# CRIMINAL GRANDPARENTS: HOW THE CRIMINAL JUSTICE SYSTEM IMPACTS INDIVIDUALS LIVING WITH DEMENTIA AND HOW WE SHOULD FIX IT

*Stephanie C. Greer*

**Abstract:** The worldwide population of those over the age of sixty is growing quickly and the law is working to catch up. With increased age comes an increased risk of age-related diseases such as various dementias that can lead to criminal behavior. Individuals living with dementia (ILWDs) may experience behavioral changes such as poor impulse control and challenges with executive functioning. Outbursts may be common and many of these symptoms become exacerbated upon law enforcement intervention. Due to a lack of de-escalation and awareness training, actions by law enforcement officers may lead to potentially violent and escalated conflicts with ILWDs. Although changes across the country are necessary, police training is state-specific, and Connecticut has the opportunity to improve mandatory training as a way to protect ILWDs within its borders. Currently, the criminal justice system is used as a means of intervening on behalf of or managing those with dementia; however, this does not serve the interests of punishment, and thus an alternative solution is necessary. To address the issues of violence and arrests by law enforcement, increasing the amount of compulsory training is crucial as forty hours every three years is insufficient to ensure that law enforcement is aware of current recommendations and techniques for de-escalation and aiding those with mental illness. Although training is not a perfect solution, it is a low-cost and readily available option that departments may initiate immediately and is necessary to promote the safety of older adults in Connecticut.

**TABLE OF CONTENTS**

## INTRODUCTION

The population of those over the age of sixty is growing in Connecticut and throughout the world.[1] With increased age comes an increased likelihood of the development of age-related diseases like dementia.[2] Although individuals living with dementia (ILWDs) may have tendencies toward criminal behavior,[3] punishing these individuals does not further our society's goals of punishment and wastes resources that could be reallocated to other care programs. The already-strained court system will face a greater burden as the number of aging adults increases and becomes more diverse in language, ethnicity, race, culture, and education.[4] The courts will be required to accommodate a greater number of cases and a variety of mental health conditions.[5] With larger numbers, there will be more arrests for violent and non-violent crimes and misdemeanors that may involve ILWDs.[6]

Due to a lack of de-escalation and awareness training, actions by law enforcement officers may lead to potentially violent and escalated conflicts with ILWDs. These contentious encounters may turn a search for a wandering ILWD into a criminal charge, leaving an older adult sitting in a jail cell. Arrests are an ineffective and costly means of intervention and are of little benefit to the ILWD or the public. Using the criminal justice system as a means of intervening on behalf of or managing those with dementia does not serve the interests of punishment, and thus, an alternative solution is necessary. To address the issues of violence and arrests by law enforcement, increasing the amount of compulsory training is necessary as forty hours every three years is insufficient to ensure that law enforcement is aware of current recommendations and techniques for de-escalation and aiding those with mental illness.[7]

In Part I, I present an overview of dementia, the various types of dementia, and the challenges physicians face in diagnosing dementia. In Part II, I discuss the connection between dementia and criminally appearing behavior, relying on statistics demonstrating the extent of the connection and arrests. In Part III, I analyze the philosophy of crime as applied to ILWDs to demonstrate that punishing ILWDs does not further the goals of the penal system. In Part IV, I compare Connecticut's training requirements and model policies with those of Washington state. I also address the model policy provided by the International Association of Chiefs of Police (IACP) and present recommendations regarding training for law enforcement.

---

[1] *Ageing and Health*, WORLD HEALTH ORG. (Oct. 1, 2022), https://www.who.int/news-room/fact-sheets/detail/ageing-and-health (Between 2015 and 2050, the proportion of the world's population over 60 years will nearly double from 12% to 22%.); *See also Senior Citizens Less Diverse, Growing in Percentage of State's Population*, CONN. BY THE NUMBERS NEWS (Dec. 19, 2017), https://ctbythenumbers.news/ctnews/tag/seniors (The 65 and older population is expected to grow by 56 percent in Connecticut between 2010 and 2040, compared with 1.5 percent growth in the population between ages 20 and 64.).

[2] Rita Guerreiro & Jose Bras, *The Age Factor in Alzheimer's Disease*, 7 GENOME MED. 1, 1 (2015), https://genomemedicine.biomedcentral.com/articles/10.1186/s13073-015-0232-5.

[3] Fei Sun et al., *Police Officer Competence in Handling Alzheimer's Cases: The Roles of AD Knowledge, Beliefs, and Exposure*, 18 DEMENTIA 675 (2017), https://journals.sagepub.com/doi/10.1177/1471301216688605.

[4] *Crime Without Criminals? Seniors, Dementia, and the Aftermath: Hearing Before the Special Committee on Aging*, 108th Cong. 108-31 (2004). (Statement of Max B. Rothman, J.D., LL.M, Executive Director, The Center on Aging, College of Health and Urban Affairs, Florida International University) [*hereinafter* Crime Without Criminals].

[5] *Id.*

[6] *Id*.

[7] CONN. GEN. STAT. § 7-294(d)(a)(9).

## I. WHAT IS DEMENTIA?

Dementia, a common illness experienced by older adults, will "continue to ascend in global health importance" as the worldwide population continues to age and effective cures are nowhere to be seen.[8] Dementia is a leading cause of cognitive and functional decline among older adults worldwide; roughly 10% of adults over sixty-five, and as many as 50% of those over eighty-five are ILWDs.[9] Currently, more than six million Americans are living with Alzheimer's Disease (AD), the most commonly diagnosed form of dementia, and many others are living with other forms.[10]

Dementia touches most people's lives in one way or another. In fact, for many, it is incorrectly considered part of the typical aging process.[11] Dementia serves as a general term for "loss of memory, language, problem-solving, and other thinking abilities" that significantly "interfere with daily life."[12] As one ages, mild changes in cognition are normal, such as general forgetfulness, slower processing, and lack of attention. While the symptoms of normal aging and dementia may sound similar, the latter leads to much more severe declines in cognition as the condition progressively affects the nerve cells in the brain.[13] These affects produce additional behavioral and mental changes such as poor memory, becoming lost easily, difficulty engaging in routine problem-solving, poor self-awareness, and unusual and inappropriate behavior.[14] In many ways, dementia takes symptoms of normal aging and magnifies them to an extent that dramatically impacts normal functioning.

As one ages, one develops a greater susceptibility to developing dementia.[15] In studies investigating this relationship, researchers have separated high-income countries from lower-income countries due to the impact of the wealth of a country on available health care and other relevant variables. In high-income countries such as the United States (US), the prevalence of dementia ranges from 5% to 10% in those over the age of seventy, to at least 25% thereafter.[16] The data collected through the US census estimates that about 7% of individuals diagnosed with AD are between sixty-five and seventy-four years old, 53% are between seventy-five and eighty-four years old, and 40% are eighty-five or older.[17]

The preeminent authority and guide for diagnosing mental disorders across the population is the Diagnostic and Statistical Manual of Mental Disorders (DSM-5). The DSM-5 defines dementia as a "Major Neurocognitive Disorder" in the category of Neurocognitive Disorders (NCD). Disorders

---

[8] APA Task Force on the Evaluation of Dementia and Age-Related Cognitive Change, APA Guidelines for the Evaluation of Dementia and Age-Related Cognitive Change , APA, (Feb 2021), https://www.apa.org/practice/guidelines/guidelines-dementia-age-related-cognitive-change.pdf.https://www.apa.org/practice/guidelines/guidelines-dementia-age-related-cognitive-change.pdf

[9] *Id.*

[10] Rashmi Goel, *Grandma Got Arrested: Police, Excessive Force, and People with Dementia*, 57 U. RICH. L.REV. 335, 342 (2023).

[11] *Healthy Aging vs. Diagnosis*, U.C.S.F. WEILL INST. FOR NEUROSCIENCES, https://memory.ucsf.edu/symptoms/healthy-aging (last visited Nov. 17, 2023).

[12] *What is Dementia?,* ALZHEIMER'S ASS'N, https://www.alz.org/alzheimers-dementia/what-is-dementia.https://www.alz.org/alzheimers-dementia/what-is-dementia (last visited Nov. 17, 2023).

[13] Marc Blatstein & Fay F. Spence, Chapter 1, *in* REPRESENTING PEOPLE WITH DEMENTIA 3 (Elizabeth Kelly ed. 2022).

[14] Healthy Aging vs. Diagnosis, *supra* note 11.

[15] Guerreiro & Bras, *supra* note 2.

[16] AM. PSYCHIATRIC ASS'N, THE DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 612 (5th ed. 2013) [*hereinafter* DSM-5].

