



# Older people and justice

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# ACCESS TO JUSTICE

# To what extent do older people receive justice?

- breaches of their human rights
- criminal offences committed against them
- breaches of humanitarian law
- civil wrongs in relation to their person and property

# Ageism and barriers to accessing justice

- Invisibility of older people
- Failure to recognise that crimes against older people can have a disproportionate impact on their independence, development, and security
- ‘Well intentioned ageism’ means that alternative approaches are adopted that concentrate on welfare
- Lack of appropriate support through the criminal justice process
- Fear of victimisation
- Low self esteem

# Ageism and barriers to accessing justice

- Inaccessibility of the legal system
- Lack of legal training to ensure effective communication between older people and lawyers
- Tension between the criminal justice and welfare services
- A lack of confidence that the legal system can deliver justice for older people – it is a younger person's domain
- Shame and fear – particularly in relation to sexual offences

# Pre conceived ideas about older people as witnesses

- Older people are unreliable witnesses
- Older people will get confused and be humiliated by the lawyers
- Older people do not want their day in court
- Older people are forgetful
- Older people really want to forget about what happened

# Victim rights

## European Court of Human Rights

‘It is true that article 6 [right to a fair hearing] does not explicitly require the interests of witnesses in general, and those of victims called upon to testify in particular, to be taken into consideration. However, their life, liberty or security of person may be a stake, as may interests coming generally within the ambit of article 8 of the Convention ... **Against this background, principles of fair trial also require that in appropriate cases the interests of the defence are balanced against those of witnesses or victims called upon to testify.**’

Doorsen v Netherlands [1966] 22 EHRR 330, para 77

# UDHR

## Article 6.

**Everyone** has the right to recognition everywhere as a person before the law.

## Article 7.

**All** are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

## Article 8.

**Everyone** has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law

## Article 10.

**Everyone** is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.



# International Covenant on Civil and Political Rights

## Article 16

**Everyone** shall have the right to recognition everywhere as a person before the law.

## Article 17

1. **No one** shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. **Everyone** has the right to the protection of the law against such interference or attacks.

# International Covenant on Civil and Political Rights

## Article 26

‘**All persons** are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or **other status**.’

# Convention on the Rights of Persons with Disabilities

## Article 5 - Equality and non-discrimination

1. States Parties recognize that **all persons are equal** before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.

## Article 12 - Equal recognition before the law

1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.
2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.
3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.

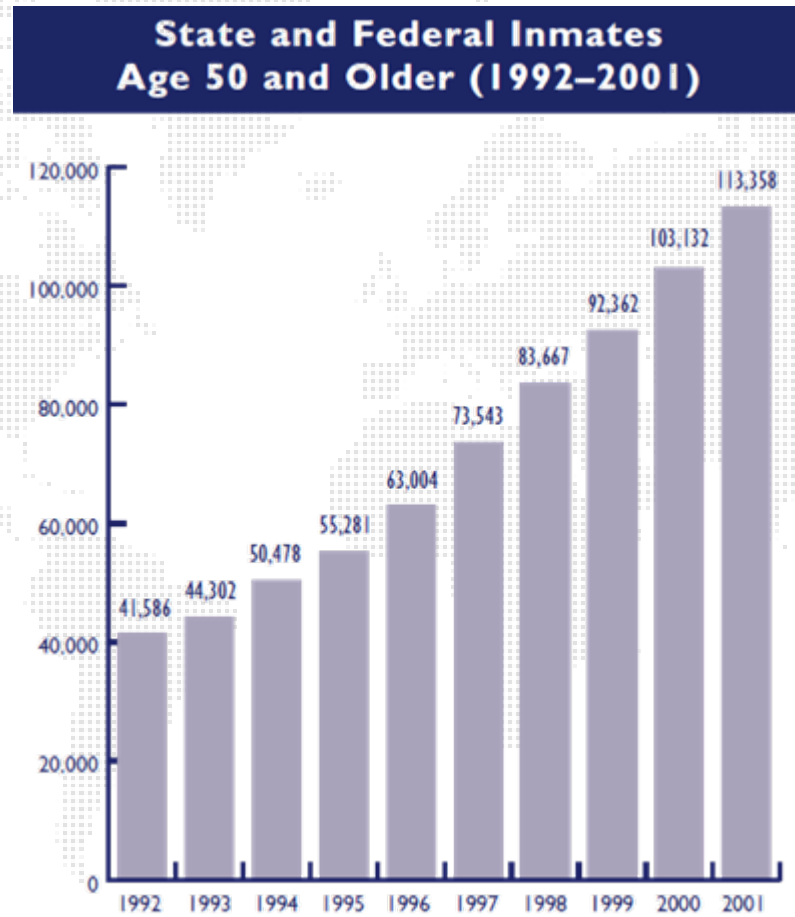
# Key principles

- Positive duty to ensure equality of access to justice for older people
- Ageist investigation and prosecution policies and assumptions outlawed
- Positive support to enable vulnerable older people to access justice – reasonable adjustment
  - ❖ Befriending and support
  - ❖ Aides to communication and access
- Post trial support
- Monitoring and data collection of older people's experience of the criminal justice system

