

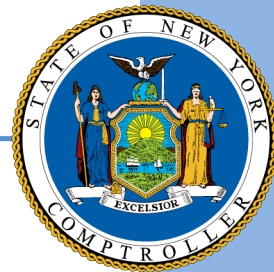
# **New York State's Aging Prison Population: Share of Older Adults Keeps Rising**

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**OFFICE OF THE NEW YORK STATE COMPTROLLER**

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**Thomas P. DiNapoli, State Comptroller**



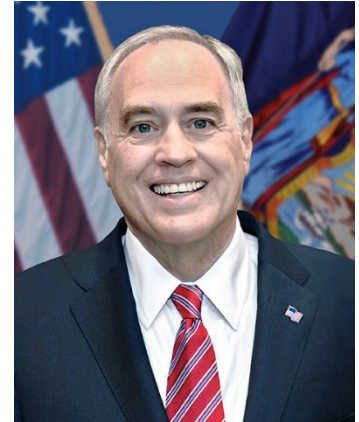
January 2022

# Message from the Comptroller

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January 2022

The safe and efficient operation of the corrections system in New York State is critically important to protecting public safety, providing incarcerated individuals with opportunities to find success upon release, and ensuring the wise use of public resources. In 2017, the Office of the State Comptroller issued a report detailing population trends in the New York State correctional system. The report found that, despite reductions in the overall size of the population, the number of incarcerated individuals age 50 and above had steadily increased between 2007 and 2016.



In the intervening years, several criminal justice policy changes have been adopted, and the declining trend in the system's overall population has accelerated. In fact, the number of incarcerated individuals in March 2021 was just one-half the level of March 2008. Nonetheless, the number of incarcerated individuals age 50 and over increased marginally over the same time period. Of more significance, individuals who were at least 50 years old comprised 24.3 percent of the State's total prison population in March 2021, compared to 12.0 percent in March 2008.

This report provides updated information regarding the overall correctional system population, an analysis of policy changes that have contributed to changes in the population, and an overview of the costs of providing medical care. The evidence indicates that more work in refining New York's corrections policies remains to be done.

In the months ahead, policy makers should carefully examine opportunities to reduce the population of incarcerated individuals age 50 and above. Moreover, while the total cost of medical care for the correctional system population has declined, data regarding the cost of care for individuals age 50 and over remains unavailable. The Department of Corrections and Community Supervision should take steps to make such information available to allow for more informed consideration of policy alternatives.

Thomas P. DiNapoli  
State Comptroller

# Table of Contents

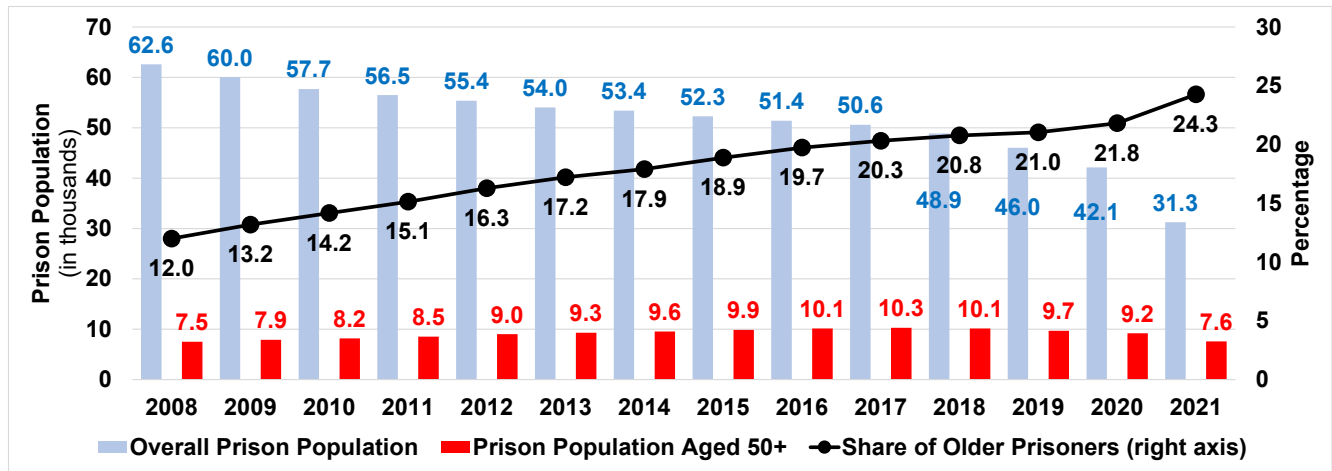
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I.	NEW YORK'S AGING PRISON POPULATION.....	1
II.	FACTORS CONTRIBUTING TO POPULATION CHANGE.....	5
III.	THE COST OF MEDICAL CARE.....	8
IV.	CONCLUSION.....	10

# I. New York’s Aging Prison Population

New York’s overall prison population has been declining. In recent years, even the number of older incarcerated individuals in the State correctional system has decreased.<sup>1</sup> As shown in Figure 1, the State prison population declined by half from March 2008 to March 2021, while the number of older incarcerated individuals increased marginally over the same period. The latter number has declined significantly, though less dramatically, from its peak in 2017.