[17] *Id.*

that fall under the NCD category are those in which "the primary clinical deficit is in cognitive function," and specifically those that are "acquired rather than developmental."[18] While the authors of the DSM-5 note that "cognitive deficits are present in many if not all mental disorders," the NCD category is intended to include only those disorders "whose core features are cognitive" and have "not been present since birth or very early life," and "represent[] a decline from a previously attained level of functioning."[19]

### A. DEMENTIA CLASSIFICATIONS

More than just memory loss, there are a variety of dementias, each with unique manifestations and leading to different symptoms. Dementia serves as an umbrella term under which subtypes include: AD, frontotemporal lobe dementia (FTD), Lewy body dementia (LBD), vascular dementia (VD), and dementia associated with Parkinson's Disease (PD). AD is the most common form of dementia, and VD is the second most common.[20]

While each type of dementia is caused by different changes in the brain, many symptoms are similar. Mood changes, impaired and declining functioning, executive function impairment, and vision changes can be present in each form of dementia.[21] Over time, as dementia becomes more severe over time, symptoms and effects of dementia also escalate in severity.[22] With moderate to severe dementias, "psychotic features, irritability, agitation, combativeness, and wandering are common."[23] Certain behaviors and manifestations are seen more frequently in certain types of dementia depending on the cause of the dementia and underlying diagnoses.[24] In PD, apathy, hallucinations, delusions, personality changes, and sleep changes are frequent.[25] With LBD progressive cognitive impairment, recurrent hallucinations, depression, and delusions are more common than in other forms of dementia.[26] Unlike other dementias, in LBD, rather than cognitive impairment manifesting as learning and memory deficits, there are changes in complex attention and executive functioning.[27]

FTD is one of the most common forms of dementia known to create challenges with the law.[28] In addition to its reputation as a legal challenge, FTD is the most common cause of dementia among persons younger than sixty.[29] In FTD, behavioral disinhibition is commonplace and often manifests with "overspending, sexually inappropriate remarks, and socially unacceptable behavior," occasionally leading to a misdiagnosis of bipolar or other psychiatric conditions.[30] Poor self-insight and awareness often lead to delays in medical treatment, and a psychiatrist often provides the first intervention and referral to gerontological care.[31] Rather than prominent

---

[18] *Id*. at 591.
[19] *Id*.
[20] What is Dementia?, *supra* note 12.
[21] *Id.*
[22] *Id.*
[23] DSM-5, *supra* note 16, at 612.
[24] *Id.*
[25] *Id.* at 637.
[26] *Id.* at 619.
[27] *Id.*
[28] Hal S. Wortzel, Chapter 7, *in* REPRESENTING PEOPLE WITH DEMENTIA 86 (Elizabeth Kelly ed. 2022) ("the behavioral changes that come with FTD can lead, not infrequently to "violations of both social norms and the law.").
[29] *Id.* at 85.
[30] *Id.* at 88.
[31] *Id.* at 86.

cognitive impairment, "individuals may develop changes in social style, and in religious and political beliefs."[32]

Moreover, a 2015 study investigating the frequency and type of criminal behavior of those with dementia found that violence was more common in those with FTD because this population has a particular "vulnerability to impulsive and disinhibited behavior."[33] Stealing has been reported as a symptom of FTD, creating an increased risk of larceny charges.[34] The most challenging aspect part of FTD is that, while those living with FTD can "understand their actions and sometimes [are] even able to verbalize that they were wrong," they lack the connections in the brain necessary to prevent the recurrence of the inappropriate behavior.[35] Although those with FTD may demonstrate "profoundly disabling brain changes," they often demonstrate normal performance on cognitive tests assessing memory and executive function, including planning goal-oriented activities.[36] While other forms of dementia impair the ability of the ILWD to recognize the wrongfulness of their behavior, dementias such as FTD do not impair the ILWD's capacity in the same way.[37] Because criminal culpability depends on the offender's requisite mental state, or mens rea, satisfaction of this "guilty mind" requirement is much easier in dementias like FTD wherein these individuals retain the ability to articulate right from wrong, even if they do not understand the implications of their behavior.[38]

### B. CHALLENGES TO OF DIAGNOSIS

Physicians face significant challenges when diagnosing dementia as there is currently no single test to determine if someone has dementia.[39] In suspected dementia cases, physicians conduct comprehensive medical assessments, which usually include collecting a complete medical history, routine exams, and neurological, psychological, blood, and genetic testing.[40] Cognitive screening measures are used occasionally to identify dementias that may be treatable or reversible, but these tests are not dispositive and are merely screening tools.[41] Diagnostic changes create obstacles, stalling the development of ways to prevent ILWDs from acting illegally, especially when there is a risk to the safety of the ILWD or others.

After struggling to arrive at a diagnosis of dementia, physicians face a more challenging hurdle of narrowing the specific cause or type of dementia. Physicians may only be able to deduce the type of dementia, as some causes are not known. This can make the use of brain scans and diagnostic testing limited if not futile.[42] Additionally, cases of dementia can be classified as "mixed

---

[32] DSM-5, *supra* note 16, at 615.

[33] Madeleine Liljegren, *Criminal Behavior in Frontotemporal Lobe Dementia and Alzheimer Disease*, 72 J. AM. MED. ASS'N NEUROLOGY 295, 298–99 (2015); *See* Mario F. Mendez, *The Unique Predisposition to Criminal Violations in Frontotemporal Dementia*, 38 J. AM. ACAD. PSYCHIATRY L. 318, 318 (2010).

[34] *Id.* at 299.

[35] *Id.*

[36] *Id.*

[37] *Id.*

[38] *Id.*

[39] Dana Miller, *Dementia and Competency in United States Courtrooms: A Case Law Review* at 6, CUNY ACADEMIC WORKS, (2020), https://academicworks.cuny.edu/jj_etds/156

[40] *Id.*

[41] Margaret S. Russell & Robert Ouauo, Chapter 5 *Testing*, *in* REPRESENTING PEOPLE WITH DEMENTIA 55, 57 (Elizabeth Kelly ed. 2022).

[42] *Washington State Plan to Address Alzheimer's Disease & Other Dementias*, WASH. STATE DEP'T SOC. & HEALTH SERVS. 28 (2023) ("many primary care practitioners report they are not comfortable making a diagnosis of Alzheimer's or other dementia.") [*hereinafter* Washington Plan].

dementia," meaning that there is more than one dementia affecting the individual.[43] Courts have considered these obstacles in the diagnostic process, especially in considering a person's competency to assist in their own defense under the Fifth Amendment to the US Constitution.[44]

Illustrating the difficulty faced by lay persons and even physicians without a specialty in dementia, *United States v. Rothman* demonstrates the challenges faced by Florida courts when physician-witnesses lack dementia training. If untrained physicians have difficulty recognizing the signs and symptoms of dementia, law enforcement officers without medical licenses certainly struggle to recognize ILWDs and carry lethal weapons.

In this case, the defendant, a physician, Dr. Rothman was indicted for conspiring to commit healthcare fraud.[45] In determining Dr. Rothman's competency, the prosecution and defense each presented physician-witnesses to consider the extent of Dr. Rothman's dementia.[46] Although the prosecution conceded that the defendant likely had dementia, it argued that his dementia was insufficiently incapacitating.[47] The prosecution's witness relied on the inconsistency of the results of Dr. Rothman's cognitive assessments and noted that these "fluctuations could only be the result of Dr. Rothman's intentional suppression of his performance."[48] The defense witness explained that "the inconsistencies in Dr. Rothman's score were just a manifestation of the fluctuations and behavior in persons who suffer from [FTD]."[49] He further concluded that those bothered by the inconsistencies in the defendant's score were "not familiar with the manifestations of frontotemporal dementia or Alzheimer's disease when it primarily affects the frontal lobes likely because the . . . evaluators lacked sufficient training in neuropsychology."[50]

Because of this testimony, the court found that the defendant was not competent to proceed to sentencing due to his dementia.[51] Had a trained physician not testified to the symptoms of dementia, it is possible that the court would have ruled differently.

Ohio courts, like courts in Florida, have also acknowledged the challenges in diagnosing dementia. While *Rothman* considered competency for sentencing, *State v. Ford* heard witness testimony that argued that it was "virtually certain" that the defendant's violent behavior was a result of his FTD.[52] With the assistance of trained physicians, some courts, as in *Ford*, have recognized the role dementias can play in individuals' criminal behavior. Here, Mr. Ford's attorneys argued that he had not been competent to stand trial at the time of his conviction and that his no-contest pleas should not have been accepted.[53] The defense demonstrated that Mr. Ford was living with FTD[54] and offered two physicians' letters, indicating that the criminal behaviors he exhibited were a direct result of "this entity."[55] In addition, in one of these letters, the physician recommended that Mr. Ford be sent to an inpatient mental health facility, rather than jail or prison. [56] While the doctor stated that insanity does not necessarily follow a diagnosis of dementia, he noted the causative and

---

[43] *Id.* at 135.
[44] U.S. CONST. amend. V.
[45] No. 08-20895, 2010 U.S. Dist. LEXIS 127639, at *2 (S.D. Fla. Aug. 18, 2010).
[46] *Id.* at *106.
[47] *Id.* at *104
[48] *Id.* at *106.
[49] *Id*.
[50] *Id.* at *107.
[51] *Id.* at *111.
[52] State v. Ford, 2007-Ohio-5722, ¶ 6 (Ct. App.).
[53] *Id.* at ¶ 1.
[54] *Id.* at ¶ 6.
[55] *Id*.
[56] *Id.*

correlative association between FTD and a "lowered threshold for behavior dyscontrol and criminality."[57]

Because the conviction and sentencing had already occurred, the defense faced a high burden of attempting to overturn a conviction.[58] Although the court did not rule in favor of Mr. Ford, this case demonstrates an improved analysis both on the part of courts and physicians as to the broad range and awareness of behavioral symptoms of dementia in the criminal justice system.[59]

