

# Illinois Should Adopt Elder Parole Legislation to Provide Aging Persons the Right to Apply for Parole

Aging persons in prison with lengthy or life sentences will die in prison, despite being rehabilitated and posing no threat to society, unless the General Assembly approves elder parole legislation that would provide these individuals with the right to apply for parole.



# Elder parole legislation would provide a process for parole of older persons in Illinois



- Elder Parole legislation has been introduced in the House as H.B. 3613 (Amendment No. 1).
- If enacted, this legislation would provide the opportunity to apply for parole for a person in prison who has attained the age of 55 years and served at least 25 consecutive years of incarceration.

## Illinois currently provides no parole process for any person sentenced on or after February 1, 1978

- Parole was abolished in Illinois on February 1, 1978 for all persons sentenced on and after that date.
- With the exception of persons who are terminally ill or medically incapacitated, executive clemency granted by the Governor is the only way for an incarcerated individual to seek early release in Illinois.



## Illinois is one of only 16 States that abolished discretionary parole and have not reinstated it

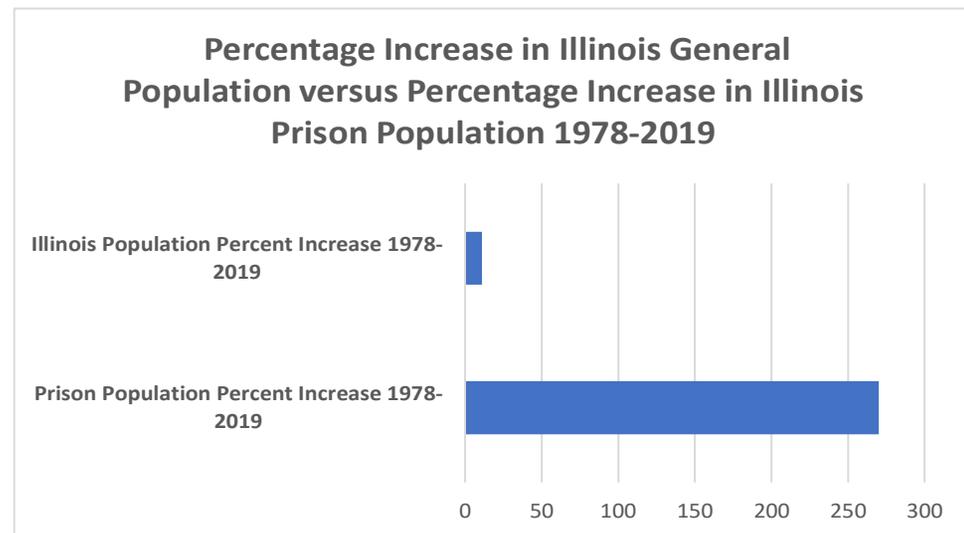
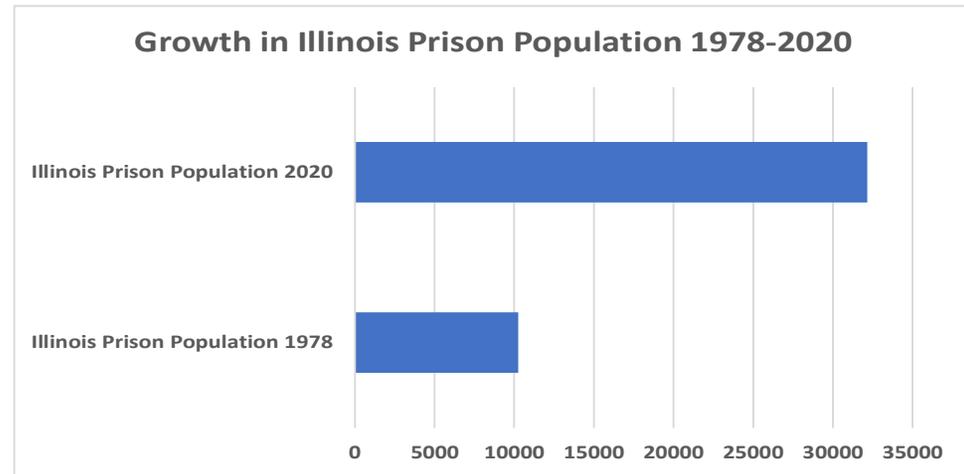
- During the 1970s through the 1990s, there was a shift in emphasis from rehabilitation to punishment in the U.S. generally that we are still living with.
- Between 1976 and 2000, 16 States, including Illinois, abolished discretionary parole and have not reinstated it.
- The other 34 States have a parole process where the parole board has discretion in determining release dates for most incarcerated persons.
- 3 of these 34 States – Colorado, Connecticut and Mississippi – abolished discretionary parole but later reinstated it.