**Figure 1**  
**Population Trends in New York State Prisons, 2008 – 2021**



Source: New York State Department of Corrections and Community Supervision (DOCCS).  
Note: All data reflect the number of individuals under custody in DOCCS facilities as of March 31 of each year.

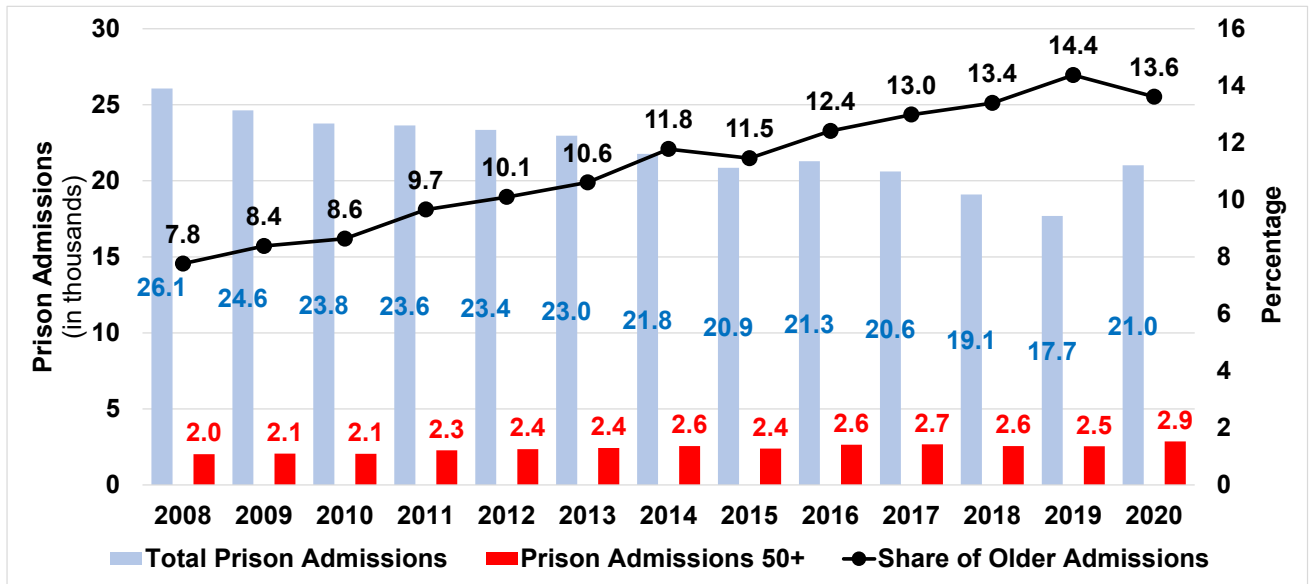
Despite this recent decrease, the total number of older individuals in New York State prisons was still 1 percent higher in March 2021 than it was in March 2008. No age segment of the State’s prison population under the age of 50 increased over the 14-year period. At the same time, the share of older individuals in New York prisons has continued to increase, more than doubling from 2008 to 2021.

The overall change in the number of older prisoners – representing increases from 2008 to 2017, offset in part by fairly sharp decreases from 2018 to 2021 – likely reflects at least two trends: rising prison admissions minus rising parolees.

Figure 2 shows the number of older individuals admitted to DOCCS prisons for a new offense or for parole violations increased by an annual average of 3.5 percent from 2008 through 2020 (data on 2021 admissions was not available at the time of publication).

<sup>1</sup> This report – like the Office of the State Comptroller’s previous report on the topic, “New York State’s Aging Prison Population”, issued in April 2017 and available at <https://www.osc.state.ny.us/files/reports/special-topics/pdf/health-aging-prison-2017.pdf> – defines older incarcerated individuals as those who are 50 years of age or older. The authors of an article on facilities and services for older prisoners – Anthony A. Sterns et al., “The Growing Wave of Older Prisoners: A National Survey of Older Prisoner Health, Mental Health and Programming,” *Corrections Today* (August 2008) – found that 56 percent of state departments of correction defined “older prisoners” as 50 years of age or older.

