

COST-BENEFIT ANALYSIS

Building on the Unger Experience: A cost-benefit analysis of releasing aging prisoners

Prepared by the JFA Institute and The Pandit Group for
Open Society Institute-Baltimore

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Introduction

In 2012, the Maryland Court of Appeals ruled in *Unger v. Maryland* (2012) that more than 200 people who had served almost 40 years in Maryland prisons were entitled to new trials because of unlawful jury instructions. In addition to righting a legal wrong, the case presented an opportunity to demonstrate that, with the proper support, aging individuals who had served long prison sentences could safely be released into the community.

Seizing upon this opportunity, Open Society Institute-Baltimore partnered with University of Maryland Francis King Carey School of Law Professors Michael Millemann and Jerome Deise and with clinical social worker Rebecca Bowman-Rivas to launch a new clinical law program. Dubbed “the Unger Clinic,” the professors worked with students in the clinical law program to develop and then implement comprehensive re-entry plans for those who were eligible for relief under *Unger*. Over the course of five years, their efforts helped engineer the safe release and reentry of almost 200 individuals, with an almost zero recidivism rate. The particulars of this remarkable story are detailed in “The Ungers, 5 Years and Counting,” a report released in November 2018 by OSI-Baltimore grantee Justice Policy Institute.

With these results in hand, OSI-Baltimore went one step further and commissioned Dr. James Austin to conduct a fiscal analysis to document any savings to taxpayers resulting from the release of “the Ungers” to the community. That analysis found that releasing the Unger Group resulted in a projected savings of \$185 million for Maryland taxpayers. This brief details the findings of that analysis and shows that releasing aging prisoners with the proper support is not only safe and humane but also cost-effective.

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Cost Benefit Analysis

While the successful release of the Unger Group demonstrates the potential merits of releasing other aging prisoners across the country, a rigorous cost-benefit analysis was needed to quantify the financial impact of doing so. To conduct such an assessment, a quasi-experimental design consisting of both a “control group” and an “experimental group” was used to calculate the savings associated with reduced periods of imprisonment for the Unger Group. The control group reflected the expected costs and/or savings if the Unger Group had not been released while the experimental group represented the anticipated costs and/or savings of the Unger Group due to their early release.

The analysis of the control group was conducted by calculating the estimated costs and benefits of keeping those within the Unger Group incarcerated without the benefit of the court decision that allowed for their release. This required estimating the following: the extent of further incarceration, the associated costs (including medical and mental health care costs) as people age in prison, as well as associated benefits (including the avoidance of future crime and costs) due to recidivism. Cohorts of those already released from Maryland prisons were used to extrapolate long-term recidivism rates of Unger-like inmates.

The analysis of the experimental group was conducted using the Unger Group. Costs included parole supervision, public assistance, and medical and mental health costs that would not have occurred if each person was still incarcerated. In addition, the costs of recidivism (such as those associated with law enforcement, the courts, property loss, and/or injuries) were factored in. Benefits included the cessation of expensive incarceration, gainful employment and resulting taxes (e.g. direct sales, housing, etc.) (Table 1).

Table 1. Conceptual Cost-Benefit Analysis

Factor	Unger Releases	Continued Incarceration
Incarceration	Less costs	More costs
Medical Care	Same?	Same?
Mental Health Care	Same?	Same?
Parole Supervision	More costs	Less costs
Public Welfare	More costs	Less costs
Sales Taxes	More revenue	Less revenue
Housing	More revenue	Less revenue
Recidivism	More costs	Less costs
Victim costs	More costs	Less costs

Finally, all of these costs were analyzed as either “marginal” or “fully loaded” costs. “Fully loaded” costs take into account that a certain number of people have to be released before one can achieve significant impact on any social or public institution. To extrapolate fully loaded costs in this scenario, we developed a profile of the Unger releases and determined how many similar state prisoners could be released via other methods (e.g. parole).

