

Public Health Implications of Elderly Prisoners in the Criminal Justice System *



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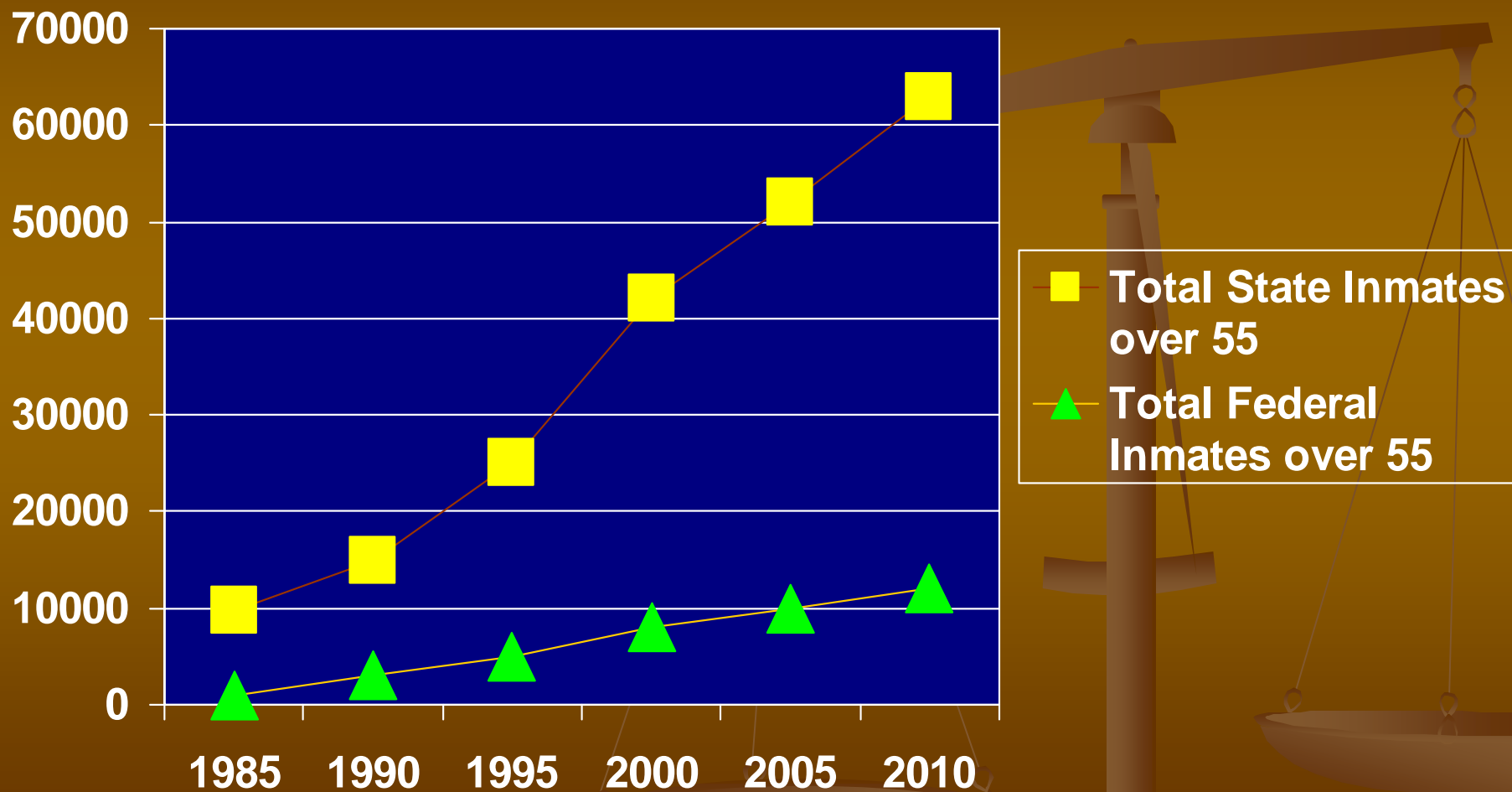
***Presented at the 2005 Public Health Law Association's 4th Annual Partnership Conference, held in Atlanta, GA.**

Trends

- From 1985 to 2005, the incarcerated inmate population increased by 309% in state prisons, the federal prison population increased by 538%, and the local jail population increased by 265% (Belenko & Peugh, 2005).
- 1) Elderly prisoners grew 7.5 times in less than one generation; 2) From 1979 to 1990, the number of prisoners over the age of 55 in state and federal institutions grew from 6,500 to 20,000; and 3) In 1997, over 50,000 inmates were over the age of 55 in prisons across the U.S. (Hoelter, 2001).
- Due to 1) sentencing laws and 2) demographic shifts in the population, the U.S. Census Bureau estimates that by the year 2030, one-third of the jail population will be over 55 years of age.
- There are more than 125,000 prisoners over the age of 50 and 35,000 prisoners over the age of 65 in correctional facilities in the United States (Taylor & Wertel, 2004).

