

The Maryland Unger Project: Safe De-carceration of Older, Life-Sentenced Prisoners

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“Our extreme sentencing policies and growing number of life sentences have effectively turned many of our correctional facilities into veritable nursing homes” .

At America’s Expense: The Mass Incarceration of the Elderly, ACLU (2012)



Older & Elderly Prisoners



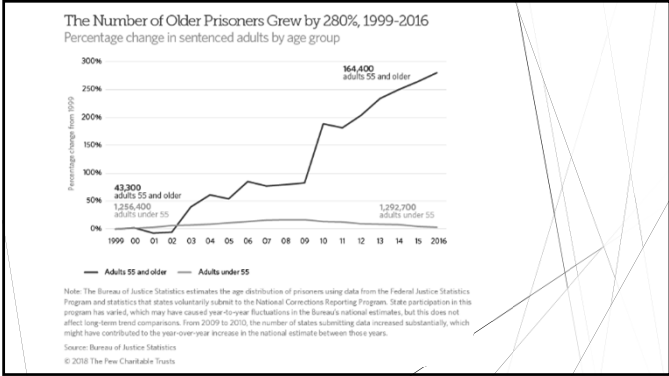
The National Institute of Corrections classifies individuals aged 50 or older as elderly/aging inmates. This is due to lack of health care & difficult life circumstances prior to incarceration, combined with the heavy stresses of prison life, which accelerates the aging process.


In 1981, there were 8853 elderly inmates in prisons, and by 2012, the number increased to 124,900. There will be an estimated 400K+ by 2030.

These elderly Prisoners ,known as the “Gray Wave” are incarcerated at a cost of more than \$9 Billion Annually in the US.

In 2012, 16% of the national prison population were 50 or older, and 13.5% of federal prisoners were 50+

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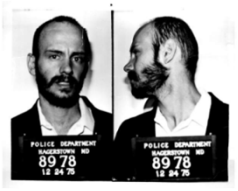


MARYLAND NUMBERS

- ▶ Total state prison population: 19,332 (823 women)
- ▶ 3,314 (17%) Maryland prisoners are over the age of 50, including 834 who are 60+
- ▶ 2,331 (12.1%) Individuals serving life sentences
 - ▶ 69.9% Black

DATA FROM DPSCS CORRECTIONS 2017 ANNUAL REPORT
<http://dpccs.maryland.gov/publicinfo/publications/pdfs/DOC2017AnnualRpt.pdf>

What is the Unger Decision?



Legal Background

- ▶ Prior to December, 1980, standard jury instructions in Maryland trials stated that the jury was the judge of facts AND the law, thus, a Judge's instructions regarding the law were advisory only.
- ▶ The Maryland Court of Appeals stopped this practice going forward in *Stevenson v. Maryland* 289 Md. 167 (1980), but no remedies were provided to individuals convicted under those instructions
- ▶ *Stevenson* was affirmed in *Montgomery v. State* 292 Md. 167 (1981) and *State v. Adams* 406 Md. 420 (2008)

Unger Changed Everything

- ▶ Unger v. State of Maryland 427 Md. 383 (2012) handed down by The Maryland Court of Appeals (highest court in MD) on May 24, 2012
- ▶ Unger applied Stevenson retroactively, and held that individuals convicted by juries who received the flawed instructions were entitled to new trials.

Implications of Unger

- ▶ Approximately 230 individuals serving life sentences in Maryland became entitled to new trials
- ▶ All trials took place before 1980, thus witnesses have died, moved away, etc., making it very difficult to retry the cases
- ▶ New opportunity for men (and one woman), most of whom expected to die in prison, to be released. Due to Maryland's "life means life" approach to those with parole-eligible life sentences, this is a hope which had been dim for nearly 20 years.

What is the Unger Project?



Partners

University of MD Carey School of Law - Clinical Law Office & Law and Social Work Services Program

Maryland Office of the Public Defender

Maryland Restorative Justice Initiative
Director and Founder, Walter Lomax, is Chair of
The Unger Advisory Committee

This project was supported with a private grant from the Open Society Institute - Baltimore, the project ended May 10, 2018.

The first group of six men and one woman were released on May 21, 2013 from the Baltimore City Circuit Court House



Outcomes TO DATE

- ▶ More than 200 cases resolved
- ▶ 186+ individuals released to the community
- ▶ At least 2 released to detainers (serving sentences in other jurisdictions - including federal)
 - ▶ 2 serving additional time in Maryland
 - ▶ 4 retried and resentence to Life
 - ▶ 1 retried and acquitted
- ▶ 10 died in prison, awaiting a resolution of their cases
 - ▶ 11 died after release
- ▶ Approximately 12 cases still unresolved

WHO was Released?

- Aged 51-85 at the time of release
- Overwhelmingly African-American
 - Average Age: 64
- All were sentenced before December, 1980. and served an average of 39 years in prison; one served more than 60
- Many were youthful offenders/juveniles - as young as 15 years old at the time of conviction.

Our Recidivism Rate is 1.04 %, The Overall Maryland rate is 40%

- 2 men have returned to prison for a new charge and a VOP.
- 2 men have pending hearings for new charges.
- 3 men have technical VOP violations with pending hearings.



