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A Long and Pricey Road to Freedom for New York's Aging Prisoners

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A long and pricey road to freedom for New York’s aging prisoners

Two supporters of Judith Clark at a “Candles for Clemency” vigil outside Gov. Andrew Cuomo’s residence in Mount Kisco, NY on Saturday September 17, 2016. Clark, 66, has been serving a 75-years to life sentence since 1983 for driving a getaway car into Brink’s armored truck as part of a robbery, which resulted in the death of a Brinks guard and two police officers, according to court documents. Photo by Khorri Atkinson/NYC News Service

Robert Seth Hayes checks in with his daughter, Crystal by phone every weekend about her studies at the University of Connecticut, his 10 year-old granddaughter, Myaisha and how he’s coping with his life-threatening health conditions. They live about 140 miles away from each other and in completely different worlds. Crystal is a social work doctoral candidate and Hayes has been number 74A2280 at the Sullivan Correctional Facility in Fallsburg for the past 42 years.
Hayes is currently serving a 25 years to life sentence for the shooting death of a New York City Transit Police Officer in 1974. He was 23 years-old at the time of his conviction.

“It’s difficult. We may talk, but it’s difficult,” Crystal said of the fact of not growing up with her father, who got locked up when she was two-years-old. “He’s in prison but he tries to be around.”

The transit officer was attempting to detain two people at a transit station in the Bronx, according to legal records. Over the years, Hayes, now 68-year-old, has been suffering from Hepatitis C and Type II diabetes, and last month he had diabetic como, his daughter said.

“When I look at it and I think about how stupid it was…just foolishly engaging in things and consequences of those actions were devastating,” Hayes told New York Parole Board members last June seeking early release, according to a transcript of the hearing. He condemned his actions, saying it was “irresponsible, immature and lack[ed] intelligence.” During the hearing, a parole board member pointed out that he, Hayes, has a defibrillator implanted in his chest to prevent a cardiac arrest.

Over the past decade, the New York State legislature has passed reforms to try and reduce the mandatory prison sentences of nonviolent drug offenders. Under the 2004 Drug Reform Act, the maximum prison sentence for someone with possession and intent to sell drugs was cut from 25 years to nine. And a 2009 law ended mandatory sentence for some drug felonies and expanded treatment programs and other alternatives to incarceration, which resulted in the closure of 13 prisons.

But the stories of those who are in and have been through New York’s prison system, suggest that reform is still dragging slowly. Early release programs, such as commutation, pardon and parole, tend to shy away from people serving decades in prison for violent crimes because of the lingering tough-on-crime era. The sentencing policies and healthcare costs continue to have lasting consequences for inmates, their relatives and taxpayers. [A pardon removes a conviction, commutation of a sentence makes someone eligible for parole at an earlier date or grants immediate release.]

Hayes is one of the more than 10,000 elderly inmates – defined as those over 50 – in New York’s prison system. Even though statistics show that recidivism rates plummet as offenders age, New York’s aging prison population has grown from 2,002 in 1990 to 10,140, according to records obtained from the Department of Corrections and Community Supervision. The entire prison population is 51,744.
“I think this problem, referred to as mass incarceration, has gone beyond that description,” Mujahid Farid, 67, a former inmate, who now advocates for the release of aging inmates through his organization called Release Aging People in Prison, or RAPP, said in a recent phone interview. “We know that the aging prison population is the lowest of risk to recidivism so this is something that should be of major concern. We just can’t incarcerate people and expect that the underlying problem will be solved.”

Farid served 33 years for the attempted murder of a New York City Police Officer in 1978 and started RAPP in 2011, the same year he got release on parole. Until more aging inmates are released either through clemency and parole, the state would have to spend millions — especially on those who’ve developed conditions that require medical care, he added.

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Number of People In Custody</th>
<th>Inmates Over Age 50</th>
<th>Percent Age 50+ of Total</th>
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<tr>
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<td>10.8%</td>
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<tr>
<td>2015</td>
<td>52,344</td>
<td>10,140</td>
<td>19.4%</td>
</tr>
</tbody>
</table>

Table created by Khori Atkinson based on from the Department of Corrections and Community Supervision.

