

# Vermont Must End Life Without Parole

Vermont's prison population has declined over 30% since reaching its peak in 2009.<sup>1</sup> Policy reforms prioritized by state lawmakers and practitioners over the years can be credited with this impressive outcome. Over this same time period, however, the number of people serving Vermont's most extreme sentence, life without the possibility of parole, has only increased, standing at odds with the state's attempts to scale back prison growth.

Vermont must now pursue new reforms to undo the harmful and ineffective warehousing of people that life sentences result in and to offer opportunities for rehabilitation and redemption.

Lengthy imprisonment is a costly investment and Vermont's corrections costs are rising in large part due to the growing population of elderly people in the state's prisons. Between fiscal year 2010 and fiscal year 2015, the state spent at least \$94 million on correctional health services.<sup>2</sup>

This briefing paper is designed to inform policy discussions on long-term incarceration. It begins with an examination of trends in life sentences over time, followed by an assessment of the diminishing returns of life sentences for public safety and a review of factors that help to explain the expansion of life sentences in Vermont.

## GROWTH IN LIFE SENTENCES IN VERMONT

In 2020, 203,865 people were serving life sentences across the United States, including 105,567 people with parole-eligible life sentences (LWP, or life with the opportunity for parole) and 55,945 people with parole-ineligible life sentences (LWOP, or life without parole). Another 42,353 people were serving terms of 50 years or more and are likely to die in prison if

their maximum sentence is served. Altogether, these lifers and long-term prisoners make up 15 percent of the overall number of state and federal prisoners, meaning that one of every seven prisoners is in prison for life in the United States.

The life-sentenced population is at an all-time high both in Vermont and the nation as a whole. The pace of growth in life sentences has been swifter in Vermont than in nearby states and the national average. There were nearly twice as many people serving LWOP sentences in Vermont in 2020 compared to 2003. A likely explanation for the continued expansion of life sentences is that convictions that previously would have received shorter, non-life sentences now receive life sentences. This is due to the upward drive of all prison sentences that gained momentum in the now largely discredited "tough on crime" era that created mass incarceration in the United States and transformed the nation into the world's largest jailer.

## FACTS ABOUT THE LWOP POPULATION IN VERMONT

Since 2003 Vermont has doubled its population of those serving life sentences; more than 150 people are serving such sentences today at the same time the state has experienced substantial declines in the overall prison population. Among the lifer population are 15 people serving life without the possibility for

parole, inclusive of 3 women and 12 men. Two of the people serving LWOP are African American and one person is Native American; the remaining LWOP prisoners are white. All but one person has been convicted of murder or aiding in murder. The average age of the population serving LWOP is 55 years old, an age widely considered to be elderly in the prison environment. The youngest person serving this sentence is 39 and the oldest person is 78 years old. The average number of years served is 22 with a median time-served of 24 years. Time served among the LWOP population ranges from 6 years to 36 years.

## **DIMINISHING PUBLIC SAFETY IMPACT OF LIFE SENTENCES**

### **Aging Out**

Imprisonment for those who commit serious crimes can serve to protect society as well as apply an appropriate level of punishment for the offense. Indeed, public concerns about serious crime and maintaining public safety are among the drivers of support for long prison sentences. Yet aside from their high cost, life sentences are problematic for multiple reasons. First, there are diminishing benefits of lengthy terms of imprisonment on improvements to public safety. A prominent reason is that the impulse to engage in crime, including violent crime, is highly correlated with age, and by one's early 40s even those who have committed a series of violent offenses will have tapered off considerably.<sup>3</sup>

### **Deterrence**

Researchers have established through multiple empirical studies that, at best, lengthy prison sentences provide only a modest deterrent effect but the costs of heavy reliance on life sentences far outweighs its hoped-for benefits.<sup>4</sup> Instead, a wide body of research has concluded that the deterrent effect is more a function of certainty of punishment rather than severity.<sup>5</sup>

A more reasonable term of imprisonment would limit incarceration to 20 years except in unusual cases. This would allow for a sufficient punishment to be served but also afford the prisoner the opportunity

to demonstrate reform and readiness for release to society. If he or she did not demonstrate this in 20 years, another chance at release after a few more years would be awarded. The goal should be rehabilitation of all incarcerated people. As a policy this would free up prison space by releasing those who were rehabilitated but keep those incarcerated who truly are a danger to public safety.

### **Policies that Expand the Population of Life-Sentenced Prisoners**

Statutory changes over the past three decades have extended prison sentences to include or mandate life in prison for certain crimes; various states adopted habitual offender laws, truth-in-sentencing laws, mandatory minimums, and the outright abolition of parole.

