



NO END IN SIGHT

**AMERICA'S ENDURING
RELIANCE ON LIFE
IMPRISONMENT**



**THE
SENTENCING
PROJECT**

RESEARCH AND ADVOCACY FOR REFORM



RESEARCH AND ADVOCACY FOR REFORM

For more information, contact:

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

(202) 628-0871

sentencingproject.org
twitter.com/sentencingproj
facebook.com/thesentencingproject

This report was written by Ashley Nellis, Ph.D., Senior Research Analyst at The Sentencing Project. Savannah En, Research Fellow, provided significant research assistance for this report.

The Sentencing Project works for a fair and effective U.S. criminal justice system by producing groundbreaking research to promote reforms in sentencing policy, address unjust racial disparities and practices, and to advocate for alternatives to incarceration.

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FINDINGS AND RECOMMENDATIONS

Before America's era of mass incarceration took hold in the early 1970s, the number of individuals in prison was less than 200,000. Today, it's 1.4 million;¹ and more than 200,000 people are serving life sentences – one out of every seven in prison. More people are sentenced to life in prison in America than there were people in prison serving any sentence in 1970.

Nearly five times the number of people are now serving life sentences in the United States as were in 1984, a rate of growth that has outpaced even the sharp expansion of the overall prison population during this period.

The now commonplace use of life imprisonment contradicts research on effective public safety strategies, exacerbates already extreme racial injustices in the criminal justice system, and exemplifies the egregious consequences of mass incarceration.

In 2020, The Sentencing Project obtained official corrections data from all states and the Federal Bureau of Prisons to produce our 5th national census on life imprisonment.

KEY FINDINGS

- One in 7 people in U.S. prisons is serving a life sentence, either life without parole (LWOP), life with parole (LWP) or virtual life (50 years or more), totaling 203,865 people;
- The number of people serving life without parole – the most extreme type of life sentence – is higher than ever before, a 66% increase since our first census in 2003;
- 29 states had more people serving life in 2020 than just four years earlier;
- 30% of lifers are 55 years old or more, amounting to more than 61,417 people;
- 3,972 people serving life sentences have been convicted for a drug-related offense and 38% of these are in the federal prison system;
- More than two-thirds of those serving life sentences are people of color;
- One in 5 Black men in prison is serving a life sentence;
- Latinx individuals comprise 16% of those serving life sentences;
- One of every 15 women in prison is serving life;
- Women serving LWOP increased 43%, compared to a 29% increase among men, between 2008 and 2020;
- The population serving LWOP for crimes committed as youth is down 45% from its peak in 2016;
- 8,600 people nationwide are serving parole-eligible life or virtual life sentences for crimes committed as minors.

The unyielding expansion of life imprisonment in recent decades transpired because of changes in law, policy and practice that lengthened sentences and limited parole. The downward trend in violence in America that continues today was already underway when the country adopted its most punitive policies, including the rapid expansion of life sentences. The increase in life imprisonment and the growing extremity of our criminal legal system was largely driven by policies enacted in response to public fears about crime, often rooted in sensationalized media stories rather than the actual prevalence of violent crime in most communities.

Yet debate around the utility of long prison sentences often ends with the mention of violent crime, even though we know that life imprisonment does not make us safer. The vast majority of people “age out” of criminal conduct by adulthood. Lengthy prison terms hold people well after their risk of committing a new offense becomes minimal.

In this report, we reveal for the first time that 30% of the life-sentenced population is 55 or older. The imprisonment of an aging population has become a fiscal and humanitarian crisis the country must confront. The urgency of this crisis grows ever greater as the COVID-19 pandemic disproportionately jeopardizes the lives of older Americans in prison. Reoffending by persons released after serving long terms is rare, making the need for expediting releases for older lifers the only humane public health and public safety approach.

Racial and ethnic disparities plague the entire criminal justice system from arrest to conviction and is even more pronounced among those serving life sentences. One in 5 Black men in prison is serving a life sentence and two thirds of all people serving life are people of color. An abundance of scholarship finds evidence of racial and ethnic disparities resulting in harsher sentencing outcomes because of race. Elevated rates of Black and Latinx imprisonment are partly caused by higher levels of engagement in violent crime, but are worsened by the racially disparate impacts of heavy-handed policies initiated during the 1980s and 1990s.

Communities that are under-resourced and over-punished need greater investment in evidence-based solutions that interrupt crime at its root. Public investments for supporting youth, ensuring access to medical and mental health care, expanding living wage employment opportunities and ensuring affordable housing are a better use of public resources than lifelong imprisonment. Lengthening prison sentences produces diminishing returns on public safety and robs struggling communities with necessary resources to fend off violence in the first place.