The Unger Group

According to aggregate data about the Unger Group provided by the University of Maryland, as of October 10, 2016, there were 232 individuals in the Unger Group. Of these, 159 (69%) had been released from prison, 37 (16%) had pending motions to reopen post-conviction proceedings, 13 (6%) were awaiting new trials after successful motions to reopen post-conviction proceedings, 9 (4%) had been released to detainers, 6 (3%) had life sentences vacated and were resentenced to sentences for terms of years, 6 (3%) had died before their motions were fully resolved, and 2 (1%) had been retried, reconvicted, and resentenced to life imprisonment as of October 10, 2016 (Table 2).

The University of Maryland also provided additional detailed information for each person in the Unger Group from a different point in time based on 158 Unger prison releases. Based on the data provided, most of the releases were male (99%), Black (78%) and living in Baltimore City (62%) (Table 3).

Table 2: Status of Unger Group Cases (as of 10/10/16)¹

Status	N	%
Released from prison	159	69%
Motions to reopen post-conviction proceedings pending	37	16%
Awaiting new trials after successful motions to reopen post-conviction proceedings	13	6%
Released to detainers	9	4%
Life sentences vacated, resentenced to sentences for terms of years	6	3%
Died before finally litigating motions to reopen post-conviction proceedings or after successful motions but prior to retrials	6	3%
Retried, reconvicted, and resentenced to life imprisonment	2	1%
Total	232	100%

In terms of the most serious crime for which they were sentenced to prison, the vast majority of individuals within the Unger Group (84%) had been convicted of murder, and another 13% for rape. The other types of most serious crimes were also for crimes of violence. The vast majority were convicted for multiple crimes with an average of three convictions per Unger releasee.

¹ Data provided by the University of Maryland.

Table 3: Characteristics of Unger Group Releasees

Total	158*	100%
Race²		
Black	124	78%
White	20	13%
Missing	14	9%
County³		
Baltimore City	98	62%
Other	49	31%
Missing	11	7%
Most Serious Offense⁴		
Murder (first degree, second degree)	132	84%
Rape (first degree)	21	13%
Other (assault with intention to murder, conspire to murder, manslaughter, sex offense first degree)	5	3%
Total number of convictions		522
Average number of convictions per person		3.3

* Please note that complete information was not available for each individual in the Unger Group.

Life Expectancy of the Unger Releasees

For purposes of the cost-benefit analysis, it was assumed, based on the analysis presented above, that the Unger Group would have remained incarcerated for the balance of their lives. (Current parole board practices indicate that very few people convicted of murder are eligible for parole or are being released prior to their death). We then estimated the life expectancy of the Unger Group. Life expectancy was defined as the average number of years of life remaining to be lived by prisoners of a certain race and gender surviving to their age at the time of their release.

Life expectancy for the Unger Group was determined using 2014 life expectancy tables as calculated by the Centers for Disease Control and Prevention. Each period life table projected the outcomes for a hypothetical cohort as if the cohort experienced the age-specific death rates that prevailed for the real population in a specific year. Life tables were also derived from the number of deaths in 2014, population estimates based on the 2010 census, and data for Medicare beneficiaries.⁵

An expected period of incarceration was calculated for each person based on their age at release (average of 64 years) and their projected life expectancy (average of 81 years),

² Data provided by University of Maryland

³ Data provided by University of Maryland

⁴ Data provided by MD Department of Public Safety and Correctional Services

⁵ Arias E, Heron M, Xu JQ. United States life tables, 2014. National vital statistics reports; 66 (4). Hyattsville, MD: National Center for Health Statistics. 2017.

factoring in race when data was available and assuming male gender. Based on this approach and assumptions, we estimate that the Unger Group would have remained in custody for an average of 18 additional years before they would have died in prison (table 4).

Table 4. Key Life Expectancy Attributes for Unger Releases

Unger Group Characteristics	N	Min	Max	Average/ Mean	Median
Age at time of incarceration ⁶	158	13 years	62 years	24 years	23 years
Age at time of release ⁷	158	52 years	83 years	64 years	63 years
Number of years incarcerated	158	0 years	56 years	40 years	39 years
Life expectancy ⁸	158	78 years	90 years	81 years	82 years
Expected time left to live	158	7 years	28 years	18 years	18 years

Costs of Incarceration

The budget for Maryland’s Department of Public Safety and Correctional Services (DPSCS) fiscal year 2017 was \$1.4 billion to support the state’s prisons, Baltimore City jail, probation and parole services, the Parole Commission, and associated administrative costs. Nearly 63% of the total budget was allotted to the state’s prisons (Table 5).

