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2014 SURF Conference Proceedings

Title

Age and Incarceration

Permalink

<https://escholarship.org/uc/item/07j5q8rs>

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Publication Date

2015-04-01

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Peer reviewed|Undergraduate

Studies

Old Behind Bars: The Aging Prison Population in the United States (2012)

Human Rights Watch report details the difficulties of imprisoning elderly inmates, and the struggles elderly inmates face in confinement, including proper housing needs (pp. 48-54), quality and cost of medical care (pp. 72-78), mobility impairments (pg. 47), and victimization by younger inmates (pp. 57-60).

https://www.hrw.org/sites/default/files/reports/usprisons0112webwcover_0_0.pdf

Correctional Health Care: Addressing the Needs of the Elderly, Chronically Ill. And Terminally Ill Inmates (2004)

Department of Justice report has found that “management problems with elderly inmates... are intensified in the prison setting and include: vulnerability to abuse and predation, difficulty in establishing social relationships with younger inmates,” and the “need for special physical accommodations in a relatively inflexible physical environment.” (pp. 9-10)

<http://static.nicic.gov/Library/018735.pdf>

Long Term Inmates and Recidivism Rates (2016)

“Between the ages of 17-24 and 40-49, total crime and violent crime was reduced by ½. Between 40-49 and 50-59, total crime and violent crime was reduced by an additional ½. Higher risk inmates in their forties and fifties sometimes resemble lower risk inmates in their twenties (Sivertson and Carlsson, 2015).”

http://www.cdcr.ca.gov/BOPH/docs/johnsonvshaffer/Recidivism_Rates_Long_Term_Offenders.pdf

Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines (2004)

Page 28 shows a graph depicting the declining recidivism rates of offenders correlating with increasing age. Offenders under the age of 21 have a total recidivism rate of 35.5%, while offenders between the ages of 41-50 have a rate of 12.7% and offenders over the age of 50 have a rate of 9.5%.

http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2004/200405_Recidivism_Criminal_History.pdf

Cases

United States v. Clark (2008) – 5th Circuit affirmed the below-guidelines sentences of two defendants convicted of drug trafficking conspiracy based partly on the old age of the defendants and their subsequent low likelihood of recidivism. 289 F. App'x 44, 52 (5th Cir. 2008).

United States v. Gray (2006) – 11th Circuit affirmed a downward departure from 151-188 months to 72 months in a child pornography case based on defendant's old age (64), medical condition (depression and chronic mood disorder), and minimal criminal record. 453 F.3d 1323, 1325 (11th Cir. 2006).

United States v. Chase (2009) – 10th Circuit remanded case for resentencing based on district court improperly equating a downward variance with a downward departure, and thus did not properly

consider factors it was required to consider (advanced age, health, employment history) when addressing a variance.

“Chase's advanced age, prior military service, health issues, and employment history were all factual bases that would warrant a downward variance without running afoul of the statutory factors under § 3553(a)... The district court's inaccurate statements support Chase's claim the district court improperly equated a downward variance with a downward departure and suggest the district court did not properly exercise its discretion in considering Chase's motion for a downward variance.” 560 F.3d 828, 831 (8th Cir. 2009).

United States v. Collins (1997) – 10th Circuit ruled that the district court properly relied upon defendant's age and infirmity in departing downward from the career offender guideline range of 151-188 months to a range of 37-46 months. The court found that his age (64) and infirmity (heart disease, high blood pressure, ulcers, arthritis, and prostatitis) were present to an exceptional degree and “logically relevant to a defendant's criminal history or likelihood for recidivism,” warranting a downward departure from the career offender guideline. 122 F.3d 1297, 1306 (10th Cir. 1997).

United States v. Baron (1995) – Court granted a downward departure from advisory range of 27-33 months to home detention and probation for 76-year old bankruptcy fraud defendant whose medical problems would worsen in prison.

“As a general matter, as well as being costly, imprisonment is not efficacious particularly where the offender is not as likely to commit future crimes as a younger offender. Indeed, the Commission admits as much, recommending home confinement as an alternative form of punishment when incarcerating an elderly and infirm defendant is less efficient and more expensive than imprisonment.” 914 F. Supp. 660, 664 (D. Mass. 1995).

18 U.S.C.S. app. § 5H1.1

Age (including youth) may be relevant in determining whether a departure is warranted, if considerations based on age, individually or in combination with other offender characteristics, are present to an unusual degree and distinguish the case from the typical cases covered by the guidelines. Age may be a reason to depart downward in a case in which the defendant is elderly and infirm and where a form of punishment such as home confinement might be equally efficient as and less costly than incarceration. (LexisNexis, Lexis Advance through PL 115-42, approved 6/27/17)