Safely Reducing Prison Populations

The Maryland Story

A Partnership between Open Society Institute-Baltimore and
Maryland Department of Public Safety and Correctional Services

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Introduction

Much has been written in recent years about the need to reform the way we respond to crime. Over the last 50 years, the nation's jail and prison populations have exploded, ballooning from approximately 300,000 in 1970 to more than 2 million today. The exponential increase has led some to declare that we have entered an era of "mass incarceration".[1] After decades of continual increase in the use of imprisonment (both local jails and state prisons), however, there is a growing consensus among advocates, policymakers, and systems administrators that the time has come to end the march toward mass incarceration.

Fueling the move to reduce incarceration is the significant decline in both the actual crime rate as well as the public's fear of crime. With crime rates at their lowest since the 1960s⸺when the incarceration rate was 25% of what it is today⸺one could argue that it is time to end the "war on crime" and begin reducing our prison and jail populations. There are, however, only a few examples across the nation where incarceration rates have been significantly reduced. Maryland is one of those examples.

Since 2002, Open Society Institute-Baltimore (OSI-Baltimore) and the Maryland Department of Public Safety and Correctional Services (DPSCS) have worked together to develop and implement a number of major reforms designed to (1) lower the projected growth in the state's prison population and (2) improve the capacity of DPSCS to deliver cost-effective rehabilitative services.

These various studies and reforms have addressed all of the major components of the state correctional system (prison, probation, and parole). Most of the intended reforms have been successfully implemented, achieving the following objectives:

1. Reversal of projected growth in Maryland's prison population to a peak of over 25,000
2. Reduction of Maryland's prison population by approximately 25% to below 18,000 people by 2020 (Figure 1)
3. Reduction of Maryland's three-year recidivism rate from 50% to 36%
4. Reduction in the number of people admitted to a Maryland prison from 15,000 per year to 10,000 per year
5. Reduction in Maryland's statewide crime rate concurrent with the reduction of Maryland's prison population (Figure 1)

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[1] Jacobson, Michael. 2005. *Downsizing Prisons: How to Reduce Crime and End Mass Incarceration.* New York, New York: New York of University Press.

Figure 1. Maryland Crime Rates and Prison Populations 1978 - 2020
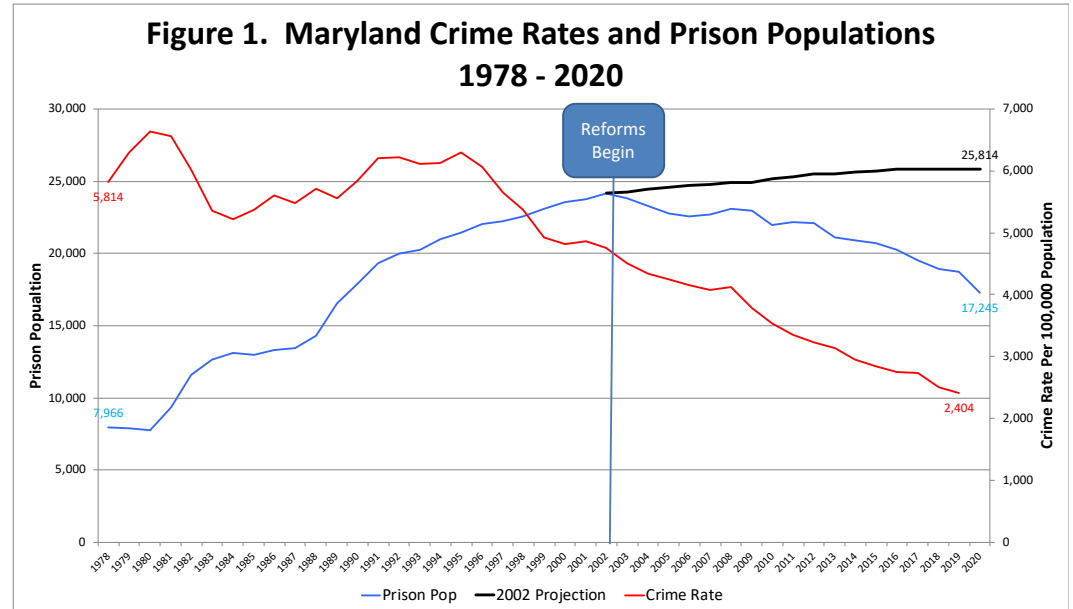
Today, Maryland's prison population continues to decline. Fewer people are going to prison each year, those being released have significantly lower recidivism rates, and crime rates have been reduced.