## I. CRIME

### A. EXTENT AND TYPES OF CRIME

It is unlikely that many people picture their grandparents in the back of a police car. How do older adults become involved with the criminal justice system? In the case of dementia, neurological changes in the brain may lead some dementia sufferers to exhibit unusual behavior such as "getting naked in public, wandering away from their home, ignoring traffic signs at an intersection, or becoming violent toward others."[60] The nature of these offenses makes training and awareness more essential. Because many of these behaviors are understandably inappropriate and illegal, or risk the safety of the ILWD or others, neighbors or onlookers are likely to request the intervention of police officers.[61] Statistics show, however, that police are arresting more older adults than in the past, with higher rates of dementia among older adults than any other group, police are arresting more ILWDs.[62] Yet, arrestees can be released and the charges dropped when the dementia comes to light.[63]

When law enforcement recognizes and understands the various manifestations of dementia, police interactions with ILWDs are less likely to escalate and can lead to improved outcomes for both the individual and the officer. In *Edwards v. City of Martins Ferry*, an eighty-two-year-old ILWD brought a civil suit against the city for an officer's use of excessive force and failure to properly train and supervise.[64] Officers were called by neighbors who reported seeing Mr. Edwards urinating in public, a behavior commonly seen in ILWDs.[65] Mr. Edwards had been diagnosed with AD and was simply taking a walk.[66] Because there was no public restroom, Mr. Edwards made sure no one was around, relieved himself in a bush, and then continued his walk.[67] Neighbors called the police, and when the officer approached Mr. Edwards and gave commands, Mr. Edwards did not comply and repeatedly complained that he wanted to go home and that it was hot outside.[68] Thinking that Mr. Edwards was simply being obstinate, the officer escalted the situation by "slamm[ing] him against the hood of the police cruiser" and, while the officer was restraining Mr.

---

[57] *Id.*
[58] *Id.* at ¶ 9.
[59] *Id.* at ¶ 15.
[60] Sun et al, *supra* note 3.
[61] *Id*.
[62] Goel, *supra* note 10, at 340.
[63] *Id*.; Edwards v. City of Martins Ferry, 554 F. Supp. 2d 797 (S.D. Ohio 2008).
[64] 554 F. Supp. 2d at 799.
[65] Wortzel, *supra* note 28, at 90.
[66] *Edwards*, 554 F. Supp. 2d at 800.
[67] *Id.*
[68] *Id.*

Edwards, the officer used his taser and "told Mr. Edwards 'The next fucking time I tell you to come here, you'll come here.'"[69]

Despite this violent treatment, the court found against the plaintiff, Mr. Edwards, and granted summary judgment for the officer. In its decision, the court noted that officers cannot legally ignore complaints about the commission of a crime or allow the person committing the crime to walk away because of their age.[70] The court suggested that Mr. Edwards and his family would have preferred that the police allow Mr. Edwards to walk away, rather than follow this law; however, they would likely have preferred a different response from the officer.[71]

After Mr. Edwards was taken to the police station, a different officer, one with experience with ILWDs, spoke calmly with him and concluded that "there was something wrong with him," deciding not to charge him with a crime.[72] The second officer told the court that his concern after noticing Mr. Edward's dementia was to contact his family to help get him home rather than send him to jail, get him home.[73] This is the response many families would want for their loved ones, which can be achieved through appropriate training for law enforcement officers.

With training, the first officer may have recognized that Mr. Edward's behavior is common in ILWDs, especially for those who have experienced changes and deficiencies in their executive function leading to a diminished ability to think and plan.[74] This can lead ILWDs to go about their daily routine, like Mr. Edwards on his walk, but they may easily forget to go to the bathroom before leaving.[75] "When faced with the physical need to urinate, they have no choice but to do it on a roadside or behind a tree."[76]

As discussed in Part I, dementia presents differently depending on its cause and the particular person it affects. In certain types of dementia, sufferers are more prone to criminally appearing behavior.[77] ILWDs often are introduced to the criminal legal system as new arrestees, but data separating the numbers of "persons aging into dementia in the correctional system, and persons entering the criminal legal system with existing dementia" is limited.[78] There have been four relevant factors identified that may explain the reasons older adults can experience the criminal legal system for the first time: family and relationship issues, including the death of loved ones and changes in family dynamics, which may contribute to abuse; substance use; changes in mental health, potentially contributing to aggression, agitation, and inappropriate sexual behavior; and cognitive deficiencies, such as dementia.[79]

To address these first-time offenders, some jurisdictions have created specific diversion programs for criminal offenses by older adults with mental illness, including dementia.[80] Some have suggested that the acceptability of these alternatives depends on whether society considers retribution to be a preeminent justification for criminal punishment, especially when charges and allegations involve violent or felony offenses.[81] As Miller puts it, "The more significant the offense

---

[69] *Id.* at 801.
[70] *Id.* at 806.
[71] *Id*.
[72] *Id.* at 801.
[73] *Id.*
[74] Goel, *supra* note 10, at 359.
[75] *Id.*
[76] *Id*.
[77] Liljegren, *supra* note 33, at 295.
[78] David Godfrey, *The Experience of Persons with Dementia in the Criminal Legal System*, 43 J. AM. BAR ASS'N COMM'N L. & AGING 109, 110 (2022-110 110 (2022).
[79] Dawn Miller, *Sentencing Elderly Criminal Offenders,* 7 NAT'L ACAD. ELDER L. ATT'YS 221, 225 (2011).
[80] *Id.* at 230.
[81] *Id.* at 229.

and the more retribution is valued, the less viable such alternative approaches to sentencing appear."[82] As will be discussed in Part III, retribution likely has little application to the justification of punishments for ILWDs. Rather, access to these alternatives may be directly tied to awareness of their existence. One of the more effective ways to ensure this awareness is achieved is through training law enforcement officers to encourage effective interventions, thus avoiding arrests.

### B. EMPIRICAL DATA

While it may be difficult to envision one's grandparents in the criminal justice system, it happens frequently. The Federal Bureau of Investigation Crime Data Explorer (FBICDE) notes that in 2022, there were a total of 5,901,2838,075,886 arrests, of which 254,184245,034, or 4.313.03%, of these arrests, were of persons over the age of sixty years of age or older, over an estimated 696 arrests each day.[83] Although 4.31% may seem insignificant, as the population over the age of sixty grows, so too will the number of individuals included in this percentage.[84] In the general population violent arrests make up merely 5.924.07% of total arrests, and the population over sixty accounts for only 4.063.05% of these violent arrests.[85] Table 1 shows that the category of sex offenses is one with the greatest number of arrests among older people with more than 9.27% of arrestees being at least 60 years old and 8% of total arrests of those over the age of sixty, which can be explained through criminal charges such as indecent exposure, and in the case of Mr. Edwards.[86] While it may be surprising that many of the arrests are for sexually based offenses, Rashmi Goel, Associate Professor at Strum College of Law, explains that ILWDs are frequently charged with crimes of public exposure, which are frequently regarded as sexually-based offenses.[87] Symptomatic of certain types of dementia such as FTD, these behaviors can result from hypersexuality, leading some ILWDs to inappropriately "expose themselves or touch others sexually without permission."[88] Public urination is usually classified as indecent exposure, which can happen when ILWDs, like Mr. Edwards, forget to use the restroom before leaving home.[89] While violent crimes such as murder and nonnegligent homicide account for less than one percent 3.02% of arrests of those over the age of sixty,[90] murder cases usually involve an ILWD causing the deaths of family members in a state of delusion and disorientation.[91] Offenses such as resisting arrest or assault may occur after officer intervention when the officer has engaged inappropriately with the ILWD. These cases can be mitigated through appropriate training and recognition of ILWDs. While not all situations are mitigated sufficiently, training is essential for the safety of the IWLD and the officer. In one case, an ILWD was arrested for attempted murder because they shot at a social worker's head.[92] The social worker had approached the ILWD to bring them to a nursing home. While the social worker was not killed, the bullet grazed their head, demonstrating the

---

[82] *Id*.
[83] *Crime in the United States Annual Reports: Persons Arrested 2022*, FED. BUREAU OF INVESTIGATION CRIME DATA EXPLORER (2022), https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/ downloads [hereinafter *Persons Arrested 2022*].
[84] Senior Citizens Less Diverse, *supra* note 1.
[85] *Persons Arrested* 2022, *supra* note 83 ("Violent crimes are offenses of murder and nonnegligent manslaughter, rape, robbery, and aggravated assault.").
[86] *See infra* Table 1.
[87] Goel, *supra* note 10, at 358-359.
[88] *Id*.
[89] Often this includes public urination. *See Edwards*, 554 F. Supp. 2d at 806.
[90] *See infra* Table 1.
[91] *Persons Living with Dementia in the Criminal Legal System*, ABA Comm'n on L. & Aging, at 35 (2022), https://www.nri-inc.org/media/0h0fbcju/2022-dementia-crim-just-rpt. pdf.
[92] *Id.*

danger that can be posed by some offenders.[93] Although no solution is perfect, preparation and training can aid in addressing similar situations, even if such situations are infrequent.