A DOCCS spokesman said the average cost per inmate each year is $60,000, but added that the agency does not have a breakdown of the cost of housing an inmate by age.
The state agency, which oversees New York’s 55 correctional facilities, provides healthcare for everyone in the prison system. It has five ‘Regional Medical Units,’ which an official labeled as “our highest level of care.” [Officials said inmates in the general population also receive medical care at the units.]

The agency said it opened its first health care unit—Walsh Regional Medical Unit—within the Mohawk Correctional Facility, in 1991. The others were opened in 1996, 1998, 2002 and 2003, the spokesman said in an email. According to report from the agency, the state allocated $33 million in 2011 to expand Walsh, which is located at the Mohawk Correctional Facility in Oneida County. The expansion of the state’s largest medical unit for inmates created an additional 38 beds [150 in total] and more resources to aide aging and gravely ill inmates.

The agency did not respond to request about the cost to open all five facilities or the agency’s annual healthcare budget. But according to its website, the agency’s health care budget fiscal year 2012-13 was $340,000,000.

But nationally, prison health care spending totaled $7.7 billion in 2011 – down from a peak of $8.2 billion in 2009, according to a July 2014 report, the most recent, by The Pew Charitable Trusts. The report said that a “steadily aging prison population is a primary challenge that threatens to drive costs back up.”

At the Bedford Hills Correctional Facility, a maximum-security correctional facility for women located in Westchester County, Judith Clark, 66, is serving a 75-years to life sentence since 1983. On Oct. 20, 1981, the 32-year-old woman drove a getaway car into Brink’s armored truck in Nanuet, New York as part of a robbery, which resulted in the death of a Brinks guard and two police officers, according to court documents.

Over the years, Clark has been leading educational programs for other prisoners, legal documents show. She also earned a Bachelor's degree in Behavioral Sciences, a Masters Degree in Psychology and has taught prenatal parenting classes for pregnant women in prison.

“There are countless programs she has done and help facilitate,” Clark’s attorney, Steve Zedman, said in a phone interview, adding that his client is a classic example of the type of inmate that should be not be in prison.

“There are a lot of people like Ms. Clark who have done remarkable things,” he said. “But what this [prison system] is about is punishment. It is costing millions upon millions of dollars and these are folks have no threat to public safety. If they are not a threat why
aren’t they out. That’s why I mention it’s all about punishment and it’s about time that equal consideration of mercy. It’s a moral thing to do.”

Clark’s legal team has been applying for clemency since 2011, but Gov. Andrew Cuomo has denied it every year, Zeidman said. They weren’t told why.

Zeidman and advocates say more attention should be given to people who committed violent offenses but have made efforts to rehabilitate themselves.

“We’re hopeful,” Zeidman said of Clark, whose clemency application is pending. She won’t be eligible for parole until 2056 when she’s 107. “Her application is full and robust as anyone could prepare. I hope she will walk free after all these years.”

Among New York’s criminal justice reform advocacy circles, the governor has been criticized for not adequately exercising his clemency power - a privilege state law and the constitution give him. Cuomo, who took office in 2011, has granted eight pardons and commuted three prison sentences between December 2013 and 2015. Only two included aging inmate – Lydia Garcia Ortiz, 71 and Joseph Wilson, 66, in 2015. Ortiz, whose sentence was commuted, was sentenced to 25 years for trafficking an estimated $5 million of cocaine from New York City to Rochester, where she lived. Ortiz got released last December after serving 12 years. Wilson, on the other hand, was pardoned after being convicted in 2006 for criminal possession of a controlled substance in the seventh degree, resisting arrest and obstructing governmental administration.
Responding to critics, Alphonso David, Cuomo’s legal counsel, said in a recent phone interview that “criticisms are just misinformed and misplaced because [critics] might not be aware of the steps the governor is taking.”