These achievements have placed Maryland among a select group of states⸺including California, New York, and New Jersey⸺that have successfully reversed their prison population growth patterns and significantly reduced their crime rates and prison populations (Table 1). California has lowered its prison population by more than 45,000 people while continuing to decrease its crime rate. Impressively, it has also lowered its probation, parole, and jail populations. In total, there are more than 180,000 fewer people under correctional control than there were in 2006. New York has also lowered its entire correctional system population. In fact, New York City's jail population has declined from 22,000 to less than 6,000 while the city's crime rate has plummeted. Finally, New Jersey has reported the largest decline in its prison population decline (39%) and the largest reduction in its crime rate (53%) in the nation.

The scientific evidence is clear⸺all forms of correctional supervision, not just confinement in prisons⸺can be reduced while crime rates decrease. California, New York, New Jersey⸺and now Maryland⸺are leading the way in reversing policies that have fueled America's imprisonment binge. In this report, we highlight the correctional system initiatives jointly undertaken by OSI-Baltimore and the DPSCS and forecast additional reforms that can be undertaken to bring us closer to ending mass incarceration in Maryland.

Table 1. Prison Population and Crime Rate Reductions in New York, California, New Jersey, and Maryland

	NY	NJ	CA	MD
Year Reforms Initiated	1999	1999	2006	2008
Prison Population Before Reform	72,899	31,493	175,512	23,239
2018 Prison Population	46,636	19,362	128,625	18,856
Prison Reduction	-26,263	-12,131	-46,887	-4,383
% Reduction	-36%	-39%	-27%	-19%
UCR Crime Rate Before Reform	3,279	3,400	3,743	4,126
2018 Crime Rate	1,791	1,613	2,828	2,502
Crime Rate Reduction	-1,488	-1,787	-797	1,624
% Reduction	-45%	-53%	-24%	-39%

Sources: Bureau of Justice Statistics, Prisoners Series and UCR Crime in the United States series.

The Maryland Model for Reducing Prison Populations and Recidivism

Each state highlighted above used different methods for reducing their prison populations. Maryland is unique in that the effort to reduce its prison population was not driven by major litigation (California and New Jersey), a change to the state's drug sentencing laws (California, New Jersey, and New York), or a massive ballot initiative (California). Rather, DPSCS decided to pursue a collaborative relationship with OSI-Baltimore in which statistical analysis, combined with an examination of best practices, led to the implementation of major administrative reforms.

The Reforms

At the core of the Maryland model is the adoption of an incentive-based system that encourages prisoners to engage in risk-reduction programs and exhibit positive institutional behavior (see Figure 2).

The system includes four key elements:

1. Development of an automated and validated initial risk/needs-based system that is completed at the point of admission to prison or probation;

2. Development of standardized case plans that are designed to address the identified initial risk and needs;

3. A re-assessment risk-based system that serves to reduce prisoners' risk levels based on compliance with the case plan; and

4. Parole guidelines that are driven by the risk/needs system and inmates' participation in risk reduction activities.

A key feature of the model is that it serves to encourage people sentenced to prison to engage in activities and programs that will reduce their risk of re-offending. It is not unlike the medical model where a physician assesses a patient's medical risk for key diseases (e.g. heart disease or cancer) and then develops a plan (e.g. exercise or diet) that will lower the person's risk. If the patient follows the plan, the risk is reduced and his or her life is extended and healthier. In turn for their participation, inmates earn credits for positive behavior.