## *II. PUNISHMENT*

ILWDs interact with the law in four phases of the criminal justice system: upon arrest, upon adjudication of competency,[94] at trial, and at sentencing. Dementia calls into question current policies and the assessment of this process as our goals of punishment do not comport with the application of the legal system to ILWDs. Rather than reform the legal system as a whole, it is beneficial to both ILWDs and the state to avoid the criminal justice system altogether when not necessary.

Punishing ILWDs may not accomplish the individual and broader societal goals of preventing crime. As for ILWDs punishment may not have the intended effect. Rather, it may have adverse effect; and arrest itself may be sufficient punishment due to its mental and potentially physical costs.[95] Additionally, arrests can directly impede goals, such as isolation, while incapacitation of offenders, which may inhibit access to residential and long-term care facilities.[96]

We need to reform the current system and create alternative forms of punishment. Rather than rebuilding the current criminal legal system, an attainable solution is improving law enforcement training and intervention to connect ILWDs to community resources. These changes must be made and implemented, as the population continues to age, these incidents will continue to grow as well. We must rethink how we as a society handle certain behaviors that either violate the law or are seen as public safety threats, but are in fact a product of dementia. To begin to consider alternative solutions, we must ask ourselves what we are trying to generally achieve through punishment.

---

[93] *Id*.

[94] After waiting for a spot in a hospital to become available, a physician performs a competency evaluation. In 2019, there were an estimated 91,000 competency evaluations conducted, about half of which were for people charged with misdemeanors. Hallie Fader-Towe & Ethan Kelly, *Just and Well: Rethinking How States Approach Competency to Stand Trial*, THE COUNCIL OF STATE GOV'TS JUST. CTR., at 3, (Oct. 27, 2020), https://csgjusticecenter.org/publications/ just-and-well-rethinking-how-states-approach-competency-to-stand-trial/.

Dementia, however, is unlike many other mental illnesses that have the potential to improve with medication and therapy. Dementia is progressive and only becomes more debilitating as time passes. The goal of rehabilitation is to eventually release the individual back into society where they can participate fully, but for an ILWD, this is never going to be a reality. *See e.g.* Dusky v. United States, 362 U.S. 402, 402 (1960) (for court's determination of competency). *See also Alzheimer's Stages: How the Disease Progresses*, MAYO CLINIC, https://www.mayoclinic.org/diseases-conditions/alzheimers-disease/in-depth/alzheimers-stages/art -20048448 (last visited Nov. 24, 2023).

In the federal system, a person can be held at the hospital for a maximum of four months to determine whether "there is a substantial probability" that the person will attain "in the foreseeable future" sufficient capacity for the proceedings to continue. If there is such a determination, the court can continue to hospitalize the person for an "additional reasonable period of time," or until the pending charges are dropped. 18 U.S.C. § 4241(d)(1), (2)(A)-(B).

This process is expensive, and yet, during this period, the person has neither been tried, nor rehabilitated and is probably more disoriented due to the change in routine and environment. Meanwhile, it costs the federal or state government about $800 to $1500 per day to provide treatment to patients in forensic hospitals that likely could have been obtained outside of the court system and on an outpatient basis. W. Neil Gowensmith et al., *Lookin' for Beds in All the Wrong Places: Outpatient Competency Restoration as A Promising Approach to Modern Challenges,* 22 PSYCH. PUB. POL'Y & L. 293, 294 (2016); Thea Amidov, *Mentally Ill and Locked Up: Prisons Versus Inpatient Wards for Psychiatric Patients*, PSYCH CENTRAL (Apr. 1, 2015), https://psychcentral.com/ pro/mentally-ill-and-locked-up-prisons-versus-inpatient-wards-for-psychiatric-patients#1.

[95] Christie Thompson, *As Police Arrest More Seniors, Those with Dementia Face Deadly Consequences*, MARSHALL PROJECT (Nov 11, 2022, 5:30 AM), https://www.themarshallproject. org/2022/11/22/police-arrests-deadly-texas-florida-seniors-dementia-mental-health.

[96] Donna Cohen et al., *State Policies for the Residency of Offenders in Long-Term Care Facilities: Balancing Right to Care with Safety*, 12 J. POST-ACUTE AND LONG-TERM CARE MEDICINE 481, 481 (2010).

### A. WHY DO WE PUNISH?

Punishment is a social construct that relies on the foundations of religion and philosophy. Although many ILWDs may find that they face no criminal charges, this may be because the interaction with the officer already led to sufficient suffering, as in the case of Mr. Edwards.[97] Others may instead be charged for their illegal acts. While Mr. Edwards had AD, courts have struggled with potential diagnoses of FTD.[98] Because of FTD's impact on impulse control, but not necessarily memory, courts proceed cautiously when considering defendants' abilities to assist in their own defense.[99] The goals of our legal system include ensuring that the accused have legal process and individual criminal culpability leads to punishment.[100]

The US criminal justice system stems from areas of philosophical thought, including utilitarianism and retributivism.[101] From these origins, we derive four main purposes for "punishment": deterrence, rehabilitation, isolation, and retribution.[102] However, despite these influential rationales for "what we do to criminal law offenders, . . . in the final analysis, basically, we punish because it makes us feel good to get even."[103]

These rationales are echoed in the Model Penal Code (MPC), which prioritizes deterrence over rehabilitation and retribution.[104] In addition to these themes, the MPC notes that the recommended sentences and punishments are meant to rehabilitate offenders, provide "fair warning" of the potential sentences, individualize their treatment, coordinate the penal system, promote the use of scientific methods and research in treatment, and centralize the administration of correctional institutions.[105]

Deterrence has little application to ILWDs as it wildly overestimates the cost-benefit analysis that occurs when those who commit crimes act according to these impulses.[106] If the ILWD does not know that what they are doing is wrong or cannot comprehend why they are being punished, or even that what they are experiencing is intended as punishment, punishment for the purpose of deterrence is futile and a waste of resources. The person being punished likely will not remember the punishment at all, and administrative time and resources will have been wasted as a means to an unachievable end.

Rehabilitation aims to provide resources to change behavior, but the way we currently approach these efforts is failing and the population of ILWDs is growing and affecting more people in our society.[107] In the criminal system, dementia may lead to competency problems. The current process of competency determination may not be able to handle certain types of dementia, particularly FTD.

In the current system, when a person has dementia or another mental condition, regardless of their age, whether they are fit to participate in proceedings depends on their "competency," which is determined by a judge by a preponderance of the evidence after considering arguments and

---

[97] *Edwards*, 554 F. Supp. 2d at 806.
[98] *Rothman*, No. 08-20895, 2010 U.S. Dist. LEXIS at *2; *Ford*, 2007 Ohio App. LEXIS at ¶6.
[99] *Rothman*, No. 08-20895, 2010 U.S. Dist. LEXIS at *2.
[100] Richard Lowell Nygaard, *On the Philosophy of Sentencing: Or Why Punish?*, 5 WIDENER J. PUB. L. 237, 248 (1996).
[101] *Id.* at 245, 262.
[102] *Id.* at 252.
[103] *Id.* at 249.
[104] MODEL PENAL CODE, foreword (AM. L. INST. PROPOSED OFF. DRAFT 1962) (This code was created in 1962 and, intending to influence the revision and codification of criminal law, led to at least thirty-four states codifying substantive criminal law.).
[105] *Id.* at § 1.02(2)(a)–(h).
[106] Nygaard, *supra* note 100, at 256.
[107] Ageing and Health, *supra* note 1.

evidence from the defendant and the prosecution.[108] Once the court comes to this conclusion, the goal is to "restore" the person to competency.[109] However, this is unrealistic for ILWDs and often leads to ILWDs spending time in jail waiting for an evaluation or a bed at a forensic hospital.[110] Not only does this leave the state or federal government open to liability, but it also worsens the condition of the ILWD.[111] Reforming this process would benefit both the state and the ILWD, but reformation may take an alternative approach to rehabilitation specific to dementias.

Unlike many other mental illnesses that have the potential to improve with medication and therapy, dementia is progressive and only becomes more debilitating as time passes.[112] The goal of rehabilitation is to eventually release the individual back into society where they can participate fully, but for an ILWD, this will never be a reality.

The need to protect society from those who cannot conform to society's rules, and perhaps the safety of others, leads to the principle of incapacitation, which often takes the form of isolation. One can say that isolation and detention are effective, but the offender simply cannot commit other crimes when detained, whether they would do so regardless.[113] For ILWDs and the population at large, isolation can lead to greater harm than benefit.[114] Because many of the offenses committed by ILWDs are nonviolent, isolation in a holding cell in an unfamiliar place can be detrimental to their condition, and is associated with increased aggression and agitation, jeopardizing the safety of the ILWD and the staff of the institution.[115]

Immanuel Kant's retributivist philosophy of punishment originated from the idea that when one commits a crime, one deserves punishment, and that punishment should be proportional to the crime committed.[116] Punishing because of the "wrongfulness" of the action and the violation of social laws is considered "retribution." [117] The balance necessary to bring about the result retributivism intends is difficult to strike, especially when the person committing the crime may not have the ability to understand that such an act was wrong. This goal of "teaching someone a lesson"[118] costs the US an average of more than $38 million each day, just in pretrial holdings.[119] These goals and philosophies of punishment do not serve their purposes when applied to ILWDs in the criminal justice system. In rethinking these goals and the means of achieving them, one must consider whether the criminal justice system must be involved at all. I argue that it does not.

