

Justice Reinvestment Initiative in Vermont

Study of a Parole for Older Adults Policy

August 17, 2021 and October 12, 2021



Act 148 tasks the working group with evaluating the policy of allowing parole eligibility for older adults who have served a portion of their minimum term.



Medical Parole

Parole eligibility based on a person's medical condition.

Geriatric Parole or Parole for Older Adults

Parole eligibility based on a person's age and/or age-related illness or infirmity, including incapacity and the need for long-term care.

Compassionate Release

Can refer to both medical parole and/or parole for older adults.

Vermont law currently provides for medical parole and medical furlough.

| | Medical Parole | Medical Furlough |
|--|----------------|------------------|
| Person must be diagnosed with a terminal or serious medical condition that makes them unlikely to physically present a danger to society | ✓ | ✓ |
| Allows for release to a hospital, hospice, licensed inpatient facility, or other suitable housing accommodation | ✓ | ✓ |
| Requires recommendation by the Department of Corrections (DOC) based on a range of factors including offense, time served, risk level, victim concerns, age, and release plan. | ✓ | ✓ |
| Entity responsible for final release determination. | Parole Board | DOC |

Parole for older adults has similar policy goals as medical parole but with a more explicit focus on the aging prison population.



Reduce correctional **health care costs** related to treating older adults.



Reduce the **rising number** of incarcerated older adults in the prison population.



Increase access to a **higher level of day-to-day care** than what may be available in an institution.



Provide a **humane alternative** to continued incarceration for people suffering from age-related issues.

There have been several efforts to create a parole policy for older adults in Vermont that were not enacted.



H.29 (2013)

→ Eligibility included people 55–65 who have served at least 10 years and people 65 or older who have served at least 5 years.

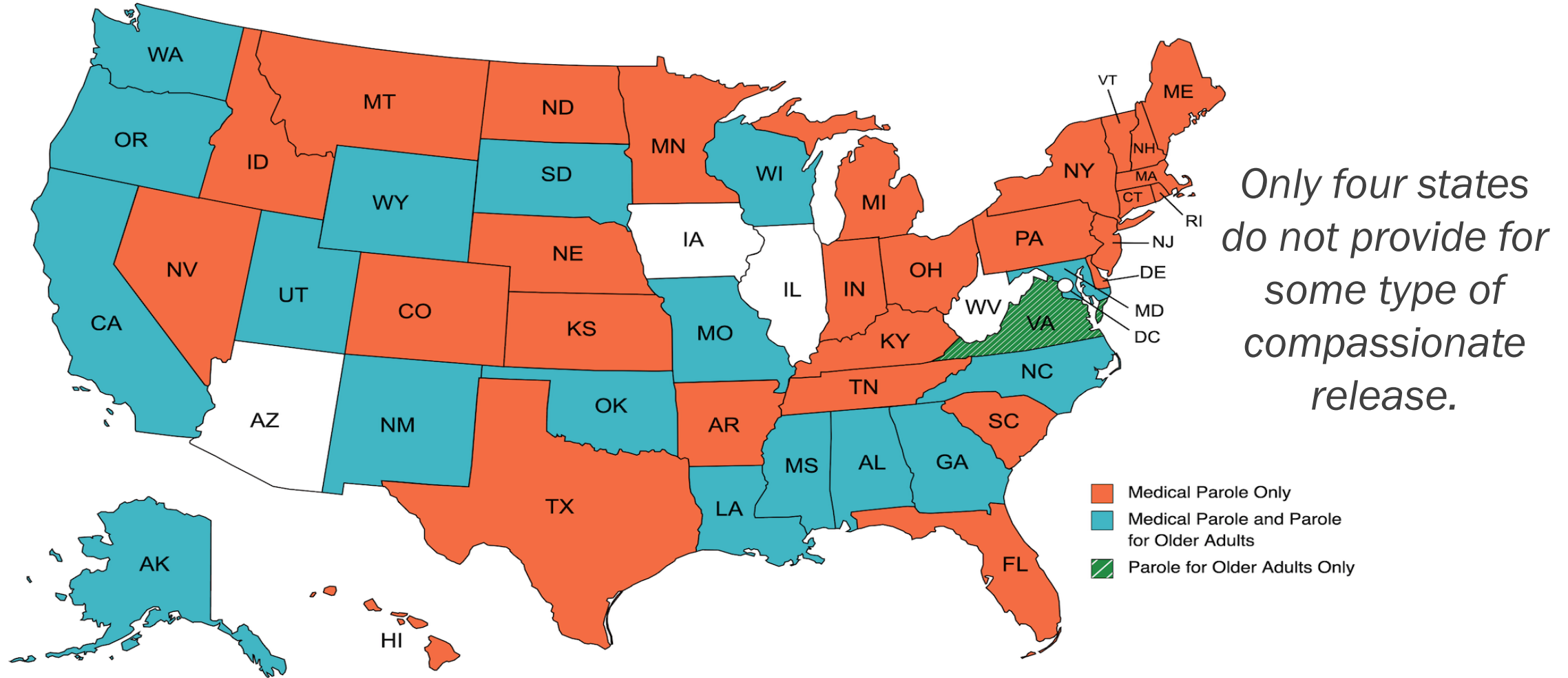
S.167 (2019)

