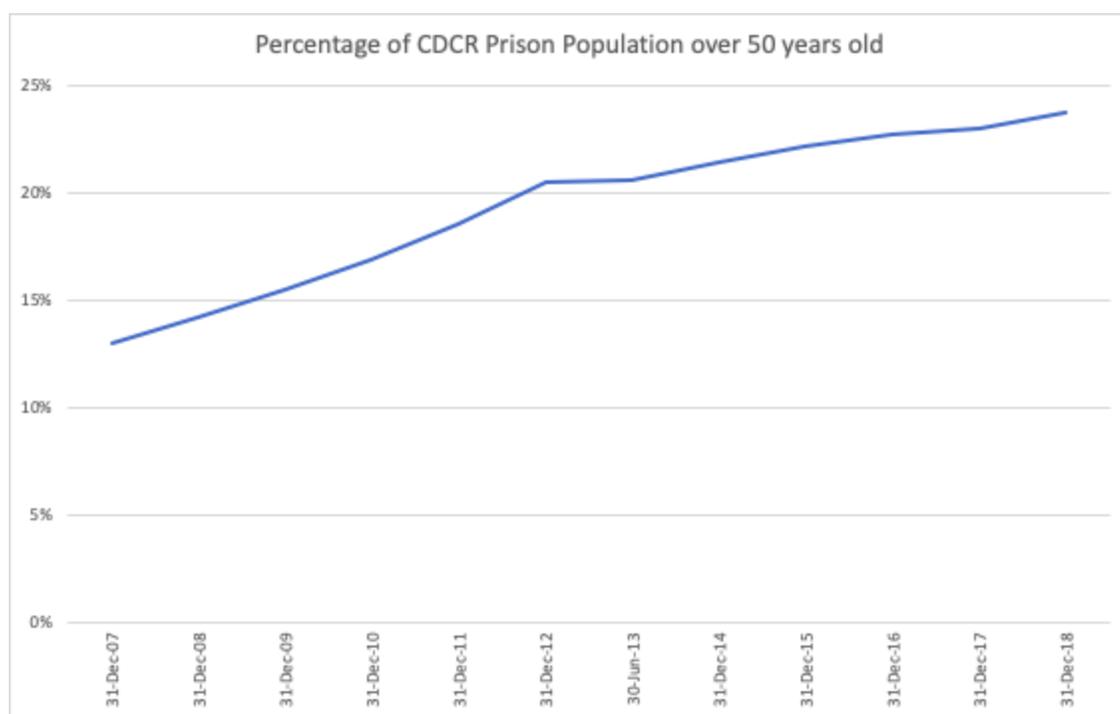


Fig. 1: Percentage of CDCR Prison Population over 50 years old¹⁴

Prisoners above the age of 50 tend to have lower rates of recidivism, and higher rates of parole success, than any other segment of the prison population.¹⁵ Across the United States, older persons also have significantly lower arrest rates than younger persons. In 2001, the arrest rate for persons aged 40-44 was 0.73%.¹⁶ The rate decreases by about half every 5 years, dropping to 0.46% for persons 45-49 and 0.26% for persons 50-54.¹⁷ For 55-59 years old, the arrest rate plummets to 0.14%.

It is also worth noting that many have estimated that due to a variety of factors, the physiological age of incarcerated people is, on average, 10 to 15 years greater than their chronological age. Some institutions, including the National Institute of Corrections, define older incarcerated people as those aged 50 years or more.¹⁸

¹⁴ Data based on CDCR population data from 2007 - 2018, as reported in CDCR's Prison Census Data and Offender Data Points Reports.

¹⁵ Office of Research. "2013 Outcome Evaluation Report." *California Department of Corrections and Rehabilitation*, January 2014, [web.archive.org/web/20160710214750/http://www.cdcr.ca.gov/Adult_Research_Branch/Research_Documents/Outcome_Evaluation_Report_2013.pdf](http://www.cdcr.ca.gov/Adult_Research_Branch/Research_Documents/Outcome_Evaluation_Report_2013.pdf) Accessed 11 January 2020.

¹⁶ Uniform Crime Reporting Program. "Age-Specific Arrest Rates and Race-Specific Arrest Rates for Selected Offenses, 1993-2001." *Federal Bureau of Investigation*, November 2003, www.fbi.gov/about-us/cjis/ucr/additional-ucr-publications/age_race_arrest93-01.pdf, Accessed 11 January 2020, pg. 4.

¹⁷ Office of Research. "2013 Outcome Evaluation Report." *California Department of Corrections and Rehabilitation*, January 2014, [web.archive.org/web/20160710214750/http://www.cdcr.ca.gov/Adult_Research_Branch/Research_Documents/Outcome_Evaluation_Report_2013.pdf](http://www.cdcr.ca.gov/Adult_Research_Branch/Research_Documents/Outcome_Evaluation_Report_2013.pdf) Accessed 11 January 2020.