The system also increases an individual's chances of being paroled at his or her initial parole eligibility date. Prior to this reform, Maryland parole commissioners would routinely defer consideration of someone's parole eligibility until they had completed a laundry list of programs. With the new system in place, more inmates are able to better demonstrate their fitness for release at their first parole hearing. The overall result is a reduction in the length of imprisonment as well as lower recidivism rates, which means a smaller and safer prison population.

Figure 2

Incentive-Based Corrections Process
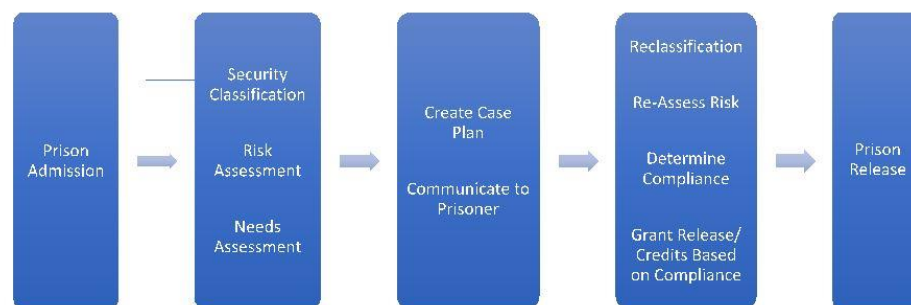
Another key feature of the Maryland model is that it does not require a comprehensive array of "evidence-based" treatment programs. Instead, it leverages the current availability of well-structured work assignments and the typical assortment of education, vocational

training, and self-help programs (e.g. drug/alcohol abuse or anger management) that have been shown to have modest effects on people's lives.[2]

Why It Worked

Since the implementation of reforms in Maryland in 2005, there have been numerous positive impacts. Prior to 2005, the state's prison population was rising and expected to reach a peak of approximately 26,000 people. Instead of rising as projected in 2005, the state prison population has been steadily declining since the implementation of reforms, as the crime rate continues to decline (Figure 1).

To assess the impact of these reforms, an analysis on recidivism rates was conducted on prisoners who were released in 2013. Prisoners were classified as recidivists if they returned to prison within three years for either a new crime conviction or a technical parole violation. Prior to 2002, Maryland's three-year prison recidivism rate (the percent of prisoners released who have returned to prison within three years of their release) hovered around 50%. Since the OSI-Baltimore/DPSCS reforms have taken place, the three-year prison recidivism rate consistently decreased, reaching a low of 34% for prisoners released in 2013 (Figure 4). Significantly, recidivism rates were lower for those who completed the recommended risk reduction programs, were assigned to lower custody levels, and were compliant with their case plans established when admitted to prison (Table 2).

Even more significant is that these positive changes in dynamic risk factors has resulted in a decrease in the number of high risk people leaving the prison system (Table 3). Specifically, there were over 1,000 fewer prisoners who were assessed as high risk leaving the system compared to the number of prisoners assessed at high risk upon admittance. Conversely, the number of people assessed with lower risk levels increased.

The decline in risk levels does not change the recidivism rates by the risk level, regardless of whether it is the initial static risk level or the adjusted dynamic risk level. In other words, the recidivism rates by risk level are essentially the same (Table 4). This means that dynamic risk levels are as valid as the initial static levels and, therefore, the reductions in risk level between admission and release are genuine. In the aggregate, the risk levels of admitted prisoners have been reduced. Said another way, those being released from prison do in fact have lower risk levels than they had when they entered prison.

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[2] Aos, Steve, Mama Miller and Elizabeth Drake. (2006). *Evidence-Based Public Policy Options to Reduce Future Prison Construction, Criminal Justice Costs and Crime Rates.* Olympia: Washington, State Institute for Public Policy. Sherman, Lawrence, Denise Gottfredson, Doris MacKenzie, John Eck, Peter Reuter, and Shawn Bushway. (1997). *Preventing Crime: What Works, What Doesn't, What's Promising.* A Report to the United States Congress by the National Institute of Justice, Washington, DC.