During the 1970s through 1990s, Illinois Law also changed in other ways to impose longer sentences that keep individuals in prison longer and to provide fewer opportunities for early release

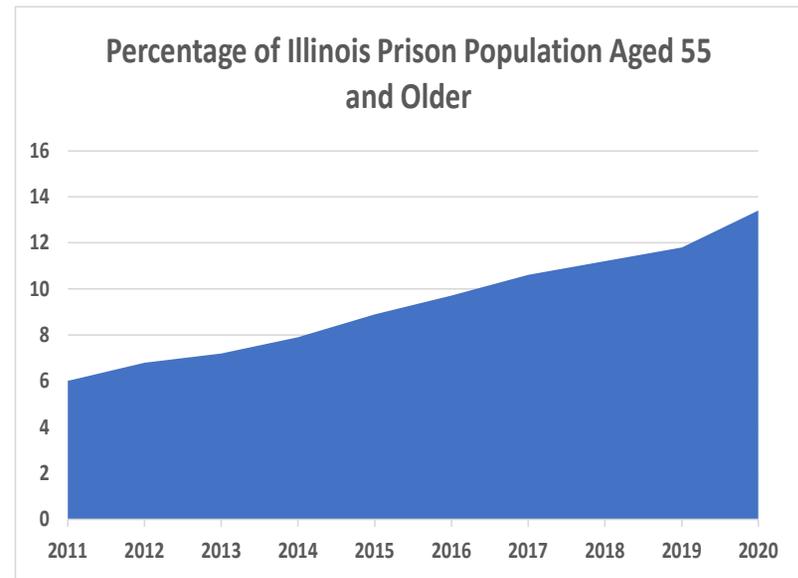
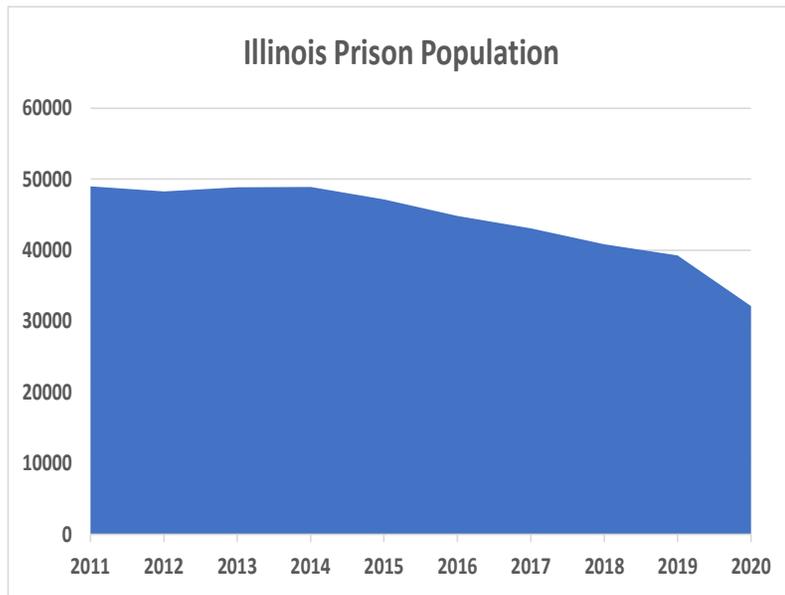


- Under the Illinois habitual offender statute, effective February 1, 1978, and expanded in 1980, a person convicted three times of certain felonies is given a mandatory life sentence without possibility of parole.
- In 1995, Illinois enacted “Truth-in-Sentencing” legislation which restricted the ability of individuals to reduce sentence lengths for certain violent crimes by earning good time credit.

