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JoEllen Grohs

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Caring for Aging Prisoners is Taxing: How Missouri Can Ease Its Prison Health Care Burden

*JoEllen Grohs**

ABSTRACT

In 1976, the Supreme Court of the United States handed down the decision in *Estelle v. Gamble* which established the government's obligation to provide medical care to incarcerated persons. The 1970s is also known as the "Tough-On-Crime Era," where politicians began to take sides on crime and create mandatory minimum sentences. This led to a dramatic increase in the prison population and, more specifically, the aging prison population. Because of the government's obligation to provide medical care to inmates based on the decision in *Estelle*, caring for the aging prison population has become more expensive and more burdensome on the taxpayer. Missouri has one of the highest incarceration rates in the world and one of the highest aging prisoner populations. This article examines the high cost of caring for the aging prisoner population nationally and in Missouri and compares methods other states are using to lessen the burden on their taxpayers. In so doing, this article will ultimately conclude that Missouri should expand its medical parole policy or its use of telehealth in prisons to release some of the aging prisoners.

* Bachelor of Journalism, University of Missouri, 2017. J.D. Candidate, University of Missouri School of Law, 2020. Associate Member, Business, Entrepreneurship & Tax Law Review, 2018–2019. Special thanks to Professor Sam Halabi and Taylor Shortal for their guidance and encouragement throughout this process.

I. INTRODUCTION

Drug-use and criminal activity were on the rise in the 1970s, which led to a nationwide plea for the government to be tougher on crime, known as the “Tough on Crime Era.”¹ This ultimately resulted in President Richard Nixon creating strict policies concerning drug-related crimes, including mandatory minimum sentences and “three-strikes” laws.² Politicians took sides on crime issues and enacted determinate sentencing structures and truth in sentencing laws.³ The creation of mandatory minimum sentences all but ensured many prisoners would reach advanced age during their sentence, which would lead to an increase in the aging prisoner⁴ population.⁵

Then, in 1976, the Supreme Court decided *Estelle v. Gamble*.⁶ In *Estelle*, a state prisoner filed a complaint against several prison officials under the Eighth Amendment for failure to provide adequate health care.⁷ The Court looked at previous cases interpreting the Eighth Amendment and established that the government has an “obligation to provide medical care” to incarcerated persons.⁸ The constitutional requirement set forth in *Estelle*, along with the increase in the aging prisoner population resulting from the Tough on Crime Era, led to increased costs in health care for elderly prisoners, placing a heavy financial burden on states and their taxpayers.⁹

Around the country, states are taking various steps to try to ease this burden on taxpayers.¹⁰ For example, Louisiana passed laws making it easier for elderly prisoners to be released.¹¹ In that circumstance, prisoners go through a parole hearing where their risk of recidivism is assessed, normally called medical parole.¹² States that choose this approach transfer the burden of health care costs from the taxpayers to the inmates’ families in addition to making the prisoner eligible for programs such as Medicaid.¹³ Alternatively, other states created separate prisons to house elderly prisoners.¹⁴ California, for example, built a 1,700-bed prison specifically for

1. Jean Mikle, *Health Care Costs for Older Inmates Skyrocket*, USA TODAY (Mar. 31, 2013, 12:01 AM), <https://www.usatoday.com/story/news/nation/2013/03/31/health-care-costs-for-older-inmates-skyrocket/2038633/>; Brian Kincade, *The Economics of the American Prison System*, SMARTASSET (May 21, 2018), <https://smartasset.com/mortgage/the-economics-of-the-american-prison-system>.

2. Kincade, *supra* note 1; Mikle, *supra* note 1.

3. Caitlin Curley, *Tough on Crime: How the United States Packed its Own Prisons*, GENFKD (Dec. 3, 2015, 4:45 PM), <http://www.genfkd.org/tough-on-crime-united-states-packed-prisons>.

4. An “aging prisoner” is defined by the National Institute of Corrections as a prisoner aged 50 or older. See TINA CHIU, VERA INST. JUST., IT’S ABOUT TIME: AGING PRISONERS, INCREASING COSTS, AND GERIATRIC RELEASE 4 (2010), https://storage.googleapis.com/vera-web-assets/downloads/Publications/its-about-time-aging-prisoners-increasing-costs-and-geriatric-release/legacy_downloads/Its-about-time-aging-prisoners-increasing-costs-and-geriatric-release.pdf.

5. TCR Staff, *The Rising Cost of Incarcerating the Elderly*, CRIME REP. (May 17, 2018), <https://thecrimereport.org/2018/05/17/the-rising-cost-of-punishing-the-elderly>.

6. *Estelle v. Gamble*, 429 U.S. 97 (1976).

7. *Id.* at 97.

8. *Id.* at 102–03.

9. Jean Mikle, *Caring for Aging Inmates is a Growing Expense*, CORRECTIONSONE (July 2, 2013), <https://www.correctionsone.com/correctional-healthcare/articles/6303774-Caring-for-aging-inmates-is-a-growing-expense/>.

10. *Id.*

11. Mikle, *supra* note 1.

12. *Id.*

13. *Id.*

14. *Id.*

medically frail prisoners.¹⁵ Finally, some states—for example, Delaware—turned to telehealth for treating prisoners.¹⁶ Telehealth, also referred to as telemedicine, comprises a variety of technologies and tactics to virtually deliver medical, health, and education services.¹⁷ For example, telehealth allows patients to see their nurses and doctors remotely through online videoconferencing.¹⁸ Further, certain technologies are used to “wirelessly transmit information, such as blood pressure,” from patient to doctor.¹⁹

While some states implemented new prison health care policies to address this growing concern, many have not. Missouri is one of these states, which has one of the highest incarceration rates in the world, let alone the country.²⁰ Missouri’s aging prisoner population has almost doubled since 2005 while, simultaneously, there was a less than 10% increase in the total prison population.²¹ Therefore, Missouri should follow the model set by other states to ease the burden on the state taxpayer.

This article analyzes the causes of Missouri’s ballooning health costs of prisoners as well as its potential remedies. Part II outlines the Tough on Crime Era and how it contributed to the increase of the aging prison population in state prisons. Part III begins with a discussion concerning costs of aging prisoners nationwide, then moves to a discussion about Missouri’s aging prisoners. Part IV discusses different ways states are cutting costs while still providing adequate medical care and how each solution would or would not work in Missouri prisons. Finally, the article concludes by recommending a more generous medical parole policy and the expansion of telehealth to prisons.

II. THE TOUGH-ON-CRIME ERA

During the 1960s, an increasing crime rate was becoming a national issue, drawing the focus of the media and law enforcement officials.²² At this time, youths used drugs while protesting the Vietnam War and their parents’ conventional culture, which led to recreational drugs becoming more popularized and mainstream.²³ As a result, politicians took stances on the crime issue.²⁴ Republican presidential

15. *Id.*

16. Michael Ollove, *State Prisons Turn to Telemedicine to Improve Health and Save Money*, PEW CHARITABLE TR. (Jan. 21, 2016), <https://www.pewtrusts.org/en/research-and-analysis/blogs/state-line/2016/01/21/state-prisons-turn-to-telemedicine-to-improve>.

