



**Testimony of
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**On An Act For Second Look of
2023, HB3955**

Before the Massachusetts
Legislature, Joint Committee on the
Judiciary

September 26th, 2023

I'm Nazgol Ghandnoosh, Co-Director of Research at The Sentencing Project. In 2021, I authored a report examining a powerful tool to curb mass incarceration and its racial disparities: second look policies that enable extreme sentences to be re-evaluated.¹ I want to share with you some of the empirical and legal support for second look reforms, which has grown since the publication of that report. I am very pleased that the Massachusetts legislature is now considering becoming part of this growing movement and I strongly urge you to pass HB3955, a Second Look Act which would allow people age 25 years or younger at the time of their offense to petition for resentencing after 10 to 15 years of imprisonment, depending on the crime, and allow others to do the same after 12 to 18 years of imprisonment.

RACIAL JUSTICE

Ending mass incarceration and tackling its racial disparities require taking a second look at long sentences. Nationwide, nearly one in every five people in US prisons have already served at least 10 years, based on data from 2019.² In Massachusetts, the rate was even higher, with nearly one-quarter of the prison population having served at least 10 years.³

Re-evaluating lengthy sentences is a racial justice issue because while Black Americans are vastly over-represented in the prison population, this disparity widens among those serving lengthy sentences. In 2019, Black Americans represented 14% of the total U.S. population, 33% of the total prison population, and 46% of the prison population who had already served at least 10 years.⁴

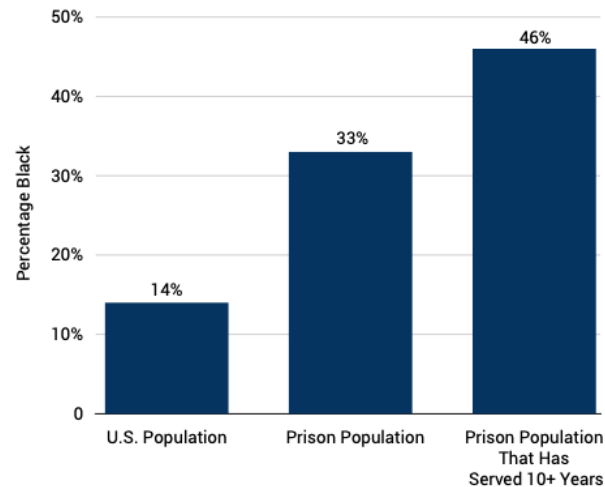
¹ Ghandnoosh, N. (2021). [A second look at injustice](#). The Sentencing Project.

² Ghandnoosh, N., & Nellis, A. (2023) [How many people are spending over a decade in prison?](#) The Sentencing Project.

³ Ghandnoosh & Nellis (2023). See note 2.

⁴ Ghandnoosh & Nellis (2023). See note 2.

Representation of Black Americans in U.S. and Prison Populations, 2019



Sources: U.S. Census Bureau, 2019 American Community Survey 1-Year Estimates; Carson, E.A. (2020). Prisoners in 2019. Bureau of Justice Statistics; United States Department of Justice, Bureau of Justice Statistics. *National Corrections Reporting Program, 1991-2019: Selected Variables*. Inter-university Consortium for Political and Social Research [distributor], 2021-07-15.

In other words, racial disparities in incarceration grow with sentence length. Research by my colleague Ashley Nellis has found that nationwide, two-thirds of people serving life sentences are people of color and 55% of those serving parole-ineligible life sentences are Black.⁵

In recognition of facts like these, the National Academies of Sciences, Engineering, and Medicine, in its latest report on reducing racial inequality in crime and justice, has recommended scaling back lengthy sentences and specifically identified second-look laws as an important tool for achieving this goal (emphasis added):⁶

Subject to the main goals of parsimony and community safety, states, localities, and the federal government should explore ways to reduce police stops and searches, jail detention, prison admissions, and **long sentences**, which would further reduce racial disparities. Examples of such efforts could include limiting jail detention to only those charged with serious crimes who pose a serious and immediate risk of harm or flight, pursuing further drug sentencing reform, **establishing second-look provisions for**

⁵ Nellis, A. (2021a). [No end in sight: America's enduring reliance on life imprisonment](#). The Sentencing Project.