**Figure 2**  
**New York State Prison Admissions, 2008 – 2020**

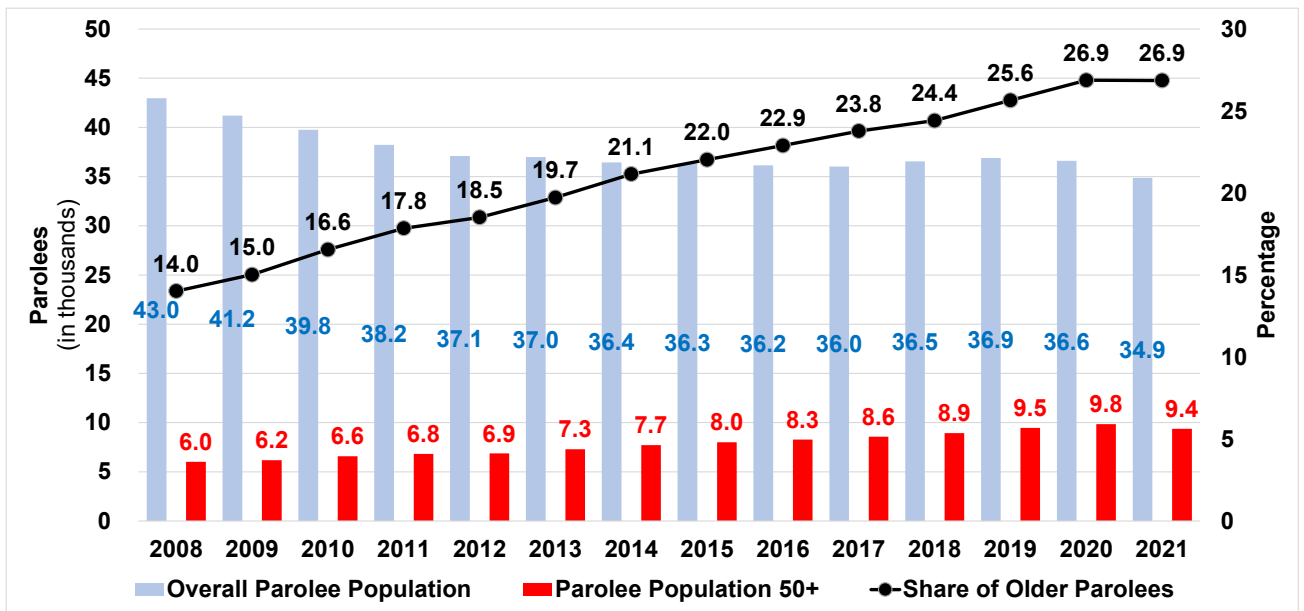


Source: DOCCS.

Note: The data reflect admissions to DOCCS facilities during the calendar year.

The proportion of new admissions who were at least 50 years old was 75.4 percent higher in 2020 than it was in 2008. On the other hand, the number and the percentage of older individuals released from the State prison system to parole supervision under DOCCS jurisdiction have also been rising, as shown in Figure 3.

**Figure 3**  
**New York State Parolees under DOCCS Community Supervision, 2008 – 2021**



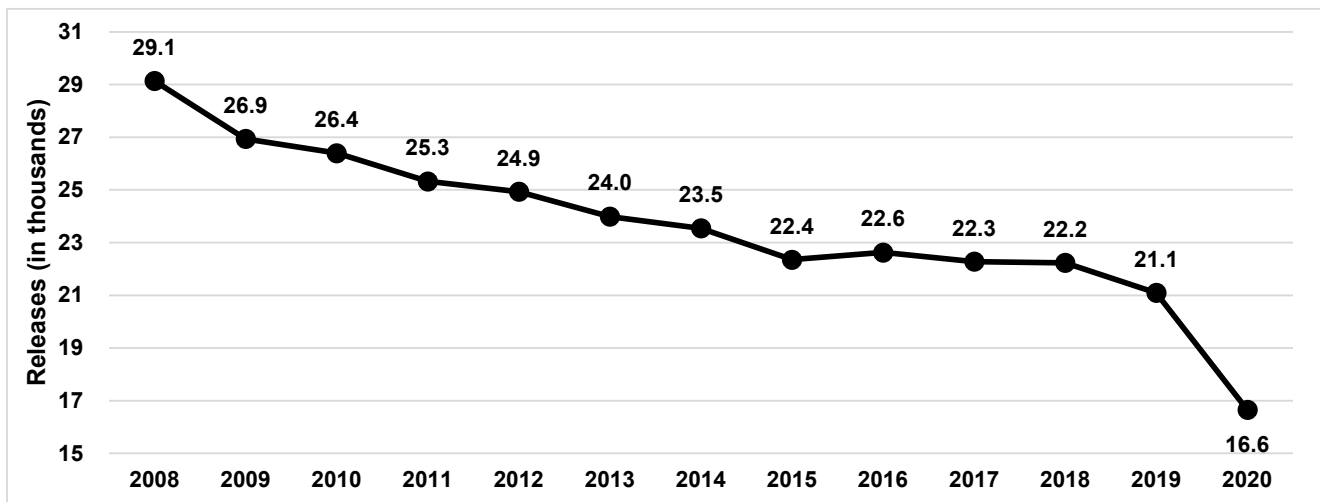
Source: DOCCS.