### B. IMPACT OF PUNISHMENT

Societal constructs and foundations stemming from our criminal justice system's priorities of deterrence, rehabilitation, isolation, and retribution impact how we treat the criminal behavior of

---

[108] 18 U.S.C. § 4241.
[109] *Id.*
[110] In 2017, a man accused of stealing fries and a hamburger spent 55 days in jail waiting for a bed to become available at a state hospital to begin the restoration process. Katie O'Connor, *Psychiatrists, Judges Work to Address Competency to Stand Trial Process*, PSYCHIATRIC NEWS, AM. PSYCHIATRIC ASS'N (July 26, 2021), https://doi.org/10.1176/appi.pn.2021.7.39.
[111] *Id*.
[112] *Alzheimer's Stages: How the Disease Progresses*, MAYO CLINIC, https://www.mayoclinic.org/diseases-conditions/alzheimers-disease/in-depth/alzheimers-stages/art-20048448 (last visited Nov. 24, 2023).
[113] *Id.*
[114] Adesh Kumar Agrawal et al., *Approach to Management of Wandering in Dementia: Ethical and Legal Issue*, 43 INDIAN J. PSYCHOL. MED., no. S5, 2021, at S53, S56.), https://doi.org/10.1177/ 02537176211030979.
[115] *Id.*
[116] Kevin Murtagh, *Punishment*, INTERNET ENCYCLOPEDIA PHIL., https://iep.utm.edu/punishme/ (last visited Feb. 16, 2025).
[117] Nygaard, *supra* note 100, at 262.
[118] *Id*. at 253.
[119] *Pretrial Justice: How Much Does It Cost?*, PRETRIAL JUST. INST. 2 (Jan. 12, 2017) https://portal.ct.gov/-/media/Malloy-Archive/Reimagining-Justice/Reimagining-Justice---Pretrial-justice-at-what-cost-PJI-2017.pdf.

ILWDs, and much of it originates from a lack of understanding. Aside from the harm legal punishment can cause to many ILWDs, such punishment does not serve the purposes of the criminal legal system and is creating a great cost to society.[120] ILWDs and other mental illness] "are better served outside of the criminal justice system," and this can be accomplished through law enforcement training to identify ILWDs and direct them to appropriate resources.[121]

ILWDs are a burden on the criminal justice system due to poor capacity to "rehabilitate" ILWDs, and such attempts come with significant costs. For those living with FTD, it is typical to maintain a "superficial ability to distinguish right from wrong."[122] However, this trait "combined with the proclivity towards illegal behaviors, presents real challenges to the criminal justice system."[123] While general concepts of culpability often depend on prongs, such as knowledge that the act was wrong, but fails to consider "the degraded moral rationality caused by FTD, or the impaired ability to comport behavior with the requirements of the law."[124]

Upon arrest, a person is brought to a police station and is held. During this period, the person has neither been tried, nor rehabilitated and is disoriented due to the change in routine and environment, which can lead to ILWDs exhibiting increased aggression and agitation.[125] This process puts both the ILWD and the officers at risk due to the heightened possibility of escalation. Once a person is brought to court, a fine may be all that is given for someone like Mr. Edwards, but for those with high recidivism, states like Nevada or Georgia impose a mandatory minimum sentence.[126] For many ILWDs, it is unlikely that their behavior will change drastically when considering acts of trespassing or shoplifting unless they are institutionalized or highly supervised, also a means of isolation or incapacitation that can lead to loneliness and depression.[127] Rather than typical isolation or incapacitation in a correctional facility, ILWDs may be admitted to long-term care facilities, however, having a history of criminal behavior, even an arrest, can preclude a person from obtaining admission.[128] In using the criminal justice system as a means of intervention, it forecloses opportunities for support of ILWDs. To ensure this cycle is not exacerbated, law enforcement training would allow for direct communication with diversion programs and resources to avoid an arrest record when unnecessary. The goal of this paper is to consider early interventions and measures that can be taken by law enforcement to hopefully avoid arrests of ILWDs and de-escalate situations effectively when necessary and possible.

## *III. RECOMMENDATIONS*

### A. NEED FOR REFORM

The current attitude toward dementias and older adults by enforcement officers is due to a lack of training and education.[129] Police and first responders are relied upon to support community

---

[120] *Id.* at 6.
[121] Washington Plan, *supra* note 42, at 27.
[122] Wortzel, *supra* note 28, at 90.
[123] *Id.*
[124] *Id.*
[125] Gowensmith et al., *supra* note 94.
[126] For indecent exposure and public nudity, see NEV. REV. STAT. § 201.220 (2023); GA. CODE. ANN. § 16-6-8 (2023).
[127] Alzheimer's Ass'n, *supra* note 89.
[128] Cohen, *supra* note 96, at 481.
[129] *Crime Without Criminals*, *supra* note 4, at 4 (statement of Rorie Lin Gotham) ("From what I understand, officers who enroll in special courses and go through proper training on how to deal with those who are mentally ill, are shocked of the responsibility

members and are often the first call citizens make in the case of an emergency. However, we have seen a hesitation in recent years to call law enforcement when something goes wrong.[130] With insufficient training on dementia, additional violence may ensue, and older adults can be arrested and remain in jail for months without officer awareness of alternatives.[131] Diversion and community programs vary across states, but the best means of facilitating the connection between ILWDs and community resources upon interaction with law enforcement is effective training. As police power falls to the states, each state may create its programs for law enforcement officers.[132] Although a country-wide reformation is in order, due to governmental constructs, focusing on one state is the most effective way to create tangible change in local communities, which leads to my focus on the state of Connecticut.

There has been a call for additional training for law enforcement officers to improve awareness and understanding of dementia, including by the Supreme Court of Florida.[133] In considering significant reform to its state policies, the State State of Florida held a hearing before its Special Committee on Aging in 2004.[134] At this hearing, Commander Gotham shared how his father and Sheriff's Deputy Brian Litz died due to a deficiency in police training and the mental health system.[135] Commander Gotham had previously called for wellness checks for his father, who was living with dementia, and they had given him great peace of mind regarding his father's safety.[136] When he called for the second check, the Commander told the dispatcher that his father had a gun in the house and was having mental challenges due to his dementia and delusions, ensuring all relevant safety information was provided.[137] However, when Deputy Litz arrived to conduct the wellness check, he was shot and killed by the Commander's father, and "forty-two minutes later, in what is still shielded in confusion, misunderstanding, and lacking in truth, [his] dad, unarmed, was shot and killed in a blaze of gunfire from police and swat teams."[138]

This response is absurd, unnecessary, and horrifying. The death of Deputy Litz is no small matter, and certainly warranted a response. Had the responding officers considered the dispatch notes, wherein the Commander provided relevant information as to his father's condition, perhaps an alternative response would have been considered. Although situations to this extent may be rare, this case illustrates the extent to which law enforcement can escalate a situation, and how officers' behavior may dictate the result of an interaction.

There have been incidents in which officers do not have the requisite training to ensure the safety of those they are meant to protect.[139] Table 3 shows that, so far in 2023, there have been 1030

---

they have had on their shoulders. I recently heard second hand of one officer who attended a training session. He stated that he was so enlightened that he wonders how he ever made it through 12 years of service making the tough decisions he had to make. And more importantly he felt that he might have wronged victims due to his lack of this special training earlier in his career.").

[130] *See* Gloria Oladipo, *'We're Tired of Being Beaten': Protestors Across US Call for Justice for Tyre Nichols*, GUARDIAN (Jan. 28, 2023, 11:58 AM), https://www.theguardian.com/us-news/ 2023/jan/28/tyre-nichols-protests-marches-police-violence; *See also* Sam Levin, *'It Never Stops': Killings by US Police Reach Record High in 2022*, GUARDIAN (Jan. 6, 2023, 6:00 AM), https://www.theguardian.com/us-news/2023/jan/06/us-police-killings-record-number-2022.

[131] *Crime Without Criminals*, *supra* note 4, at 51 (statement of Donna Cohen, PH.D., Professor and Head of the Violence and Injury Prevention Program of the Department of Aging and Mental Health at the Louis De La Parte Florida Mental Health Institute at the University of South Florida).

[132] Berman v. Parker, 348 U.S. 26, 32 (1954) ("Public safety, public health, morality, peace and quiet, law and order -- these are some of the more conspicuous examples of the traditional application of the police power to municipal affairs. Yet they merely illustrate the scope of the power, and do not delimit it.").

[133] *Supreme Court Commission Urges Changes to Baker Act,* SUPREME COURT OF FLORIDA (Dec. 28, 1999).

[134] Crime Without Criminals, *supra* note 42, at 1.

[135] *Id*. at 4 (statement of Commander Gary A. Gotham, United States Navy, Woodbridge, VA).

[136] *Id*. at 28.

[137] *Id*. at 7.