⁶ Muhammad, K. G., Western, B., Negussie, Y., & Backes, E. (Eds.) (2022). [Reducing racial inequality in crime and justice: science, practice, and policy](#). National Academies of Sciences, Engineering, and Medicine.

long sentences, eliminating revocations of community supervision for technical violations, and eliminating the death penalty.

Preventing crime victimization is also a racial justice issue, because Black Americans are more likely than whites to become victims of serious violent crime.⁷ This is another reason to pass this law, to help redirect our resources and efforts towards effective policies that can actually prevent future victimization,⁸ and away from laws that keep people imprisoned when they no longer pose a public safety risk.

As I once heard Reverend Vivian Nixon, former Executive Director of College & Community Fellowship in New York City say: “The quality of the solution depends on who is impacted by the problem.”⁹ You now have an opportunity to help end the double harm imposed on communities of color, which bear both the burden of higher rates of serious violent crime and the suffering of excessive prison sentences which fail to promote public safety.

CRIMINOLOGICAL RESEARCH

Criminological research establishes that lengthy sentences are at odds with best practices for advancing public safety. A number of research approaches have shown that lengthy prison terms incarcerate people who no longer pose a public safety risk.¹⁰

One line of inquiry has studied recidivism among people released from prison and found significantly lower recidivism rates among people who have served longer than six to 10 years compared to those who have served shorter sentences, likely because they have aged out of criminal activity. For example, using a broad definition of recidivism (rearrest), the United

⁷ Muhammad et al. (2022), see note 6; see also Thompson, A., & Tapp, S. (2022). [Criminal Victimization, 2021](#). Bureau of Justice Statistics.

⁸ Komar, L., & Porter, N. (2023). [Ending mass incarceration: Safety beyond sentencing](#). The Sentencing Project; Mendel, R. (2023). [Effective alternatives to youth incarceration](#). The Sentencing Project; John Jay College Research Advisory Group on Preventing and Reducing Community Violence. (2020). [Reducing violence without police: A review of the research evidence](#). John Jay College of Criminal Justice; Sebastian, T., et al. (2022) [A new community safety blueprint: How the federal government can address violence and harm through a public health approach](#). Brookings; Doleac, J. (2018). [New evidence that access to health care reduces crime](#). Brookings.

⁹ Nixon, V. D. (2015, September 24). Keynote address at inaugural conference: From mass incarceration to effective and sustainable decarceration. Washington University in St. Louis.

¹⁰ Kazemian, L., & Farrington, D. P. (2018). Advancing knowledge about residual criminal careers: A follow-up to age 56 from the Cambridge Study in Delinquent Development. *Journal of Criminal Justice*, 57, 1-10. <https://doi.org/10.1016/j.jcrimjus.2018.03.001>; Prescott, J. J., Pyle, B., & Starr, S. B. (2020). Understanding violent-crime recidivism. *Notre Dame Law Review*, 95(4), 1643–1698; Levine, B., & Kettunen, E. (2014). [Paroling people who committed serious crimes: What is the actual risk?](#) Citizens Alliance on Prisons and Public Spending.

States Sentencing Commission found that people who had served at least 10 years in federal prison had a reoffending rate that was 29% lower than similarly situated individuals who received shorter sentences.¹¹ When the Bureau of Justice Statistics examined recidivism rates for people with violent convictions released from state prisons, it found that those who had served more than six years were 25% less likely to recidivate than those who had served one year.¹² Finally, studies of people released after decades of imprisonment for the most serious crimes have found extremely low recidivism rates, meaning that these individuals have been imprisoned until they pose a fraction of the recidivism risk of those released from shorter sentences.¹³ These studies support reassessing prison terms within the decade mark. They do not support maintaining or increasing shorter prison terms.¹⁴ In fact, a number of studies have found that community supervision produces better public safety outcomes than shorter terms of imprisonment.¹⁵

Another approach has been to follow the same group of individuals over time to determine the duration of their “criminal careers.” These studies have found that most people who commit crime desist from criminal offending within four to 12 years after they begin.¹⁶ In their long-duration study of British men up to age 56, Lila Kazemian and David Farrington found among those who were convicted more than once, desistance typically took 16 years, and included convictions that would not merit incarceration.¹⁷ Based on this evidence, they concluded: “The harsher sentences ... imposed on individuals convicted of violent offenses may serve a retributive purpose, but they are not justified by recidivism data or by our analyses of residual criminal careers.”¹⁸ In addition, scholars examining the likelihood of

¹¹ United States Sentencing Commission. (2022). [Length of incarceration and recidivism \(2022\)](#); United States Sentencing Commission. (2020). [Retroactivity & recidivism: The Drugs Minus Two Amendment](#).