Table 2. Maryland Dynamic Risk Scoring Factors

Assessed Prior to Parole Consideration - 2013 Prison Releases

	3 Year Return to Prison Rate
Total	34%
Program Completed	
Yes	31%
No	38%
Security Level	
Pre-Release	33%
Minimum	36%
Medium/Higher	50%
Case Plan	
Full Compliance	31%
Partial Compliance	37%
Non-Compliance	46%

Table 3. Changes in Risk Level

Prison Admission versus Release - 2013 Prison Releases

Risk Level	Risk Level at Admission		Risk Level at Release		Difference
	Releases	%	Releases		
Low	1,310	21%	1,696	27%	+386
Low Moderate	1,123	18%	1,273	20%	+150
Moderate	1,358	22%	1,847	30%	+489
High	2,446	39%	1,421	23%	-1,025

Changes in risk levels between admission and release were also analyzed. As expected, prisoners who were assessed at high risk levels at admission but had their risk levels lowered due to positive behavior have lower recidivism rates than those who had not improved their risk levels (45% for those who did not improve versus 40% who did improve). Conversely, prisoners assessed at low risk levels at admission who had their risk levels increased upon release have higher recidivism rates (25% for those who did increase their risk levels versus 18% for those who did not) (Table 5).

This is important because the Parole Commission is increasingly basing its discretionary release decisions on the adjusted risk levels, and parole decision-making by risk level is associated with a lower prison recidivism rate. For example, the percentage of people assessed at high risk levels that were released on parole was 16% while 32% of prisoners that were assessed at low risk levels were released on parole (Table 6).

Table 4. Recidivism Rates by Static Risk Level at Admission vs. Dynamic Risk Level at Release - 2013 Prison Releases

| Risk Level	Risk at Admission	Risk at Release
Low	19%	19%
Low Moderate	28%	32%
Moderate	34%	38%
Higher	44%	44%

Table 5. Recidivism Rates by Admission Risk Level, Release Risk Level and Various Combinations Risk Level Change - 2013 Prison Releases

Risk Level at Admission	Risk Level at Release	Recidivism Rate
High	High	45%
High	High Moderate	40%
High Moderate	High Moderate	34%
High Moderate	Low Moderate	33%
High Moderate	High	38%
Low Moderate	Low Moderate	32%
Low Moderate	Low	23%
Low Moderate	High Moderate	43%
Low	Low	18%
Low	Low Moderate	25%

Table 6. Risk Level by Method of Release - 2013 Prison Releases

Method	Releases	Low	Low Moderate	Moderate	High
Expiration	852	16%	18%	31%	35%
Parole	2,311	32%	23%	30%	16%

The number of people being admitted to prison has also been decreasing. In 2002, there were approximately 15,000 prison admissions. Since then, the number of admissions dropped to under 11,000 by 2013 and below 10,000 by 2016 (Figure 3).