[138] *Id.*

[139] Table 3; *Mapping Police Violence*, https://mappingpoliceviolence.us/ (last visited Feb. 13, 2025).

people killed by police, and 5.73% of those deaths are of individuals over the age of fifty-nine.[140] Providing education to law enforcement about dementia and de-escalation tactics can be a highly effective tool to ensure the safety of ILWDs and law enforcement officers.[141]

Studies have shown that training is effective at aiding officers in de-escalating conflicts.[142] The Police Executive Research Forum advocates for a training program that emphasizes the importance of de-escalation tactics and self-awareness for officers.[143] In one study, officers graduating from the program reported 28% fewer incidents where force was used, 26% fewer complaints, and fewer injuries than those without training.[144] In a second study, use-of-force incidents declined by 40%.[145]

### B. Police Training and Development of a Comprehensive Policy for Law Enforcement

Common calls received by law enforcement for ILWDs include falls, mistreatment accusations, wandering, and disorderly behavior.[146] It is estimated that 60% of ILWDs will wander from home, and in an unfamiliar environment they can become anxious and hostile.[147] Law enforcement officers often rely on family members to provide information about the ILWD when they receive a call that a person has left home unaccompanied.[148] However, this reliance creates a challenge if the person lives alone, or the person being consulted does not know about the wandering person's dementia diagnosis.[149]

Violent and inappropriate police actions have come to the forefront of media, but excessive force especially impacts ILWDs.[150] If a brain disease is not recognized, police may view a combative dementia sufferer as a threat and respond accordingly.[151] Police brutality towards older adults has drawn attention recently.[152] An article from The Marshall Project notes that older adults are experiencing problems with police officers more frequently as the population ages and a greater number of people develop dementia.[153] Due to the effects that occur in the brain as a result of dementia itself, "[a]ny use of force or arrest can be devastating."[154]

---

[140] *Id*.
[141] Factsheet*; Dementia Training for First Responders*, Alzheimer's Impact Movement, (2020), at 1, https://portal.alzimpact.org/media/serve/id/5d23aea86c77c.
[142] Isidoro Rodriguez, *Why Police Training Needs to Evolve–and How,* The Crime Report (Mar. 26, 2021), https://webcf.waybackmachine.org/web/20210326131240/https:/thecrimereport.org/2021/03/26/why-police-training-needs-to-evolve%E2%80% 95and-how/.
[143] *Id.*
[144] *Id.*
[145] *Id.*
[146] Washington Plan, *supra* note 42, at 26.
[147] Factsheet; *Dementia Training for First Responders*, *supra* note 141.
[148] Washington Plan, *supra* note 42, at 26.
[149] *Id.*
[150] *See Amy B. Wang, An 87-Year-Old Woman Carried a Knife Outside to Cut Dandelions. Police Tasered Her.,* Wash. Post (Aug. 17, 2018, 4:03 PM), https://www.washingtonpost.com/ nation/2018/08/17/an-year-old-woman-carried-knife-outside-cut-dandelions-police-tasered-her/.
[151] Thompson, *supra* note 95.
[152] *Id.*
[153] *Id.*
[154] *Id.*.

Illustrating just how detrimental force can be to an older adult, Armando Navejas, an ILWD, wandered away from his home, prompting his wife to call 911 for assistance.[155] When the police found him, he seemed agitated and was uncooperative.[156] The situation escalated when Mr. Navejas threw a piece of wood "limply toward the officer," which landed on the car windshield, bouncing off and leaving the vehicle undamaged.[157] However, when Mr. Navejas turned away, the officer shot a stun gun, hitting Mr. Navejas and causing him to fall face-down on the pavement.[158] After he was brought to the emergency room with fractures and bleeding around his brain,[159] Mr. Navejas never returned home. Yet, the police department found the use of force "reasonable and necessary."[160]

When departmental leadership does not address situations like that of Mr. Navejas, it sets a precedent that other officers follow and condones similar interactions and use of force. These circumstances understandably lead to more arrests and legal interventions. The trend shown by Graph 1 demonstrates that police are arresting 30% more adults over the age of sixty-five than were arrested in 2000, while overall arrests have decreased by 40% since 2000.[161] With the prevalence of dementia among those over the age of sixty, more training is warranted. After police officers in Colorado injured an older woman with dementia who tried to leave a store with items worth fourteen dollars, the officers faced criminal charges and resigned. [162] Additionally, the remaining officers underwent "de-escalation training": a response that should be encouraged more frequently.[163] Although training is beneficial, there is no national standard for police training, and the length and content of the trainings varies widely.[164] When ILWDs commit crimes, police must be aware of the symptoms and risks faced by ILWDs. I will first consider the Model Policy provided by the International Association of Chiefs of Police (IACP). Then, I will compare the Connecticut training requirements for law enforcement to those of Washington State. Arrests are necessary in some circumstances, but it is essential that they are handled appropriately. While training is not a complete solution, it is a step forward.

### *i. IACP MODEL POLICY*

The IACP provides many resources for police in the form of videos, model policies, and pocket cards that officers can keep with them, including "10 Signs & Steps," which provides warning signs that a driver has dementia and tips to respond, and "Alzheimer's Do's and Don'ts."[165] The model policy is dementia and AD-specific, provides a brief overview of the "disease," and outlines initial contact considerations for officers.[166] Despite these guidelines failing to address criminal encounters with ILWDs specifically, they can prevent escalation of the situation and charges

---

[155] *Id.*
[156] *Id.*
[157] *Id.*
[158] *Id.*
[159] *Id.*
[160] *Id.*
[161] *See infra* Graph 1, Data graph complied by Jacob Kaplan,.
[162] Leigh Paterson, *The Violent Arrest of a Woman with Dementia Highlights the Lack of Police Training*, NAT'L PUB. RADIO (June 15, 2021, 5:00 a.m.), https://www.npr.org/2021/06/15/ 1004827978/th-violent-arrest-of-a-woman-with-dementia-highlights-the-lack-of-police-traini.
[163] *Id.*
[164] *Id.*
[165] *Alzheimer's Initiatives*, INT'L ASS'N OF CHIEFS OF POLICE (last visited Nov. 21, 2023), https:// www.theiacp.org/projects/alzheimers-initiatives.
[166] Missing Persons with Alzheimer's Disease, Model Policy, INT'L ASS'N OF CHIEFS OF POLICE, 1, 3–4 (2010), https://www.theiacp.org/sites/default/files/all/a/AlzheimersPolicy.pdf.

resulting from such escalation. Although it would be ideal that each officer-ILWD encounter resolved amicably, there are circumstances in which an arrest is appropriate, in which case training relating to these cases would allow such arrests to take place less violently.

This model policy also provides comprehensive questions to ask family or caregivers when investigating missing persons or wandering reports, expediting the speed at which the search can begin, and ensuring a thorough understanding of the subject of the search.[167] The IACP website also provides a guide created by the Alzheimer's Association, specifically to inform and guide law enforcement. While the guide was created in 2006, a majority of the incidents of police violence toward ILWDs mentioned herein occurred after this date.[168] Although there is no way to know specifically the number of departments that have similar model policies, it is unlikely that there is any causal or correlative relationship between this specific policy as currently offered and officer interactions with ILWDs.

While the IACP makes resources such as the model policy available, these resources are not easily accessible. To access these resources, one must first go to "resources" on the website, locate the "Alzheimer's Initiatives" webpage, and sift through over 100 articles. It was far easier to search specifically for Alzheimer's resources. One of the many benefits of compulsory training is that it is just that: compulsory. It is accessible and required, rather than an optional search of the Alzheimer's Initiatives webpage tucked away on the IACP website. While the model policy provides a guide for law enforcement to improve their understanding of interacting with ILWDs, it does not recommend any form of mandatory training.

### *ii. CURRENT CONNECTICUT POLICY AND TRAINING REQUIREMENTS*

The Connecticut Police Officer Standards and Training Council (POST) has adopted a model policy for "handling missing persons investigations."[169] Like the IACP model, this policy does not recommend any training for officers, but it does provide resources for officers to consult when investigating missing persons reports, such as SILVER Alert, and the necessary criteria for law enforcement to consider.[170] It is disappointing that Connecticut has not developed a mental-health specific model policy, as much of the information contained in the policy applied to mental health incidents and considerations.

Although the model policy does not require training, state law requires law enforcement to receive mental health and de-escalation training.[171] In basic training, officers attend a total of twelve hours of training on awareness and interactions with those living with mental health conditions.[172] This is far from sufficient training, especially for those officers with no prior training on this issue in their new capacity as law enforcement. Additionally, as of October 2023, when officers become certified, they must renew their certification every three years, which requires a demonstrated forty hours of review training on mental health[173] which can be completed remotely through a computer program.[174]

---

[167] *Id.* at 2.
[168] *See Edwards*, 554 F. Supp. 2d at 800; Thompson, *supra* note 95; Paterson, *supra* note 162.
[169] Conn. Police Officer Standards & Training Policy for Handling Missing Persons Investigations, CONN. POLICE OFFICERS STANDARDS AND TRAINING COUNS, 1 (2012), https://portal.ct.gov/-/media/POST/GENERAL_NOTICES/2016/GN1206POSTPolicyforHandlingMissingPersonsInvestigationspdf.pdf.
[170] *Id.*
[171] CONN. GEN. STAT. § 7-294(o), (v).
[172] Basic Training Curriculum Final Revision 2015, CONN. POLICE OFFICER STANDARDS AND TRAINING COUNS. (2023).
[173] CONN. GEN. STAT. § 7-294(d)(a)(8).
[174] *See id.* § 7-294(d)(a)(9).