¹² Antenangelo, L., & Durose, M.R. (2021). [Recidivism of prisoners released in 24 states in 2008: A 10-year follow-up period \(2008–2018\)](#). Bureau of Justice Statistics.

¹³ Nellis, A. (2021b). [A new lease on life](#). The Sentencing Project.

¹⁴ For example, see United States Sentencing Commission. (2014). [Recidivism among offenders receiving retroactive sentence reductions: The 2007 Crack Cocaine Amendment](#).

¹⁵ Petrich, D. M., Pratt, T. C., Jonson, C. L., & Cullen, F. T. (2021). Custodial sanctions and reoffending: A meta-analytic review. *Crime and Justice*, 50(1), 353–424. <https://doi.org/10.1086/715100>; Loeffler, C. E., & Nagin, D. S. (2022). The impact of incarceration on recidivism. *Annual Review of Criminology*, 5(1), 133–152. <https://doi.org/10.1146/annurev-criminol-030920-112506>

¹⁶ Kazemian, L. (2021). [Pathways to desistance from crime among juveniles and adults: Applications to criminal justice policy and practice](#). National Institute of Justice; Blumstein, A., & Piquero, A. (2007). Restore rationality to sentencing policy. *Criminology & Public Policy*, 6(4), 679–687. <https://doi.org/10.1111/j.1745-9133.2007.00463.x>; Piquero, A., Hawkins, J., & Kazemian, L. (2012). Criminal career patterns. In R. Loeber & D. P. Farrington (Eds.), *From juvenile delinquency to adult crime: Criminal careers, justice policy, and prevention* (pp. 14–46). New York, NY: Oxford University Press.

¹⁷ Kazemian & Farrington (2018), see note 10.

¹⁸ Kazemian & Farrington (2018), note 10, p. 9.

being arrested after a period of time had passed since a prior arrest¹⁹ have found that people with records pose the same public safety risk as others within seven to eight years after their last arrest, or less time for some offenses.²⁰

These findings correspond with research on the age-crime curve, which measures the proportion of individuals in various age groups who are engaged in criminalized activity. Arrest trends between 1980 and 2010 reveal that for a range of offenses, including robbery and murder, criminal offending peaked around the late teenage years or early 20s, then began a gradual decline in the early 20s.²¹ The fact that this pattern holds true for violent crimes is notable because over half (58%) of people in state prisons in 2019 had violent convictions.²² This proportion was even higher among those sentenced to 10 years or longer (76% had violent convictions) and those who had already served 10 years (89% had violent convictions).²³

Finally, long sentences also fail to effectively deter crime. As Daniel Nagin, professor at Carnegie Mellon University and a leading national expert on deterrence has written: "Increases in already long prison sentences, say from 20 years to life, do not have material

¹⁹ Often referred to as "hazard rates."

²⁰ For example, a study of 18 year olds who were arrested for robbery in New York in 1980 found that after staying arrest-free for 7.7 years, they were no more likely to be arrested for any crime than the general population. For those initially arrested for aggravated assault, the "redemption time," as the authors call it, was even shorter: 4.3 years. (Incarceration after first arrest, the authors explain, occurred in 10% of the robbery cases examined and excluding these individuals from the study did not significantly change the findings.) Blumstein, A., & Nakamura, K. (2009). Redemption in the presence of widespread criminal background checks. *Criminology*, 47(2), 327-359, p. 343. <https://doi.org/10.1111/j.1745-9125.2009.00155.x>; see also Kurlychek, M. C., Brame, R., & Bushway, S. D. (2006). Scarlet letters and recidivism: Does an old criminal record predict future offending? *Criminology & Public Policy*, 5, 483–503. <https://doi.org/10.1111/j.1745-9133.2006.00397.x>; Kurlychek, M., Brame, R., & Bushway, S. D. (2007). Enduring risk? Old criminal records and predictions of future criminal involvement. *Crime & Delinquency*, 53(1), 64–83. <https://doi.org/10.1177/0011128706294439>

