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## THE LEFTOVER: WHERE DO ELDERLY PRISONERS GO WHEN RELEASED?

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“It is said that no one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones.”<sup>1</sup>

*The elderly population in prison keeps increasing. Consequently, problems arise as to the relevant care that elderly prisoners need. This Note addresses the medical and rehabilitative needs that elderly prisoners require, and the government’s role in alleviating some of these concerns by funding the Second Chance Reauthorization Act. This Note also suggests additional assistance to the elderly prisoners before and after they are released from prison. Finally, the Note suggests a three-part solution, considering the reality the elderly prisoners face when they re-enter the society after serving a long sentence.*

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1. *Nelson Mandela Rules*, UNITED NATIONS, <http://www.un.org/en/events/mandeladay/rules.shtml> (last visited Nov. 13, 2017).

## I. Introduction

As the population of aging prisoners increases, there is a push to release them.<sup>2</sup> The release of elderly prisoners as an avenue of both economic and logistic relief for the Bureau of Prisons is growing in popularity.<sup>3</sup> Despite the popularity of this solution, there is a problem few are willing to address: Where do the elderly go once they are released?<sup>4</sup>

Once the system decides to release elderly prisoners who have completed their sentences, the same system pushes them to the street with two bus tickets or a couple hundred dollars with nowhere to go.<sup>5</sup> They are the leftover population; no one knows what to do with them, and, frankly, no one seems to care.

To fully address the problem, it is necessary to look to the infamous “War on Drugs” and resulting sentencing laws, including “Mandatory Minimums.” Mandatory Minimums, longer sentences imposed for non-violent, drug-related crimes, were a factor leading to the growing population of aging prisoners. This Note examines other social factors contributing to the issue, like elderly individuals committing more crimes and the general growth of the elderly population as compared to other age groups. The life of aging prisoners will be discussed along with the challenges that federal and state prisons must address as their cell blocks turn into nursing homes. It is also necessary to look at the Second Chance Act of 2007,<sup>6</sup> and Congress’ attempt to continue its funding with the Second Chance Reauthorization Act.<sup>7</sup> This bipartisan act, and subsequent bills, show recent historical developments in which politicians acknowledge the importance of reentry. Yet, standing nearly alone, it shows how little the legislature has addressed the care of those reentering society. Finally, housing for the elderly, both felons and not, will be addressed to explore what is available.

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2. See e.g., Geraldine Downey & Frances Negron-Muntaner, *Jailing Old Folks Makes No Sense*, N.Y. TIMES (Aug. 30, 2016), [http://www.nytimes.com/2016/08/30/opinion/jailing-old-folks-makes-no-sense.html?\\_r=0](http://www.nytimes.com/2016/08/30/opinion/jailing-old-folks-makes-no-sense.html?_r=0) [hereinafter Downey & Negron-Muntaner].

3. *Id.*

4. *Id.*

5. John Burnett, *Newly Released Texas Inmates Prepare for A Long Ride to Freedom*, NPR (Apr. 12, 2015, 5:23 AM), <http://www.npr.org/2015/04/12/398763933/newly-released-texas-inmates-prepare-for-a-long-ride-to-freedom>.

6. Second Chance Act of 2007: Community Safety Through Recidivism Prevention, Pub. L. No. 110-199, 122 Stat. 657 (2008) [hereinafter Second Chance Act of 2007].

7. Second Chance Reauthorization Act, S. 1513, 114th Cong. (2015).

This Note analyzes the housing choices elderly citizens have when re-entering society. Even if an elderly individual has no criminal background, finding housing is not easy. When deciding long-term care and housing for a prior felon, the questions become impossible to answer. The reentry of aging individuals through case studies, statistics, and reports are important when analyzing different living arrangements. This Note discusses the steps a prisoner must take when leaving prison; regardless of whether that prisoner is going home, to a halfway-home, or a professional care facility. Within each option there are challenging issues related to health care and economics, and what society considers the morally "right" thing to do. Even more worrisome, this Note shows how hard it is to find a group in society who cares what happens to this population. Sharp distinction between ideal housing choices and the economic realities of the elderly released from prison exists.

Finally, this Note suggests a three-part solution that is both preventative and curative. First, sentencing laws should be amended to relieve prison systems from housing non-violent drug offenders for unjustly long sentences. This will prevent an exponentially growing aging prisoner population that has and will continue to overwhelm the Bureau of Prisons from becoming a crisis. Second, reentry programs need to be adjusted to fit the needs of elderly prisoners to help them attain basic knowledge about modern housing options. Third, to promote a healthy reentry to society of those elderly prisoners released, the Second Chance Act of 2007 should be expanded under the Second Chance Reauthorization Act. This expansion would include giving grants to programs that provide innovative housing solutions to the elderly released from prison. These recommendations aim to prevent elderly recidivism, relieve the prison and justice systems from current constraints, and provide comfort and adequate health care for those who have served their time.

## II. Background

Nearly all states have seen an increase in their elderly prisoner populations.<sup>8</sup> In the federal prison system, 18.5% of prisoners are over the age of fifty-one.<sup>9</sup> From 2007-2010 the increase in prisoners sixty-five and up outpaced the growth of total population by ninety-four to one.<sup>10</sup> The growth of the elderly population in prisons is noticeable and quick. Yet, there is no clearly defined age limit at which a prisoner is classified as “elderly” or “aging.”<sup>11</sup> In developed countries, non-prisoners are generally considered elderly at sixty-five years old,<sup>12</sup> though some older individuals have revolted against the term, saying elderly is over eighty.<sup>13</sup> In prison, it is a different story. In prison, an individual is considered “aging” or “elderly” beginning between the ages of fifty and sixty-five, depending on the jurisdiction.<sup>14</sup> Prisoners are thought to age up to fifteen years faster than non-prisoners.<sup>15</sup> Projections predict over one-third of prisoners will be classified as elderly by 2030.<sup>16</sup>

The statistics beg the question: Why are prison populations getting so “old?” It depends on who you ask. Some blame the “War on Drugs,” Mandatory Minimums, and “tough on crime” policies.<sup>17</sup> Others

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8. Michael Ollove, *Elderly Inmates Burden State Prisons*, STATELINE: THE PEW CHARITABLE TRUSTS (Mar. 17, 2016), <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2016/03/17/elderly-inmates-burden-state-prisons> [hereinafter Ollove].

9. Inmate Age, FED. BUREAU OF PRISONS, [https://www.bop.gov/about/statistics/statistics\\_inmate\\_age.jsp](https://www.bop.gov/about/statistics/statistics_inmate_age.jsp) (last visited Nov. 13, 2017).

10. Ollove, *supra* note 8.

11. OSBORNE ASS'N, *The High Costs of Low Risk: The Crisis of American's Aging Prison Population* 1, 2 (July 2014), [http://www.osborneny.org/images/uploads/printMedia/Osborne\\_Aging\\_WhitePaper.pdf](http://www.osborneny.org/images/uploads/printMedia/Osborne_Aging_WhitePaper.pdf) [hereinafter OSBORNE].

12. WORLD HEALTH ORG., *Proposed Working Definition of an Older Person in Africa for the MDS Project*, <http://www.who.int/healthinfo/survey/ageing-defnolder/en/> (last visited Nov. 15, 2017).

13. Linton Weeks, *An Age-Old Problem: Who is 'Elderly'?*, NPR (Nov. 14, 2013, 11:09AM), <http://www.npr.org/2013/03/12/174124992/an-age-old-problem-who-is-elderly>.

14. OSBORNE, *supra* note 11 at 2; see also OFF. OF THE INSPECTOR GEN., U.S. DEP'T OF JUST., *The Impact of an Aging Inmate Population on the Federal Bureau of Prisons* 5 (revised Feb. 2016), <https://oig.justice.gov/reports/2015/e1505.pdf> [hereinafter *The Impact of an Aging Inmate Population*].

15. Pam Belluck, *Life, With Dementia*, N.Y. TIMES (Feb. 25, 2012), <http://www.nytimes.com/2012/02/26/health/dealing-with-dementia-among-aging-criminals.html> [hereinafter Belluck].

16. OSBORNE, *supra* note 11, at 2.

17. Valeriya Metla, *Aging Inmates: A Prison Crisis*, LAWSTREET: L. BLOG (Feb. 15, 2015), <https://lawstreetmedia.com/issues/law-and-politics/aging-inmates-prison-crisis/> [hereinafter Metla].

attribute the increase to the overall aging population in America or a new age of the elderly committing more crimes.<sup>18</sup>

## A. How the Elderly Population Boom Happened

### 1. THE WAR ON DRUGS

In 1971, President Nixon declared the “War on Drugs.”<sup>19</sup> He moved for mandatory minimums, no-knock warrants, and increases in the budget for federal agencies controlling drugs.<sup>20</sup> Marijuana was first highly criminalized as a Schedule One drug.<sup>21</sup> Nixon appointed Pennsylvania Governor Raymond P. Shafer and several other conservatives to chair the National Commission on Marihuana (sic) and Drug Abuse to determine the criminalization of marijuana.<sup>22</sup> Just a year after Nixon declared the “War on Drugs,” this commission, also known as the Shafer Commission, unanimously recommended that marijuana be decriminalized for personal use.<sup>23</sup> The Shafer Commission stated: “It implies an overwhelming indictment of the behavior which we believe is not appropriate. The actual and potential harm of use of the drug is not great enough to justify intrusion by the criminal law into private behavior, a step which our society takes only with great reluctance.”<sup>24</sup> The Commission recommended both possession for personal use and distribution of small amounts of marijuana should not be criminal offenses.<sup>25</sup> This was never implemented.<sup>26</sup> Instead, Nixon disregarded the report and took his stance on marijuana use: “We need, and I use the word ‘all out war,’ on all fronts.”<sup>27</sup>

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18. *Id.*

19. Ed Vulliamy, *Nixon’s ‘War on Drugs’ Began 40 Years Ago, and the Battle is Still Raging*, THE GUARDIAN (July 23, 2011, 7:07 PM), <https://www.theguardian.com/society/2011/jul/24/war-on-drugs-40-years>.