17. *About Telehealth*, CTR. FOR CONNECTED HEALTH POL’Y, <https://www.echpca.org/about/about-telehealth> (last visited Feb. 10, 2019).

18. *Telehealth: Technology Meets Health Care*, MAYO CLINIC (Aug. 16, 2017), <https://www.mayoclinic.org/healthy-lifestyle/consumer-health/in-depth/telehealth/art-20044878>.

19. *Id.*

20. *Missouri Profile*, PRISON POL’Y INITIATIVE, <https://www.prisonpolicy.org/profiles/MO.html> (last visited Feb. 10, 2019).

21. Miranda Moore, *Solutions Remain Elusive as Elderly Prisoners Grow in Number*, COLUMBIA MISSOURIAN (June 24, 2017), https://www.columbiainmissourian.com/news/solutions-remain-elusive-as-elderly-prisoners-grow-in-number/article_a29eacde-51da-11e7-b667-431405ae5d7f.html.

22. Curley, *supra* note 3; William C. Head, *From America’s First Federal Drug Law to President Richard Nixon’s War on Drugs*, HG.ORG, <https://www.hg.org/legal-articles/from-america-s-first-federal-drug-law-to-president-richard-nixon-s-war-on-drugs-41378> (last visited Feb. 11, 2019).

23. Joseph Cummins, *The Rebellion of the Youth in the 1960s*, CLASSROOM, <https://classroom.synonym.com/rebellion-youth-1960s-11087.html> (last visited Feb. 11, 2019); *Thirty Years of America’s Drug War: A Chronology*, PBS: FRONTLINE, <https://www.pbs.org/wgbh/pages/frontline/shows/drugs/cron/> (last visited Feb. 11, 2019).

24. Curley, *supra* note 3.

candidate, Barry Goldwater, brought the issue further into the limelight by opining that because of the increasing crime rate, there was greater need for governmental intervention.²⁵ Later, President Lyndon Johnson created the Safe Streets Act of 1968, which was enacted to increase the amount of federal funding for local and state police.²⁶ He also created the Law Enforcement Assistance Administration²⁷ and the Bureau of Narcotics and Dangerous Drugs.²⁸ These organizations furthered President Johnson's effort to financially aid law enforcement in preventing crime.²⁹

After Johnson, Richard Nixon was elected president in 1968, and he continued the government's attempt to combat the soaring crime rate.³⁰ By 1971, President Nixon officially declared a war on drugs.³¹ Among other policy changes, Nixon increased the operation of drug control agencies and created "no-knock" warrants.³² As a result of the "no-knock" warrants, police officers were no longer required to announce their presence before entering a home.³³ Nixon led the way in changing federal laws associated with selling, trafficking, and possessing drugs, beginning with the creation of the Office for Drug Abuse Law Enforcement in 1972.³⁴ Nixon's reasoning behind creating the office was to encourage the fight on drugs to be made through the criminal justice system.³⁵ Additionally, Nixon placed marijuana in the most restrictive category of drugs, known as Schedule One.³⁶ Recently, in 2016, the Drug Enforcement Administration ("DEA") announced it would keep marijuana in Schedule One, alongside other drugs such as heroin.³⁷

In addition to the new drug-related policies, courts were also making structural changes in the 1970s.³⁸ Before the 1970s, courts used an intermediate sentencing structure, which gave judges and parole boards significant discretion and flexibility in setting sentences and determining when to release inmates.³⁹ Because sentences were described in ranges, a prisoner could be sentenced to one to five years and

25. *Id.*

26. Jessica Lussenhop, *Clinton Crime Bill: Why is it so Controversial?*, BBC (Apr. 18, 2016), <https://www.bbc.com/news/world-us-canada-36020717><https://www.bbc.com/news/world-us-canada-36020717>.

27. The Law Enforcement Assistance Administration disbursed funding to state law enforcement agencies but was abolished in 1982. *Law Enforcement Assistance Administration Law and Legal Definition*, USLEGAL, <https://definitions.uslegal.com/l/law-enforcement-assistance-administration/> (last visited Feb. 11, 2019).

28. Curley, *supra* note 3. The Bureau of Narcotics and Dangerous Drugs became the Drug Enforcement Administration by 1973. *The Hundred Years' War*, MODERNMEDICINE NETWORK (Sept. 15, 2013), <http://www.drugtopics.com/chains-business/hundred-years-war>.

29. Curley, *supra* note 3.

30. *Id.*

31. *A Brief History of the Drug War*, DRUG POL'Y ALLIANCE, <http://www.drugpolicy.org/issues/brief-history-drug-war> (last visited Feb. 11, 2019) [hereinafter *Brief History of the Drug War*].

32. *Id.*

33. Head, *supra* note 22.

34. *Id.*; German Lopez, *Was Nixon's War on Drug a Racially Motivated Crusade? It's a Bit More Complicated.*, VOX (Mar. 29, 2016, 2:00 PM), <https://www.vox.com/2016/3/29/11325750/nixon-war-on-drugs>.

35. Lopez, *supra* note 34.

36. *Brief History of the Drug War*, *supra* note 31. The federal government places each drug in a classification—or schedule—based on the drug's medical value and potential for abuse. Schedule One drugs have no medical value and an immense potential for abuse. German Lopez, *The Federal Drug Scheduling System, Explained*, VOX, <https://www.vox.com/2014/9/25/6842187/drug-schedule-list-marijuana> (last updated Aug. 11, 2016, 9:05 AM) [hereinafter *Scheduling System, Explained*].

37. *Scheduling System, Explained*, *supra* note 36.

38. Curley, *supra* note 3.

39. *Id.*

would attend parole board hearings to determine when that prisoner could be released.⁴⁰ By the mid-1970s, however, states began implementing a determinate sentencing structure.⁴¹ After the change, judges and parole boards had no discretion in determining sentence length, and states created fixed prison terms because the law dictated the exact sentence.⁴² For example, under the determinate sentence structure, a possession charge would carry a precise sentence of two years instead of a range of one to two years.⁴³ States also created mandatory parole systems, which took away some of the parole boards' power as administrative rules governed inmates' release instead.⁴⁴ Within these systems, early release was less likely, but inmates could still reduce their time with either good time credits or by working off their time.⁴⁵

Although states were already moving toward longer sentences and stricter laws, this trend amplified during the 1980s.⁴⁶ In 1984, Congress passed the Sentencing Reform Act which eliminated disparity in sentencing laws across the country.⁴⁷ States also began enacting Truth in Sentencing Laws by this time, which restricted parole opportunities and required offenders to serve the majority of their sentences.⁴⁸ Although the time required to serve varies from state to state, today the majority of states require an inmate to serve 85% of their sentence before being eligible for release.⁴⁹

A major event in the United States leading toward mandatory minimum sentences was the death of Len Bias.⁵⁰ The University of Maryland basketball star died of a drug overdose after being drafted by the Boston Celtics in the 1986 NBA Draft.⁵¹ Just a few weeks after his death, Congress enacted the Anti-Drug Abuse Act of 1986, which enforced "mandatory minimum sentences for drug offenses."⁵² Specifically, the Anti-Drug Abuse Act "required a minimum [mandatory] sentence of [five] years for drug offenses that involved . . . 500 grams of cocaine, . . . [five] grams of methamphetamine, [and] 100 kilograms" of marijuana.⁵³ The act "also required a [mandatory] minimum sentence of [ten] years for drug" crimes involving

40. Ashley Dugger, *Indeterminate Criminal Sentencing: Definition, Purposes, & Advantages*, STUDY.COM, <https://study.com/academy/lesson/indeterminate-criminal-sentencing-definition-purpose-advantages.html> (last visited Feb. 16, 2019).