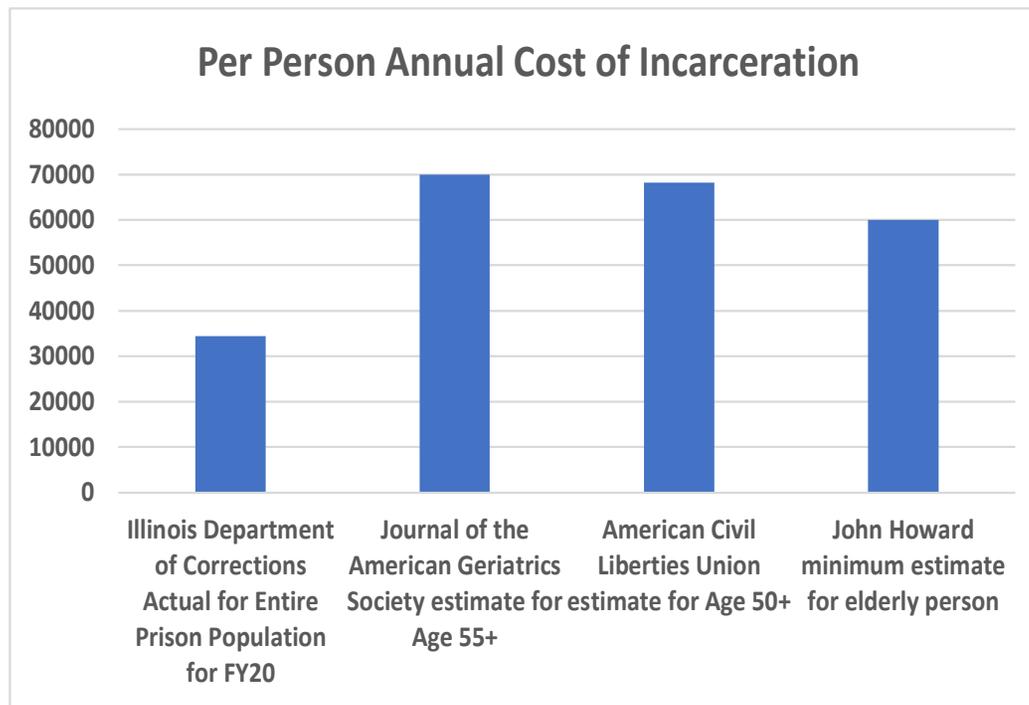
Since 1978, following the shift from rehabilitation to punishment, the Illinois prison population more than tripled and the percentage increase far outpaced the percentage increase in the overall population of Illinois



Although the overall prison population in Illinois has declined in recent years, the percentage of the population consisting of older persons imprisoned in Illinois has been growing



The estimated cost of incarcerating an older person is about twice or more of the average per person cost of incarceration in Illinois



## Persons who have life sentences imposed on or after February 1, 1978 are sentenced to age and die in prison

- As of December 31, 2021, there were 1496 persons in Illinois prisons who were sentenced to life on or after February 1, 1978.
- Unless granted clemency by the Governor, or a medical release based on terminal illness or medical incapacitation, these individuals will continue to age in prison and will die in prison, regardless of whether they have become rehabilitated, and regardless of whether they pose a threat to public safety.