Despite a growing awareness that ratcheting up prison sentences, not crime trends, fueled mass incarceration, many sentencing reform proposals fall short of addressing this head on. Indeed, changes directed at scaling back punishments for low-level and nonviolent

crimes are favored *because* they confront low-level and nonviolent crimes; this emphasis has had the unintended consequence of further legitimizing the utility of long-term imprisonment.

To reverse course on the nation’s 40-year prison buildup, we must scale back all punishments and evaluate individuals based on their current behavior and prospects for a crime-free life upon release. Since more than half of the people in prison are serving sentences for a crime of violence, we must not only reevaluate appropriate sanctions in response to violent crime, but also how to prevent violent crime in the first place.

Some states are beginning to address overly long prison terms through second-look legislation. In 2018, California passed a law to allow prosecutors to seek sentence modifications from judges if sentences are believed to be excessive. In 2020, the Council of the District of Columbia passed legislation that provides people who were under 25 at the time of their offense and sentenced to a long term, the chance to petition the court for resentencing and early release after 15 years. At the federal level, Senator Cory Booker of New Jersey introduced the Second Look Act in 2019 which would allow a federally incarcerated person to petition the court for a sentence modification after 10 years.

These are important first steps. More must be done.

RECOMMENDATIONS

Abolish Life Without Parole

Sentences of life without the possibility of parole (LWOP) are virtually unheard of in the rest of the world. They are considered antithetical to personal transformation, the primary goal of many other corrections systems. Even more, they violate fundamental principles of human dignity.² Instead of serving the interests of justice, LWOP unnecessarily burdens systems with the heavy cost of housing, feeding, and providing medical care for the more than 55,000 people. This disproportionately elderly population must live in institutions not well designed to care for them.

The elimination of LWOP will recalibrate all sentences underneath it. Public perceptions of incarceration minimize the negative impact of a 5- or 10-year sentence

on an individual when compared to the extremes of a life sentence. Creation of a more fair and just system depends on ending all extreme penalties.

Limit All Life Sentences to 20 Years Except in Rare Circumstances

As with the country's use of LWOP, virtually unheard of elsewhere in the world, imprisonment beyond 20 years is a predominantly American phenomenon. Life sentences have been part of the American criminal legal system for decades, but only in the age of mass incarceration have they become part of the mainstream. In order to sensibly confront extreme sentencing, reduce mass incarceration, and redistribute resources to communities that would benefit from robust crime prevention, we recommend a 20-year maximum for all life sentences. We arrive at this recommendation after witnessing the continued expansion of America's zeal for ever-harsher punishment while decades of practical experience, data, and social science support more restorative approaches.

If, after 20 years of imprisonment, it is clear that the individual continues to engage in conduct that would put the public at risk if they were released, a period of civil confinement could be considered by a court. Individuals potentially subjected to such confinement would be entitled to strict due process rights and legal representation. This is similar to the practice in Norway, often held as the gold standard in corrections. The goal here would still be rehabilitation and reintegration, not exclusion, and mandatory periodic review to assess readiness for release would continue.

Accelerate and Expand Release Opportunities

America suffers from a broken parole system, or in some jurisdictions, no parole system at all. In jurisdictions with parole, the review process is mired in political jockeying and often manipulates victim experiences to secure a parole denial. A just parole system would operate independently from the politics of the executive branch both in the ultimate decision to release an individual, as well as the composition of the parole board. The board should be composed of professionals with expertise in social work, psychology, the law, and corrections. Crime of conviction should not be the determining factor in the decision of the parole board. The focus of the parole

board hearing should be on the person's development while incarcerated, current public safety considerations, and identifying what supports are needed to ensure success after release.

States should also adopt "second look" policies that reconsider the appropriateness of continued incarceration given the passage of time and changed circumstances within the individual. Beginning this review at 10 or 15 years aligns the U.S. with the international community and the American Law Institute, a national nonpartisan body of legal experts. It should not take the corrections system more than 20 years to empower an individual with the skills necessary to live crime-free after release.

Reorient Victim and Community Involvement Toward True Healing

In its present orientation, the justice system — and prosecutors specifically — employ victim testimony from individuals at high risk of retraumatization in order to obtain tough sanctions for the defendant. Survivors are not provided with the tools and resources sufficient to cope with the emotional, physical, and financial effects of having experienced crime. A reorientation of the role of victims requires investing in restorative and community justice models that heal the harm caused by violence at their root, creating a system that is "survivor-centered, accountability-based, safety driven, and racially equitable."³ Experts in this space know that we are all safer when we uplift victims, hold everyone accountable for their actions, and do so with empathy and compassion; not assume victims or communities are well-served by long-term imprisonment.



