Medical Assistance in Dying (MAiD) While Incarcerated vs Compassionate Release: A Comprehensive Analysis of "Dying with Dignity" within the Canadian Correctional System.

by

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Abstract

The principle of equivalence of care asserts that incarcerated individuals have access to the same level of healthcare as the general population. Carceral institutions have been notably criticized for having substantially fewer resources available and overall poor access to healthcare services. Medical Assistance in Dying (MAiD) is a medical process that assists eligible individuals who are seeking to end their lives. To be eligible, one must be eligible for health services funded by provincial, territorial, or federal healthcare services, be 18 years old and mentally competent for making health decisions for one's self and have a grievous and irremediable medical condition such as a disease, illness and disability and be in an advance state of decline that cannot be reversed which has resulted in unbearable pain, and mental suffering.

The right to choose how and when to end one's life falls under the purview of the right to private life. Article 3 of the Universal Declaration of Human Rights (UDHR) states that everyone has the right to life, liberty, and security of a person. Article 12(1) of the International Covenant of Economic, Social and Cultural Rights (ICESCR) states that the state parties to the Covenant recognize everyone's right to enjoy the highest attainable standard of physical and mental health. Article 12(2), which ensures that state parties enable citizens to exercise this right while holding each binding state accountable to have the adequate means to exercise this right to its fullest potential, and specifically Article 12(2)(d), which recognizes the need for states to create conditions for sustaining medical services and medical attention in the event of sickness for all individuals, regardless of status in society.

MAiD within Canadian carceral settings, however, presents difficulties because an inmate, by definition, is an individual who is denied their fundamental human rights. Using the foundation of these fundamental human rights, this report will argue for the use of Compassionate Release for terminally/dying inmates to allow these individuals to exercise their right to die with dignity and obtain the highest standard of healthcare during their last days.

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Purpose

This research aims to illustrate the dehumanizing effects of the Canadian criminal system. As this emerging and neglected area of research continues to expand, it remains critical to engage with complex areas of the Canadian justice system to promote change, advocacy, and reform justice. This paper demonstrates the fundamental human rights violations and the lack of attention and access to MAiD among inmates, the flaws in the process where an inmate may receive a compassionate release in place of MAiD and the plea for restructuring this process within the Canadian justice system. It will also elaborate on the direct parallel between access and equivalent standards to healthcare while incarcerated and in society. This will demonstrate how an offender becomes inherently stripped of their fundamental human rights once imprisoned. Terminology within this research area can be complex, so it is essential to define critical concepts for ease of reference. In this paper, institutions will work interchangeably to reference different types of carceral institutions and spaces of confinement in Canada, both federal and provincial. The main components distinguishing the various carceral institutions are established by sentencing duration and crime level; nonetheless, individuals are similarly incarcerated in each space. It is important to note that though each province governs the carceral system differently, the Correctional and Conditional Release Act (CCRA) establishes specific standards of care, policy, and procedure for all offender institutions.

Glossary

Canada Health Act (CHA) refers to Canada's federal legislation for publicly funded health care insurance.[1]

Carceral is a space that is used for containment and control.[2]

Carcerality Predictive policing has allowed the carceral system to penetrate underprivileged areas beyond the boundaries of actual prisons.[3]

Conditional Release refers to serving the remainder of an inmate's sentence in the community under supervision with specific conditions.[4]

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[1] Canada Health Act, Government of Canada, 2023, https://www.canada.ca/en/health-canada/services/health-care-system/canada-health-care-system-medicare/canada-health-act.html.
[2] "Carceral," Oxford English Dictionary, n.d., https://www.oed.com/dictionary/carceral_adj.
[3] "Carcerality," Glossary: Carcerality - Critical Data Studies - Purdue University, n.d., https://purdue.edu/critical-data-studies/collaborative-glossary/carcerality.php.
[4] Government of Canada "Conditional Release" Parole Board of Canada, Fact Sheet - Types of Release - Canada.ca, 2024, https://www.canada.ca/en/parole-board/corporate/publications-and-forms/types-of-release-fact-sheet.html.

Correctional Service Canada (CSC) is responsible for providing every inmate with essential health care and reasonable access to non-essential mental health care that will contribute to the inmate's rehabilitation and successful reintegration into the community.[5]

Dying with Dignity Canada (DWDC) Dying Honourably Canada is a national human rights foundation that works to safeguard end-of-life rights, enhance the quality of death, and assist Canadians in avoiding needless suffering. This allows individuals to express their right to end their lives peacefully.[6]

Inmate refers to a housed/ dwelling place that occupies space with others.[7]

Institution refers to an establishment, organization or association instated for a specific objective or purpose.[8]

International Human Rights Law (IHRL) governs the body of international law that promotes and protects all variations of human rights in international, regional, and domestic legislation.[9]

Medical Assistance in Dying (MAiD) is an extensive medical process that assists eligible individuals seeking to end their lives. This procedure is case-specific and must follow eligibility criteria and specifications and gain approval legislation before administering it to the individual who has requested it.[10]

Offender is a person who breaks the law/commits an offence.[11]

Office of the Correctional Investigator (OCI) is to ensure the fair and humane treatment of persons serving federal sentences. This is done by drawing attention to human rights obligations and holding the CSC accountable for administering federal corrections in a way that complies with law, policy, and fair decision-making.[12]

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[5] Correctional Service Canada, Government of Canada.ca, 2024, n.d., https://www.canada.ca/en/correctional-service.html.
[6] Dying with Dignity Canada, 2022. https://www.dyingwithdignity.ca/
[7] "Inmate" Legislative Services Branch, "Consolidated Federal Laws of Canada, Corrections and Conditional Release Act. n.d., https://laws-lois.justice.gc.ca/eng/acts/c-44.6/page-1.html.
[8] *Ibid*
[9] United Nations Human Rights Office of the High Commissioner (OHCHR), "International Human Rights Law," n.d., https://www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-law.
[10]Health Canada, "Medical Assistance in Dying: Overview," Government of Canada.ca, n.d., 2024 https://www.canada.ca/en/health-canada/services/health-services-benefits/medical-assistance-dying.html.
[11] "Offender" Oxford English Dictionary, n.d.
[12] The Office of the Correctional Investigator "Our Mission and Context," n.d., https://oci-bec.gc.ca/en/content/our-mission-and-context.

Palliative Care is a concept driven by providing the utmost standard of care for quality of life, especially during end-of-life care. It emphasizes treating the whole person and their family, not just the illness.[13]

Parole refers to the conditional release and transfer from incarceration to serving the remainder of a sentence within the community.[14] This is completed while under supervision and after a specified duration of imprisonment, usually one-third of a sentence, depending on the sentence.

Parole Board of Canada (PBC) As a component of the Canadian criminal justice system, the Parole Board of Canada (PBC) is an impartial administrative body that renders excellent decisions regarding conditional release, record suspension, and clemency recommendations.[15]

Parole by Exception refers to inmates receiving parole who have not yet reached their initial eligibility date.[16] This can include an inmate who is terminally ill, suffering from poor physical and mental health while in confinement, experiencing extreme hardship while in confinement, or being extradited.