“He is the only governor in the country who has launched a public-private partnership with bar associations and legal organization to provide free legal services to people who are seeking clemency,” he said, in response to a ‘Pro Bono Clemency Program’ Cuomo started last year to assist inmates with their applications.

“We’re looking at specific populations to grant clemency to, specifically looking at domestic violence victims, looking at individual who are elderly in prison but has demonstrated evidence of rehabilitation,” David added. It’s still unclear when the first set of applicants will get released under this program.

In the meantime, relatives like Soraya Smith 57, is hoping that her sister, Roslyn, will get clemency soon, pointing to her institutional accomplishments.

Roslyn, 54, is currently serving a 50 years to life sentence at Bedford Hills Correctional Facility for two second degree murder charges and a first degree for robbery that she and her companion committed in 1980. She was 17 years-old at the time of her conviction, according to court documents. Since then, Roslyn has earned a college degree, trained dogs for the blind and mentor other prisoners, Smith said.

“She said she’s guilty of being there. It’s a rough live in there but she’s making the best use of it,” Smith said of her sister, who had told her that ‘you have to help me transition when I get out.’

“She’s hopeful that she will get clemency and I am. When you grow up you have to make it or break it. She’s setting an example to others. She’s letting younger [inmates] know that this is not where they want to be. It’s time for her to get out,” Smith added.

**Calls for Parole Reform**

When aging inmates—even ones with severe health conditions—are eligible for parole, it doesn’t necessarily means that he or she would get it right away or at all. The stories of those who've before the parole board up to a decade, suggest that members tend to focus
entirely on the nature of the crime committed rather than the inmate’s institutional accomplishments and readiness for society, according to advocates who has been calling for legislative reform.

Seventy-year-old John Mackenzie was eligible for parole in 2000. In 1975, he was sentenced to 25 years to life for fatally shooting a police officer following a burglary he carried out, according to court records. He spent his 41 years in prison trying to rehabilitate himself, his attorney Kathy Manley said, by earning three degrees – a Bachelor’s of Science in Business Administration, Associate of Arts, Science, and Bachelor’s of Science in Business Administration, respectively, according to documents. He had also participated in various prison programs, such as mentoring younger prisoners.

After being denied parole at his ninth hearing in 2015, Mackenzie filed an administrative appeal, which State Supreme Court Judge Maria Rosa supported. She ordered a new hearing, saying the board violates a 2011 executive law that requires it to not consider the nature of the crime, but factors such as participation in rehabilitative programs and readiness for society. Judge Rosa had even ordered that none of the parole board members from the 2014 or 2015 hearings should participate in Mackenzie’s new hearing, according to court documents.

“It is undisputed that it is unlawful for the parole board to deny parole solely on the basis of the underlying conviction,” she wrote in her ruling. “Yet the court can reach no other conclusion but that this is exactly what the parole board did in this case.”

Around 6 a.m. on Thursday, August 4, a correctional officer at the Fishkill Correctional Facility found Mackenzie dead, with a sheet tied to a window and around his neck. It happened just nine days after being denied parole for the tenth time.

“It was taking a toll on him. He just couldn’t do it anymore. I thought we were winning. It was devastating. I cried a lot and was so angry,” Manley said with a loud sigh. She has been working as his pro-bono attorney since 2013.

“They [the parole board] certainly didn’t recognize the efforts he made [to change himself],” Manley added. “A lot of persons from the inside look at John as a mentor. He’s well loved. Many of them have written tributes to me about him John.”

And like Mackenzie, Farid, the RAPP founder, appeared before the board ten times and was denied each time because of the nature of his crime.
“I had great expectations of being released because I completely turned my life around. At that time, I completed four college degrees, I've been responsible for creating programs [for inmates] and all of this happened prior to my first parole board hearing in 1993,” Farid said in a recent phone interview. “They denied me year after year, but I didn't feel like I was wasting my time. Making it to the parole board wasn't my main objective by engaging in the things I did.”