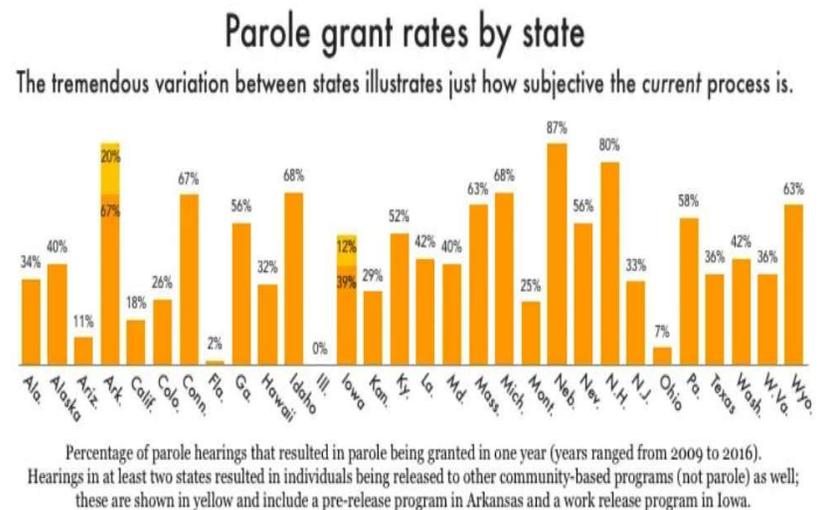
# Significant Cost Savings Could be Achieved by the State with the Proposed Elder Parole Process

- As of December 31, 2021, the number of individuals who would qualify for the proposed elder parole process was 967, which was 3.4% of the total prison population.
- The average per-person cost of incarcerating an individual in Illinois during Fiscal Year 2020 was \$34,362.
- This means that over \$33 million was spent to incarcerate these individuals for a single year at the average per-person cost, and over \$67 million may have been spent in a single year at the higher estimated per-person average cost of incarcerating older persons.
- Giving these persons a chance to show that they are ready to be released would provide a way to reduce these significant costs of incarceration and a way to give these individuals the chance to make a positive contribution to society.

# Data From Other States Shows That Cost Savings Could Be \$13 to \$28 million per year

- In 2014, the average rate for granting parole by States reporting data was 42%.
- If 42% of those eligible for parole in Illinois under the proposed law in the first 3 years were granted parole, the cost savings could be \$13 to \$28 million per year based on the per-person cost.

Source for average rate and graph: “Eight Keys to Mercy: How to shorten excessive prison sentences” by Jorge Renaud (Prison Policy Initiative, November 2018)



The Illinois Department of Corrections is required by consent decree to provide adequate medical care to incarcerated persons with serious medical needs

The consent decree in *Lippert v. Baldwin*, now *Lippert v. Jeffreys*, entered May 9, 2019, requires the Governor, Director of IDOC and Director of Health Services for IDOC to provide adequate medical care to those incarcerated in the IDOC with serious medical needs.



The court-appointed Monitor, Dr. John Raba, found that the medical needs of aging persons required by the consent decree are an increasing burden on IDOC's health care system

- “The aging population in the IDOC is placing an increasing burden on the functioning of the correctional facilities and on the correctional health care system.”
- “Men and women with various types of dementia, cerebrovascular accidents (CVA), advanced cancers, cardiovascular disease, and increasing fragility with risk of falls are housed in many of the IDOC facilities.”
- “The infirmaries are becoming filled with patient-inmates who are confused, incontinent, and require assistance with the basic activities of daily living including dressing, feeding, bathing, and toileting.”

Dr. Raba found that IDOC does not have the resources to fulfill its duty to provide adequate medical care to aging persons in prison

- “The health care and correctional resources including staff, physical space, equipment, onsite support services and offsite specialty consultation, diagnostic testing, and hospitalization required to meet the needs of this aging population is staggering and will only increase if there is not a concerted and strategic effort to comprehensively address this situation.”
- “It is also the monitor’s position that the IDOC should not attempt to construct large long-length-of-stay skilled nursing or nursing home correctional facilities which would present notable difficulties to meet and maintain state certification standards.”