Note: All data reflect the number of parolees under DOCCS jurisdiction residing in the State on March 31<sup>st</sup> of each year. Parolees supervised outside of the State are not included.

The DOCCS category of 'releases' consists of releases to community supervision, as well as non-community supervision releases. Releases to community supervision include parole, conditional release, release following participating in alternative programs such as drug treatment, and release at maximum expiration of sentence. Non-community supervision releases include release at expiration of maximum sentence, transfers to the State Office of Mental Health, deaths, escapes and unauthorized absences from temporary release.

On the whole, the number of incarcerated individuals released from DOCCS facilities has been trending downward since 2008, as shown in Figure 4.

**Figure 4**  
**Releases from New York State Prisons, 2008 – 2020**



Source: DOCCS.

Note: The data reflect incarcerated individuals released from DOCCS facilities during each calendar year, including those released to community supervision (parole, conditional release, release following participating in alternative programs such as drug treatment, and release at maximum expiration of sentence) and to non-community supervision (release at expiration of maximum sentence, transfers to the State Office of Mental Health, deaths, escapes and unauthorized absences from temporary release).

The overwhelming majority of releases – averaging 86.8 percent over the 13-year period – were to community supervision, mostly in the form of parole or conditional release.

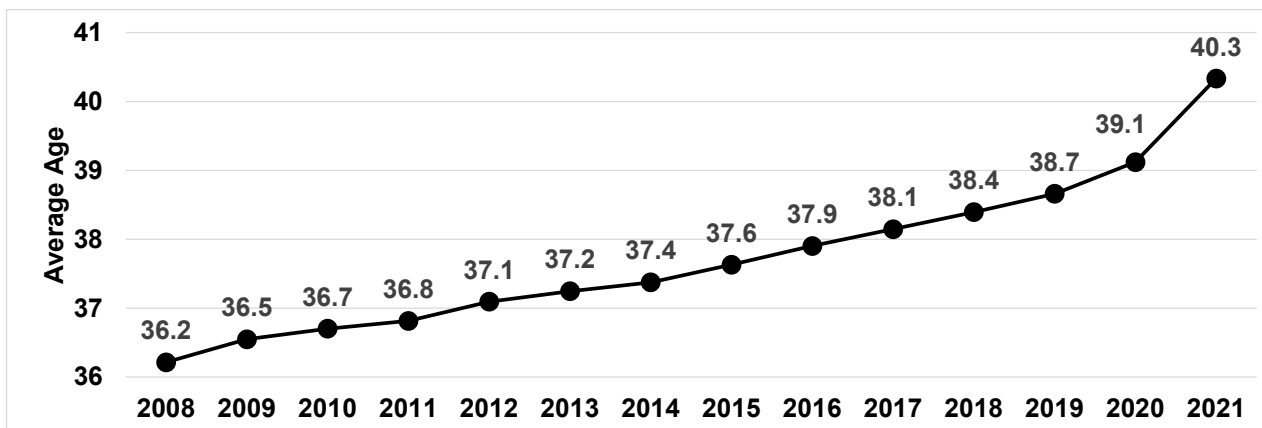
The most recent return-to-custody research by DOCCS indicates that older persons released from State prison are much less likely to be returned to custody for a new commitment or parole violation than younger individuals.<sup>2</sup> Of the persons released in 2015, the DOCCS research shows that 33.8 percent of persons in the 50 to 64 age range have been returned to custody. The only cohort with a lower percentage of return was individuals who were 65 years old and over.

<sup>2</sup> See DOCCS, *2015 Releases from Custody, Three Year Post-Release Follow-Up*, page 19, available at [https://doccs.ny.gov/system/files/documents/2021/11/2015-releases\\_three-year-post-release-follow-up\\_final\\_20211117.pdf](https://doccs.ny.gov/system/files/documents/2021/11/2015-releases_three-year-post-release-follow-up_final_20211117.pdf).