41. Curley, *supra* note 3.

42. *Id.*; Dugger, *supra* note 40.

43. Dugger, *supra* note 43.

44. Curley, *supra* note 3.

45. PAULA M. DITTON & DORIS JAMES WILSON, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, TRUTH IN SENTENCING IN STATE PRISONS 1 (Jan. 1999), <https://bjs.gov/content/pub/pdf/tssp.pdf>; Curley, *supra* note 3.

46. *Mandatory Minimums and Sentencing Reform*, CRIM. JUST. POL'Y FOUND., <https://www.cjpf.org/mandatory-minimums/> (last visited Feb. 16, 2019); Curley, *supra* note 3.

47. CRIM. JUST. POL'Y FOUND., *supra* note 46.

48. Curley, *supra* note 3.

49. *Truth in Sentencing Law and Legal Definition*, USLEGAL, <https://definitions.uslegal.com/truth-in-sentencing/> (last visited Feb. 16, 2019).

50. DEBORAH J. VAGINS & JESSELYN MCCURDY, ACLU, CRACKS IN THE SYSTEM: TWENTY YEARS OF THE UNJUST FEDERAL CRACK COCAINE LAW at i (2006), https://www.aclu.org/files/assets/cracksin_system_20061025.pdf.

51. *Id.*

52. Curley, *supra* note 3.

53. CRIM. JUST. POL'Y FOUND., *supra* note 46 (emphasis omitted).

five “kilograms of cocaine, . . . 50 grams of methamphetamine, [and] 1,000 kilograms” of marijuana.⁵⁴

Although Bill Clinton initially “advocated for treatment instead of incarceration,” his rhetoric changed by the time of his presidential campaign in 1992.⁵⁵ Clinton denied a recommendation from the United States Sentencing Commission which would have eliminated sentence disparity between crack and powder cocaine offenses.⁵⁶ Instead, Clinton supported the war on crime and enacted the Violent Crime Control and Law Enforcement Act (“Act”).⁵⁷ Along with more mandatory minimum sentences, this Act offered grants to states that adopted truth in sentencing laws and created a “‘three-strikes’ mandatory life sentence for repeat offenders.”⁵⁸ The Act requires “mandatory life imprisonment if a convicted felon: (1) has been convicted” of a “serious violent felony” in a federal court and “(2) has two or more previous convictions in” either federal or state courts, with at least one being a “serious violent felony.”⁵⁹ The Act states that a “serious violent felony” includes murder, manslaughter, sex offenses, kidnapping, robbery, and any offense resulting in a sentence of ten years or more that includes an “element of force or a significant risk of force.”⁶⁰ In *Lockyer v. Andrade*, a defendant who was found “guilty of two counts of petty theft with a prior conviction” was sentenced to 50 years in prison because he had prior convictions and fell within the criteria of California’s three-strikes law.⁶¹ The defendant challenged his conviction, but the Supreme Court of the United States upheld the law’s constitutionality since it did not violate the “gross disproportionality principle.”⁶²

The progression of the Tough on Crime Era contributed to the “growth of the federal prison system” and its expenses through the mandatory minimum drug laws and sentencing guidelines.⁶³ Specifically, the United States’s incarceration rate almost quadrupled between 1960 and 2000.⁶⁴ In 1985, before Len Bias’ death, there were about 35,000 inmates in federal prison, and 9,500 of those were incarcerated on drug charges.⁶⁵ That number has continued to increase, totaling 195,000 federal inmates in 2016 with “more than 85,000 of those serving time for” drug charges.⁶⁶ Today, the United States has about “5% of the world’s population, [but] is responsible for 25% of the world’s” incarcerated population, surpassing every other country in per capita incarceration rates.⁶⁷ Just as the United States as a whole has seen a dramatic increase in its prison population, Missouri specifically experienced an

54. *Id.*

55. Curley, *supra* note 3; *Brief History of the Drug War*, *supra* note 31.

56. *Brief History of the Drug War*, *supra* note 31.

57. Curley, *supra* note 3.

58. *Id.*; Lussenhop, *supra* note 26.

59. ‘Three Strikes’ Sentencing Laws, FINDLAW, <https://criminal.findlaw.com/criminal-procedure/three-strikes-sentencing-laws.html> (last visited Feb. 16, 2019).

60. *Id.*

61. *Lockyer v. Andrade*, 538 U.S. 63, 68 (2003).

62. *Id.* at 77.

63. CRIM. JUST. POL’Y FOUND., *supra* note 46.

64. Curley, *supra* note 3.

65. Jon Schuppe, *30 Years After Basketball Star Len Bias’ Death, its Drug War Impact Endures*, NBC NEWS, <https://www.nbcnews.com/news/us-news/30-years-after-basketball-star-len-bias-death-its-drug-n593731> (last updated June 19, 2016, 7:37 AM).

66. *Id.*

67. OSBORNE ASS’N, THE HIGH COSTS OF LOW RISK: THE CRISIS OF AMERICA’S AGING PRISON POPULATION 1 (2014), <http://www.osborneny.org/resources/resources-on-aging-in-prison/osborne-aging-in-prison-white-paper/>.

increase in its prison populations.⁶⁸ In 2016, Missouri had a higher incarceration rate than the United States as a whole, with a rate of 533 offenders per 100,000 population compared to the United States's rate of 450 offenders per 100,000 population.⁶⁹ From 1980 to 2016, Missouri's prison population steadily increased from about 5,000 to 32,000.⁷⁰

The increase of the prison population comes with an increase in the prison budget and costs to taxpayers. Between the years 2000 and 2006, the federal prison budget increased to nearly \$5 billion, and from 2006 to 2017, the budget increased to about \$7 billion.⁷¹ Because of the increase in incarceration, state and federal correction departments have struggled to meet the demands caused by stricter laws.⁷² The cost of incarceration in the United States is around \$1.2 trillion dollars, according to a 2016 Washington University study.⁷³

Together with other factors, the Tough on Crime Era created an incarceration system in the United States that places a large number of people in prison every year.⁷⁴ Not only do these mandatory minimum sentences increase the general prison population, but they also increase the number of aging prisoners.⁷⁵ The increase in sentencing length combined with less opportunities for release led to a system that puts a larger number of people in prison.⁷⁶ The few opportunities for release all but ensure these people will grow old in prison and aging prisoners come with costs other prisoners do not have, such as high costs of medical care and transportation to out-patient services.⁷⁷ These costs fall directly on the state taxpayers.⁷⁸

III. COST OF THE AGING PRISONER POPULATION

A. *Nationwide Costs*

Every year, the Justice Department's inspector general looks at the agency's "top management challenges" and unsurprisingly, the federal prison system's growing elderly prison population has ranked among the urgent priorities every year since 2006.⁷⁹ There are varying definitions for who qualifies as an "aging prisoner." The National Institute of Corrections considers an "aging prisoner" to be prisoners aged 50 or older, whereas the U.S. Census Bureau defines the elderly population as

68. MICHAEL L. PARSON & ANNE L. PRECYTHE, MO. DEP'T OF CORR., PROFILE OF THE INSTITUTIONAL AND SUPERVISED OFFENDER POPULATION 6 (2018), https://doc.mo.gov/sites/doc/files/2018-06/Offender-Profile_2017_2.pdf.

