Expert Witness Testimony on
S. 207: An Act Relating to Compassionate Release and Parole Eligibility

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Dear Senators Flory, Balint, and Committee Members,

Thank you for the invitation to testify on the legislative bill, S. 207, which is designed to establish a judicial procedure for compassionate release and parole eligibility for the aging and seriously ill in prison. Our organization, *Be the Evidence*, represented by Drs. Tina Maschi and George Leibowitz, support this bill because it seeks to reestablish justice and fairness in the criminal justice system. This bill is especially important because many incarcerated individuals are vulnerable and marginalized populations. They include older people, persons with disabilities and terminal illnesses, and those individuals serving long terms sentences often as a result of stricter and punitive sentencing policies that resurfaced in the 1980s during the 'get tough on crime' era. Specific to Vermont, the individuals that we are referring to are represented within a total inmate population of 2062 of which about 16% (or 332) are aged 50 and older. More specifically, 12% (or 253) are aged 50-59 and 4% (or 79) are aged 60 and older (Vermont Department of Corrections [VT DOC], 2015).

It is our position that incarcerating older persons with chronic, serious, and terminal health and mental health issues in prison, especially with long-term sentences, is a form of cruel and inhumane punishment. Our position is consistent with the Vermont Department of Corrections mission to provide "quality services and continuous improvement to justice involved individuals while respecting diversity, legal rights, and human dignity, and productivity" (VT DOC, 2015, p. 2).

The reasons we support this bill is because it:

(1) places legal decision-making with impartial judges in the court system as opposed to parole board members who have been under scrutiny for extreme use of parole and compassionate release denials;
(2) establishes a set of procedures in which a person (or a surrogate) can petition the courts for a fair hearing for release based on a number of factors including age, health and mental health status, and length of sentence served;
(3) is nondiscriminatory since it addresses special populations and issues, such as the elderly, persons with disabilities and terminal illnesses, incarcerated people who are deemed a low risk to public safety, and individuals who have served lengthy prison terms for violent and/or sex offenses; and
(4) fosters transparency and accountability on the part of the criminal justice system, especially the courts and corrections, to adopt more evidence-based decision-making and sentencing practices. It also provides a mechanism to address the unintended consequences of a large number of people in Vermont and other states who are older and in many of the cases frail and dying.

Why is it Important that this law addresses age, physical and mental health, and criminal justice histories?
In short, largely because it addresses both chronological and biological aspects of aging among people in prison.

Age and Health Status: Research shows a high level of serious physical and mental health problems that increase with age in the prison population (e.g., ACLU, 2012; HRW, 2010; Maschi, Viola, & Sun, 2012). These problems include, lung and heart disease, cancer, and dementia (e.g., Maschi, Kwak, Ko, & Morrissey, 2010). Their incapacitation based on their physical and mental health condition (especially as their disease progresses), places them at an extremely low risk for being a danger to public safety (Maschi, Kalmanofsky, Westcott, & Pappacena, 2015). The health status of the Vermont prison population is a significant area of

concern that needs to be addressed. According the the Vermont Department of Corrections 2015 Fiscal Report, in 2015 there were 4,997 chronic health care services. In 2014, there were 14,172 chronic health care services provided. Among Vermont's prison population, 64% of inmates are on medication and 33% are on psychotropic medication (VT DOC, 2015).

Evidence on biological versus chronological aging in a prison population also supports the need for such a bill as S .207. Research suggests that older people in prison experience an accelerated aging process. That is, an individual who is chronically aged 50 has the health status of a community counterpart who is 60 or 65 years old. This accelerated aging process is commonly attributed to the high risk personal histories of individuals prior to prison, such as poor health habits or substance abuse, traumatic brain injury, or minimal access or use of health care services. However, another factor that contributes to accelerated aging is the stressful and unhealthy conditions of confinement, such as overcrowding, daily violence, and lack of access to light and high nutrition foods. Therefore, aged 50 to 55 is generally considered 'older' or 'elderly' in prison because their biological age is 10-15 older than their chronological age. S. 207 accounts for this age discrepancy by addressing both the age and health status of the individual who may petition the court for release (Maschi, Viola, & Sun, 2012).