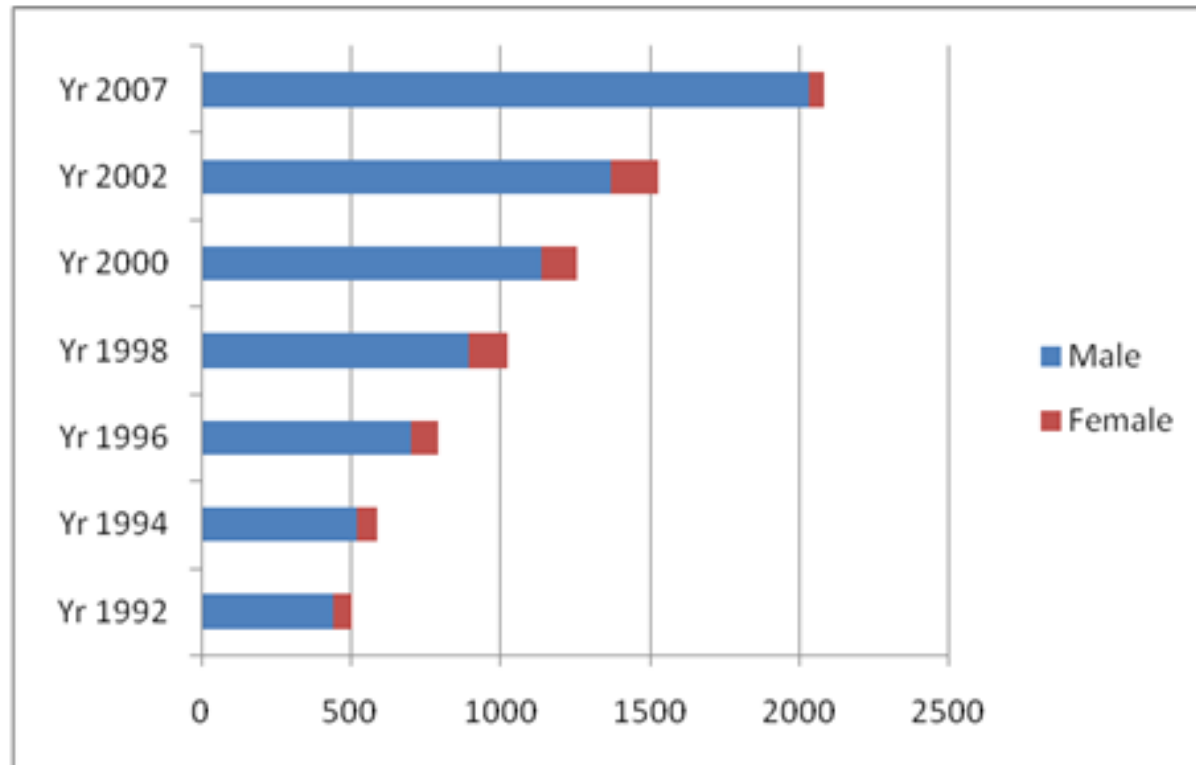


# OLDER PRISONERS

# Older prison population - USA



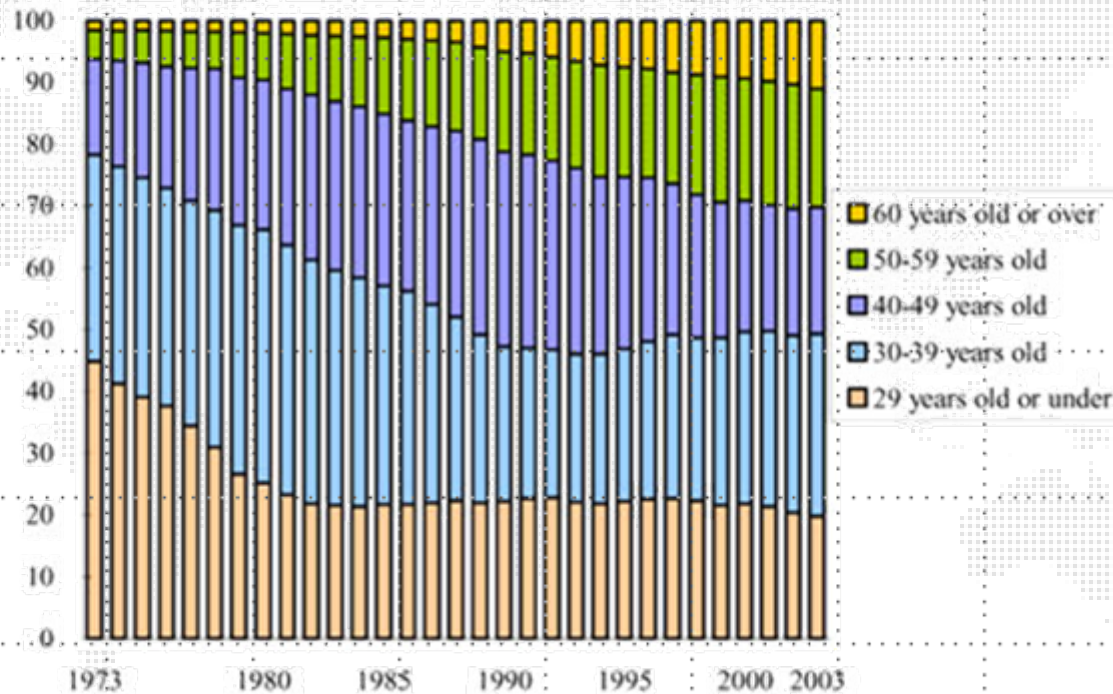
# Older prisoner population – England and Wales



*Fig 1 - Population Trends of prisoners aged 60 years and over (HMCIP Thematic Report 2004, and for the 2007 data, Hansard, House of Commons written answers, 20<sup>th</sup> March 2007)*

# Older prisoner population - Japan

Fig. 5-3-2-13 Percent distribution by age group of prisoners accommodated at the end of (1973-2003) (%)



Source: Annual Report of Statistics on Correction



# Older prisoners profile

- Depression
- Stress
- Mental health problems
- Physical disability – mobility problems
- Isolation from family
- Incontinence
- A facade of coping
- Bullying
- Failure to adapt to prison life
- Fear of dying in prison

# 'Older' prisoner

- Sixty years for women excludes most older women prisoners. (Dobson, 2004).
- Prison accelerates biological ageing as prisoners age ten years faster than non-prisoners do. (Uzoaba, 1998; Abner, 2006, p. 9).
- Some studies adopt a lower age for 'older prisoner'. (Frazer L. , 2003, p. 95; G Yorston, 2006, p. 333).
- In America, Ohio adopts 50 years, Minnesota 55 years, Michigan 60 years and Colorado 65 years. (Abner, 2006).

# International Covenant on Civil and Political Rights

- Article 10

‘All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.’

# 1977 Standard Minimum Rules for the Treatment of Prisoners

<b>Article 12(b)</b>	<b>The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary in a clean and decent manner.</b>
<b>Article 13</b>	Adequate bathing and shower installations shall be provided so that every prisoner may be enabled and required to have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate.