Despite the importance of mandatory training, the length of time required for training and the method of delivery are insufficient to adequately meet the needs of the community. Computer training is demonstratively less effective than in-person training.[175] As teachers around the world have agreed post COVID-19, "a computer is no match for a classroom,"[176] and when citizens' lives are at stake, this is hardly a risk that society can afford to take.

Connecticut has made advances lately with an amendment to previous training requirements through Public Act 22-64, including a requirement for a new training curriculum.[177] Connecticut has also recently adopted "Bring Me Back Home," (BMBH), a voluntary registration system that allows families to register their wandering relatives.[178] This program asks that caregivers call 9-1-1 in the case of wandering and tell the dispatcher that the missing person is registered with BMBH to alert first responders that the person has dementia or a related mental condition.[179] While this program sounds like a great initiative, it has not yet been established,[180] and its efficacy cannot be evaluated. Even if the program was instituted, first responders would have to know what to do with the mental health information to safely bring the person home. Training would allow for synergy between these programs.

### iii. WASHINGTON STATE TRAINING REQUIREMENTS

Washington State's laws regarding officer training are regarded as the most progressive in the country.[181] According to Justice in Aging, the plan notably includes an approach encompassing many different health and wellness providers, staff involvement in the development of training programs, and a curriculum with examinations to ensure mastery of the content and requirements for continuing education.[182]

During a 2023 Dementia Action Collaborative meeting in Washington State, police officers noted that officers face challenges when responding to calls from and on behalf of ILWDs. [183] Police may inadvertently leave an ILWD at home alone without needed supervision or support because there is no reliable way to ascertain whether the person who needs to be transported is an ILWD or the caregiver for an ILWD.[184] The Alzheimer's Association notes that "an overarching gap is a lack of dementia-specific training and knowledge of local resources available to help this population."[185]

Washington requires a greater number of mental health training hours in basic training for law enforcement than Connecticut does,[186] yet Connecticut has a greater population of older adults by

---

[175] Li-Kai Chen et al., *Teacher Survey: Learning Loss is Global – and Significant*, MCKINSEY & CO., (March 1, 2021).
[176] *Id.*
[177] CONN. GEN. ASSEMBLY, PUB. ACT 22-64
[178] *Bring Me Back Home*, CONN. STATE DEP'T EMERGENCY SERVS. & PUB. PROT. https://portal.ct.gov/DESPP/Division-of-Emergency-Service-and-Public-Protection/Bring-Me-Back-Home. (last visited Nov. 24, 2023, 9:04 a.m.)
[179] *Id.*
[180] *Id.*
[181] Georgia Burke & Gwen Orlowski, *Training to Serve People with Dementia: Is our Health Care System Ready?*, JUST. IN AGING (Aug. 2015), https://justiceinaging.org/wp-content/uploads/2015/ 08/Training-to-serve-people-with-dementia-Alz5_FINAL.pdf.
[182] *Id.*; WASH. ADMIN. CODE § 388-112-0132 (2013).
[183] Washington Plan, *supra* note 42, at 26—27.
[184] *Id*. at 29.
[185] *Id*.
[186] Connecticut requires 8 hours in basic training, while Washington requires 200 hours. WASH. ADMIN. CODE § 139-11-020.

1.5%.[187] While the recertification hours are the same for both states, forty hours every three years,[188] this number is not sufficient to ensure the safety of the rapidly increasing population of older adults.

Although the number of hours is not ideal, unlike Connecticut's, Washington's Administrative Code § 139-11-020(2) requires specific training topics such as tactics to reduce escalation that may lead to violence and evoke situations requiring the use of force. These tactics include managing the distance between the officer and the "subject," and engaging in communication with the person.[189] Washington's code also recognizes that officer self-awareness can mitigate poor response and encourage appropriate action by the officer, which can be taught by an appropriate authority.[190] An important requirement specifically for police interaction with ILWDs is mandating training on alternative programs and options to prevent jail and arrest.[191]

### C. ACTION STEPS

While there is no consensus on the amount or the form of mental health training that is required for law enforcement,[192] Connecticut must prioritize the safety of the public that law enforcement is intended to protect. The state should require more frequent training of law enforcement officers, perhaps including a specific interval at which training must be completed, such as bi-monthly or even bi-annually.[193] Because medicine and science are constantly evolving, recommendations three years in the future may be vastly different from those of today. Additionally, Connecticut law should outline the necessary curriculum for this training similar to those topics enumerated in the Washington statutes.[194]

While arresting and holding citizens is expensive,[195] there is no-cost law enforcement and first responder training offered by many organizations such as the Alzheimer's Association[196] and the IACP.[197] The IACP program is administered in person and offers a train-the-trainer option, which allows individual departments to certify an officer to then conduct training for the team.[198] While the IACP training's format may create barriers to training initially, once an officer from that team is certified, access is constant. The training from the Alzheimer's Association is online and easily accessible. The use of these programs would also ensure compliance with topics required by statute, further reducing barriers to administering training to officers. The certificate awarded after the passage of a final quiz allows easy oversight and verification of completion by the police

---

[187] Persons 65 and over, Connecticut – 18.3%, Washington – 16.8%, as of the 2020 census. *QuickFacts, Connecticut*, U.S. CENSUS BUREAU, (2020), https://www.census.gov/quickfacts/ fact/table/CT#; *QuickFacts, Washington*, U.S. CENSUS BUREAU, (2020), https://www.census.gov/ quickfacts/fact/table/WA/PST045222.

[188] WASH. ADMIN. CODE § 139-11-020(2).

[189] *See id.* § 139-11-020(1)(a)(i), (iv).

[190] *See id.* § 139-11-020(1)(b)-(e).

[191] *See id.* § 139-11-020(1)(r).

[192] Audie Cornish et al., *The State of Police Training in the U.S.*, NAT'L PUB RADIO (Apr. 27, 2021, 4:07 P.M.), https://www.npr.org/2021/04/27/991343004/the-state-of-police-training-in-the-us.

[193] Burke & Orlowski *supra* note 181.

[194] WASH. ADMIN. CODE § 139-11-020(2).

[195] Amidov, *supra* note 94.

[196] *Approaching Alzheimer's: First Responder Training*, ALZHEIMER'S ASS'N, https://training.alz.org/products/4021/approaching-alzheimers-first-responder training?_gl=1*1v0qsuv*_ga*MTQ5ODgyMjIwNi4xNjk5NjQ1OTcw*_ga_9JTEWVX24V*MTcwMDg0MTc1Ny4xMi4wLjE3MDA4NDE3NTcuNjAuMC4w (last visited Nov. 24, 2023)

[197] *Alzheimer's Training Center*, INT'L ASS'N CHIEFS POLICE, https://www.theiacp.org/alzheimers-training-center. (last visited Nov. 24, 2023).

[198] *Id.*

administration. Not only will these measures ensure improved knowledge by law enforcement, but they have economic benefits as well.

## IV. CONCLUSION

Connecticut has the opportunity to improve mandatory training as a way to protect ILWDs within its borders. As the population ages, age-related mental illnesses, such as dementia, will become increasingly common.[199] Despite the propensity for criminally appearing behavior committed by ILWDs,[200] processing ILWDs through the criminal justice system does not further society's philosophical goals of punishment and wastes valuable resources that could be reallocated to programs such as law enforcement training. Such programs may also improve law enforcement's social approval and promote the community's welfare by leading to the de-escalation of potentially violent conflicts and enhanced trust.

Forty hours in three-year intervals is insufficient to bring about these benefits.[201] Because medical and scientific recommendations are constantly evolving, first responders with frequent contact with ILWDs must understand the signs and symptoms of the disease and ways to approach interactions with ILWDs. Although training is not a perfect solution, it is a low-cost and readily available option that departments may initiate immediately and is necessary to promote the safety of older adults in Connecticut.

[199] Guerreiro & Bras *supra* note 2.
[200] Sun, Gao, Brown & Winfree, Jr, *supra* note 3.
[201] CONN. GEN. STAT. § 7-294(d)(a)(9).

