



**Testimony of Nazgol
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**On the Second Look Sentencing
Act, House Bills 4566 - 4560**

Before the Michigan House Criminal
Justice Committee

March 19, 2024

Established in 1986, The Sentencing Project advocates for effective and humane responses to crime that minimize imprisonment and criminalization of youth and adults by promoting racial, ethnic, economic, and gender justice.

I am Nazgol Ghandnoosh, Co-Director of Research at The Sentencing Project. I have been researching criminal legal issues for 14 years, with a focus on extreme sentences and reforms that seek to scale them back, as well as on racial disparities in sentencing, and national trends in decarceration. I have published numerous articles and chapters in academic and professional journals and books, and authored many reports published by The Sentencing Project. It is my pleasure today to appear before the Michigan House Judiciary Committee to offer my testimony in support of House Bills 4556 - 4560.

Criminologists have identified four main purposes of incarceration: deterrence, rehabilitation, incapacitation, and retribution. Criminological research has also established that lengthy prison sentences do not advance these goals and are in fact counterproductive because they divert limited resources from more effective investments in community safety.

Reviewing the sentences of those incarcerated for 10 years or longer, as House Bills 4556 - 4560 would allow, is a data-driven public safety approach which would help Michigan make a much-needed course correction. While Michigan has achieved a 38% decline in its prison population since 2006, the state's sentencing policies still result in excessive prison terms.¹ Michigan is among only 12 states where two-thirds or more of the prison population are serving sentences of at least a decade.² Almost one-third of Michigan's prison population has already served at least 10 years—a higher proportion than the national average.³ Given that racial disparities increase with sentence length, House Bills 4556 - 4560 would also set Michigan towards a path of correcting the disproportionate imposition of lengthy sentences on its Black citizens.⁴ I urge you to advance these bills.

¹ Ghandnoosh, N. (2023). [*Ending 50 years of mass incarceration: Urgent reform needed to protect future generations*](#). The Sentencing Project.

² Ghandnoosh, N. & Nellis, A. (2022) [*How many people are spending over a decade in prison?*](#) The Sentencing Project.

³ Nellis, A. (2023). [*A second look at long-term imprisonment In Michigan*](#). The Sentencing Project.

⁴ Nellis (2023), see note 3.

National Organizations Have Called for Second Look Laws and a Growing Number of States are Pursuing These Reforms

A growing number of states have created second-look resentencing opportunities. Six states—Connecticut, Delaware, Maryland, Oregon, Florida and North Dakota—and the District of Columbia allow for an incarcerated person to ask the court to reconsider a sentence in many instances. These second look laws go beyond resentencing opportunities created in response to the 2012 U.S. Supreme Court holding in *Miller v. Alabama*, which narrowed life without parole sentences for youth under age 18. Five states—California, Illinois, Minnesota, Oregon, and Washington—have enacted prosecutor-initiated resentencing laws that allow prosecutors to ask the court to reconsider a sentence. Oklahoma is poised to become the fourth state to pass a domestic violence survivor resentencing bill, after New York, Illinois, and California. This reform creates a trauma-informed resentencing process for crime survivors—disproportionately women and members of the LGBTQ community—who have suffered intimate partner violence, family abuse, and trafficking.⁵ These second look reforms, which states including New York and California have shown are not stymied by truth-in-sentencing laws, bring states closer to criminological evidence and the recommendations of legal experts.

Multiple national organizations have called for the passage of second look laws for all ages, regardless of the conviction, in order to reduce excessively long sentences:

- The **American Bar Association** adopted Resolution 502 that urges governments to enact legislation permitting courts to take a second look at incarcerated people after no more than 10 years of their sentence.⁶
- The **American Law Institute’s Model Penal Code** recommends that states adopt a second look judicial process that would include sentence review after 10 years of incarceration for youth who committed their offense under age 18 and after 15 years of imprisonment for others.⁷ University of Minnesota law professor Kevin Reitz, who

⁵ Komar, L., et al. (2023). [Sentencing reform for criminalized survivors: Learning from New York’s Domestic Violence Survivors Justice Act](#). *The Sentencing Project*.

⁶ American Bar Association (2022). [Resolution 502](#).