²¹ Peak arrest levels for young people have dramatically fallen in recent years. Loeber, R., & Farrington, D. (2014). Age-crime curve. Bruinsma & D. Weisburd (Eds.), *Encyclopedia of Criminology and Criminal Justice*. Springer, pp. 12–18; Neil, R., & Sampson, R. (2021). The birth lottery of history: Arrest over the life course of multiple cohorts coming of age, 1995–2018. *American Journal of Sociology*, 126(5), 1127–1178. <https://doi.org/10.1086/714062>

²² Carson, E.A. (2021). *Prisoners in 2020 – Statistical tables*. Bureau of Justice Statistics.

²³ Specifically, the violent convictions of those who had served 10 years or more were: murder (representing 39% of all who had served this length of time), rape/sexual assault (20%), robbery (13%), aggravated or simple assault (12%), negligent manslaughter (1%), and other violent crimes (4%). The violent convictions of those sentenced to 10 years or more were: murder (23% of all who had sentences of this length), rape/sexual assault (20%), robbery (14%), aggravated or simple assault (13%), negligent manslaughter (2%), and other violent crimes (4%). United States Department of Justice, Bureau of Justice Statistics. *National Corrections Reporting Program, 1991-2019: Selected Variables*. Inter-university Consortium for Political and Social Research [distributor].

deterrent effects on crime."²⁴ Long sentences do little to discourage crime because most people do not expect to be apprehended for a crime, are not familiar with relevant legal penalties, or commit crime with their judgment compromised by substance use or mental health problems.²⁵ And as Berkeley Law professor Jonathan Simon has noted, many violent acts are responsive to situational factors and circumstances, necessitating a broader approach to crime prevention.²⁶

LEGAL EXPERTS

Based on the prevailing evidence, several leading legal associations and experts recommend reassessing the necessity of imprisonment for all after 10 to 15 years. The American Bar Association's policymaking body, the House of Delegates, urges lawmakers to authorize courts to take a "second look" at criminal sentences after 10 years of imprisonment.²⁷ Over 60 elected prosecutors and law enforcement leaders have called for second look legislation, with several prosecutors' offices having launched sentence review units.²⁸

The American Law Institute, a nonpartisan group of leading legal practitioners and scholars who strive to clarify and modernize U.S. laws through its Model Penal Code, recommends that all prison sentences be reviewed within 10 years for youth convictions, and after 15 years for crimes by adults, so that sentences reflect our "evolving norms...and knowledge base."²⁹

University of Minnesota Law School Professor Kevin Reitz, who documented the deliberations behind the Model Penal Code, joined national parole experts Edward Rhine and the late Joan

²⁴ Nagin, D. (2019, March 21). Guest post: Reduce prison populations by reducing life sentences. *Washington Post*. <https://www.washingtonpost.com/crime-law/2019/03/21/guest-post-reduce-prison-populations-by-reducing-life-sentences/>; Durlauf, S., & Nagin, D. (2011). Imprisonment and crime: Can both be reduced? *Criminology and Public Policy*, 10(1), 13–54.

²⁵ Robinson, P., & Darley, J. (2004). Does criminal law deter? A behavioural science investigation. *Oxford Journal of Legal Studies*, 24(2), 173–205.

²⁶ Simon, Jonathan. (2011). *Drugs are not the (only) problem: Structural racism, mass imprisonment, and the overpunishment of violent crime*. The Aspen Institute, p. 145. <https://www.aspeninstitute.org/wp-content/uploads/files/content/docs/pubs/Race-Crime-Punishment.pdf>

²⁷ Robert, A. (2022, August 8). [ABA provides 10 principles for ending mass incarceration and lengthy prison sentences](#). *ABA Journal*.

²⁸ Fair and Justice Prosecution. (2021, April). *Joint statement on sentencing second chances and addressing past extreme sentences* [Press release].