Trends (continued)

Current & Projected Total Inmates Over 55 Years Old from 1985-2010



Source: American Correctional Association, 1999

Trends (continued)

- Costs exceeded \$69,000 a year to house one elderly inmate, compared to \$22,000 per annum to house a non-elderly prisoner
- Probation costs approximately \$1,000 per year per probationer
- Parole with electronic monitoring (home detention) costs about \$3,500 a year (at the expense of the inmate)
- The Federal Bureau of Prisons spends over \$600 million per year to imprison elderly inmates
- 97.4% of elderly inmates in the federal system are non-violent offenders
- Less than 1% of those on probation or parole who return to prison are older than 60

Problems Under Consideration

- Use of mandatory sentences for drug offenders and restrictive release policies overcrowds facilities.
- Increasing prison populations also raises demand for prisoner health care services, especially for those aging in prison.
- Poor health conditions of prisoners, combined with harsh prison life make the prison environment conducive for the spread of disease.
- Prisoners are “doubly disadvantaged,” with high rates of infection and morbidity compared to those in the free-world.

Problems Under Consideration (continued)

- Due to the growing number of men and women over the age of 60 confined in correctional institutions, special attention must be paid to:
 - 1) elderly prisoners' medical treatment needs and
 - 2) the extent to which these needs are met.
- Elderly prisoners have different social needs, as well as increased needs for privacy and preventive health care.
- Most correctional officers do not have training to recognize problems associated with elderly individuals.

Methods

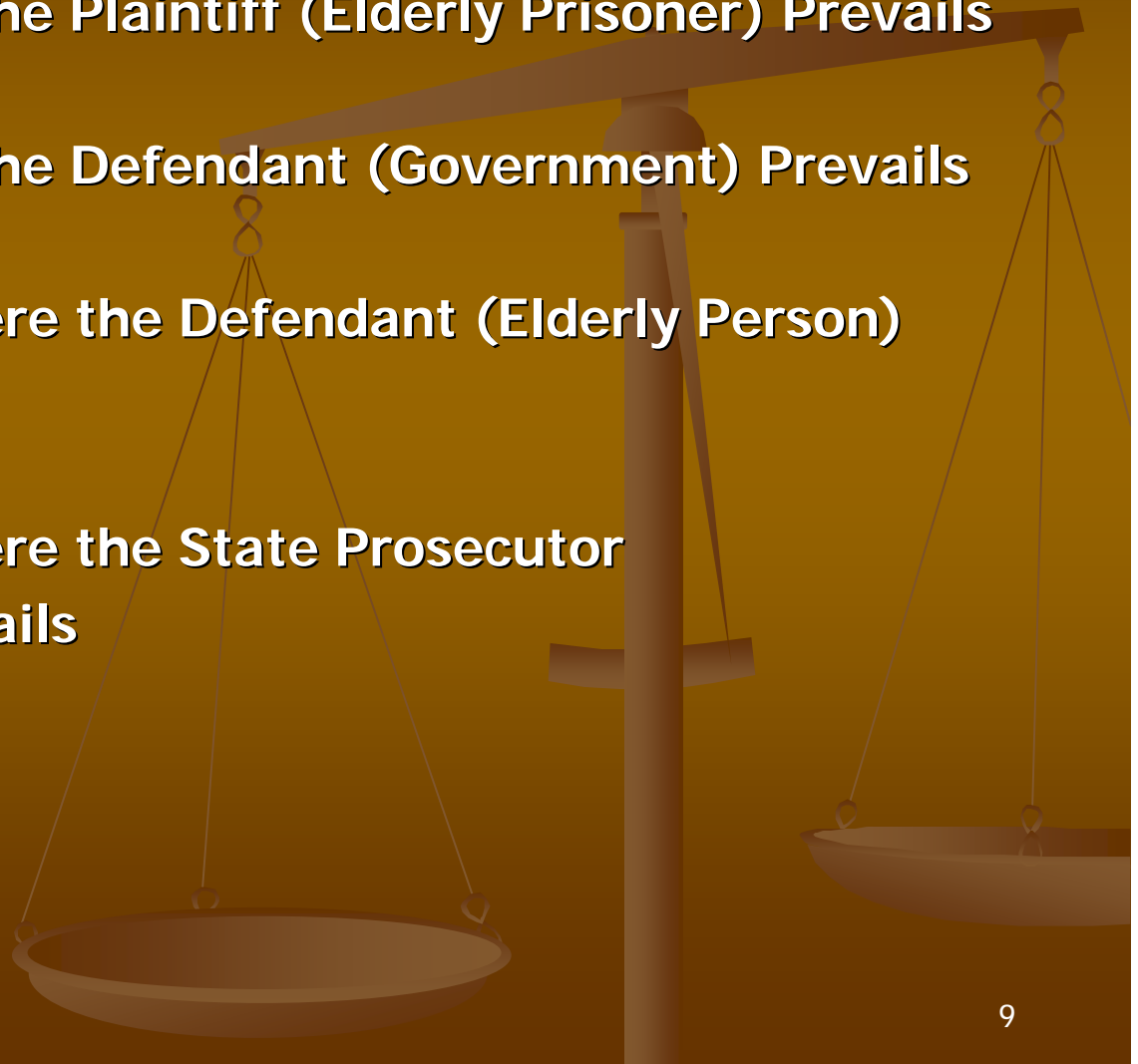
- *Hypothesis:* Elderly inmates' age impacts the courts' disposition
- *Research strategy:* analyze federal and state civil and criminal cases involving elderly inmates (55 years and older).
- *Study Period:* From February 23, 1953 to April 8, 2005, the "allcases" Westlaw computerized database was searched, uncovering federal and state court decisions reported to Westlaw.
- *Search Strategy:* "elder! inmate!" or "old! prison!"