Age and recidivism is an important consideration. Research suggests that adults aged 50 and older have a recidivism rate of 1-5%. These findings suggest that releasing someone based on their age of 50 and older, more than likely poses a low risk to public safety (e.g., Maschi & Koskinen, 2015). It also underscores the need for the use of risk assessment tools that appropriately weight older age as a low risk category.

Offense History: Research suggests that the risk of recidivism is lower among older people compared to younger people, including those with sex and violent offense histories (e.g., Levenson & Shields, 2012). In 2014 in Vermont, about 63% of the male population and 40% of the female population are serving time for violent offenses (VT DOC, 2015).

Individuals aged 50 and older who committed a sexual offense (12%) are 50% less likely to recidivate than individuals who are younger (26%) and committed other types of offenses at release (35%; Levenson & Shields, 2012). Individuals who committed a violent offense generally commit one crime and do not repeat a pattern of violence. Moreover, after 5 years in the community offense-free, risk declines by half, and after 10 years by half again. Increased age is a protective factor against future offending, regardless of age at which the offense occurred, age at sentencing, or age at release from incarceration (Zobga et al., 2012). Additionally, data from older offenders (N=3,425) showed lower Static-99 scores than younger offenders, and the implications of this research is that evaluators using Static-99 (a commonly used risk sex offense risk assessment instrument) should consider advanced age in their overall estimate of risk (Hanson, Morton, & Harris, 2006). In our recent study assessing differences in trauma and coping among sex offenders, non-recidivists were significantly older, and had a greater capacity for social and physical coping underscoring the importance of understanding the intersection of trauma, mental health and increased risk for recidivism among older sex offenders (Leibowitz and Maschi, in press)

A *strength of the proposed law (S. 207)* is that *it does not discriminate based on static factors*, such as the *'nature of the crime'* or offense histories. Based on our research on the aging and seriously ill in Vermont prisons (Maschi & Leibowitz, in press), we found that many older women in prison who have committed violent offenses reported being victims of domestic violence and committed a crime in self defense. These findings suggest that there often are mitigating factors that lead a person to commit a one-time violent offense. A strength of this law is that it provides a built-in safety mechanism by taking into account serious or

violent disciplinary infractions in prison to assess whether violence is a patterned behavior. That is, it uses a dynamic factor of recent violence to assess risk level prior to release.

Sentence Length: Many adults in prison who have served ten years or more were subject to stricter sentencing guidelines to serve mandatory minimum sentences (ACLU, 2012). This law gives the opportunity for individuals 55 or older with chronic health issues who poses minimal risk of recidivism to be eligible for prison release. In 2014, Vermont there are 155 individuals who are sentenced to life (VT DOC, 2015). This number has more than doubled in ten years (VT DOC, 2015).

How does S. 207 measure against recommended human rights guidelines?

Be the Evidence's, Aging in the Criminal Justice System Project, has conducted research and issued reports on the aging prison population for over ten years. More specifically, we released a report that reviewed state and federal laws that facilitated the release of aging and seriously ill individuals in prison. We developed a checklist to assess the extent to which these laws followed a human rights guidelines (See Appendix Table 1A). Applying this checklist to S. 207, we found that in its current form, it addresses key components of the following human rights guidelines: dignity and respect of the person, nondiscrimination and special population considerations, transparency, participation, and accountability.

Recommendations

As part of our support of S. 207, we offer these recommendations to include in the bill:

1. Add a monitoring provision to assess the barriers and facilitators to the successful implementation. [*Given what we already know about existing compassionate and geriatric release laws, there are often barriers to their effective use which often leads to countless numbers of people dying unnecessarily in prison].*
2. Add language that more clearly defines treatment or program completion, and allow a provision that if an individual is waitlisted, their petition to the court may still be considered.
3. When assessing geriatric sexual offenders, and those with serious health issues, evidence-based risk assessment tools should be utilized, with consideration to both static (fixed, historical factors) and dynamic (changeable) risk factors.
4. As shown in Table 1 in the Appendix, additional provisions should include pre and post release discharge planning and community placements; interprofessional involvement, including social workers for discharge planning and care coordination; social supports including family members; specific measureable time limits for each stage of the review process; emotional reintegration support for the individual and his/her family; and where appropriate notification and supports for victims and their families.