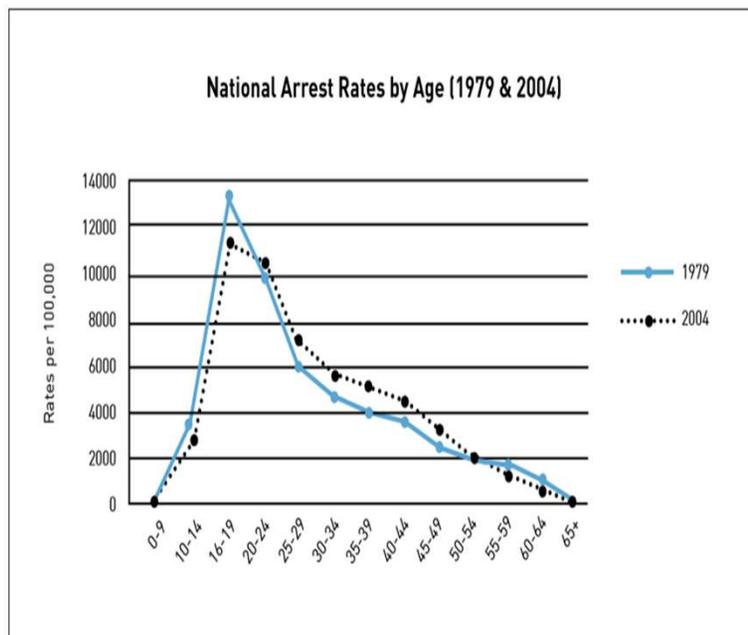
Parole for older persons would help relieve IDOC of the burdens of old age care and end of life care by releasing individuals to their communities while they are still capable of returning to society as productive citizens

- Per Dr. Raba: “[I]n the near future the IDOC must take the lead to create a pathway to discharge those men and women whose mental and medical conditions make them no longer a risk to society to appropriate settings in the community.”
- An opportunity for parole for prisoners in their 60s would allow these individuals to be restored to useful citizenship while they are still capable of contributing to society, so that by the time they require end of life care, they will be in the appropriate community settings contemplated by Dr. Raba.

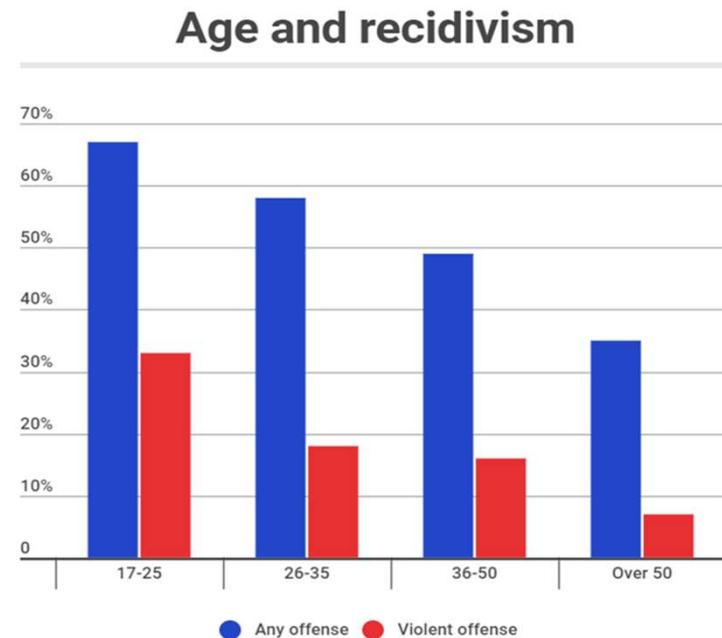
# The cost to the State of medical care would be significantly less in community settings

- The costs of security for incarcerated people would be eliminated for persons released to the community.
- Some released persons may qualify for Medicare.
- Released persons who are veterans may be able to receive medical care from the federal Veterans Administration.
- Medicaid, which is partially funded by the federal government, should generally be available to persons released to the community who do not have other health insurance.