DOCCS spokesperson Tom Mailey, said the parole board does not make its final decision solely on the nature of the crime. It uses a risk-assessment tool the state adopted in 2011 called COMPAS, which measures an inmate’s risk of reoffending.

Under the risk-assessment tool, inmates complete a 63-item assessment form, which includes their criminal history, mental health status, education background and conduct in prison, etc., before appearing before the parole board. And they would also answer questions regarding financial management, institutional achievements and family support. They are assigned scores from one to 10 based on their answers. Hypothetically, the lower their score, the lower the risk to commit new crimes.

“The Board must consider statements made by victims and victim’s families, consider an inmate’s criminal history, institutional accomplishments, potential to successfully transition back into the community, and perceived danger to public safety,” the spokesman said.

However, Robert Dennison, who served on the parole board as chairman and commissioner between 2000 and 2007, said the board does tend to focus more on the nature of the crime committed rather than institutional accomplishments.

“It’s the [violent crime] that puts them in prison so the board feels that because most of the crimes are very, very serious, this is what they should focus on most importantly, more than what a person does to help themselves in prison,” Dennison said in a phone interview. “Many board members feel that…even if they take a million programs and do well in the programs, they cannot undo what they did.”

Dennison added that Executive Law Section 259-I, which has factors the independent body should take into consideration prior to making any final determination, allows the parole board to “add more weight” to the nature of the crime committed.
“The law permits them to do that...so it’s perfectly legal what they’re doing,” he said. “I think there’s no sense [for COMPAS] because many board members don’t care what the person’s COMPAS score [is].”

The governor proposed rules in October that requires the parole board to consider an inmate’s age at the time of the crime, risk and institutional accomplishments in a decision. The DOCCS spokesman said the proposed regulations seek a more robust use of COMPAS while requiring parole board members to provide more detailed explanations of why they didn't consider someone’s COMPAS score.

“Opening up the Parole Board's decision making and instituting these new commonsense guidelines will help ensure the work of those trying to rehabilitate their lives does not go unrecognized, and that those who still present a public threat remain behind bars,” Cuomo said in a statement at the time of his announcement.

When Hayes appeared before the parole board last June for the 10th time, parole board members grilled him about the crime he committed and what led him to do it. But they lauded him for “being open and honest” with them, expressing remorse and his rehabilitation efforts, according to a transcript of the video-conferenced hearing.

“I’ve listened carefully and you, you know, you have accomplished a lot in prison over the years,” one member said, later pointing out that Hayes’ hasn’t had a disciplinary report since 1999, has gained 60 college credits and two businesses in Buffalo offered him paid work if released.

“Your COMPAS risk assessment has you low where I would like to have someone be… So I see you’ve also done all of your programming and you have no programming left to take,” according to the transcript of the hearing,” another board member said, according to the transcript. “Now you have been working with some of the inmates and as a matter of fact there was even a letter from one of the inmates that said you kind of helped him screw his head on correctly because he had it a little off, and I wanted to, you know, state that.”

Still, the parole board rejected Hayes’ application, citing the nature of the crime he committed as their reason. They said his release “would be incompatible with the welfare of society. … You targeted police. Police officers are the last line of defense in a civil society.”

Hayes 11th parole hearing is slated for June 2018. He will be 70-years-old.
“He’s been model for prisoners. Why do we keep somebody who has done everything you required them to do,” said Crystal, 42, Haynes’ daughter, said in a recent phone interview. “They have the lowest recidivism rate out of everybody. We have an aging prison population that is really expensive and it’s not humane to keep people in prison who don’t belong there.”

Cases like Hayes’, Mackenzie’s and Clark’s is the core reason why prison reform advocates are fighting to reform the entire system, Farid and the attorneys said. Until then, they expect more stories like these being commonplace with the long stretches of parole and clemency denials.

“There's certainly hope. Folks like me that is representing people looking get clemency have to hold that hope. Obviously people are anxious and nervous that nothing is going to happen, but we we have to maintain hope,” said Zeidman.