<b>Article 21(1)</b>	Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits.
<b>Article 22(1)</b>	At every institution there shall be available the services of at least one qualified medical officer who should have some knowledge of psychiatry. The medical services should be organized in close relationship to the general health administration of the community or nation. They shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality.

# *European Prison Rules 2006*

- Rule 103.5
  - ❖ ‘Social work, medical and psychological care may also be included in the regime for prisoners.’
- Rule 107.5
  - ❖ ‘Representatives of such social services or agencies shall be afforded all necessary access to the prison and prisoners to allow them to assist with preparations for release and the planning of after-care programmes.’
- *Explanatory Memorandum* – specialist staff within prisons should work closely with those from social agencies or services.

# ECHR

- Art 3 prohibition of inhuman and degrading treatment
- Art 5 right to liberty
- Art 8 right to private life, family life, home and correspondence
- Papon v France

# Key principles for national and international law

- Challenge the ‘sameness’ mentality
- Older prisoners should be entitled to equal access to social welfare services equivalent (with necessary adaptations) to older people in the community
- Health services (including dental) should be integrated into the prison system
- Access to hospice provision
- Prison regime to accommodate needs of older prisoners
- Physical adaptations to meet mobility needs
- Laundry provision
- Incontinence service
- Prison officer with responsibility for older prisoners
- Appropriate hygiene provision

# Publications

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