69. *Id.* See *infra* Part III.B for further discussion on Missouri's current incarceration rate.

70. *State-by-State Data*, SENT'G PROJECT, <https://www.sentencingproject.org/the-facts/#map> (last visited Feb. 2, 2019).

71. CRIM. JUST. POL'Y FOUND., *supra* note 46.

72. Kincade, *supra* note 1.

73. Neil Schoenherr, *Cost of Incarceration in the U.S. More Than \$1 Trillion*, SOURCE (Sept. 7, 2016), <https://source.wustl.edu/2016/09/cost-incarceration-u-s-1-trillion/>.

74. Kincade, *supra* note 1.

75. OSBORNE ASS'N, *supra* note 67, at 5.

76. *Id.*

77. *Id.*

78. *Id.* at 3.

79. Kevin Johnson & H. Darr Beiser, *Aging Prisoners' Costs Put Systems Nationwide in a Bind*, USA TODAY (July 11, 2013, 6:51 PM), <https://www.usatoday.com/story/news/nation/2013/07/10/cost-care-aging-prisoners/2479285/>.

prisoners 65 and older.⁸⁰ Individuals with long sentences that remain in prison as they grow old comprise the aging prison population.⁸¹ As of May 25, 2018, there are an estimated 274,000 prisoners age 50 and older in the United States's state and federal prisons, and “[t]here are two primary factors that contribute to the” rise in the aging prisoner population: (1) an increase in longer prison sentences, and (2) an increase in aging individuals receiving prison sentences.⁸²

The number of aging prisoners 55 and older grew by 280% from 1999 to 2016, while the number of all other prisoners grew by only 3%.⁸³ From 2009 to 2013, the aging prisoner population grew from 24,857 to 30,962, a 25% increase.⁸⁴ According to a report published by the Office of the Inspector General, aging prisoners were the fastest growing segment of the Federal Bureau of Prisons' inmate population.⁸⁵ The American Civil Liberties Union (“ACLU”) published a 2012 report calling the rise in aging prisoners a “national epidemic.”⁸⁶ According to the report, nearly a quarter-million inmates in state and federal prisons are classified as “aging” or “elderly.”⁸⁷ This study found 16% of the United States's prison population and about 13.5% of federal prisoners are age 50 and older.⁸⁸ By 2030, it is estimated that one in three people in federal or state prisons will qualify as an aging prisoner, which would more than triple the aging prisoner population in the 1990s.⁸⁹ For example, in Ohio, only 2% of elderly prisoners nationwide fell within this category in 1979, while the percentage increased to 19% in 2012.⁹⁰

The increase in the aging prisoner population led to an increase in spending to provide aging prisoners with health care, which places a growing burden on the state taxpayer.⁹¹ The Justice Department's inspector general found that institutions with the highest percentage of aging prisoners spent five times more per inmate on medical care than those with the lowest percentage of aging prisoners.⁹² In 2014, the United States spent more than \$16 billion on incarceration for elderly prisoners, which is, on average, twice as much as it costs to incarcerate all other prisoners.⁹³

There are many factors that lead to the high cost of providing medical care for aging prisoners. Specifically, aging prisoners are more susceptible to diagnoses of

80. Mikle, *supra* note 9; CHIU, *supra* note 4, at 4.

81. ACLU, AT AMERICA'S EXPENSE: THE MASS INCARCERATION OF THE ELDERLY at vi (2012), https://www.aclu.org/files/assets/elderlyprisonreport_20120613_1.pdf.

82. Robin Seaton Jefferson, *Should Older Prisoners Get a Pass Just Because They're Old?*, FORBES (May 25, 2018, 8:34 PM), <https://www.forbes.com/sites/robinseatonjefferson/2018/05/25/new-report-makes-recommendations-for-releasing-caring-for-aging-prisoners/#7411860f5ca6>; Michael Pittaro, *How the Aging Prison Population Challenges Correctional Facilities*, CORRECTIONSONE (May 1, 2018), <https://www.correctionsone.com/correctional-healthcare/articles/474317187-How-the-aging-prison-population-challenges-correctional-facilities/>.

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

84. U.S. DEP'T OF JUST., THE IMPACT OF AN AGING INMATE POPULATION ON THE FEDERAL BUREAU OF PRISONS at i (2015), <https://oig.justice.gov/reports/2015/e1505.pdf>.

85. *Id.*

86. Johnson & Beiser, *supra* note 79.

87. *Id.*

88. ACLU, *supra* note 81, at vi.

89. Michelle Chen, *Our Prison Population is Getting Older and Older*, NATION (Dec. 11, 2017), <https://www.thenation.com/article/our-prison-population-is-getting-older-and-older/>.

90. ACLU, *supra* note 81, at vi.

91. Mikle, *supra* note 9.

92. McKillop & Boucher, *supra* note 83.

93. OSBORNE ASS'N, *supra* note 67, at 2.

dementia, impaired mobility, and loss of hearing and vision.⁹⁴ Additionally, aging prisoners typically experience the effects of aging sooner than the average person aged 50 and older outside of prison.⁹⁵ This advanced aging can be caused by substance abuse, inadequate preventive and primary care before incarceration, stress caused by the isolation, or possible violent prison environments.⁹⁶ The Journal of the American Medical Association found that aging prisoners have an average of three chronic illnesses and as many as 20% of them have a mental illness.⁹⁷ This creates a necessity to increase prison staff, provide enhanced training, and may also require a facility to invest in structural changes, such as special housing and wheelchair ramps.⁹⁸

Many states look to hospitals to provide health care services because on-site care is limited.⁹⁹ There are three types of health services outside prisons: (1) off-site care, (2) inpatient hospitalization, and (3) outpatient care.¹⁰⁰ Security for care received outside prisons adds an additional cost to medical treatment because many medical procedures cannot be performed on-site—it can cost up to “\$2,000 per 24 hours to guard” the inmates off-site.¹⁰¹ However, states also use one of four systems to provide on-site care: (1) the direct model, (2) the contracted model, (3) the state university model, and (4) the hybrid model.¹⁰² State-employed clinicians in the corrections departments provide all or most on-site care in the direct model, whereas clinicians employed by private companies provide all or most on-site care in the contracted model.¹⁰³ In the state university model, the state’s public medical school provides the medical care.¹⁰⁴ Lastly, the hybrid model comprises a combination of the other models.¹⁰⁵

States around the country have used several different methods to ease the heavy burden placed on their taxpayers and reduce the high cost of caring for the elderly in prison. Some of these methods include the expansion of telehealth, “Medicaid financing, and medical or geriatric parole.”¹⁰⁶ This will be discussed in further detail in Part IV of this article.