20. Drug Policy Alliance, *A Brief History of the Drug War*, DRUGPOLICY.ORG, <http://www.drugpolicy.org/facts/new-solutions-drug-policy/brief-history-drug-war-0> (last visited Nov. 17, 2017) [hereinafter *A Brief History of the Drug War*].

21. *Id.*

22. Paul Armentano, *35 Years of Prohibition*, NORML.ORG, <http://norml.org/component/zoo/category/celebrating-35-years-of-failed-pot-policies> (last visited Nov. 17, 2017) [hereinafter Armentano].

23. *A Brief History of the Drug War*, *supra* note 20.

24. Armentano, *supra* note 22.

25. *Id.*

26. *A Brief History of the Drug War*, *supra* note 20.

27. Armentano, *supra* note 22.

Despite the Federal Government's goals of criminalizing drugs, states took it within their power to decriminalize marijuana.<sup>28</sup> In 1977, President Jimmy Carter ran and was elected on a platform to decriminalize marijuana.<sup>29</sup> But, societal changes left this reform behind and actually led to stricter drug laws.<sup>30</sup>

President Ronald Reagan's administration is linked to an "unprecedented expansion of the drug war."<sup>31</sup> In a seventeen-year period, the incarceration of individuals for nonviolent drug offenses grew from 50,000 to 400,000.<sup>32</sup> In the 1980s, severe legislation was passed against drug use.<sup>33</sup> Even First Lady Nancy Reagan was involved with the drug education program including Drug Abuse Resistance Education (D.A.R.E) and spearheaded the infamous phrase "Just Say No."<sup>34</sup> When polled in 1985, only 2%–6% of Americans said drug abuse was the "number one problem" in America.<sup>35</sup> Within the following years, the administration passed drug policies and implemented drug education programs.<sup>36</sup> In the years after this legislation, the social view drastically changed.<sup>37</sup> In 1989, 64% of the public said drug abuse was the "number one problem."<sup>38</sup> Yet, just one year later, in 1990, the number had dropped to less than 10%.<sup>39</sup> The drop in concern from the public did not reflect the legislation at the time, as the "draconian policies enacted during the hysteria [in 1989] remained."<sup>40</sup>

As a consequence from the War on Drugs, Congress enacted "Mandatory Minimums."<sup>41</sup> Mandatory minimum sentences require a

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28. *A Brief History of the Drug War*, *supra* note 20.

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. Scott O. Lilienfeld & Hal Arkowitz, *Why "Just Say No" Doesn't Work*, SCI. AM. (Jan. 1, 2014), <https://www.scientificamerican.com/article/why-just-say-no-doesnt-work/> [hereinafter Lilienfeld & Arkowitz].

35. *A Brief History of the Drug War*, *supra* note 20.

36. *Id.*; Lilienfeld & Arkowitz, *supra* note 34.

37. *A Brief History of the Drug War*, *supra* note 21.

38. *Id.*

39. *Id.*

40. *Id.*

41. Families Against Mandatory Minimums, *Sentencing 101*, FAMM.ORG, <http://famm.org/sentencing-101/> (last visited Nov. 13, 2017) [hereinafter *Sentencing 101*].

prisoner to serve a minimum amount of time in prison.<sup>42</sup> Many mandatory minimum sentences apply to drug offenses.<sup>43</sup> For example, if an individual is found “in possession with intent to distribute” with either 1 kilogram of heroin, 5 kilograms of cocaine, 280 grams of crack, etc., they will automatically be sentenced to a mandatory minimum of ten years in prison on their first offense.<sup>44</sup>

Today, the “War on Drugs” is highly criticized as a complete failure and fraud.<sup>45</sup> Since 1971, the United States has spent over \$2 trillion on this effort.<sup>46</sup> This is approximately \$51 billion annually.<sup>47</sup> It is not simply an economic issue, but as Milton Friedman has said, a moral one.<sup>48</sup> In 2016, quotes from John Ehrlichman, a top-advisor to Nixon, surfaced with scandal and questions about veracity.<sup>49</sup> Ehrlichman is reported saying “the two enemies” of the Nixon campaign in 1968 were “the antiwar left and black people.”<sup>50</sup> He said:

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42. *Id.*

43. Families Against Mandatory Minimums, *What are Mandatory Minimums?*, FAMM.ORG, <http://famm.org/mandatory-minimums/> (last visited Nov. 13, 2017).

44. Families Against Mandatory Minimums, *Federal Mandatory Minimums*, FAMM.ORG, <http://famm.org/wp-content/uploads/2013/08/Chart-All-Fed-MMs-NW.pdf> (last visited Nov. 13, 2017).

45. See Richard Branson, *War on Drugs a Trillion-Dollar Failure*, CNN (Dec. 7, 2012, 6:05 PM), <http://www.cnn.com/2012/12/06/opinion/branson-end-war-on-drugs/> [hereinafter Branson]; Tim Dickinson, *Why America Can't Quit the Drug War*, ROLLING STONE (May 5, 2016), <http://www.rollingstone.com/politics/news/why-america-cant-quit-the-drug-war-20160505> [hereinafter Dickinson]; Hao Li, *War on Drugs a “Total Failure” and Statistics to Prove It*, INT’L BUS. TIMES (June 17, 2011, 9:53 AM), <http://www.ibtimes.com/war-drugs-total-failure-statistics-prove-it-291447> [hereinafter Li]; *The War on Drugs is a Failure*, DRUG-WAR.US, <http://drug-war.us/> (last visited Nov. 13, 2017) [hereinafter *War on Drugs is a Failure*].

46. Drug Policy Alliance, *Drug War Statistics*, DRUGPOLICY.ORG, <http://www.drugpolicy.org/drug-war-statistics> (last visited Nov. 13, 2017) [hereinafter *Drug War Statistics*].

47. *Id.*

48. Interview by Randy Paige with Milton Friedman, Senior Research Fellow, Hoover Institution on War, Revolution, and Peace (1991), <http://www.ukcia.org/research/argue/milton.htm> (“It’s a moral problem that the government is making into criminals people, who may be doing something you and I don’t approve of, but who are doing something that hurts nobody else.”).

49. Dan Baum, *Legalize It All: How to Win the War on Drugs*, HARPER’S MAG. (Apr. 2016), <http://harpers.org/archive/2016/04/legalize-it-all/> [hereinafter Baum]; Tom LoBianco, *Report: Aide Says Nixon’s War on Drugs Targeted Blacks, Hippies*, CNN (Mar. 24, 2016, 3:14 PM), <http://www.cnn.com/2016/03/23/politics/john-ehrllichman-richard-nixon-drug-war-blacks-hippie/>.

50. Baum, *supra* note 49.

We knew we couldn't make it illegal to be either against the war or black, but by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course we did.<sup>51</sup>

Currently twenty states have decriminalized marijuana use for personal use.<sup>52</sup> Eight states have approved taxing and regulating marijuana.<sup>53</sup> The United States still has the highest incarceration rate in the world, consisting of 25% of the world's prisoners,<sup>54</sup> while only housing less than 5% of the world's total population.<sup>55</sup>

## 2. AGING BEHIND BARS

Political changes and the War on Drugs are not the only causes alleged to affect the aging prison population. Prisoners may just be aging behind bars. As of 2014, 46.2 million individuals in the United States were sixty-five and older.<sup>56</sup> The population is expected to continue growing older.<sup>57</sup> In fact, it is expected to double from the forty-six million today to ninety-eight million in 2060.<sup>58</sup> Some attribute this continuing growth in the aging baby boomer generation, declining fertility amongst the general population, and declining immigration to the United States.<sup>59</sup> Currently, the Census Bureau expects a peak of immigration population of 1.5 million immigrants per year by 2060.<sup>60</sup> Most immigrants are working-age adults.<sup>61</sup> The higher immigration, the

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51. *Id.*

52. *Drug War Statistics*, *supra* note 46.

53. *Id.*

54. Drug Policy Alliance, *Mass Criminalization*, DRUGPOLICY.ORG, <http://www.drugpolicy.org/mass-criminalization> (last visited Nov. 13, 2017) [hereinafter *Mass Criminalization*].

55. *Id.*

56. U.S. DEP'T OF HEALTH AND HUM. SERVS', ADMIN. FOR COMMUNITY LIVING, ADMIN. ON AGING, AGING STATISTICS, [https://aoa.acl.gov/Aging\\_Statistics/Index.aspx](https://aoa.acl.gov/Aging_Statistics/Index.aspx) (last visited Nov. 13, 2017).

57. Jennifer M. Ortman et al., *An Aging Nation: The Older Population in the United States*, U.S. CENSUS BUREAU (May 2014), <https://www.census.gov/prod/2014pubs/p25-1140.pdf>.

58. Mark Mather et al., *Aging in the United States*, 70 POPULATION BULLETIN 1, 3 (Dec. 2015), <http://www.prb.org/pdf16/aging-us-population-bulletin.pdf> [hereinafter Mather et al.].

59. *Id.*

60. *Id.*

61. *Id.*



lower the relative older population is.<sup>62</sup> With the recent changes in immigration policy by President Trump,<sup>63</sup> a decline in immigration would mean a higher burden on the working generation to care for the non-working elderly.