We want to thank the committee members for holding this hearing for what can become a groundbreaking law and precedent in which other states may follow suit.

Appendix A. Table 1. Compassionate and Geriatric Release Worksheet. Human Rights Principles Assessment for Compassionate and Geriatric Release Laws Regarding Physical and Mental Health, Age, Pathway to Release Decision, Post Release Plan, Personal and Criminal History, Style of Review			
Assessor/s' Name:			Date:
Federal/State/Institutional Law/Policy: Vermont S. 207			
Yes	No	*Does the law address any of the following minimum standards of existing laws? (Check yes or no)*	
		Dignity and respect of the person	**Notes** *(Developing or improving practice/policy response)*
X		Humane treatment of prisoners, esp. advanced aged and infirm	
	RECOMMEND	Post release plan vetted for safety and appropriateness	
	RECOMMEND	Placement are available in prison special medical units (e.g., hospice) prior to release	
	RECOMMEND	Holistic care models-prison and post release	
	RECOMMEND	Interprofessional pre and post release care plans	
	RECOMMEND	Interprofessional pre and post release service linkages set in place	
	RECOMMEND	Vetting post care placement for safety & appropriate healthcare services	
		Promote Political, Civil, Economic, Social, and Cultural Rights	
	RECOMMEND	Legal language that refers to 'cruel or inhumane' if release denied	
X		No life limit for release in some situations	
	RECOMMEND	Benefits (Medicaid/SSI/public assistance) available prior to release	
X		Family and community involvement	
X		Assigned surrogate when no family are identified that can provide care	
X		Request made by incarcerated person or someone on their behalf	
	RECOMMEND	Emotional and reintegration support for released person and caregiver/s	
	RECOMMEND	If a person recovers, he or she does not need to return to prison	
	RECOMMEND	Home care supervision plans	
		Nondiscrimination	
X		No or minimal constraint on sentence length to request release	
X		Released if determined there is no public safety threat to society	
X		Age classified as aged 50/55 and above	
X		Does not discriminate based on chronological age (without infirmity)	
X		Does not discriminate based on sex offense history	
X		Does not discriminate based on murder 1st or2nd degree history	
X		Does not discriminate based on Felony (class A, B, C) history	
X		Does not discriminate based on length of time served	
		Participation	
X		Age (older people)	
X		Persons with disabilities (physical or mental)	
X		Persons with terminal illness	
X		Correctional leaders (e.g., warden, commissioner, or medical director)	
X		Parole board or Judicial Arm	
X		Family members or surrogates	
	RECOMMEND	Legal Advocates/Petitioners (including family)	
	RECOMMEND	Crime survivors (victim involvement)	

X		Physician Involvement	
	RECOMMEND	Other professionals: psychiatrist, psychologist, social worker, lawyer	
		Transparency	
	RECOMMEND	Laws with clear definition of key terms	
X		Clear pathways for release determination	
	RECOMMEND	Laws with specific, measurable, time limited procedures	
	RECOMMEND	% of parole petitions responded to in a timely fashion	
	RECOMMEND	% of parole requests honored	
		Accountability	
	RECOMMEND	Time limits for each stage of review process	
	RECOMMEND	Discharge planning evaluation	
	RECOMMEND	Staff filing of release paperwork and follow-up	
	RECOMMEND X	**Monitoring mechanism in place to monitor law implementation**	
		Special Populations Addressed	
X		Older Persons (Elderly)	
X		Persons with Disabilities (Physical and/or Mental, Mental Retardation)	
X		Persons with Terminal Illness	
X		Other: Incarcerated Individuals with Long (10 years of more) or Life Prison Terms	

Bibliography

Aday, R. H. (2005). Aging prisoners' concerns toward dying in prison. *OMEGA-Journal of Death and Dying, 52*(3), 199-216.

American Civil Liberties Union [ACLU]. (2012). At America's expense: The mass incarceration of the elderly. Washington, DC: Author.