⁷ American Law Institute (2017). *Model Penal Code: Sentencing, Proposed Final Draft*, p. 644, 681.

led the Model Penal Code revisions, explained: “Where there was disagreement over the 15-year provision, it came from proponents of significantly shorter periods, such as 10 or even 5 years.”⁸

- **Fair and Just Prosecution** issued a statement signed by over 60 current and former elected prosecutors and law enforcement leaders that recommends a sentence review after “15 years or more” of incarceration for middle-aged and elderly incarcerated people.⁹

Lengthy Sentences Lead to the Incarceration of Many People Who No Longer Pose a Public Safety Risk

One way that incarceration is intended to promote public safety is by rehabilitating people who pose a risk to our communities, and by incapacitating them until they can safely return home. Lengthy sentences incarcerate many people well past this point, producing diminishing returns on incarceration.

A number of criminological 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 States Sentencing Commission found that people who had served at least 10 years in federal prison had a reoffending rate

American Law Institute (2017). [Model Penal Code: Sentencing §305.6 – Modification of long-term prison sentences; Principles for legislation](#). See also Reitz, K. (2017, June 7). [New Model Penal Code for criminal sentencing: Comprehensive reform recommendations for state legislatures](#).

⁸ American Law Institute. (2021). *Model Penal Code: Sentencing*. Prepublication Draft, p. 802.

⁹ Fair & Just Prosecution (2021, April). [Joint statement on sentencing second chances and addressing past extreme sentences](#). [Press Release.]

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; 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.

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.

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.¹⁴ 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.¹⁵ 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.”¹⁶ In addition, scholars examining the likelihood of being arrested after a period of time had passed since a prior arrest have found that people

¹¹ The Commission also found that the retroactive application of the Drugs Minus Two Amendment, reducing average sentences from 146 months to 121 months resulted in no change in recidivism. United States Sentencing Commission. (2022). [Length of incarceration and recidivism \(2022\)](#); United States Sentencing Commission. (2020). [Retroactivity & recidivism: The Drugs Minus Two Amendment](#).

¹² Antenangeli, 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. (2021). [A new lease on life](#). The Sentencing Project.

¹⁴ See 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; 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.

¹⁵ Kazemian & Farrington (2018), see note 10.

¹⁶ Kazemian & Farrington (2018), see note 10, p. 9.

with criminal records pose the same public safety risk as others within seven to eight years after their last arrest, or less time for some offenses.¹⁷

These findings correspond with research on the age-crime curve, which measures the proportion of individuals in various age groups who engage in crime. 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.¹⁸ The fact that this pattern holds true for violent crimes is notable because well over half (63%) of people in state prisons in 2021 had violent convictions.¹⁹ 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).²⁰

¹⁷ 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; 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; 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.

¹⁸ 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.

¹⁹ Carson, E. A., Kluckow, R. (2023). [Prisoners in 2022 – Statistical tables](#). Bureau of Justice Statistics.

²⁰ 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*

Lengthy Sentences Have a Limited Deterrent Effect

In addition to incapacitating people when they no longer pose a criminal threat, long sentences also fail to deter others from criminal activity. As Daniel Nagin, professor of public policy and statistics at Carnegie Mellon University and a leading national expert on deterrence, writes: “Increases in already long prison sentences, say from 20 years to life, do not have material deterrent effects on crime.”²¹ Research has found that long sentences are limited in deterring future crimes 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.²²

The expectation of getting away with crime, even violent crime, is not unreasonable, given FBI data showing that police “clear” fewer than two-thirds of murders (arresting a suspect), with the clearance rate for reported rapes falling to one-third.²³ These low clearance rates are a key reason that criminologists emphasize that the *certainty* of punishment is a more effective deterrent than its *severity*.²⁴ Nagin’s survey of research on this issue with University of Chicago professor Steven Durlauf concludes: “For the general incarceration of aged criminals to be socially efficient, it must have a deterrent effect on younger criminals ... Simply no reliable evidence is available that such an effect is sufficiently large to justify the costs of long prison sentences.”²⁵

Corrections Reporting Program, 1991-2019: Selected Variables. Inter-university Consortium for Political and Social Research [distributor].