Another possibility is that the elderly population is now turning to crime. Across the world, elderly are arrested for complex thefts, violent crimes, and shoplifting among other things.<sup>64</sup> Yet, the United States' rate of crime committed by the elderly has seen a downward trend since the 1980s.<sup>65</sup> Some question whether the increasing elderly population will increase the rise in elderly-related crime.<sup>66</sup> While the true cause remains to be seen, it is likely that all the above factors are coming together and creating the aging prisoner phenomena.

## B. How the Elderly Do Life in Prison

In many cases, elderly prisoners must receive specialized care in prison.<sup>67</sup> In the federal prison system, determining care is done by assigning prisoners to a care level.<sup>68</sup> Prisons assign each prisoner a care level between one and four: one is the healthiest and four requires the most care.<sup>69</sup> The Bureau of Prisons (BOP) deemed 33% of aging prisoners as level four prisoners, requiring in-patient, hospitalized care.<sup>70</sup> Nineteen percent of the overall prison population requires level four care.<sup>71</sup> Though states have not adopted a universal system of categorizing care for the elderly, states still must provide the same types of care that the federal system provides.<sup>72</sup>

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62. *Id.*

63. Nicholas Kulish et al., *Trump's Immigration Policies Explained*, N.Y. TIMES (Feb. 21, 2017), <https://www.nytimes.com/2017/02/21/05/trump-immigration-policies-deportation.html>.

64. Carol Matlack, *Instead of Playing Golf, the World's Elderly are Staging Heists and Robbing Banks*, BLOOMBERG (May 28, 2015, 7:30 AM), <https://www.bloomberg.com/news/articles/2015-05-28/worldwide-elderly-crime-rates-increase> [hereinafter Matlack].

65. *Id.*

66. Aimee Picchi, *The Rise of the Geriatric Criminal*, CBS (May 29, 2015, 3:26 PM), <http://www.cbsnews.com/news/the-rise-of-the-geriatric-criminal/>.

67. Ollove, *supra* note 8; *The Impact of an Aging Inmate Population*, *supra* note 14 at 5.

68. *The Impact of an Aging Inmate Population*, *supra* note 15, at 5.

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

Under the Eighth Amendment, the Supreme Court considers not receiving proper health care in prison cruel and unusual punishment.<sup>73</sup> “Deliberate indifference” to medical needs of prisoners constitute a breach of this constitutional right.<sup>74</sup> Ideally, prisons should provide the same level of medical treatment that is available to non-prisoners in society.<sup>75</sup> This concept is continually challenged with new technology. New technology has changed what is defined as proper health care. Organ transplants, especially, have been of recent controversy.<sup>76</sup> What is and is not medically necessary leads the BOP to face some serious ethical issues when it comes to caring for the aging in prison.

There are not only moral issues; they are also economic issues. Care of elderly inmates is significantly more expensive than younger inmates.<sup>77</sup> For over twenty years now, elderly inmates’ medical treatment costs have been enormous.<sup>78</sup> As of 2014, the United States spent over sixteen billion dollars on the incarceration of individuals fifty and older.<sup>79</sup> The cost to incarcerate aging inmates rose 23% between the years of 2010 and 2013, while the cost to incarcerate younger inmates only increased 3%.<sup>80</sup> In 2013, the BOP spent 17% of its \$6.5 billion budget on medical care for inmates; that totals \$1.1 billion.<sup>81</sup>

The day-to-day for elderly inmates is not easy.<sup>82</sup> Between medical needs and physical disability, inmates face daily struggles.<sup>83</sup> Elderly may have to sleep on upper bunks, take stairs to their cells, or struggle with mental illness like dementia without proper treatment.<sup>84</sup> State prisons have tried to individually address these problems in different

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73. *See Estelle v. Gamble*, 429 U.S. 97, 104 (1976).

74. *Id.*

75. Susan Lundstrom, *Dying to Get Out: A Study on the Necessity, Importance, and Effectiveness of Prison Early Release Programs for Elderly Inmates and Inmates Suffering from HIV Disease and Other Terminal-Centered Illnesses*, 9 *BYU J. OF PUB. L.* 155, 161 (May 1, 1994), <http://digitalcommons.law.byu.edu/cgi/viewcontent.cgi?article=1173&context=jpl> [hereinafter Lundstrom].

76. John Fung, *Organ Donation to Prisoners: Ethics and the Law*, ABC (Mar. 3, 2017), <http://abcnews.go.com/Health/story?id=116967&page=1>.

77. *The Impact of an Aging Inmate Population*, *supra* note 14, at 5.

78. Lundstrom, *supra* note 75, at 169.

79. OSBORNE, *supra* note 11, at 2.

80. *The Impact of an Aging Inmate Population*, *supra* note 14, at 10.

81. *Id.*

82. Mary Price, *America’s Elderly Prison Population Boom is Becoming a Nightmare*, MSNBC (May 6, 2015), <http://www.msnbc.com/msnbc/americas-elderly-prison-population-boom-becoming-nightmare> [hereinafter Price].

83. *Id.*

84. *Id.*; Belluck, *supra* note 15.

ways.<sup>85</sup> Some prisons instituted a geriatric section of the prison.<sup>86</sup> These are essentially specialized nursing homes, but run by inmates.<sup>87</sup> Scholars have proposed this idea as a cost effective and morally neutral solution to problems associated with handling the elderly prison population.<sup>88</sup>

The federal prison system's physical infrastructure is entirely overwhelmed by elderly inmates.<sup>89</sup> The overcrowding of federal institutions and limitation in providing elderly accommodations (such as handicapped-accessible cells, bathrooms, and lower bunks) limit the BOP's ability to control prisoners in safe, humane, and cost-effective environments.<sup>90</sup> While it may sound inane, the lack of access to lower bunks can cause serious injury to elderly individuals.<sup>91</sup> The upper bunks do not have ladders or steps, which requires inmates to stand on stools or chairs.<sup>92</sup> It presents a liability if a prisoner falls and creates tension among inmates who previously had a lower bunk and were re-assigned.<sup>93</sup> Furthermore, when an elderly individual is assigned a higher care level, such as Care Level Four, assignment is based on the availability of bed space and not necessarily medical need.<sup>94</sup>

In Vermont, state prisons have tried to transfer elderly inmates in need of intensive and consistent care to nursing homes.<sup>95</sup> But nursing homes often deny entrance to prisoners for security and publicity reasons even if the elderly prisoner is incapacitated.<sup>96</sup> Four states including Illinois, Louisiana, Virginia, and Maryland, require some criminal background check before an individual is admitted into state nursing homes.<sup>97</sup> Aging individuals may even be cleared to leave prison early on

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85. Elizabeth Hewitt, *Lawmakers Consider Options for Aging Prisoners, Including Nursing Home Care*, VTDIGGER (Dec. 27, 2015, 6:30 PM), <https://vtdigger.org/2015/12/27/lawmakers-consider-options-for-aging-prisoners-including-nursing-home-care/> [hereinafter Hewitt].

86. Lundstrom, *supra* note 75, at 169.

87. *Id.*

88. *Id.*

89. *The Impact of an Aging Inmate Population*, *supra* note 14, at 10.

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

95. Hewitt, *supra* note 85.

96. *Id.*

97. Christie Thompson, *Ever Committed a Crime? Good Luck Finding a Place to Grow Old*, THINKPROGRESS (July 1, 2014), <https://thinkprogress.org/ever-committed-a-crime-good-luck-finding-a-place-to-grow-old-f5151341a095#.j6wnf4b59> [hereinafter Thompson].

compassionate release or parole, but not be able to find a nursing home or housing that will accept them because of their criminal record or financial situation.<sup>98</sup> In these cases, the aging prisoner is technically free, but unable to be released from prison.<sup>99</sup>

After spending many years behind bars, there is often a gap in skills and knowledge about the modern world that makes re-entry of the elderly especially difficult.<sup>100</sup> While there are social groups and programs to support fathers and mothers who are in jail, these programs do not address the foundational problem.<sup>101</sup> Despite all of this programming, there are very rarely programs dedicated solely to elderly individuals re-entering society.<sup>102</sup> There are virtually no programs that actively help elderly learn more about technology, modern society, or how to navigate the new health care systems, housing markets, and government resources. Take health insurance, for example. Prisoners are not allowed to receive Medicare or Medicaid while in prison.<sup>103</sup> There were plans under Obamacare for released prisoners,<sup>104</sup> but no standardized program exists to help released prisoners receive these benefits that are often necessary to find a home or care services.

### C. How the Government Tried to Respond: The Second Chance Act of 2007

The Second Chance Act of 2007 is a grant program developed to “improve the re-entry planning and implementation” of prisoners.<sup>105</sup> The Second Chance Act of 2007 applies to prisoners of all age groups, but has a specific section for “elderly individuals.”<sup>106</sup> The Act allowed a pilot program, in which elderly prisoners were reunited with their families to serve the remainder of their sentence on home detention.<sup>107</sup> The

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98. *Id.*

99. *Id.*

100. Paul Kleyman, *Facts on Ethnic Elders: Little Help for Prisoners Released After Decades*, NEW AMERICA MEDIA (Feb. 10, 2014), <http://newamericamedia.org/2014/02/facts-on-ethnic-elders-little-help-for-prisoners-released-after-decades.php> [hereinafter Kleyman].

101. *Id.*

102. *Id.*

103. *Id.*

104. *Incarcerated People*, HEALTHCARE.GOV, <https://www.healthcare.gov/incarcerated-people/> (last visited Nov. 13, 2017).