# Recidivism declines with age as individuals “age out” of criminal tendencies



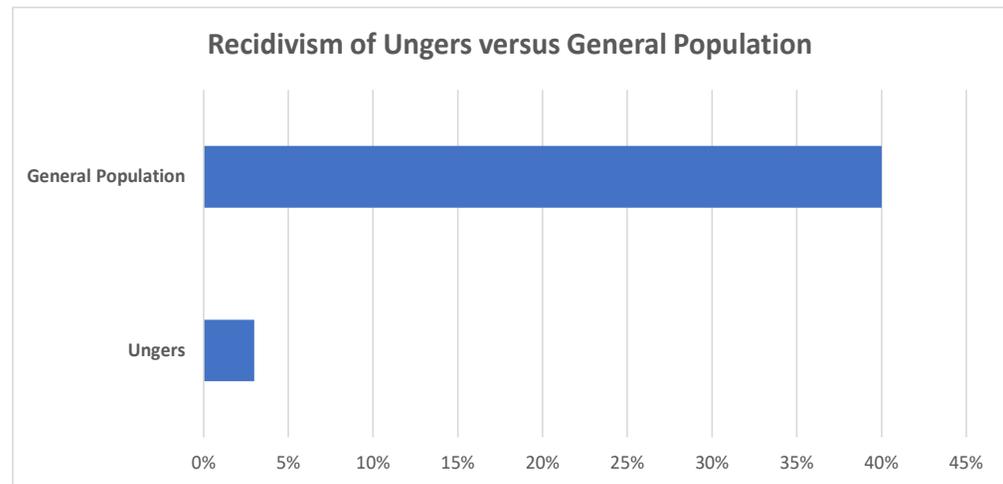
Source: Bushway et al., *Has the U.S. Prison Boom Changed the Age Distribution of the Prison Population?* (2011).<sup>32</sup>



This chart shows the re-arrest rate by age of persons released from the Illinois Department of Corrections to McLean County over the period of 2011-2014. Source: *Bloomington Pantagraph*.

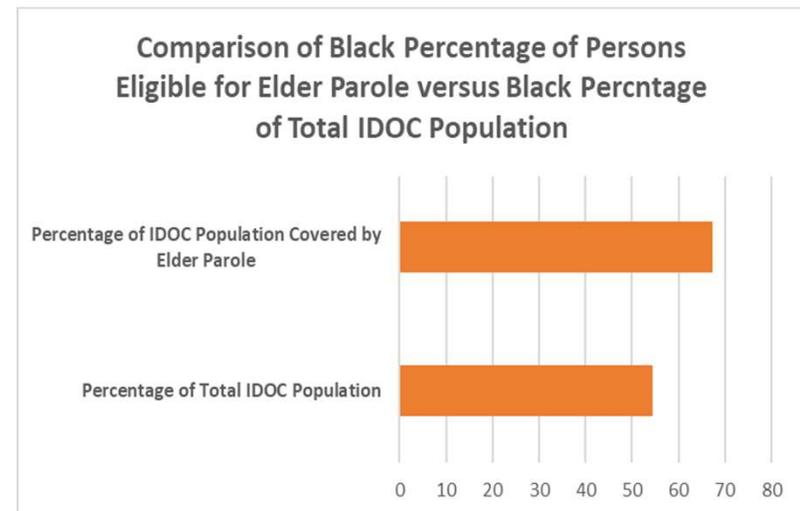
Experience in Maryland shows the low recidivism rate of a group of older persons with life sentences who were released early from prison

- In 2012, in *Unger v. Maryland*, the Maryland Court of Appeals ruled that persons convicted under flawed jury instructions given before 1981 be granted new trials.
- As of March 2020, 199 people, ages 51-85, known as the “Ungers,” who had been sentenced to life for violent crimes, and had been released as a result of the *Unger* decision, had a recidivism rate of 3% versus a recidivism rate for the general prison population in Maryland of about 40%.



## There is a Higher Percentage of Black people in the Group of Persons Covered by the Elder Parole Legislation as opposed to the Total IDOC Population

- The group of incarcerated persons who would be able to apply for parole under the Elder Parole legislation includes a higher percentage of Black individuals than the general IDOC population
- The general IDOC population is 54% Black as opposed to the elder population that would be covered by the legislation, which is 67% Black.