Due to variable costs, it is difficult to discern the precise cost per inmate per year. If one divides the state prison population of 19,332 (which excludes the Baltimore City jail population and sentenced inmates housed in local jails as of 2017) by the state prison budget of about \$890 million, the cost per year per inmate is approximately \$46,000 per year. Factoring in the costs of DPSCS administration, the Parole Commission and other commissions, the inmate cost per year rises by some amount as there are costs associated with parole hearings and general administrative support.

Table 5: Maryland’s Fiscal Year 2017 Allowance by Function⁹

Function	\$ (millions)	% of Total Budget
Total budget	\$1,422.2	100.0%
State prison corrections	\$889.7	62.6%
Baltimore City jail	\$213.7	15.0%
Administration	\$123.1	8.7%
Parole and probation supervision	\$115.1	8.1%
Parole Commission and other commissions	\$80.6	5.7%

⁶ Data provided by MD Department of Public Safety and Correctional Services

⁷ Data provided by MD Department of Public Safety and Correctional Services

⁸ Arias E, Heron M, Xu JQ. United States life tables, 2014. National vital statistics reports; 66 (4). Hyattsville, MD: National Center for Health Statistics. 2017.

⁹ Department of Public Safety and Correctional Services Fiscal 2017 Budget Overview
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Table 6: Maryland Department of Public Safety and Correctional Services Costs Fiscal Year 2017

Total DPSCS Budget 2017 Budget	\$1,422.2 million¹⁰
State prison budget	\$889.7 million ¹¹
State prison population 2017	19,332 ¹²
Average direct cost per inmate per year	\$45,876
Variable/marginal cost per inmate per year	\$10,405
Medical marginal costs per inmate per year	\$7,956

For purposes of our analysis, we used the amount DPSCS uses for budgeting purposes. In FY 2017, DPSCS’ actual annual cost per inmate was \$45,876. Of that amount \$10,405 is referred to as variable costs that will float with changes in the inmate population. For example, food services, and utility costs will vary based on the size of the inmate population. The largest component of the variable costs are medical/mental health services at \$7,956.

Given the relatively small number of Unger releases thus far, one can only use the variable rate of \$10,405 because these releases will not result in the closure of a facility or the laying off of staff. One can and should also assume a higher variable medical care costs figure than the \$7,956 listed above for the reasons explained below.

According to the Vera Institute, approximately 16% of Maryland’s prison budget is allocated to payments for medical care providers. Using this figure, one can assume that 16% of the state’s prison budget is allocated to health care (\$142.4 million per year).¹³ Just what percent of this amount is spent on inmates 65 years and older is not known, but we do know that they do absorb a disproportionate amount of the health care costs. CMS data shows that health care for the elderly (defined as 65 years and older) accounts for approximately 34% of total health-care related costs in the United States even though they make up only about 15% of the population.^{14 15 16} Two of the nation’s three largest state prison systems report that per capita healthcare costs for older prisoners are 3.5 times what they are for younger prisoners.¹⁷

Medical costs are also higher for Unger releases given that people sent to prison are generally less healthy than the general population, often having abused drugs and alcohol or neglected

¹⁰ Department of Public Safety and Correctional Services Fiscal 2017 Budget Overview

¹¹ Department of Public Safety and Correctional Services Fiscal 2017 Budget Overview

¹² Maryland Division of Correction FY 2017 Annual Report

¹³ Vera Institute of Justice. May 2017. *The Price of Prisons: Examining State Spending Trends, 2010-2015*. New York, NY: Vera Institute of Justice.

¹⁴ De Nardi, Mariacristina; French, Eric; Jones, John Bailey; McCauley, Jeremy. 2015. “Medical Spending of the U.S. Elderly,” National Bureau of Economic Research Working Paper No. 21270.

