

Humane Prison Hospice Project Submission for OEWSA12

Guiding Question Two: The right to justice

The 1976 United States Supreme Court in *Estelle vs. Gamble* determined that all U.S. prisoners should have access to adequate healthcare, and that a prisoner “must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs” in order to claim a violation of Eighth Amendment constitutional right to be free from cruel and unusual treatment. Without access to justice, they can make no such allegation. Prisoners’ access to the right to justice entails their ability, or the ability of prison staff responsible for their care, to know that they can allege those acts or omissions and deliberate indifference. General Comment 14 (ICESCR) recognizes that adequate healthcare also includes access to palliative care for prisoners. We are far from that state of awareness, knowledge, or clear channels for making such allegations in state and federal prison systems.

One United States-based organization, Humane Prison Hospice Project, is operationalizing the right to justice for older and terminally ill prisoners through a model prison-based palliative care program that trains prisoners to be end-of-life caregivers and grief companions (<https://hospicecare.com/uploads/2022/2/Humane-Prison-Hospice-Project-Model.pdf>). Of the approximately 1,800 prisons in the United States, only about 100 have on-site hospice programs, and far fewer rely on prisoners to provide care. As no U.S. law or legal precedent mandates hospice and palliative care for incarcerated persons, these programs remain rare in state and federal prisons.

The United States has the highest incarceration rate in the world, with over 2 million people living behind bars, and this population is rapidly aging, reaching crisis numbers. By 2030, because of tough sentencing laws, older prisoners - typically defined as those over age 55 – will account for one-third of the prison population, meaning U.S. prisons will become nursing homes for the ill, the frail, and the dying. The graying prison population has made the need for compassionate end-of-life care acute.

Prisoners in California without access to the one state prison hospice program either die :

- (1) Alone in their cell or with support from a cellmate who then is sent to solitary confinement while the death is being investigated.
- (2) In the prison infirmary alone and without the support of other prisoners who have often become like family after a long term imprisoned. Or,
- (3) In a community hospital, alone, shackled to a bed and with two guards posted at the door for safety, which comes at great cost to taxpayers and is cruel and inhumane for any human being during the dying process.

Policy changes enabling prisoners to access the right to justice must support prison hospice programs. A mandate supporting prison hospice programs to train prisoners as caregivers could

be a catalyst for widespread adoption of these programs. Humane Prison Hospice Project trains inmate volunteers to care for their fellow prisoners as a “win-win” solution. Working initially in San Quentin Prison in California, Humane is implementing a replicable model that cultivates compassion and healing for both prisoners facing end-of-life and the volunteer caregivers who support them.

The ripple effect of this work extends into our communities beyond prison walls when the inmates who are trained in compassionate end-of-life and grief support are paroled. The training they receive restores empathy that has been shut down within and gives these prisoners tools to help heal some of the wounds they’ve inflicted on society. It not only creates changemakers from within, but also adds to the total wellness of the communities where they live once released from prison. Although this impact requires further study, several programs show a recidivism rate of near zero percent for inmates with compassionate end-of-life training and experience who are released from prison.

Prisons in the U.S. that allow those they are responsible for to die without access to justice, and to hospice programs – the majority – violate both the right to health as stipulated in the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, the Convention of the Rights of Persons with Disabilities, the Inter-American Convention on the Human Rights of Older Persons, and the UN Standard Minimum Rules for the Treatment of Prisoners which states that, “*All prisoners shall be treated with the respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment...*” (The Nelson Mandela Rules, Rule 1).

“The way prisoners die says more about us and our humanity than it does about the crimes of the imprisoned,” - Marvin Mutch, Public Policy Advocate, Humane Prison Hospice Project