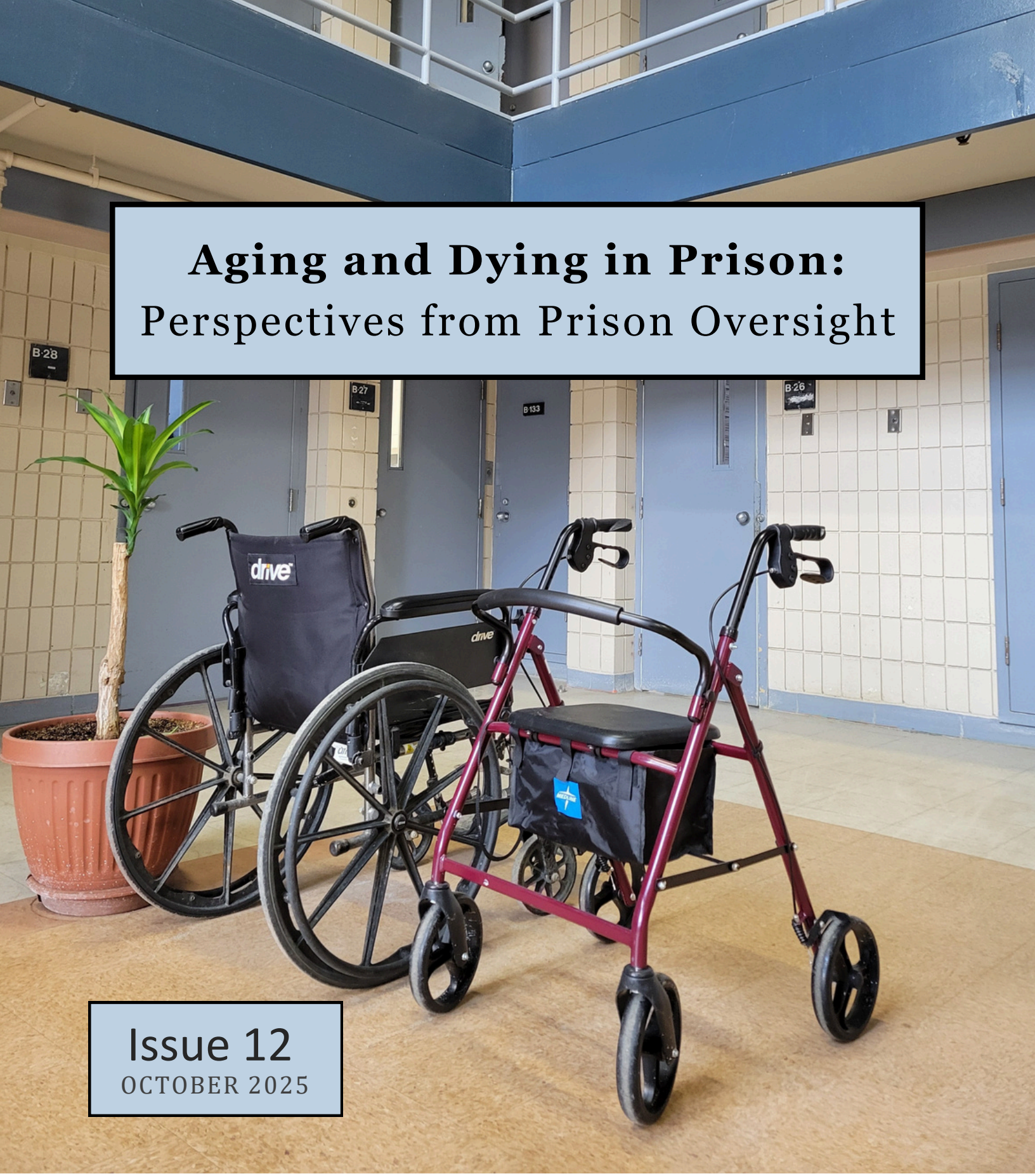



# Aging and Dying in Prison:
## Perspectives from Prison Oversight

Issue 12
OCTOBER 2025

NETWORKS
WORKING TOGETHER
EXTERNAL PRISON OVERSIGHT AND HUMAN RIGHTS

ICPA
International Corrections & Prisons Association

*The Expert Network on External Prison Oversight and Human Rights is committed to bringing together various agencies responsible for external prison oversight to share information and exchange best practices and lessons learned.*

For more information about the network and its activities, please visit:
https://icpa.org/group/external-prison-oversight-and-human-rights-network.html

For inquiries regarding the Expert Network or the content of this newsletter, please contact: PJIL@austin.utexas.edu

**Cover Photo:** A living unit at La Macaza Institution, a federal penitentiary in Canada. Photo provided by the Office of the Correctional Investigator of Canada.

The University of Texas at Austin
Prison and Jail Innovation Lab
*Lyndon B. Johnson School of Public Affairs*

# Contents

# Welcome Message from the Chair

Dear Members,

As I announced in July, I have made the decision to retire in February 2026 as the Correctional Investigator of Canada. This marks the end of an immensely rewarding chapter in my professional life, including my time as Chair of the ICPA's Network on External Prison Oversight and Human Rights.

This Network was established in 2018 with the goal of fostering collaboration and advancing oversight practices across jurisdictions. Ensuring the continuity and future growth of this network has been a central consideration in my retirement planning. That is why we have been working diligently over the past year with the Network's new leadership team, the Prison and Jail Innovation Lab (PJIL) at the University of Texas at Austin, to ensure a smooth and sustainable transition. This newsletter was the product of that collaboration and will be my last as the Network's chair.

Below, I will once more present the Network's new leadership team. This will be followed by a summary learning from eleven newsletters over the past seven years, a quick look at our current theme and featured jurisdiction, and a few words in remembrance of our dear colleague, Peter Severin, the late President of ICPA.

**Our Network's New Leadership Team**

PJIL is a national policy resource center focused on the safe and humane treatment of people in custody and on efforts to strengthen prison oversight. PJIL's signature project is the National Resource Center for Correctional Oversight (www.prisonoversight.org), an online resource for all things oversight-related in the United States. Many of you will recognize PJIL's Director, Michele Deitch, and Associate Director, Alycia Welch, from their presentations at several ICPA conferences, publications in Network newsletters, and participation in Network meetings.

Since July, Michele and Alycia have been serving as Chair and Deputy Chair of our Network. I am also delighted to share that Kate Eves, OBE, will be joining the leadership team as the

Network's Special Advisor, helping to ensure the continued success and future impact of the Network.

You will recognize the exceptional qualifications of all three members of this leadership team:

**Michele Deitch**

Michele brings over 38 years of experience in criminal and juvenile justice policy. She is a Distinguished Senior Lecturer at the University of Texas, with a joint appointment at both the Lyndon B. Johnson School of Public Affairs and the University of Texas School of Law, and she also serves as Director of the Prison and Jail Innovation Lab (PJIL) at the LBJ School. Her areas of expertise include independent oversight of correctional institutions, prison and jail safety issues, and youth in custody. Michele's career spans service as a federal court-appointed monitor of conditions in the Texas prison system, General Counsel to the Texas Senate Criminal Justice Committee, policy director for Texas's sentencing commission, consultant to justice system agencies across the United States, and draftsperson for the American Bar Association's Standards for the Treatment of Prisoners. A Soros Senior Justice Fellow, she was honored with the 2019 Flame Award from the National Association for Civilian Oversight of Law Enforcement (NACOLE) for her significant contributions to corrections oversight. Michele is an attorney, and she holds degrees from Amherst College (B.A.), Oxford University (M.Sc.), and Harvard Law School (J.D.).

**Alycia Welch**

Alycia Welch is the Associate Director of the Prison and Jail Innovation Lab (PJIL) at the Lyndon B. Johnson School of Public Affairs at the University of Texas at Austin, where her scholarship focuses on the safe and humane treatment of people in custody and where she regularly advises policymakers and agencies on prison and jail conditions and effective oversight. As adjunct faculty, she also co-instructs graduate-level policy research courses on prison reform. Previously, Alycia directed a transitional housing program for women exiting prison or jail; developed an alternative to incarceration program for young adults; oversaw a multistate initiative providing training and technical assistance on behavioral

health and criminal justice issues; and as an analyst in the Texas legislature, helped establish changes to the criminal legal and behavioral health systems. The recipient of several policy research awards, Alycia has authored numerous reports on these issues that have received national recognition and been featured in major media outlets. Alycia holds dual master's degrees in Public Affairs (LBJ School) and Social Work (Steve Hicks School) from the University of Texas at Austin, as well as a B.A. from the University of Michigan.

**Kate Eves**

Kate brings an impressive international record of oversight experience to the PJIL team. She was the head of suicide and homicide investigations for the British Prisons Ombudsman, worked for HM Prison Inspectorate for England and Wales, and chaired the Brook House Inquiry into abuse at an immigration detention centre in England. She has also held senior manager positions in HM Prison Service of England and Wales. Kate has also worked in a contract capacity with oversight organizations in the U.S., including the NYC Board of Correction and the John Howard Association, in addition to the Prison and Jail Innovation Lab (PJIL). Kate is an independent expert advisor to the government of England and Wales on preventing deaths in all forms of state custody. She holds a master's degree in Criminology from the London School of Economics and Political Science. Kate received the Order of the British Empire (OBE) in 2024 in recognition of her public service in this field.

Together, Michele, Alycia, and Kate are exceptionally well positioned to build on our foundation and take the Network to new heights. With PJIL's existing oversight network in the United States and abroad, along with their strong organizational capacity, this leadership team is well equipped to broaden our reach. This transition will help amplify American oversight efforts while reinforcing the ICPA's global impact in this crucial area of work.

## Seven Years of Learning in Eleven Newsletters

Since our founding, we've achieved a great deal together. We've grown the network to over 100 active members with another 100 subscribers to our distribution list, representing 45 countries across every continent. We've convened eight panels at ICPA annual conferences,

giving voice to oversight practitioners, civil society actors, and experts in correctional accountability from around the world.

We've also published eleven comprehensive newsletters exploring a broad spectrum of topics, bringing oversight and monitoring bodies into closer dialogue—building relationships, sharing lessons, and strengthening our common mission to increase transparency and accountability within carceral systems globally.

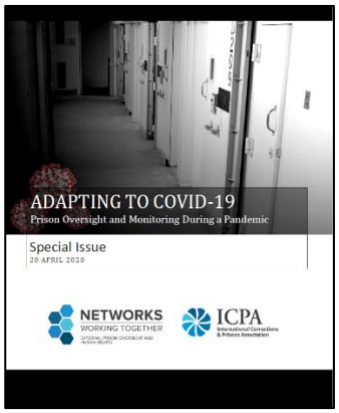

Our **first newsletter** was published on October 17, 2018, and focused entirely on **prison oversight in Canada**. The landscape of prison oversight in Canada includes various provincial, territorial, and federal ombuds offices and agencies, each tasked with addressing issues through the lens of human rights and accountability. For example, the provincial ombudsperson of Ontario notes rampant use of prolonged segregation, an issue of particular concern when it comes to those who are in pretrial custody. The need for systemic reform in Ontario was highlighted in former federal correctional investigator Howard Sapers' independent review of Ontario's correctional system. Nova Scotia's provincial ombudsperson reported their approach to both complaint-driven and "own-motion" investigations, which included regular visits to youth and adult correctional facilities to address issues and to reduce complaints through proactive outreach and internal resolution mechanisms. Up North, the Yukon territory's Investigations and Standards Office (ISO) were building a preventative, rights-based inspection framework for correctional oversight at the Whitehorse Correctional Centre. At the federal level, the Office of the Correctional Investigator (OCI) investigates prisoner complaints and undertake systemic reviews, all while prioritizing issues of central and national importance such as Indigenous Peoples in custody, access to health care, and conditions of confinement.

Issue #2 was published on March 15, 2019, and highlighted the practice of **solitary confinement** through an international lens. In Canada, despite mounting legal challenges, prisoners continue to endure solitary confinement-like conditions. Around the world, the detrimental impacts of this practice have been deeply felt. One Argentinian prisoner described solitary conditions as "terrible" with unsanitary conditions, rats, lack of proper hygiene, and minimal access to basic needs like light and blankets. Nevertheless, the practice of solitary confinement is commonly used, often without regard for

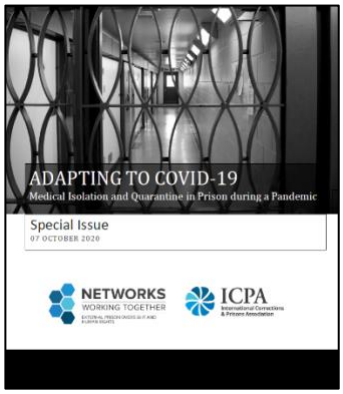
physical and mental impacts on prisoners. In Australia, the featured jurisdiction for this issue, through the leadership of the Victorian Ombudsman, efforts were underway to implement the Optional Protocol to the UN Convention Against Torture (OPCAT) as one strategy for addressing ongoing issues associated with solitary confinement.


Mirroring the theme of ICPA's annual conference that year, issue #3 took up the challenge of "**Strengthening Correctional Cornerstones**" (published September 24, 2019) by speaking to the correctional cornerstones of human rights and dignified treatment. In this newsletter, longtime Canadian advocate Professor Michael Jackson argued that human rights should form the foundation of professional and fair prison management, rather than being something that is merely considered in the context of maintaining control. As Professor Jackson put it, "Respect for human rights is a necessary condition for the exercise of correctional authority." The featured jurisdiction for this issue was Argentina, and we are grateful to Procuración Penitenciaria de la Nación, which, under the leadership of the late Francisco Mugnolo, advocates for the rights of prisoners and the implementation of human rights protections.


Issue #4 was published on March 31, 2020, and covered the theme of **effective prison oversight and independence**. The independence of oversight mechanisms is critical to maintaining credibility and trust amongst stakeholders. In Northern Ireland, the Prisoner Ombudsman's Office discussed limitations on its ability to fully realize its mandate due to the non-statutory basis of the office's creation and with that, a lack of full independence. In contrast, New Zealand's Chief Ombudsman took the initiative to develop a National Preventive Mechanism under the Optional Protocol to the UN Convention Against Torture (OPCAT), allowing it to undertake proactive inspections which inform recommendations surrounding systemic issues such as the overrepresentation of Māori prisoners. In Ireland, the Inspector of Prisons followed a structured framework focused on dignity, safety, rehabilitation, and wellbeing. In the Maldives, our featured jurisdiction for this issue, multiple oversight bodies including the independent Inspector of Correctional Services monitor prison conditions, supported by both domestic and international accountability mechanisms.

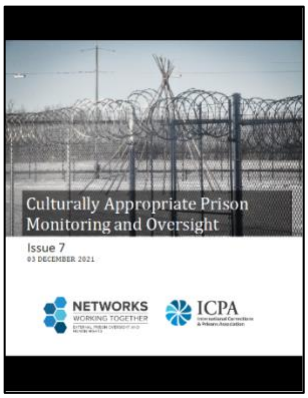



The COVID-19 pandemic posed unprecedented challenges to prison oversight, prompting a temporary suspension of physical visits in many countries. On April 20, 2020, we published a Special Issue: "**Adapting to COVID-19: Prison Oversight and Monitoring During a Pandemic**." This issue underscored the critical need to maintain human rights protections for prisoners even in the midst of a public health crisis. Indeed, International bodies such as the United Nation's Subcommittee on the Prevention of Torture (SPT) and the European Committee for the Prevention of Torture (CPT) emphasized that monitoring of custodial environments, including quarantine facilities, must adapt to these new realities rather than be stunted by them. This work was guided by key principles, including proportional and time-limited restrictions, legal safeguards, transparency, alternatives to detention, as well as ensuring access to healthcare, pertinent personal information, and family contact. Around the world, innovative approaches, such as video conferencing, remote inspections, and enhanced use of data and community input, were adopted in an effort to ensure continued oversight, while respecting health protocols. The pandemic also sparked wider reflection on the overuse of detention and highlighted the need for long-term systemic change toward more humane, rights-based treatment of those who are incarcerated.