Methods (continued)

- For "elderly inmates," the search produced 12 hits, and in 8 of the 12 cases age played a role in the courts' disposition. For "old prisoners," the search produced 58 hits, of which age played a role in the courts' disposition in 12 cases.
- Thus, the paper focuses on 20 civil and criminal cases litigated in the federal and state courts where age played a dispositive role in the courts' final disposition.

Judicial Decision Making Model

- 1) Civil Cases Where the Plaintiff (Elderly Prisoner) Prevails
- 2) Civil Cases Where the Defendant (Government) Prevails
- 3) Criminal Cases Where the Defendant (Elderly Person) Prevails
- 4) Criminal Cases Where the State Prosecutor (Government) Prevails



Civil Cases Where the Plaintiff (Elderly Prisoner) Prevails

- Elderly inmates prevail in civil lawsuits when prison conditions expose them to extreme weather (*Wills v. Barksdale*, 625 F.Supp. 411 (W.D. Tenn. 1985)).
- Prison officials may be liable if they fail to separate young violent inmates from frail elderly inmates, resulting in victimization (*Brown v. Pattison*, WL 1490302 (N.D. Tex. 2004)).

Civil Cases Where the Defendant (Government) Prevails

- Government prevails in civil lawsuits if elderly inmates receive reasonable and adequate medical care; prison officials are not required to provide elderly inmates specialized medical care, unless ordered by a physician (*Lindsey v. McGinnis*, WL 162610 (6th Cir. 1994)).
- Prison officials win lawsuits if they lack knowledge that elderly inmates are at increase risk of inmate-on-inmate assault (*Edney v. Karrigan*, WL 2101907 (S.D. N.Y. 2004)).

Criminal Cases Where the Defendant (Elderly Person) Prevails

- When imposing criminal sentences, judges use the frail age and deteriorating health of elderly defendants to impose lighter sentences (*U.S. v. Baron*, 914 F.Supp. 660 (D. Mass. 1995); *U.S. v. Willis*, 322 F.Supp.2d 76 (D. Mass. 2004)).
- Infirm and elderly inmates receive early prison release and other forms of community corrections instead of extended prison time (*Ex Parte Willette*, 63 So.2d 52 (Miss. 1965); *State v. Tahash*, 136 N.W.2d 847 (Minn. 1965); *Schuster v. Vincent*, 342 N.Y.S.2d 18 (N.Y. Sup. Ct. 1972)).

