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## **Abstract**

The main goal of most systems of criminal justice and most corresponding institutions, such as prisons or forensic psychiatric hospitals, is to eventually release inmates and therefore organize rehabilitative work on the basis that, after their release, they should be able to live a life without further offending. On the contrary, for offenders whose future is constrained to custody and who therefore will most probably die in prison, reinsertion or rehabilitation is not an inherent goal of custody.

The chapter will explore the reasons (ageing and health conditions, delinquency at a later age and, in particular, a restrictive system of sanctions and security measures) that lead to the increase of end of life cases in prisons. Insights into the situation in selected countries provide some statistical ground for a better understanding of the importance of the phenomenon as well as of differences in cross-national perspective. Different approaches in handling end of life in prisons and related ethical questions are discussed. These approaches deal with challenges on the level of the penitentiary system, on the organizational level of the single prison, for the day-to-day work of staff, and for fellow prisoners as well as for the dying prisoners themselves.

Running Head Right-hd: End of life in prison

Running Head Left-hand: Marina Richter, Ueli Hostettler, and Irene Marti

## Chapter 66

### End of life in prison

#### Challenges for prisons, staff, and prisoners

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### Introduction

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In most cases and apart from countries where the death penalty constitutes a legal sentence, prisons were built to punish and reform offenders. Thus, prisons are geared towards people who are sentenced to stay incarcerated for a definite period of time. Because of therapeutic or security measures, the period of detention for some categories of prisoners is currently prolonged in many countries, the long-term aim to rehabilitate offenders nevertheless remains. Although reoffending occurs after release, causing prisoners to re-enter the system, sentences are generally still pronounced for a definite period of time. But, in some countries such as the US, mandatory minimum sentencing policies permit the permanent incarceration of those who have been convicted of a third crime.

Further, prisons are usually built and conceptualized for able-bodied people. Stairs and long aisles require mobile prisoners. The quality of furniture is as sturdy and secure as possible to last long and withstand any attempt of dismantling and using for other purposes. Health facilities are basically meant to cure ill prisoners to bring them back to the regular running system, rather than keeping them for long periods of care.

If prisons are built neither for sick nor old people, they are even less built for dying prisoners and the provisions of end-of-life care and for what is debated as ‘good death’. As deaths in prison were in most cases rather seen as accidents, they were also for a long time silenced in research (Liebling 1996, 1998). The term ‘good death’ refers to the idea that there are many ways to die and that some are considered as being ‘better’ than others. Some of the most salient aspects of current definitions of good death include ‘being in control, being comfortable, sense of closure, affirmation/value of the dying person recognized, trust in care providers, recognition of impending death, beliefs and values honored, burden minimized, relationships optimized, appropriateness of death, leaving a legacy, and family care’ (Kehl 2006: 277). In short, good death should be self-determined, free of pain, and humane (Schneider 2005). But, the concept has also been highly criticized as it imposes a certain attitude towards dying and a certain model of dying (Hart et al. 1998).

In prisons, suicide, homicide, or also accidents do occur. In contrast to these ‘deaths without dying’ (Liebling 2017), where death comes unexpectedly without a dying process of different duration before, we concentrate in this chapter on deaths that are preceded by an evening of life and a period of dying. Because of the deteriorating health condition of the prisoner observed by staff and fellow prisoners, they know that he/she is reaching a terminal phase that will inevitably end with the death of that person. The duration of this process can be shorter or longer, but implies that the institution can and should pay attention and provide support during this time. To discuss the challenges dying prisoners constitute for the prison system, we will first outline the reasons for the increase in end-of-life cases in prisons. Bearing in mind that prisons were originally not built for dying inmates, we will then discuss what it means for the system, for staff, and for co-inmates to work and live with dying prisoners. Finally, after a prisoner’s death, bereavement, and other forms of personal and institutional coping remain important.

## **Increasing numbers of end-of-life cases in prisons worldwide**

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Across the globe, the numbers of prisoners who expect to experience their end of life in prison are increasing. In the United States, approximately 3,500 prisoners die every year of a natural death (Bureau of Justice Statistics). This means that every year one of 450 prisoners dies in custody (0.22%). In other countries, the rate is comparable or rather lower while the absolute numbers differ considerably. In England and Wales there were 122 natural deaths in custody in 2015, which represents 0.14% of the prison population (Eurostat, Inquest). In countries such as Switzerland where the absolute numbers are very low, 14 persons died in custody in 2015 (Swiss Federal Statistical Office), the rate oscillates arbitrarily.