B. *Missouri Costs*

Missouri is not unlike other states in the country experiencing the economic consequences of caring for the aging prisoner population. In 2018, Missouri had one of the highest incarceration rates in the world at 859 per 100,000 population,

94. McKillop & Boucher, *supra* note 83.

95. *Id.*

96. *Id.*

97. CHIU, *supra* note 4, at 5.

98. McKillop & Boucher, *supra* note 83.

99. *State Prisons and the Delivery of Hospital Care*, PEW CHARITABLE TR. (July 19, 2018), <https://www.pewtrusts.org/en/research-and-analysis/reports/2018/07/19/state-prisons-and-the-delivery-of-hospital-care> [hereinafter *State Prisons*].

100. *Id.*

101. OSBORNE ASS’N, *supra* note 67, at 2.

102. *State Prisons*, *supra* note 99.

103. *Id.*

104. *Id.*

105. *Id.*

106. PEW CHARITABLE TR., *STATE PRISON HEALTH CARE SPENDING 4* (2014), <https://www.pewtrusts.org/~media/assets/2014/07/stateprisonhealthcarespendingreport.pdf> [hereinafter PEW CHARITABLE TR.].

surpassing the national averages of many countries, including the United States and United Kingdom.¹⁰⁷ Along with having one of the highest incarceration rates, the state corrections system is at about 105% capacity.¹⁰⁸ Because of the high incarceration rate and capacity percentage, the department of corrections expenditure in fiscal year 2017 was \$685,910,542 and the prison population was around 32,500.¹⁰⁹ Further, the appropriation for the 2018 fiscal year was \$725,069,448.¹¹⁰

In 2015, 10.2% of Missouri's prison population was comprised of aging prisoners and the cost of health care spending made up more than 20% of the state's total prison expenses.¹¹¹ As of 2017, the aging prisoner population is increasing at 11 times the rate of the general prison population.¹¹² Reinforcing the constitutional guarantees of the Eighth Amendment, Missouri Statute § 217.230 also requires the state to provide sufficient medical care to inmates, which adds to the costs of caring for this demographic of the prison population.¹¹³ One way Missouri provides sufficient medical care is through various programs. For example, the Missouri Department of Corrections has the Division of Offender Rehabilitative Services, which provides, among other things, programs for medical and mental health issues, education, and substance abuse treatment.¹¹⁴ The medical services area of the Department of Corrections stresses health care education, disease prevention, and health problem diagnosis.¹¹⁵ All correctional facilities in Missouri provide x-rays, blood tests, minor surgical procedures, chronic care clinics, telemedicine, and emergency transportation.¹¹⁶ However, only some facilities provide oral surgery, ear, nose, and throat clinics, and endoscopies and colonoscopies.¹¹⁷

Missouri is also one of 31 states that provide hospice care, chronic illness care, and long-term nursing home care in its prisons.¹¹⁸ To provide this medical care, Missouri uses Corizon, which is a private sector government contractor created by Correctional Medical and Prison Health Systems that provides health care to prisons across the country.¹¹⁹ In order for Corizon to provide adequate medical care to Missouri's prisoners, Corizon is paid about \$12.59 per prisoner per day to cover medical

107. PRISON POL'Y INITIATIVE, *supra* note 20.

108. *Editorial: A Blueprint for Reforming Missouri's Broken Corrections System*, ST. LOUIS POST-DISPATCH (Jan. 10, 2018), https://www.stltoday.com/opinion/editorial/editorial-a-blueprint-for-reforming-missouri-s-broken-corrections-system/article_4e544f92-e60f-503e-a0b6-a121e5b6dbc4.html [hereinafter *Blueprint*].

109. Alex Derosier, *Missouri's Prison Population has Increased by About 2,500 Since 2006*, MISSOURINET (Feb. 14, 2017), <https://www.missourinet.com/2017/02/14/missouris-prison-population-has-increased-by-about-2500-since-2006/>; MO. OFFICE OF ADMIN., DIV. OF BUDGET & PLANNING, FISCAL YEAR 2019 DEP'T OF CORR. BUDGET 9-1, https://oa.mo.gov/sites/default/files/FY_2019_EB_Corrections.pdf.

110. MO. OFFICE OF ADMIN., *supra* note 109.

111. McKillop & Boucher, *supra* note 83; Chris Mai & Ram Subramanian, *The Price of Prisons: Prison Spending in 2015*, VERA (May 2017), <https://www.vera.org/publications/price-of-prisons-2015-state-spending-trends/price-of-prisons-2015-state-spending-trends-prison-spending>.

112. Moore, *supra* note 21.

113. *See Estelle v. Gamble*, 429 U.S. 97 (1976); *see also* MO. REV. STAT. § 217.230 (2018).

114. *Division of Offender Rehabilitative Services*, MO. DEP'T OF CORR., <https://doc.mo.gov/divisions/rehabilitative-services> (last visited Feb. 16, 2019).

115. *Id.*

116. *Id.*

117. *Id.*

118. Moore, *supra* note 21.

119. *Missouri's Elderly Prison Population Surges*, KMBC NEWS, <https://www.kmbc.com/article/missouri-s-elderly-prison-population-surges/3687273> (last updated Mar. 9, 2015, 2:39 PM).

and mental health care and, according to expenditure data, it has received about \$1.6 billion from the Department of Corrections, which is more than any other vendor since 2000.¹²⁰ The rate Corizon is paid per day includes outpatient services and other off-site medical care, such as surgeries, pharmaceutical services, and mental health care.¹²¹

To stress the need for change in the Missouri prisons, former Missouri Governor, Eric Greitens, ordered the Council of State Governments Justice Center to conduct a study on the current state of the corrections system.¹²² The study, conducted in the spring of 2017, suggested that Missouri needs to invest in itself immediately or else two new prisons will have to be built due to the increasing population, which would create further increases in costs for taxpayers.¹²³ Specifically, Missouri could either invest around \$189 million to create better community-based treatment options or pay \$485 million to build and operate the two new prisons.¹²⁴ Andy Barbee, the Council of State Governments Justice Center’s director of research, said Missouri’s current correctional system is at a “make-or-break” point.¹²⁵ By investing in community-based treatment options, Missouri would save money and could produce long-term results, which would decrease the number of returning prisoners.¹²⁶ Because Missouri has one of the nation’s largest and oldest prison populations, this increases the burden on taxpayers for providing health care for these inmates. Therefore, Missouri must make systemic or legislative changes to reduce this burden while still providing sufficient medical care to aging prisoners.

IV. SOLUTIONS

To reduce the cost of health care in prisons while still providing sufficient medical care to their inmates, states have relied on several different methods. Some states turned to medical or geriatric release policies, while others expanded their telehealth services to reach prisons.¹²⁷ States that expanded Medicaid under the Affordable Care Act (“ACA”) have given prisoners more options for coverage once released from incarceration.¹²⁸ While Missouri has taken a few steps toward decreasing health care costs, more steps need to be taken in order to make a real impact that will ease the costly burden of providing health care for aging prisoners.