American Geriatrics Society (2003). Transitional Care. Retrieved May 9, 2012 from http://www.nicheprogram.org/niche_encyclopedia-geriatric_models_of_care-transitional_models

Anno, B., Graham, C., Lawrence, J.E., Shansky, R., Bisbee, J., & Blackmore, J. (2004). Correctional health care: Addressing the Needs of Elderly, Chronically Ill, and Terminally Ill Inmates. Retrieved April 1, 2010 from http://nicic.gov/library/018735
CA: Sage Publications.

Bureau of Justice Statistics [BJS] (2014). *Probation and parole in the United States, 2013*. Retrieved February 1, 2015 from http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5135

Byock, I. (2002). Dying well in corrections: Why should we care? *Journal of Correct Health Care, 9*(2), 107-117.

Chiu, T., (2010). *It's about time: Aging prisoners, increasing costs, and geriatric release*. New York: Vera Institute of Justice.
http://beepdf.com/doc/6114/elderly_jail_inmates__problems_prevalence_and_public_health.htmlhttp://beepdf.com/doc/6114/elderly_jail_inmates__problems_prevalence_and_public_health.html

Coleman, E.A. 2003. Falling through the cracks: Challenges and opportunities for improving transitional care for persons with continuous complex care needs. Journal of the American Geriatrics Society, 2003; 51(4): 549-555.

Drisko, J., & Maschi, T. (in press). *Content Analysis Methods.* New York: Oxford University Press.

Fazel, S., Hope, T., O'Donnell, I., & Jacoby, R. (2001). Hidden psychiatric morbidity
Hoffman, H.C. and Dickinson, G.E. (2011), "Characteristics of prison hospice programs in the United States"*American Journal of Hospice Palliative Care,* Vol. 28 No. 4, pp. 245-252.

Hanson, K., Morton, K.E., & Harris, A.J.R. (2006). Sexual offender recidivism risk. *Annals of the New York Academy of Sciences*, 989: 154–166. doi: 10.1111/j.1749-6632.2003.tb07303.x

Human Rights Watch [HRW]. (2012). *Old behind bars*. Retrieved from http://www.hrw.org/reports/2012/01/27/old-behind-bars

James, D.J., & Glaze, L.E. (2006). *Mental health problems of prison and jail inmates.* (NCJ Publication No. 213600). Rockville, MD: U.S. Department of Justice.

Jhi, K.Y., & Joo, H.J. (2009). Predictors of recidivism among major age groups of parolees in Texas. *Justice Policy Journal, 6,* 1-28.

Katz, S. & Akpom, C.A. (1976). A measure of primary sociobiological functions. *International Journal of Health Services*. 6, 493–508.

Kinsella, C. (2004). *Correctional Health Care Costs.* Retrieved from The Council of State Governments, Lexington, KY website: http://www.csg.org/knowledgecenter/docs/TA0401CorrHealth.pdf

Lansing, S. (2012). *New York State COMPAS-probation risk and need assessment study: Examining the recidivism scale's effectiveness and predictive accuracy*. Retrieved March 1, 2013 from http://www.criminaljustice.ny.gov/crimnet/ojsa/opca/compas_probation_report_2012.pdf

Levenson, J.S., & Shields, R.T. (2012). Sex offender risk and recidivism in Florida. Retrieved December 12, 2015 from http://www.lynn.edu/about-lynn/news-and-events/news/media/2012/11/sex-offender-risk-and-recidivism-in-florida-2012

Leibowitz, G.S., & Maschi, T.M (in press). Cumulative trauma, resilience, and the risk for recidivism among sex offenders in prison.

Maruschak, L. M. (2008). *Medical problems of prisoners* (NCJ Publication No. 221740). Rockville, MD: US Department of Justice. London, England: Author.

Maschi, T. & Aday, R. (2014). The social determinants of health and justice and the aging in prison crisis: A call to action. *International Journal of Social Work, 1*(1), 1-15.

Maschi, T., & Baer, J.C. (2012). The heterogeneity of the world assumptions of older adults in prison: Do differing worldviews have a mental health effect? *Traumatology*. doi: 1534765612443294, first published on April 24, 2012.