The situation in every country is different and the numbers of end-of-life cases show that the development is much more advanced in countries such as the United States or the UK. Nevertheless, there are a couple of general trends that lead to an increase in prisoners dying of non-sudden natural deaths in prisons in many parts of the Western world, if not on a global scale (Penal Reform International 2018). These trends also make the case of end-of-life prisoners an urgent topic, relevant to all countries, but to a different extent.

There is, first, a change in the sentencing and release practices that leads to longer confinement and to more frequent lifelong custody. Although there are alternatives available, such as electronic monitoring, there is a general increase in the prison population worldwide (Johnston 2008); exceptions include some societies considered as less punitive such as Canada, Scandinavian countries, and others (Pratt et al. 2005). This increased sentencing is coupled with an increased imposing of longer sentences. Not only are there more people sentenced to prison, but also for longer periods of time. Furthermore, there are various possibilities of imposing long periods of custody for security reasons. This so-called punitive turn (Garland 2001) is followed by a trend that could be termed the securitive turn that not only tends towards valuing punishment higher than rehabilitation, but also follows the idea of maximizing the security of

society (Loader 2009; Schuilenburg 2015). Prisoners are preventively excluded from society on the basis of an attributed risk for future offending. This penal intensification leads, fourth, to a greater occurrence of different forms of indefinite and lifelong confinement.

Second, there is a general increase in the number of older prisoners (Crawley 2005). The general ageing of the population also changes the composition of prison population with regard to age. In addition to the phenomenon of hyper ageing that prisoners experience in custody (Dubler 1998; Fazel et al. 2001), there is also an increasing number of older and elderly prisoners due to *demographic changes* in the *general population*. Another factor that further supports this trend is the increase in the number of offenders who commit crimes at a later age or whose crimes were prosecuted only many years after they had been committed (in many jurisdictions statutory limitations for sex-related offences have been lifted; for more details, see Ulmer and Steffensmeier 2014). The increase in elderly prisoners coupled with longer sentences and with a restrictive practice of release and security measures leads to more people dying in prisons of natural non-sudden deaths.

On the one hand, this increase in cases of end-of-life situations in prison challenges established practices of handling prisoners and of running prisons. On the other hand, the fact that death occurs in a foreseeable way because of natural reasons has also fuelled a debate on ethical issues. In countries such as Germany or Switzerland, where end of life in prison is a rather new and not yet a frequent phenomenon, the ethical debate includes a basic argument: should the prison at all be a place to die? From a legal-philosophical position, an individual should always be dying as a human being and not as a prisoner, in peace and, particularly, in freedom (Kinzig 2012; Wulf and Grube 2012). Freedom thereby implies, in particular, the possibility to choose about relevant issues, such as where and when to die and who shall be accompanying this process. In many countries, there exist legal possibilities to release prisoners who are facing their end of life. Compassionate release is applicable when legal principles of security and prevention do not apply anymore. The freedom of choice can also imply to die in

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prison, if it is the prisoner's wish. The point is not where prisoners die, but that they are given free will to decide where this shall happen (Kinzig 2012).

In the face of an increasingly punitive and security-focused penal regime, the ethical issues remain for prisoners who cannot expect to be released towards the end of their lives. In countries, such as the United States, where end-of-life situations in prison are in general an acknowledged fact, the ethical discussion centres on ethical principles of dying inside the walls of confinement (Cohn 1999; Byock 2001; Taylor 2002). The humanitarian argument states that society should care about dying inmates and provide end-of-life care in order to ensure a humane treatment (Cohn 1999; Maull 2005). Many consider this as a basic human right (Maschi et al. 2014; Maschi and Richter 2017). The social contract argument states that because of the equivalence of all members of society, grounded in the social contract of modern democratic states, the society has the obligation to care for every one of its members, also for those in prison (Byock 2001; Handtke et al. 2012).