A. More Lenient Medical Release Policy

States around the country have different processes for releasing elderly inmates, which “include discretionary parole, inmate furloughs, and medical—or compassionate—release.”¹²⁹ However, inmates must meet a number of requirements to be eligible, which are “usually related to their age, medical condition, and

120. Moore, *supra* note 21.

121. *Id.*

122. *Blueprint*, *supra* note 108.

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.*

127. PEW CHARITABLE TR., *supra* note 106, at 13–14.

128. *Id.* at 14.

129. CHIU, *supra* note 4, at 6.

risk to public safety.”¹³⁰ Missouri does have a medical release policy, but few inmates satisfy the strict requirements.¹³¹ There is no minimum age requirement, but the prisoner must be so advanced in age, or have such serious medical ailments, that they need long-term nursing home care.¹³² The prisoner is also subject to review by the Board of Probation and Parole who has discretion to grant or deny medical parole.¹³³

In the past, the Missouri legislature has attempted to pass bills that would make it easier for aging prisoners to be granted parole.¹³⁴ For example, House Bill 344 was introduced in 2015 which would have given elderly prisoners a chance at release after serving at least 25 years in prison.¹³⁵ To be eligible, prisoners would need to be over the age of 65 with no prior convictions for violent felony crimes.¹³⁶ That bill was voted down by the Missouri House, with many Republicans arguing the proposal was simply a way to overturn jury decisions.¹³⁷

Because Missouri has one of the highest incarceration rates in the world, let alone the country, a more lenient medical release policy would decrease the number of people in prisons while simultaneously decreasing the cost of health care for the state taxpayers. While this solution makes sense, it may take a while to enact a more lenient policy based on the disagreement among Missouri legislative members and the amendment process. Further, there is discomfort among the public about releasing offenders, even though the aging prison population is less likely to recommit or commit new crimes than the younger prison population.¹³⁸ Given the small chance a person aged 50 or older may commit or recommit a crime, enacting a more lenient medical release policy would be worth that small risk to obtain the benefits of a decreased prison population and health care costs.

B. Expand Telehealth to Prisons

Another route Missouri could take is to expand telehealth in prisons around the state. Telehealth reduces the need for transportation and staff supervision needed for the transportation by offering medical services to remote locations where it is usually unavailable.¹³⁹ The Health Resources and Services Administration defines telehealth as “the use of electronic information and telecommunications technologies to support long-distance clinical health care, patient and professional health-

130. *Id.*

131. MO. REV. STAT. § 217.250 (2018).

132. *Id.*

133. *Id.*

134. Moore, *supra* note 21.

135. Jesse Bogan, *Missouri Lawmaker Wants Certain Geriatric Offenders Out of Prison*, ST. LOUIS POST-DISPATCH (Mar. 17, 2015), https://www.stltoday.com/news/local/crime-and-courts/missouri-lawmaker-wants-certain-geriatric-offenders-out-of-prison/article_f2867157-d1eb-599b-ae3c-0965fa3b7635.html.

136. *Id.*

137. Austin Huguelet, *Missouri House Shoots Down Attempt at Giving Elderly Lifers Chance at Parole*, ST. LOUIS POST-DISPATCH (May 3, 2017), https://www.stltoday.com/news/local/govt-and-politics/missouri-house-shoots-down-attempt-at-giving-elderly-lifers-chance/article_8da8e5b4-987a-5346-a37a-dc06c94b214a.html.

138. Mikle, *supra* note 9; ACLU, *supra* note 81, at ii.

139. *State Prisons*, *supra* note 99, at 14.

related education, public health, and health administration.”¹⁴⁰ Expansion of telehealth in state prisons has saved states millions of dollars; for example, telehealth saved Georgia about \$9 million in officer pay and transportation costs.¹⁴¹

The telehealth network in Missouri is known as the Missouri Telehealth Network (“MTN”).¹⁴² MTN began in 1994 and was one of telehealth’s first public-private partnerships.¹⁴³ Currently, MTN partners with Heartland Telehealth Resource Center¹⁴⁴ and other health organizations, while also managing several telehealth programs.¹⁴⁵ In 2016, Missouri Governor, Jay Nixon, signed SB 579 into law, which established new telemedicine practice standards.¹⁴⁶ Under the new standards, the telemedicine providers must be licensed in Missouri, and a valid physician-patient relationship must be established before treatment via telemedicine can be issued.¹⁴⁷ However, the new standards do not extend the use of telemedicine in prisons.¹⁴⁸

While SB 579 does not explicitly extend telehealth to prisons, in 2009, Saint Luke’s Health System expanded its telehealth program to inmates at Crossroads Correctional Center and Jefferson City Correctional Center by providing them with pulmonary specialty care services via telemedicine.¹⁴⁹ Former Missouri Department of Corrections Director of the Division of Adult Institutions, Tom Clements, said, “Telehealth will improve our ability to safely and efficiently manage incarcerated offenders, while providing appropriate medical care to those who need it. The [Missouri] Department of Corrections is anxious to establish telehealth at additional correctional institutions.”¹⁵⁰ As of 2011, Missouri only used telemedicine for cardiology, orthopedic, and oncology services.¹⁵¹ In the same year, Missouri used telemedicine in combination with on-site care for cardiology services and with both on-site and off-site care for orthopedics and oncology services.¹⁵²

Although the expansion of telehealth in prisons would nearly eliminate transportation costs, and other costs related to off-site health care services, there are limitations to telehealth. One of the major issues is the necessity for broadband and the

140. *About Telehealth: What is Telehealth?*, CTR. FOR CONNECTED HEALTH POL’Y, <https://www.cchpca.org/about/about-telehealth> (last visited Feb. 4, 2019).

141. PEW CHARITABLE TR., *MANAGING PRISON HEALTH CARE SPENDING 12–13* (2013), https://www.pewtrusts.org/~media/legacy/uploadedfiles/pes_assets/2014/pctcorrectionshealthcare-brief050814pdf [hereinafter *MANAGING PRISON*].

142. *Missouri Telehealth Network*, MO. SCH. MED., <https://medicine.missouri.edu/offices-programs/missouri-telehealth-network> (last visited Feb. 4, 2019).

143. *Id.*

144. *Who We Are*, HEARTLAND TELEHEALTH RESOURCE CTR., <http://heartlandtrc.org/about-us/> (last visited Feb. 4, 2019). Heartland Telehealth Center is federally-funded and is a resource center which seeks to increase the use of telemedicine in Missouri, Oklahoma, and Kansas.

145. MO. SCH. MED., *supra* note 142.

146. S. 579, 98th Gen. Assemb., 2d Reg. Sess. (Mo. 2016); Nathaniel M. Lactman & Jacqueline N. Acosta, *Missouri Governor Signs New Telemedicine Law*, FOLEY & LARDNER LLP (Aug. 23, 2016), <https://www.healthcarelawtoday.com/2016/08/23/missouri-governor-signs-new-telemedicine-law/>.

147. Mo. S. 579.

148. *Id.*

149. *Saint Luke’s Expands Telehealth Program to Correctional Facilities in Missouri*, SAINT LUKE’S (Jan. 21, 2010), <https://www.saintlukeskc.org/about/news/saint-lukes-expands-telehealth-program-correctional-facilities-missouri>.