Criminal Cases Where the State Prosecutor (Government) Prevails

- Judicial discretion may lead to increased sentence length if the gravity and severity of a crime does not mitigate the defendant's old age and frail health (*State v. Stenzel*, 688 N.W.2d 20 (Wis. Ct. App. 2004)).
- Imprisonment becomes a better option than being released into the community when the defendant lacks family and community support (*People v. Porras*, WL 22463328 (Cal. Dist. Ct. App. 2003)).

Discussion/Conclusion

- Old age and poor health status of the defendant/plaintiff play an important role in the final disposition of criminal cases and civil lawsuits.
- Systematic reviews of the health of older populations within correctional facilities should be required to determine the health status and appropriate treatment regimens for elderly inmates.
- Prison medical care personnel in the U.S. should adopt the “best practices” from the U.K.’s National Health Service to meet the objective of providing equal medical services for persons in the free-world community and those incarcerated.

Discussion/Conclusion (continued)

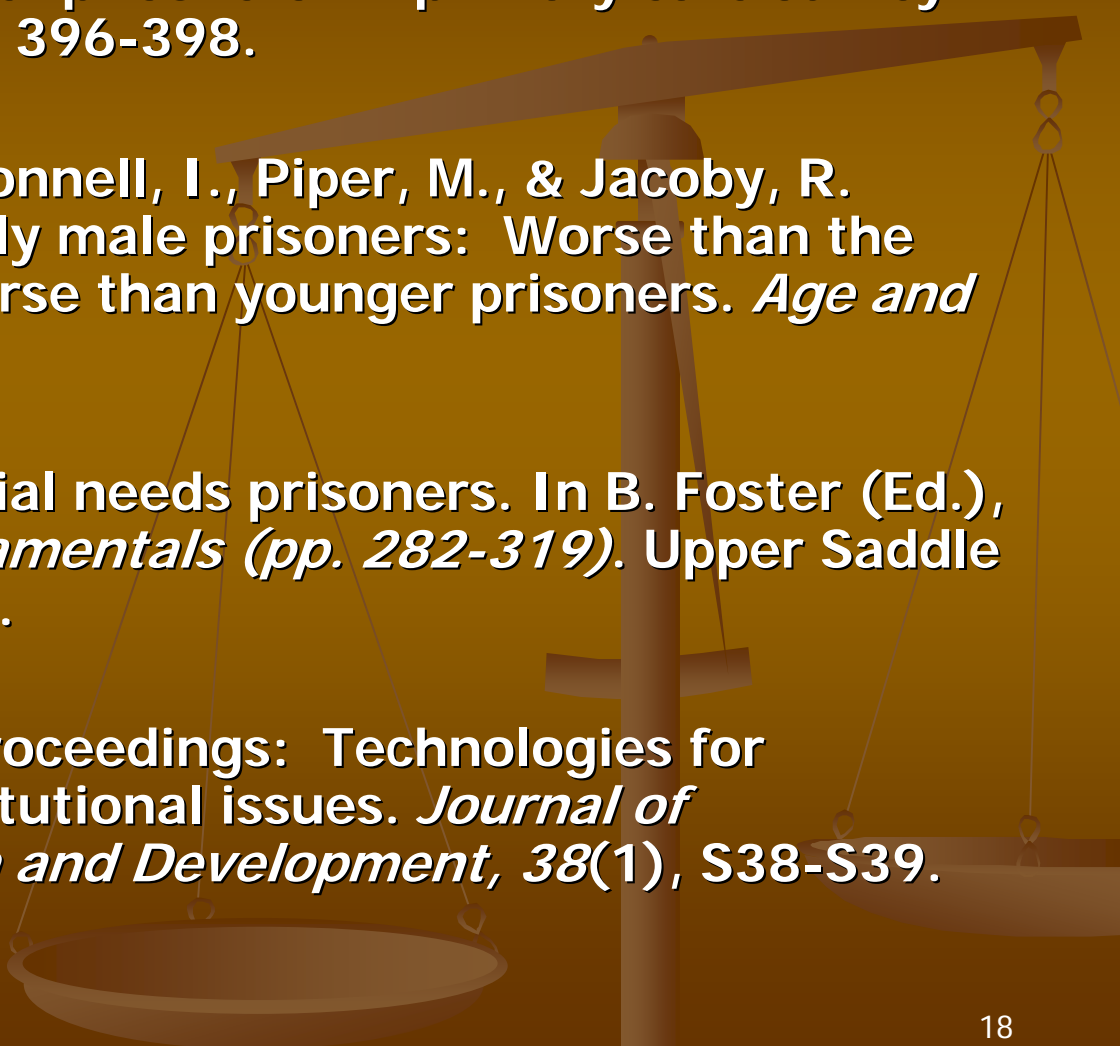
- Remedies to improve elderly prisoners' health conditions:
- Increase staff training geared specifically toward health care of the elderly: understanding the dynamics associated with death and dying, identifying the symptoms of depression, and knowing more about the aging process.
- Training needs to recognize the symbiotic relationship between custodial staff and health care staff: More basic knowledge about older prisoners would enable staff to more readily recognize the special needs of elderly inmates.
- Correctional facilities need to meet the American with Disabilities Act criteria to accommodate elderly prisoners with better lighting, handrails, nutrition, and warmth.