→ Proposed a judicial process for people 65 or older who suffer from a chronic or serious medical condition or are experiencing deteriorating mental or physical health.

S.338 (2020) and S.18 (2021)

→ Eligibility included people 65 or older who have served 5 years, fulfilled programming requirements, and have not received a major disciplinary rule violation within the previous 12 months.

Seventeen states currently have a parole policy for older adults, with all but one also having medical parole.



Most states limit eligibility to people **60 or older** and do not require a person to have served any set duration of their sentence.

7

Require a person be at least 60.

8

Do not require a person to have served any set duration of their sentence.

3

Require a person be at least 65

2

Require a person 60+ to have served at least 10 years and a person 65+ to have served at least 5 years.

4

Do not have an age requirement and base eligibility on physical incapacitation and/or reduced risk to public safety due to age.

In addition to age, some states require that a person must also have some type of qualifying age-related infirmity or illness.



In Missouri, an incarcerated person must be incapacitated by age to the extent that they **require long-term nursing home care**.



In North Carolina, in addition to being 65 or older, an incarcerated person must also **suffer from chronic infirmity, illness, or disease related to aging** that has incapacitated the person to the extent they do not pose a public safety risk.



In Oregon, along with being elderly, an incarcerated person must also be **permanently incapacitated**.

Many state policies also include other components such as victim notification and carve-outs for certain offenses.

Additional components include:

- **Offense carveouts** for a range of violent and/or sexual offenses
- Requirements that a person **serve a defined portion of their minimum sentence** prior to parole consideration
- **Victim notification** when a person is identified or approved for early release, as well as an opportunity for victim input prior to decision-making
- Eligibility exclusions for people **serving life without parole**
- Additional **criteria for release** including significantly reduced risk to public safety and risk to recidivate

In nearly all states, the final release decision is made by the paroling authority or the corrections department.

Data from the Department of Corrections can provide some insight into the eligible population should Vermont adopt a parole policy for older adults.