Prisoners facing end of life in confinement have usually lived for many years in secured settings, without having any perspective of eventually leaving confinement. Their lives take place inside the walls; their lifeworlds have melted down to what happens inside the prison. Moreover, they have to find new ways in dealing with time in prison, as there is no way out and no possible change in sight (Marti 2017). This situation has crucial implications for the prisoners themselves, as well as for their fellow prisoners who share their daily lives in the same spaces. But the situation not only impacts on prisoners; their long-term stay in prison, the lack of any perspective, and the prospect of dying in prison also strongly influences the prison as an institution, how it is organized, and, additionally, the work of prison staff (Marti et al. 2017).

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## **Experiencing end of life in prison**

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End of life in prison challenges the prisoners, staff, and the system in many ways. There are challenges that occur on the normative level of the penitentiary system, challenges on the

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organizational level of the single prison, challenges for the day-to-day work of staff, and challenges for fellow prisoners as well as for the dying prisoners themselves. We outline each of these challenges in more detail.

As end of life refers not only to the mere moment of dying but also includes the time span that leads towards this moment, there are implications beyond death itself. In recent years, palliative care has been developed to accompany this process. In dealing with end-of-life situations, palliative care takes the patient with his or her necessities as a point of reference. The aim is not to extend life, but to improve the quality of the remaining lifetime as much as possible. This entails measures of treating symptoms such as pains, suffocation, or other physical problems. At the same time, it also includes spiritual and social care. It therefore addresses questions regarding the accompaniment by other persons and the bereavement of all the affected people as well (Ratcliff 2000).

A core question of the penitentiary system's normative foundation is the status a prisoner has in the situation of end of life. As prisons are governed by strict rules about the usage of time and space; there is, in principle, little possibility to adapt the prison regime to the needs of prisoners requiring end-of-life care. Issues such as continuous medical care (especially palliative care), assistance of fellow prisoners, or flexible visiting schemes often encounter systematical barriers. There are various approaches to addressing these problems. One is to install specific units for end-of-life care in prisons. Such prison hospices have first been established in the United States (Cahal 2002; Maull 2005). Another approach is to open the prison to ambulatory end-of-life care teams (Turner and Payne 2011). However, the question remains whether prisoners at their end of life still need to be treated, without any exception, according to the rules established for prisoners who are serving a sentence.

At the organizational level, end-of-life cases challenge prisons in many ways. Usually, prisons are neither built nor organized to accommodate dying prisoners. The infrastructural elements in retirement homes, such as medical beds, floors, and rooms without thresholds or other impediments or restricted mobility; handles; and other helping features for people with

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impediments are often missing. Prisons have to adapt their infrastructure if they intend to keep elderly prisoners in the evening of their lives and eventually also their end of life. Also, the organization as a whole needs to adapt. Prison staff has either to be trained or supported by external specialists for end-of-life care (Howe and Scott 2012). Above all, as end of life in the sense of non-sudden natural death is foreseeable, the prison as an organization has to take advantage of the opportunity to plan and to provide solutions either inside their walls or in cooperation with external specialized institutions such as retirement homes or hospices (Hostettler et al. 2016).

The daily work routine of staff is challenged in a very profound way. A good example is the rule to keep a distance, to which staff in most countries adhere. Physical distance between staff and prisoners reduces the possibility of physical violence and assaults. But at the end of life, care often requires physical contact as well as emotional closeness. Staff needs to provide treatment such as ointments, the patient may require help with personal hygiene, or need a hug when he or she feels lonely. Working with end-of-life prisoners challenges the professional definition of prison staff (Howe and Scott 2012). Instead of securing, controlling, and rehabilitating, they suddenly need to take care of the dying person and his or her body. Not all members of staff can imagine providing (end of life) care for a prisoner. Therefore, also specialized personnel and cooperation across professions are needed. As palliative care is a holistic approach towards physical, spiritual, and social questions, there is a need for health professionals, chaplains, social workers, and other prison staff to collaborate closely (Cloyes et al. 2016).

Fellow prisoners are also affected (Supiano et al. 2014). They might want to help because they know the dying inmate, because they fear that eventually they will die in similar conditions or simply because the prison cannot provide a 24-hour assistance and fellow prisoners would be willing to help out. In some prisons, prisoners are not only accepted to assist in providing end-of-life care, but are even trained to provide professional care for their dying fellow prisoners (Cloyes et al. 2014). There is a big difference in allowing voluntary help by prisoners who feel

that they want to do something for the prisoner who has been living with them for years, or in training prisoners specifically for this task. On the one hand, the training allows prisoners to provide professional care, and, as examples have shown, also provides the caregivers with the opportunity to pursue an important and meaningful task. On the other hand, however, it substitutes the state's obligation to provide care and constitutes a less expensive approach.