Figure 3. Prison Admissions and Three Year Recidivism Rates 2001 -2016
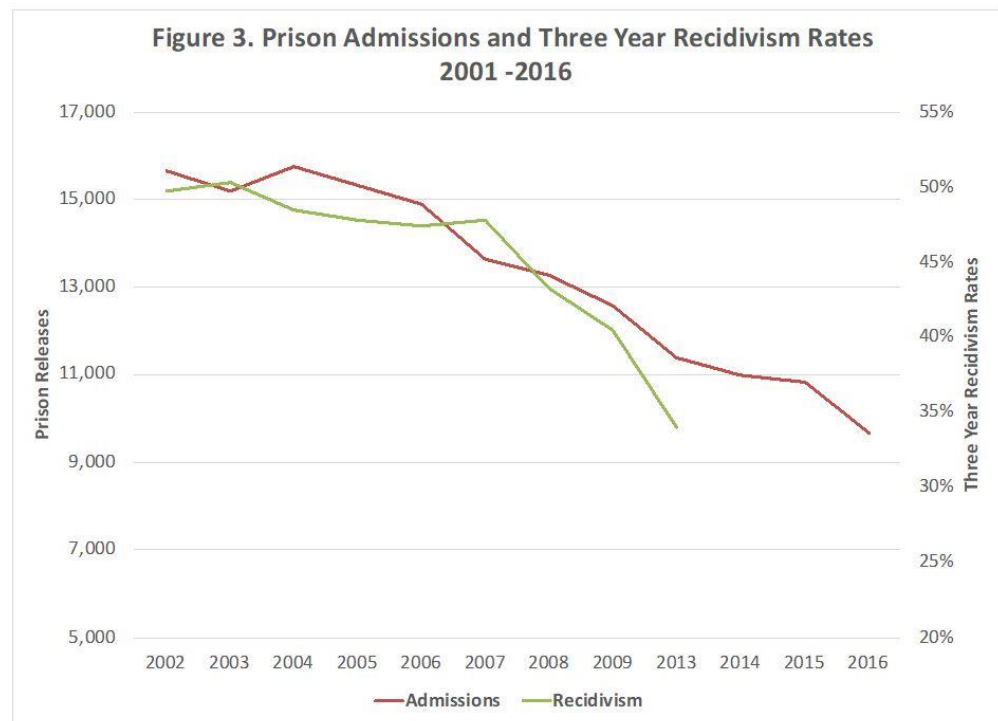
Maryland's incentive-based program has worked for several reasons. First, the program encourages motivated prisoners to comply with prison rules and the recommendations set forth in their case plans. Several studies have found that positive prison conduct is directly related to lower recidivism rates.[3]

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[3] Harer, Miles. 1994. Recidivism Among Federal Prison Releasees in 1987: A Preliminary Report. http://www.ncjrs.gov/App/publications/abstract.aspx?ID=156549. Cochran, Joshua C., Daniel P. Mears, William D. Bales & Eric A. Stewart. Does Inmate Behavior Affect Post-Release Offending? nvestigating the Misconduct-Recidivism Relationship among Youth and Adults. 2014. Justice Quarterly Vol. 31, Issue 6.

Table 8. Maryland Three-Year Return to Prison Rate
2013 Prison Releases

Indicator	Return to Prison
Total Maryland Recidivism Rate	34%
Technical Violations	19%
New Prison Sentence	15%
U.S. Rates	
Bureau of Justice Statistics 2005 Releases	50%
Pew 2004-2007 Releases	43%

Second, the model builds upon knowledge that there is a tendency for people admitted to prison to have lower offending rates after release, relative to before incarceration. Known as the "suppression effect," this means that prior to imprisonment, there was an abnormally high rate of criminal activity that led to arrest, conviction, and imprisonment. Upon release, people return to a more normal and less frequent rate of offending than before.

Finally, the "maturation effect" plays a significant role. Age and gender are the two most important predictors of criminal conduct. The vast majority of crimes are committed by young (ages 15-24 years) males, who are also the most frequently arrested. However, the average age of the nation's prison population is approximately 35 years——well past the upper end of the age group responsible for the majority of offenses. Based on the age factor alone, state and federal prisoners are in a declining risk group.

For all of these reasons, reducing the time someone is imprisoned——more commonly known as the length of stay (LOS) ——should have no negative impact on public safety. Research on this subject, conducted both nationally and in Maryland, has shown this to be the case. For example, there is no meaningful statistical relationship between the number of months someone is incarcerated and recidivism rates for Maryland prisoners released in 2013 (Figure 4).[4] Similar results have been reported by the Bureau of Justice Statistics and the Pew Center on the States.[5]

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[4] If anything there us a slight upward trend in three year recidivism rates as length of stay increases. But this analysis does not control for relevant risk related factors.

[5] Pew Center on the States. June 2012. Time Served: The High Cost, Low Return of Longer Prison Terms. Washington, DC: Pew Charitable Trusts.

