

Compassionate Release: Call for humility and more leniency

By Barry R. Ashpole



THE AGING POPULATION IS A UNIVERSAL PHENOMENON; accompanying it is an unsettling corresponding increase in the number of people living with disability, or with a chronic or terminal illness. Nowhere is this more evident than in the prison populations of almost every country. Prisons and correctional facilities, consequently, are caught between the proverbial “rock and a hard place,” between issues of security and public safety, and the civil rights of incarcerated persons to healthcare comparable to what is available to the populace-at-large. There is widespread evidence that few applicants are granted early release so that they may live out their last days no longer confined within the four walls of a prison cell. Coupled with the other world-wide phenomenon of overcrowded prisons, there’s clearly a blatant “disconnect” between policy and practice in the prevailing concept of compassionate release.

Basically, compassionate release is a process that allows for the early release or parole due to advanced age, with a life-limiting illness, complex medical care needs, or significant functional decline and deemed not a threat to public safety. This brings into play another consideration and perhaps an incentive to effect change. The care of incarcerated older adults, many of whom have high rates of chronic disease and disability, has generated rising prison healthcare costs and strained prison healthcare infrastructures. ¹ The many benefits seem obvious, and yet, compassionate release is rarely given.

Image credit: The case for compassionate release. (September 2020). *Gargoyle*, Alumni Magazine for the University of Wisconsin Law School. <https://bit.ly/4eD2aPR> (Artist not identified)

However, there is a flipside to the issues of compassionate release, post-release accommodation, and healthcare. On release, many face the prospect of becoming what is euphemistically termed “unhoused,” in other words, homeless. Not everyone has an accepting or loving family to return home to. Extended prison time more often than not weakens “outside” social support systems, if any existed in the first place. Critically, few community resources offer accommodation or support until advancing illness forces hospitalization.

*There are people who have been granted compassionate release but are still in prison because they have nowhere to go. Some require nursing home care... In other cases, people in prison have no family members or community able or willing to care for them in their last days. And there are thousands of people who might qualify for compassionate release on paper but who are not granted it, whether due to administrative hurdles, the Federal Bureau of Prisons' lack of transparency about its evaluation process, or because the ultimate decision lays with a judge disinclined to grant it, whether due to personal bias or fear of political liability. The result is that very few people who are aged or terminally ill are able to go home.*²

Two cases help to illustrate the common challenges. One concerns an individual who had served over 30 years and applied for compassionate release due to advanced illness. Unfortunately, by the time he was granted release, his family ties had deteriorated, and the social support that once existed had faded. He was left with nowhere to go, and even the local community resources struggled to accommodate him until his condition worsened to the point of hospitalization. Sadly, this experience is not uncommon and highlights the broader issue of societal disconnection with those who have faced decades in custody. Another poignant case involves a man who was diagnosed with terminal cancer. Despite his medical condition, he was considered ineligible for compassionate release due to the perceived lack of housing options. His family wasn't willing to take him in, and local community resources couldn't accommodate someone with such complex medical needs, so he ended up spending his final months in the prison hospice, surrounded by peer caregivers rather than family or outside support. This outcome is also very common.³

Perhaps more typical, a terminally ill resident at Ireland's Midlands Prison died in custody instead of spending his last days at home following delays in processing an application for compassionate temporary release. A prison doctor wrote to the prison's governor three times requesting his release on medical grounds so “he could spend his remaining life in a dignified manner.” The request was not processed and forwarded to the Department of Justice in time, and the 56-year-old remained in the prison until admitted to Midlands Regional Hospital, where he died a day later.⁴

Recently, what would be considered a fairly unique case came to light in America. A parole board denied a request for early release at the Julia Tutwiler Prison for Women in Wetumpka, Alabama. The applicant's diabetes care and cancer treatments were a reminder that the state was paying to keep her alive, providing the wheelchair-bound 72-year-old with dialysis for end-stage renal disease. But none of that was taken into account when she came up for parole in January 2023. She was denied. A year later, the Alabama Department of Corrections granted her parole anyway, working around the three-member parole board, which has spent the last two years denying nearly all releases from an overcrowded prison system.⁵

The Alabama case brings into focus another consideration into the compassionate release “equation.” As stated, care of the elderly incarcerated has generated rising prison healthcare costs and strained prison healthcare infrastructures. This brings into question governance of prison healthcare services, a factor which varies from one country to another. In some countries it rests

with departments of justice or corrections, in a handful of countries under the jurisdiction of the country's ministry or department of health.⁶

The elderly or infirmed, having served lengthy prison sentences, merit “a second look” and “a little humanity.” In the words of New York Senior District Court Judge Frederic Block:

*Still, sometimes a sentence that made sense when it was imposed can look like a bad fit over time. Prisoners grow old or get sick. The laws under which they were sentenced change. Others who committed the same crimes get starkly different prison terms. Doubts arise about guilt. On occasion, everyone agrees the prisoner has been thoroughly rehabilitated.*⁷

Wise words, particularly in the context of compassionate release.

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