## APPENDIX

Table 1

| Crime | Total Male Arrests | Total Female Arrests | Total Arrests | Male 60+ | Female 60+ | Total Arrests 60+ | % Total 60+ |
|---|---|---|---|---|---|---|---|
| Murder and nonnegligent manslaughter | 8,901 | 1,146 | 10,047 | 287 | 36 | 323 | 3.21% |
| Rape | 15,470 | 460 | 15,930 | 831 | 7 | 838 | 5.26% |
| Robbery | 40,378 | 7,429 | 47,807 | 597 | 68 | 665 | 1.39% |
| Aggravated assault | 211,559 | 63,940 | 275,499 | 10,164 | 2,190 | 12,354 | 4.48% |
| Burglary | 79,225 | 18,565 | 97,790 | 2,079 | 381 | 2,460 | 2.52% |
| Larceny-theft | 288,105 | 180,734 | 468,839 | 12,770 | 6,952 | 19,722 | 4.21% |
| Motor vehicle theft | 49,466 | 13,876 | 63,342 | 743 | 121 | 864 | 1.36% |
| Arson | 5,910 | 1,801 | 7,711 | 325 | 66 | 391 | 5.07% |
| Other assaults | 533,132 | 232,684 | 765,816 | 25,829 | 7,809 | 33,638 | 4.39% |
| Forgery and counterfeiting | 16,117 | 7,198 | 23,315 | 543 | 135 | 678 | 2.91% |
| Fraud | 40,834 | 21,301 | 62,135 | 1,664 | 564 | 2,228 | 3.59% |
| Embezzlement | 4,060 | 3,720 | 7,780 | 116 | 90 | 206 | 2.65% |
| Stolen property; buying, receiving, possessing | 53,807 | 14,020 | 67,827 | 1,000 | 167 | 1,167 | 1.72% |
| Vandalism | 101,371 | 30,483 | 131,854 | 3,180 | 829 | 4,009 | 3.04% |
| Weapons; carrying, possessing, etc. | 132,860 | 13,925 | 146,785 | 2,894 | 240 | 3,134 | 2.14% |
| Prostitution and commercialized vice | 5,349 | 7,106 | 12,455 | 448 | 112 | 560 | 4.50% |
| Sex offenses (except rape and prostitution) | 18,742 | 1,079 | 19,821 | 1,804 | 34 | 1,838 | 9.27% |
| Drug abuse violations | 538,712 | 188,034 | 726,746 | 16,863 | 3,402 | 20,265 | 2.79% |
| Gambling | 811 | 292 | 1,103 | 68 | 41 | 109 | 9.88% |
| Offenses against the family and children | 24,644 | 13,421 | 38,065 | 781 | 298 | 1,079 | 2.83% |
| Driving under the influence | 463,775 | 158,569 | 622,344 | 31,585 | 9,449 | 41,034 | 6.59% |
| Liquor laws | 52,026 | 24,343 | 76,369 | 2,735 | 573 | 3,308 | 4.33% |
| Drunkenness | 11,475 | 2,849 | 14,324 | 799 | 173 | 972 | 6.79% |
| Disorderly conduct | 137,093 | 56,356 | 193,449 | 8,317 | 2,204 | 10,521 | 5.44% |
| Vagrancy | 9,722 | 2,951 | 12,673 | 860 | 170 | 1,030 | 8.13% |
| All other offenses (except traffic) | 1,464,947 | 520,800 | 1,985,747 | 73,249 | 17,541 | 90,790 | 4.57% |
| Suspicion | 52 | 10 | 62 | 1 | - | 1 | 1.61% |
| Curfew and loitering law violations | 3,855 | 1,793 | 5,648 | - | - | - | 0.00% |
| **TOTALS** | **4,312,398** | **1,588,885** | **5,901,283** | **200,532** | **53,652** | **254,184** | **4.31%** |

| | |
|---|---|
| % total arrests of those 60+ to total arrests all ages | 4.31% |
| % total 60+ violent arrests to all 60+ arrests | 5.58% |
| % total 60+ violent arrests to violent arrests all ages | 4.06% |
| % total violent all ages compared to total arrests all ages | 5.92% |

***Reminder that one person can be arrested multiple times

***According to the FBI, violent crimes include murder, nonnegligent manslaughter, robbery, rape, and aggravated assault

Table 2

Violent crime by age

| key | value | | |
|---|---|---|---|
| 20 to 29 | 232451 | Under 20 | 15.54% |
| 30 to 39 | 194835 | 20 - 39 | 48.58% |
| 10 to 19 | 134576 | 40 - 59 | 18.36% |
| Unknown | 125809 | 60+ | 3.22% |
| 40 to 49 | 101386 | | |
| 50 to 59 | 60138 | | |
| 60 to 69 | 21569 | | |
| 70 to 79 | 4883 | | |
| 0 to 9 | 2110 | | |
| 80 to 89 | 1095 | | |
| 90 to Older | 741 | | |

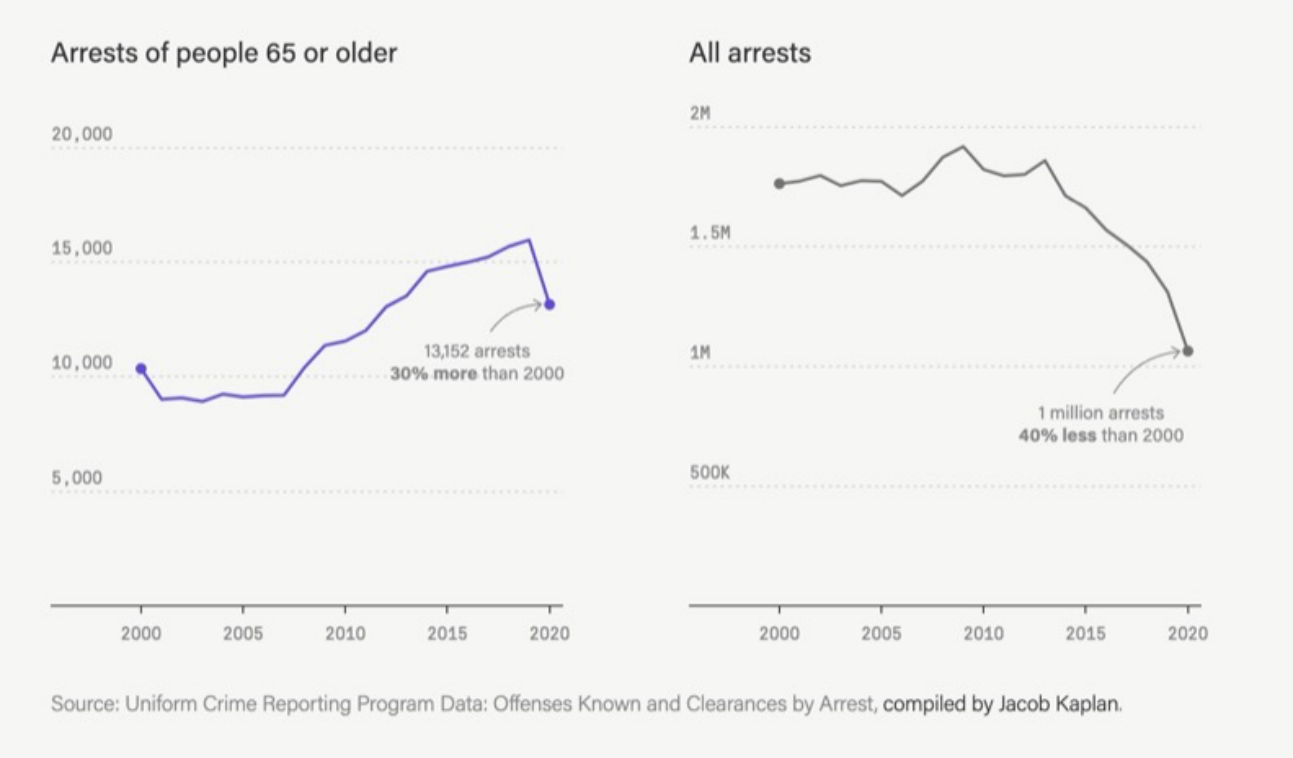
| | |
|---|---|
| Total # Crimes | 879593 |
| # Crimes +60 | 28288 |
| % Crimes +60 | 3.22% |

*https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/crime-trend

Table 3

| | | | | |
|---|---|---|---|---|
| | Police Killings of Persons age 60 and over | | | |
| 60 | 7 | | % over 60 | 5.73% |
| 61 | 4 | | | |
| 62 | 3 | | Total killed | 1030 |
| 63 | 5 | | | |
| 64 | 5 | | | |
| 65 | 5 | | | |
| 66 | 8 | | | |
| 67 | 3 | | | |
| 68 | 3 | | | |
| 69 | 2 | | | |
| 70 | 1 | | | |
| 71 | 0 | | | |
| 72 | 0 | | | |
| 73 | 2 | | | |
| 74 | 1 | | | |
| 75 | 2 | | | |
| 76 | 3 | | | |
| 77 | 0 | | | |
| 78 | 2 | | | |
| 79 | 0 | | | |
| 80 | 0 | | | |
| 81 | 0 | | | |
| 82 | 1 | | | |
| 83 | 1 | | | |
| 84 | 0 | | | |
| 85 | 0 | | | |
| 86 | 1 | | | |
| 87 | 0 | | | |
| 88 | 0 | | | |
| 89 | 0 | | | |
| 90 | 0 | | | |
| 91 | 0 | | | |
| 92 | 0 | | | |
| 93 | 0 | | | |
| 94 | 0 | * data synthesized from https://mappingpoliceviolence.us/ | | |
| 95 | 0 | | | |
| 96 | 0 | | | |
| 97 | 0 | | | |
| 98 | 0 | | | |
| 99 | 0 | | | |
| 100 | 0 | | | |
| Total | 59 | | | |

Graph 1


Arrests of people 65 or older
20,000
15,000
10,000
5,000
13,152 arrests
30% more than 2000
2000
2005
2010
2015
2020
All arrests
2M
1.5M
1M
500K
1 million arrests
40% less than 2000
2000
2005
2010
2015
2020
Source: Uniform Crime Reporting Program Data: Offenses Known and Clearances by Arrest, compiled by Jacob Kaplan.