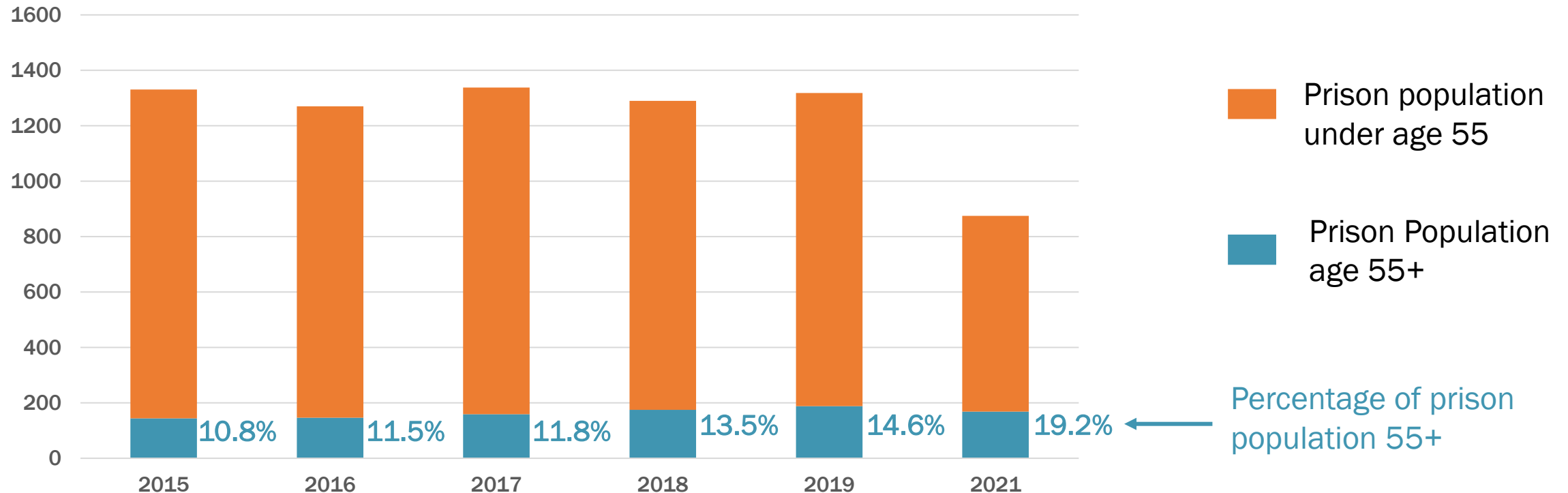
CSG Justice Center staff were able to do a **limited population profile** for people who could potentially be considered for release under a parole policy for older adults with criteria that the person:

- Be at least 60 years of age or older
- Have served at least 5 years
- Have not yet served their minimum sentence and are therefore ineligible for release through the standard parole process

It is important to note that due to data analysis limitations, this profile was unable to account for re-admissions over time when calculating total time served. As a result, it should be considered a strong estimate.

The number of people over the age of 55 who are incarcerated in Vermont has increased almost 10 percent since 2015 despite a recent decrease in the total prison population.

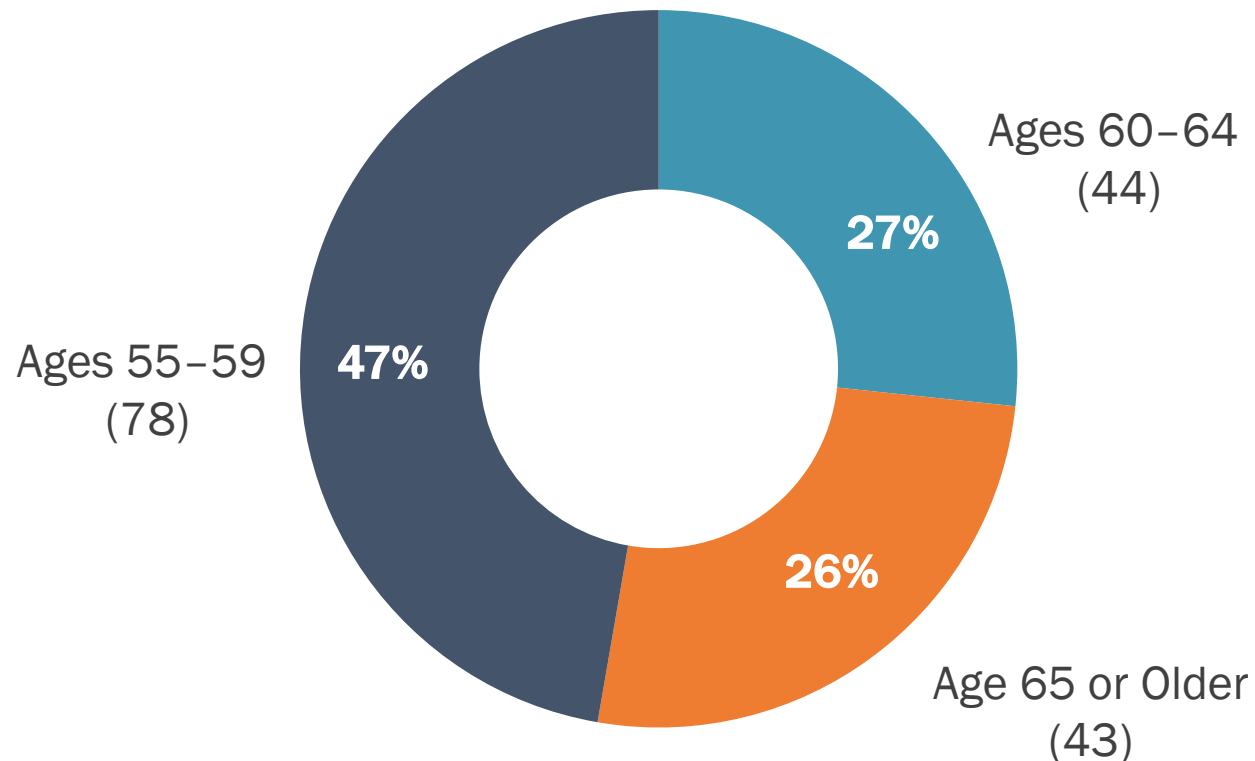
Snapshot Sentenced Incarcerated Prison Population
by Age, June 2015–2019 and April 2021*