Of the State's prison population of 31,262 individuals in March 2021, those who were at least 50 years old comprised 7,586 individuals, or 24.3 percent of the total, compared to 7,511 individuals, or 12.0 percent of the New York prison population of 62,597 individuals, in March 2008. As of March 2021, there were 2,483 incarcerated individuals, or 7.9 percent of the total, who were at least 60 years old, compared to 1,697, or 2.7 percent of the total, in March 2008.

The average age of incarcerated individuals under custody in New York State prisons was 40.3 years in March 2021, an increase of 4.1 years, or 11.4 percent, since March 2008, as shown in Figure 5.

**Figure 5**  
**Average Age of Incarcerated Individuals in New York State Prisons, 2008 – 2021**



Source: DOCCS and OSC analysis.

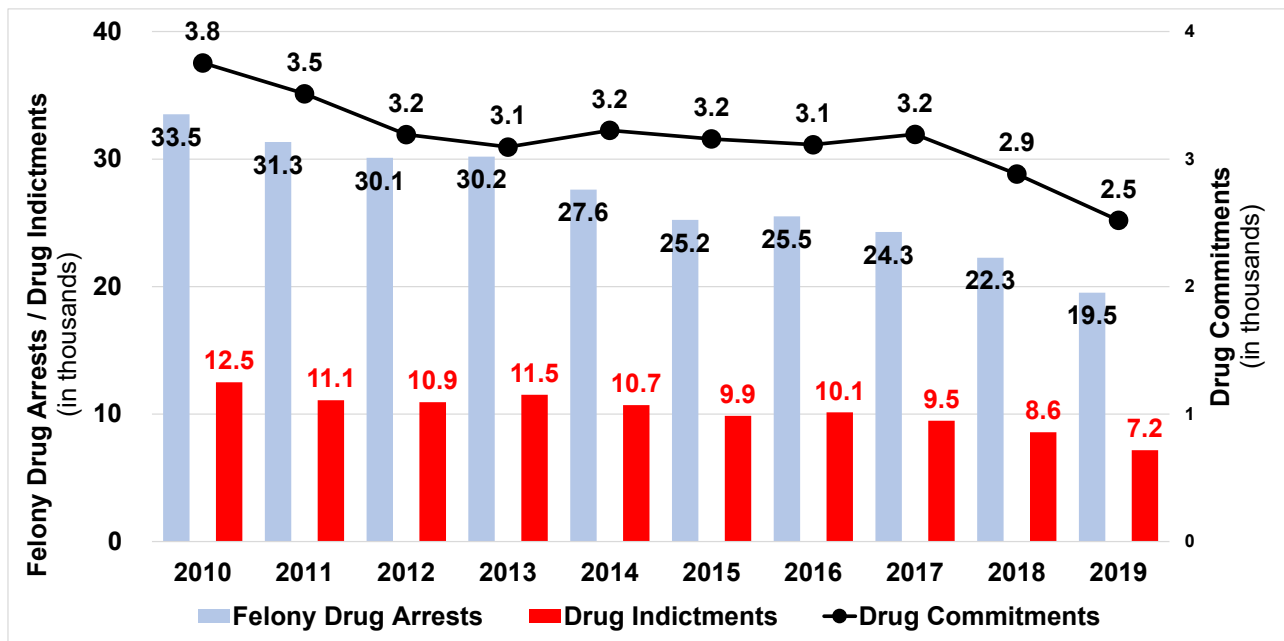
Note: All data reflect the number of individuals under custody in DOCCS facilities as of March 31 of each year.

## II. Factors Contributing to Population Change

The decline in the State’s total prison population, as well as recent decreases in the number of aging incarcerated individuals, results from various factors including trends in admissions and releases to parole supervision previously discussed, but also from the reform of the Rockefeller drug laws in 2009,<sup>3</sup> the early release of certain individuals during the COVID pandemic, legislation enacted to remove all individuals under the age of 18 from DOCCS prisons, and changes in certain State parole policies and procedures.

The most recent annual State report on the impact of the 2009 Rockefeller drug law reforms indicates significant declines in felony drug arrests, indictments on felony drug charges and prison commitments for felony drug crimes from 2010 through 2019, as shown in Figure 6.<sup>4</sup>

**Figure 6**  
**New York Felony Drug Arrests, Drug Indictments**  
**and Drug Commitments, 2010 – 2019**  
 (at year end)



Source: New York State Division of Criminal Justice Services (DCJS).