Unfortunately, the national length of stay (LOS) has been going in the opposite direction. In 1994, the Bureau of Justice Statistics reported an average LOS of 21 months. By 2015, it had increased to 29 months. If the average LOS returned to 21 months, the nation's prison population would decline by approximately 25% with no adverse public safety effects. Furthermore, if prisoners are incentivized to participate in meaningful activities, overall recidivism rates may actually decline.


Figure 4. LOS and Recidivism Rates
Maryland Prisoners Released in 2013
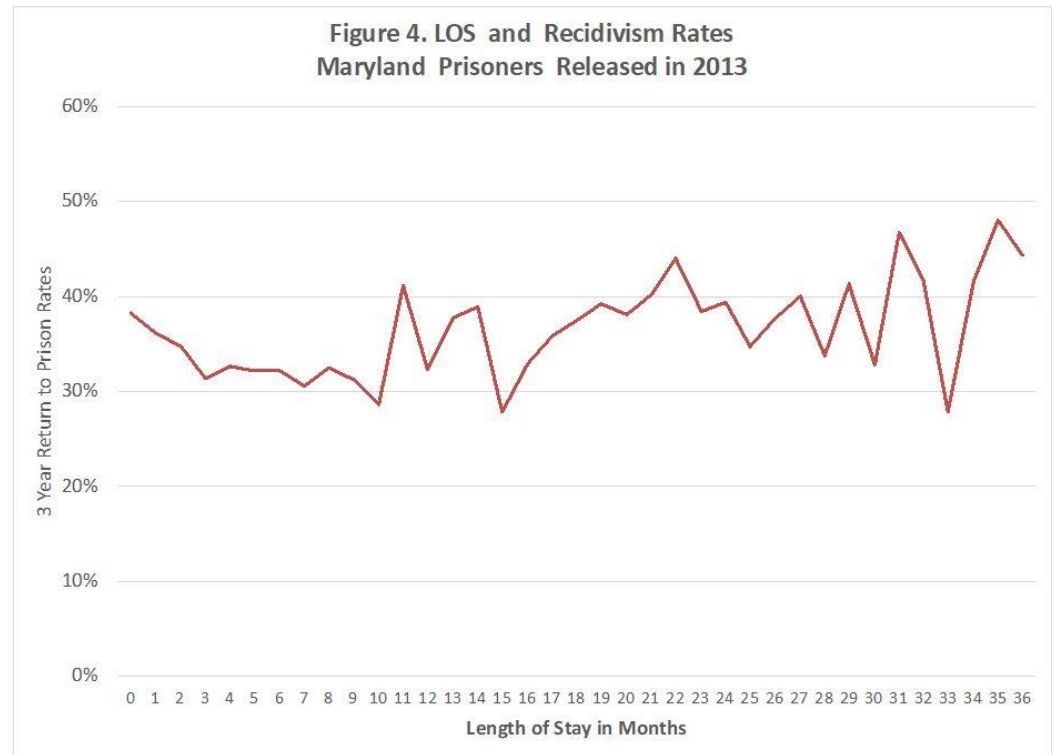
Reduce Maryland's Aging Prison Population

In May 2012, the Maryland Court of Appeals held in *Unger v. State* that approximately 235 prisoners serving parole-eligible life sentences in Maryland who had been convicted prior to 1981 were entitled to new trials. In those cases—the vast majority of which were for murder—judges had erroneously given instructions that the jurors, rather than the judges, were the ultimate deciders of the law. The Court reaffirmed its decision in 2015 following a challenge by prosecutors seeking to overturn or narrow the Court's original decision.

Soon after the court's 2012 ruling, two professors at the University of Maryland School of Law, the chief of the Appellate Division of the Maryland Office of the Public Defender, and OSI-Baltimore grantee Maryland Restorative Justice Initiative worked with clinical law and social work students to identify more than 200 prisoners who would

be eligible for relief under the ruling. Most of them were in their 60s and 70s and had been incarcerated for an average of 40 years.