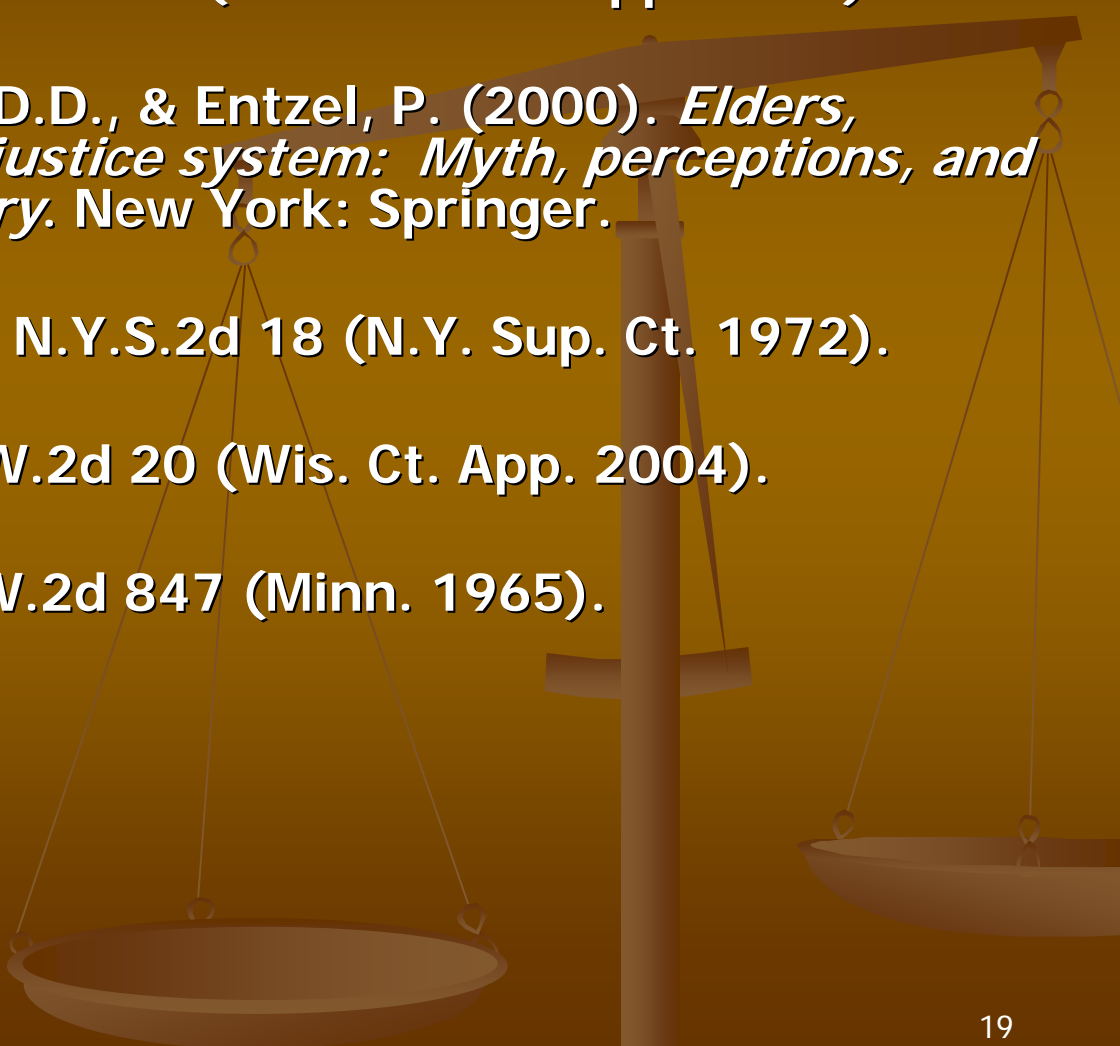
Discussion/Conclusion (continued)