Penitentiary Any location designated as a prison under section 7 and any institution of any kind, including with any lands attached thereto, that is run by the Service for the care and custody of prisoners, whether on a temporary or permanent basis.[17]

Prison is a place of confinement or detention to detain offenders in custody.[18]

Physician-Assisted Suicide "A physician or nurse practitioner directly administers a substance that causes death, such as an injection of a drug. This is sometimes called clinician-administered medical assistance in dying."[19]

Statutory Release When a federal inmate has completed two-thirds of a fixed-length sentence, the law mandates that they be released from prison under supervision.[20]

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[13] Dying with Dignity Canada, "Palliative Care," 2022, https://www.dyingwithdignity.ca/end-of-life-support/palliative-care/.
[14] Government of Canada "Parole," Canada.ca, 2018, https://www.canada.ca/en/parole-board/services/parole/what-is-parole.html.
[15] Government of Canada "Parole Board of Canada" 2024, https://www.canada.ca/en/parole-board.html.
[16] Canadian Association of Elizabeth Fry Society. "Parole and conditional release" - CAEFS, 2021, https://caefs.ca/wp-content/uploads/2022/04/2021-08-01-CR-FS-Parole-and-Conditional-Release.pdf.
[17]"Penitentiary," Legislative Services Branch, "Consolidated Federal Laws of Canada, Corrections and Conditional Release Act. n.d.,
[18] "Prison" Oxford English Dictionary, n.d.
[19] Government of Canada. "Medical Assistance in Dying: Overview" Canada.ca, 2023, para 1. https://www.canada.ca/en/health-canada/services/health-services-benefits/medical-assistance-dying/legislation-canada.html#a1.
[20] Parole Board of Canada, "Statutory Release," Government of Canada.ca. 2024. https://www.canada.ca/en/parole-board/corporate/publications-and-forms/types-of-release-fact-sheet.html.

The Correctional and Conditional Release Act (CCRA) respects corrections, conditional release, and detention of offenders.[21]

The Correctional Service of Canada (CSC)- Commissioner's Directive allows inmates to access the community or other institutions for medical, administrative, parental responsibility, compassionate reasons, community service, personal development, or rehabilitative purposes.[22]

The Royal Prerogative of Mercy refers to an unrestricted discretionary power to show mercy, founded on the knowledge that the Canadian legal system is not perfect and that, occasionally, it is required to step in for the sake of justice, humanity, or compassion to lessen the severe negative impacts of criminal sanctions.[23]

Voluntary Euthanasia "A physician or nurse practitioner provides or prescribes a drug that the eligible person takes themselves to bring about their death. This is sometimes called self-administered medical assistance in dying."[24]

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[21] Government of Canada. "Corrections and Conditional Release Act" Canada.ca, 2023, https://laws-lois.justice.gc.ca/eng/acts/c-44.6/.

[22] *Ibid*

[23] Parole Board of Canada, "Royal Prerogative of Mercy," Government of Canada. Canada.ca, 2023, https://www.canada.ca/en/parole-board/corporate/publications-and-forms/royal-prerogative-of-mercy-ministerial-guidelines.html.

[24] Government of Canada. "Medical Assistance in Dying: Overview" Canada.ca, 2023, para 2.

Introduction

In 2015, The Canadian Supreme Court ruled in *Carter v. Canada* that the criminal laws that forbade aid in dying restricted a person's right to life, liberty, and security under section 7 of the Canadian Charter of Rights and Freedoms in a way that could not be shown to be justified by section 1 of the Charter.[25] The relevant sections of the Criminal Code were section 14, which states that no one may consent to death being inflicted upon them, and paragraph 241(b), which forbids aiding suicide.[26] After this monumental ruling, the Supreme Court announced a one-year deadline to create a new federal law surrounding MAiD. Bill C-14 (2016) was passed, providing Canada's first Medical Assistance in Dying (MAiD) legislation. In 2021, Bill C-7 significantly changed this legislation in response to Quebec's 2019 decision in *Truchon v. Canada*. This case challenged the original 2016 law, claiming it was unconstitutional regarding the reasonable foreseeability of natural death criteria and the end-of-life criteria from Quebec's provincial act regarding end-of-life care.[27] By 2023, the Special Joint Committee examining MAiD issued a report that included the status of palliative care in Canada, MAID for mature minors, MAiD for those with mental health issues as their only underlying ailment, advance requests, and the protection of people with disabilities.[28] Supporting MAiD, Dying with Dignity Canada (DWDC) allows individuals to express their right to end their life in a peaceful state. DWDC supports MAiD on compassionate grounds that recognize the pain and suffering of serious illnesses, disabilities and disease and the gruelling pain and mental anguish. They provide a framework for individuals to exercise their fundamental human rights and explore remedies to end their lives in a peaceful state. Additionally, they advocate for those who are denied their fundamental right to terminate their life, which leads to enduring and unnecessary suffering.

Within the Canadian context, Physician-Assisted Suicide and Voluntary Euthanasia are the two different types of Medical Assistance in Dying available. Both are based on the same concept and work interchangeably, but they have notable administrative differences. Each

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[25] Department of Justice Government of Canada, "Legislative Background: Medical Assistance in Dying (Bill C-14), Introduction - Brief Summary of Carter v. Canada." 2023, https://www.justice.gc.ca/eng/rp-pr/other-autre/ad-am/p1.html.
[26] *Ibid*
[27] Government of Canada. "Medical Assistance in Dying: Legislation in Canada" Canada.ca, 2023, para 1. https://www.canada.ca/en/health-canada/services/health-services-benefits/medical-assistance-dying/legislation-canada.html#a1.
[28] Dying With Dignity Canada "Parliamentary Review," 2023, pg. 2 https://www.dyingwithdignity.ca/advocacy/parliamentary-review/.

technique is governed and administered differently across Canadian provinces and territories, aligning with each healthcare administration. As MAiD continues to evolve in practice, the terminology has expanded to include assisted suicide, euthanasia, aid-in-dying, and physician-assisted suicide. To keep the research cohesive when referencing MAiD, physician-assisted suicide and voluntary euthanasia will only be actively discussed. This research will provide a general overview of the healthcare delivery in Canadian Correctional institutions and its impediments to inmate's access to adequate standards of care while focusing on the current end-of-life care policy and procedure. It will focus on the importance of compassionate release for terminally ill inmates and call upon human rights recommendations through federal prison reform and updated policy legislation to ensure these standards are being met.