*Due to data set limitations, specific age categories were not available for 2020.

Over half of Vermont's older incarcerated population are 60 years or older.

Snapshot Sentenced Incarcerated Population
Over 55 Years of Age, April 2021



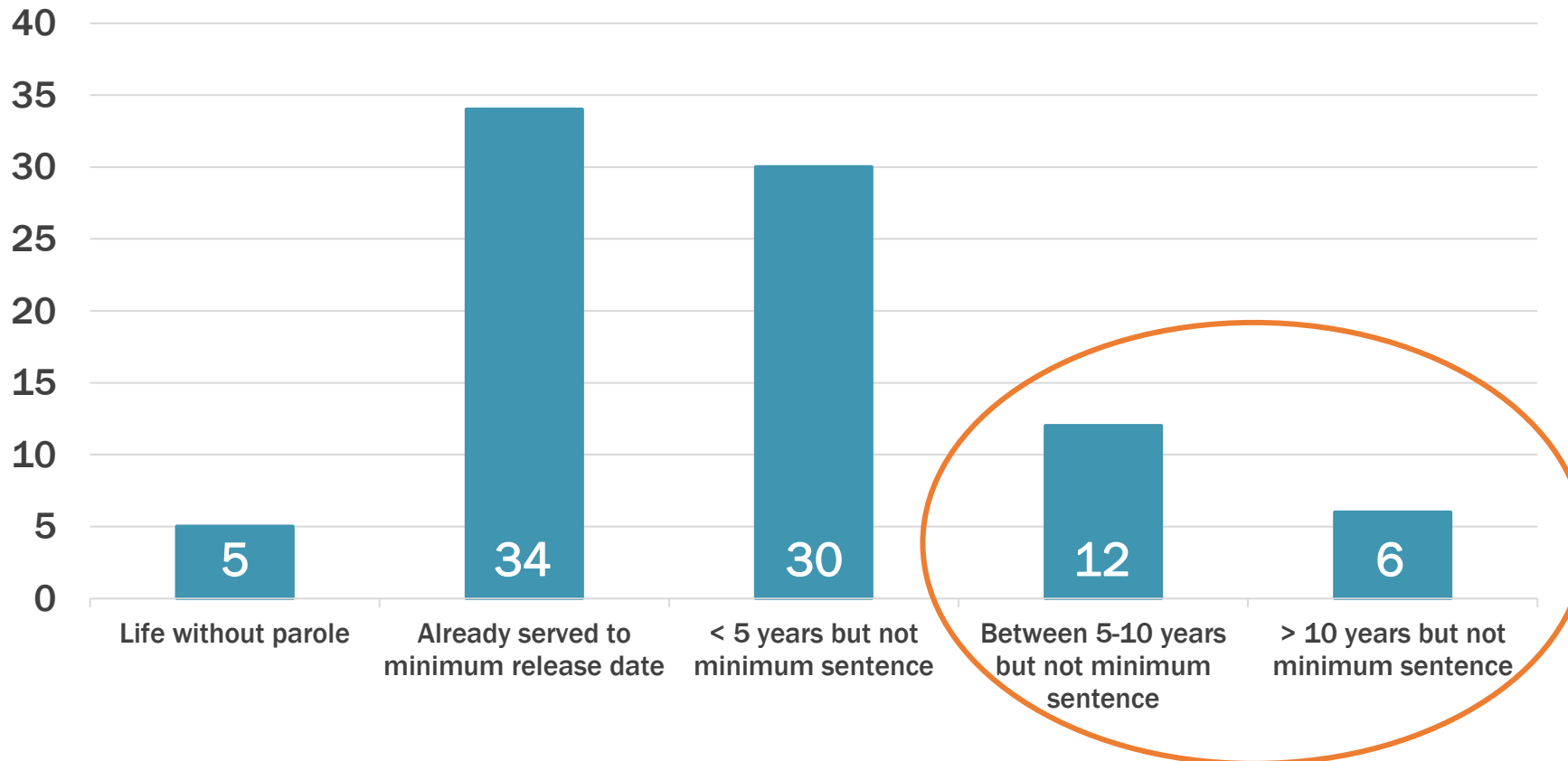
60+ population demographics:

Male 84 (96%)
Female 3 (4%)

White 79 (91%)
Black 5 (6%)
*American Indian/
Alaskan Native* 2 (2%)
Unknown 1 (1%)

Of the 87 incarcerated people aged 60 or older, only 18 have served at least 5 years but not yet reached their minimum.

Portion of Minimum Sentence Served for Vermont Prison Population
60 Years of Age or Older, April 2021

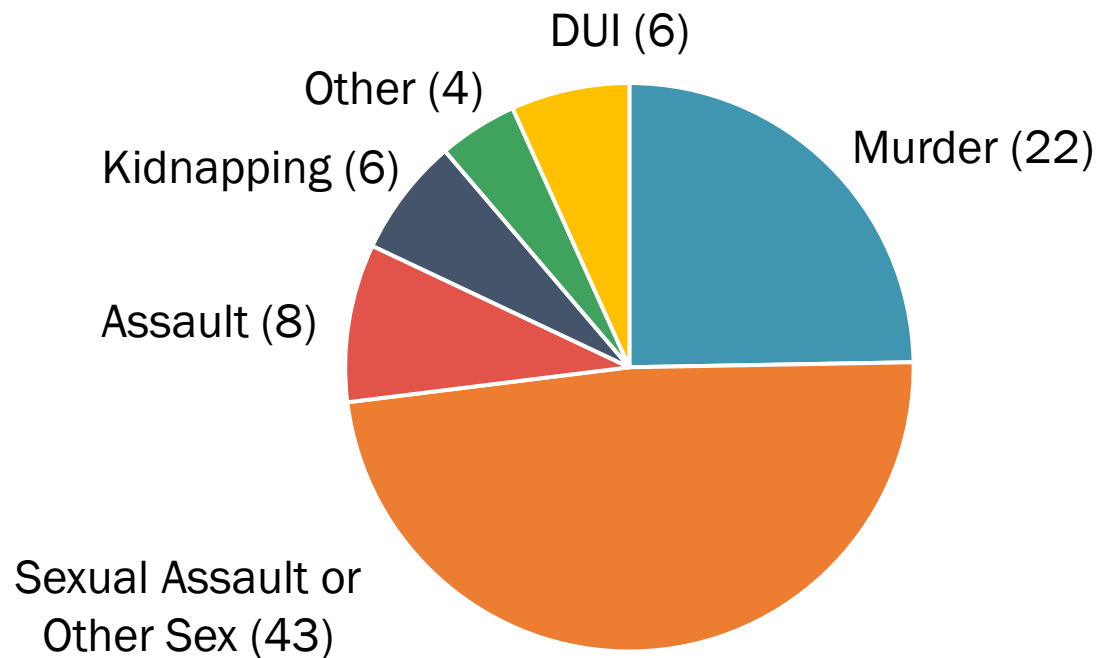


Of the 18 people 60 years or older who have served at least 5 years, 9 have served over half of their minimum sentence.