NAOMI BLOUNT WILSON

Naomi Blount Wilson is a Commutations Specialist for the Pennsylvania Board of Pardons, the arm of the state that hears clemency pleas. She knows what's involved in going before the pardon board, having successfully done so in 2019 after serving 37 years of a life-without-parole (LWOP) sentence for a 1982 homicide in which she played an indirect role. Blount Wilson is one of only two women serving life whose sentences were commuted in the past two decades. Pennsylvania Lieutenant Governor John Fetterman hired Blount Wilson and another former lifer⁴ to assist as a liaison between his office and prisoners shortly after her release.

Photo Credit: Joshua Vaughn

INTRODUCTION

Life sentences are the lifeblood of mass incarceration.

Pennsylvania is a good place to begin a discussion about life sentences in America. The state is emblematic of the political gamesmanship that has been at play in administering justice and mercy for many decades. As a result, the state holds the second highest number of people serving life sentences – 8,242 individuals – both in the country and the world. Two thirds have no chance for release other than by a rare commutation by the governor. Entire prisons are devoted to housing lifers in Pennsylvania, a sentence frequently termed “death by incarceration.”

The commonplace use of life imprisonment in the U.S. places it at odds with practices in other industrialized nations. The United States incarcerates people for life at a rate of 50 per 100,000, roughly equivalent to the entire incarceration rates of the Scandinavian nations of Denmark, Finland, and Sweden.⁵ Fifteen percent of people in U.S. state and federal prison are serving life terms.

Life sentences are the lifeblood of mass incarceration, particularly given their dramatic growth in recent decades, and there are good reasons to eliminate the punishment entirely. Their mainstream use in the American justice system, having far exceeded the crimes for which they were once intended, deprives people of their dignity and perpetuates a system of extreme punishment across the entire sentencing spectrum.

Despite a natural impulse to believe that applying ever-harsher punishments will act as a deterrent, this is not the case. Most people considering whether to commit crime do not think they will be caught in the first place and have little knowledge of the severity of punishment for particular crimes. A sentence of 40 years will not deter a person any more so than a sentence of 20 years, especially if the individual does not believe he or she will even be caught. Certainty of apprehension, rather

than severity of punishment, is a more powerful influence on the decision to commit crime.⁶ Because of the nation’s preference for the latter, state and federal prisons now face a crisis of managing a growing population of elderly prisoners who are costly to house, feed, and provide medical care for – but even more important, who pose no serious threat to public safety. During the current COVID-19 pandemic, the immediate release of elderly lifers should be a priority.

Beyond the current public health crisis, states and the federal government should implement a 20-year maximum to prison terms, except in rare circumstances. Funds no longer directed at excessive incarceration could be positively invested in disadvantaged communities with lacking sufficient economic and public health support to improve both social outcomes and public safety. America’s misguided investment in mass incarceration has worsened life in the poorest communities and made these vulnerable communities more prone to crime, not less. The path to strengthening communities calls for a robust reinvestment of the dollars and lives previously wasted on mass incarceration.⁷

Enacting a 20-year cap on life sentences in most cases could reverse the tough-on-crime policies debunked by years of social science. This cap would recalibrate all sentences downward, leading to substantial reductions in incarceration and producing a more humane, effective, just, and merciful system.

During the COVID-19 pandemic, the immediate release of elderly lifers should be a priority.

In an evolved criminal legal system, far fewer people would be in prison, and those who were imprisoned would not stay nearly as long as they currently do. When incarceration is required, the experience should be devoted to preparation for release. A comprehensive plan should be devised early on with the expectation that individuals will be reintegrated and become productive members of society. This is the successful approach used by many other countries.

In 2020, The Sentencing Project undertook its fifth census⁸ of people who have been sentenced to life. Table 1 provides state and federal counts of those serving life without the possibility of parole (LWOP), life with a possibility for parole (LWP), and virtual (or “de facto”) life, sentences of 50 years or longer before an opportunity for parole.⁹ During the first eight months of 2020, we obtained overall counts (as of January 1, 2020) of persons serving time for each of these three life sentence types. We also obtained disaggregated counts of lifers by race, ethnicity, gender, juvenile status at the time of the offense, and crime of conviction. For the first time, our survey also captured counts of people serving LWP, LWOP, and virtual life sentences who are now elderly (age 55 or older at the time of the survey). We received data from all jurisdictions to produce the summary results in the following table.