Health Care Delivery in the Canadian Carceral System

Many provinces and territories do not provide adequate standards of health care for inmates. This contributes to the continued disadvantaging and marginalization of federally and provincially incarcerated individuals. Individuals who are incarcerated are more likely to suffer from physical and mental health illnesses and do not have the same access to healthcare. The carceral system is designed on specific protocols and guidelines that govern the lives of inmates, including when and how they access health services during incarceration. Inadequate standards of medical care while incarcerated are a normalized practice which diminishes and neglects the fundamental human rights of inmates. This differs from the community-level access to adequate healthcare since inmates face service restrictions.

Federal and provincial incarcerated inmates are expressly prohibited from receiving publicly financed health insurance under the Canada Health Act. Inmates' health care is provided by the Ministry of Correctional Services and Community Safety, governed by the Correctional and Conditional Release Act (CCRA), which lacks official direction and adequate standards to which these services must adhere.[29] Social and structural determinants of health, including poverty, lack of access to healthcare, inadequate nutrition, and educational obstacles, present particular health concerns for Canadian prisoners.[30] The healthcare system for inmates in most Canadian prisons is entirely different from that of the general public. This adds to lengthy

[29] Andrew Lee, Alison Ross, and Megan Saad, "Health Care Reform in Canadian Corrections Facilities," *Ontario Medical Student Association*, 2021.pg. 2
[30] *Ibid.*

prisoner wait times and inadequate treatment of physical and mental health issues by making it harder to hire and retain medical experts.[31]

The primary goal of the CCRA is to safeguard society, while prisoner rehabilitation is a secondary concern.[32] Regarding the CCRA and its policy and procedures, its guidelines state that "essential health care" is to be provided to prisoners. This vague definition remains problematic because there is no clear understanding of what constitutes essential health care or how it should be implemented. All forms of healthcare can be classified as essential when exercising an individual's fundamental human rights. This means that regarding medical needs or attention a person may acquire, the standard to which they receive care shouldn't be jeopardized or subject to debate. However, the vague CCRA language ignores the more comprehensive healthcare requirements that are deemed essential for incarcerated individuals, such as the rising presence of diseases within carceral institutions that need more than essential attention. The lack of official guidelines allows the institutions to shift away from the urgency, which marginalizes inmates from receiving the perceived "essential care," placing other critical areas of healthcare services and access to non-institutionalized essential medical care as a lengthy process.

The Penitentiary Act of 1834 brought about a change in Canada's criminal justice system from the use of corporal punishment to incarceration for reformation.[33] It is essential to note the early stages, expectations, and treatment of prisoners can constitute controversial and neglected areas of reform within the Canadian justice system. In the early development of prisoners and incarceration, prisoners, offenders, and detainees were kept in total isolation from the outside world, regardless of age, sanity, or offence. They were housed in a condition of complete inactivity during non-working hours, which resulted in mental and physical atrophy with stringent rules.[34] These rules compelled prisoners to lie down for 12–16 hours a day since their cramped cells would not let them walk about freely.[35]

Nonetheless, an 1848 Royal Commission report on the cruel treatment of inmates in Kingston Penitentiary resulted in demands for justice system reform and accountability. As years

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[31] *Ibid.* pg.4
[32] Eilish Scallan, Kari Lancaster, and Fiona Kouyoumdjian, "The 'Problem' of Health: An Analysis of Health Care Provision in Canada's Federal Prisons," *Health: An Interdisciplinary Journal for the Social Study of Health, Illness and Medicine* 25, no. 1 (2019): pg. 5. https://doi.org/10.1177/1363459319846940.
[33] *Ibid,* pg. 11
[34] Public Safety Canada "Recreation in Canadian Penitentiaries 1832-1961", 1962, para 1. https://www.publicsafety.gc.ca/lbrr/archives/hv%209307%20a1%20p4%201955-eng.pdf.
[35] *Ibid, section b*

progressed, so did the resources and access to necessities within carceral institutions; between 1869 and 1872, education resources, books, lighting within cells, and additional reading times were.[36] Between 1869 and 1888, prisoners were allowed to write letters to families or loved ones.[37]

Additionally, the formative years of a modern criminal justice system occurred during the end of the nineteenth and the beginning of the twentieth centuries.[38] From 1920 to 1939, a committee was appointed to revise penitentiary regulations; in 1933, they were revised, and in 1936, the Royal Commission was established to investigate penal systems in Canada. In 1938, when the investigation was completed, the "Archambault Report" marked a change in the history of Canadian penology.[39] Although several proposals for inmate protection and independent review were not met by the CCRA when it was created in 1992, it attempted to further provide justice and fairness for those imprisoned. As a whole, it prioritizes the preservation of society over individual rights and places more emphasis on punishment and incarceration than rehabilitation. [40]

Health is portrayed differently in the Canada Health Act (CHA) and the CCRA, with the CHA placing more emphasis on public responsibility and the CCRA on individual responsibility.[41] This prevents access and freedom from systemic barriers to health care for all people in Canada since the "citizen" and the "offender" are constituted as separate categories with different health care requirements. In this manner, the CCRA reinforces continued oppression and marginalization within carceral facilities where inmates face extreme difficulties when they seek adequate standards of care. Additionally, the CCRA perpetuates and intensifies the stigma and dehumanization that are already products of the Canadian correctional system. Prison healthcare system experts claim that the health treatment received by federal inmates in the Canadian carceral system is significantly diversified. Each province or territory individually governs the responsibilities and execution without official national guidance. They are responsible for sustaining, recruiting, and maintaining staff within each institution that adheres to

[36] *Ibid, section b*
[37] *Ibid, section c*
[38] *Ibid, section c*
[39] *Ibid, section c*
[40] Scallan, Lancaster, and Kouyoumdjian, pg. 5
[41] *Ibid,* pg. 14

their provincial and territorial guidelines and legislation standards.[42] This demonstrates the differences between Canadian carceral institutions, as what one inmate may receive in Ontario, for example, would differ from what one is incarcerated in Manitoba. According to the CCRA, CSC offers "essential health care" that "conforms to professionally accepted standards" to an estimated 15,055 federal offenders.[43] However, disparities between inmates and the general public concerning access to healthcare include challenges related to access to adequate mental health services and dentistry needs.[44]

Additionally, there needs to be more qualified medical staff due to provincial and territorial provision of healthcare services to carceral institutions. This has created longer wait times, staffing shortages and insufficient services available during incarceration. Due to private provincial and territorial institutions, securing the appropriate medical staff, including an adequate ratio of medical professionals to inmates, remains complex as the Canada Health Act does not govern carceral institutions. Though the CSC is responsible for providing essential healthcare to inmates, their standards remain ambiguous and lack official standards.

The United Nations Standard Minimum Rules for the Treatment of Prisoners.

In 1995, the United Nations set forth minimum standards of care and rules regarding the treatment of prisoners. The United Nations Standard Minimum Rules for the Treatment of Prisoners establishes standards of care and related guidelines that are not meant to describe a perfect prison system. They aim to acknowledge sound principles and practices for treating inmates based on assessing the fundamental components and expectations of today's most effective systems.