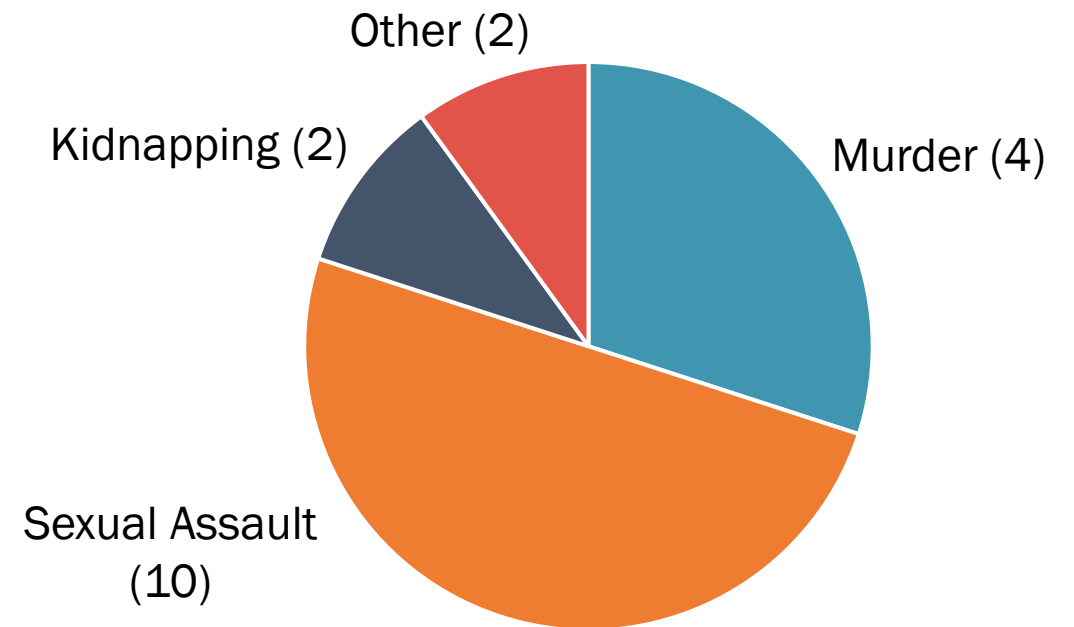
Due to data analysis limitations, this profile was unable to account for re-admissions over time when calculating total time served. As a result, it should be considered a strong estimate.

77 percent of people 60 and older who have not met their minimum but served at least 5 years are incarcerated for sexual assault or murder.

Vermont Incarcerated Population At Least 60 or Older by Offense Type, April 2021



Vermont Incarcerated Population At Least 60 or Older That Have Served At Least 5 Years But Not Their Minimum by Offense Type, April 2021



While most of the 18 people included in Vermont's population profile have been assessed as higher risk, research does show that future criminality is inversely correlated with age.

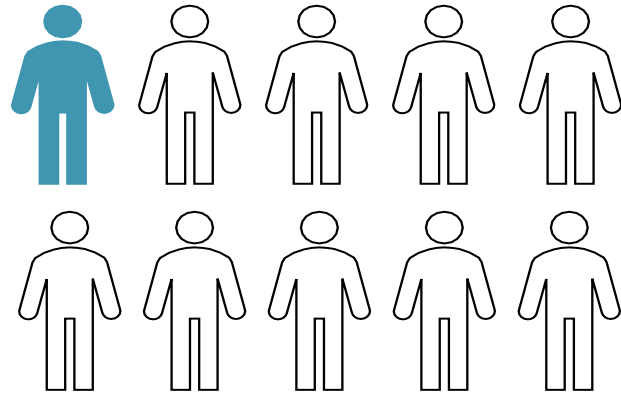
As a result, some older incarcerated people may be released without an increased risk to public safety.