Over the course of five years, and with support from OSI-Baltimore, the Prisoner Advocacy and Reentry Support Project (the "Unger Clinic") of the University of Maryland Clinical Law Program developed release plans and case-managed housing, medical, and other post-release social services to help more than 180 eligible *Unger* clients transition safely into the community. Of those, only three have been re-arrested and none have been reconvicted.

Figure 5. Costs Comparisons for Unger Releases
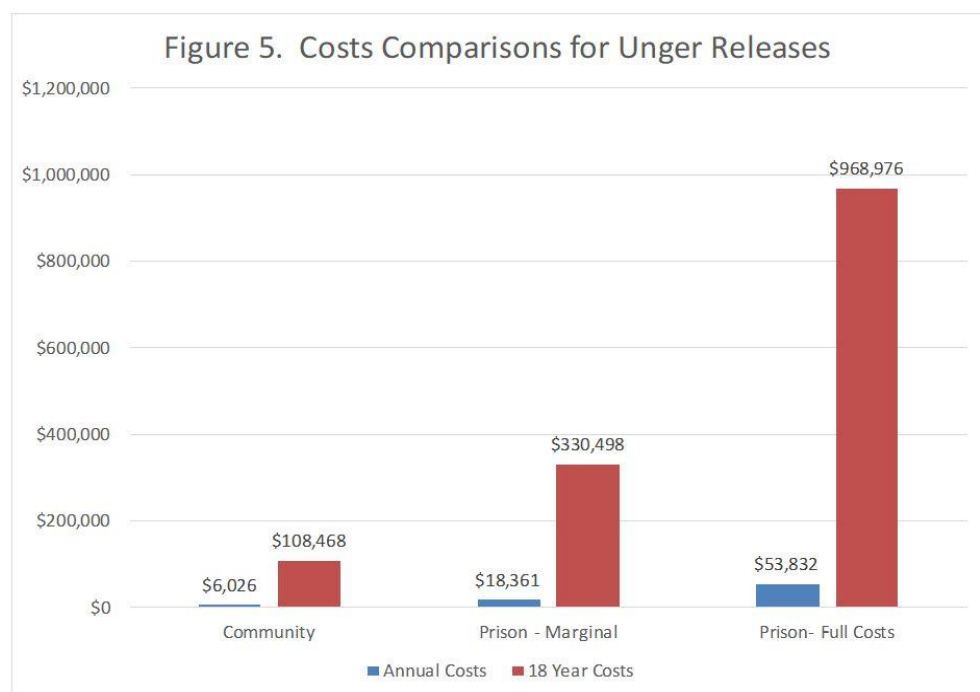
For purposes of this brief, the lesson is that with the proper supports even prisoners serving long sentences for serious offenses can be safely released into the community. In addition to being safe, reducing aging prisoners is also cost-effective. After analyzing a wide range of factors, it was determined that while the estimated costs of keeping these prisoners incarcerated for life would be nearly $1 million, the costs to the community if the prisoners were released would only be about $110,000 (Figure 5). Given the growing number of elderly people currently incarcerated in Maryland prisoners, it behooves DPSCS to take administrative steps to ensure that aging prisoners receive the programming they need behind the wall, receive parole hearings in a timely manner, and are positioned for administrative release.

Reforming the Parole Board Decision

As indicated above, some of the success for lowering the prison population has been linked to the Parole Board increasingly basing its decisions on the prisoner's modified risk level. But more work remains. Specifically, prisoners who have been sentenced for violent crimes and have been required to serve lengthy sentences continue to serve longer periods of time well beyond their parole eligibility dates even when they have fully complied with their risk-reduction case plans. Moving toward a policy where parole is presumed at the minimum parole eligibility date for people who have completed their recommended risk reduction programs would have a significant impact on the prison population without adversely impacting public safety. Such a policy began to be developed as early as 2012 by the Maryland Parole Commission but remains elusive.

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 faces by cities and communities around the country. In keeping with that mission, we offer this set of OSI-Baltimore Briefs. The initiatives and projects described 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 so that others may benefit from what we learned about the process, challenges, and successes of addressing some timely and widely shared issues.