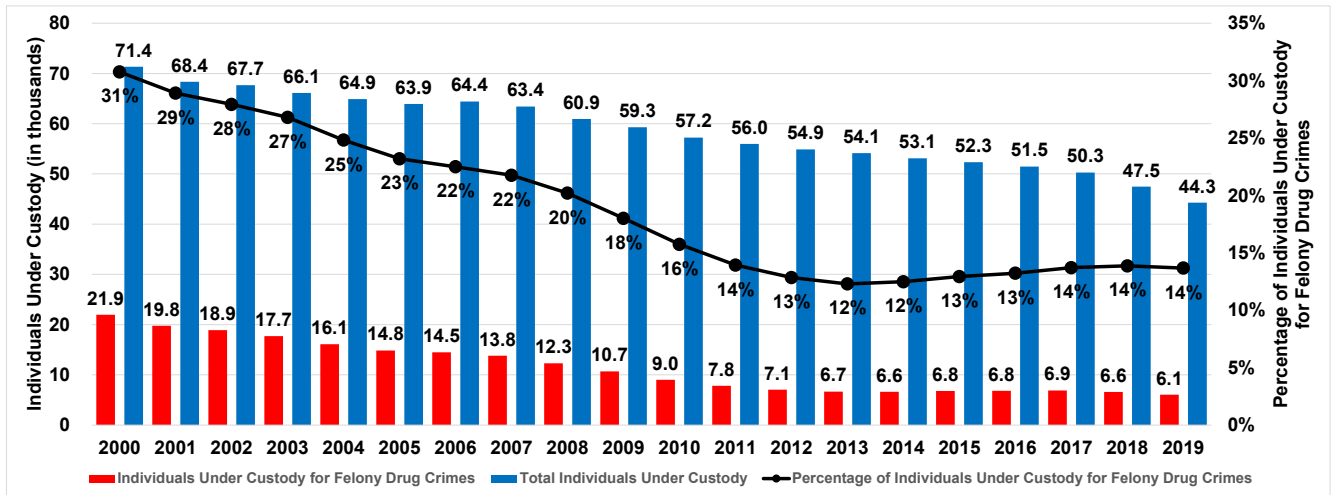
<sup>3</sup> See New York State Division of Criminal Justice Services (DCJS), *Preliminary Impact of 2009 Drug Law Reform: October 2009 – September 2010*, October 2010, available at [https://www.criminallawlibraryblog.com/wp-content/uploads/sites/335/2016/09/NY\\_CrimJust\\_interim-drug-law-reform-update-10-07-2010.pdf](https://www.criminallawlibraryblog.com/wp-content/uploads/sites/335/2016/09/NY_CrimJust_interim-drug-law-reform-update-10-07-2010.pdf), for a summary of statutory changes and effective dates of the Rockefeller drug law reforms. These reforms amended mandatory prison sentencing laws enacted in 1973 to deter the sale and use of drugs by authorizing treatment for substance use disorder as a potential alternative to incarceration. The reforms also expanded the availability of drug treatment courts and allowed certain non-violent drug offenders serving long terms in prison to apply to the courts for resentencing.

<sup>4</sup> DCJS 2009 Drug Law Changes: 2019 Annual Report, November 2020, available at <https://www.criminaljustice.ny.gov/crimnet/ojsa/FINAL%202019%20Drug%20Law%20Reform%20Report%202011-17-20.pdf>.



Over the 10-year period, the report registered decreases in: felony drug arrests of 13,989 or 41.7 percent; felony drug indictments of 5,322 or 42.6 percent; and felony drug prison commitments of 1,235 or 32.9 percent. The same report also showed a significant decline in the number of individuals under DOCCS custody for felony drug crimes over the last 20 years, as indicated in Figure 7.

**Figure 7**  
**Individuals under DOCCS Custody for Felony Drug Crimes, 2000 – 2019**  
 (at year end)



Source: DCJS.

Over the 20-year period, the total number of individuals under DOCCS custody dropped by 37.9 percent to just over 44,000 in 2019, while individuals under DOCCS custody for drug crimes decreased at nearly twice that rate – by 72.4 percent – to just over 6,000 in 2019. The percentage of individuals under custody for drug crimes fell by more than half from 2000 to 2019, but has ticked up in recent years.

The COVID pandemic has also affected the number of incarcerated individuals in the State prison system. According to the testimony of Acting Commissioner Anthony J. Annucci at a legislative budget hearing in February 2021, DOCCS “leveraged existing laws that allowed for the early release of 3,555 non-violent, non-sex offenders” in April 2020, including 791 low-level parole violators released from local custody.<sup>5</sup> He said candidates for early release also had to be at least 55 years old and within 90 days of their scheduled release.