105. Second Chance Act of 2007, *supra* note 6, at 657.

106. *Id.* at § 231(g).

107. *Id.* at § 231(g)(1)(A).

Attorney General was in charge of monitoring that program, designated for the fiscal years 2009 and 2010.<sup>108</sup>

The funding for this Act is relatively poor, allocating an average of just \$100 per released prisoner during its test run.<sup>109</sup> A study conducted under the Second Chance Act of 2007's funding and guidelines showed a significant decrease in recidivism for the states who committed to the study.<sup>110</sup> The study from the National Reentry Resource Center showed that programs for newly released prisoners helped them with their life beyond prison.<sup>111</sup> In general, recidivism rates among the elderly are very low. Only 2% of prisoners over fifty are incarcerated again.<sup>112</sup> That number barely exists concerning prisoners over sixty-five.<sup>113</sup>

There have been several bills introduced in Congress to refund this Second Chance Act of 2007 with modifications.<sup>114</sup> The newest attempt to fund the Second Chance Act of 2007 is the Second Chance Reauthorization Act.<sup>115</sup> If passed, this would amend the 2007 act to be an official program, not a pilot program.<sup>116</sup> The Reauthorization Act lowers the age requirement of "elderly" from sixty-five to sixty to encompass more prisoners.<sup>117</sup> Furthermore, it changes the time the individual must serve before release to family from over ten years or 75% of time, to two-thirds of the sentenced served.<sup>118</sup>

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108. *Id.*

109. N.Y. TIMES EDITORIAL BOARD, *The Second Chance Act Proves Its Worth: Committed States Have Reduced Recidivism Rates*, N.Y. TIMES (June 27, 2014), <http://nyti.ms/USchIF> [hereinafter *SCA Proves Its Worth*].

110. *Id.*

111. *Id.*

112. Downey & Negron-Muntaner, *supra* note 2.

113. *Id.*

114. Second Chance Reauthorization Act, S. 1513, 114th Cong. (2015).

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.*

#### D. How the Elderly Live Outside of Jail: Housing Options

Most older adults live in homes or apartments.<sup>119</sup> As of 2015, only 4% of elderly live in group settings, like nursing homes.<sup>120</sup> Of this 4% in group settings, almost 90% reside in skilled-nursing facilities.<sup>121</sup> Unsurprisingly, the older individuals get, the more likely they are to reside in group settings.<sup>122</sup> There are many factors that affect an elderly individual's living arrangements. Marital status, age, health, sex, race, and culture play a role in determining if an elderly individual will live alone, with a relative, or in a nursing facility.<sup>123</sup>

Difficult decisions must be made when an elderly person can no longer live alone. The individuals may move into a relative's home, a nursing home, an assisted-care facility, a program with in-home nurses, and even drones as caretakers and "artificial friends" are in the works.<sup>124</sup> None of the options are a win-win situation.

Living with a relative is a popular choice; generally no one wants to send their grandmother to a nursing home.<sup>125</sup> But, living with an elderly relative can be extremely stressful and difficult.<sup>126</sup> It often comes with a lot of questions: Is this person's mental capacity impaired? How often will they need help throughout the day? Who is going to help them while I'm at work? Who is going to pay for the extra cost?<sup>127</sup> The stress and shifting roles when becoming a caregiver may work for some families, but it does not work for all. In some cases, the decision to take

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119. Mather et al., *supra* note 58, at 5.

120. *Id.*

121. Loraine A. West et al., *65+ in the United States: 2010* 130 (U.S. Census Bureau P23-212, 2014), U.S. DEP'T OF HEALTH AND HUM. SERVS, (June 2014), <https://www.census.gov/content/dam/Census/library/publications/2014/demo/p23-212.pdf> [hereinafter West et al.].

122. *Id.*

123. *Id.* at 130-32.

124. John Markoff, *As Aging Population Grows, So Do Robotic Health Aides*, N.Y. TIMES (Dec. 4, 2015), <https://www.nytimes.com/2015/12/08/science/as-aging-population-grows-so-do-robotic-health-aides.html>.

125. Family Caregiver Alliance, *Selected Long-Term Care Statistics*, CARE GIVER.ORG, <https://www.caregiver.org/selected-long-term-care-statistics> (last visited Nov. 13, 2017) [hereinafter Family Caregiver Alliance].

126. Bonnie Lawrence, *What is the Best Strategy for Taking Care of Your Aging Parents at Home?*, PBS: NEWS HOUR (Sept. 14, 2014, 3:43 PM), <http://www.pbs.org/newshour/updates/options-want-stay-home-age/> [hereinafter Lawrence].

127. *Id.*

in an elderly relative leads to regret and facing the reality that not everyone is equipped to take care of aging parents or relatives.<sup>128</sup> Sometimes it is the elderly individual who does not want to live with their child, niece, or nephew.<sup>129</sup> There are other living arrangements for those who find they cannot care for their elderly relative anymore.<sup>130</sup>

The now “classic” option is a nursing home.<sup>131</sup> Nursing homes tend to have a negative connotation, drawing an image of someone who has thrown away a family member to be neglected by unskilled nurses.<sup>132</sup> While there are still terrible nursing homes in the U.S., there are also great ones out there, but they come at a higher cost.<sup>133</sup>

Cultural, economic, and personal factors come into play when deciding where an elderly family member may live. In the U.S., more families are open to trying nursing home care.<sup>134</sup> While it may be an option for many, Part III (F) shows why it is rarely an option for released or current prisoners.

### III. Analysis

#### A. How the Elderly Get Out of Jail

Under the Second Chance Act of 2007, prisoners who were once considered violent are always considered violent. One example is a female prisoner, who suffered several strokes which left her unable to

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128. Carol Bradley Bursack, *Living with Elderly Parents: Do You Regret the Decision?*, AGINGCARE.COM, <https://www.agingcare.com/articles/living-with-elderly-parents-do-you-regret-the-decision-133798.htm> (last visited Nov. 13, 2017) [hereinafter Bursack].

129. Stacey Burling, *The Dilemmas of Parents Aging at Home*, THE INQUIRER: PHILLY.COM (Oct. 2, 2016), [http://www.philly.com/philly/health/aging-parents\\_living\\_alone.htm](http://www.philly.com/philly/health/aging-parents_living_alone.htm).

130. *Id.*

131. Marlo Sollitto, *What's the Difference Between Skilled Nursing and a Nursing Home?*, AGINGCARE.COM, <https://www.agingcare.com/articles/difference-skilled-nursing-and-nursing-home-153035.htm> (last visited Nov. 13, 2017).

132. Kathleen Mears, *Thoughts on the Negative Connotation of Nursing Homes*, IADVANCESENIORCARE (Aug. 18, 2008), <http://www.iadvanceseniorcare.com/blogs/kmears/thoughts-negative-connotation-nursing-homes>; see Jye Wang et al., *The Effects of Resident and Nursing Home Characteristics on Activities of Daily Living*, 64 J. GERONTOLOGY A. BIOL. SCI. MED. SCI. 473, 473–80 (Feb. 6, 2009), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2657168/>.

133. April Jones, *Nursing Home Horror Stories: Are They True?*, AGINGCARE, <https://www.agingcare.com/articles/nursing-homes-perceptions-and-realities-133358.htm> (last visited Nov. 13, 2017).

134. Family Caregiver Alliance, *supra* note 125.

walk and talk, was given an indeterminate sentence of "20 years to life."<sup>135</sup> This prisoner was denied parole<sup>136</sup> because she was previously convicted of a violent crime, even though she was currently completely handicapped.<sup>137</sup> Parole boards may focus on past criminal behavior instead of looking at the present state of the prisoner.<sup>138</sup> Some suggest looking at the prisoner's transformation or status after time spent in prison.<sup>139</sup>

The Second Chance Act of 2007 did not apply to people under the age of sixty-five.<sup>140</sup> It also required that an individual not commit a crime of violence, a sex offense, or have a history of such behavior.<sup>141</sup> Additional requirements include: not attempting to escape or no previous escape from the BOP, release being a substantial cost benefit because imprisonment was expensive, and a determination that there is no substantial risk of the prisoner engaging in criminal conduct or endangering persons or the public.<sup>142</sup> Along with looking at the behavior of the prisoner, their imprisonment must be expensive.<sup>143</sup> Currently, few prisoners qualify to be released according to the Second Chance Act of 2007.<sup>144</sup> While some serve long sentences for non-violent crimes, many are serving time for something related to a violent or sexual crime.<sup>145</sup>

The Second Chance Reauthorization Act, will lower the previous act's age requirement and apply to those who are sixty.<sup>146</sup> It also lowers the time spent in prison by allowing those who served two-thirds of their sentence to qualify instead of ten years or 75%.<sup>147</sup> It also recognizes that the program is permanent, and not a pilot program.<sup>148</sup> These differences reflect the increasing worry regarding the aging re-entering communities. Or, at the very least, reflect the desire to ease the economic burden on the BOP.

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135. Downey & Negron-Muntaner, *supra* note 2.

136. *Id.*

137. *Id.*

138. *Id.*

139. *Id.*

140. Second Chance Act of 2007, *supra* note 6, at 675.

141. *Id.*

142. *Id.*

143. *Id.*

144. *Id.*

145. See generally NATHAN JAMES, CONGRESSIONAL RESEARCH SERV., RL34287 OFFENDER REENTRY: CORRECTIONAL STATISTICS, REINTEGRATION INTO THE COMMUNITY, AND RECIDIVISM (Jan. 12, 2015) [hereinafter JAMES].