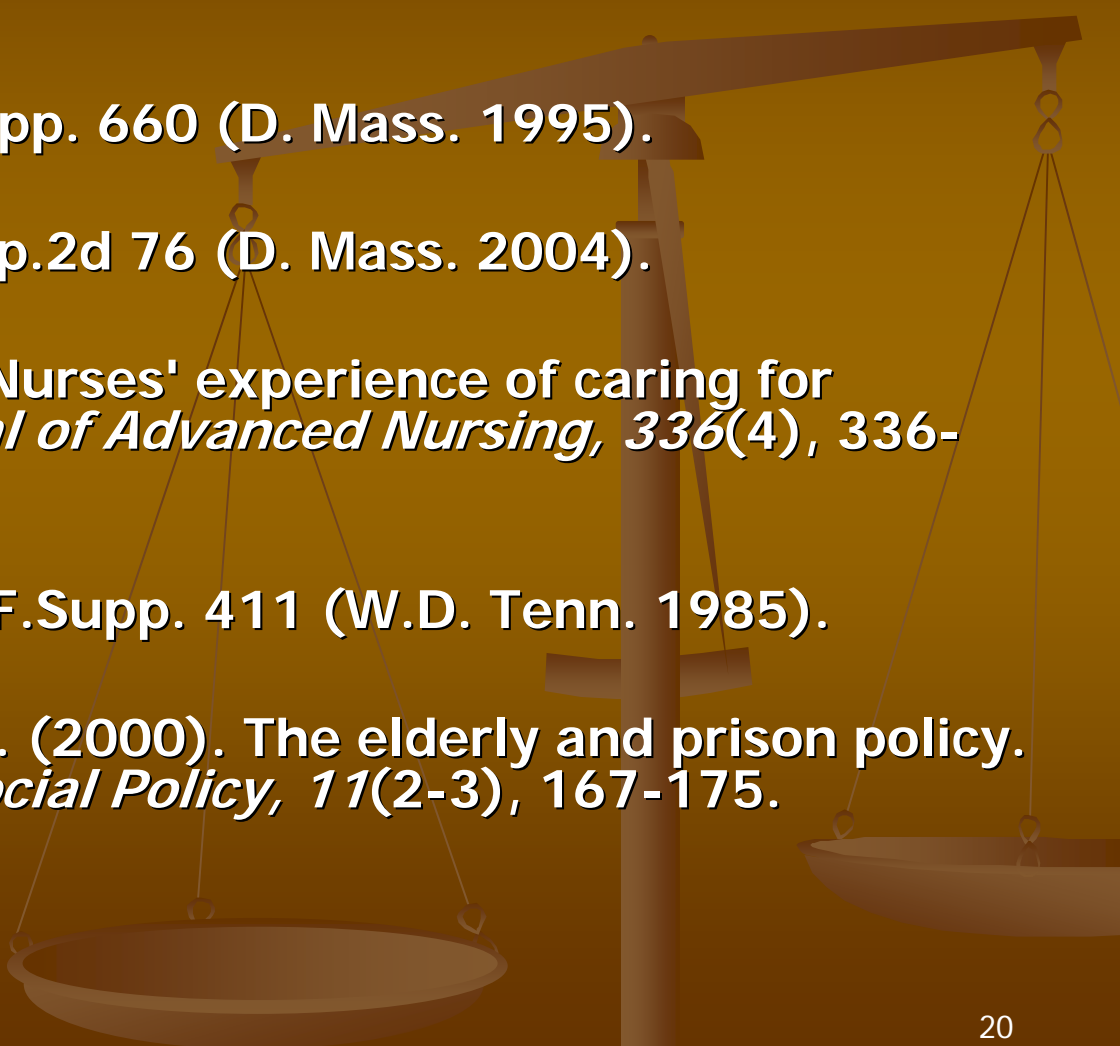
- Future research should focus on alternatives to incarceration for elderly inmates, otherwise, revenues for correctional health care systems will rise dramatically:
 - 1) early release of the medically infirm
 - 2) home confinement or community corrections

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