Table 1. State Totals: Life With Parole, Life Without Parole, and Virtual Life Sentences, 2020

| State | LWP | LWOP | Virtual | Total | Percent of Prison Population |
|----------------|----------------|---------------|---------------|----------------|------------------------------|
| Alabama | 3,413 | 1,533 | 714 | 5,660 | 26% |
| Alaska | - | - | 398 | 398 | 8% |
| Arizona | 1,231 | 531 | 808 | 2,570 | 6% |
| Arkansas | 713 | 542 | 958 | 2,213 | 12% |
| California | 33,867 | 5,134 | 1,877 | 40,878 | 33% |
| Colorado | 2,090 | 790 | 846 | 3,726 | 19% |
| Connecticut | 46 | 68 | 627 | 741 | 6% |
| Delaware | 101 | 377 | 214 | 692 | 19% |
| Florida | 3,147 | 10,438 | 1,531 | 15,116 | 16% |
| Georgia | 7,721 | 1,636 | 791 | 10,148 | 19% |
| Hawaii | 311 | 32 | 2 | 345 | 10% |
| Idaho | 521 | 130 | 22 | 673 | 7% |
| Illinois | 5 | 1,620 | 2,709 | 4,334 | 11% |
| Indiana | 85 | 131 | 3,724 | 3,940 | 14% |
| Iowa | 43 | 705 | 773 | 1,521 | 18% |
| Kansas | 1,279 | 35 | 173 | 1,487 | 15% |
| Kentucky | 759 | 118 | 462 | 1,339 | 6% |
| Louisiana | 247 | 4,377 | 1,373 | 5,997 | 19% |
| Maine | 3 | 62 | 57 | 122 | 6% |
| Maryland | 2,240 | 444 | 1,125 | 3,809 | 21% |
| Massachusetts | 977 | 1,057 | 57 | 2,091 | 28% |
| Michigan | 1,129 | 3,882 | 646 | 5,657 | 15% |
| Minnesota | 471 | 142 | 6 | 619 | 7% |
| Mississippi | 491 | 1,589 | 370 | 2,450 | 13% |
| Missouri | 1,740 | 1,002 | 584 | 3,326 | 13% |
| Montana | 52 | 55 | 57 | 164 | 6% |
| Nebraska | 95 | 262 | 613 | 970 | 18% |
| Nevada | 2,294 | 501 | 67 | 2,862 | 22% |
| New Hampshire | 154 | 77 | 21 | 252 | 11% |
| New Jersey | 1,055 | 94 | 566 | 1,715 | 9% |
| New Mexico | 782 | 2 | 14 | 798 | 13% |
| New York | 7,703 | 303 | 290 | 8,296 | 19% |
| North Carolina | 1,712 | 1,576 | 883 | 4,171 | 12% |
| North Dakota | 39 | 35 | 10 | 84 | 5% |
| Ohio | 6,672 | 699 | 1,095 | 8,466 | 18% |
| Oklahoma | 2,183 | 936 | 614 | 3,733 | 15% |
| Oregon | 713 | 218 | 143 | 1,074 | 7% |
| Pennsylvania | 60 | 5,375 | 2,807 | 8,242 | 18% |
| Rhode Island | 196 | 28 | 23 | 247 | 13% |
| South Carolina | 886 | 1,214 | 336 | 2,436 | 13% |
| South Dakota | - | 173 | 218 | 391 | 11% |
| Tennessee | 1,855 | 286 | 690 | 2,831 | 6% |
| Texas | 8,156 | 1,267 | 9,039 | 18,462 | 13% |
| Utah | 2,200 | 47 | - | 2,247 | 35% |
| Vermont | 137 | 16 | 14 | 167 | 13% |
| Virginia | 1,239 | 1,628 | 1,326 | 4,193 | 14% |
| Washington | 2,320 | 643 | 251 | 3,214 | 19% |
| West Virginia | 314 | 290 | 123 | 727 | 11% |
| Wisconsin | 944 | 265 | 466 | 1,675 | 7% |
| Wyoming | 151 | 44 | 149 | 344 | 14% |
| FEDERAL | 1,025 | 3,536 | 1,691 | 6,252 | 4% |
| TOTAL | 105,567 | 55,945 | 42,353 | 203,865 | 15% |

Note: Alaska does not have a statutory category of LWP or LWOP but does use virtual life sentences of 50 years or more.

LIFE IN CONTEXT

The U.S. has not always relied on life sentences as heavily as it does now. Life sentences have been a part of our corrections systems since the start, but only in recent decades did it become the expectation that “life means life.”¹⁰ The founding of our corrections system in the early 1800s was driven by a belief that wayward individuals could be “saved” from permanent criminality through a functional corrections system.¹¹

Our prisons were initially designed with a focus on reformation, correction, and reintegration, at least theoretically if not in practice.¹² Today, our system of “correction” has redefined itself as one of exclusion with very little emphasis on rehabilitation. There is too little accountability for today’s system to show that it is providing effective rehabilitation programs and services for individuals in its care. When confronted with high reoffending rates, officials fault the formerly incarcerated and not the lack of sufficient programming to support rehabilitation while people are in prison and/or reentering the community. This cycle disproportionately impacts people and communities of color.