¹⁵ Center for Medicare & Medicaid Services National Health Expenditure Data <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/Age-and-Gender.html>

¹⁶ U.S. Census Bureau

¹⁷ Williams, Brie A., James S. Goodwin, Jacques Baillargeon, Cyrus Ahalt, and Louise C. Walter. June 2012. *Addressing the Aging Crisis in U.S. Criminal Justice Healthcare*. Journal of American Geriatric Society; 60(6): 1150-1156.

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their health for many years. As a result, prisons define their “elderly” population as 55 years and older because the incarcerated population experiences “accelerated aging” and is clinically 10 years ahead of the non-incarcerated population. Prisoners in general are significantly more likely to suffer from at least one or more chronic health conditions or disabilities than their non-incarcerated counterparts. Older adults in prison generally suffer from three chronic medical conditions, and have a significantly higher burden of chronic conditions like hypertension, diabetes, and pulmonary disease than younger prisoners and older non-prisoners.^{18 19}

Assuming that the ratio of the percentage of healthcare costs attributable to adults 65 years and older in the U.S. population is the same for Maryland prisoners 60 years and older, the approximate healthcare costs for older prisoners in Maryland is conservatively \$15,912 per inmate per year. Therefore, the variable costs per Unger releasee is actually \$18,361.²⁰ If one uses the same assumptions for a fully loaded rate, the annual per inmate cost is \$53,832 (Table 7).

Table 7. Estimated Cost Per Unger Inmate If Not Released

Prison Cost per inmate per year	\$45,876 ²¹
Overall Variable costs per inmate	\$10,405
Overall Variable medical care component	\$7,956
Variable Adjusted for Just the Elderly Population	\$15,912
Total Variable Cost per Unger Release	\$18,361
Averted years of incarceration	18 years
Total avoided variable incarceration costs per person	\$330,498
Total fully loaded costs with additional medical costs	\$53,832
Using 18 years of avoided incarceration per release	\$968,976

Approximately 3,150 inmates in Maryland’s prisons are 51 years of age and older with 700 over the age of 60.²² There are also about 2,400 people serving life sentences in Maryland prisons. While not all of these inmates are eligible for release under *Unger*, it can be assumed that the size of this elderly population and its associated custody and medical care costs would be sufficiently large enough to justify the use of fully loaded cost figures. Assuming a higher medical cost factor for releases in the 51 and higher age bracket, the total average fully loaded cost per inmate per year is \$53,832. Using a fully loaded rate, the avoided costs for 18 years of incarceration for those within the Unger Group jumps to \$968,976 per person.

¹⁸ Williams, Brie A., James S. Goodwin, Jacques Baillargeon, Cyrus Ahalt, and Louise C. Walter. June 2012. *Addressing the Aging Crisis in U.S. Criminal Justice Healthcare*. Journal of American Geriatric Society; 60(6): 1150-1156.

¹⁹ Ollove, Michael. March 17, 2016. *Elderly Inmates Burden State Prisons*. Washington, DC: Pew Charitable Trust.

²⁰ Specifically, we subtract the variable medical cost from the total variable cost and add that difference to the variable cost adjusted for the elderly.

²¹ Maryland Department of Safety and Correctional Services, Office of Grants, Policy, and Statistics

²² http://www.dpscs.state.md.us/publicinfo/pdfs/stats/data-reports/I_and_I-Statistics/Inmate_Characteristics/Quarterly_Inmate_Characteristics/FY2014/2013-01-October_Inmate_Char.pdf

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Costs of Releasing Unger Inmates

As noted earlier, there are costs associated with releasing aging prisoners and not incarcerating them for the remainder of their lives. Most notably, social services are needed to help released prisoners transition back to society. The Clinical Law Program of the University of Maryland-Carey School of Law provided several post-release social services to a majority of the Unger Group. Data provided by the University of Maryland included about 138 of the 158 clients served by the clinic over a six month time frame from a fixed point in time on June 23, 2016 (Table 8).