<https://fairandjustprosecution.org/wp-content/uploads/2021/04/FJP-Extreme-Sentences-and-Second-Chances-Joint-Statement.pdf>

²⁹ American Law Institute. (2021). *Model Penal Code: Sentencing*. Prepublication Draft, p. 802.

Petersilia in recommending that resentencing reviews begin after 10 years of imprisonment.³⁰ He explained that the main disagreement within the American Law Institute over the 15-year recommendation was whether it should be shorter, with some advocating for five years.³¹

THE SENTENCING PROJECT’S RECOMMENDATIONS

A few ways to make this second look bill even stronger—i.e., more closely aligned with criminological evidence and responsive to the constraints of the criminal legal system—are to institute an automatic sentence review process within a maximum of 10 years of imprisonment, regardless of the offense, with a rebuttable presumption of resentencing. Subsequent hearings should occur within a maximum of two years. Legal counsel should be appointed to represent individuals through the resentencing process.

In addition, The Sentencing Project recommends anticipating and intentionally monitoring and addressing racial and other disparities in resentencing. Discretionary resentencing decisions may be impacted by the race and other characteristics—such as educational level, mental health status, and gender—of the incarcerated individual or their victim. For example, disparities in both sentencing and in-prison discipline driven by racial bias will impact eligibility for resentencing and must therefore be accounted for in any resentencing policy, practice, or law.

A GROWING MOVEMENT

“There comes a point where you really have to ask yourself if we have achieved the societal end in keeping these people in prison for so long,” Senator Cory Booker said in 2016.³² In 2019, and again last year, he introduced the Second Look Act, which would allow people who have spent at least 10 years in federal prison to petition a court to take a second look at their sentence, enabling judges to determine whether they are eligible for a sentence reduction or release.³³

³⁰ Rhine, E. E., Petersilia, J., & Reitz, R. 2017. The future of parole release. In Tonry, M. (Ed.), *Crime and Justice*, Vol. 46 (pp. 279-338).

³¹ American Law Institute (2021), see note 29.

³² Lopez, G. (2016, May 17). *Cory Booker: Senate bill is “in my lifetime the first reversal of mass incarceration.”* Vox. <https://www.vox.com/2016/5/17/11661858/cory-booker-criminal-justice-reform>

³³ The bill also proposed creating a rebuttable presumption of release for petitioners aged 50 or older, shifting the burden to the government to demonstrate why the individual should remain imprisoned. See: Office of Cory Booker. (2019, July 15). *Booker, Bass to introduce groundbreaking bill to give “second look” to those behind bars*

Washington, DC's own legislature is a pioneer on this issue, with a second look law that allowed people who committed crimes under age 25 to petition for resentencing after 15 years of imprisonment. Like Massachusetts's second look bill, DC's law reflects the irrefutable evidence that the younger age of emerging adults contributes to their diminished capacity to comprehend the risk and consequences of their actions.³⁴ Over 150 people have been released from prison as a result of this reform and many have become leaders and pillars in our community, including my colleague Warren Allen. By now, dozens of states have passed or are considering some kind of second look law.³⁵

I hope that you will recognize the scientific and moral underpinning of this reform and pass this important second look bill.

[Press release]. <https://www.booker.senate.gov/news/press/booker-bass-to-introduce-groundbreaking-bill-to-give-and-ldquoosecond-look-and-rdquo-to-those-behind-bars>; Second Look Act of 2022, S. 5193, 117th Cong. (2022). <https://www.congress.gov/bill/117th-congress/senate-bill/5193/text/is?overview=closed&format=txt>

³⁴ Nellis, A., & Monazzam, N. (2023). [*Left to die in prison: Emerging adults 25 and younger sentenced to life without parole*](#). The Sentencing Project.

³⁵ Second Look Network. (n.d.) *Second look laws*. Retrieved September 26, 2023 from <https://secondlooknetwork.org/page/laws>; Famm. (2023, September 18). *Pending second chances legislation*. Retrieved September 26, 2023 from https://docs.google.com/spreadsheets/d/13a-FuNUNGaphzq-GsAd8E54veaZhU_nWkmh2gxy-iCs/edit#gid=0