150. *Id.*

151. Karishma A. Chari et al., *National Survey of Prison Health Care: Selected Findings*, NAT’L HEALTH STAT. REP. 15 (July 28, 2016), <https://www.bjs.gov/content/pub/pdf/nsphcsf.pdf>.

152. *Id.* at 16.

lack of broadband access in rural areas.¹⁵³ Unfortunately, Missouri is one of the worst states in regard to broadband access in rural areas; one-third of Missouri counties have no access to telehealth services.¹⁵⁴ Rachel Mutrux, the senior program director for MTN, said while telehealth requires a large amount of broadband access, the access is getting better, especially because hospitals began receiving electronic health records.¹⁵⁵ To try to combat this broadband issue, Missouri created grants for rural hospitals to develop better broadband support.¹⁵⁶

Another limitation of expanding telehealth is the costs of implementation.¹⁵⁷ Although telehealth could substantially reduce costs related to inmate health care, the costs for primary care devices for telehealth can range from \$5,000-\$10,000.¹⁵⁸ Further, software and hardware for videoconferencing can cost between \$1,500-\$10,000.¹⁵⁹ Other problems include the costs of training and the collapse of personal relationships between the patient and physician created through clinic appointments.¹⁶⁰ For instance, as patients and doctors spend more time with one another, the patient's care improves because it becomes more individualized.¹⁶¹ Verbal and nonverbal modes of communication are very important in establishing a trusting patient-doctor relationship, with nonverbal forms of communication playing a larger role.¹⁶² A patient will be more likely to trust and openly communicate with a doctor who establishes strong eye contact, uses reassuring body gestures, and conveys emotional perceptiveness.¹⁶³ Although patients would be able to constantly communicate with their doctors through text messages, videos, emails, etc., older patients who are not as technologically advanced will miss the one-on-one contact in-person visits provide.¹⁶⁴

Although these limitations can create significant barriers to the implementation of telehealth, Missouri can use other states as guides for how to expand in the most cost-effective way. For example, California gradually expanded its high-speed network in prisons and chose to invest in telehealth carts¹⁶⁵ to expand the use of telehealth, which could save California up to \$15 million annually in inmate health care costs.¹⁶⁶

153. Mica Soellner & Trevor Hook, *Telehealth Gives Rural Missouri Greater Access to Health Care*, COLUMBIA MISSOURIAN (Jan. 7, 2018), https://www.columbiamissourian.com/news/state_news/telehealth-gives-rural-missouri-greater-access-to-health-care/article_43c82608-e47a-11e7-8750-77faef5c043f.html.

154. *Id.*

155. *Id.*

156. *Health Care Transformation – Telemedicine: Implications for Missouri*, MO. FOUND. FOR HEALTH 4 (Aug. 10, 2016), <https://mfh.org/wordpress/wp-content/uploads/2016/08/Health-Care-Transformation-Telemedicine.pdf>.

157. *Id.* at 3.

158. *Id.*

159. *Id.*

160. *Id.* at 4.

161. Nathan Toh, John Pawlovich & Stefan Grzybowski, *Telehealth and Patient-Doctor Relationships in Rural and Remote Communities*, 62 CAN. FAM. PHYSICIAN 961, 961 (Dec. 2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5154642/pdf/0620961.pdf>.

162. *Id.*

163. *Id.*

164. *Id.* at 962; Maria Mgdalena Bujnowska-Fedak & Urszula Grata-Borkowski, *Use of Telemedicine-Based Care for the Elderly: Promises and Pitfalls*, 3 SMART HOMECARE TECH. & TELEHEALTH 91, 99 (May 7, 2015), <https://www.dovepress.com/getfile.php?fileID=24945>.

165. MANAGING PRISON, *supra* note 141, at 14. Telehealth carts, or “T-carts,” contain audio, visual, and diagnostic equipment that allows physicians to treat patients from outside the prison walls.

166. *Id.*

Missouri could either keep their use of telehealth minimal or expand it to cover more prisons and services. Either choice would be costly to state taxpayers. If Missouri made no changes to their prison health care system, the taxpayer will still be burdened with off-site transportation costs for certain medical procedures and on-site visits by physicians. Choosing to expand telehealth to more corrections facilities and offer more services through telehealth would be a large investment cost for the equipment and higher quality broadband access. The Federal Communications Commission has used the Mississippi Diabetes Telehealth Network as a model for successful telehealth implementation.¹⁶⁷ In its first year of expanding broadband access to allow more patients access to telehealth, Mississippi saved more than \$28,000 a month.¹⁶⁸ Missouri has already tried to improve its broadband access,¹⁶⁹ and, if that continues, the access to telehealth would also increase across the state. Just as the study on the Missouri prison system suggested, Missouri can either choose to invest now or pay more later.¹⁷⁰ Missouri should expand its use of telehealth because it would save the state and its taxpayers more money in the long run, which is worth the high investment costs at the start.

C. Expand Medicaid

Under the ACA, states had the option to expand Medicaid coverage to certain people with household incomes below a certain level.¹⁷¹ “Medicaid is a federal- and state-funded health insurance program for” families, seniors, and low-income people who would not be able to afford health care coverage.¹⁷² Missouri’s Medicaid program is called “MO HealthNet [and] runs through the Missouri Department of Social Services.”¹⁷³ Missouri declined to accept federal Medicaid expansion, which means non-disabled adults without children are not Medicaid eligible no matter how low their income is.¹⁷⁴ If Missouri would have expanded Medicaid coverage, the federal government would have paid all costs under the expansion from 2014 to 2016.¹⁷⁵ The federal reimbursement would have dropped to 90% in 2020, and then it would have stayed at that level.¹⁷⁶ It is estimated that 87,000 people have no access to health insurance without a Medicaid expansion, and about 352,000 additional people would be covered if the state expanded its coverage.¹⁷⁷ As of 2015,

167. *Policymakers: Broadband Funding Key to Bringing Telehealth Access to Rural Areas*, CARE INNOVATIONS, <http://news.careinnovations.com/blog/policymakers-broadband-funding-key-to-bringing-telehealth-access-to-rural-areas> (last visited Feb. 28, 2019).

168. *Mississippi’s Telehealth Network Could be FCC’s Model for RPM Expansion*, CARE INNOVATIONS, <http://news.careinnovations.com/blog/mississippi-telehealth-network-fcc-model-for-remote-patient-management> (last visited Feb. 28, 2019).

169. MISSOURI FOUND. FOR HEALTH, *supra* note 156.

170. *Blueprint*, *supra* note 108.

171. Louise Norris, *Missouri and the ACA’s Medicaid Expansion*, HEALTHINSURANCE.ORG (Apr. 15, 2018), <https://www.healthinsurance.org/missouri-medicaid/>; *Medicaid & CHIP: Medicaid Expansion & What it Means for You*, HEALTHCARE.GOV, <https://www.healthcare.gov/medicaid-chip/medicaid-expansion-and-you/> (last visited Feb. 4, 2019).

172. *Medicaid Eligibility in Missouri*, ELIGIBILITY.COM (Nov. 9, 2017), <https://eligibility.com/medicaid/missouri-mo>.

