



SCHOOL OF LAW
THE UNIVERSITY OF TEXAS AT AUSTIN

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September 30, 2020

House Committee on Appropriations - Subcommittee on Article V
Texas House of Representatives
Sent via e-mail to Appropriations@house.texas.gov

Re: ART 145 / Interim Charge #6

Dear Chairman Longoria and Subcommittee Members:

We are writing in response to the Request for Information to offer input on **Interim Charge #6: Examine the major cost drivers within and the impact of funding provided to the Correctional Managed Health Care program.** We write to provide information based on our ongoing research relating to elderly prisoners.

1. The elderly prison population, which has grown rapidly, has costly medical needs

The elderly population in United States prisons has risen rapidly. The number of people 55 or older in state and federal prisons increased by almost 280% between 1999 and 2016.¹ In 1993, prisoners age 50+ made up 5.3% of total prison population; by 2013, they had grown to comprise 18.4%.² This growing population has increased medical needs, costing two to three times more than other prisoners.³ For example, elderly prisoners are more likely to “experience dementia, impaired mobility, and loss of hearing and vision.”⁴ In addition, prisoners age 50+ are three times as likely as younger persons to report having had a chronic condition or infectious disease.⁵ High blood pressure, diabetes, arthritis and heart problems are among the most common medical problems for prisoners, and they can require costly diagnosis, medication, and regular monitoring.⁶ Moreover, elderly prisoners may need wheelchairs, walkers or canes, and they are more likely to suffer falls resulting in costly hip fractures.⁷ States have even had to

¹ Matt McKillop & Alex Boucher, *Aging Prison Populations Drive Up Costs*, 2018, <https://www.pewtrusts.org/en/research-and-analysis/articles/2018/02/20/aging-prison-populations-drive-up-costs>.

² Bureau of Justice Statistics, *Aging of the State Prison Population, 1993-2013*, May 2016, at 4, <https://www.bjs.gov/content/pub/pdf/aspp9313.pdf>.

³ B Jay Annot et al., *Correctional Health Care: Addressing the Needs of Elderly, Chronically Ill, and Terminally Ill Inmates*, U.S. Department of Justice, National Institute of Corrections, 2004.

⁴ Pew Trusts, *Prison Health Care: Costs and Quality*, October 2017, at 27, https://www.pewtrusts.org/-/media/assets/2017/10/sfh_prison_health_care_costs_and_quality_final.pdf.

⁵ Bureau of Justice Statistics, *Medical Problems of State and Federal Prisoners and Jail Inmates, 2011-12*, Feb. 2015, at 5, [bjs.gov/content/pub/pdf/mpsfpi1112.pdf](https://www.bjs.gov/content/pub/pdf/mpsfpi1112.pdf).

⁶ *Id.* at 6.

⁷ Human Rights Watch, *Old Behind Bars: The Aging Prison Population in the United States*, 2012, <https://www.hrw.org/report/2012/01/27/old-behind-bars/aging-prison-population-united-states>.



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retrofit and modify facilities to ensure the physical safety of elderly inmates.⁸ With greater medical needs, elderly prisoners pose higher health care costs to the state.

At the same time, elderly prisoners are far less likely to pose a public safety risk. A 2017 report from the United States Sentencing Commission found that the risk of recidivism reduces drastically after age 55, noting that “13.4 percent of offenders age 65 or older at the time of release were rearrested compared to 67.6 percent of offenders younger than age 21 at the time of release.”⁹ Earlier studies likewise concluded that prisoners age 50+ are far less likely to return to prison for new crimes, compared with younger persons.¹⁰

Texas’ numbers mirror these national trends. Between 2012 and 2019, the Texas Department of Criminal Justice’s (TDCJ) inmate population over the age of 54 increased by 65%, notwithstanding TDCJ’s overall 3% population decline in this same period.¹¹ And TDCJ’s health care costs matched this growth, increasing 53% in this same time frame.¹² Today, individuals aged 55 and older constitute one-eighth of TDCJ’s overall prisoner population and account for almost a half of TDCJ’s hospitalization costs, which exceeded \$750 million in 2019.¹³ And as TDCJ’s inmate population continues to age, so too will medical costs associated with age and increased illness, more than wiping out any potential cost-saving measures, such as increased use of telemedicine and the use of discounted medications implemented by TDCJ’s health-care providers.

Posing low criminogenic risk but needing costly medical care, prisoners age 50+ are ideal candidates for release through parole and compassionate release. If the state were to fully utilize available mechanisms and create new mechanisms for granting elderly inmates release, the state could significantly reduce correctional health care costs.