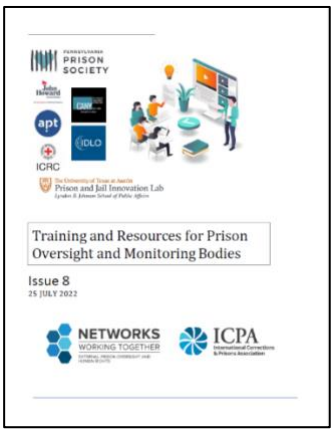

Issue #6 was published on October 7, 2020, and continued with the theme of adapting prison monitoring to pandemic conditions. In this issue, we focussed on the use of **medical isolation and quarantine**. During the COVID-19 pandemic, many prison systems worldwide failed to apply adequate quarantine and isolation measures, with some implementing dangerous or discriminatory practices leading to overcrowded quarantine cells, unscientific treatments, and/or neglect of prisoner healthcare needs. In Norway, widespread use of solitary confinement for infection control – often without medical necessity – was criticized for violating human rights, particularly in the context of vulnerable prisoners. Argentina faced similar concerns, with its use of prolonged or indefinite solitary confinement being considered inhumane and even torturous under international law, with emphasis on the Mandela Rules which prohibit such practices beyond 15 days. In Canada, my Office criticized the misuse of "medical isolation" for incoming prisoners without symptoms or confirmed exposure. In response, I recommended clear distinctions between medical isolation and quarantine, as well as stronger oversight. Across all jurisdictions, an

overarching conclusion was that emergency health measures must not override prisoners' basic rights to humane treatment, health care, and dignity, even and especially amidst a global pandemic.



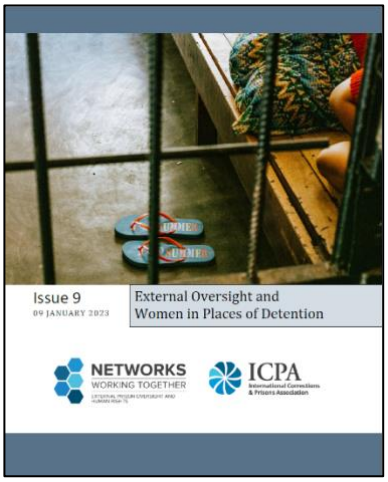

Issue #7 was published on December 3, 2021, and tackled the theme of **culturally appropriate prison monitoring and oversight**, an essential component of redressing systemic racism and the overrepresentation of racialized peoples in prisons around the world. Comparative analyses revealed that both Canadian and American prison systems perpetuate legacies of racism, as evidenced by the disproportionate imprisonment of Black and Indigenous Peoples. Similarly, in Australia and New Zealand, Aboriginal and Torres Strait Islander, as well as Māori populations remain vastly overrepresented in custodial contexts. In this issue, advocates highlighted the critical role of Black and Indigenous voices in prison oversight and underscored the importance of lived experience in shaping meaningful responses to custodial realities.

Shortly after its publication, we released a two-page summary to highlight the major points of learning gathered from this important issue on culturally appropriate prison monitoring and oversight.

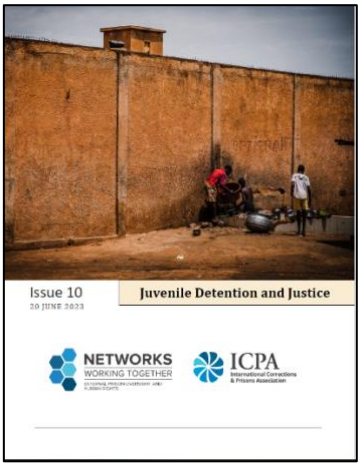



Issue #8 was published on July 25, 2022, and took a detour from correctional issues to showcase **training and resources for prison oversight and monitoring bodies**. In an effort to strengthen accountability, transparency, and humane treatment in correctional settings, professional development opportunities and information sharing mechanisms for prison oversight bodies are expanding globally. In the U.S., a unique three-state collaboration between the Correctional Association of New York, the John Howard Association of Illinois, and the Pennsylvania Prison Society is using shared tools, comparative insights, and best practices to bolster independent civilian oversight. Internationally, the International Development Law Organization (IDLO) launched an Advisory Group to guide the creation of a global corrections training curriculum, which draws on expertise from various regions and sectors. The Prison and Jail Innovation Lab (PJIL) at the University of Texas is emerging as a leading national policy hub, focusing on transparency, conditions of confinement, women and youth in custody, as well as working

to support the growth of oversight systems through its new National Resource Center on Correctional Oversight. Together, these initiatives demonstrate a growing recognition of the importance of ensuring well-equipped and connected oversight bodies, with an emphasis on obtaining adequate tools, while simultaneously building lasting partnerships to facilitate meaningful change.

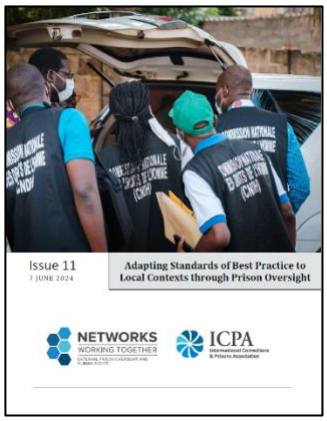



Issue #9 was published on January 9, 2023, and focused on the plight of **women in places of detention**. Women in prison, in particular Indigenous women and those who are survivors of violence, face unique and compounding challenges. During the COVID-19 pandemic, poor hygiene access, interrupted maternal relationships, and heightened isolation exacerbated persisting issues. The reality is that, historically, carceral systems were designed with men in mind, which means that the particular needs of women are often overlooked behind bars. This is despite international standards and protocols such as the Bangkok Rules, which stress the need for gender-specific protections. In New Zealand, after reports highlighted severe overuse of segregation for Māori women, the government acknowledged the need to completely overhaul women's prison policies and classifications. Similarly, a submission from my Office emphasized the importance of sustained external oversight that incorporates the voices of women and gender-diverse prisoners while pushing for substantive change that upholds and honours the principles of dignity, equity, and fairness for all.




In our 10th Issue, published on June 20, 2023, we looked at **juvenile detention and justice**. Across multiple jurisdictions, youth, and in particular, Indigenous children and those with disabilities, remain disproportionately represented in prison systems. This reality reflects deep systemic failures to meaningfully support youth and children more broadly. In Australia, Aboriginal and Torres Strait Islander youth make up the vast majority of incarcerated children, with facilities like Banksia Hill exposing alarming rates of neurodevelopmental disorders such as Fetal Alcohol Syndrome Disorder among youth in custody. In response, oversight bodies and advocates emphasize that punitive, adult-oriented systems cannot

meet the complex developmental and psychological needs of children, especially when the circumstance of their criminalization is often tied to prior victimization and trauma. Jurisdictions like Scotland and Canada offered lessons in rights-based reform, invoking international standards such as the UN Convention on the Rights of the Child and Canada's Youth Criminal Justice Act, which position incarceration as a last resort. However, cultural stigma, legal inertia, and political resistance continue to hinder transformative change, making the expansion of child-focused, trauma-informed oversight both a legal and moral imperative.




Finally, the 11th issue of our network newsletter, published June 7, 2024, endeavored to **adapt standards of best practice to local contexts through prison oversight**. Across the world, Prison oversight bodies have recognized the need to adapt international human rights standards to local contexts, thus ensuring their relevance and impact in meaningfully addressing carceral issues. In places like Australia and Tasmania, as well as New Zealand and the UK, inspection frameworks integrate global protocols, such as the Mandela Rules and Bangkok Rules, and pair them with localized assessments rooted in safety, dignity, and reintegration. Central to these efforts are inclusive consultations, especially with formerly incarcerated people and overrepresented populations such as Indigenous and Black communities. In the U.S., where oversight is less centralized, organizations like the Pennsylvania Prison Society and John Howard Association are developing shared tools to assist with fostering greater transparency and evaluation mechanisms, and ultimately, to drive change from the ground up.

## Current Issue

I am very proud to publish the 12th and my final newsletter as Chair of this network, titled, "**Aging and Dying in Prison: Perspectives from Prison Oversight."** This newsletter would not have been possible without the help of Allison Paranka, Administrative Coordinator at the Prison and Jail Innovation Lab, and Kate Eves, Special Advisor in the Network's new leadership team, who both led and supported the work of reviewing, editing, and producing this issue.

I would also like to thank the following authors for their insightful contributions on this important topic:

- **Sean Costello**, *Deputy Custodial Inspector for the Australian Capital Territory*, and **Dr. Michael Levy,** *Public Health Physician*
- **Kelly Jackson** (*Research and Review Officer*) and **Christine Wyatt** (*Director Review*), Office of the Inspector of Custodial Services, Western Australia
- **Han Moraal** (*Chair)* and **Fay Nijenhuis** (*Advisor*), Council for the Administration of Criminal Justice and Protection of Juveniles, the Netherlands
- **Fiona Irving**, *Principal Clinical Inspector*, Office of the Inspectorate, New Zealand
- **Emad Talisman** (*Senior Analyst*), **Michael Giles** (*Deputy Director of Policy and Research*), and **Madison Pate-Green** (*Indigenous Outreach Officer*), Office of the Correctional Investigator, Canada
- **Alyssa Gordon**, 2023-2025 Borchard Fellow in Law & Aging at the American Civil Liberties Union's National Prison Project, Washington, D.C., **Michele Deitch, J.D., M.Sc.**, *Director,* Prison and Jail Innovation Lab, University of Texas, and **Alycia Welch, M.P.Aff., M.S.S.W.,** *Associate Director*, Prison and Jail Innovation Lab, University of Texas
- This issue also includes a profile of the Netherlands as our featured jurisdiction. We extend our gratitude to network members **Han Moraal** and **Fay Nijenhuis** from the Council for the Administration of Criminal Justice and Protection of Juveniles, the Netherlands, for their significant contributions.

**Remembering Peter Severin**

I was saddened to hear about the sudden passing of Peter Severin, ICPA President, on August 17, 2025. You can read more about Peter's exceptional character and dedication to the field of corrections, here: In Memory of  Peter Severin, ICPA President. I found this description of Peter from ICPA's board to be quite apt and moving:

> *Colleagues remember Peter for his fundamental belief in human dignity and rehabilitation. His approach to corrections was guided by the conviction that every individual has inherent value and the capacity for positive change. This philosophy informed his leadership style and the reforms he championed throughout his career.*

In addition to his role as President of ICPA, Peter served in many capacities, including Board Liaison for our Network. He was instrumental in facilitating changes to ICPA's policy, which

permitted the creation of our network and many more. I remember Peter as being a true gentleman with a unique capacity for progressive, open-minded leadership.

It was an honour to share the stage with Peter at the 2023 Annual Conference in Antwerp where he handed me the Head of Service Award for my role as Canada's Correctional Investigator and chair of our network.

I look forward to seeing some of you at the upcoming ICPA Annual Conference in Istanbul. It will be an opportunity to reconnect with old friends, to learn, share, and inspire. Again, I thank you for your trust, passion, and commitment to this work. It has been an honour to serve as your Chair.

Warm regards,

**Ivan Zinger**
*Outgoing Chair,* External Prison Oversight and Human Rights Network
International Corrections and Prisons Association

# Welcome Message from the Incoming Chair

Dear Network Members,

It is my great honor to have been appointed as Chair of the ICPA Experts' Network on Prison Oversight and Human Rights. I truly look forward to serving in this new role, along with my dear colleagues Alycia Welch (Vice Chair) and Kate Eves (Special Advisor). I could not ask for a more dedicated or knowledgeable team—one deeply committed to ensuring the safe and humane treatment of people in custody and the need for more transparency and accountability when it comes to prison conditions.

Following in the footsteps of outgoing Chair Ivan Zinger and his outstanding team at the Canadian Office of the Correctional Investigator, including the indispensable Emad Talisman, is both inspirational and intimidating. Ivan's vision and leadership in establishing and nurturing this network continues to be its driving force: Ivan saw the need for a vehicle that allows oversight professionals from around the world to learn from each other and find common ground, and that need is as strong today as it was when the network launched seven years ago.

Since then, Ivan has grown the network substantially and expanded awareness of the ICPA in professional communities previously less engaged with the Association. He has organized numerous panels focused on oversight issues at the ICPA annual conferences that have provided wonderful training opportunities for our network members. And he has published 12 substantive newsletters—journals, really—that provide thematic guidance on various issues faced by oversight bodies around the world. These newsletters and the lessons we can learn from the articles in them—thoughtfully described in Ivan's farewell message—are a testament to the quality and depth of our Network's contributions, produced at Ivan's encouragement.

Above all, Ivan has succeeded in expanding appreciation of the critical importance of independent oversight among the international corrections community that comprises the ICPA, and in helping to promote a human rights perspective in all that the ICPA does. When the ICPA honored Ivan with the Head of Service Award in Antwerp two years ago, it was a worthy recognition not only of Ivan's tremendous accomplishments, but also of the extent

to which he has helped make the concept of external oversight central to the work of the ICPA. In honor of Ivan's remarkable service to our international oversight community and the Canadian people, Ivan deserves our praise and our thanks. And we send him off into a well-earned retirement with our best wishes for his next adventures.

Looking ahead, our leadership team is eager to build on the strong foundation that Ivan and his team have created. This Network is home to so much expertise and talent, and we want to continue to showcase and share your rich knowledge. This will be especially helpful to oversight bodies that are less well-established and to advocates seeking to create oversight structures where they do not currently exist. Our goal is to foster a strong peer-learning community, where oversight professionals from around the world can exchange insights, share best practices, and call on each other for information and support. We also want this network to be a space where we can keep each other informed about developments affecting your organizations and the correctional agencies you monitor.

Some of you may wonder why leadership of this network now resides with a team based in the U.S., given that the U.S. lags so far behind the rest of the world when it comes to prison oversight. While that observation is undoubtedly true, it is also important to acknowledge the progress towards creating correctional oversight bodies in the U.S. in recent years. Currently, about 20 states in the U.S. have a formal prison oversight body in place, and efforts to establish oversight bodies in the rest of the states are gaining momentum. One of our goals is to raise awareness of U.S. oversight entities, and to support emerging oversight bodies with a robust set of resources and best practices drawn from the international community.

On a personal note, I spent the past year based in the UK and in other parts of Europe, learning a great deal about external oversight bodies in these places. I conducted interviews with representatives of various National Preventive Mechanisms and had the extraordinary opportunity to spend a week shadowing an HM Inspectorate of Prisons team during their inspection of an infamous prison in England. These experiences have offered invaluable lessons that I hope to bring back to support oversight work in the U.S. and beyond.

As we chart the next phase of the Network's development, we welcome your input and ideas. Our current plans include the following:

(1) **Expanding the Network:** We will continue reaching out to directors of oversight bodies from around the world who are not yet represented in the Network to encourage them to join;

(2) **Maintaining a strong presence at ICPA:** We will maintain a strong presence at ICPA annual conferences by hosting panels focused on correctional oversight and human rights and by organizing a meeting for our Network members at each annual conference;
(3) **Hosting an Annual Webinar:** We plan to organize and host an annual Network-sponsored webinar open to all ICPA members;
(4) **Publishing Network Newsletters:** We will publish two newsletters per year, each focused on a specific theme. At least some of these newsletters, possibly one per year, will focus on some aspect of the practice of oversight and how to strengthen our work, while other newsletters will emphasize current challenges facing correctional agencies and how oversight bodies should respond. These newsletters will also include updates about developments in the oversight field (so please send us your news!), as well as new resources that may be helpful for oversight practitioners. We also plan to feature specific oversight bodies in each newsletter;
(5) **Collaborating with Related Organizations:** We plan to seek opportunities for collaboration between the Network and other organizations working on related issues.