Just as life sentences are not what they used to be, the parole process is not as it used to be either. Politicians have become increasingly responsive to public fears about crime, distorted by media portrayals, rather than reflective of the true prevalence of crime. In reality, violent crime has been declining for nearly three decades and is now half its peak from the early 1990s.

Most recipients of life sentences have committed acts of violence, which calls for great care in determining their readiness for release. Professionalized parole boards, judges, and sentencing review boards can be effective in identifying those who are prepared to return to the community. Despite understandable concerns about reoffending, longitudinal studies suggest that persons convicted of violent offenses are not any more likely to commit another violent crime than persons convicted of nonviolent offenses. In fact, release from a life sentence for homicide yields recommitment rates for a new homicide that are astonishingly low and these individuals are less likely to commit any act of violence than other individuals released from prison.¹³

Before the era of hyperincarceration took hold, the number of individuals in prison was less than 200,000. Today it’s 1.4 million,¹⁴ with more than 200,000 people serving life sentences alone. One in 7 people in prison is serving a life sentence. There has been a remarkable shift in our society’s willingness and even eagerness to apply heavy punishments in the name of deterrence, and this applies even more so to people of color.¹⁵ Extreme punishment for punishment’s sake is now a hallmark of the justice system with little evidence that such an approach produces better public safety outcomes.

As states cope with the consequences of the 40-year incarceration buildup, modest sentencing reforms are underway to scale back prison populations. The federal

Extreme punishment for punishment’s sake is now a hallmark of the justice system with little evidence that such an approach produces better public safety outcomes.

system, too, is grappling with an overly large prison population as a result of draconian sentences imposed mostly on people with drug convictions. The gradual downward tick of the prison population since 2009 is the result of successful efforts focused on releasing and diverting those convicted of mostly low-level crimes that exclude people convicted of violence and serving longer prison terms. Reforms at the low end of the punishment scale are commendable and necessary, but they alone will not make a meaningful dent in mass incarceration. A surgical focus on reducing sentences for those convicted of nonviolent crimes leaves untouched the sentences of more than half the people in prison, including those serving life imprisonment. Until we mitigate the pervasive use of life and “life-like” terms as a sentencing response, progress toward a proportionate justice system will remain out of reach.

Life sentences, particularly the most extreme of these types (LWOP), are often touted as the humane alternative to the death penalty. Yet many of the problematic aspects of the death penalty are also applicable to life sentences. The legal scrutiny bestowed on the death penalty should also encompass sentences so long that they cannot be outlived. For example, legitimate doubts exist about the accuracy of convictions that have ended with a death sentence. As of yearend 2020, 173 people had been exonerated. These errors raise serious questions about the legitimacy of all sentences, but mechanisms for legal review are not built in for life sentences as they are for death sentences.

Other industrialized nations view life sentences, like the death penalty, as immoral and unethical.¹⁶ Consider a key decision by the European Court of Human Rights in 2013. In the case of *Vinter and Others v. United Kingdom*, the Court essentially barred the imposition of life without parole sentences in member nations.¹⁷ Based on the principle that all prisoners should have the “right to hope,” the decision requires that individuals who have transformed themselves in prison and have atoned for the harm they have caused should be considered for release.

The *Vinter* case is remarkable because of the gruesome nature of the crimes committed by the three plaintiffs. In *Vinter’s* case, he had already been released twice before from prison for serious crimes before committing his third serious offense. Despite the severity of these crimes, even these individuals were deemed by the court to be capable of reform.¹⁸ The concerns for upholding human dignity and opportunities for transformation prioritized by other nations, even for the most serious crimes, contradict the unmitigated harshness of the U.S. criminal legal system.

THE FACTS OF LIFE

LONG-TERM TRENDS

We should all be relieved with the downward trajectory of violent crime, but it isn't our tough-on-crime response that led to it. Most experts agree that sentencing policies, rather than crime rates, fueled mass incarceration. Life imprisonment is a signature piece of mass incarceration, intended to show how tough we can be on crime.¹⁹

As depicted in Figure 1 below, life sentences began to accrue even before violent crime rates rose somewhat dramatically in the late 1980s and early 1990s, reaching their peak in 1992. By 1995, the violent crime rate in the United States was down 9% and has continued to drop in the years since. But many states had just begun to ramp up their mandatory sentencing laws.