Maschi, T., Baer, J.C., Morrissey, M.B., & Moreno, C. (2012). The aftermath of childhood trauma on late life mental and physical health: A review of the literature. *Traumatology*. doi: 1534765612437377, first published on April 16, 2012.

Maschi, T., Dennis, K., Gibson, S., MacMillan, T., Sternberg, S., & Hom, M. (2011). Trauma and stress among older adults in the criminal justice system: A review of the literature with implications for social work. Journal of Gerontological Social Work, 54, 347-360.

Maschi, T., Gibson, S., Zgoba, K., & Morgen, K. (2011). Trauma and life event stressors among young and older adult prisoners. *Journal of Correctional Health Care*, 17(2), 160-172.

Maschi, T., Kwak, J., Ko, E.J., & Morrissey, M. (2012). Forget me not: Dementia in prisons. *The Gerontologist*, doi: 10.1093/geront/gnr131

Maschi, T., & Marmo, C., & Han, J. (2014). Palliative care in prison: A content analysis of the literature. *International Journal of Prisoner Health, 10,* 172-197.

Maschi, T., Morgen, K., Zgoba, K., Courtney, D., & Ristow, J. (2011). Trauma, stressful life events, and post traumatic stress symptoms: Do subjective experiences matter? *Gerontologist*, 51(5), 675-686. doi:10.1093/geront/gnr074

Maschi, T., Morrissey, M., Immagieron, R., & Sutfin, S. (2012). *Aging Prisoners: A Crisis in Need of Intervention: White Paper*. Retrieved April 1, 2012 from http://sites.google.com/site/betheevidenceproject/white-paper-aging-prisoner-forum

Maschi, T., Morrissey, M.B., & Leigey, M. (2013). The case for human agency, well-being, and community reintegration for people aging in prison: A statewide case analysis. *Journal of Correctional Healthcare*. Published online May 26, 2013. DOI:10:1177/1078345613486445

Maschi, T., Suftin, S. & O'Connell, B. (2012): Aging, mental health, and the criminal justice system: A content analysis of the literature, *Journal of Forensic Social Work*, 2:2-3, 162-185.

Maschi, T., Viola, D., & Morgen, K. (2013). Trauma and coping among older adults in prison: Linking empirical evidence to practice. *Gerontologist*. First published online July 19, 2013 doi:10.1093/geront/gnt069.

Maschi, T., & Viola, D., Morgen, K., et al. (2014). Bridging community and prison for older adults and their families: Invoking human rights and intergenerational family justice. International Journal of Prisoner Health, 19(1), 1-19

Maschi, T., Viola, D., & Sun, F. (2012). The high cost of the international aging prisoner crisis: Well-being as the common denominator for action. *Gerontologist*. doi: 10.1093/geront/gns125, first published on October 4, 2012.

Maschi, T., Viola, D., Morgen, K., & Koskinen, L. (2013). Trauma, stress, grief, loss, and separation among older adults in prison: the protective role of coping resources on physical and mental wellbeing. Journal of Crime and Justice.

Meleis, Al, Sawyer L., Im, E., Schumacher, K., & Messias, D. (2000) Experiencing transitions: an emerging middle range theory. *Advances in Nursing Science*, 23(1), 12-28. doi:10.1080/0735648X.2013.808853 (SPECIAL ISSUE ON ELDER ABUSE).

Mesurier, R. (2011). *Supporting older people in prison: Ideas for practice*. United Kingdom: Age UK. Retrieved September 1, 2011 from http://www.ageuk.org.uk/documents/en-gb/for-professionals/government-and-society/older%20prisoners%20guide_pro.pdf?dtrk=true