The right to choose how and when to end one's life falls under the purview of the right to private life. Article 3 of the Universal Declaration of Human Rights (UDHR) states that everyone has the right to life, liberty, and security. Article 12(1) of the International Covenant of Economic, Social and Cultural Rights (ICESCR) states that the state parties to the Covenant recognize everyone's right to enjoy the highest attainable standard of physical and mental health. This includes Article 12(2), which ensures that state parties take adequate steps to exercise this right to its fullest potential. This consists of the necessary means presented in Article 12(2)(d),

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[42]Adam Miller, "Prison Health Care Inequality," *Canadian Medical Association Journal* 185, no. 6 (March 4, 2013), para 2. https://doi.org/10.1503/cmaj.109-4420.
[43] *Ibid,* para 5.
[44] *Ibid,* para 10.

which seeks to create conditions for sustaining medical services and medical attention in the event of sickness.

The United Nations Standard Minimum Rules for the Treatment of Prisoners article 22(1) states that every institution must have access to the services of a minimum of one licensed medical officer with some training in psychiatry. The organization of medical services ought to be closely linked to the country's or community's overall health management. A psychiatric service will be provided for the diagnosis and, when necessary, treatment of mental illnesses.[45] Article 25 (1) notes that the medical officer is responsible for the physical and emotional well-being of the inmates. This officer should regularly check all sick inmates daily and any inmate who explicitly requests their attention. (2) The medical officer must notify the director if they believe that a prisoner's physical or mental health has been negatively impacted by incarceration or will be negatively impacted by any conditions associated with confinement.[46]

Human rights law stipulates that when a prisoner's health has surpassed the effectiveness of prison, incarceration is no longer suitable and morally becomes improper.[47] In the context of atrocity crimes, there has been opposition to the compassionate release of terminally sick criminals because of worries about victims' rights, reoffending, and the rule of law.[48] The prisoner may die in custody if the compassionate release request is denied, but if the prisoner is released "early," the decision to remove them from custody may not have been made legitimately.[49] The prohibition on torture and cruel, inhumane, or degrading treatment or punishment found in human rights law provides the legal foundation for compassionate release.[50] This goes beyond the scope of domestic laws and reinforces international human rights law (IHRL), which enables all bidding states to implement appropriate policies and procedures by abiding by this legislation.

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[45] U.N. standard minimum rules for the treatment of prisoners, 1995, part 1, para 22 https://www.hrw.org/legacy/advocacy/prisons/un-smrs.htm?gad_source=1&gclid=CjwKCAiAkp6tBhB5EiwANTCx1Ip-t1_RYBn_My1gTgQQUIq9_2AfwW4xyPZRvm6LxX3cI4Eg6f8hjxoCz3AQAvD_BwE.
[46] *Ibid*, para 25
[47] *Ibid*, pg. 73
[48] *Ibid*, pg. 71
[49] *Ibid*.
[50] *Ibid*, pg. 79

End-of-Life Care for The Federally Incarcerated in Canada

The Correctional Service of Canada (CSC) laws, policies, rules, and guidelines about caring for federally incarcerated individuals remain complex and need more official direction. For those who are terminally sick or require palliative care, the CCRA and the Criminal Code mandate that the CSC look for alternatives to hospitalization.[51] End-of-life care goes beyond the scope of MAiD and includes receiving the same standards of care, treatment, and access to adequate healthcare during their final days in the same manner as other members of society. Age within the incarceration setting and society share the same inevitable commonality: the increase of health concerns, frequency of disease or illness and a rising mortality rate.[52]

Though advancements in legalization surrounding MAiD have been made over the years, more legislation still needs to be specific to advanced requests. Additionally, the DWDC describes advanced requests as established when a competent individual can make an advance request in writing for medical assistance in dying (MAiD), which may be granted later if they can no longer make their own medical decisions.[53] An advance request would enable someone to outline in writing a future situation in which they would desire to use MAiD as their illness progresses, compromising their future judgements.

Palliative treatment and MAiD are two clinical choices available to incarcerated individuals, provincially or federally, seeking to end their lives. As the number of individuals over fifty years old who are being administered into custody continues to grow, the widespread presence of diseases, commonly cancer, continues to rise in Canadian carceral institutions.[54] According to the Criminal Code and CCRA, the CSC must look for alternatives to incarceration for those who require palliative treatment or are terminally ill.[55] The healthcare guidelines established for CSC cover requesting and administering healthcare, handling denial of permission and involuntary treatment, and handling medical crises. The palliative care guidelines are ambiguous, hard to find, and only accessible through an access-to-information request.[56]

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[51] Adelina Iftene and Jocelyn Downie, "End-of-Life Care for Federally Incarcerated Individuals in Canada," *SSRN Electronic Journal*, 2020, pg. 10 https://doi.org/10.2139/ssrn.3857727.
[52] *Ibid,* pg.7
[53] Dying with Dignity Canada (DWDC), "Advance requests," 2024, https://www.dyingwithdignity.ca/advocacy/parliamentary-review/advance-requests/.
[54] *Ibid,* pg. 6.
[55] *Ibid*, pg. 10
[56] *Ibid* pg. 27

By the commissioner's directive 710-3, "*temporary absences may be granted for medical reasons, administrative reasons, community services purposes, family contact purposes, parental responsibility reasons, and personal development for rehabilitative purposes. Escorted temporary absences are granted to all incarcerated individuals."*[57]

Based on this directive, an outsider might expect that inmates have the opportunity to obtain specific healthcare services like palliative care and MAiD. The cost to the community for these inmates to receive an adequate standard of palliative care that enhances their quality of life hinges on the feasibility of medical support within the community and its availability. The likelihood that inmates receive a spot for medical care is low due to the CSC's lack of readiness to commit to medical care outside of the carceral institution.[58] Support within the community for these inmates to receive palliative care and temporary absences cannot happen without proper funding and resources made available to them. From a human rights perspective, the lack of such resources infringes on an inmate's fundamental right to access adequate healthcare and exacerbates the dehumanizing nature of carceral institutions.

Temporary absence is the most typical method for getting end-of-life care in the community. 60% of the 94 deaths from natural causes involving patients receiving palliative care occurred in a CSC regional hospital, 30% in a community hospital, and 9% in a CSC institution.[59] Parole and temporary absence from the carceral system are commonly misunderstood. Though they seem similar in context, they rarely correlate with each other. Temporary absences occur under specific circumstances, with the corresponding reasoning, such as section A) medical reasons- to undergo examination or treatment that is not offered within the prison, B) administrative reasons, C) community service duties, D) family contact purposes, E) parental responsibilities, F) parental responsibilities, and G) compassionate reasons.[60] Within the scope of these reasons, the release provided is for ideally shorter periods and insufficient to receive ongoing forms of care.