As shown in Table 8 there were a wide array of difficulties that members of the Unger Group faced after many years of continued incarceration. The most frequent issues were the overall punitive effects of lengthy incarceration, medical problems, lack of income, and housing/shelter issues.

Table 8. University of Maryland Unger Client Challenges as of 6/23/16

Challenges	n
Long term incarceration	99
Medical problems	53
No income	47
Substandard housing	29
Lack of transportation	14
Uninsured	14
Mental illness	13
Hospitalization	12
Homeless (or at risk)	12
Disabled family member	12
Substance abuse	11
Mobility problems	6
History of trauma/abuse	4
Currently incarcerated	3
No food	3
Low IQ/learning disability	3
Domestic violence	1
Utility turned off	1
Debt	1
Misc./ Other	16

After identifying each individual’s challenges, the University of Maryland then divided the 138 clients into seven tiers depending on level of need (Table 9).

Table 9. University of Maryland’s Characterization of Unger Population by Need

Tier	Description
1	Tier one consists of the most complex and highest need clients. Issues are multi-layered, frequently overlap, and consist of extreme medical support or hospice, mental illness, indigence. For the many that were incarcerated as juveniles, life and social skill development were impacted by being raised in the DOC. These clients include medically fragile individuals and those with dementia or serious mental health issues who will need accessible housing, specialized care, or supportive housing/nursing care.
2	Tier two clients may have one or two of the issues identified in tier 1 and require more extensive hands-on case management, particularly indigent clients, for a prolonged period of time after release. These clients may require more referrals and more support agencies. Their needs frequently require multiple layers of support in addition to case management from the University of Maryland. Financial challenges are a significant challenge for this group. For example, tier 2 clients include individuals who do not have family or other community supports as well as individuals with arson or sex offenses who are not accepted by many housing and re-entry programs due to liability.
3	Tier three clients initially require fairly low levels of assistance as they are coming home to families who are willing and able to provide long-term financial and material support as well as housing. Case management often assists families connect to resources. This group of clients tends to face greater levels of case management when they make the decision to live independently, which has typically occurred for some clients 6-8 months after their release.
4	These clients often initially require low levels of assistance as they are coming home to families who are willing and able to provide long-term financial and material support as well as housing. Case management often assists families connect to resources. The families and clients are planning on maintaining their housing and financial situation so there is no instability and thus no need for the client to seek independent living. These clients may need assistance for aging parents and siblings and resources for future additional geriatric healthcare issues.
5	Due to caseload, University of Maryland classifies some clients as referrals. These clients are referred to community resources, such as BACHS and Healthcare for the Homeless. University of Maryland submits referrals and follows up with new providers via phone and email for the first few weeks to ensure that the referral is a match for both parties. These clients are also given monthly calls to invite them to our support groups.
6	Tier six clients were moved off of University of Maryland’s case management services caseload. University of Maryland is available for crisis support and a monthly check-in to invite them to events and support groups.
7	Tier seven clients are those that either were released in counties where University of Maryland does not provide social work services, or did not request services upon contact. Some did not provide any contact information University of Maryland was not able to provide any form of follow up or contact for support.

In terms of estimating the costs associated with each tier, cost figures were provided that reflected expenses that Unger releasees could not pay with their own personal resources. In effect, these costs are “government” paid expenses (either federal, state or local), like SSI, Temporary Disability Assistance, Supplemental Nutrition Assistance, Medical Assistance or Medicare, and MTA Mobility Assistance. Note that included in these costs is a “fellow” costs which was in effect an economic subsidy provided by private funding to cover a wide array of other costs.

The total average labor and services costs for six months ranged from \$10,127 for tier 1 clients to \$0 for tier 7 clients (Table 10). The average cost incurred for these “government” paid social services over a six month period would be \$3,013. If annualized, the costs would be \$6,026 per year for each Unger releasee (Table 11).