"Tough on crime" rhetoric among politicians that dominated the 1980s and 1990s in Vermont and the nation underplayed the severity of life sentences. By spreading the idea that life-sentenced prisoners only served a fraction of their original punishment and thus harsher sentencing laws were necessary, the public was led to believe that life-sentenced prisoners were released after only a short prison stay. One study of Texas jurors who served in capital murder trials found that they routinely underestimated the number of years to be served for a capital murder conviction in the absence of the death penalty, with most believing that a life-in-prison sentence was 15 years before parole. In fact, support for "truth-in-sentencing" laws (which require a set percentage of the sentence—often 85 percent—to be served before parole consideration) derive from the belief that the public has been misinformed in regard to the amount of time served in prison. Under Texas law at the time of the study mentioned above, prisoners would have had to serve a minimum of 40 years before parole consideration.

It is not "tough" to imprison people long past their proclivity—or even physical ability—to commit crime; to the contrary, it is a poor use of resources that could be put toward crime prevention and community-building.

## **UNDERLYING CAUSES OF EXTREME PUNISHMENT: RACE, ETHNICITY, GENDER, AND CRIME OF CONVICTION**

In the United States, people of color, especially Black men, are disproportionately represented in the criminal justice system.<sup>6</sup> State prisons incarcerate African Americans at more than five times the rate of whites. In Vermont, 9 percent of the state's prison population is Black compared to 1 percent of the general population.<sup>7</sup>

Racial disproportionality exists among life or virtual life-sentenced prisoners as well. At the national level, one in five African American prisoners is serving life in prison or de facto life; in Vermont it is one in six.

Most people serving life sentences in the United States are men; three percent are female. In Vermont, six percent of people serving life are women, twice the national average.

Nationally, 59 percent of people serving life and de facto life committed a murder and 91 percent have been convicted of a violent crime. In Vermont, the majority (64 percent) has been convicted of a murder, but a greater proportion has been convicted of a nonviolent offense (17 percent) than the 6.8 percent average for all states.<sup>8</sup>

## **RECOMMENDATIONS**

### **End Life without Parole**

Ending life without parole would position Vermont as a national leader in addressing structural racism and excessively long prison sentences that contribute to mass incarceration. Vermont is among several jurisdictions, including Massachusetts, New York, Pennsylvania, and Washington DC, that are considering proposals that improve parole practices for life sentenced prisoners and others serving long prison terms.

### **Improve the Process of Parole**

Many parole boards either through policy or practice take it upon themselves to incorporate the severity of the crime into the decision to grant or deny parole, a

practice which amounts to re-litigating the case. Most parole systems rely heavily on the crime of conviction in deliberating the parole decision. Prioritizing an individual's in-prison record and demonstrated effort of rehabilitation must guide parole decisions.

### **Authorize 20-Year Maximum Sentence**

Lawmakers should establish an upper limit of 20 years in prison as a maximum penalty. After twenty years in prison most people will be rehabilitated and can return home safely. Time-appropriate prison terms are grounded in humanitarian and public-safety concerns. Life sentences deprive the person of the chance to turn his or her life around. Moreover, it is well-established through viewing crime trends over time that the vast majority of people "age out" of crime.

## ENDNOTES

1. Ghandnoosh, N. (2021). Can we wait 60 years to cut the prison population in half? The Sentencing Project.
2. ACLU of Vermont. (2021). ACLU Urges Vermont Supreme Court to Rule for Transparency in Prison Records Case
3. Cauffman, E. & Steinberg, L. (2000). (Im)maturity of judgment in adolescence: Why adolescents may be less culpable than adults. *Behavioral Sciences and the Law*, 18(6), 741-760; Scott, E., & Steinberg, L. (2010). Rethinking juvenile justice Boston: Harvard University Press; Steinberg, L. & Scott, E. (2003). Less guilty by reason of adolescence: Developmental immaturity, diminished responsibility, and the juvenile death penalty. *American Psychologist*, 58(12), 1009-1018.
4. Nagin, D. (2013). Deterrence: A review of the evidence by a criminologist for economists. *American Review of Economics* 5, 83-105.
5. Von Hirsch, A et al (1999) "Criminal Deterrence and Sentence Severity: An Analysis of Recent Research," Oxford: Hart Publishing.
6. Nellis, A. (2021). The Color of Justice: Racial and Ethnic Disparity in State Prisons. Washington, DC: The Sentencing Project.
7. Ibid.
8. Vermont Department of Corrections. (2021). *Daily incarceration report as of December 27, 2021*.



**THE  
SENTENCING  
PROJECT**

RESEARCH AND ADVOCACY FOR REFORM

1705 DeSales Street NW, 8th Floor  
Washington, D.C. 20036

[sentencingproject.org](http://sentencingproject.org)

This fact sheet was created by Senior Director of Advocacy, Nicole D. Porter, and Senior Research Analyst, Ashley Nellis.  
Published February 2022.

The Sentencing Project promotes effective and humane responses to crime that minimize imprisonment and criminalization of youth and adults by promoting racial, ethnic, economic, and gender justice.