²¹ Nagin, D. (2019, March 21). [Guest post: Reduce prison populations by reducing life sentences.](#) *Washington Post*.

²² Robinson, P., & Darley, J. (2004). Does criminal law deter? A behavioural science investigation. *Oxford Journal of Legal Studies*, 24(2), 173–205.

²³ Federal Bureau of Investigation. (2019). [Crime in the United States, 2019: Percent of offenses cleared by arrest or exceptional means by population group.](#) Department of Justice, Table 25.

²⁴ National Institute of Justice. (2016). [Five things about deterrence.](#) U.S. Department of Justice.

²⁵ Durlauf, S., & Nagin, D. (2011). Imprisonment and crime: Can both be reduced? *Criminology and Public Policy*, 10(1), 13–54, p. 38.

Extreme Sentences Achieve More Retribution Than Many Victims Want, and More Than Society Should Impose

Incarceration is also designed to achieve the goal of retribution, even if the incarcerated individual is no longer a public safety risk. Some amount of retribution may be desirable to some crime victims and to society as a whole. But as policymakers it's important for you to understand two ways that extreme sentences offer too much retribution.

First, victims and survivors are not monolithic and harmed individuals sometimes begin and move towards different views regarding just punishment for their suffering. As Douglas Berman, Law Professor at Ohio State University, has acknowledged, "Victim interests may not always run toward treating sentences as ... final."²⁶ For some crime survivors like Jeanne Bishop, who lost three family members to murders committed by a teenager, "An alternative type of 'finality' exists.... It happens when the work of punishment, penitence, remorse and rehabilitation is complete, and a young offender can re-enter society."²⁷

Crime survivors sometimes describe a transformation in their views, as can be seen among high-profile survivors who once advocated for severe penalties but are now working to undo their impact. This includes Samantha Broun, who now advocates in favor of second chances for people with life sentences. Broun testified for stronger restrictions on release from prison in 1995, after her mother was the victim of a violent crime perpetrated by a man whose murder sentence had been recently commuted. Broun has since expressed discomfort that people are still behind bars because of policy changes made in the wake of her mother's victimization.²⁸ Another such advocate is Patty Wetterling, who lobbied for registering individuals convicted of sex-related offenses after her son's abduction in 1989, but has since become a vocal critic of registries. Wetterling told *American Public Media* in 2016, "Locking them up forever, labeling them, and not allowing them community support doesn't work. I've

²⁶ Berman, D. (2014). Re-balancing fitness, fairness, and finality for sentences. *The Wake Forest Journal of Law & Policy*, 4(1), 151-177, p. 175.

²⁷ Bishop, J. (2015). A victims' family member on juvenile life without parole sentences: "Brutal finality" and unfinished souls. *DePaul Journal for Social Justice*, 9(1), 85-92, p. 92.

²⁸ Broun, S., & Allison, J. (2016, December 9). *20 years later*. This American Life. <https://www.thisamericanlife.org/604/20-years-later>; DiFilippo, D. (2016, November 1). *Stepping back from vengeance; seeking reformative justice*. WHY. <https://why.org/articles/stepping-back-from-vengeance-seeking-reformative-justice/>

turned 180 (degrees) from where I was.”²⁹ Delivering the keynote speech at the Mitchell Hamline School of Law’s symposium on residency restrictions and registries, she voiced concern over the effectiveness and harms caused by a policy for which she once advocated.

For reasons like these, Michigan survivors of violent crime, including Nabil Zebib, emphasize the diversity of views among this community regarding appropriate punishment.

Second, as policymakers you are trusted to uphold the societal value of not inflicting too much retribution. Ultimately, some people impacted by violent crime will object to resentencing even if resentencing does not pose a public safety risk. Often, survivors’ limited contact during incarceration with the individual who caused them harm leaves them ill-prepared to assess risk of future violence, especially in cases resulting in long sentences.³⁰ When the desire for additional punishment is far beyond what is needed to achieve public safety, it is worth noting, as Danielle Sered has observed:

A survivor-centered system is not a survivor-ruled system. Valuing people does not mean giving them sole and unmitigated control. The criminal justice system maintains a responsibility to safety, justice, and human dignity that it should uphold even when those interests run contrary to survivors’ desires.³¹

As Sered explains, in these situations the criminal legal system remains obliged to listen to survivors, to be transparent about the decision making process, and to connect them with support.