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## After death

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Death means the end of life of the dying person. For all the other persons involved, this moment marks the turn from acting, caring, and accompanying this person to a period of mourning and bereavement (Charlton 2002). The challenges related to end-of-life prisoners, therefore, do not end with death, but continue during the period of bereavement. The people involved are family members and friends, but also prison staff and, in particular, fellow inmates. In short, it involves the dead person's social network. As these prisoners usually spent many years in the prison system it includes rather people from within the system than from outside. Often, there are only very few relatives left who used to maintain contact with the prisoner. In many cases, contact with the outside world is completely lost over time.

Those people from the world outside the walls, such as members of the family, relatives, and friends, or voluntary visitors who kept in touch with the prisoner, need access and time to empty the cell and take with them some of the prisoner's belongings as they would do if they were emptying his or her house. The economic logic of a prison expressed in the reflex to re-occupy the cell as fast as possible must be put on hold. It is a question of dignity and respect towards the prisoner who has died as well as his or her social network, to not empty the cell immediately as if the prisoner was just a number that now exited the system (Hostettler et al. 2016).

For prisoners who have spent many years in the prison system and feel more and more alienated from the world outside, the people inside the prison, staff, and fellow prisoners,

represent a sort of family or community – although by force. This community then also needs moments, places, and symbols of mourning and bereavement (Supiano et al. 2014). An important element, in particular for fellow prisoners, is clear and early communication. As prisoners usually mistrust the system and fear that they don't get adequate care at the right moment, it is important to inform promptly and openly to prevent rumours. In addition to communication, there is also a need for rituals, for instance organized by the prison chaplain, or symbols like a burning candle, or to leave the cell unoccupied for some time. Prisoners who usually cannot leave the prison to participate in a burial need therefore places, rituals, and symbols inside the walls that support their period of mourning and bereavement (Hostettler et al. 2016).

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## Conclusions

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Although originally, prisons have not been built as spaces for practices of 'good death', the current increase in end-of-life cases in prisons worldwide calls for an adaptation of prison organization and practice. The reasons of this increase in end-of-life cases merits a discussion in its own right. However, the fact that there are more and more prisoners who are facing the prospect of dying in custody, urgently requires a reaction of prisons and of the prison system as a whole. We have discussed this adaptation in several ways:

First, although there are more cases of end of life in prison, this does not mean that prisons should generally be transformed into hospices. For many prisoners there are legal options, such as compassionate release, or release due to the bad health condition of the inmate, that allow an end of life outside of confinement. In many countries there exist such legal options, but their usage is still rather scarce. In short, the search for alternatives, to provide a 'good death' outside confinement consists also a form of adaptation.

Second, there are many specialized institutions in the community that are already taking care of elderly and dying people. In particular for countries with small numbers of prisoners and therefore also limited numbers of cases of end of life in confinement, it can be easier to

cooperate with institutions of the general community to provide solutions for dying prisoners than to create a special unit.

Third, as already practiced in countries such as the United States or the UK, it is possible to provide 'good' death in prison. Again, there are organizational variations that are mediated by the history and culture of a national prison system but also by the numbers of prisoners at stake. Palliative care can be offered in special sections within the prison or in separated prison hospices or by mobile caring teams of internal and external staff and be provided upon request and when needed.

Finally, the challenges for the system do not end at the organizational level, but also touch the prison as an organization as well as its staff. Beyond that, the fellow inmates as part of the social environment and network of the dying inmate are also affected and challenged by an inmate's death. In general, end of life does not only concern the dying person and challenges the organization in order to allow for a 'good death', but involves all persons of the social network of the dying person, including family and friends, voluntary visitors, fellow inmates, and often also prison staff.

End-of-life situations in prison may vary significantly across prison systems and differ quite clearly from the situation of dying people outside prison walls. These differences exist. However, prisoners have the same concerns about death and dying like any other person. One and, maybe, the most common concern is the wish to die at home, which in the prison context can often be translated into the wish to die in the prison where a prisoner has spent his or her last ten or 20 years and where he or she literally feels at home. At the same time, being in prison always means being deprived of one's basic rights, to decide when, where, how, and in who's company to die.

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