The dramatic expansion of life imprisonment has occurred in part because of a growing list of allowable crimes that authorize it. Between 2012 and 2020, we observe growing numbers of lifers convicted of homicide, the primary offense for which someone serves a life

sentence, but also a 40% increase in the number of people serving life for a sex-related offense and another 9% increase in the number of people serving life sentences for aggravated assault, robbery, or kidnapping.

To place the growth of life imprisonment in perspective, the national lifer population now exceeds the size of the entire prison population of 197,245 people in 1970, just prior to its unyielding climb over the next four decades. Though the growth in life sentences in all states has been dramatic over the decades, states with the largest effects are in the South and West of the country.

Figure 2 provides a view of the states ranked by the percent difference between the current number of life-sentenced prisoners and the total prison population in 1970. Utah and Nevada are at the top of the table because the current life-sentenced populations in these states are more than four times each state's entire prison population in 1970. The next two most dramatic shifts

Figure 1. Trends in Violent Crime and Life Imprisonment

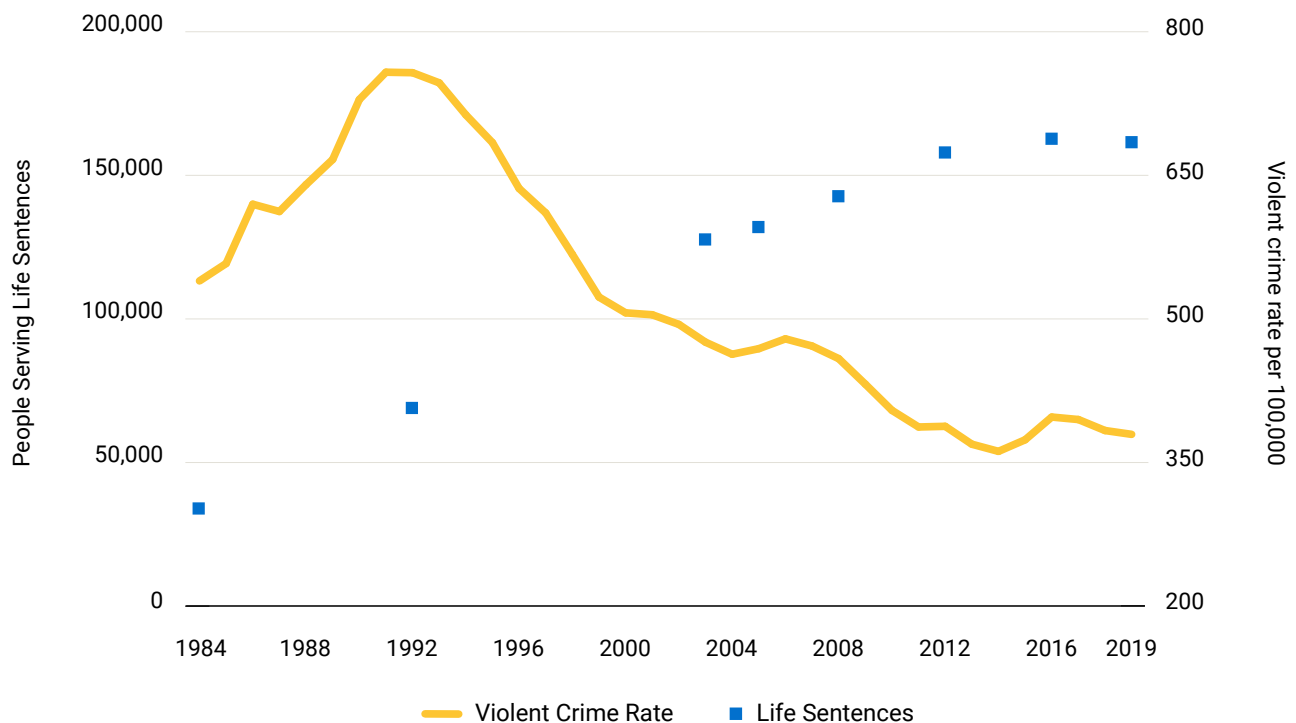
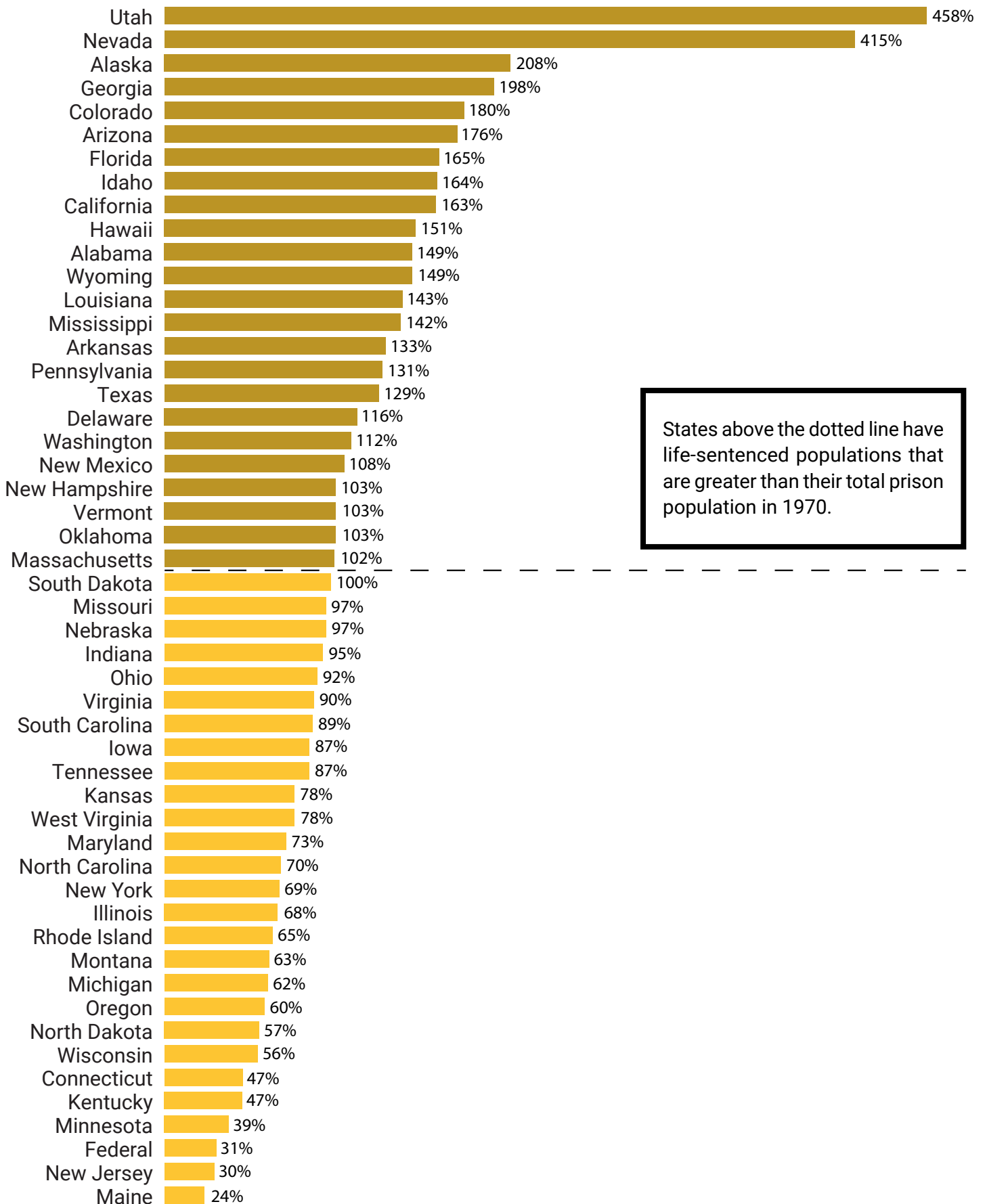