146. Second Chance Reauthorization Act, S. 1513, 114th Cong. (2015).

147. *Id.*

148. *Id.*



Yet, the motives and practicality of the Reauthorization Act are questionable. There is a push to release non-violent prisoners.<sup>149</sup> But non-violent offenders, even drug offenders, are not typically the individuals in the “aging” category.<sup>150</sup> To have an impact on prisons, and to answer the moral issue of incarcerating those incapable of committing violent crime, the Reauthorization Act would have to apply to a wider group than just non-violent offenders. The pilot program during the Second Chance Act of 2007 only applied to an extremely small portion of aging prisoners.<sup>151</sup>

Available bed space should determine which individuals are released from jail. Federal prisons are grossly overcrowded.<sup>152</sup> Inmates are often assigned to different parts of the jail or a care level depending on availability of beds.<sup>153</sup> This may be especially true in the case of inmates requiring handicapped-accessible facilities.<sup>154</sup> The BOP’s organization by care level leads to many of its handicapped inmates being housed in the same unaccommodating area.<sup>155</sup>

#### **B. How the Elderly are (not) Prepared to Leave Prison**

A release from jail is not as simple as heading home. Re-entry for all prisoners is complex, difficult, and requires addressing major issues on a personal and societal level.<sup>156</sup> The first issue: are the prisoners prepared to leave? One suggested solution is to provide more prison programming.<sup>157</sup> Lack of programming is a big part of the problem. In the federal system, the BOP does not provide programming to address the needs of elderly inmates.<sup>158</sup> Programming for future employment, education, and personal ventures—like how to be a good father or mother—are shown to have positive results.<sup>159</sup> Yet, this type of program-

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149. See Downey & Negrón-Muntaner, *supra* note 2; Lundstrom, *supra* note 75.

150. See JAMES, *supra* note 145, at 29.

151. Second Chance Act of 2007, *supra* note 6, at 657.

152. *The Impact of an Aging Inmate Population*, *supra* note 14, at 23–24.

153. *Id.* at 26–29.

154. *SCA Proves Its Worth*, *supra* note 109.

155. *The Impact of an Aging Inmate Population*, *supra* note 14, at 27.

156. JOAN PETERSILIA, *WHEN PRISONERS COME HOME: PAROLE AND PRISONER REENTRY 14* (Oxford University Press, 2003) [hereinafter PETERSILIA].

157. *Id.*

158. *The Impact of an Aging Inmate Population*, *supra* note 14, at 52.

159. PETERSILIA, *supra* note 156, at 14.

ming is not created for elderly needs or directed to the elderly prisoners.<sup>160</sup> Take, for example, employment programming. Elderly prisoners may not be seeking future employment at all.<sup>161</sup>

In addition to the programs provided by the prison, local programs can aid prisoners who are reentering society.<sup>162</sup> While prison officials have noted that their programs are based on need, rather than age, an investigation showed that out of the eighteen standardized programs zero address the exact needs of elderly inmates.<sup>163</sup> But, there are programs exclusively created for younger inmates.<sup>164</sup> In 2013, just over 2,500 inmates met the criteria of this program for inmates under the age of thirty-two serving their first federal sentence.<sup>165</sup> In that same year there were nearly 31,000 elderly inmates for whom no elderly programs existed.<sup>166</sup> Out of all eighteen programs, aging inmates participated in two programs at rates equal or slightly higher than the overall prison population.<sup>167</sup>

Pre-release programs have the same downfalls as other BOP programs.<sup>168</sup> The pre-release program consists of six “core topics:” health and nutrition, employment, personal finance, community resources, release procedures, and personal development.<sup>169</sup> In interviews with the Office of the Inspector General, most of these core areas were not helpful to the re-entry of elderly inmates.<sup>170</sup> Elderly prisoners were not worried about employment, buying their first house, or raising a family; most had already done those things or the time has passed for them to do those things.<sup>171</sup> Even institution staff knew these programs were not properly tailored to elderly needs.<sup>172</sup> If an elderly individual develops Parkinson’s Disease, he likely will not be able to work in the precision-based textiles program in prison. If an elderly individual is frail, she will likely not be entrusted with power tools at a carpentry program.

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160. *The Impact of an Aging Inmate Population*, *supra* note 14, at 52.

161. *Id.*

162. *Id.*

163. *Id.* at 32.

164. *Id.* at 33.

165. *Id.*

166. *Id.*

167. *Id.* at 32.

168. *Id.* at 35–36.

169. *Id.* at 35.

170. *Id.* at 36.

171. *Id.*

172. *Id.* at ii.

Most elderly prisoners have grown children or no children by the time they reach this age. These programs are not applicable to the elderly individuals' needs who have served their time. A staff member suggested that while the information may be relevant for younger inmates, a more useful program would be to teach aging inmates how to apply for Social Security benefits and find assisted living facilities.<sup>173</sup>

### C. How the Elderly are Caught in the "Time-Warp Effect"

The "time warp effect" refers to the shock experienced by prisoners released after long periods of incarceration. Julio Acosta was in jail for twenty-three years and paroled in 2013.<sup>174</sup> On his first day released he had a "horrifying morning . . . at the international house of pancakes."<sup>175</sup> He was in shock because of the metal flatware, the lack of guards, and the stress of the new environment.<sup>176</sup> He was sweating, shaking, and did not understand the new world around him.<sup>177</sup> Julio Acosta is not alone. Prisoners released after long sentences make large life adjustments. Aside from the initial shock, sometimes they are unfamiliar with technological advances and often experience strong social anxiety about how the world has changed since they were last free.<sup>178</sup>

This time away from society makes it substantially harder to participate in society once a prisoner has re-entered.<sup>179</sup> Technological changes do not just affect social interactions and the use of cellphones and computers. Elderly prisoners may need a form of identification.<sup>180</sup> Forms of identifications are necessary to apply for housings, loans, cars, rentals, and healthcare.<sup>181</sup> Identifications vary from state to state.<sup>182</sup> For

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173. *Id.* at 32.

174. *Id.* at ii.

175. *Id.* at 35–36.

176. Jon Mooallem, *You Just Got Out of Prison. Now What?*, N.Y. TIMES MAG. (July 16, 2015), [https://www.nytimes.com/2015/07/19/magazine/you-just-got-out-of-prison-now-what.html?\\_r=0](https://www.nytimes.com/2015/07/19/magazine/you-just-got-out-of-prison-now-what.html?_r=0) [hereinafter Mooallem].

177. *Id.*

178. *Id.*

179. Juleyka Lantigua-Williams, *The Elusiveness of an Official ID After Prison*, THE ATLANTIC (Aug. 11, 2016), <http://www.theatlantic.com/politics/archive/2016/08/the-elusiveness-of-an-official-id-after-prison/495197/> [hereinafter Lantigua-Williams].

180. *Id.*

181. *Id.*

182. *Id.*

general identification, birth certificates are usually required.<sup>183</sup> Frustratingly, states often require a personal identification to even receive a copy of your birth certificate.<sup>184</sup> These qualifications for a form of identification are often not free; fees may apply.<sup>185</sup> While the fees may not pose a problem for all prisoners, for indoctrinated prisoners and living within the prison system for five, ten, fifteen or more years, they may find the process impossibly complicated.

The federal government has recognized the need for a form of identification for released prisoners.<sup>186</sup> The federal government has not taken any action on their own to provide identifications for prisoners released from federal prison.<sup>187</sup> Furthermore, it cannot compel states to provide such forms of identifications.<sup>188</sup> Some states have acted and allow prisoners to exchange their prison identification card, an otherwise useless identification outside of prison, for a state identification card.<sup>189</sup>

The bigger issue is that without a form of identification, a recently released prisoner will have a significantly harder time getting health care or insurance.<sup>190</sup> Logistically, it would be difficult for an ex-prisoner to navigate the healthcare system even with an identification. It is difficult for citizens who have never been in prison or have societal strikes against them. Add this to the lack of knowledge regarding technological advances. A prisoner's form of identification can get stalled for months at a time, leaving him or her without a job, health care, and no way to reconnect with society.<sup>191</sup> Stanley Bailey had been locked up for twenty-five years.<sup>192</sup> He was released and deemed a re-entry success

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183. *Id.*

184. *Id.*

185. See, e.g., *Birth Certificates*, PA.GOV, [http://www.health.pa.gov/MyRecords/Certificates/BirthCertificates/Pages/default.aspx#.WDBVq\\_krLgk](http://www.health.pa.gov/MyRecords/Certificates/BirthCertificates/Pages/default.aspx#.WDBVq_krLgk) (last visited Nov. 13, 2017); *Virginia Department of Health Agency Information*, VITALCHEK.COM, <https://www.vitalchek.com/birth-certificates/virginia/virginia-department-of-health> (last visited Nov. 13, 2017); *Order a Birth Certificate*, NYC.GOV, <http://www1.nyc.gov/site/doh/services/birth-certificates.page> (last visited Nov. 13, 2017).

186. Lantigua-Williams, *supra* note 179.

187. *Id.*

188. *Id.*

189. *Id.*

190. *Id.*

191. Mooallem, *supra* note 176.

192. *Id.*

story, but there was more beneath the surface.<sup>193</sup> Bailey had done everything right by getting a job and developed prospects regarding a more permanent position as a truck driver, but he was being slowed down.<sup>194</sup> He was unable to locate his birth certificate for months, which meant he could not get a learner's permit or government aid.<sup>195</sup>

Even if a prisoner can navigate healthcare, housing, identification, telephones, computers, and all the technology in between, in many cases society has advanced so far that their plans and professions have become moot.