Additionally, an offender's potential eligibility for parole and temporary releases hinges upon various eligibility criteria, including detailed eligibility or lack thereof, for certain types of

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[57]Correctional Service Canada, "Temporary Absences", 2016, Commissioners Directive No 710-3, para (6), sub-sections A-G, https://www.csc-scc.gc.ca/politiques-et-lois/710-3-cd-eng.shtml#s1a
[58] Iftene & Downie, 2020, pg. 12
[59] *Ibid*, pg. 19
[60] Correctional Service Canada, "Temporary Absences," 2016

sentences, specific time served, duration of original sentence, and behaviour. This includes if their temporary absence is supervised, unsupervised or denied. Those granted parole instead of temporary absences serve the remainder of their sentence in the community or within rehabilitation institutions or services. Parole by Exception is commonly called a form of compassionate release within Canadian prisons. According to section 121 of the CCRA, an exceptional provision allows an offender who has not yet reached their day and full parole eligibility dates to be considered for parole.

> *Under section 121 of the CCRA, parole by exception may be granted to an offender:*
> a. *Who is terminally ill.*
> b. *Whose physical or mental health is likely to suffer severe damage if the offender continues to be held in confinement.*
> c. *For whom continued confinement would constitute an excessive hardship that was not reasonably foreseeable at the time the offender was sentenced or*
> d. *Who is the subject of an order of surrender under the Extradition Act and will be detained until surrendered."* [61]

A study conducted by Adelina Iftene and Jocelyn Downie looked at data dating back to 2005 with evidence of 49 cases requesting The Royal Prerogative of Mercy, all of which were not granted and no community-based end-of-life care was offered.[62] This leaves the interpretation of what classifies an inmate as terminally ill or the priority of terminally ill inmates up to the discretion of the provincial authority. Section 121 of the CCRA is minimal; there needs to be more information regarding the possibility of petitioning for a Royal Prerogative, and the applicant person can only apply for parole by exception with the help of CSC.[63] Additionally, the CSC must support parole by exception before any opportunity for release by initiating a "pre-release" on behalf of the offender. This implies that the parole officer will need to choose which alternatives to incarceration are the best ones.[64] This includes risk assessments, psychiatric evaluations, and medical records gathered by the parole officer. They write their evaluation of the inmate and gather suggestions for local services, including victim impact statements and assessments and contacting family or relatives. [65] Significant medical evidence" from the prison

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[61] Parole Board of Canada, "Decision Making Policy Manual for Board Members" Policy 4.1.1, Government of Canada. Canada.ca, 2023. https://www.canada.ca/en/parole-board/corporate/publications-and-forms/decision-making-policy-manual-for-board-members/chapter-4.html#4.1.1.
[62] Iftene & Downie, 2020, pg. 20
[63] *Ibid,* pg. 23
[64] *Ibid.*
[65] *Ibid.*

doctor demonstrating that the person's health is likely to suffer serious harm if they remain incarcerated or that their circumstances would make their continued incarceration an excessive hardship is necessary for a request for parole by exception to be granted, which poses a liability concern with prison physicians to endorse Section 121 applications.[66]

Moreover, section 121 (1)(a) of the CCRA must be more specific and precise when referencing the terminally ill. This is understandable given that phrases like "undue hardship" and "health likely to suffer serious damage" provide no guidance to the CSC regarding their interpretation or what specific proof and documentation would be sufficient to demonstrate that the person satisfies these requirements.[67] The use of parole by exception, in other words, compassionate release, continues to be a minimal practice, and approval remains complex. The Office of the Correctional Investigator (OCI) reports relatively low parole by exception releases for inmates who died of natural causes or are expected to do so.

> "*Parole by Exception (compassionate release) provisions of the* Corrections and Conditional Release Act *were explored in 36 of 55 palliative care cases. Of those, 14 applications were made to the Parole Board of Canada for review; only four were granted. In 19 of 55 palliative cases, the rapid course of illness did not allow sufficient time to explore alternatives to incarceration. Five inmates refused to submit an exception request; for some, their wish was to remain at a CSC facility to receive end-of-life care. Managing palliation in a prison setting is challenging, to say nothing about the erosion of human dignity that dying behind bars implies."*[68]

Anyone serving a life sentence is eligible for parole by exception if they are terminally ill or appeal using the Royal Prerogative of Mercy.[69] The Royal Prerogative of Mercy Parole allows those serving life sentences, whether terminally ill or not, to have their sentences commuted, which means spending the remainder of their sentence duration in community supervision.[70] Parole, by exception, hinges on the medical professional within the institution, who either supports the inmate's release or infringes on their release. Depending on staffing and support within each institution, some medical professionals may be versatile and equipped to practice in different areas. In contrast, others may have a general physician not necessarily equipped with the same judgements. This affects the willingness of an institution to release an inmate on

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[66] *Ibid.*
[67] *Ibid.*
[68] Office of the Correctional Investigator, Annual Report 2015, supra note 11 at 22. https://oci-bec.gc.ca/en/content/annual-report-office-correctional-investigator-2014-2015#s6
[69] Iftene & Downie, 2020, pg. 17
[70] *Ibid.*

compassionate grounds because they rely heavily on the internalized medical professional. In all cases, the prison doctor must show that the inmate's continued incarceration will cause excessive hardship or that the inmate's health would undoubtedly suffer significant injury.[71] Three hundred fifty federally incarcerated persons passed away from natural causes while incarcerated between 2005 and 2015.[72] These requests were made for people with severe medical conditions, such as cancer, liver failure, brain injury, mental health issues, and a few grave illnesses that were not explicitly named.[73] The lack of recorded data surrounding the details of each request presents difficulties for future requests to have precedent. This makes it challenging for inmates to adequately understand the role and function of the CCRA and be provided a basic understanding of these policies. It provides a foundation that neglects appropriate care for all inmates, especially those exercising their end-of-life rights.

Compassionate Release and the Effects of Aging & Dying in Prison

Individuals who are palliative or terminally ill nonetheless express fear of dying in prison. Palliative or end-of-life care and the facilitation or enabling of MAiD in federal correctional facilities are not the domains of the CSC.[74] The Canadian Hospice Palliative Care Association's guidelines and standards are adhered to by CSC; however, several neglected areas remain within these guidelines. There is a lack of 24-hour care in institutional environments, family member connection and communications, additional education, and training for those providing palliative care, monitoring and services, and the connection to community partners and resources.[75] The provision of end-of-life care is not suitable to a prison setting. Ensuring that federally sentenced prisoners receive treatment comparable to that offered in the community and facilitating visits from family and friends would be easier with a community placement.[76] Community placements would also introduce a more compassionate response to highly challenging circumstances.[77] Numerous other factors frequently make decision-making