We want this network to serve you, and to reflect your needs, experiences, and aspirations. Please don't hesitate to reach out to us at the Prison and Jail Innovation Lab (PJIL@austin.utexas.edu) with suggestions or ideas. We look forward to getting to know you and learning more about the important work you do to ensure the safe and humane treatment of people in prison by shining a light into this closed world.

With warmest regards,

Michele Deitch
*Incoming Chair*

*Michele in Ivan's shoes*

# **Trapped in Time:** The Silent Crisis of Elderly Incarceration in the U.S.

Authors:


**Alyssa Gordon**
Borchard Fellow
National Prison Project, ACLU

**Michele Deitch**
*Director*
Prison and Jail Innovtion Lab

**Alycia Welch**
*Associate Director*
Prison and Jail Innovation Lab


ACLU

The University of Texas at Austin
Prison and Jail Innovation Lab
*Lyndon B. Johnson School of Public Affairs*

**Trapped in Time: The Silent Crisis of Elderly Incarceration in the U.S.**

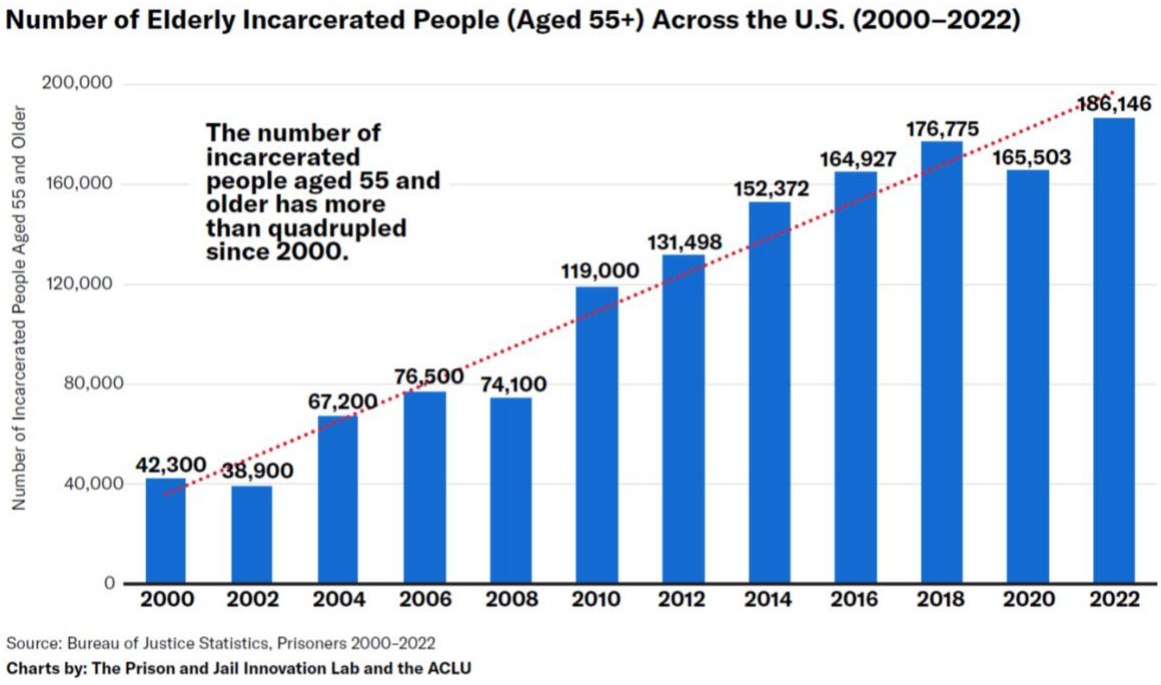
**Alyssa Gordon, J.D.,** Borchard Fellow, American Civil Liberties Union, National Prison Project

**Michele Deitch, J.D., M.Sc.**, *Director,* Prison and Jail Innovation Lab, University of Texas

**Alycia Welch, M.P.Aff., M.S.S.W.,** *Associate Director*, Prison and Jail Innovation Lab, University of Texas

The aging of America's prison population is a crisis unfolding in slow motion. For more than three decades, the growth of older people in U.S. prisons has far outpaced the growth of their younger counterparts: in 1991, elderly people aged 55 and over made up just 3% of the total state and federal prison population—by 2021, they made up almost five times that number. If current trends remain, researchers predict that by 2030, as much as one-third of the American prison population will be over 50 years old.

*Figure 1*




The graying of America's prisons is transforming the landscape of the nation's correctional departments, presenting myriad operational and fiscal challenges for prison systems across the country. Of most importance, though, is that the ballooning elderly incarcerated population, coupled with correctional agencies' inability to adequately address their distinct needs, has created conditions that are ripe for a multitude of civil rights violations, the exacerbation of chronic medical conditions, and ultimately, needless suffering and preventable deaths. These problems are only getting worse.

In September of 2025, the American Civil Liberties Union's National Prison Project and the Prison and Jail Innovation Lab, with research support from a team of graduate students at the Lyndon B. Johnson School of Public Affairs and the University of Texas School of Law, released a report we co-authored titled "Trapped in Time: The Silent Crisis of Elderly Incarceration" that asks how elderly incarcerated people are impacted by incarceration. The report provides an analysis of data we collected from a 50-state survey of prison agencies and from other publicly available sources and describes the harms that elderly incarcerated people experience in U.S. prisons. The report details our recommendations for measures corrections agencies and legislators need to implement to address the distinct needs of elderly people and to reduce the harm that they experience while incarcerated.

This article summarizes some of our key findings in that report and our recommendations for policymakers, corrections officials, and health care providers.

**How did we get here?**

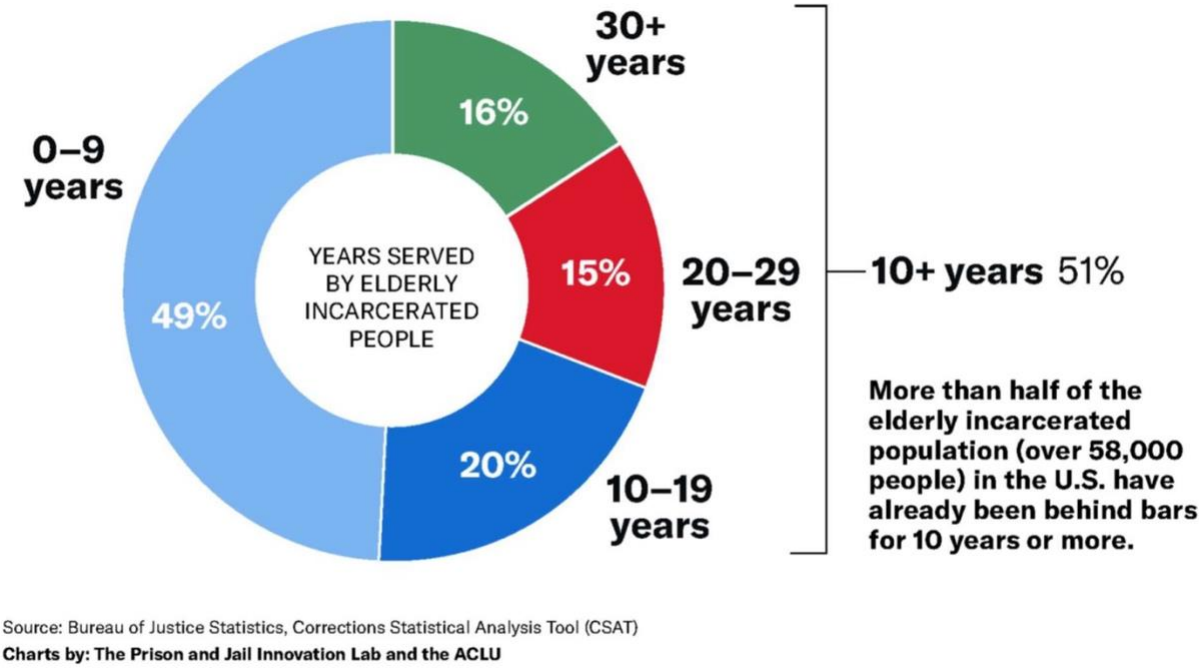
A principal driver of the exponential growth in elderly incarceration in America is the panoply of so-called "tough-on-crime" laws of the late 20th century. Numerous laws were passed during this time to buttress "law and order" political platforms, which operated under the since debunked premise that harsher criminal sentences effectively deter crime. During this era, various punitive policies were enacted across the country and converged to create a super-machine of carceral control, resulting in exponentially longer prison sentences. These laws — many of which are still on the books in numerous states today — include mandatory minimums, "three strikes" laws, and "truth-in-sentencing" statutes that reduce or eliminate opportunities for early release, among other measures.

For example, mandatory minimums are predetermined sentences that require a person to serve a specific minimum number of years in prison for certain offenses, regardless of the individual circumstances of the offense. Before mandatory minimum laws became popular, judges were able to consider various factors when fashioning criminal sentences, such as a defendant's upbringing, role in the offense, developmental disabilities, and perceived risk to the community. With mandatory minimum laws, judges cannot sentence below the legislated mandatory minimum, even if strong factors are present to reduce the defendant's culpability. This severely hamstrings judges' power to determine fair sentences.

Policies and practices such as these, taken together, drastically increased the number of elderly people trapped in state and federal prisons across the United States, as more people were — and are still — forced to spend decades of their lives suffering behind bars.

*Figure 2*

Years Served by Elderly Incarcerated People (Aged 55+) Across the U.S., 2021[1]




Today, prison systems are buckling under the weight of elderly incarceration. Research shows that America's "tough-on-crime" era was largely a failed experiment. Extreme sentences fail to promote public safety, and this unnecessary expansion of incarceration comes with an enormous price tag. It is not "tough" to imprison people long past their proclivity — or even *physical ability* — to commit crime; to the contrary, it is a short-sighted, inhumane, and inefficient use of resources that instead should be reinvested into community systems of care that actually address the root causes of crime and promote collective well-being.

## The Harms of Aging Behind Bars

Though prison conditions are undoubtedly harrowing for everyone who is incarcerated, elderly incarcerated people are especially vulnerable to the harms created by the prison environment and correctional agencies' traditional approach to operating these facilities. Moreover, managing the distinct needs of the aging incarcerated population presents major operational and management challenges to prison officials, wardens, prison health care

[1] *Figure 2* shows a conservative **estimate** of the breakdown of time served by incarcerated people across all 50 states, and therefore, differs from the data in *Figure 1*. While data on the amount of time served by currently incarcerated people is not systematically tracked by the U.S. federal government nor maintained by and readily available from state prison systems, estimates were calculated using the Bureau of Justice Statistics (BJS)' Corrections Statistical Analysis Tool (CSAT) to compare the year and age at which elderly people began their sentences. More information about our calculations can be found in the full report (see endnote #53 and the "Methodology" section, p. 66).

staff, and line correctional officers. Adapting prison policies and procedures to reduce the harm elderly people experience in prison and alleviate operational hurdles requires a thorough understanding of this population's everyday experience.

Elderly incarcerated people have higher rates of serious and chronic physical health care needs and mental health challenges than their younger incarcerated counterparts that correctional health care systems are ill-equipped to address. For example, to manage various degenerative disorders that cause limited mobility, elderly incarcerated people may need wheelchairs, walkers, or portable oxygen tanks — medical equipment that can be hard to come by in prisons. Prisons are also poorly equipped to deal with problems related to urinary incontinence, and they do not routinely provide people with dentures. Moreover, access to physical and mental health care in U.S. prisons is notoriously problematic, as established by countless studies, lawsuits, and personal accounts, resulting in higher rates of adverse health outcomes among the elder population.

Additionally, correctional institutions have little ability to deal with those with cognitive impairments such as dementia, making standard prison institutional rules and policies ill-suited for older people who must live within these regulations. They may not be able to keep up with their daily routines, interact appropriately with others while living in congregate living settings such as shared cells or open dormitory spaces, or understand instructions given by correctional staff. This can lead to unwarranted discipline that fails to account for cognitive difficulties.

Further exacerbating the harms that elderly people face behind bars, state correctional departments repeatedly fail to modify prison operations — as required by the Americans with Disabilities Act ("ADA") — to provide accessible housing, services, and programs to incarcerated people with disabilities. Common ADA violations in prison include a lack of ramps for people in wheelchairs; failure to provide interpreters for deaf and blind individuals (leaving them unable to communicate with staff, participate in disciplinary hearings, or understand medical information); and exclusion from educational, work, vocational, and religious programming due to inaccessible spaces or failure to provide reasonable accommodations.

Elderly incarcerated people are also more vulnerable to the worst outcomes of natural disasters, environmental challenges, and public health emergencies. Many aging incarcerated people, with their limited mobility and health challenges, are at particular risk when prison agencies choose not to evacuate their facilities in the wake of hurricanes, wildfires, and other natural disasters. They are also disproportionately affected by extreme temperatures in correctional facilities that lack sufficient air conditioning or heating systems. And they are at the highest risk of death during public health emergencies like the COVID-19 pandemic.

## The Costs of Aging Behind Bars

Incarcerating elderly people is also quite a costly endeavor. The American Civil Liberties Union found that, in 2009, older incarcerated people accounted for $8.2 billion per year in medical costs alone. And in 2013, the U.S. Department of Justice's Office of the Inspector General reported that the Federal Bureau of Prisons spent 19% of its total budget (over $881 million) on the costs of incarcerating elderly people. These staggering numbers exist likely because aging people, on average, require medical care that is significantly more expensive than the medical expenses of their younger counterparts.

Elderly incarcerated people are frequently diagnosed with chronic diseases, mental health conditions, cognitive impairments, and mobility ailments. And diseases such as diabetes, hepatitis, HIV, and cancer — all prevalent among the elderly incarcerated population — require expensive treatments. Overall, the increasing costs of the aging incarcerated population reflect a significant financial burden on state budgets.

## What are the Public Safety Risks of Releasing Elderly People from Prison?

Not only do elderly people suffer substantial harms in prison, but they are also the population least likely to reoffend, making their continued incarceration a questionable policy choice at best. Studies show that elderly incarcerated people pose little threat to public safety because the vast majority of them "age out" of crime as they grow older. In a sampling of three states, we found that the three-year rearrest rate for people over age 50 ranged from 6% to 18%, well below the average recidivism rate of 66% for all releasees. Because most elderly incarcerated people no longer pose a threat to public safety, are nearing the end of their lives, and have already served decades behind bars, this raises fundamental questions about the morality of an aging person's continued incarceration — especially when there is no compelling societal justification to do so other than punitive or retaliatory reasons.

## Recommendations

Corrections agencies and policymakers can take measures to better protect the health and safety of elderly incarcerated people and to save taxpayer dollars without putting public safety at risk. Our recommendations fall into three broad categories: 1) substantially reduce the number of elderly people in America's prisons; 2) invest in the elderly incarcerated population's complex reentry needs so they are set up for success upon release; and 3) better protect elderly people still left on the inside, with particular emphasis on providing constitutionally adequate medical care and humane conditions of confinement. Specific measures are detailed below.

*Ways to release more elderly incarcerated people from prisons:*

We can bring down the size of the incarcerated population by releasing more elderly people from prisons. Since elderly people present relatively low risks to the community, they are an ideal population to target for release.