⁸ Michael Ollove, Pew Trusts Stateline, *Elderly Inmates Burden State Prisons*, March 17, 2016, <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2016/03/17/elderly-inmates-burden-state-prisons>.

⁹ United States Sentencing Commission, *The Effects of Aging on Recidivism Among Federal Offenders*, 2017 https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171207_Recidivism-Age.pdf

¹⁰ ACLU, *At America’s Expense: Mass Incarceration of the Elderly*, June 2012, at 21-25, https://www.aclu.org/files/assets/elderlyprisonreport_20120613_1.pdf.

¹¹ It is worth noting that not only is TDCJ’s inmate population aging overall, but the percentage (and absolute number) of inmates who fall in the oldest age category (60+ years) is increasing the fastest, growing from 4.3% in 2012 to 7.3% in 2019, and with the average age of the entire TDCJ population increasing from 37.8 years to 39.1 years in this same 8-year time frame. See TDCJ Statistical Reports (2012 – 2019), available on the TDCJ website at <https://www.tdcj.texas.gov/>.

¹² Matthew Clarke, *Texas Prison Health Care Costs Record High Despite Population Reduction*, May 1, 2020, <https://www.prisonlegalnews.org/news/2020/may/1/texas-prison-health-care-costs-record-high-despite-population-reduction/>.

¹³ Davis Rich, *Prison health care costs are higher than ever in Texas. Many point to an aging prison population*, Nov. 25, 2019, <https://www.texastribune.org/2019/11/25/texas-prison-health-care-budget-parole/>.



2. Broader use of MRIS for the elderly would result in more releases and help reduce medical costs without risk to public safety

Utilizing Medically Recommended Intensive Supervision to increase parole for elderly inmates would drive down correctional healthcare costs without posing risk to public safety. Medically Recommended Intensive Supervision (MRIS) is a program established by the 72nd Legislature and amended by the 80th Legislature that allows for early parole review of certain categories of offenders, including those with mental impairments and IDD, the elderly, terminally ill, or physically handicapped.¹⁴ The Legislature established MRIS with the goal of reducing the number of state prisoners who were elderly or had mental or physical handicaps.¹⁵ However, MRIS does not apply to those serving sentences of death or life without parole, to violent offenders, and to those who used a weapon as part of their offense, as provided under Article 42A.054 of the Code of Criminal Procedure.¹⁶

To be a candidate for MRIS, a person must either be referred directly by their facility's Unit medical or mental health staff, make a written request themselves, or receive an "external" referral from family members, social service agencies, elected officials, or others.¹⁷ The candidate then has their eligibility reviewed by the MRIS Program Supervisor based on the statutory condition and offense criteria. Next, a request is sent to their Unit medical or mental health staff for a medical summary, if they were not the original source of the reference.¹⁸ The MRIS medical screening documents used in this process do not mention age, and instead focus solely on medical diagnoses.¹⁹ This emphasis on serious medical diagnoses in screening impedes MRIS candidates from seeking or obtaining release on the basis of age.

If an individual is deemed eligible after screening, the Correctional Office will create a "parole case summary," notify victims services, and complete any additional screening before sending all information collected to the Texas Board of Pardons and Paroles MRIS Panel.²⁰ The Board ultimately determines whether to grant MRIS parole, except for those with state jail felonies, who will be reviewed by the sentencing judge. An MRIS decision includes a recommendation regarding the threat to public safety; an approval or denial of MRIS; and any

¹⁴ Texas Department of Criminal Justice Parole Division, *Medically Recommended Intensive Supervision PD/POP-2.2.5*, 2018, https://www.tdcj.texas.gov/documents/pd/02.02.05_parole_policy.pdf

¹⁵ Ethridge PA, White TG. *The Use of Medically Recommended Intensive Supervision (Medical Parole) in Texas*. J Correct Health Care. 2015 Oct; 21(4):375-89.

¹⁶ See Texas Government Code Section 508.145.

¹⁷ Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI), Department Guidelines PGP 01.04, June 2020, https://www.tdcj.texas.gov/documents/rid/TCOOMMI_PGP_0104_MRIS.pdf

¹⁸ Id

¹⁹ Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI), *Medically Recommended Intensive Supervision Screening Form*, July 2019, https://www.tdcj.texas.gov/divisions/cmhc/docs/cmhc_policy_manual/A-08.06_Attachment_A.pdf

²⁰ FAMM, *Compassionate Release – Texas*, https://famm.org/wp-content/uploads/Texas_Final.pdf



additional special conditions that will be imposed on the prisoner, outside of the general condition that MRIS parolees remain under suitable medical supervision.²¹

In 2019, although 2,803 inmates were screened for MRIS eligibility, only 196 were presented to the Texas Board of Pardons and Paroles. The Board awarded MRIS parole to 76 individuals.