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[71] Iftene & Downie, 2020, pg. 23
[72] Iftene & Downie, 2020, pg. 19
[73] *Ibid.*
[74] Canadian Human Rights Commission. *Aging and Dying in Prison: An Investigation into the Experiences of Older Individuals in Federal Custody*. Ottawa, ON, CA: Correctional Investigator Canada, 2019, pg. 54. https://www.chrc-ccdp.gc.ca/sites/default/files/publication-pdfs/oth-aut20190228-eng.pdf
[75] *Ibid.*
[76] *Ibid.*
[77] *Ibid.*

surrounding compassionate release more difficult, even though it is evident that human release decisions should only be based on medical eligibility and authorization by a legal entity.[78]

The proportion of aged prisoners and the number of inmates who are expected to die while serving their sentences may be rising as a result of the inability to implement compassionate release policies.[79] According to studies, inmates regret not being able to see loved ones, dread dying in jail because of insufficient treatment, and believe that dying in prison is a stigma.[80] Compassionate end-of-life care remains complex in practice and procedure within the correctional system due to the difficulty, tight conditions, and competing interests of security and care. Providing terminally sick, elderly, and vulnerable inmates with compassion and empathy to live out their final days in an ethical and morally compassing way proposes two symbolic purposes: acknowledging them as fellow human beings and the significance of serving out their sentence. By definition, the correctional system is not conducive to the growth of individual autonomy, free will, or consent and, as a result, constrains personal freedom.[81] For an inmate to reject any possibility of compassionate release or dying outside of the correctional institution in a humane and rehabilitative way is likely a sign of psychological adaptation to institutionalization.[82]

Different eligibility requirements apply depending on the type of criminal and sentence length. Those who do not receive parole are eligible for statutory release, which entitles them to release after serving two-thirds of their sentence.[83] Decisions made during the parole procedure are arbitrary and loosely controlled, depending on subjective standards. Statutory release differs from parole in that the Parole Board of Canada (PBC) does not decide to grant release. Statutory release is not available to offenders serving life sentences or indeterminate sentences.[84]

According to the CCRA, parole by exception is meant to free those who are terminally ill, whose health cannot be maintained while they are behind bars, whose health would be endangered if they were kept behind bars, or who are subject to an extradition order. This clause,

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[78] Róisín Mulgrew, "Terminal Illness and Compassionate Release," *Journal of International Criminal Justice* 21, no. 1 (March 1, 2023): pg. 70, https://doi.org/10.1093/jicj/mqad013.
[79] *Ibid*, pg. 55
[80] Canadian Human Rights Commission. *Aging and Dying in Prison: An Investigation into the Experiences of Older Individuals in Federal Custody*. Ottawa, ON, CA: Correctional Investigator Canada, 2019, pg. 55
[81] *Ibid*, pg. 55
[82] *Ibid*, pg. 55
[83]Parole Board of Canada, "Statutory Release," Government of Canada.ca. 2024.
[84] *Ibid.*

however, is rarely used for people serving life or indeterminant sentences. The application procedure under section 121 of the CCRA governs parole by exception, is overly demanding regarding eligibility, and needs to be more adequately regulated. Judges have reduced sentence duration out of sympathy, but parole by exception remains uncommon.

The Canadian Criminal Code and penal theory provide various justifications for incarcerating individuals, ranging from denunciation and incapacitation to general and individual deterrence. Protection and offender rehabilitation are utilitarian reasons central to the penal system's goal. Although compassionate release is not a component of the criminal justice system, using it does not contradict the objectives of jail.

Constitutional rights, such as the right to primary healthcare, the prohibition against inhumane punishment, the right to life, liberty, and personal security, and the equality of all people before the law, are all violated when terminally ill elderly inmates are treated in jails. Inmates with severe chronic diseases or terminal illnesses may benefit from compassionate release. Only Canada recognizes the right to voluntary euthanasia for inmates as a fundamental human right. However, MAiD in a jail setting presents difficulties because a prison, by definition, robs individuals of their rights. This makes eligibility criteria challenging to meet and gain appropriate documentation, assessments, and approvals due to slower processing times than the general public, granting a third of all requests for MAiD by prisoners in Canada.[85] This is far lower than the general population's approval rate of 81%. As mental health concerns continue to increase within the prison population, the demand for alternative options, rehabilitation programs and reintegration programs is heightened to mitigate the need to use MAiD as an outlet for prisoners serving extreme sentences.

Prison is designed to deny citizens their right to freedom of movement, yet the Convention permits interference with the right to privacy in some limited circumstances.[86] If inmates are not assisted with suicide, the State reintroduces the language of death in terms of punishment and inadvertently exercises influence over some of its citizens' deaths. While it is true that the State is responsible for ensuring that inmates do not pass away while incarcerated, it

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[85] Michael Cook, *Canadian prisoners are choosing euthanasia, but the public is none the wiser*, May 18, 2023, https://bioedge.org/end-of-life-issues/euthanasia/canadian-prisoners-are-choosing-euthanasia-but-the-public-is-none-the-wiser/.

[86] Yoann Della Croce, "Assisted Suicide for Prisoners: An Ethical and Legal Analysis from the Swiss Context," Bioethics Vol 36(4), 2021, pg. 383 https://onlinelibrary.wiley.com/doi/10.1111/bioe.13005.

cannot be maintained that this obligation includes forbidding inmates from using assisted suicide.[87] Presenting hurdles for inmates to receive MAiD and access to the same resources as non-inmates during the process allows stigmatization. The idea that inmates are somehow less important than other members of society is the foundation of the argument that they deserve a horrible, painful death, deeming their lives less significant to the general public.

Since the State is the primary status source in a community and shapes how people see one another, inmates must be treated with the same freedom and dignity that they are born with alongside the general population. Differentiating access, treatment, and healthcare is a personal attack on all prisoners.[88] Notable responses from our international neighbours show jurisdictions in the United States adopting compassionate options in response to the growing number of elderly and terminally ill people in custody.[89] To accommodate prisoners released to the community under medical parole, the state of Connecticut, for instance, opened a nursing home through a private contractor tailored to terminally ill inmates.[90] The American equivalent of CSC, the U.S. Federal Bureau of Prisons (BOP), has strengthened its rules for compassionate release, allowing for the consideration of a sentence reduction for offenders whose life expectancy is 18 months or less and who have been diagnosed with a terminal, incurable disease.[91]

In June 2016, the same month and year the End of Life Option Act became a legitimate California statute, medical assistance for dying became permitted in Canada.[92] While the Californian statute approached MAiD more conservatively, Canada opted to use the guides of European legislation, making the practice more liberal.[93] Physicians are allowed to prescribe deadly medication dosages in Canada and California. However, in California, like many other US jurisdictions, physicians are not allowed to actively participate in assisted aid in the death of their patients by administering the medication.[94] The law in Canada is more lenient and will enable doctors or nurse practitioners to actively end patients' lives through the administration of