Studies have found that people 55 or older are significantly less likely to recidivate following release when compared to people under 30 years old.*



*It is important to note that the degree to which risk decreases with age can vary by recency and offense type. Specifically, people convicted of recent sexual offenses involving children do not show reduced risk to reoffend just because they are older.

Compassionate release policies are generally applied on a case-by-case basis, so eligibility does not always guarantee release.



*Nationally, **only a little more than one out of 10 people** eligible for medical or age-related parole were ultimately granted release from 2013 to 2015.*

Data on the use of medical parole and furlough is not available for Vermont; however, anecdotal information indicates that these policies are used infrequently.

There are several factors that contribute to the underutilization of parole policies for older adults nationally.

These challenges significantly limit a state's ability to achieve intended policy goals despite the enactment of a statute on parole for older adults:

- Extensive statutory exclusions that overly restrict the number of people eligible for case-by-case consideration
- A complicated or unclear identification and assessment process, including vague definitions or eligibility criteria
- Lengthy release determination processes
- Lack of post-release housing, health care, and other services in the community

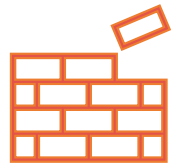
Should Vermont adopt a parole policy for older adults, it would be important to track several key measures to monitor implementation.

Measures include:

- Total eligible population based on statute
- Number of people identified for review and how they were identified
- Number of people reviewed and the resulting recommendation
- Number of people released
- Reason for rejecting review, recommendation, or release

During the August meeting, members requested information on approaches for addressing the aging prison populations other than compassionate release.

States have utilized several different strategies, often in conjunction with medical or geriatric parole:



Retrofitting or building secure prison facilities for geriatric incarcerated people in need of a high level of day-to-day care



Creating structured programs for older adults that provide age-specific treatment, care, and reentry services



Contracting with private providers to serve people in the community

States with large aging incarcerated populations have invested significant resources in retrofitting or building new geriatric facilities.

Facilities range from specialized wings to dedicated prisons and most often serve people requiring a high level of care.



Pennsylvania converted a **former state hospital into a secure geriatric prison facility** for incarcerated people in need of long-term or hospice care.



Missouri has created several **enhanced care wings within existing prison facilities** to provide services similar to a nursing home.



Virginia established a **special needs facility that provides services for older incarcerated people**, as well as others who require different types of specialized care.

Other states have created structured programs for older adults that provide age-specific programming, care, and reentry services.

These programs focus on supporting the needs of older adults while incarcerated as well as in preparation for release.



Ohio's Hocking Correctional Facility offers **wraparound services focused on community reintegration** to prepare aging incarcerated people for release, including into nursing home placement.



Nevada partnered with community organizations to establish a **program for older incarcerated people** designed to increase mental, physical, and spiritual health.

Connecticut is implementing an innovative model in collaboration with state mental health and private sector partners.



After struggling to identify nursing homes willing to accept corrections and mental health referrals, Connecticut contracted with a privately owned and operated facility to specialize in state-referred clients.

- The facility, 60 West, serves people in need of nursing home-level care outside of incarceration or hospital settings.
- Most corrections residents are people granted Nursing Home Release under the discretionary authority of the DOC commissioner and are monitored by the Division of Parole and Community Services.
- Other residents include referrals from the Department of Mental Health and Addiction Services.

60 West is the first facility of its kind to be approved for federal nursing home funding by the Centers for Medicare & Medicaid Services.

Medicaid covers half the cost of resident care at 60 West, resulting in significant savings to the state.



Under a 1997 exemption, people in correctional custody qualify for Medicaid reimbursement if care is provided outside of a state or local facility. This is a significant opportunity for states to access critical funding to support long-term care in the community for aging incarcerated people.

Like Connecticut, other states often use multiple strategies, including compassionate release, to manage the needs and cost of aging prison populations.

It is important for states to assess the specific needs of their older incarcerated population, as well as collaborate with health and human service agency and community partners.