Table 10. Average Cost of Unger Client Services Per Person for 6 Months By Tier

Tier	Housing	Bus Passes*	Miscellaneous**	Bare Minimum Cost	Average Fellow Cost***	Total Average Services and Labor Costs Per Person
1	\$7,200	\$408	\$75	\$7,683	\$2,444	\$10,127
2	\$7,200	\$408	\$75	\$7,683	\$2,160	\$9,843
3	-	\$204	\$38	\$242	\$1,023	\$1,265
4	-	\$20	\$12.50	\$33	\$1,421	\$1,454
5	-	\$20	\$12.50	\$33	\$1,421	\$1,454
6	-	\$20	-	\$20	\$171	\$191
7	-	-	-	-	-	\$0

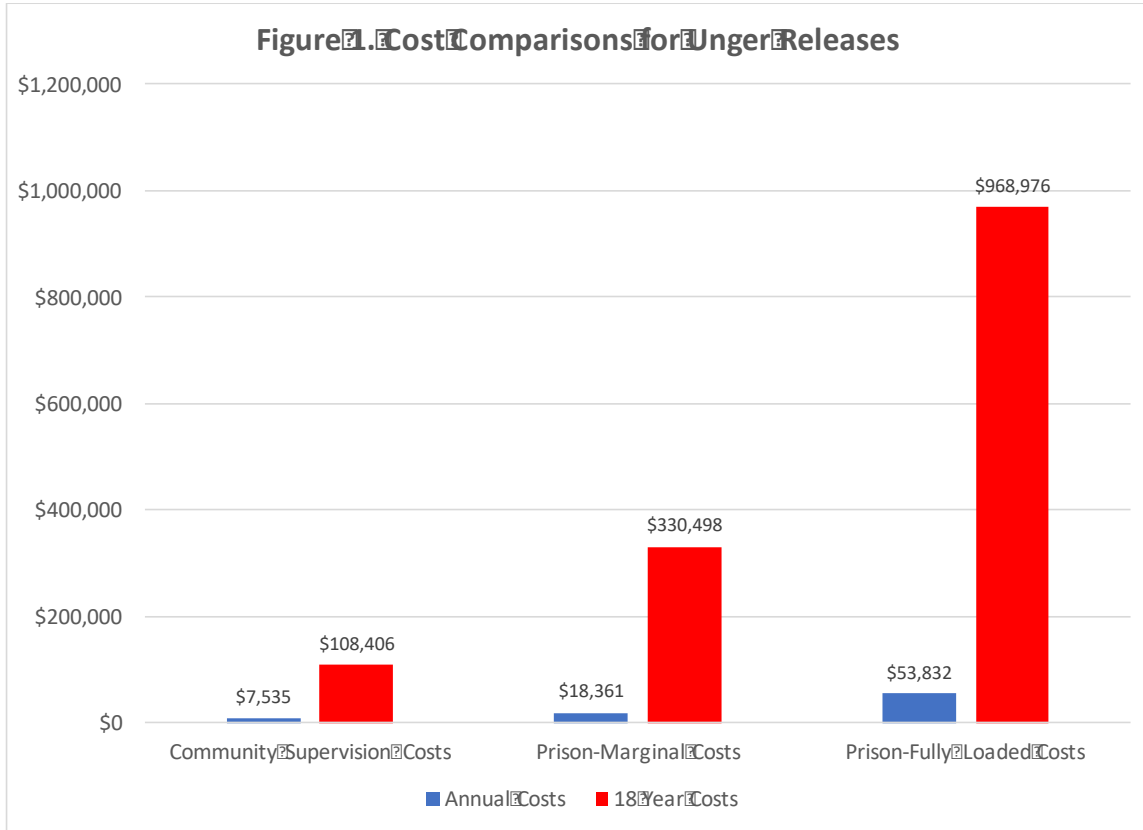
*Bus passes are \$68/month/person or \$20/month/person

**Miscellaneous expenses (medical co-pays, pharmacy help, toiletries, clothes and food) are \$12.50/month/person

***Based on average full time salary and benefits of Fellows (\$47,000 + 12,129 = \$59,128) with an average of \$28.42/hour