Figure 2. Percent Difference in 2020 Life-Sentenced-Population and 1970 Prison Population

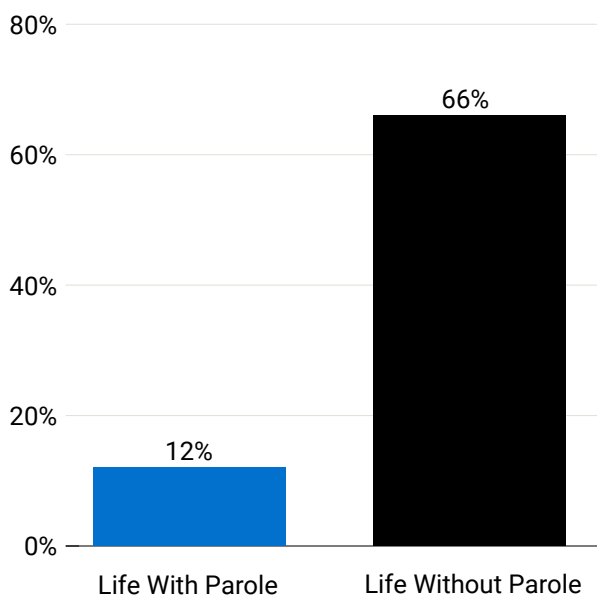


Note: Prison population data was not provided in 1970 for Alaska, Arkansas, and Rhode Island. For these states we use prison population data for 1971.

are in Alaska²⁰ and Georgia, where the life-sentenced population is approximately twice the entire prison population of 1970. Further down, we see that in Ohio there are 92% as many lifers today as total prisoners in 1970. And in Maine at the bottom, the growth in life-sentenced people is still notable: the number of lifers today reflects 24% of the total prison population in 1970.

