Strategies to Optimize the Use of Compassionate Release From US Prisons

Adults aged 50 years or older constituted 10% of the US prison population in 2012 and 20% in 2017.[1] Many factors have contributed to the aging of the prison population, including reduced judicial discretion (e.g., mandatory minimum sentences, "three strikes" legislation), indeterminate sentencing, and the reintroduction of life without parole.[2] As many incarcerated older adults experience multiple physical and mental health conditions at higher rates than do nonincarcerated persons,[2] prison yards are now peppered with walkers, wheelchairs, and other durable medical equipment. Incarcerated older adults are also vulnerable to predation and often live in environments not designed to meet their physical needs.[3] As a result, older adults generate high costs for overcrowded correctional systems, many of which are ill suited to provide the complex medical care needed for patients of advanced age or approaching the end of life.[2,3]

In response to the aging of the prison population, many jurisdictions have introduced or reinvigorated legal mechanisms to release or parole people with life-limiting illness early to their communities.[4] Nearly all states have some form of early release policies,[4] including medical parole, medical release, and "geriatric" parole, to name a few (all herein referred to as "compassionate release"). Such mechanisms are critical release valves for bloated US correctional facilities and can serve as supportive, human rights–oriented strategies for unifying families at the end of life and transferring persons to community-based health care systems that are better equipped to meet their complex health needs.

Despite the existence of compassionate release policies, a recent analysis paints a bleak portrait of their use.[4] Only 4% of requests in the Federal Bureau of Prisons are granted, and anecdotal evidence points to similarly low rates among many state prison systems,[4] indicating underuse of these mechanisms as an important approach to decarceration. The limited use of compassionate release is driven by numerous systemic barriers at the patient, professional, and policy levels. We describe these barriers and strategies to combat them and promote human dignity and decarceration among this medically vulnerable population.

BARRIERS TO THE USE OF COMPASSIONATE RELEASE

Barriers to the use of compassionate release are multisystemic. These include challenges at the patient, professional, and policy levels.

Patient-Level Barriers

Some persons who are eligible for compassionate release are unaware of the policies or incorrectly believe that they are ineligible.[5] In a survey of medically complex patients across three geographically disparate prisons and jails, 43% of respondents lacked the knowledge necessary to apply for compassionate release, and 75% indicated they would apply if eligible.[5] Limited health literacy and inadequate social support can also pose barriers to applying for compassionate release in the many prisons where formal assistance is lacking.[5] In addition, perceptions that patients distrust correctional health care professionals (whether correct or incorrect) can impair clinicians' engagement in difficult conversations about serious illness and prognosis.[5]

Professional–Level Barriers

Application for, and use of, compassionate release policies is often contingent on having a limited prognosis as established by a physician. However, prognostication is a complex endeavor even for trained professionals.[6] It is common for physicians to overestimate prognosis, and many hesitate to provide a prognosis at all.[6] Fear of litigation may also permeate conversations about life-limiting illness and release, as some clinicians worry about the legal consequences of releasing a person who lives beyond the expected timeframe.[7] Lack of knowledge about serious and terminal illness among parole board members can also pose a barrier if the board does not possess sufficient medical knowledge to understand the trajectory of serious illness.[6]

Profound barriers to discharge planning also exist.[7] Few jurisdictions provide adequate discharge plan development, despite more than half of compassionate release policies requiring that robust plans be in place before release.[4] In addition, difficulty identifying appropriate post-release housing is common, as many long-term care settings are reluctant to accept persons released from prison.

Policy-Level Barriers

Many policy barriers to compassionate release exist,

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including narrow eligibility requirements.[4,6] For example, numerous jurisdictions require patients to be of a certain age or to have served a specified portion of their sentence to qualify. Other jurisdictions may exclude persons based on specific charges.[4] Some states dictate specific prognoses (e.g., having 6 months remaining to live)[4] despite the scientific limitations of precise prognostication.[6] Unclear or profoundly complex application processes and narrow application and appeal deadlines can also impede the process.[4] Political barriers exist, as well. Policymakers' retributive stance and desire to appear "tough on crime"[3] to their constituents may discourage policies and practices that lead to the release of those convicted of crime.

RECOMMENDATIONS TO OVERCOME BARRIERS

Recommendations must be similarly multifaceted to curtail the many barriers to compassionate release. Research, education and training, and policy revision are essential to the promotion of human dignity and decarceration for persons seeking compassionate release.

Enhanced Research and Transparency

Research regarding barriers to the application and use of compassionate release policies is in its infancy. Investigations are needed to understand the drivers of public sentiment on compassionate release, parole board and correctional decision-making, and disparities in release outcomes. Mandated reporting of eligibility, application, and release under these mechanisms also could be an important first step toward better understanding strategies to accelerate and expand compassionate release, as well as to identifying potential disparities in their application (e.g., according to gender and race).[4]

Education and Training

System-wide education and training are essential to increasing widespread use of compassionate release policies. Such interventions should target patients, correctional health care professionals, parole board members, and other key decision-makers in correctional facilities. Although the First Step Act (Pub L No. 115-391; 2018) requires federal institutions to communicate the availability of compassionate release and provide application assistance to patients, parallel efforts are needed at the state level.[4] Eligibility and application information should be included in handbooks and in prison and jail libraries.[4] Correctional health care professionals should also be knowledgeable about their jurisdiction's compassionate release policies and procedures. Efforts to increase public awareness of this issue are also critical, as constituents can shape decision-making through advocacy.

Policy Change

Revising existing policies to include "life-limiting illnesses" or "debilitating" conditions rather than relying on prognostic certainty may help health care professionals feel more comfortable supporting applications for compassionate release.[6] On a policy level, reducing minimum age or years served requirements (e.g., requiring completion of 75% of one's sentence or 10 years, whichever is shorter) would increase access to compassionate release.[6] Removing charge-related exclusions and introducing shorter, time-sensitive deadlines with mandated agency response to reduce delays are also needed,[4] and the availability of pro bono counsel may be required for some patients when administrative outlets have been exhausted.[4]

It is important to note that even with significant policy and procedural changes, many patients will not qualify for release or will not be released in a timely manner. For these patients, it is essential that palliative care be optimized in prisons and that there be a focus on promoting human dignity among those with life-limiting illness in these settings.[2]

CONCLUSIONS

With the rapid aging of the prison population, compassionate release has become an important tool that can be used to achieve a humane, dignity-driven response to mass incarceration. For patients who have a viable release plan for housing and medical care, identifying and overcoming patient-, professional-, and policy-level barriers to the use of compassionate release comprise an important step toward reckoning with and rectifying the harms of mass incarceration and are critical to advancing a rational public health approach to the care of an aging prison population. AJPH

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The authors have no conflicts of interest to declare.

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