Social Work Services



Strengths-Based Case Management

- Developed in late 1980's at the University of Kansas (Rapp, et. al.)
- Evidence-based for use with substance abuse & individuals with CPMI
- Client-centered approach - assumes people can learn, change, & grow
- Focus is on individual strengths, rather than pathology
- The client-case manager relationship is key
- Case manager is a service provider AND broker/referral source
- Interventions based upon client self-determination and empowerment
- Community is viewed as an oasis of resources- natural connections/supports
- Caseloads are small enough to allow for meaningful interaction
- When possible, services are not time-limited

Client Tier System for Prioritization

- ▶ **Tier I** - Complex, high-need clients: indigence, little-no community support & multiple challenges: mental health, serious medical, substance abuse, needs supported housing, nursing/hospice care, juvenile incarceration
- ▶ **Tier II** - One or two major challenges, indigence, often difficult-to-place clients (sex offenders), limited community support
- ▶ **Tier III** - Some support needs at release, but lower level of material support needed initially, due to family support. Needs increase at 6-8 month mark, as client seeks to become independent, or as they struggle with issues (limited family resources, conflict in housing situation)

- ▶ **Tier IV** - Very limited needs upon release due to stable family support. No rush to move to independent housing. Most issues involve needs of extended family, including care for aging parents, and/or emerging health issues of their own.
- ▶ **Tier V** - Limited initial support needed, and primarily referred out for employment services/support. Follow-up is provided via periodic contacts with client and other providers. Monthly calls for check-in and invitation to Third Tuesday events.
- ▶ **Tier VI** - Clients who have 'graduated' from ongoing case management and are managing well independently. We are available for crisis-based intervention, and clients receive monthly calls for check-in and invitation to Third Tuesdays.
- ▶ **Tier VII** - Individuals released to outlying counties receiving referrals and monthly check-in or those who have declined services.

30-60-90 Model

- ▶ **First 30 days** - intensive support often provided, mostly task-focused, i.e. getting benefits in place, orientation to community, initial appointments, some emotional intensity and swings, but a "honey-moon" period for most-exuberant, celebratory time
- ▶ **Second 30 days** - Reality begins to set in - struggles such as delayed benefits, difficulty obtaining ID, become highly anxiety-provoking. Clients begin to think about the future and may become overwhelmed. Conflicts with family or roommates/housing providers begin to emerge. Honey-moon period recedes]
- ▶ **Third 30 days** - Can become crisis situation- struggles and delays become extremely frustrating and overwhelming, realization that life outside is not as expected or imagined. Family or housing conflicts escalate. Fears for future and of failure become central

Pre-release & At-release

- Pre-release assessment and individualized home plan
- Coordination with institutional staff, family members, and future service providers
- Pre-court briefing for family & friends, provision of binder with extensive information about resources, a bus pass, a bag of hygiene products, a bottle of water, and a snack
- At release - review release packet, including meds and follow up with any mistakes on IDs, paperwork and medications

Post-Release Services

Follow up case management services - Depends upon level of need. Focus has been on indigent releasees without family support, and those with serious medical and mental health issues

Financial support for indigent clients:
Emergency housing fund, clothing, bus passes, medical copays, over-the-counter meds, hygiene items, and groceries, while benefits are pending.

Third Tuesdays

RE-ENTRY CHALLENGES



"Van Winkle Effect"

- Family and friends deceased or "moved on"
 - Delayed grief
- Many at retirement age and not employable
 - Medically frail and vulnerable
- Lack of life skills, particularly those incarcerated before the age of 21
 - Struggle with new technology
- Changes in City and neighborhoods - for the worse



The Riots of 1968 and the Uprising of 2015 - History repeats itself.



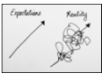
"PRISONIZATION"

- ▶ PTSD-like symptoms
- ▶ Nightmares, anxiety, hyper-vigilance, sense of alienation
 - ▶ Altered emotional responses, i.e. "prison mask"
 - ▶ Lack of autonomy - may appear to be unmotivated
 - ▶ Sense of entitlement - expects to have needs met by others



Unrealistic Expectations

- No frame of reference for cost of living or the current reality of the job market
- False information circulated amongst prisoners
- Everyone knows "that guy"
 - Newly released comparing themselves to more established individuals released earlier





Loss and Grief

Providing space to mourn the men who passed waiting for freedom, and those that only briefly claimed their freedom was an essential part of managing the mortality issues and the need for each man to process his own mortality; and his place in an ageist and ableist society.

Systemic Problems

- Many were “non-entities” on paper. They lacked a credit history, rental history, community job history, and often, photo ID
 - Birth certificates, State IDs, & Social Security Cards!
- Waiting period for cash, food stamps and Medical Assistance benefits can be a few weeks, to a few months
- Barred from many affordable housing options, including public housing and most senior buildings
- Barred from most nursing facilities and assisted living programs

Lessons From Unger

- ▶ Elderly prisoners can be safely released to the community, given appropriate support.
- ▶ Individuals who have served decades in prison can become positive and productive members of society
- ▶ Elderly returning citizens have needs that are not being met in traditional re-entry programs.

- ▶ Urgent need for wrap-around support to indigent returning citizens without family or social connections
- ▶ Medical conditions are often advanced, due to substandard care. End-of-life support has been a central component of our most intensive case management services.
- ▶ Resiliency and the importance of family
- ▶ An example of the power of community

Applications

- ▶ This program may be difficult to replicate without sufficient funding and state level buy ins.
- ▶ This model applies most effectively to elderly individuals with long term incarcerations.
- ▶ This model works well when the manpower hours can be tailored to be as intensive as needed and the duties can go beyond the scope of traditional case management.
- ▶ Using students was a huge part of the success, their willingness to explore and research and their enthusiasm for both the subjects and the clients helped maintain the project.