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[87] *Ibid* pg. 385
[88] *Ibid* pg. 386
[89] Canadian Human Rights Commission. *Aging and Dying in Prison: An Investigation into the Experiences of Older Individuals in Federal Custody*. Ottawa, ON, CA: Correctional Investigator Canada, 2019, pg. 54
[90] *Ibid.*
[91] *Ibid.*
[92] Daryl Pullman, "Slowing the Slide down the Slippery Slope of Medical Assistance In Dying," The American Journal of Bioethics, 2023, pg.65 https://www.tandfonline.com/doi/full/10.1080/15265161.2023.2201190.
[93] *Ibid*, pg. 65
[94] *Ibid*, pg. 68

lethal injection.[95] The Canadian approach to medically assisted death is less clear-cut than the California protocol because the practitioner first determines whether the patient satisfies the ever-expanding requirements for an assisted death before taking direct control of the patient's demise by giving them lethal drugs within Canadian jurisdiction.[96] Canada and the United States have varying legislation for medically assisted dying. Canada passed legislation to allow medically assisted dying in 2016, while the United States has very restrictive and limited aid-in-dying laws.[97] Unlike Canada, the United States lacks a federal law governing medically assisted suicide. Individual states have established state-level legislation allowing patients access to medically assisted death. These laws typically stipulate that patients must be terminally sick, be adults of sound mind to make capable decisions over 18 years of age and take lethal administration from a physician.

Case Law

Case law within Canada is slim and still developing as access to MAiD progresses. In addition to *Carter v. Canada* and *Truchon v. Canada,* the development of MAiD in Canadian jurisprudence has since approved and enacted MAiD for nine inmates within the last seven years in Canada.[98] Though the existing case law is still progressing as MAiD within the correctional system is inquired about, three notable cases within Canada demonstrate the differences in purpose for seeking MAiD.

Tesfaldet v. O.R.B.D (Ontario Review Board (Criminal Code) Decisions), Mr. Yonatan Tesfaldet was found not guilty on September 24, 2015, of the Criminal Code offences of aggravated assault, possession of a weapon for a dangerous purpose, and attempt to commit murder.[99] He is being held at the Centre for Addiction and Mental Health (CAMH). This disposition offers him community living in approved, supervised housing, among other benefits. The first few years Mr. Tesfaldet was employed with the ORB were challenging. Seclusion was necessary as he alternated between secure and general forensic units. On January 16 and 24, 2017, two assaults involved the same patient. During this period, Mr. Tesfaldet inquired about

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[95] *Ibid*.
[96] *Ibid,* pg. 69
[97] *Ibid,* pg. 69
[98] Avis Favaro, CTV National News Medical Correspondent "The Number of Medically-Assisted Deaths in Canada's Prisons a Concern for Some Experts," CTV News, May 3, 2023, https://www.ctvnews.ca/health/the-number-of-medically-assisted-deaths-in-canada-s-prisons-a-concern-for-some-experts-1.6380440.
[99] Tesfaldet (Re), [2022] O.R.B.D. No. 162 at para 9

medical aid in dying, declaring that he would seek a doctor's assistance in taking his own life if he were released.[100] Mr. Tesfaldet started to improve in 2018. His positive psychotic symptoms had significantly subsided, and he was taking his medicine as prescribed. He received the designation of Alternate Level of Care (ALC) in October 2019 and was prepared for release as soon as housing became available. There were no violent or aggressive episodes, nor were there any substance abuse-related problems. Mr. Tesfaldet showed a "very positive response to his behavioural therapy plan and engaged well in treatment interventions" by 2020.[101] The board commended Mr. Tesfaldet for his commitment to advancing his health and moving into the community. The case of Mr. Tesfaldet is only a tiny example of how alternative options and additional resources could prevent inmates from receiving or requesting MAiD as an optional end to their sentence and life.

In the case of *Delorme v. O.R.B.D.,* the applicant expressed interest in receiving MAiD based on being ineligible for release to a secure facility or community living arrangement.[102] Mr. Delorme was found not guilty by reason of insanity ("NGRI") on charges of aggravated sexual assault, carrying a weapon to commit an offence and forcible confinement in 1989.[103] In 2001, he reoffended and was subsequently found guilty of making death threats, committing sexual assault, and detaining someone without permission.[104] Mr. Delorme has been diagnosed with sexual sadism and non-exclusive type pedophilia, both of which he acknowledges. He was also found to have an antisocial personality disorder diagnosis. Prior diagnoses of paranoid schizophrenia have been made for him; however, tests done after the 2001 index offences have ruled this out.[105] The case of Mr. Delorme demonstrates the abusive aspect of requesting MAiD while incarcerated. Given the CSC's claim that they are not aware of inmates requesting MAiD as an outlet to their sentences, the initial inquiry made by Mr. Delorme says otherwise.[106] It presents the opportunity to challenge the CSC's validity while administering MAiD.

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[100] *Ibid.*
[101] *Ibid.*
[102] Delorme (Re), [2022] ORBD no 907 at para 26.
[103] *Ibid.*
[104] *Ibid.*
[105] *Ibid.*
[106] Health Canada, "Final Report of the Expert Panel on MAiD and Mental Illnesses," section 4.3 "Requesters who are Incarcerated" para 4. Canada.ca, May 2022, https://www.canada.ca/en/health-canada/corporate/about-health-canada/public-engagement/external-advisory-bodies/expert-panel-maid-mental-illness/final-report-expert-panel-maid-mental-illness.html.

R.v. Doran- BCJ (British Columbia Judgements): Ms. Doran has a long history of mental health problems, including admissions to the Chilliwack General Hospital's psychiatric unit.[107] Over the years, Ms. Doran's mental health issues have caused severe issues that strain on her well-being. Ms. Doran requested MAiD before her incarceration on the grounds of mental health challenges, causing her recurring problems over the years.[108] Ms. Doran based her MAiD application on a comparable case that was filed in Alberta, where an individual with severe conversion disorder named E.F. requested judicial authorization from the Alberta Court of Queen's Bench to be eligible for MAiD.[109]

In addition to the three cases noted above, a 2020 study highlighted the institutional physician's role and the care process when federally incarcerated individuals request MAiD. The study conducted eleven interviews with physicians in different provinces involved in the CSC MAiD cases. Medical professionals' experiences shed light on several barriers to care, including bureaucratic procedures within the CSC that resulted in longer wait times than usual for patients in the general public, difficulties obtaining release before applying for MAiD, awareness of the patient's preferred location for passing away; concerns about voluntariness and confidentiality that are specific to CSC patients; and moral dilemmas regarding the presence of police, correctional officers, and shackles during administration or assessment.[110] The Office of the Correctional Investigator has reported on several cases, highlighting further difficulties. The viewpoints of inmates and prison personnel must be included in future research, and the impact that new MAiD laws will have on inmate MAiD must be considered.[111] The Office of the Correctional Investigator (OCI), Canada's federal prison ombudsman, has called for stricter regulations limiting access to MAiD unless the patient is first granted release.[112] In other places, the OCI has asserted that prisoners should not have access to MAiD at all, citing their incarceration as a factor that compromises their ability to consent to the procedure voluntarily.[113] Some contend that the protections outlined in the CSC's current guideline might impede patient-