Miles, M. B., & Huberman, A. M. (1994). *Qualitative data analysis.* Thousand Oaks, CA: Sage Publications.
Nasreddine Z.S., Phillips NA, Bédirian V, Charbonneau S, Whitehead V, Collin I, Cummings JL, Chertkow H. (2005). The Montreal Cognitive Assessment (MoCA): A brief screening tool for mild cognitive impairment. *Journal of the American Geriatrics Society 53*, 695-699, 2005.
National Commission on Correctional Health Care. (2002). *The Health Status of Soon-To-Be-Released Inmates: A Report to Congress*. Chicago, IL: National Commission on Health Care.
National Consensus Project for Quality Palliative Care (NPC)(2013).*Clinical Practice Guidelines for Quality Palliative Care, Third Edition.* Pittsburgh, PA: National Consensus Project for Quality Palliative Care.
National Institute of Corrections [NIC] (2010). *Effectively Managing Aging and Geriatric Offenders* [Satellite/Internet Broadcast]. Retrieved April 1, 2011 from http://nicic.gov/Library/024363
Nunez-Neto, B. (2008). *Offender reentry: Correctional statistics, reintegration into the community, and recidivism: A CRS report for congress*. Retrieved fromhttp://lieberman.senate.gov/assets/pdf/crs/offenderreentry.pdf
Prison Reform Trust (2008) *Doing Time: The Experiences and Needs of Older People in Prison,* London: Prison Reform Trust.
Sabol, W.J., & Couture, H. (2008). *Prison inmates at midyear 2007.* (NCJ Publication No. 221944, pp. 1-24). Rockville, MD: U.S. Department of Justice.
Shimkus, J. (2004). The graying of America's prisons: Corrections copes with care for the aged. *Correct Care*, 18(3):1,16.
Tutty, L. M., Rothery, M. & *Grinnell*, R. M. (1996) *Qualitative Research for Social Workers*, Allyn and Bacon, Needham Heights, MA.
United Nations Office on Drugs and Crime, 2009. *Handbook for prisoners with special needs.* Available from: http://www.unhcr.org/refworld/docid/4a0969d42.html [accessed 6 January 2013]
United Nations (2012). *Report of the United Nations High Commissioner for Human Rights.* Substantive session, 23–27 July 2012 Geneva.
United Nations (1977). *Standard minimum rules for the treatment of prisoners*. Available from: http://www2.ohchr.org/english/law/treatmentprisoners.htm
United Nations (1948). *The universal declaration of human rights*. Available from: http://www.un.org/en/documents/udhr/
Weathers, F. W., Litz, B. T., Herman, D. S., Huska, J. A., & Keane, T. M. (1993), October). *The PTSD checklist: Reliability, validity, and diagnostic utility*. Paper presented at the annual meeting of the International Society for Traumatic Stress Studies, San Antonio, TX.
Williams, B. A., McGuire, J., Lindsay, R. G., Baillargeon, J., Cenzer, I., Lee, S. J., & Kushel, M. (2010). Coming home: Health status and homelessness risk of older pre-release prisoners. Journal Of General Internal Medicine, 25(10), 1038-1044. doi:10.1007/s11606-010-1416-8.
Williams, B. A., Sudore, R. L., Greifinger, R., & Morrison, R. R. (2011). Balancing punishment and compassion for seriously ill prisoners. *Annals Of Internal Medicine,* 155(2), 122-126.
Williams, B., Stern, M., Mellow, J., Safer, M., & Greifinger, R. (2012). Aging in Correctional Custody: Setting a Policy Agenda for Older Prisoner Health Care. *American Journal of Public Health, 8*, 1475-1481.
Williams B, & Abraldes R. (2007) Growing older: Challenges of prison and re-entry for the elderly. In R. Greifinger (Ed.) *Public Health Behind Bars: From Prisons to Communities.* (pp. 56-72). Springer. New York, New York.
Williams, B., Greifinger, R., Sudore, R., & Williams, B. (2011). Balancing Punishment and Compassion for Seriously Ill Prisoners. *Annals of Internal Medicine, 15,* 122-126.
Wright, K.N. and Bronsten, L. (2007a). "An original analysis of prison hospice", *The Prison Journal,*Vol. 87 No. 4,pp. 391-407.
Wright, K.N. and Bronstein, L. (2007b), "Creating decent prisons: A serendipitous finding about prison

hospice”*Journal of Offender Rehabilitation,* Vol. 44 No. 4, pp. 1-16.
Yesavage, J.A., Brink T.L., Rose, T.L., Lum, O., Huang, V., Adey, M.B., Leirer, V.O. (1983). Development and validation of a geriatric depression screening scale: A preliminary report. *Journal of Psychiatric Research 17,* 37-49, 1983.