173. *Id.*

174. Norris, *supra* note 171.

175. *Missouri’s Economy Will Benefit from Expanding Medicaid*, FAMILIES USA 1 (Feb. 2013), https://familiesusa.org/sites/default/files/product_documents/MO-and-Medicaid-Expansion.pdf.

176. *Id.*

177. Norris, *supra* note 171.

MO HealthNet only covered parents with incomes capped at 19% of the federal poverty level, making it the state program with the lowest eligibility allowed under federal law.¹⁷⁸ Among those not covered by MO HealthNet are Missouri prisoners, which means the state must pay 100% of their health care costs.¹⁷⁹

Inmates are ineligible for Medicaid coverage because of a federal law known as the Medicaid Inmate Exclusion Policy (“MIEP”).¹⁸⁰ However, the MIEP does not prohibit inmates from enrolling in Medicaid while incarcerated.¹⁸¹ Medicaid expansion would cover those low-income, childless adults, which would make more prisoners eligible to enroll in the program.¹⁸² Colorado, Michigan, and Ohio—all expansion states—reported savings of between \$5-\$13 million a year in their state corrections budgets related to inpatient care.¹⁸³ If an inmate is a low-income, childless adult and is enrolled, states can seek federal matching funds that would pay for some prison health care services.¹⁸⁴ The MIEP bans the payment of federal Medicaid matching funds for the costs of services for inmates, unless the inmate is a patient in a “medical institution” for 24 hours or longer.¹⁸⁵ Although states can only expect coverage for inpatient care, the federal government would cover those infrequent but costly portions of an inmate’s health care.¹⁸⁶

Because states cannot receive reimbursement from the federal government for health care treatment during incarceration, they take three different approaches to ensuring prisoners can make proper Medicaid claims.¹⁸⁷ Washington D.C. and 16 states have suspended Medicaid for the duration of incarceration, and 15 states have suspended Medicaid for a specific amount of time.¹⁸⁸ Missouri and 18 other states completely terminated Medicaid during incarceration, as opposed to suspending it, which means inmates in Missouri must reapply for coverage after leaving prison.¹⁸⁹ This can be troublesome because the application time period is usually limited to 90 days and they may not be able to access the necessary health care.¹⁹⁰ Suspension allows less time to reactivate coverage once the inmate is released, but the

178. *Medicaid Makes (Dollars &) Sense*, MO. BUDGET PROJECT 1 (Jan. 2015), http://www.mobudget.org/wp-content/uploads/2015/01/Medicaid_Dollars_Sense_2015.pdf.

179. *Id.* at 2.

180. Tyler Winkelman et al., *Inmates are Excluded from Medicaid – Here’s Why it Makes Sense to Change That*, MICH. INST. FOR HEALTHCARE POL’Y & INNOVATION (Feb. 27, 2017), <http://ihpi.umich.edu/news/inmates-are-excluded-medicaid-%E2%80%93-here%E2%80%99s-why-it-makes-sense-change>.

181. Alexandra Gates et al., *Health Coverage and Care for the Adult Criminal Justice-Involved Population*, HENRY J KAISER FAM. FOUND. 4 (Sept. 5, 2014), <https://kaiserfamilyfoundation.files.wordpress.com/2014/09/8622-health-coverage-and-care-for-the-adult-criminal-justice-involved-population1.pdf>.

182. MANAGING PRISON, *supra* note 141, at 17–18.

183. MEDICAID & CHIP LEARNING COLLABORATIVES, MEDICAID AND JUSTICE-INVOLVED POPULATIONS: STRATEGIES TO INCREASE COVERAGE AND CARE COORDINATION, MEDICAID.GOV 6 (Aug. 17, 2017), <https://www.medicaid.gov/state-resource-center/downloads/mac-learning-collaboratives/justice-involved-populations.pdf> [hereinafter MEDICAID].

184. MANAGING PRISON, *supra* note 141, at 17.

185. Gates et al., *supra* note 182, at 4. Winkelman et al., *supra* note 181.

186. MANAGING PRISON, *supra* note 141, at 18.

187. MEDICAID, *supra* note 184, at 13.

188. For example, Medicaid could be suspended for 30 days or up to one year. *Medicaid Suspension Policies for Incarcerated People: 50-State Map*, FAMILIES USA (July 2016), <https://familiesusa.org/product/medicaid-suspension-policies-incarcerated-people-50-state-map>.

189. *Id.*; Brittany La Couture, *Termination of Medicaid for Inmates*, AM. ACTION F. (July 7, 2016), <https://www.americanactionforum.org/insight/termination-medicaid-inmates/>.

190. *Id.*

corrections departments can bill Medicaid for the allowed expenses.¹⁹¹ However, suspension also presents difficulties, such as extensive coordination between Medicaid and Department of Justice agencies, potentially complex system changes, and challenges to timely reactivation because of little notice about incarceration status changes.¹⁹²

States that have enacted Medicaid for inmate health care quickly saw savings because the federal government reimburses at least 50% of inpatient costs, and Medicaid has strong negotiating power, so it typically pays the lowest rates of any state payer.¹⁹³ A study in New Hampshire estimated the corrections department would save almost \$22 million because of Medicaid coverage expansion for inpatient care.¹⁹⁴

Although expanding Medicaid coverage could potentially save Missouri millions of dollars, Missouri should not expand Medicaid coverage, especially considering other possible solutions. The potential reimbursement for inpatient care at hospitals would greatly decrease health care costs for inmates, because that type of care tends to be one of the most expensive.¹⁹⁵ However, it would leave the costs of other care virtually unchanged.¹⁹⁶ Therefore, taxpayers would still bear the costs of on-site physicians and the care given inside the prison walls.¹⁹⁷ Further, costs would still be high for providing adequate staff and training to care for the inmates. There are also many difficulties in providing for only suspension of coverage instead of complete termination. Even though Medicaid expansion would ease some of the responsibility placed on Missouri and its taxpayers regarding health care costs, the potential for complicated system changes and the savings in comparison to the other options make Medicaid expansion the least attractive solution.

V. CONCLUSION

With the prison population continuing to age in the United States and, specifically in Missouri, the load taxpayers bear in supporting inmates' health care costs will also continue to increase. Therefore, Missouri must find a solution to cut costs related to its inmates' health care. This article suggested three possible solutions: (1) a more lenient medical parole policy, (2) expansion of telehealth in prisons, and (3) Medicaid expansion. Comparing the three solutions, the expansion of Medicaid would only help decrease the costs of certain health care services and could create hardships within the corrections system. While a more lenient medical release policy and telehealth expansion each have their own limitations, the benefits they provide strongly outweigh those risks.

Despite the small steps Missouri has taken to decrease the health care costs associated with its aging prisoner population, Missouri must look harder at its corrections systems and the options available to it in order to stop the aging prisoner epidemic. Based on the previous discussions among state legislatures and their promotion for new legislation, there seems to be an obvious want for change in

191. MEDICAID, *supra* note 184, at 13.

192. *Id.*

193. MANAGING PRISON, *supra* note 141, at 19.

194. *Id.*

195. *Id.* at 18.

196. *Id.*

197. *Id.*

Missouri's medical release policy. Therefore, legislatures should continue this discussion and encourage Missouri to enact a more lenient medical parole policy.