The Acting Commissioner also testified about “modified policies and procedures in community supervision that have drastically reduced the issuance of technical warrants” during the pandemic, limiting the number of people sent back to prison for technical parole violations. In addition, he testified that the State Parole Board, in consultation with DOCCS, has adopted regulations that “improved the standard conditions of supervision, and modified the parole revocation process, advancing both alternatives to incarceration options, and shorter periods

<sup>5</sup> See the Testimony of Anthony J. Annucci, Acting Commissioner of the New York State Department of Corrections and Community Supervision, Fiscal Year 2021-22 Budget Hearing, February 10, 2021, available at <https://doccs.ny.gov/system/files/documents/2021/02/doccs-budget-testimony-fy21-22-2-10-2021.pdf>.

for re-incarceration, when necessary.” The efficacy of these measures in maintaining public safety while reducing the overall prison population should be closely monitored.

Legislation to modify the standards of evidence and certain procedures in order to limit the circumstances under which people subject to DOCCS community supervision may be re-incarcerated for technical parole violations – such as missing an appointment with a parole officer or being late for curfew – was signed into law by the Governor in September 2021. When it takes effect in March 2022, this legislation is intended to focus DOCCS resources on “substantive parole violations” and avoid future returns to DOCCS custody or supervision.<sup>6</sup>

In addition, Raise the Age legislation enacted in 2017 and fully implemented in 2020 removed all individuals under the age of 18 from DOCCS prisons to facilities operated by the State Office of Children and Family Services. State prisons housed over 200 sixteen- and seventeen-year-olds in March 2008, but only 26 in March 2020.

Other actions that may factor into the size of New York’s prison population include medical parole and Executive clemency. Medical parole authorizes the release of incarcerated individuals with a condition or disease that is either terminal or so debilitating that they cannot reasonably pose a danger or risk to the public. Executive clemency gives the Governor sole discretion to reduce an individual’s prison sentence so that he or she becomes immediately eligible for release. The Governor may also pardon or set aside the conviction of individuals who have completed their sentences. However, as the State Comptroller’s April 2017 report on the State’s aging prison population pointed out, neither type of action had substantially reduced the number of incarcerated individuals in New York prisons. Up-to-date DOCCS data on medical parole and Executive clemency was not available at the time of this report’s publication.

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<sup>6</sup> See Chapter 427 of the Laws of 2021, available at <https://www.nysenate.gov/legislation/bills/2021/s1144/amendment/original>.