The emphasis on serious medical diagnoses in MRIS screening and in BPP deliberations has deterred the release of MRIS candidates based on their age. Although MRIS applies to the elderly, defined in the policy as 65 years or older,²² the Texas Board of Pardons and Paroles 2019 Annual Statistics Report shows that between 2015 and 2019, not one single person obtained MRIS release under the category of “elderly.”²³ Rather, in recent years, all MRIS releases are based on medical diagnosis. If TDCJ and BPP broadened the screening and review criteria to allow for MRIS release based on age, without requiring particular medical diagnoses or disability, the use of MRIS would result in increases releases of persons age 50+ without any additional risk to public safety.

The Legislature can and should clarify that MRIS should be used to release elderly prisoners, without requiring the presence of particular medical diagnosis or disability.

3. Expanding MRIS eligibility to individuals convicted of aggravated offenses will allow for broader use of MRIS and help reduce medical costs

In Texas, an individual’s eligibility for parole depends in part on the offense committed.²⁴ State law provides that people who are convicted of so-called “non-aggravated” offenses become parole-eligible when they have served actual calendar time plus good conduct time equaling 25 percent of their sentence or 15 years (the lesser of the two).²⁵ On the other hand, individuals who are convicted of “aggravated offenses” on or after September 1, 1993 must serve a minimum of 50 percent of their sentence before becoming parole-eligible.²⁶ “Aggravated offenses” are certain offenses set out in Texas law that carry higher penalties upon conviction.²⁷ Additionally, a person convicted of an aggravated offense is only eligible for MRIS consideration if they have been diagnosed with a medical condition of terminal illness or long-term care.²⁸

²¹ *Id.*

²² Correctional Managed Health Care Policy Manual, Medically Recommended Intensive Supervision Screening 2018, https://www.tdcj.texas.gov/divisions/cmhc/docs/cmhc_policy_manual/A-08.06.pdf

²³ *Id.*

²⁴ See Texas Government Code Section 508.145.

²⁵ *Id.*

²⁶ *Id.*

²⁷ Texas Code of Criminal Procedure Art. 42A.054.

²⁸ Texas Department of Criminal Justice Parole Division, “Answers to Common Questions,” 2019, at 9, https://www.tdcj.texas.gov/bpp/publications/PIT_English.pdf.



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The Legislature can and should expand MRIS eligibility on the basis of “elderly” status alone for individuals convicted of aggravated offenses, without requiring medical diagnoses. This would result in broader use of MRIS for elderly inmates. Since elderly inmates pose low criminogenic risks,²⁹ expanding MRIS eligibility to elderly individuals convicted of aggravated offenses would reduce medical costs without incurring any risk to public safety.

4. Expanding MRIS eligibility to individuals convicted with life sentences will allow for broader use of MRIS and help reduce medical costs

Currently, MRIS is not available for those serving a sentence of death or life without parole.³⁰ The exclusion of inmates serving life sentences limits the effectiveness of MRIS to reduce correctional healthcare costs. The Legislature should allow elderly inmates serving sentences of life without parole to show that they do not pose a risk to public safety to the BPP. Expanding MRIS eligibility to those serving a sentence of life without parole would reduce correctional medical costs while still protecting public safety.

5. Conclusion

To reduce healthcare costs, the state can and should expand the use of MRIS for elderly inmates. We urge the committee to recommend to the 87th Legislature these reforms:

1. Clarify that MRIS eligibility extends to inmates, on the basis of “elderly” status alone, without requiring medical diagnoses or disability.
2. Expand MRIS eligibility to persons who were convicted of aggravated offenses, on the basis of “elderly” status alone.
3. Expand MRIS eligibility to persons serving a sentence of life without parole.

As set forth above, these reforms will lower healthcare costs, improve rehabilitation, and promote public safety. Thank you for allowing us to provide this research information.

Sincerely yours,

Handwritten signature of Emily Johnston.

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²⁹ United States Sentencing Commission, “The Effects of Aging on Recidivism Among Federal Offenders,” 2017 https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171207_Recidivism-Age.pdf

³⁰ See Texas Government Code Section 508.145.(a)



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