

The case for and against elder parole: Balancing social, legal and ethical considerations

Mary Beth Morrissey and Daniel Pollack | July 1, 2022



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In 2018, Congress passed the First Step Act, Pub. L. No. 115-391. This statute amended 18 U.S.C. §3582(c)(1) to permit a court to consider a defendant's motion for compassionate release following the exhaustion of his or her administrative remedies with the Bureau of Prisons (BOP)

or 30 days after submitting a request to the appropriate warden, whichever came sooner. Specifically, it provides a chance for sentencing relief for certain defendants who received mandatory minimum sentences prior to the Fair Sentencing Act of 2010.

In *United States v. Resnick* (2020), the court held: “The First Step Act did not amend the eligibility requirements for compassionate release, which are set forth in 18 U.S.C. §3582(c)(1)(A) and §1B1.13 of the U.S. Sentencing Guidelines. The court can only modify a sentence if, “after considering the factors set forth in section 3553(a) to the extent they are applicable,” it finds that “extraordinary and compelling reasons warrant such a reduction,” 18 U.S.C. §3582(c)(1)(A)(i); or “that the defendant is at least 70 years old and has served at least 30 years in prison, among other things.”

Some states have been looking at similar legislation. In New York, there is support for the Elder Parole Bill (S.15-A/A8855). Numerous advocacy organizations in aging and health have written to state legislators expressing support for elder parole, citing “a moral and fiscal crisis of aging, sickness and death in prisons.” The State Society on Aging of New York, Caring Across Generations, Hunter College’s Brookdale Center for Healthy Aging, LiveOn NY, SAGE (Advocacy and Services for LGBT Elders), and United Neighborhood Houses are among those organizations which have signed on to the “Parole Justice Is Elder Justice” letter.

The Elder Parole Bill (S.15-A/A8855) would require that those aged 55 or older who have served 15 years in person would be eligible for review by the Parole Board for consideration for parole. Thus, parole would not

be automatically granted at 55 years of age or after having served 15 years in prison, whichever is later. Rather, it would trigger a review for parole consideration.

Indicators cited in support of the Elder Parole Bill include the following:

- The 55 and over population constitutes about 15% of New York's prison population, reflecting a surge in the total population since 2007.
- According to a January 2022 Report of State Comptroller Thomas DiNapoli, individuals at least 50 years old comprised 24.3% of the state's total prison population in March 2021, compared to 12.0% in March 2008.
- Incarceration negatively impacts overall health and mental health, heightens medical risk, and contributes to accelerated aging for those growing old in prison.
- Some needs of people 55 and older cannot be met in prison. Prisons are not equipped to deal with the types of chronic or serious illnesses that accompany growing old, and there is very limited access to pain management or palliative care.
- The cumulative risks and harms of incarceration to the person incarcerated should be affirmatively ethically justified in cases where parole would not pose a serious risk to society.

In addition, it is important to note that persons who are incarcerated and experiencing accelerated aging are also at higher risk for developing dementia Maschi, Kwak, Ko & Morrissey, 2012. In sum, the lack of geriatric, dementia, and palliative care units and adequate health and

mental health services to meet the needs of persons growing old in prison contributes substantially to their suffering, raising ethical issues as to whether there is justification for ignoring the growing social problem of keeping older people in prison who no longer pose a risk to the society.

From a strictly utilitarian perspective, an argument can be made that incarceration imposes a heavy cost burden on the state. Access to education and rehabilitation in prison can create possibilities for people to get a second chance at life, to contribute meaningfully to society, and restore relationships with family and social institutions.

In the minds of others, considering parole for some persons who are incarcerated who have committed particularly heinous crimes should not be a realistic option. On its [website](#), the National Organization of Parents of Murdered Children (PMOC) states: “For survivors of homicide victims, the early release or parole of convicted murderers is seen as a denigration of their loved one and results in extremely intensified emotions. Parents Of Murdered Children, Inc.’s, Parole Block ProgramSM strives to give survivors a sense of control, as well as a positive outlet for the anger, frustration and disillusionment with the criminal justice system. PBP allows them to participate in the parole process by attempting to keep murderers behind bars for their minimum sentence, thus protecting society from potential repeat offenders.” It adds: “Since it began, the Parole Block ProgramSM has been extremely successful at preventing the early release/parole of those convicted of homicide. POMC has protested the early release/parole of thousands of murderers since the inception of the program in 1990. So far more than 1500 paroles have been denied.”

Parole is a privilege. The goal of the parole system is to be simultaneously supportive of the needs of society, victims and family, and the older adult offenders who are no longer considered dangerous. Is every person who is incarcerated going to benefit from rehabilitation? What level of reoffending risk should society tolerate? To what extent might incarceration of the elderly have a disproportionate impact upon different racial and ethnic groups? How much should we take into account the heartbreak and trauma of the victim's family and friends?

Whatever position one takes, a meaningful discussion about parole reform for older adults is an urgent matter for the New York state legislature to consider.

Mary Beth Quaranta Morrissey, *PhD, MPhD, JD* is associate professor at Yeshiva University's School of Social Work in New York City.

Contact: mary.morrissey@yu.edu.

Daniel Pollack, *MSW, JD*, is professor at Yeshiva University's School of Social Work in New York City. Contact: dpollack@yu.edu.