#### D. How the Elderly "Go Home"

A prisoner is released. They have \$200 in their pocket. Now what? There are several options. An inmate can go home if he or she has family or a house to go to. He or she can go to a halfway house. He or she can go to a nursing home. But first, he or she must report to a parole officer. In some cases, a prisoner must report within forty-eight hours and the parole office is hundreds of miles away.<sup>196</sup> In California, some inmates released from a Sacramento prison must make their way to a parole officer in San Diego; that is, they must travel 500 miles in two days.<sup>197</sup> Sometimes prisoners must pay some of that 200 dollars they receive from prison back to the prison for a ride to the bus station.<sup>198</sup>

A prison inmate tells a story of a man who had been in prison for thirty-five consecutive years.<sup>199</sup> When he went out into the world he saw how fast-paced it was and it was too difficult for him to handle.<sup>200</sup> He did not have a family to go back to, so he made a decision.<sup>201</sup> He got a hold of a gun, went to a liquor store, and, without robbing anyone, told the clerk to call the police; he wanted to go back to prison.<sup>202</sup>

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193. *Id.*

194. *Id.*

195. *Id.*

196. *Id.*

197. *Id.*

198. *Id.*

199. Laura Sullivan, *Life After 'Life': Aging Inmates Struggle for Redemption*, NPR (June 4, 2014, 3:24 PM), <http://www.npr.org/2014/06/04/317055077/life-after-life-aging-inmates-struggle-for-redemption> [hereinafter Sullivan].

200. *Id.*

201. *Id.*

202. *Id.*

In Colorado, a program has offered prisoners a Long-Term Offender Program for individuals with sentences of ten, twenty, thirty years or more.<sup>203</sup> This program tries to help prisoners get used to life outside of prison while still behind bars.<sup>204</sup> The program hopes to keep men out of jail and ease them into the shock of joining the outside world.<sup>205</sup> There are some success stories. Red Thorpe was a former prisoner with a twenty-five-year sentence who developed from a profession as a handyman to a college instructor.<sup>206</sup> He is now the leader of the Long-Term Offender Program in Colorado.<sup>207</sup> The program is not designed to help anyone get out of prison, rather it helps them adjust once they do.<sup>208</sup> It is designed to help prisoners come to terms with their lives and what life has become on “the outside.”<sup>209</sup>

If the prisoners do have somewhere to go, sending prisoners home does not mean the correctional system must let them go with no safeguards. Another option for releasing prisoners might be “house arrest” or electronic detection devices.<sup>210</sup> This raises some of the same problems of “early release” and the Second Chance Authorization Act of 2007 and subsequent Reauthorization Act. Under 730 ILCS 5/5-8A-1, individuals who have committed certain crimes, such as first degree murder, escape, aggravated battery with a firearm, or criminal sexual assault, are excluded from house arrest.<sup>211</sup> The statute does not consider the mental capacity, age, or physical capability of the individual.<sup>212</sup> For the elderly who seem more suspicious of law enforcement, but still have medical limitations, this option may be a viable alternative to the overcrowding of prisons.

In the federal system, the BOP may assign inmates to home confinement for the last six months of their prison sentences.<sup>213</sup> From 2009 to 2013, the elderly inmates placed on home confinement increased by 258%.<sup>214</sup> Yet, this was from one small number (161) to another relatively

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203. *Id.*

204. *Id.*

205. *Id.*

206. *Id.*

207. *Id.*

208. *Id.*

209. *Id.*

210. Lundstrom, *supra* note 75, at 171.

211. 730 Ill. Comp. Stat. Ann. 5/5-8A-2 (B) (West 2017).

212. Second Chance Act of 2007, *supra* note 6, at 657.

213. *The Impact of an Aging Inmate Population*, *supra* note 14, at 36.

214. *Id.*

small number (577).<sup>215</sup> Prison staff say this method is useful for managing elderly inmates.<sup>216</sup> The BOP remains responsible for a prisoner's health and safety when a prisoner is on home confinement.<sup>217</sup> But, it shifts the burden from the prison system to the individual, as the aging inmates must be able to pay for their medical care on their own.<sup>218</sup> This burden shifting proves too much for some inmates. Prisoners have returned to prison from home confinement because they could not care for themselves and did not have the budget to get help.<sup>219</sup> What makes home confinement a beneficial option for aging inmates is the ability to enroll in insurance.<sup>220</sup> Typically, a prisoner would not be able to enroll in Medicaid or Medicare while incarcerated, but, while on home confinement, BOP social workers can help prisoners enroll.<sup>221</sup> This gives prisoners on home arrest a period between total incarceration and total freedom in which they can control their finances, pick a health insurance, and sign up for Medicaid.

There is little reason to fear the elderly will commit crimes after their release from prison.<sup>222</sup> Aging inmates have a lower rate of re-arrest and it continues to decrease as an inmate gets older.<sup>223</sup> Elderly inmates who are arrested again often are alleged to have committed drug offenses.<sup>224</sup> In a study of 381 prisoners over the age of fifty, only fifty-eight were rearrested for a new crime.<sup>225</sup> Forty of those individuals were between the ages of fifty to fifty-nine.<sup>226</sup> Only three prisoners over the age of sixty-five were re-arrested.<sup>227</sup> Of those arrested, none of them were over the age of seventy.<sup>228</sup>

While recidivism of the elderly in the United States is not alarming in the least, the United States may have to look to Japan's current population issues for guidance. In Japan, the elderly population has

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215. *Id.* at 37.

216. *Id.*

217. *Id.*

218. *Id.*

219. *Id.*

220. *Id.*

221. *Id.*

222. *Id.*

223. *Id.*

224. *Id.*

225. *Id.* at 39–40.

226. *Id.*

227. *Id.*

228. *Id.* at 37.

grown so quickly that their needs outpaced their ability to provide help for the elderly.<sup>229</sup> These elderly individuals, or their families, do not have the means to support themselves. The elderly themselves turn to crime to support their lifestyles and needs.<sup>230</sup> Overall crime rates have fallen in Japan over the decades, but, in 2015, Japanese elders over the age of sixty-five committed more violent and simple crime (such as shoplifting) than teenagers.<sup>231</sup>

#### E. How a Halfway House is (Sometimes) an Option

Thousands of prisoners are released each year, many for non-violent drug offenses.<sup>232</sup> Some of those individuals are not released from prison directly, but from halfway houses or home confinement.<sup>233</sup> Often prisoners live in these halfway houses for several months to have time to get support and adjust to the outside world.<sup>234</sup> A halfway house provides individuals with “a temporary place to live as they attempt to get back on their feet or make a major transition in their lives.”<sup>235</sup> They are not prisoner-specific. Halfway houses are often completely full.<sup>236</sup> The halfway house’s quality is often questionable, and there is often not enough funding to fully support them.<sup>237</sup> Despite their faults, halfway houses provide prisoners somewhere to go when they do not have a home or family to go back to.

The Colorado Long-Term Offender Program has a connection to the Dahlia halfway house.<sup>238</sup> This halfway house, though not specific to

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229. Patrick Cox, *Japanese Prisons are Starting to Look Like Nursing Homes*, BUS. INSIDER (Dec. 4, 2015, 7:51 PM), <http://www.businessinsider.com/japanese-prisons-look-like-nursing-homes-2015-12>.

230. *Id.*

231. *Id.*

232. Carrie Johnson, *What You Should Know About the Federal Inmate Releases*, NPR (Nov. 1, 2015, 8:11 PM), <http://www.npr.org/sections/thetwo-way/2015/11/01/453564956/what-you-should-know-about-the-federal-inmate-release> [hereinafter Johnson].

233. *Id.*

234. *Id.*

235. Marianna Bramble, *Starting a Halfway House or Transitional Housing Facility*, SMALL BUS. ASS’N: BLOGS (Mar 9, 2016), <https://www.sba.gov/blogs/starting-halfway-house-or-transitional-housing-facility>.

236. Johnson, *supra* note 232.

237. *Id.*

238. Sullivan, *supra* note 199.



the elderly, does provide support for those released after long sentences.<sup>239</sup> The elderly do not get any special acceptance into halfway houses.<sup>240</sup> In fact, no special halfway houses just for the elderly exist.<sup>241</sup> Halfway houses provide some treatment and medical care for their residents,<sup>242</sup> but elderly illness is often beyond the scope of the houses ability to provide.<sup>243</sup>

Halfway houses often require its residents to pay rent.<sup>244</sup> The halfway house provides more stability than living on one's own.<sup>245</sup> It gives the newly-released prisoner a safety net. But, because of specific elder needs, a regular halfway house may not fit their requirements. If a prisoner has an "in" to a halfway house, then this may be his or her best option when released after a long sentence.<sup>246</sup>

#### F. How Nursing Homes are Almost Never an Option

A professional care facility appears to solve many problems related to releasing elderly prisoners. If the prison is overcrowded, the prison can send elderly inmates with significant medical issues to a nursing home.<sup>247</sup> If a prisoner has nowhere to be released, he or she can admit themselves into a nursing home. If only the solution were so easy. State officials in Connecticut realized nursing homes may never be the solution.

In Rocky Hill, Connecticut, the nursing home at 60 West Street offered to do something many nursing homes refused to do: accept elderly prison inmates.<sup>248</sup> At first, the state was confident that Medicaid

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239. *Id.*

240. Andrew Cohen, *Older Prisoners, Higher Costs*, MARSHALL PROJECT (May 6, 2015, 10:09 AM), <https://www.themarshallproject.org/2015/05/06/older-prisoners-higher-costs>.

241. Sullivan, *supra* note 199.

242. COMPLETING THE TRANSITION, FED. BUREAU OF PRISONS, [http://www.bop.gov/about/facilitites/residential\\_reentry\\_management\\_centers.jsp](http://www.bop.gov/about/facilitites/residential_reentry_management_centers.jsp) (last visited Nov. 13, 2017).