Table 11. Total 6 Month Costs of Unger Clients Served by University of Maryland

Tier	Number of Clients	% of Total	Total Per Tier Cost	Cost per Client
1	11	8%	\$111,397	\$10,127
2	20	15%	\$196,860	\$9,843
3	31	22%	\$44,485	\$1,435
4	37	27%	\$53,798	\$1,454
5	5	4%	\$7,105	\$1,421
6	11	8%	\$2,101	\$191
7	23	17%	\$0	\$0
Total	138	100%	\$415,746	\$3,013
Annualized				\$6,026



Finally, there are the costs of supervision in the community. The Unger releasees had their sentences modified where they were given credit for time served and released. They were, however, required to serve 1-5 years of probation. To calculate these costs, the annual cost of probation supervision was applied to members of the group less any supervision fees they were each required to pay. DPSCS estimated that most supervision fees were waived and that only about three years of supervision costs would be warranted. Given the small number of people released under *Unger*, one would find it difficult to apply the fully loaded daily cost of \$6.89, so we used a 20% figure or \$1.38 a day which amounts to \$503 per year for no more than three years or an additional cost of \$1,509. When added to the \$6,026 estimate in Table 11, even if one assumes three years of supervision for each releasee, the total supervision costs per releasee would be \$7,535.

When one compares this final figure of \$7,535 to the incarceration costs calculated above in Table 7, one clearly sees that the costs of placing the Unger Group in the community in lieu of imprisonment has costs Maryland taxpayers significantly less, whether one uses a marginal or fully loaded cost figure.

Other Benefits and Costs Related to the Releasing of the Unger Group

In addition to avoided costs of continued incarceration and lower costs associated with release, the Unger Group demonstrates that there are other benefits to releasing aging prisoners. Released individuals would pay taxes for goods purchased as part of everyday activities. If paying rent for housing, some portion of those payments used by the landlord/property owner would be paid in state and federal taxes. Unfortunately, there are no reliable figures on the Unger Group members' income. But we know that some members of the group have been able to find employment and thus can assume that there are income taxes being paid, among other things.

For our analysis to be complete, we have to consider the costs of any crimes committed by members of the Unger Group that would not have been committed had they all remained incarcerated. To date, only two men have been convicted of a new crime and returned to prison. Thus, the criminal and public safety costs to society for releasing the Unger Group has been negligible.

Criminal and Juvenile Justice Program, Open Society Institute-Baltimore

The Open Society Institute-Baltimore's Criminal and Juvenile Justice Program seeks to reduce the use of incarceration and its social and economic costs without compromising public safety, and promote justice systems that are fair, are used as a last resort, and offer second chances. It supports advocacy, public education, research, grassroots organizing, litigation and demonstration projects that focus on reforming racial and social inequities at critical stages of the criminal and juvenile justice systems—from arrest to reentry into the community.

The program includes the following priorities:

Reform arrests and pre-trial detention policies to reduce Baltimore City's pre-trial detention population.

The program supports efforts to: investigate and promote effective alternatives to arrests, including school-based arrests; promote community-based alternatives to youth detention centers and adult jails; reform bail practices; and end the practice of automatically charging youth as adults.

Reform parole and probation policies to reduce Maryland's prison population.

The program supports efforts to increase the number of people who are released on parole, including individuals serving parole eligible life sentences; and decrease the number of people who are incarcerated for technical parole or probation violations.

Ensure the successful re-entry and reintegration of people with criminal records.

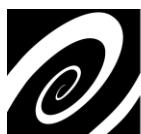
The program supports advocacy efforts and demonstration projects that promote policies and practices that ensure access to employment, education and other opportunities regardless of criminal background status.

The OSI-Baltimore Brief Series

Open Society Institute-Baltimore was created as a field office for the Open Society Foundations to test approaches for solving some of the most difficult challenges faced by cities and communities around the country. In keeping with that mission, we offer this set of OSI-Baltimore Briefs. The initiatives and projects they describe occurred in Baltimore with multiple partners and stakeholders from both the city and state, but the ideas, insights and information they contain are useful to people and places across the nation. Our hope is that these examples may be replicated or adapted to that others may benefit from what we learned about the process, challenges and successes of addressing some timely and widely shared issues.

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