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[107] R. v. Doran, [2022] B.C.J. No. 1835 para 10
[108] *Ibid.*
[109] R. v. Doran, [2022] B.C.J. No. 1835 para 11
[110] Peter Driftmier and Jessica Shaw, "Medical Assistance in Dying (MAID) for Canadian Prisoners: A Case Series of Barriers to Care in Completed Maid Deaths," *Health Equity* 5, no. 1 (December 1, 2021): 847–53, pg. 847 https://doi.org/10.1089/heq.2021.0117.
[111] *Ibid*
[112] *Ibid*
[113] *Ibid*

centred care by lengthening the process, jeopardizing voluntariness, or going against international human rights standards that require inmates to have the same access to healthcare as the general public.[114]

Human Rights Recommendations

The principle of equivalence of care, which asserts that prisoners and incarcerated individuals have access to the same level of healthcare as the general population, has been cited by several proponents of access to assisted suicide as a legal assurance.[115] The right to choose how and when to end one's life falls under the purview of the right to private life, which is safeguarded by Art. 13 of the Swiss Constitution, according to the European Court of Human Rights.

> Article. 13 states, *1. "Every person has the right to privacy in their private and family life, home, mail, and telecommunications. 2. "Every person has the right to be protected against the misuse of their data."* [116]

Article 3 of the Universal Declaration of Human Rights (UNDR) states that everyone has a right to life, liberty, and security of a person.[117] Additionally, Article 5 states that no one should be subject to torture or cruel, inhumane or degrading treatment or punishment.[118] Article 12(1) of the International Covenant of Economic, Social and Cultural Rights (ICESCR) states that the state parties to the Covenant recognize everyone's right to enjoy the highest attainable standard of physical and mental health. This includes Article 12(2), which ensures that state parties take adequate steps to exercise this right to its fullest potential, and specifically Article 12(2)(d), which recognizes the need for states to create conditions for sustaining medical services and medical attention in the event of sickness. IHRL enables all biding states to respect, protect and fulfil their obligation to their biding civilians. It ensures protection and provides an appropriate framework for all individuals to express their fundamental human rights. Canada signed and

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[114] *Ibid*
[115] Yoann Della Croce, 2021, pg. 383
[116] Federal Constitution of the Swiss Confederation, Fedlex, April 18, 1999, https://www.fedlex.admin.ch/eli/cc/1999/404/en.
[117] United Nations "Universal Declaration of Human Rights (UDHR)," Article 3, n.d., https://www.un.org/en/about-us/universal-declaration-of-human-rights.
[118] *Ibid.* Article 5

ratified its commitment and due diligence to the ICESCR treaty in 1976.[119] Without proper legislation fulfilling their obligation, Canada remains in breach of their commitment to the treaty.

The CCRA and CSC would benefit from establishing a universal standard of healthcare for federally and provincially incarcerated individuals. This would include eliminating vague and ambiguous terminology and providing official direction to all correctional institutions within the nation that each facility adheres to without confusion or neglect. This would also eliminate the discretion of provincial health authorities to make decisions that differ between provinces and territories. This would also include establishing federal legislation that all penitentiaries establish a standard healthcare practice for the incarcerated, including hiring and retaining a minimum standard of medical professionals, including the appropriate number of medical staff to inmate population who meet the expected requirements of medical, physiatry and psychiatry training of the CCRA and CSC within carceral facilities. Improvements surrounding parole by exception broaden eligibility for inmates and eliminate unnecessary restrictive measures that hinder the possibility of parole after the allocated duration for inmates.

Moreover, it will eliminate the societal disparities of federally and provincially incarcerated individuals being exempt from the CHA. This allows provincial and federal carceral instructions to receive adequate funding to maintain the appropriate medical staff within their facilities, providing the same level of healthcare as the general population. Finally, incorporating compassionate release reform within the CCRA and CSC standards of care for all incarcerated individuals would enable the exercise of all inmate's fundamental human rights while still adhering to the basis of law and incarceration. As noted in previous sections, MAiD was not designed as an outlet for incarcerated individuals to forgo their sentence using physician-assisted suicide or voluntary euthanasia. It was developed to help terminally ill individuals exercise their fundamental right to life and right to death on their terms, through no additional motive outside of living in unbearable and excruciating circumstances. If federal and provincial correctional justice systems implemented and revised policies and procedures to incorporate compassion and empathy for those who are suffering while incarcerated, the continued dehumanizing stigmatization of penal institutions would diminish over time.

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[119] Department of Justice Government of Canada, "International Human Rights Treaties to Which Canada Is a Party," International Human Rights Treaties to which Canada is a Party, n.d., https://www.justice.gc.ca/eng/abt-apd/icg-gci/ihrl-didp/tcp.html.

Though this research aims to provide federally incarcerated individuals with the same access to healthcare and treatment as the general population through human rights recommendations and updated carceral reform, there is still potential for counterarguments and opposing viewpoints. Regardless of status within society, access to adequate healthcare that improves the quality of care and treatment or access for an individual to express their right to death with dignity remains a fundamental practice. Victim impact and victim impact statements, the effectiveness of rehabilitation programs, thorough, conclusive, and solidified inmate assessments, and the overall security of an inmate rejoining society without reoffending are all weighing impacts on whether or not compassionate release is an appropriate practice for terminally ill inmates. This area of prison reform can potentially attract different perspectives and expectations of the Canadian justice system. Nonetheless, with an effective remedy, updated federal policy and elimination of vague legislation within the CCRA, there is potential to overcome opposing perspectives, providing the opportunity to apply an effective humanitarian practice.

Conclusion

Compassionate release remains a prominent and beneficial practice within the Canadian correction system. Healthcare standards within correctional institutions do not provide the appropriate level of care and security to inmates due to the lack of definition and vague interpretation of what constitutes adequate health standards. Inmates who are terminally ill and who require proper end-of-life care should not have to face scrutiny or degrading treatment during their final days. The lack of resources within Canadian correctional institutions makes receiving care tailored to vulnerable inmates and their pressing conditions difficult or sometimes not feasible. Inmates are suffering from crucial and inhumane treatment through systematic dysfunctions and flawed legislation. A call to action to the Correctional and Conditional Release Act to modify, reform and provide stricter guidelines that all Canadian federal correctional institutions uphold. Doing so provides the recognition and inherent understanding that all human beings are born free and equal in dignity and rights, even those within the carceral system. It promotes compassionate release consistent with fundamental human rights, the practice of human rights law and Canada's commitment to providing the utmost equality in healthcare. The humanitarian ideologies within the community and incarceration permit a compassionate and empathic response to human suffering and acknowledge the possibility and power of repentance,

rehabilitation, and reintegration within society. The correctional system has maintained its dehumanizing practice for the sake of establishing a symbolic assertion of dominance through harsh policy, neglected necessities, and infringement on fundamental human rights that no longer constitute an ethical practice.

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