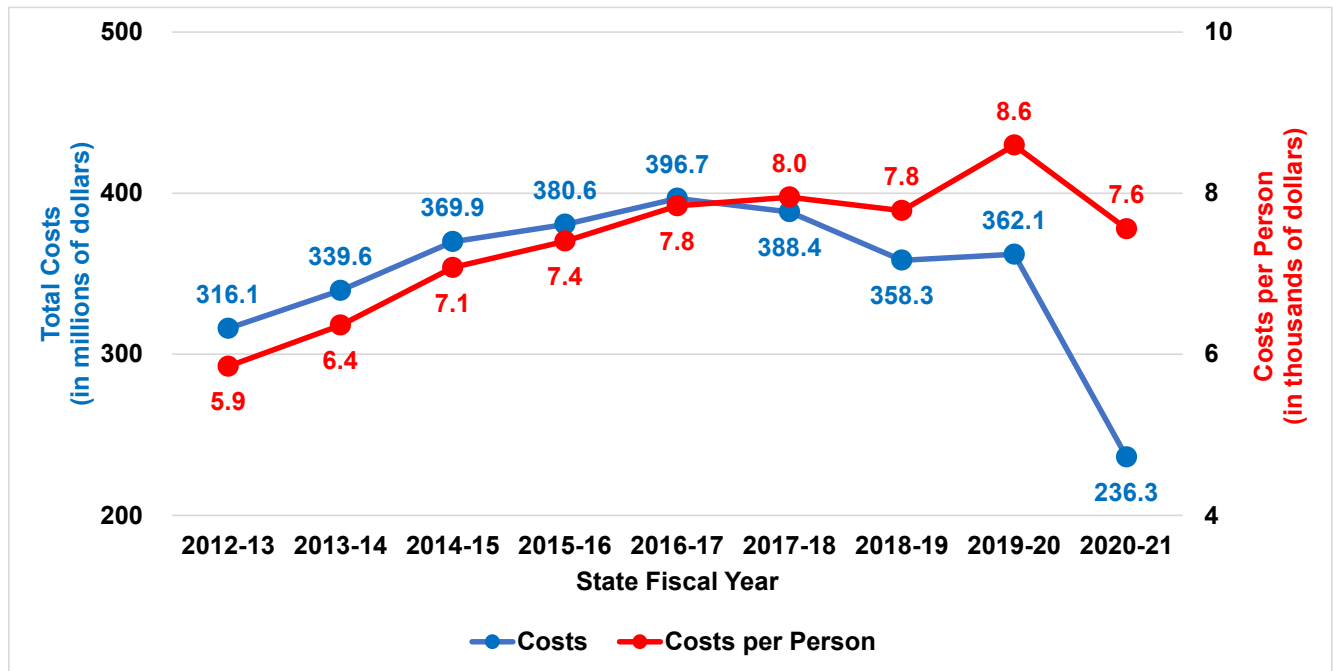
# III. The Cost of Medical Care

## The Impact of Medical Costs of Aging Incarcerated Individuals

DOCCS and other authorities have continued to identify a number of issues related to aging incarcerated individuals, including the potential for higher medical costs to care for them. Acting Commissioner Annucci has testified about the “higher cost for individuals that are older,” and has received repeated legislative requests for specific information about the costs of providing medical services to aging incarcerated individuals, but has never been able to provide it. “I cannot give you a specific dollar figure,” he testified in February 2021, “but the older you get in prison, the more costly [the] level of medical care you are required to receive.”<sup>7</sup>

Overall health care costs for the State prison system have averaged about \$350 million per year since State Fiscal Year (SFY) 2012-13, peaking at nearly \$400 million in SFY 2016-17 but trending significantly lower since then, as shown in Figure 8, likely due in part to declines in the State prison population.

**Figure 8**  
**New York State DOCCS Health Services Costs and**  
**Costs per Person**  
**SFY 2012-13 – SFY 2020-21**



Sources: Office of the State Comptroller and DOCCS.

Note: Disbursements per incarcerated individual are calculated by dividing total disbursements for each State fiscal year by the number of incarcerated individuals on March 31<sup>st</sup> of each year.

<sup>7</sup> Annucci Testimony, op. cit.

Over the same time period, health care costs for each incarcerated individual have averaged about \$7,380 per year, rising 29 percent higher in SFY 2020-21 than they were eight years ago.

DOCCS pays almost all of the health care costs of individuals incarcerated in State prisons. This is due to the fact that federal law (Section 1905(a) of the Social Security Act) prohibits states from using federal Medicaid funds to pay for such services in most circumstances, even if incarcerated individuals are eligible for and enrolled in the program.<sup>8</sup> When incarcerated individuals are released from prison, State budgetary savings may result if they are enrolled in Medicaid, which is partly funded by the federal government, or obtain other health coverage.

When older individuals are released from prison, they are at lower risk of recidivism than other age cohorts, as found in the State Comptroller's April 2017 report on New York's aging prison population, as well as DOCCS's most recent analysis of return-to-custody data for incarcerated individuals released from State prisons in 2015.<sup>9</sup>

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<sup>8</sup> Exceptions include when an inmate is admitted as an inpatient in a hospital, nursing facility, juvenile psychiatric facility or intermediate care facility.

<sup>9</sup> See The Office of the State Comptroller, "New York State's Aging Prison Population," page 3, available at <https://www.osc.state.ny.us/files/reports/special-topics/pdf/health-aging-prison-2017.pdf>, and the DOCCS research report on 2015 Releases from Custody, op. cit.

## IV. Conclusion

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While the overall size of New York's prison population has been decreasing, the percentage of older people has continued to rise. In fact, despite a decrease in prisoners aged 50 and older beginning in 2018, the total number of older individuals in the State prison system in March 2021 was still greater than it was 13 years ago. Policy makers should continue to look for ways to further reduce the State's prison population, particularly older individuals who pose a reduced risk to society at large. In particular, the impact of a new law to modify DOCCS's community supervision program and avoid re-admissions for technical parole violations enacted in 2021 should be closely monitored after taking effect in 2022.

As noted in the Comptroller's 2017 report on this issue, older incarcerated individuals are generally more costly to accommodate and care for, primarily due to their greater medical needs. Health care costs for all incarcerated individuals in New York prisons are trending downward along with the State prison population itself, but remain a significant burden to the State at about \$350 million per year. Specific cost information for individuals age 50 and over was unavailable at the time of the 2017 report, and remains unavailable at this time. The Department of Corrections and Community Supervision should take the steps necessary to collect and share this information with State policy makers, to allow for more informed choices about how best to address this challenge.

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