Punishment imposed by the criminal legal system is intended, in part, to displace personal acts of retaliation by survivors. But governments undertake this retribution within a scaffolding of rights and norms that is intended to ensure fairness and justice. This includes

²⁹ Baran, M., & Vogel, J. (2016, October 4). *Sex-offender registries: How the Wetterling abduction changed the country*. APM Reports. <https://www.apmreports.org/story/2016/10/04/sex-offender-registries-wetterling-abduction>; Wetterling, P. (2019, February 28). Keynote speech: Spring 2019 symposium -- Residency restriction: Wise or unwise? Mitchell Hamline School of Law. <https://mitchellhamline.edu/sex-offense-litigation-policy/2019/03/20/spring-2019-symposium-residency-restrictions-wise-or-unwise/>

³⁰ Rhine, E. E., Petersilia, J., & Reitz, R. (2015). Improving parole release in America. *Federal Sentencing Reporter*, 28(2), 96-104.

³¹ Sered, D. (2017). [*Accounting for violence: How to increase safety and break our failed reliance on mass incarceration*](#). Vera Institute of Justice, p. 15

procedures to ensure that the person being punished is guilty, and laws restraining excessive punishment for their offense, such as the death penalty. After reinstating the death penalty in 1976, the Supreme Court narrowed the crimes and people for whom death could be sought in a series of cases responding to the “evolving standards of decency.”³² Long before this, Michigan abolished the death penalty and it is now among 23 states where the death penalty is prohibited,³³ even if some crime survivors or the family members of victims would prefer to have this option. Similarly, when states curb excessive terms of imprisonment that are counterproductive to public safety and are infused, to some degree, with racial bias, this can result in a sentence modification that conflicts with the wishes of some survivors. But ultimately, as Berman suggests, reconsidering initial sentences “may foster respect for a criminal justice system willing to reconsider and recalibrate the punishment harms that it imposes upon its citizens.”³⁴

Long Sentences Divert Resources From Effective Investments in Public Safety

Extreme sentences offer modest public safety gains and come at a high financial cost. Policymakers should consider how investments in lengthy prison terms de-emphasize more effective investments in public safety.

The Brookings Institute as well as John Jay College of Criminal Justice have created syntheses of research evidence on public health approaches to crime as guides for funding organizations, community leaders, and lawmakers.³⁵ Two reports from The Sentencing Project also highlight non-carceral social interventions for youth and adults to promote

³² Steiker, C. S., & Steiker, J. M. (2011, September 27). *Why death penalty opponents are closer to their goal than they realize*. The New Republic.

<https://newrepublic.com/article/95378/troy-davis-death-penalty-abolish>

³³ Death Penalty Information Center. (2024). *State by state*.

<https://deathpenaltyinfo.org/states-landing>

³⁴ Berman, D. (2014). Re-balancing fitness, fairness, and finality for sentences. *The Wake Forest Journal of Law & Policy*, 4(1), 151–177, p. 170.

³⁵ John Jay College Research Advisory Group on Preventing and Reducing Community Violence. (2020). [Reducing violence without police: A review of research evidence](#); Sebastian, T., Love, H., Washington, S., Barr, A., Rahman, I., Paradis, B., Perry, A. M., & Cook, S. (2023). [A new community safety blueprint: How the federal government can address violence and harm through a public health approach](#). Brookings.

community safety.³⁶ These initiatives and policies include providing universal access to effective drug treatment, investing in community-based violence prevention programs, reimagining crisis response, and expanding mentorship and therapeutic support for youth.

Efforts to implement effective strategies to advance community safety are well under way and have been met with much success—they must now be scaled up so that we have a system of mass crime prevention rather than mass incarceration.

³⁶ Porter & Komar (2023). [Ending mass incarceration: Social interventions that work](#). The Sentencing Project; Mendel, R. (2023). [Effective alternatives to youth incarceration](#). The Sentencing Project.