State legislators can and should significantly expand opportunities for "compassionate release," a mechanism that allows incarcerated people facing imminent death, advanced age, or debilitating medical conditions to obtain early release on humanitarian grounds. While virtually every state currently has some kind of compassionate release policy on paper, in practice, there are numerous barriers that prevent many people from being granted release, including categorical exclusions for people convicted of certain crimes regardless of if they meet other criteria and convoluted procedures that sometimes result in people dying before their applications can be considered. To illustrate how rarely compassionate release is employed, one state, Alaska, granted zero petitions for compassionate release in a 7-year period, while another state, Kansas, approved only seven such releases in a similar time frame. Moreover, elderly people are a sensible target for release even if they are not ill or dying. For that reason, legislators should also establish geriatric parole policies that give non-sick elderly people a meaningful opportunity for release.

Separate and apart from these types of special release procedures, existing parole frameworks should be modified to focus parole release determinations on forward-looking factors, like readiness for release and current risk to public safety, rather than on a person's original crime. Since so many elderly people are in prison for violent offenses committed long ago, a focus on their original crimes during the parole decision-making process tends to result in their continued incarceration.

We also recommend state policymakers enact or reform their existing "second look" laws to allow more elderly incarcerated people to access relief. "Second look" laws provide an opportunity for judges to revisit the need for a person's continued incarceration after the person has served a minimum number of years on the original sentence. Typically, where such laws exist, they apply to people who were given long sentences when they were juveniles. Legislators should broaden these laws to apply to people sentenced at any age and should also ensure that these laws apply retroactively.

Legislators should also repeal or modify sentencing laws that keep people incarcerated into old age, long past their crime-prone years.

*Ways to address barriers to elderly reentry:*

To address barriers to elderly reentry and ensure elderly people can integrate into the community after release, policymakers and correctional officials should work together to:

- Enhance reintegration services available to incarcerated people before their release (e.g., by providing services such as one-on-one counseling, future-

planning workshops, essential document assistance, and health care and benefits enrollment);
- Establish increased reentry housing to minimize the risk of homelessness; and
- Create community reentry centers to serve as "drop-in" hubs that offer essential services to new returnees.

*Ways to reduce harm and better meet the needs of elderly people who remain incarcerated:*

Our final set of recommendations includes strategies to better protect vulnerable aging people who remain incarcerated. To reduce the myriad harms that elderly people experience in prison, we recommend that prison agencies:

- Increase access to necessary medical treatments through regular preventative assessments and individualized treatment plans;
- Amend institutional policies that restrict advance care planning in prison;
- Ensure all prisons are fully compliant with the ADA;
- Enact or amend emergency protocols to address the safety needs of older incarcerated people during natural disasters and public health crises;
- Address extreme temperatures in prisons;
- Train correctional staff on how to interact with older incarcerated people;
- Provide safe reporting mechanisms to protect elderly people from harm;
- Provide hospice services for incarcerated elders facing terminal illness; and
- Address the need for dementia care.

Through these reforms, advocates, lawmakers, and correctional officials alike can work together to address the distinct needs of the elderly incarcerated population. At the same time, these recommendations can serve to save taxpayer money by significantly shrinking America's bloated prison population and can do so without putting public safety at risk. By implementing these recommendations, we can reverse the tide of elderly incarceration in the United States, better protect the health and safety of an extremely vulnerable population, and create substantial cost savings to be reinvested into the community.

***

This article is adapted from a larger report: Alyssa Gordon, Michele Deitch & Alycia Welch, *Trapped in Time: The Silent Crisis of Elderly Incarceration* (Am. Civ. Liberties Union Nat'l Prison Project and the Prison & Jail Innovation Lab, Lyndon B. Johnson Sch. of Pub. Affs., Univ. of Tex. at Austin, Sept. 2025).

# **Elderly, Aging, and Dying in Custody:** A Western Australia Perspective


Authors:

**Kelly Jackson**
*Research and Review Officer*
Office of the Inspector of Custodial Services, Western Australia

**Christine Wyatt**
*Director Review*
Office of the Inspector of Custodial Services, Western Australia


OFFICE OF THE INSPECTOR OF CUSTODIAL SERVICES

The Office of the Inspector of Custodial Services is an independent statutory agency responsible for monitoring and providing oversight over custodial facilities and services in Western Australia

## Elderly, Aging, and Dying in Custody: A Western Australia Perspective

**Kelly Jackson,** *Research and Review Officer*

**Christine Wyatt,** *Director Review,* Office of the Inspector of Custodial Services, Western Australia

### The shift

Across Australia, the United States, and Europe, there is an ongoing trend towards an increase in the number of older and elderly prisoners due to increased life expectancy, enhanced forensic techniques, and changes in the attitude of society and the judicial system (Garrido & Frakt, 2020; Ginnivan et al., 2018; Peixoto et al., 2022). In recent years we have noted the same trend. Western Australia's prisoner population has aged substantially, such that between 2010 and 2020 the number of people in custody over the age of 50 doubled with almost one in every eight prisoners considered 'older' (or 12.3% of the total prison population).

Prisoners aged 50 years and over are deemed older because of the age differential between the overall health of inmates compared to their counterparts in the general population (Ginnivan et al., 2018). For First Nations prisoners, this is even starker and therefore they are considered older from 45 years of age. People in custody often experience accelerated aging due to socioeconomic, lifestyle, and biomedical factors including poor health, mental illness, substance misuse, trauma, homelessness, and victimisation. The stress and harmful effects of prison environments can also accelerate age-related illnesses and conditions.

The demographic shift in Australian prisons has been driven by:

- Broader societal aging due to lower mortality rates
- A higher proportion of convictions for offences attracting longer sentences including homicides, drug-related crimes, and sexual offences – particularly historical child sexual abuse
- Changes in sentencing laws such as mandatory minimums and extended non-parole periods

## The challenges

Research shows the challenges faced by older prisoners are multifaceted and incorporate physical, psychological, and social factors. Prison infrastructure is not purpose-built with elderly prisoners in mind and so there is often difficulty in using bunks and bathroom facilities, acclimatising to temperatures, and attending medication parades or meal times (Angus, 2015; Garrido & Frakt, 2020). This is despite the World Health Organisation recommending to restructure prisons to accommodate the environmental needs of older people by installing grip rails, seats in showers, bunk bed ladders, ramps and widened doorways to accommodate wheelchairs, and better access to bathroom facilities (Ginnivan et al., 2018).

Older prisoners' healthcare needs are often under serviced, with few screening and care protocols in place for high risk conditions including dementia, cardiovascular disease, terminal illnesses, cognitive impairment, psychological disorders, and disability (Angus, 2015; Ginnivan et al., 2018; Peixoto et al., 2022; Psick et al., 2017). Beyond this, there is also limited access to clinicians with geriatric experience leading to missed diagnoses and inadequate management of chronic conditions, pain, and nutrition (Garrdido & Frakt, 2020).

Older prisoners are also particularly vulnerable to social isolation and victimisation, with social support networks lost due to incarceration (Ginnivan et al., 2018). While largely compliant within correctional settings, older prisoners can struggle to adjust to institutional life without those they depend on, and face unique mental stressors related to threats of violence and fear of dying in prison (Angus, 2015; Lucak, 2014; Psick et al., 2017). These challenges are often exacerbated by limited resources and a lack of specialist aged care within prisons. Few custodial systems have adequately responded to the unique needs of older people in custody and this is often detrimental to their overall experience in custody (Ginnivan et al., 2018; Peixoto et al., 2022).

## The responsibilities

Our inspection oversight work is guided by minimum standards we expect to see in the management and treatment of people in custody. Understanding the above literature, in 2020 we developed specific standards relevant for older people in custody, to ensure their unique health, lifestyle, and re-entry needs are being met with consistency and humanity.

When assessing prison services, supports, and infrastructure, we expect to find:

Age-specific needs and risks are identified early for the appropriate management of older people in prison, including decisions about their placement, so their time in custody is purposeful, respectful, and allows variation from the prison design that has been traditionally aimed at younger prisoners.

Health care that is proactive and high-quality in identifying age-related decline, with specialist staff qualified in aged care, nursing, and gerontology. This includes that terminally or chronically ill prisoners' health and social care needs are adequately and compassionately managed, permitting dignity and family visits during end-of-life circumstances.

Access to appropriate and meaningful education, employment, and programs to meet the older population's unique needs, including for those who are medically unfit for physical work and those past retirement age.

Adequate preparation for release utilising strategies that actively reduce institutionalisation for older people and coordinate links to aged support agencies in the community.

## The findings

Given the population shift and our expectations, in 2021 we reviewed the experiences of older people in custody in Western Australia. Many older people in custody were presenting with poorer physical and mental health which meant they required more intensive support. Their needs differed significantly from their younger counterparts, particularly with regards to mobility, healthcare, participation in the daily regime, and their transition to release planning. And while many older people presented with similar issues and concerns about their management and treatment within prisons, they were not a homogenous group. They had varied and individual needs, some of which were not being met.

Yet, despite these factors and their growing number, it was clear to us that the Department of Justice had not and was not adequately planning for the shifting prisoner demographic and their age-specific needs. Our review found:

Strategic policy and planning were absent as there was no dedicated policy, strategic framework, or cohesive approach for managing older prisoners. This meant there were

inconsistent practices between prisons which risked older peoples' inclusion in the daily regime and intensified the punitive nature of their imprisonment.

There were significant infrastructure limitations as few prisons in Western Australia were designed with older prisoners in mind. Many had aging infrastructure, accessibility issues, and some had challenging terrain making them unsuitable as placement options. And while some prisons offered limited options, ultimately, there were no purpose-built units for older people in custody. We were pleased the Department had identified this concern and it had initiated plans for an Assisted Care Unit (ACU) to be constructed as part of a broader infrastructure project. This unit was to include high-care nursing home-style accommodation and hostel-style living for men requiring varying levels of support, and the build was scheduled for completion in mid-2023.

There was no indication there had been gender and cultural considerations as departmental planning that was occurring was largely focussed on men in the metropolitan region. Older female prisoners formed a small but significant group, and the Department could not point to any dedicated planning or infrastructure to meet their needs. Planning and consultation for the women's estate was expected to occur after our review, and we stressed the importance of engaging older First Nations women, given the vital role matriarchs play in their communities, and their responsibilities and obligations to family and extended kinship ties.

Our review made three recommendations, all of which the Department supported in principle and proposed actions which were intended to be completed by the end of 2022. We recommended:

1. Create a strategic framework or policy specific to the age-related needs of older prisoners.

2. Ensure all staff who interact with older prisoners are trained in age-related physical and mental health decline.

3. Ensure a balanced approach to the ligature minimisation program so accessibility adjustments and aides can adequately assist prisoners where they are required. (The ligature minimisation program refers to the Department's efforts to reduce access points within cells that can be used to anchor a ligature in suicides and attempted suicides.)

However, by mid-2023, the number of older people in custody had continued to increase, but there was still no strategic policy, and delivery of the ACU had been significantly

delayed. We asked the Department to provide a progress update on our recommendations and the response to all three was:

> As per the Department's response to the recommendation/s, this work will require extensive research, nationally and internationally, to determine a future model that will provide optimal solutions to accommodating older prisoners.
>
> The Department has reached out to Edith Cowan University to undertake the research, awaiting a final report for review and further discussions with relevant Corrective Services business areas and a determination on the way forward.

At the same time, we inspected a regional Western Australian prison and found that without a strategic policy framework to improve standards and services, older prisoners felt unseen and unsupported. We again recommended statewide policy that established basic principles for the management of older prisoners, among other specific groups of people in custody who sought to have their specific needs addressed with a tailored standard of care.

However, the Department was not supportive of the wider recommendation, noting that principles for the management of older prisoners were included within a health services procedure. This response failed to comprehend that the needs of, and issues faced by, older people in custody went beyond their healthcare. In an apparent follow-up to our 2021 recommendations, the Department added that all new builds incorporated designs to maximise accessibility while allowing for safety requirements like ligature minimisation.

Since then, the older prisoner population has continued to rise. In the 2023/24 financial year, we found people aged over 50 years constituted an average of 14.3% of the total prison population (compared to 12.3% in 2020 and 8.9% in 2010). Significant population growth that year was observed across the board with all age groups increasing in size, except those aged 80 years and above. But the largest increases were among those aged 55-59 and 60-64 years which had grown by 24% and 19% respectively.

Despite this, at the end of 2024 when we conducted an inspection of Western Australia's three prison farms, we again recommended a policy or plan specific to the age-related needs of older prisoners. The system-wide population growth had created such bed-capacity pressures it meant an increasing proportion of older people were placed at the prison farms—working farms where they are expected to be employed. Our inspection found this was posing significant challenges and disadvantages for older prisoners, particularly those with poor health, as many farm jobs were labour intensive. Other older men with mobility limitations had difficulties moving between their units and important service areas like health centres and dining rooms due to the farms' size and terrain. Their

cells also lacked climate control and were reportedly excessively hot in summer, which some older men worried was exacerbating their health conditions.

The Department supported our recommendation in principle, reporting it was a current practice or project as all prisons assessed and reviewed prisoners' suitability for work and accommodation. The Department also maintained its prisons ensured people in custody had regular health assessments and that older prisoners had their identified transition-to-release needs addressed prior to their return to the community. It added that the High Care Needs Unit (previously the ACU) was now scheduled for completion in January 2027 and, as that date nears, policy and procedures will be developed to provide custodial guidance on the management of aged prisoners. Unfortunately, this expectation is due for delivery almost six years after our initial recommendation.

Most recently, we have begun planning the inspection for Western Australia's largest prison for later this year. It is where the new High Care Needs Unit will be built and is the only prison in the state with hospital facilities. As part of this inspection, we recently engaged an expert to review the health care and treatment of two prisoner patients at this facility. Complaints about these prisoners' health care highlighted to us the significant ongoing challenges the Department faces in the care of older prisoners, particularly those with complex health and disability needs residing in the infirmary. Reflecting our own recommendations, this review has recommended adopting Australia's aged care quality standards, employing aged care staff directly, improving multidisciplinary care planning, and ensuring robust documentation and follow-up for external appointments to better meet the needs of the aging prison population. While the broader inspection is not until October 2025 and the subsequent report not expected to be published until mid-2026, it is hoped the Department will not wait until this time to action these recommendations.

Action is critical because we have previously noted the aging prisoner population is likely linked to the increasing average age of death from apparent natural causes. Between 2000 and 2021, 193 people died in prison in Western Australia. Approximately 60 per cent of these deaths (118) were from apparent natural causes. In 2023 when we examined the Department's response to coronial recommendations made during inquests of deaths in custody, we found that between 2000 and 2015 there were an average 3.8 natural deaths per year. However, from 2016 the average increased to 9.5 natural deaths per year, aligning with the shifting average age of the prisoner population. The average age at death for prisoners who died in custody between 2000 and 2015 was about 46 years. This increased to 55 years for the 2016 to 2021 timeframe. For those with terminal illnesses and/or requiring end-of-life care, ensuring quality aged care at this time will preserve their inherent dignity and right to humane and decent treatment.

## The conclusion

The work of our Office, particularly over the last five years, has revealed experiences and shortcomings for management and treatment of older people in custody that align with national and international research. Similarly, our continued recommendations for policy, infrastructure, staffing and services reflect proposed best practice within the literature. Regrettably, the Department has yet to substantially improve the provisions for older prisoners and so the needs of this vulnerable cohort remain unmet, risking their health, safety, and wellbeing. However, we are hopeful for the completion of the High Care Needs Unit and rollout of resultant statewide policy in 2027.