# Procedure for Seeking Parole under the Elder Parole Legislation

- Parole decisions would be based on a showing of reasons why the individual should be paroled, evidence of rehabilitation and remorse, character references and community support for the release, and the individual's plans for housing and employment upon release from incarceration.
- Victims' families would be notified and provided an opportunity to participate at the parole hearing.
- The Prisoner Review Board would make an individualized determination as to whether parole should be granted in each case.

The structure is already in place to provide a parole opportunity for older persons in prison

- Since 1978, the Illinois Prisoner Review Board has acted as a parole board for individuals sentenced before February 1, 1978.
- The Prisoner Review Board continues to hold hearings and rule on parole applications made by these persons.
- The same structure would be used under the Elder Parole legislation to decide, on an individualized basis, which persons should be granted parole.

# The General Assembly Should Approve H.B. 3613



# Credits/Sources

1. Photo by Donald Tong.
2. Photo by QuinceMedia—1031690.
3. Photo by Bich Tran.
4. The Oxford Handbook of Sentencing and Corrections, edited by Joan Petersilia and Kevin R. Reitz, Introduction (2012); “Parole and Early Release” by Office of Program Policy Analysis and Government Accountability (OPPAGA), Report 19-13 (November 2019).
5. Photo by TryJimmy-8789.
6. Data used to calculate Illinois General Population Increase from <https://www.macrotrends.net/states/illinois/population> Illinois Population 1900-2019. Data used to calculate Illinois Prison Population Increase from Illinois Department of Corrections (IDOC).
7. Data from IDOC.
8. Data on actual cost from IDOC. Journal of the American Geriatrics Society Data from Being Old and Doing Time: Functional Impairment and Adverse Experiences of Geriatric Female Prisoners, by Brie A. Williams, MD, Karla Lindquist, MS, Rebecca L. Sudore, MD, Heidi M. Strupp, Donna J. Willmott, MPH, and Louise C. Walter, MD, in Journal of the American Geriatrics Society (April 2006). American Civil Liberties Union Data from At America’s Expense: The Mass Incarceration of the Elderly, by American Civil Liberties Union (June 2012). John Howard Association estimate from Aging prisoners left to arbitrary process to win release, by Emily Hoerner and Jeanne Kuang, published by Injustice Watch (October 2, 2017).
9. Data from IDOC and photo by Truthseeker 08.
10. Data from IDOC.
11. “Eight Keys to Mercy: How to shorten excessive prison sentences” by Jorge Renaud (Prison Policy Initiative, November 2018).

# Credits/Sources (continued)

12. Photo by truthseeker08.
13. *Lippert v. Jeffreys*: First Report of the Monitor, November 24, 2019, Prepared by: John M. Raba, MD
14. *Lippert v. Jeffreys*: First Report of the Monitor, November 24, 2019, Prepared by: John M. Raba, MD
15. *Lippert v. Jeffreys*: First Report of the Monitor, November 24, 2019, Prepared by: John M. Raba, MD
16. "Medicaid 101," by Illinois Department of Healthcare and Family Services;  
[https://www.va.gov/healthbenefits/resources/publications/hbco/hbco\\_basic\\_eligibility.asp](https://www.va.gov/healthbenefits/resources/publications/hbco/hbco_basic_eligibility.asp)
17. National data from Bushway et al., "Has the U.S. Prison Boom Changed the Age Distribution of the Prison Population?" (2011), as found in "At America's Expense: The Mass Incarceration of the Elderly," by American Civil Liberties Union (June 2012); Illinois data from Loyola University's Center of Research, Policy and Practice, as published in Bloomington Pantagraph in "Age, criminal history define recidivism" by Edith Brady-Lunny, March 19, 2018.
18. Data from "Growing old in prison: How Maryland is working to ease the path to release for a low-risk, high-cost population," BY ANGELA ROBERTS - APRIL 30, 2020, Capital News Service, <https://cnsmaryland.org/>
19. Data from IDOC.
20. Proposed legislation.
21. Information from Prisoner Review Board website.
22. Photos (from left to right) by Gustavo Fring, RobinHiggins – 1321953, and Lukas.

**This presentation was prepared by William J. Nissen**

**© 2022 William J. Nissen**