243. Sullivan, *supra* note 199.

244. *Id.*

245. *Id.*

246. *Id.*

247. *Old Behind Bars: The Aging Prison Population in the United States*, HUMAN RIGHTS WATCH (Jan. 27, 2012), <http://www.hrw.org/report/2012/01/27/old-behind-bars/aging-prison-population-United-States>.

248. David Drury, *Feds: No Medicaid Reimbursement for Prisoners at Rocky Hill Nursing Home*, COURANT.COM (Sept. 5, 2015, 8:19 AM), <http://www.courant.com/community/rocky-hill/hc-rocky-hill-nursing-home-0905-20150904-story.html>.

would provide 50% of the cost for prison inmates moved to this nursing home.<sup>249</sup> They were wrong. A court decision upheld the decision to deny Medicare/Medicaid certification to this nursing home.<sup>250</sup> While the state takes it up on an appeal, the state is now responsible for the inmates' entire costs while living at the facility.<sup>251</sup> The problem is that the inmates do not meet the Medicare guidelines.<sup>252</sup> While in custody of a prison, inmates are not eligible for these federal healthcare programs.<sup>253</sup> If Medicare and Medicaid will pay half of the money for these elderly prisoners' care, it would save the state money from the individual and specialized attention that prisoners would otherwise have to receive in prison infirmaries.<sup>254</sup>

Once a prisoner is released from prison, they may be eligible for Medicare or Medicaid. The way to apply for Medicare or Medicaid is through the Social Security Administration (SSA).<sup>255</sup> For just Medicare alone, assuming an elderly person first knows they have to go to the SSA, he or she can apply online, call the Social Security line, or visit a Social Security office to apply for Medicare.<sup>256</sup> To receive Medicare, an individual needs a Social Security Number, which many prisoners may not know or have no access to.<sup>257</sup> Then, they must navigate the insurance coverage plans, group health plans, and provide information about past employment.<sup>258</sup> Furthermore, they have to pay Medicare taxes for at least ten years to qualify for Medicare Part A.<sup>259</sup> Medicare only applies to nursing home care if an individual is coming straight from a hospital.<sup>260</sup> It is unclear whether legislators would qualify an inpatient prison hospital under this restriction. These requirements prove a problem for

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249. *Id.*

250. *Id.*

251. *Id.*

252. *Id.*

253. *Id.*

254. *Id.*

255. *How to Apply Online for Medicare Only*, SOC. SECURITY ADMIN., <https://www.ssa.gov/pubs/EN-05-10531.pdf> (last visited Nov. 13, 2017) [hereinafter *How to Apply*]; *Medicaid & Chip Coverage*, HEALTHCARE.GOV, <https://www.healthcare.gov/medicaid-chip/> (last visited Nov. 13, 2017) [hereinafter *Medicaid & Chip*].

256. *How to Apply*, *supra* note 255.

257. *Id.*

258. *Id.*

259. Patricia Barry, *What if I Haven't Worked Long Enough to Qualify for Medicare?*, AARP, [http://www.aarp.org/health/medicare-insurance/info-04-2008/ask\\_ms\\_\\_medicare\\_9.html](http://www.aarp.org/health/medicare-insurance/info-04-2008/ask_ms__medicare_9.html) (updated Apr. 2014).

260. *Id.*

prisoners who have been in jail for up to thirty or forty years. Medicaid is a similar application process with more restrictive requirements.<sup>261</sup> Without some form of insurance, an aging individual must cover the entire cost of living and care on their own.

In May 2016, the Michigan House of Representatives passed a bill to send approximately 120 prisoners each year to Michigan's nursing homes annually.<sup>262</sup> The plan also includes Medicaid coverage for the prior inmates depending on federal approval.<sup>263</sup> But, there is a strong opposition. The Vice President for the Health Care Association of Michigan openly disapproves of the plan.<sup>264</sup> She and her cohort plan to fight the bill as it goes to the Michigan Senate.<sup>265</sup> She even concedes that the facilities would be a better fit for the elderly, but the Centers for Medicaid Services refuses to provide Medicaid coverage.<sup>266</sup>

One thing standing in the way of this bill is the current minimum-sentencing law in Michigan.<sup>267</sup> Minimum-sentencing laws may keep prisoners for non-violent drug crimes for long, drawn out sentences. They may keep them beyond a point where the individual is even capable of picking up a pen or speaking a full sentence. Michigan lawmakers have tried to dispose of the minimum sentencing laws, but instead chose to just accommodate one group of individuals with an exception to the law.<sup>268</sup> This exception would be for the elderly individuals with a higher care status that exceeds the ability and resources of the current prison facilities in Michigan.<sup>269</sup>

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261. *Medicaid & Chip*, *supra* note 255.

262. Emily Mongan, *Michigan House Approves Plan to Send Frail Prisoners to Nursing Homes*, MCKNIGHT'S LONG-TERM CARE NEWS (May 5, 2016), <http://www.mcknights.com/news/michigan-house-approves-plan-to-send-frail-prisoners-to-nursing-homes/article/494662/> [hereinafter Mongan].

263. *Id.*

264. *Id.*

265. *Id.*

266. *Id.*

267. Chris Kardish, *States Look to Nursing Homes to Lower Prison Health Care Costs*, GOVERNING: HEALTH & HUMAN SERVS. (Feb. 27, 2014), <http://www.governing.com/news/headlines/gov-states-look-to-nursing-homes-to-lower-prison-health-care-costs.html> [hereinafter Kardish].

268. *Id.*

269. *Id.*

One private company managing a nursing home in Midgeville, Georgia recognized the need for a place the elderly inmates can go.<sup>270</sup> Sometimes if an inmate has nowhere to go, they must stay in prison.<sup>271</sup> Bostick Nursing Center is trying to help relieve the prison system and help those prisoners after having paid their debt to society.<sup>272</sup> The owner and president of the company managing this nursing home, David Vincent, is dedicated to providing services to these individuals who have a stigma attached to them due to their criminal record.<sup>273</sup> Mr. Vincent's attitude is more of an exception than a rule. Many former inmates are not approved to live in a skilled nursing facility or assisted living facility because of their criminal backgrounds.<sup>274</sup>

Nursing homes are one extreme of specialized care facilities. Assisted living facilities help their residents for certain needs, while still providing the privacy of a home or apartment setting.<sup>275</sup> Typically, care can be anything, from just having housekeeping or maintenance visit on an elderly individual to providing service for daily activities like bathing, eating, and dressing.<sup>276</sup> But, this hybrid of care does not come for cheap. On average monthly fees are \$2,000.<sup>277</sup> Furthermore, these assisted living facilities may discriminate against tenants.<sup>278</sup> There is often a wait list for assisted living facilities.<sup>279</sup> These factors make it an unrealistic option for most released prisoners.

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270. *New Nursing Home to Care for Former Inmates*, WMAZ (Nov. 29, 2016, 6:33 PM), <http://www.13wmaz.com/news/local/new-nursing-home-to-care-for-former-inmates-1/358236190> [hereinafter WMAZ].

271. *Id.*

272. *Id.*

273. *Id.*

274. *Id.*

275. THE BASICS OF ASSISTED LIVING, NAT'L CAREGIVERS LIBRARY, <http://www.caregiverslibrary.org/caregivers-resources/grp-care-facilities/hsgp-assisted-living-facilities/the-basics-of-assisted-living-article.aspx> (last visited Nov. 13, 2017).

276. *Id.*

277. *Id.*

278. WMAZ, *supra* note 270.

279. Carol Marak, *Waiting Lists*, ASSISTEDLIVINGFACILITIES.ORG, <http://www.assistedlivingfacilities.org/resources/choosing-an-assisted-living-facility/waiting-lists/> (last visited Nov. 13, 2017).

Overall, the morality and economy of moving aging prisoners to nursing homes may coincide. But, as noted above, there is strong opposition to moving prisoners to nursing homes.<sup>280</sup> There are some who disagree with former prisoners being in nursing homes at all, even after they have served a full sentence.<sup>281</sup> Yet, keeping an incapacitated individual behind bars, where they do not receive proper care, is not an ideal moral circumstance.<sup>282</sup> Prisons are not allowed to breach an individual's Eighth Amendment right against cruel and unusual punishment by not providing adequate medical care.<sup>283</sup> Even if prisons wanted to provide this costly medical care, they likely could not provide specialized care due to the lack of resources and skill level.<sup>284</sup> When a prisoner has either served their time or can no longer be deemed capable of understanding what "serving their time" means, it is reasonable to remove them from the prison's care.

Moving aging prisoners to nursing homes may also benefit the economics of a state's prison system. As more and more aging prisoners populate state and federal prisons, the cost of medical care for prisons increases.<sup>285</sup> Few states have successfully partnered with facilities beyond prison walls to help save the state money in caring for elderly inmates or former inmates.<sup>286</sup> States have struggled mostly with how to fund this transition as Medicare and Medicaid have sometimes refused to pay for inmate care.<sup>287</sup> But, states may apply for reimbursements through the health programs.<sup>288</sup> This shifts the cost from the state government to the federal government.<sup>289</sup>

California, Michigan, Connecticut, and Georgia, along with many other states, have been turning to these nursing homes to help solve their money problems.<sup>290</sup> Elderly inmates are costing up to three times as much as younger inmates, and the elderly inmate population is

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280. See, e.g., Mongan, *supra* note 262.

281. *Id.*

282. Lundstrom, *supra* note 75, at 160; see also *Estelle v. Gamble*, 429 U.S. 97, 104 (1976).

283. *Estelle*, 429 U.S. at 104.