# An Aging Population in the Dutch Prison System


Authors:

**Han Moraal**
*Chair*
Council for the Administration of Criminal Justice and Protection of Juveniles, the Netherlands

**Fay Nijenhuis**
*Advisor*
Council for the Administration of Criminal Justice and Protection of Juveniles, the Netherlands



Raad voor Strafrechtstoepassing en Jeugdbescherming

Council for the Administration of Criminal Justice and Protection of Juveniles, the Netherlands

## An Aging Population in the Dutch Prison System

**Han Moraal**, *Chair*, Council for the Administration of Criminal Justice and Protection of Juveniles, the Netherlands

**Fay Nijenhuis,** *Advisor*, Council for the Administration of Criminal Justice and Protection of Juveniles, the Netherlands

### Introduction

This article was written from a Dutch perspective by authors from the Council for the Administration of Criminal Justice and Protection of Juveniles, the Netherlands (hereafter: "the Council"). It begins with a brief description of the Council, followed by an overview of the Netherland's ageing prisoner population and the challenges this poses. The article focusses on recommendations to keep the Dutch prison system futureproof where elderly prisoners are concerned.

*The Council consists of two departments: the Jurisdiction Department and the Advisory Department, supported by a dedicated staff.*

*The Jurisdiction Department functions as an appellate court for detainees contesting decisions made by or on behalf of prison governors. The Advisory Department advises the Minister of Justice and Security and the State Secretary for Justice and Security on the implementation and execution of custodial sanctions and freedom-restricting measures. In youth protection matters, it also advises the State Secretary for Health, Welfare and Sport. Over the past decade, the Advisory Department of the Council has submitted several advisory reports related to developments and challenges in the Dutch prison system, including on the growing cohort of older detainees.*

### Prison Facilities and an Aging Population

Dutch society is aging, and this demographic shift is increasingly evident within prison walls. Penitentiary institutions now accommodate a rising number of older inmates who deal with age-related health issues and care needs. Between 2005 and 2021, the population of detainees over 65-years-old almost doubled. Although current figures remain relatively small and improvised measures taken by prison staff often suffice, the system is neither structurally designed nor adequately prepared to meet the full spectrum of older prisoners'

needs—from admission through to custodial stay and release. As this cohort continues to expand, the pressure on an already constrained system will only intensify.

In its advisory report, published in December 2022, the Council called for a comprehensive policy dedicated to older detainees. Where necessary, legislation must be amended and practical measures instituted to address needs at all stages, namely the admission phase (prosecutorial sentencing advice, placement and intake), the custodial phase (appropriate accommodation, healthcare, activities, meaningful engagement, and facility adaptations) and the release phase (reintegration planning and societal return).

During the preparation of this advisory report, the Council studied national and international literature, scientific articles, research reports, policy documents, statistical overviews, parliamentary documents and regulations. Also, the Council interviewed two dozen experts with scientific, governmental, judicial, and probational backgrounds. Finally, the Council interviewed several members of prison staffs and older male and female prisoners.

## Recommendations on Admission, Custodial Stay, and Release

### *Admission to Custody*

There should be an assumption against sentencing older individuals to prison where public safety permits. Probation services should highlight this in their advice to prosecutors and judges, and prosecutors should consider the appropriateness and necessity of detention for older defendants.

When custody is deemed unavoidable, detainees should serve their sentences as close to home as possible, to preserve their social networks, thus facilitating continued family and community contact. Although concentrated specialised prison facilities may have some advantages, these do not outweigh the benefits of elderly prisoners being detained close to their often-shrinking social network.

### *Custodial Accommodation*

Accommodation for older inmates requires a tailored approach. Those who manage well can remain in standard wings, but vulnerable individuals benefit most from small-scale living environments. Such units allow enhanced supervision, minimise confrontations with younger prisoners (with, for example, the danger of bullying or extortion) and foster a supportive atmosphere. Often, elderly inmates serve sentences for different crimes than younger prisoners. While younger prisoners are more often incarcerated for drug (-related)

crimes, burglary, and theft, elderly prisoners are more convicted for traffic offences and violent crimes. This might isolate elderly prisoners even more.

Rather than repurposing existing special healthcare wings designed for high-dependency care, more facilities should establish dedicated small-scale units specifically for older detainees. A separate 'elderly prison', as seen in Germany, is not feasible in the Netherlands, given current numbers and the importance of regional (close-to-home) placement. Also, many elderly prisoners might feel stigmatised if placed in special prisons for elderly people.

*Healthcare for Older Detainees: Expertise and Activities with Meaningful Engagement*

Prison healthcare services provide general somatic and mental health support but lack specialised geriatric and psychogeriatric expertise. As generally seen in society, aging is an accelerant for somatic and mental problems. Stress experienced within the prison accelerates this process even more for elderly prisoners. As the older prisoner population grows, demand on and for these services will rise significantly.

A remarkable fact that recurs in the literature (e.g. UNODC, *Handbook on prisoners with special needs,* 2009) on this subject is that the biological age of (long-term) prisoners is generally ten years higher than their actual calendar age, as a result of an unhealthy lifestyle and other factors. People in prison are at greater risk of age-related diseases than people outside prison. This applies to both physical and mental disorders. Older prisoners often suffer from a combination of different (chronic) diseases such as diabetes and cardiovascular diseases. Little is known about the extent to which dementia occurs among the prisoner population; however, it is known that imprisonment is a risk factor for the development and accelerated progression of dementia (Meijers, Harte & Scherder, *Proces* 2018). This is related to the stimulus-poor environment in which prisoners find themselves and the lack of autonomy in that environment.

More generally, health problems among prisoners are exacerbated by high levels of physical inactivity. Prisoners spend a large part of the day in their cells. The lack of physical activity poses risks for the development of cardiovascular disease and mental problems, among other things.

To address the expertise gap, the Council recommends training custodial staff in geriatric care tasks and recruiting specialist care workers within prison medical services. Also, assistance with daily living activities for older inmates should be expanded. Offering challenging and stimulating work as well as programmes that promote a sense of purpose and personal fulfilment, is vital. Older detainees should have access to meaningful and bespoke activities that foster mental engagement.

*Physical and Technical Adaptations*

Prison cells and communal areas must accommodate mobility aids and other age-related limitations. Essential adaptations of the prison building should include wider cells and doorways for walkers or wheelchairs, as well as raised toilets and strategically placed grab rails in sanitary areas. Changes to furniture are also needed, such as adjustable beds (height-adjustable or "high-low" models). The same also applies to the accessibility of communal spaces, workshops and exercise yards.

These adaptions not only accommodate the needs of elderly inmates, but also ease the burden on staff, allowing them to fulfil their tasks better and with less effort.

*Release Planning and Reintegration*

In the Netherlands, short-term prisoners are eligible for special penitentiary programmes. This allows them to spend the last part of their sentence outside prison walls, while supervised by the probation service. These special penitentiary programmes are supposed to include at least 26 hours per week of outside activities that contribute to successful reintegration, preferably consisting of paid work. In addition, the prisoner must be able to earn an income within the foreseeable future and the (apprenticeship) workplace must comply with reintegration objectives. Lastly, prisoners serving prison sentences of at least six months may be granted leave to participate in work programmes in the community. These programmes must meet minimum standards with regards to workplace and compensation.

However, such a reintegration process for older inmates does not reflect their life stage. Since most pension-age prisoners do not return to paid employment, release planning cannot rely on finding work outside. Also, an income through a standard state pension for elderly people is guaranteed by the Dutch welfare system.

While paid labour is not always necessary, this should not limit elderly prisoners' access to reintegration programmes and release conditions. To avoid any gaps in service, key measures should include developing alternative day-activity programmes—for example, volunteering, creative workshops or digital skills training. Also, targeted education on contemporary societal and technological developments should be provided. And, given the shrinking social network of elderly prisoners, strengthening social support through sustained family and community engagement is even more important.

## Conclusion

The increase of older prisoners in the Dutch prison system demands a dedicated, coherent policy and practical measures. While current numbers allow for ad hoc solutions, these are neither sustainable nor sufficient to guarantee the humane and legitimate enforcement of custodial sentences for aging inmates.

In its advisory report, the Council urged the Ministry of Justice and Security and the Dutch Prison Service to implement targeted measures to protect older detainees from bullying and extortion. On the one hand, the Council recommended that national guidelines be implemented to divert older individuals from custodial sentences, where appropriate. On the other hand, once in prison, elderly prisoners should be housed in appropriate accommodations with dedicated staff who have healthcare expertise and should receive specialised activities for older inmates. Facilities should adapt to meet mobility and care requirements, and reintegration pathways should be designed to reflect the realities of pension-age life.

By adopting these recommendations, the Dutch prison system can uphold its obligations, maintain dignity and safety for all inmates, and preserve public confidence in the fairness and humanity of the custodial system.

# **Not Getting Any Younger:** Aging and Dying in Custody


Author:

**Fiona Irving**
*Principal Clinical Inspector*
Office of the Inspectorate New Zealand
Department of Corrections



OFFICE OF THE INSPECTORATE
*Te Tari Tirohia*

## Not Getting Any Younger: Aging and Dying in Custody

**Fiona Irving**, *Principal Clinical Inspector*, Office of the Inspectorate, New Zealand Department of Corrections

*Mā te titiro me te whakarongo ka puta mai te māramatanga*
*By looking and listening, we will gain insight*

The Office of the Inspectorate *Te Tari Tirohia* is a critical part of the independent oversight of the New Zealand Corrections system and operates under the Corrections Act 2004 and the Corrections Regulations 2005. The Inspectorate, while part of the New Zealand Department of Corrections *Ara Poutama Aotearoa*, is operationally independent to ensure objectivity and integrity. Inspectors, including clinical inspectors who are registered nurses, carry out investigations of prisoner complaints and all deaths in custody, and conduct prison inspections, thematic inspections, and special investigations, along with other statutory functions.

As of 31 July 2025, New Zealand's prison population was 10,715 people in 18 prisons. A 36 percent increase in the prison population by 2035 has been forecast.

Generally, New Zealand's population is aging, with statistics showing that the number of people over 65 years old is increasing. Average life expectancy is increasing, and people are living longer. These changes are reflected in the prison population, which puts significant pressures on facilities, resources, and services, as there is an increased need to support older people to maintain their wellbeing, or with end-of-life care.

While older people in prison are often defined as those aged 65 years and older, it is important to recognise that many people in prison experience an earlier onset of aging, with complex health and disability needs emerging well before 65 years. This is particularly relevant for Māori (New Zealand's indigenous population), who are overrepresented in the prison population and face significant inequities in health outcomes.

In August 2020, the Inspectorate published its thematic report, *Older Prisoners: The lived experience of older people in New Zealand Prisons*. While our report found that older prisoners' basic needs were generally being met—with innovation, care, and respectful decision-making being demonstrated—it also identified challenges such as the complex needs of this demographic. The Inspectorate identified 30 areas of consideration and made one overarching recommendation: "*Corrections should develop, appropriately resource, and implement a comprehensive Older Prisoners' Wellbeing Strategy to respond to the age-related needs of older prisoners".*

The following is a summary of the response from the Department of Corrections, and we reflect on developments and changes since our 2020 thematic report. We outline insights

about how older people and those at the end of life are managed in prison. While progress has been made, many of the systemic and operational challenges we identified in 2020 remain. We draw on our observations from site visits, inspections, and investigations to highlight areas of good practice and reflect the ongoing challenges that older people, and the staff who manage them, face in the prison environment.

## First, some statistics

As of July 2025, prisoners aged 65 years and older made up 4% of the prison population, of whom 98% were men and 2% were women (there were eight women this age). Those 55 years and older made up 11.8% of the population.

New Zealand European prisoners[1] comprised 56.6% of the older prisoner population, with Māori 26%[2] and Pasifika 8.7%.

The offence type most common among prisoners 65 years and older was sexual offending (64.4%).

Of older prisoners, 28% were serving a life sentence, 22% were serving a sentence over 10 years, 14% were serving sentences of five to ten years, and 16% were serving a sentence of less than two years.

## It's a journey…

The Department of Corrections has been cognisant for many years of the aging prisoner population. There have been many initiatives launched in its response to this complex challenge.

Our thematic report highlighted the Older Persons Health Strategy that the Department of Corrections developed in 2015, but our report found that this strategy had not been well circulated or implemented, with frontline staff having little knowledge of it.

In 2019, the Department of Corrections updated its Healthcare Pathway policy, which included a new section describing an annual health check for prisoners who were 65 years

[1] New Zealand European refers to people in New Zealand who identify as being of European descent, primarily of British, Irish or Scottish ancestry. It is a self-identified ethnicity and part of the broader "European" category used in official statistics. People of European descent make up 67.8% of the New Zealand population (2023 census).
[2] Māori make up 17.8% of New Zealand's population (2023 census). In July 2025, Māori made up 52% of the prison population.

and older with minimum assessment components such as age-related health screening, falls assessments, and cognitive screening.

Also that year, the Department of Corrections released its Hōkai Rangi Ara Poutama Aotearoa Strategy 2019-2024, outlining a strategic direction to find new and alternative ways of doing things to achieve better outcomes with Māori and their whānau (family). At the heart of the strategy was the concept of oranga, or wellbeing, embracing the whakataukī[3] *Kotahi anō te Kaupapa: ko te oranga o te iwi – There is only one purpose to our work: the wellness and wellbeing of people.* The Department of Corrections responded to the Inspectorate's Older Prisoners thematic report recommendation highlighting this whole of organisation strategy, noting that care should be individualised and that a framework would be developed in line with New Zealand's Ministry of Health's strategic approach to the provision of health services to older people.

In 2021, the End of Life Choice Act 2019 came into force in New Zealand. This established a framework for the process, eligibility, and safeguards for assisted dying. Responding to new legislation, the Department of Corrections developed policies and procedures, and identified subject matter experts to guide staff when a prisoner requests information or access to this service.

In 2023, Corrections launched the Disability Action Plan 2023-2027 and the Aging Well Action Plan 2023-2026. These plans align with wider New Zealand health strategies and were created with input from disabled people and older people in prison. Both plans seek to address concerns with the prison environment and to support people with complex needs. They also include specific action items to drive equity for Māori and align with the obligations of Te Tiriti o Waitangi.[4] To support these plans, additional resources were established including a Lead Adviser Disability, and four regional Social Worker – Disability and Older Persons positions who provide and promote best practice delivery of health and disability services in prisons.

This year, Corrections developed a Long-Term Network Configuration Plan which recognises the need to adapt prison infrastructure to an aging population, including wider disability cells, more therapeutic spaces and formalising existing ad hoc age-related alterations in some units. While it does not propose building full aged-care facilities, it recommends partnering with other agencies to meet specialised care needs. The plan emphasises culturally responsive environments that enable community involvement, which is critical for addressing the disproportionate number of older Māori and Pasifika prisoners and supporting dignity at the end of life.

[3] Whakataukī is a Māori proverb or significant saying that contains wisdom, guidance or a message within its poetic structure. Whakataukī can serve as cultural guidelines and are used in formal speeches and everyday life to convey emotions, situations and essential meanings.
[4] Te Tiriti o Waitangi (the Treaty of Waitangi) is New Zealand's founding document, an agreement made in 1840 between representatives of the British Crown and Māori.

## Our insights

*Observations from prison inspections*

Through our Inspectorate oversight functions, we have observed some prisons accommodating significant numbers of older people with more complex health needs, including age-related disabilities, chronic conditions, cognitive decline, and reduced mobility. Facilities and systems originally designed for a younger, more physically able population are frequently now inadequate to support the dignity, wellbeing and health needs of the aging population.

Corrections' policy sets out that people 65 years and older who are not already regularly engaged with health services will be offered annual comprehensive health assessments. Our inspections found that these assessments were not always occurring, and many older prisoners are not offered this assessment due to being regularly engaged with the health team. However, while routine tasks associated with their acute or chronic health diagnoses were being managed, key aspects of the annual assessment, such as falls, vision and hearing checks, and cognitive testing, were not being regularly considered.

This resulted in some health issues, such as hearing loss or mobility limitations, being either undocumented or poorly supported, despite clear impacts on the prisoner's ability to complete activities of daily living. While it is positive that the policy provides a framework to identify many potential needs of the older person, it is silent on functional assessments critical for supporting self-care tasks to maintain independence, such as hygiene, dressing, and mobility. Understanding functional limitations helps staff to provide the necessary supports and prevent accidents within the prison environment.