¹⁸ Williams, Brie A. et. al. "Aging in Correctional Custody: Setting a Policy Agenda for Older Prisoner Health Care." *American Journal of Public Health*, August 2012, 102(8): 1475-1481, www.ncbi.nlm.nih.gov/pmc/articles/PMC3464842/#_ffn_sectitle Accessed 11 January 2020.

ELDER PAROLE CRITERIA NATIONALLY

According to data from 2018, at least 17 states have adopted some form of elder parole into their statutes.¹⁹ These processes vary from state to state and may include discretionary parole, furloughs, and medical and/or compassionate release. Elder parole eligibility often includes age criteria and length of time served. Of the 17 states that have legislated elder parole, one state allows eligibility to begin at 55 years of age, six at age 60, three at age 65, two at age 60 or 65 depending on the length served, and five use other criteria.²⁰ Alabama currently has the lowest age criteria at 55. In 2019, legislation was introduced to the New York Senate that, if passed, would allow incarcerated people who are 55 years of age and older and who have served a minimum of 15 years to be eligible for elder parole.²¹ In early 2020, an identical Assembly Bill was introduced.²²

California is the most stringent requiring persons to have served a minimum of 25 years in order to be eligible for elder parole.²³ Maryland requires 15 years served; Alaska, Louisiana, and South Dakota require 10 years served; and Virginia and Wisconsin require 5 or 10 years served depending on the person seeking parole's age. In two states - Oklahoma and Mississippi - people seeking parole must have served 10 years or a certain proportion of their sentence.²⁴

In eight states, sentence length is not a factor. In several of these states, additional factors such as medical needs are instead required. For instance, in Missouri a person seeking elder parole must require long-term nursing care. In New Mexico and North Carolina, a person must be 65 years of age or older and suffer a chronic condition or disease related to aging. In Oregon, the stipulation is that a person must be permanently incapacitated and unable to independently move between places.²⁵

Despite the existence of these laws, it has been reported that across the US, these laws are infrequently used and have not led to significant decreases in elderly incarcerated populations. For instance, a recent study by the Vera Institute reported that between 2008 and early 2016, a mere 39 people had been released on medical furlough in the

¹⁹ These include: Alabama, Alaska, California, Georgia, Louisiana, Maryland, Mississippi, Missouri, New Mexico, North Carolina, Oklahoma, Oregon, South Dakota, Utah, Virginia, Washington, Wisconsin.

“State Medical and Geriatric Parole Laws.” *National Conference of State Legislatures*, 27 August 2018, www.ncsl.org/research/civil-and-criminal-justice/state-medical-and-geriatric-parole-laws.aspx Accessed 5 November 2019.

²⁰ “State Medical and Geriatric Parole Laws.” *National Conference of State Legislatures*, 27 August 2018, www.ncsl.org/research/civil-and-criminal-justice/state-medical-and-geriatric-parole-laws.aspx Accessed 5 November 2019.

²¹ “Senate Bill S2144, 2019-2020 Legislative Session.” *New York State Senate*, www.nysenate.gov/legislation/bills/2019/s2144 Accessed 5 November 2019.

²² “Assembly Bill A9040, 2019-2020 Legislative Session.” *New York State Senate*, https://www.nysenate.gov/legislation/bills/2019/A9040?intent=subscribe&utm_content=new_same_as&utm_campaign=bill_alerts&utm_source=ny_state_senate&utm_medium=email Accessed 11 January 2020.

²³ “State Medical and Geriatric Parole Laws.” *National Conference of State Legislatures*, 27 August 2018, www.ncsl.org/research/civil-and-criminal-justice/state-medical-and-geriatric-parole-laws.aspx Accessed 5 November 2019.

²⁴ “State Medical and Geriatric Parole Laws.” *National Conference of State Legislatures*, 27 August 2018, www.ncsl.org/research/civil-and-criminal-justice/state-medical-and-geriatric-parole-laws.aspx Accessed 5 November 2019.

²⁵ “State Medical and Geriatric Parole Laws.” *National Conference of State Legislatures*, 27 August 2018, www.ncsl.org/research/civil-and-criminal-justice/state-medical-and-geriatric-parole-laws.aspx Accessed 5 November 2019.

state of Alabama.²⁶ This is in part because of the highly restrictive criteria used to determine who is eligible for elder parole. California is, again, at the far end of the spectrum when it comes to restrictive eligibility - in addition to the age requirement of 60 years or older and the required 25 years served to be eligible, AB 1448 makes large swaths of the incarcerated population ineligible by excluding people sentenced under the Three Strikes Law, those sentenced to life without the possibility of parole or death, and those convicted of the first-degree murder of a peace officer or a person who had been a peace officer.

²⁶ Silber, Rebecca, Shames, Alison, and Kelsey Reid. "Aging Out: Using Compassionate Release to Address the Growth of Aging and Infirm Prison Populations." *Vera Institute of Justice*, December 2017 www.vera.org/downloads/publications/Using-Compassionate-Release-to-Address-the-Growth-of-Aging-and-Infirm-Prison-Populations%E2%80%94Full-Report.pdf Accessed 5 November 2019.