284. Lundstrom, *supra* note 75, at 166.

285. *Id.* at 158.

286. Kardish, *supra* note 267.

287. *Id.*

288. *Id.*

289. *Id.*

290. *Id.*

growing quickly.<sup>291</sup> With a tenfold increase of elderly inmates between 1980 and 2008, the statistics are pushing more states to face the need to figure out where the elderly will go.<sup>292</sup> But, whether the stigma of having an ex-convict living next to your “nana” will ever go away is yet to be seen. The local backlash faced over these incentives have little basis in reality and more in fear.<sup>293</sup> That does not make them any less powerful. Something needs to be done, but with politicians up for election, it is unclear if any can face the backlash of “protecting elders” versus accommodating a state budget to benefit former or current prisoners.

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291. *Id.*

292. *Id.*

293. *Id.*

## IV. Recommendation

*“We could choose to be a nation that extends care, compassion, and concern to those who are locked up and locked out or headed for prison before they are old enough to vote. We could seek for them the same opportunities we seek for our own children; we could treat them like one of “us.” We could do that. Or we can choose to be a nation that shames and blames its most vulnerable, affixes badges of dishonor upon them at young ages, and then relegates them to a permanent second-class status for life. That is the path we have chosen, and it leads to a familiar place.”<sup>294</sup>*

### A. How Abolishing Mandatory Minimums Would Help

If this issue were a proverbial fire, the first step would be to abolish mandatory minimums to help put out the flame. Mandatory minimums hold prisoners in jail for a minimum amount of time not based on a judge’s discretion but on a legislative determination from pre-existing facts in the case.<sup>295</sup> It takes away a judge’s discretion if there are certain mitigating factors that a judge would deem appropriate for a crime to be below the mandatory minimum sentence. These were established in the 1970s and 80s but have become unpopular in recent history. In 2014, a national survey with the Public Religion Research Institute found that 77% of Americans believe that mandatory minimums for non-violent drug offenses should be abolished.<sup>296</sup>

Ideally, prisons would not be housing non-violent drug offenders for years or decades at a time, but it has become the default solution. These mandatory minimums have damaged the structure of our prison system and overcrowded the cells. Now, those individuals who were locked up decades ago are being “warehoused” until they are too old to commit a crime again. But, a side effect of housing prisoners for so long comes with the inevitable: age. These prisoners do not stop getting older, and they require more and more care as they do get older.

Despite unpopularity of Mandatory Minimums, some still offer public support. On March 15, 2017, Attorney General Jeff Sessions

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294. MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 206 (2010).

295. *Id.* at 88.

296. Christopher Ingram, *Here’s How Much Americans Hate Mandatory Minimum Sentences*, WASH. POST (Oct. 1, 2015), [https://www.washingtonpost.com/news/wonk/wp/2015/10/01/heres-how-much-americans-hate-mandatory-minimum-sentences/?utm\\_term=.7fe8136b7bae](https://www.washingtonpost.com/news/wonk/wp/2015/10/01/heres-how-much-americans-hate-mandatory-minimum-sentences/?utm_term=.7fe8136b7bae).

spoke out about combatting crime.<sup>297</sup> Attorney General Sessions cited the War on Drugs, and how drug prevention programs brought down drug use.<sup>298</sup> While this is untrue, it shows the direction of the political wave.<sup>299</sup> The Attorney General said he was “astonished to hear people suggest that we can solve our heroin crisis by legalizing marijuana—so people can trade one life-wrecking dependency for another that’s only slightly less awful.”<sup>300</sup> On the federal government’s own site, DrugAbuse.gov, a study shows that states with medical marijuana dispensaries are linked to reductions in overdoses related to opioids, like heroin.<sup>301</sup> Adjusting mandatory minimums will be especially difficult to do in light of this type of rhetoric.

The U.S. needs to avoid the use of mandatory minimums as much as possible, especially regarding drug-related offenses. Instead of sentencing individuals to five, ten, or twenty years in prison for a first-time offense, perhaps a drug program or alternative confinement would be more appropriate. While one purpose of prison is to punish, another is to rehabilitate. It is unreasonable to expect every jailed person to stay in jail for the rest of their lives just to ensure they never commit a crime again. It is not only unreasonable but goes against the current reality. Prisoners *will* be released every day. Prisoners *will* be rejoining society. So, why have them rejoin society without the proper skills or knowledge? In the case of the elderly, why have them rejoin society without a place to go, proper medical care, or insurance?

Mandatory minimums should be repealed and judges, who know the facts of the case and what the current state of the prison systems are, should retain sentencing discretion. This flexibility, given to judges, may stop the current problem and help ease the prison system’s burden when having to provide complex care to elderly inmates.

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297. Jeff Sessions, Att’y Gen., Remarks on Efforts to Combat Violent Crime and Restore Public Safety Before Federal, State and Local Law Enforcement (Mar. 15, 2017) (transcript available at <https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-efforts-combat-violent-crime-and-restore>) [hereinafter Session Remarks].

298. *Id.*

299. *Id.*; see also, Branson, *supra* note 45; Dickinson, *supra* note 45; Li, *supra* note 45; *War on Drugs is a Failure*, *supra* note 45.

300. Session Remarks, *supra* note 297.

301. See Eric Sarlin, *Study Links Marijuana Dispensaries to Reduced Mortality from Opioid Overdose*, NAT’L INST. ON DRUG ABUSE (May 17, 2016), <https://www.drugabuse.gov/news-events/nida-notes/2016/05/study-links-medical-marijuana-dispensaries-to-reduced-mortality-opioid-overdose>.



### B. How to Prepare the Elderly for Re-entry

As discussed above, the need for pre-release programming is extreme and instrumental. There are no standardized programs for aging inmates and no standardized programs that help them when they are released. Yet, there are many program options that could help the elderly once released. In a survey, aging inmates described programs that would help to meet their needs. Programs like computer classes, wellness classes, classes on physical and mental health, foreign languages, singing, quilting, and classes to help keep them mentally sharp.<sup>302</sup>

Current pre-release programming can also be modified. Currently, the pre-release programs are tailored to inmates of a younger age. Inmates at younger ages have different societal needs. When they are released, they may go back to young children; they may never have bought a house or rented an apartment; some may even attend school again. When an aging individual is released, they have different, and often more complex, concerns. Aging inmates should be provided programming regarding how to apply for Social Security, how to apply for Medicare or Medicaid, if necessary, how to find an assisted living facility, and how to find a nursing home or a nurse. The elderly population is also vulnerable to financial exploitation and physical abuse. Programming to warn them of the financial vulnerability is important to advise them of others trying to take advantage of them. These people taking advantage of them may not be so apparent because of how many years they have spent away from society. Online scams and door-collectors may be a concept entirely unaware to them.

These programs may be modeled after the Long-Term Offender Program in Colorado. This program has provided relief for many elderly prisoners serving long-term sentences.<sup>303</sup> This program recognizes the fast-paced world may be too much for some prisoners and provides solutions and training to those being released.<sup>304</sup>

The funding for these programs may come from a variety of places. If marijuana were to be legalized, states can use some of the taxes to put pilot programs in place. If prisoners, especially those with higher care levels, are released, then the prisons may be able to use

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302. *The Impact of an Aging Inmate Population*, *supra* note 14, at 33–34.

303. *See Sullivan*, *supra* note 199.

304. *Id.*

some of the regained funding to better reintroduce the elderly back into society.

### C. How to Expand the Second Chance Reauthorization Act

In addition to specialized programming to help the elderly re-enter society in a successful way, housing programs should be supported by the Second Chance Reauthorization Act. The Second Chance Act of 2007 provided a pilot program to help the aging population re-enter society by funding halfway houses that would give special care to the elderly who were well enough to live in a group setting.<sup>305</sup> This pilot program should be initiated as a full-time program to provide a cushion to the aging released from jail. As an aging inmate cannot immediately receive their identifications, birth certificate, social security number, Medicare, Medicaid, or disability assistance right as they walk out the door, the additional cushion time by these halfway houses and support groups is essential.

The home-arrest program within the Second Chance Reauthorization Act may also be expanded to consider nursing homes a "home." While this may not be a popular choice, it may be the right one. Nursing homes could provide the proper care for prisoners, relieving the prisons from the expensive in-patient care for which they are not trained. If we release these individuals to home arrest, it is not a big jump to release them into care of a nursing home.

The Second Chance Reauthorization Act could be expanded to encompass more individuals. While most people do not gather around a rallying cry to release more violent prisoners, it is a reality that should be considered. Parole boards should consider factors more closely related to prisoner behavior rather than conviction. For example, if a prisoner is physically or mentally handicapped, especially to the point of non-communication, this should be a strongly considered factor for releasing that prisoner.

## V. Conclusion

The aging prison population is a national crisis. The lack of care for these elderly inmates may lead to violations of civil and constitutional rights if not handled properly. The prison system, both state and

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305. Second Chance Act of 2007, *supra* note 6, at 657.

federal, are not equipped to process, handle, and house aging prisoners in the numbers that exist now or will exist in the upcoming years. There must be changes in how we view, assist, release, and educate elderly prisoners. These changes must rely on the specialization of information and programming to these elderly prisoners and better accommodations for insurance, social security, and disability when they are released. These changes are both morally and economically based, and do not directly run in contrast with another. The importance of these changes cannot be ignored. No matter what an individual did to end up in prison, society makes an agreement through law that they serve their time and no more. The way that we release prisoners now, with nowhere to go, no insurance to turn to, and no information to help them is yet another prison sentence, figuratively and sometimes literally, to be served until the end of their lives.