Our inspections found some inadequate environments and a lack of supportive equipment to manage aging people in prison. While one prison has a designated High Dependency Unit,[5] which provides an adapted environment with accessible design features and specialist equipment, most accessible facilities, such as disability cells or showers, were larger in size and had grab rails. Some showers had fixed seats or fixed shower heads high up on the wall with controls on opposite walls, causing the older prisoner to have to walk several steps across an already wet floor to reach the shower. In addition to this, the intercom button was often out of reach should the older prisoner have a fall. Several inspections revealed problems with the availability and appropriateness of mobility aids (wheelchairs, crutches, shower stools). As an example, an older prisoner told us he had to 'pay' another prisoner to push him in a wheelchair around his unit (he had used an electric wheelchair in the community). The same prisoner expressed how he felt vulnerable around other prisoners, and washed himself at his cell hand basin as he could not use the shower easily.

[5] There is one High Dependency Unit in New Zealand prisons (at Rimutaka Prison) which opened in 2012 to provide care for male prisoners who cannot independently manage their activities of daily living and require more intensive support. In 2015, it increased its capacity to manage 30 prisoners.

We saw older prisoners with mobility challenges spending long periods isolated in their cells due to a lack of appropriate equipment or staff availability. At one site, prisoners reported being confined to their cells during unlock periods because staff could not locate a wheelchair. In some cases, older men were helped by other prisoners out of necessity and kindness, as their support needs had not yet been identified or responded to by prison staff.

Our inspections found that communication and coordination challenges exist, highlighting breakdowns in communication between health and custodial staff. Health staff were at times unaware of significant issues until a crisis arose or a complaint was lodged. Custodial staff, despite observing some declining functional ability or unmet needs (e.g., failure to shower), did not consistently relay this information to health services.

While outside agencies can be engaged to provide support or aging prisoners could be transferred to prisons with more age-appropriate units, these actions were often ad hoc, reactive, and constrained by limited resources or availability. While the High Dependency Unit provides care and management of aging prisoners, it is in high demand with a waitlist, unable to meet the growing need. In addition, this unit caters to a 'rest-home' level of care and many aging prisoners require a significantly greater (hospital) level of care.[6] This creates a burden on prison resources to provide the appropriate level of care, and despite significant efforts to secure placement in private hospitals for these aging prisoners with high needs, this is often unsuccessful.

*Positive practice*

Despite these challenges, the Inspectorate has observed examples of good practice. Many older prisoners are receiving regular medical and nursing reviews, flu and other age-related vaccinations, dental care, and had access to disability or mobility aids to support their independence. Hobby glasses and hearing aid batteries are often supplied free of charge and there are many examples of sites demonstrating multidisciplinary and culturally responsive approaches to supporting age-related decline, including the use of Needs Assessment Service Co-ordination (NASC) assessments,[7] occupational therapists, and cultural support workers. Some sites have been able to establish strong relationships with community service providers and private residential aged-care facilities, and work collaboratively to meet the needs of aging prisoners.

*Deaths in custody*

The Inspectorate conducts investigations into all deaths in custody and a review of recent reports identifies some recurring and systemic issues in the care and management of older people in prison, particularly those approaching the end of life. In many cases, frontline staff demonstrated excellent examples of compassionate and coordinated care, however,

[6] In New Zealand, rest home care supports older people who need help with daily tasks but remain relatively independent. Hospital level care is for those with more complex health needs requiring 24-hour nursing and higher clinical support.
[7] A NASC assessment identifies a person's level of functioning and determines the level of funding for disability support services they required.

there remains a concerning lack of consistency in policy application, care planning, and operational responsiveness. This variability can undermine the rights and dignity of aging and dying prisoners.

A persistent theme across the reports is the inconsistent development and implementation of nursing treatment plans, especially as health deteriorates. These were not always created, updated or used in a way that aligned with the changing needs of the prisoner. Commonly we found a lack of assessments and interventions, abnormal results not actioned, delayed treatment, or missed appointments. Inappropriate assessment and management of pain was evident for some dying prisoners. These gaps were often exacerbated by staffing shortages, high workloads, or lack of training.

Advance care planning conversations were not consistently offered or documented even when some prisoners were clearly on a palliative pathway or had indications of decline. In multiple cases, compassionate release[8] was either not considered, delayed, or not followed through due to administrative gaps or lack of suitable accommodation. Corrections had one prisoner on the assisted dying pathway, but he had to request this multiple times before the process was initiated.[9]

Encouragingly, we noted for some prisoners that cultural preferences and family involvement was evident and respected, and when end-of-life planning was initiated, we found that this provided clarity for the prisoner and staff involved in the end-of-life process. Where we observed plans in place being used appropriately, care was respectful, coordinated, and medically supported, often exceeding the expected standard.

## Conclusion

New Zealand's aging and dying prisoner population presents unique challenges that require more than the existing initiatives of the past decade. While the Department of Corrections acknowledges these needs and staff demonstrate strong commitment to providing dignified care, a gap exists between intent and effective practice due to systems that have limited resources, resulting in inconsistencies and inequity of health outcomes. The path forward involves the Department's commitment to strengthening its support structure with the continued drive of national leadership to fully realise the focus areas, goals and actions of the Aging Well Action Plan, as well as continuing to enhance staff training, implement clear procedures, secure vital resources, and forge strong and collaborative partnerships with the wider health system to establish the necessary placements and care pathways for aging and end-of-life prisoners.

[8] The Parole Act allows for the compassionate release of an offender, if they are seriously ill and unlikely to recover. Compassionate release is granted by the New Zealand Parole Board.
[9] This prisoner died by natural causes of his disease.

# The ‘Grey Wave’ in Canada’s Federal Prisons


Authors:

**Emad Talisman**
*Senior Analyst*
Office of the Correctional Investigator

**Michael Giles**
*Deputy Director of Policy and Research*
Office of the Correctional Investigator

**Madison Pate-Green**
*Indigenous Outreach Officer*
Office of the Correctional Investigator


OCI Office of the Correctional Investigator | BEC Bureau de l’enquêteur correctionnel

## The "Grey Wave" in Canada's Federal Prisons

**Emad Talisman,** *Senior Analyst*, Office of the Correctional Investigator

**Michael Giles,** *Deputy Director of Policy and Research*, Office of the Correctional Investigator

**Madison Pate-Green**, *Indigenous Outreach Officer*, Office of the Correctional Investigator

*This article draws significantly from the OCI's past reporting; specifically, the 2019 report on older individuals in federal custody and the 2023-24 Annual Report investigation into managing life sentences behind bars.*

In 2019, the Office of the Correctional Investigator (OCI), Canada's ombuds person for federally sentenced individuals and the oversight body for the federal correctional service, in collaboration with the Canadian Human Rights Commission (the Commission), conducted a joint investigation into the experiences of persons aged 50 and older in federal custody and under community supervision.[1]

Our findings were eye-opening. In 2018, older persons in federal custody represented one quarter of the prison population, marking a demographic increase of 50% over the previous decade.

### How did we get here?

Although a full analysis of the causes of Canada's "grey wave" in federal corrections is beyond the scope of this article, we will briefly examine the history and severity of life sentences in our legal system.

After abolishing capital punishment in the late 1970s, Canada introduced mandatory *life* sentences of 10 and 25 years,[2] after which incarcerated individuals became eligible to apply for conditional release. In 2011, the federal government passed legislative amendments allowing judges to impose consecutive 25-year parole ineligibility periods for multiple first-

[1] Office of the Correctional Investigator (OCI). (2019). *Aging and Dying in Prison: An Investigation into the Experiences of Older Individuals in Federal Custody.*

[2] See, Manson, A. (1990). *The easy acceptance of long term confinement in Canada.* Criminal Reports, p. 265 – 275. In this article, Manson looks at the compromises made during this period to secure the abolition vote in Parliament. Specifically, he argues, "The 25-year parole ineligibility period was created as a political expedient in the face of compelling data pointing to a lower minimum term."

degree homicides. Additionally, they repealed the “Faint Hope” clause, a provision under Section 745.6 of the *Criminal Code* that allowed those serving life sentences to have their parole eligibility reviewed after serving 15 years.

These legislative changes were made despite findings from a 2010 parliamentary study[3] that showed “Canada exceeds the average time served [in custody by an offender with a life sentence] in all countries surveyed.” More recent studies confirm that Canada’s courts continue to impose increasingly lengthy periods of parole ineligibility, extending incarceration beyond parole eligibility dates.[4]

Consequently, Canada’s mandatory ineligibility period for first-degree murder now ranks among the harshest in comparable jurisdictions with parole systems around the world.[5]

In response to this worsening issue, The OCI and the Commission commented on the impact of indeterminate/life sentences in their joint report:

> “… long periods of incarceration may no longer meet the purpose or original intent of the sentence and may not be necessary from a public safety perspective. In addition, long periods of incarceration may, in some cases, be inconsistent with respect to human dignity.”

In *Life Imprisonment and the Right to Hope* (2013), Dirk van Zyl Smit argues that recognizing the dignity of all prisoners:

> “…requires that, no matter what they have done, they should be given the opportunity to rehabilitate themselves. Rehabilitation is not possible without the prospect of release. Prisoners need to be able to retain some hope for a better future.”

Without question, prolonged periods of incarceration paired with an aging prisoner population create negative impacts on prisoners, as well as increased financial costs to the state. What is more, these conditions place undue burdens on frontline staff and the correctional system more broadly.

---

[3] MacKay, R. (2010 March 5). *Legislative summary of Bill C-54: An Act to amend the Criminal Code and to make consequential amendments to the National Defence Act (Protecting Canadians by Ending Sentence Discounts for Multiple Murders Act)*. Library of Parliament: Legal and Legislative Affairs Division.

[4] Parkes, D., Sprott, J., & Grant, I. (2022). *The evolution of life sentences for second degree murder: Parole ineligibility and time spent in prison.* Canadian Bar Review.

[5] See, van Zyl Smit, D., & Appleton, C. (2019). Life Imprisonment: A Global Human Rights Analysis. Harvard University Press. In Canada, those sentenced under section 745 of the Criminal Code for first-degree murder must serve a 25-year sentence before eligibility for parole. In comparison, though the minimum period of parole ineligibility varies by state/territory, the average in Australia falls around 22 years; England & Wales = 15 years; New Zealand = 10 years; Ireland = 12 years.

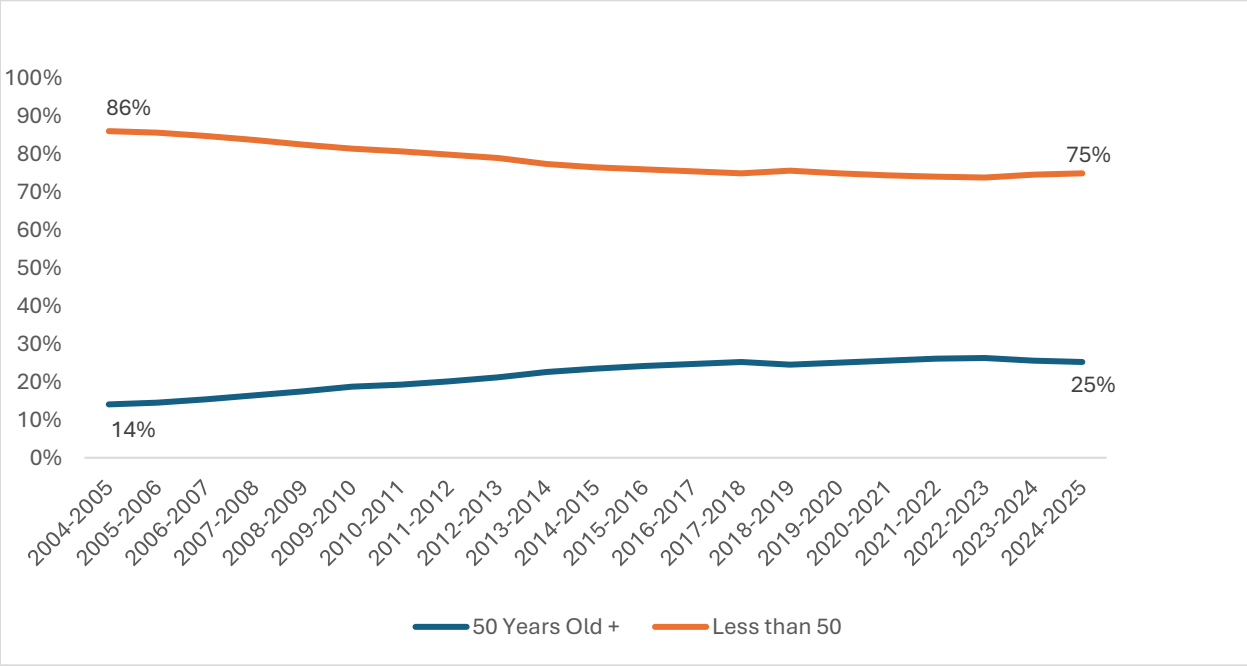
The 2019 joint investigation by the OCI and the Commission found that:

- The prevalence of chronic diseases among federal prisoners aged 65 and older was higher in most categories than among the same demographic in the general public. Consequently, correctional health care costs were driven up by age-related health decline and impairment.
- Some older lifers were being warehoused behind bars well past their parole eligibility dates. Most had long completed any required correctional programming or had upgraded their education, leaving little to be completed on their correctional plan.
- Many older prisoners felt “forced” to continue working to purchase items from the canteen or save for their eventual release. Those who retired or were unable to work received a basic allowance of just $2.50 per day. In medium-security institutions, those not working, attending programming, or enrolled in school were locked in their cells, effectively coercing labour from an aging population with reduced capacities.
- Federal prisons were clearly not designed with older persons in mind. Accessibility issues were observed at every institution visited during the investigation.
- Many older prisoners reported being “muscled,” bullied, or intimidated. They were not being recognized as a vulnerable population in federal custody, and their health, safety, and dignity were not being adequately protected.

These and similar findings point to overlapping and persisting issues in need of redress. Indeed, while the *percentage* of federal prisoners aged 50 and older remains at 25%, that *number* has increased by almost 100% between 2004 and 2005 (n = 1,889) and 2024-2025 (n = 3,736). In comparison, the overall prisoner population has increased by 10%.

*Graph 1*

Percentage of Total in Federal Custody, by Fiscal Year and Age Group




*Source*: CSC Data Warehouse, accessed September 4, 2025.

It is not uncommon for OCI staff to enter penitentiaries and observe prisoners using walkers or wheelchairs, being assisted by caregivers (sometimes by other prisoners), encountering individuals with dementia who cannot recall their crimes, or those receiving end-of-life care in prison rather than being released.

More responsive, safe and humane models of elder care exist (e.g., medical and geriatric parole used in some U.S. states) or could be created in the community at significantly less cost than incarceration. Unfortunately, at present, these tangible release options, funding arrangements, and partnerships remain limited and/or underdeveloped.

The OCI has made a number of recommendations to better address Canada’s aging custodial population, including:

- Better use of the “Parole by Exception” (sometimes referred to as “compassionate release”) provision under Section 121 of the *Corrections and Conditional Release Act.*[6]
- Timely updates to Correctional Plans and development of individualized sentence plans for those serving life sentences.

[6] For more on parole by exception applications and decisions, see the OCI’s 2023-24 Annual Report investigation, titled, *An Investigation of Quality of Care Reviews for Natural Cause Deaths in Federal Custody*.

- Collaboration with community non-profits and voluntary organizations with expertise in working with older prisoners and lifers.

While these measures are one part of redressing the realities of this “Grey Wave”, longer-term solutions must include responsive amendments to legislation. For example, placing greater emphasis on a prisoner’s conduct while incarcerated and their community-based support when assessing and reassessing the length of their parole eligibility following sentencing. As it stands, we have seen little if any progress on this issue. Far too many aging and palliative prisoners remain incarcerated, while better and less costly community alternatives exist that would be more consistent with human dignity, without losing sight of the imperative for public safety.

# **Assisted End of Life Choices for Detained People in Prison:**
# The Potential Role of Detention Monitoring


Authors:

**Sean Costello**
*Deputy Custodial Inspector*
Australian Capital Territory

**Dr. Michael Levy**
*Public Health Physician*
Australian Capital Territory



ICS
ACT Inspector of Custodial Services

# Medically Assisted End of Life Choices for Detained People in Prison: The Potential Role of Detention Monitoring

**Sean Costello,** *Deputy Custodial Inspector,* Australian Capital Territory

**Dr Michael Levy,** *Public Health Physician,* Australian Capital Territory

This article will predominantly refer to laws permitting medical assistance in dying as 'voluntary assisted dying' (VAD), but we note there are different terms used around the world.

| | |
|---|---|
| Medical assistance in dying (MAiD) | Canada, and some states in the USA |
| Euthanasia | Netherlands, Belgium, Luxembourg, Colombia, Spain, Ecuador |
| Medically assisted dying | Portugal |
| Assisted dying | New Zealand |
| *Sterbeverfugung* (death instruction) | Austria |
| Voluntary Assisted Dying | Australia |

Independent detention monitors are required to consider if detained people are receiving health care equivalent to that available in the community. This protection is enshrined in the Nelson Mandela Rules and International law including through the right to humane treatment when deprived of liberty, the right to equality, right to health and related United Nations standards.

These protections encompass a detained person's right to access voluntary assisted dying (VAD) or equivalent procedures, if that option is part of end-of-life care in the community.

There has been a 'seismic shift' in the regulation of assisted dying over the past 10 years. This is an emerging issue for detained people, with longer sentences and ageing populations in many communities leading to older prisoner populations. Detained people often have complex health care needs, but these become more acute with age as dementia and terminal illness develop. Prison authorities and staff need to support a detained person's choice about the time and manner of their death.

Consistent with other relevant principles including autonomy, choice and dignity, this article considers how prison monitors should assess the availability of VAD to detained people. We appreciate there are ethical, religious and other objections to VAD, but confine our discussion to the availability and manner of VAD for detained people.

The authors are grateful for the assistance of Emad Talisman from Canada's Correctional Investigator for reviewing a draft of this article.

## Common features of VAD laws

Internationally, VAD or equivalent laws tend to have common eligibilities such as:

- The request is voluntary, free from undue influence or pressure
- The inclusion of safeguards to ensure vulnerable people are not coerced
- The person gives informed consent to the procedure (typically at several stages of the process)
- Professional health assessment of the person's eligibility for VAD is required, often involving assessment from a health professional independent from the treating team
- Only being available to those who are terminally ill, or suffering some form of intolerable physical and/or mental suffering[1]
- Permitting self-administration or administration by a health practitioner
- Generally only being available to those aged over 18 years of age, although this differs across jurisdictions. Based on publicly available information, it does not appear any young person aged under 18 years has ever accessed VAD while in custody.

These are modified and adapted based on local cultural considerations and norms about death and access to health care, which have been critical in shaping these laws.

## Background

In recent years several countries have enacted or reformed VAD laws including the Netherlands (2001), Belgium (2002), Luxemburg (2008), Colombia (2015), New Zealand (2019), Canada (2016) and states in the United States of America. Similar laws have been in place in Switzerland for some time, and laws have been enacted by not yet commenced in Portugal, the Isle of Man, and Cuba. Legislation is currently being considered in South Korea, Ireland, France, and England, Wales and Scotland.

Recently, seven of Australia's eight provincial jurisdictions have also passed laws permitting VAD, with the exception being the Northern Territory (NT). The Northern Territory also happens to be the highest incarcerating Australian jurisdiction, and while Australia's indigenous Aboriginal and Torres Strait Islander peoples are over-represented in custody in all jurisdictions, despite having the lowest general imprisonment rate in Australia overall, the Australian Capital Territory (ACT) has the highest level of over-representation.

[1] In Canada this is described as 'grievous and irremediable medical condition'. Eligibility for MAiD for persons suffering solely from a mental illness has been delayed in Canada until 17 March 2027—see: https://www.canada.ca/en/health-canada/services/health-services-benefits/medical-assistance-dying.html

Other than in some jurisdictions in the United States, it appears detained people are generally eligible like any other member of the community to access VAD. Nonetheless, the interests of detained people do not appear to have been considered in detail when VAD laws were drafted in most jurisdictions.

In Europe and Canada, VAD requests from prisoners have been approved, although this hasn't always led to optimal outcomes. For example, after a controversial case, it was clarified in 2015 that Belgium law provides for detained people to access euthanasia. In 2019 it was reported that there had been 22 subsequent requests from people in detention in Belgium, with two detained people accessing VAD (for terminal cancer), two requests denied, a further three 'desisted' because the prisoner was released or transferred, and the remaining 15 with an unknown outcome.

In 2017, Canada's corrections authorities published Guideline 800-9, setting out how prisoners in federal prisons could request and obtain MAiD. This was updated in 2024. As part of this guideline, regional directors responsible for health services must ensure there is a process within their region for the provision of MAiD, guided by patient-centred care and compassionate and humanitarian principles. It was reported that in 2018 eight prisoners had requested MAiD. A review released by the Office of the Correctional Investigator in 2019-20 suggests that there had been three known cases of MAiD in federal correctional institutions to that time, with two carried out in the community. Unfortunately the Correctional Investigator concluded that:

> …each raises fundamental questions around consent, choice, and dignity. In the two cases reviewed in the reporting period, my Office found a series of errors, omissions, inaccuracies, delays and misapplications of law and policy.

The Investigator's concerns were primarily about whether there were more humane alternatives to managing the individual's terminal illness. He was also concerned about a lack of scrutiny due to these deaths being excluded from automatic review.

No detailed guidelines or similar document to Guideline 800-9 appears to have been developed in any other jurisdiction, including Australia, although the process in Belgium and Switzerland has been documented by scholars. [2]

Media reports suggest there have been three assisted deaths of people in custody in South Australia, and one in New South Wales, accessing those state's VAD services.

[2] Canberra Health Services in the ACT recently published an End of Life, Palliative Care and Voluntary Assisted Dying for Clients at the Alexander Maconochie Centre (AMC) guideline, which briefly discusses VAD as an option. It states that it does not fall within the capacity of the ACT's jail to provide for the administration of the voluntary assisted dying substance and the client, if not eligible for compassionate early release, will require transfer to a Canberra Health Service inpatient facility.

Apart from a further reported case of detained person who was yet to face trial accessing VAD in Spain in 2022, and a detained person in Switzerland being approved in 2020, we were unable to find further information about detained people accessing VAD.

**Autonomy in a correctional environment**

A detained person's ability to choose the nature of their palliative care is consistent with the right to self-determination under several international human rights instruments including under Article 8 of the European Convention on Human Rights.

Nonetheless, in Australia, it has been acknowledged that the power dynamics and institutionalized inequalities in a prison setting can undermine the informed and free decision making inherent in VAD. Canada's Correctional Investigator has observed that autonomy and capacity is undermined for a person detained in an inflexible custodial environment.

> It would seem that this man "chose" MAiD not because that was his "wish," but rather because every other option had been denied, extinguished or not even contemplated. This is a practical demonstration of how individual choice and autonomy, even consent, work in corrections.

The Correctional Investigator suggests, particularly for those detained people suffering from mental illness, "for prisoners, matters of free choice are mediated through the exercise of coercive administrative state powers. There is simply no equivalency between seeking MAiD in the community and providing MAiD behind prison walls".

Similarly, some in Australia have questioned if a detained person can ever obtain community-equivalent VAD in a correctional centre, and in Switzerland it has been argued the principle of equivalence is not sufficient to guarantee a detained person's access to VAD - although this could be contestable.

Some strategies to address these issues may include the staged approval process of VAD, ensuring one of the health practitioners who is involved is not part of the detained person's usual treating team, optimising palliative and mental health care, and potentially seeking further independent psychiatric assessment. Equivalence of health care would be undermined if no detained person could ever choose to access VAD while in custody.

## Key Principles

Several principles emerge from relevant human rights standards, and the experience of detained people accessing VAD to date. These include:

- Equivalence of health care between custody and community, which for this client group might need to encompass more than equivalence in process, but also in outcomes
- Dignity of the person
- Informed consent
- Autonomy of (real) choice about whether to access VAD, when and how
- Cultural beliefs and considerations
- The need for scrutiny and review

The application of these principles reveals several potential practical issues in detained people potentially accessing VAD.

## Practical Considerations

*The need for clear policy and guidance*

Without guidance, like Canada's Guideline 800-9, there is likely to be confusion as to how a detained person can request and access VAD. In several European jurisdictions, including Belgium, the application of VAD laws to prisoners has led to protracted community debate and a lack of certainty for detained people and victims as how to the scheme will operate.

*Independent reviews of VAD*

Many jurisdictions require an independent person such as a coroner to investigate a death in custody. Canada's Correctional Investigator has criticised the decision to exempt MAiD deaths in that jurisdiction from review:

> "There just has to be some degree of internal scrutiny, transparency and accountability that goes with the exercise of such ultimate and extreme expressions of state power, even if MAiD is provided for compassionate reasons."

*Limited access to information and specialist care*

Prisons often operate with limited resources, and access for detained people to specialist staff trained in palliative care, or learn more about VAD, is a potential issue.

Currently, in Australia national law makes it a criminal offence for a person to use a telephone, videoconference, email or other forms of electronic communication to provide or share information about suicide. The Federal Court recently ruled in *Carr v Attorney*

*(Cth)* [2023] FCA 1500 that VAD is included in the definition of suicide. As such, health professionals are generally advised to avoid using telephone or online communication options to discuss VAD. This likely to create barriers to detained people seeking more information about VAD.

Some medical practitioners may object to participating in VAD based on ethical, moral or other considerations. While medical staff should not be forced to participate in any VAD process, with limited health resources available in prisons, consideration is necessary as to how external health professionals can be provided for detained people in such situations.

*Facilities*

The location a detained person may choose to die is particularly important. For some, particularly those who have spent many years in the same prison, their preference may be to pass away in custody. Others may prefer their home in the community, or another location, which would also be more accessible for a person with limited mobility.

The opportunity for a prisoner to be released because of a terminal illness differs across jurisdictions. Some may provide discretion for prison authorities to authorise health related release, although in others an independent body like a court or other authority may have to make that decision. The availability and timeliness of that process may prove a barrier to detained people accessing VAD other than in prison. In Australia for example, it has been observed that 'there have been few instances of early release from custody occurring close to the prisoner's death and these cases do not allow for a planned VAD death in the community'.

In Canada, Guideline 800-9 assumes that MAiD will take place in a community hospital or health care facility unless an exception is approved. Canada's Correctional Investigator has been critical of decisions to refuse a detained person parole and then provide MAiD in a prison setting, when that decision was inconsistent with the gravity, nature, and length of the detained man's sentence. In this particular example, the Correctional Investigator was concerned that the decision to deny the man's parole application was a factor in him seeking MAiD:

> Canada's correctional authority should not be seen to be involved in enabling or facilitating any kind of death behind bars. It is simply incongruent with CSC's obligation to protect and preserve life.

This was particularly so in circumstances where in Canada it appeared to the Correctional Investigator that the law 'makes it easier for a terminally ill prisoner to qualify for MAiD than to obtain parole by exception'.

It has also been suggested that prisoners in Belgium and Switzerland may be considering VAD as a means to end psychological suffering (particularly as that is a relevant criteria to access VAD in those jurisdictions).

In relation to how a detained person is transported, we suggest that an individual risk assessment should be undertaken whenever restraints are considered for a terminally ill person who is leaving custody to access palliative care, with restraints only used in exceptional circumstances given the likely frailty of the person.

*Cultural considerations*

In some cultures, it is important to pass away at a particular place. For example, for Aboriginal and Torres Strait Islander peoples in Australia, dying 'on country' may be particularly important. Sadly, Aboriginal and Torres Strait Islander peoples are grossly overrepresented in the incarcerated population in Australia.

Experts have noted that there is a notable absence of First Nations' perspective about assisted dying around the world, with New Zealand research being a notable exception involving Maori community elders' perspectives.

A detained person who has spent a prolonged period in detention may have lost meaningful contact with family and friends. This means how health staff, non-government originations or prison staff will need to provide meaningful support as they grapple with terminal illness and choices about VAD is a critical consideration.

*Self-administration in custody*

It has been observed in Australia that self-administration in a prison environment may not be possible because possession of substances used to administer VAD would be illegal. In that jurisdiction, arrangements have been made for a detained person to transferred to a hospital for VAD, as well as allowances for family and friends to attend—provided they undergo criminal and other checks, including ensuring no victims are included. It is questionable if such a rigid approach satisfies the requirement for equivalence of health care, particularly as it is acknowledged that this process may exclude some family members.

An added complication to self-administration in prison is that some of the VAD schemes provide self-administration as the default option with practitioner-led administration only available in situations where the person is physically unable to self-administer.[3]

We suggest that consistent with the principles identified, self-administration should not be automatically dismissed as an option for detained people, but be subject to an individual

[3] For example, Victoria – *Voluntary Assisted Dying Act 2017* Section 48(3).

and documented risk assessment, which demonstrably justifies why that is not an available choice.

*Involvement of victims and victim advocates*

A detained person may seek to leave custody to access any form of palliative care. It is appropriate that victims are consulted where release of a detained person is under consideration, including on compassionate grounds. As this article focuses on the ability for prisons to access VAD as part of the suite of palliative care options, the role of victims in the broader release process is not considered in detail.

It has been observed that granting VAD to a detained person sentenced to life without parole may be perceived by some in the community as undermining the deterrent and 'retributive' nature of such a sentence. In that context, it is perhaps noteworthy that life sentences without any prospect of release have been found to breach the right against torture and inhumane or degrading treatment or punishment.

## Conclusion

Community-equivalence of health care means detained people have the right to access VAD like anyone else in the community. The manner of that access is also informed by other relevant principles such as dignity, autonomy and choice.

Informed by these principles, international experience to date, and the views of detained people, we suggest the following must be considered in the implementation of VAD as part of the suite of palliative care options available in a prison environment:

- Education of prison staff to recognise when a detained person needs referral to nursing, medical, or other palliative care support
- Invest in prison health care systems including dedicated palliative care teams
- Ensure there are clear policies and procedures for end-of-life care which includes consideration of how VAD will operate
- Document proper individualised risk assessment for all key decisions
- Learn how to improve the experiences of detained people receiving palliative care including the numbers of detained people being offered and accepting VAD
- Engage with non-government organisations including palliative care providers and First Nations cultural advisers to identify and apply a range of accepted models for VAD
- Consistent with the recommendations of Canada's Correctional Investigator, expert Committees should be formed to deliberate on the ethical and practical implementation of VAD in all places of detention. Authorities should prioritize

relevant policies and guidelines when considering applications for VAD, ensuring clarity and consistency in how such applications are assessed—ideally with input from committees that include individuals with lived experience of detention

Detention monitors play an important role in assessing if these outcomes have been achieved when detained people explore their palliative care options.

## **Featured Jurisdiction:** The Netherlands


Authors:

**Han Moraal,** *Chair*
Council for the Administration of Criminal Justice and Protection of Juveniles, the Netherlands

**Fay Nijenhuis,** *Advisor*
Council for the Administration of Criminal Justice and Protection of Juveniles, the Netherlands

**Featured Jurisdiction:** The Netherlands

## Introduction

This article was written from a Dutch perspective by authors from the Council for the Administration of Criminal Justice and Protection of Juveniles, the Netherlands (hereafter: "the Council"). It begins with a brief overview of the Dutch prison system, the systems of oversight and monitoring in the Netherlands, and an outline of the ongoing capacity problems within the Dutch system, focusing on recent developments.


## Prison Oversight and Monitoring in the Netherlands

In the Netherlands, the Custodial Institutions Agency (*Dienst Justitiële Inrichtingen,* "DJI") enforces on behalf of the Minister of Justice and Security sentences and custodial measures imposed by the courts. DJI is responsible for the daily care of detainees, in accordance with both national and international standards concerning humanity and human rights. A key aspect of detention is preparing individuals for reintegration into society. With 50 locations across the country and a workforce of 16,000 employees, DJI is one of the

largest government organizations in the Netherlands.

Detention takes place in various types of facilities, including prisons for convicted individuals (*gevangenissen*) and remand centers for those awaiting trial (*huizen van bewaring*). These are often separate wings within the same penitentiary institutions but operate under different regimes. In addition to facilities for adults, DJI also oversees specialized institutions for juvenile offenders.

Oversight and monitoring are legally regulated in several ways. Firstly, within the prisons themselves, local supervision commissions oversee how prison governors implement the deprivation of liberty in accordance with legal provisions. These commissions are composed of independent professionals from outside the prison system, including lawyers, judges, healthcare practitioners, and social workers. Inmates may submit complaints and grievances against the governor and staff. The commission may initiate mediation or issue an administrative ruling, which both the inmate and the governor may appeal to the Council.

The Council operates nationwide and comprises two departments: the Jurisdiction Department and the Advisory Department, supported by a dedicated staff.

The Jurisdiction Department acts as an appellate body for detainees contesting the ruling of the local supervision commission after their complaint against decisions made by or on behalf of prison governors, but also for prison governors challenging the ruling of the local supervision commission. The Council's rulings are final and binding on both the governor and DJI.

The Advisory Department provides guidance to the Minister and State Secretary for Justice and Security on the implementation and execution of custodial sanctions and measures that restrict individual liberty. In matters of youth protection, it also advises the State Secretary for Health, Welfare and Sport. Over the past decade, the Advisory Department has issued dozens of reports to the State Secretary responsible for the prison system on various topics, e.g. applicable draft laws and other rulings, prison regimes, prisoners' rights, rehabilitation, including on the growing capacity challenges within the Dutch prison estate.

Additional oversight is organized at the national level. The Inspectorate of Justice and Security is an independent body that monitors the functioning of the Dutch justice and security system. Its role is to ensure that organizations such as DJI operate lawfully, effectively, efficiently, and with respect for human rights.

Alongside the Inspectorate, the Dutch Ombudsman (*Nationale ombudsman*) also plays a role in overseeing the treatment of detainees. However, the Ombudsman's involvement is supplementary to that of the supervision commissions and the Council. Only grievances

and complaints that fall outside the remit of these bodies—such as those from defense lawyers or family members of inmates—are handled by the Ombudsman.

In the Netherlands, various topics regarding crime, punishment, and rights of the incarcerated are subject to public debate. However, the current most topical issue is the lack of prison capacity and the growing cohort of individuals waiting to have their sentences executed. And this is not for the first time.

## An Age-Old Issue: Cell Capacity Aligned with Demand

The Dutch prison system has historically experienced both capacity shortages and surpluses. In the late 1980s, a critical shortage forced the release of convicted persons without custody. This situation persisted into the 1990s, when Han Moraal, the first author of this article, as a public prosecutor was tasked with determining which arrested and convicted offenders could be accommodated in prison cells and which could not. This selection process generated continuous criticism from victims, the police, and fellow public prosecutors whose defendants were released prematurely.

To address the shortfall, a major prison-building program was launched in the late 1990s. Whereas 8,500 prison beds were available in 1994, this figure rose to approximately 14,500 in the years following the turn of the century. However, after a few years with full occupancy, by 2020 the occupancy rate had fallen to 73.1%, partly due to declining crime rates. In 2005 some 50,650 detainees entered the prison system (one individual may have multiple admissions); by 2015 that number had decreased to less than 40,000. The government responded by closing 26 prisons over the past decade, leaving around 50 penitentiary institutions operational.

These closures briefly restored balance, but in recent years the pendulum has swung towards a shortage of cells again. Rising crime trends and tougher sentencing policies have placed renewed pressure on capacity. Temporary closures of outdated facilities for renovation have further exacerbated the shortfall, driving it to alarming levels. Unlike in the 1990s—when the Public Prosecution Service tackled the problem at the front end of the criminal justice chain—it is now the responsibility of the State Secretary for Justice and Security to resolve the issue at the back end.

## Advice on Early Release as an Emergency Measure

Since autumn 2023, the Dutch Prison Agency has experienced acute capacity constraints for adult prisoners, prompting a ‘code black’ status: all penitentiary institutions and police cell complexes are full. In addition to pursuing capacity expansions, the State Secretary has

proposed a new early-release regulation ("end-of-sentence leave") to create an 'emergency valve' to ensure accommodation for convicted prisoners, remand detainees, and arrestees.

Granting early release carries social risks, since detainees will return to society before their court-imposed term expires. However, the alternative—having no space for pre-trial detainees and convicted persons—poses arguably greater systemic risks. The explanatory memorandum to the regulation argues that these risks do not outweigh those of leaving offenders without a custodial place. The Council recognises the necessity of urgent measures but observes that this regulation alters judicially imposed sentences. Because the detainee is being released before the end of their prescribed term of incarceration, the separation of judicial and administrative powers is infringed, and it potentially undermines judicial authority. Equally, the inability to house all detainees due to capacity constraints also compromises key tenets of the rule of law. On balance, the Council endorses the necessity of the proposed measure.

Contrary to the State Secretary's assertion, the Council believes capacity issues at the Dutch Prison Authority have been long-standing. In its 2019 advisory report *Tension in Detention (Spanning in Detentie)*, the Council warned of foreseeable pressure resulting from legislative changes that lengthened detention periods and curtailed release options. One such change—involving stricter conditional release rules—will further aggravate the shortage in the near future.

While the Council regrets that earlier interventions were not undertaken, it concurs that all efforts must now be marshalled to resolve the crisis swiftly. The Council welcomes the State Secretary's commitment to maintaining safety for staff, inmates, society and to upholding multi-occupancy cell criteria and minimum facility standards.

### A New Form of Early-Release Leave

The proposed regulation introduces a special form of end-of-sentence leave, applicable across the entire prison estate for adults. Leave is not an entitlement; decisions rest with the Dutch Prison Agency. Certain categories of offenders—such as those convicted of serious violent or sexual offences—are ineligible. Early-release leave is limited to a maximum of fourteen days and applies to sentences up to one year. It may be granted immediately before eligibility for conditional release or upon commencement of a penitentiary program. Multiple custodial terms or substitute detention orders are aggregated into a single term for eligibility purposes.

Early-release leave only applies when insufficient places are available and when the measure demonstrably contributes to alleviating the acute capacity problem. Decisions must therefore be taken on a case-by-case basis. The regulation's impact will be subject to

periodic review, and a policy framework will set out the criteria and procedures for prioritisation. Prisoners who have served most of their sentence will receive precedence. Victims and their next of kin will be notified of any leave decisions.

## A Positive Recommendation with Reservations

The Council offers a positive recommendation for this emergency measure but makes several critical observations.

*Preventing Legal Inequality*

The regulation clearly specifies which offenders are ineligible for leave but does not define the criteria for granting it. Leave is not an application-based entitlement; it must demonstrably reduce capacity pressures and will be granted according to objective criteria to be set out in a forthcoming policy framework. Without this framework, it remains unclear how priority will be determined when demand exceeds availability, creating uncertainty.

Moreover, the regulation does not address disparities between institutions. Prisons in densely populated regions may face greater shortages than those in rural areas, potentially resulting in uneven reductions based on location. Also, the explanatory memorandum states that prisoners who have served most of their sentence will be considered first but it does not clarify whether this refers to the highest percentage served or the greatest number of days. Two weeks' leave on a one-month sentence represents a much larger proportional reduction than two weeks on a one-year sentence. To avoid arbitrariness, the Council suggests a tiered model linking proportional reductions to discrete sentence-length categories.

The frequency and criteria of the periodic review that determines when leave remains necessary are also unspecified. At what point does the 'code black' status end? In the absence of clarity on implementation and leave duration, the regulation risks undermining legal certainty and equality.

*Feasibility*

Each leave decision must assess both its impact on capacity and the individual's eligibility, a process that requires time. For short-term prisoners or those nearing the end of their sentence, eligibility determinations may outlast their remaining term, rendering the regulation impractical for this group.

The regulation allows conditions attached to conditional release or penitentiary programs to continue during leave, an approach the Council supports—particularly for location and

contact restrictions. However, since these conditions derive from various statutory provisions, a clear implementation framework is essential.

The introduction of new conditions where no conditions exist post-sentence, is not advised. Drafting such conditions necessitates gathering detailed personal information and imposes reporting and supervisory burdens on probation services. Given the maximum fourteen-day leave period, these conditions may prove unenforceable and place undue strain on resources.

*Consideration for Victims*

Victims and their next of kin do not influence leave decisions but must be informed in accordance with statutory obligations. This notification must be timely and careful, requiring additional resources that may affect the measure's practicality.

Courts consider victims' interests when imposing sentences and may attach conditions to suspended terms. These conditions remain in force during leave, ensuring continuity of protection. Where no conditions were imposed, the Council considers that victims' interests remain sufficiently safeguarded and are not further prejudiced by early-release leave.

*Absence of an Expiry Date*

The regulation establishes a start date but lacks an end date, leaving its duration open-ended. Although necessity will be periodically reviewed, the Council recommends specifying an end date to emphasize the emergency nature of the measure and to reinforce legal certainty for prisoners by setting clear expectations.

## Conclusions

The Council supports this emergency measure but emphasizes that long-standing capacity issues at the Dutch Prison Authority require structural solutions, as highlighted in its 2019 advice. Reducing short custodial sentences and implementing meaningful alternatives will also relieve systemic pressure. To enhance legal certainty and feasibility, the Council recommends developing a policy framework in the short term to clarify the measure's implementation and prevent legal uncertainty and inequality. This should go along with the introduction of a tiered sentence-reduction model, linking proportional reductions to discrete sentence-length categories. Also, the predictability will improve by specifying an end date for the measure, aligned with capacity-relief plans.

However, for the long-term, the Council advised the State Secretary to reconsider structural capacity solutions as previously recommended by the Council, such as reducing short custodial sentences by offering more alternatives, restoring earlier provisions for

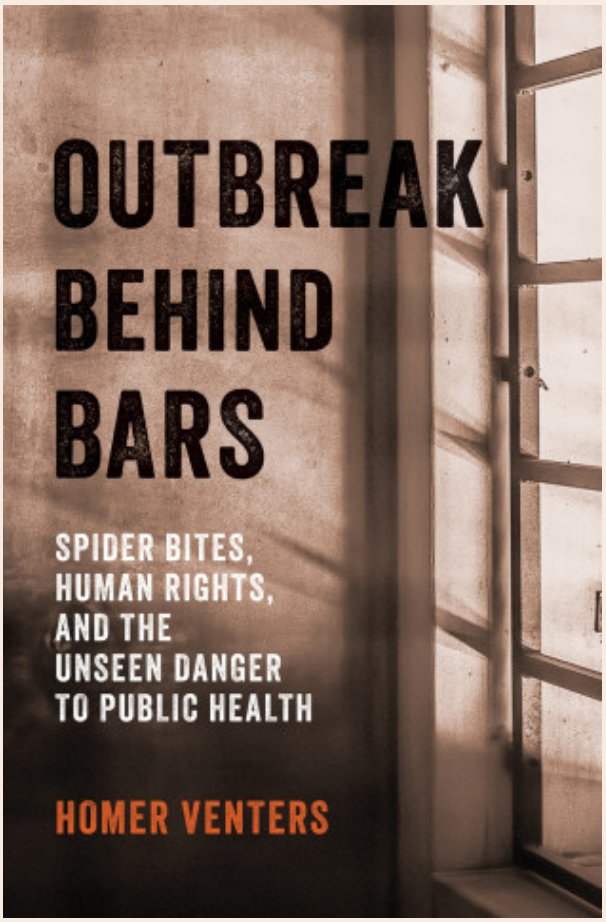
conditional release, and removing prohibitions on imposing community service for certain offences.

By pursuing both emergency and structural measures, the Dutch prison system can address immediate shortages while laying the groundwork for a sustainable, rights-based approach to custody.

## Resources

### Outbreak Behind Bars: Spider-Bites, Human Rights, and the Unseen Danger to Public Health

New book by Dr. Homer Venters, former Chief Medical Officer of the New York City jail system.




Learn more

“The goal of Outbreak Behind Bars is to provide a field guide for anyone tasked with responding to or preventing carceral outbreaks. From scabies to tuberculosis, influenza and even heat & food borne outbreaks of illness, this book is designed to provide practical guidance on best practices for prevention and response. This book also includes a concrete guide for conducting external inspections, reviews critical data sources and potential research projects that can help support prevention & response for carceral outbreaks.”

PRA
POLICY RESEARCH ASSOCIATES

## RFP Toolkit for Correctional Health Care

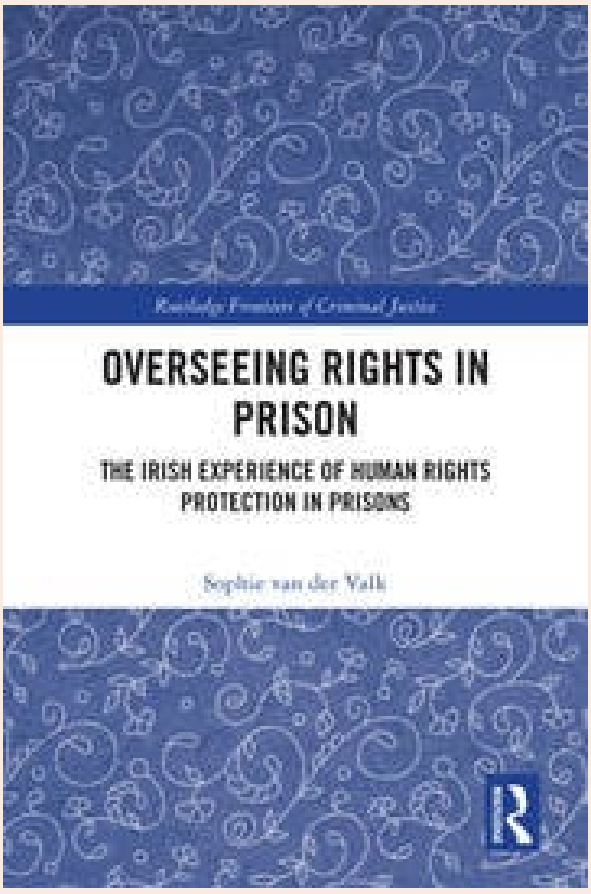
The Toolkit for Writing an RFP to Contract for Healthcare Services in a Correctional or Detention Institution (Correctional Healthcare RFP Toolkit) is designed to help correctional and detention facilities—along with local governments—create effective, outcome-focused requests for proposals (RFPs) for healthcare services

Explore the Toolkit

## Overseeing Rights in Prison: The Irish Experience of Human Rights Protection in Prisons

A new book by Sophie van der Valk

Learn more




## Carceral Hope: Life Sentences, Aging, and the Ethics of Possibility

By Helen Gair and Marion Vannier

Read here

## Deaths in prison: A Guide for Detention Monitors

Learn more