Among the three types of life sentences, the most extreme, LWOP, has risen considerably faster than either life with parole or virtual life sentences. The number of people serving LWOP stands at 55,945. Since The Sentencing Project first published analyses on the prevalence of life imprisonment in 2003, the number of people serving LWOP has increased 66% while those serving LWP increased 12%.

Figure 3. Change Over Time in Life Without Parole and Life with Parole, 2003-2020



RECENT TRENDS

The United States holds an estimated 40% of the world’s life-sentenced population, including 83% of those serving LWOP.²¹ In 2020, over half the states had more lifers of any type (LWOP, LWP, or virtual life) than in 2016. Between 2016 and 2020, nationally, life with parole (LWP) dropped slightly, virtual life imprisonment remained approximately the same, and life without parole (LWOP) continued to climb.

Life With the Possibility of Parole

A total of 105,567 people were serving parole-eligible life sentences in 2020. Nationally, we find a 3% decline since 2016, led by declines in Florida (down 23%), Mississippi (down 18%), New York (down 17%), and South Carolina (down 19%). Altogether, 28 states report fewer people serving LWP in 2020 than 2016. Nevertheless, LWP is still a major segment of the prison population in many states. As depicted in Table 2, in Alabama, California, Nevada, New York, and Utah, between 16% and 34% of the prison population has a life-with-parole sentence.

A decline in the life with parole population is likely due to a few co-occurring trends: fewer individuals are being sentenced to LWP (although some are likely receiving LWOP instead), more people are being released on parole, and individuals are dying while awaiting parole.

Table 2. States With Highest Percent of Persons Serving Life With Parole Compared to Overall Prison Population

| State | LWP as Percent of Prison Population |
|------------|-------------------------------------|
| Utah | 34% |
| California | 27% |
| Nevada | 18% |
| New York | 17% |
| Alabama | 16% |

In Georgia, 840 people are serving life with the possibility of parole for crimes committed when they were under 18; 45 of these individuals were 13 or 14 years old at the time of their crime.

Nearly 7,000 people nationwide are serving LWP for crimes committed as minors. Such sentences are disproportionately high in California, Georgia, Texas, and New York. Combined, these states account for nearly two-thirds of the LWP population nationally for crimes committed as youth.

In Georgia, 840 people are serving life with the possibility of parole for crimes committed when they were under 18; 45 of these individuals were 13 or 14 years old at the time of their crime. LWP is the dominant category of life sentence given to youth in the state by far. While it does provide an opportunity for eventual release, the state has a long wait of 30 years for initial parole consideration.

Life Without the Possibility of Parole

LWOP is authorized in all states except Alaska, and is most prevalent in California, Florida, Louisiana, Michigan and Pennsylvania. Half of the national population of people serving LWOP are in these five states. The federal government holds another 3,536 people who are serving LWOP. Nationally, 55,595 people were serving LWOP in 2020.

The U.S. Supreme Court has delivered three rulings since 2010 which, collectively, hold the sentence of life without parole unconstitutional for most persons younger than 18 at the time of their crime.²² These rulings and a series of state legislative reforms greatly narrowing the allowable use of this extreme sentence on youth account for the sharp decline in this incarcerated cohort.²³

We observe a substantial decline in sentences of LWOP among those who were under 18 at the time of their crime; a sentence colloquially referred to as “JLWOP.”

Table 3. States With Highest Percent of Persons Serving Life Without Parole Compared to Overall Prison Population

| State | LWOP as Percent of Prison Population |
|---------------|---|
| Louisiana | 14% |
| Massachusetts | 14% |
| Pennsylvania | 12% |
| Florida | 11% |
| Delaware | 10% |

Figure 4 shows that states reduced their JLWOP population 38% since 2016 and 45% from their peak in 2012, now standing at 1,465 people.²⁴ Advocates estimate an additional 700 individuals whose sentences have been invalidated but who still await a new sentence.²⁵

Importantly, over the past four years life with parole and virtual life sentences also declined 8% and 9% respectively for youth, suggesting a larger reach of these rulings on the appropriateness of long sentences for young people.

Despite the shift in life sentences for youth, the application of LWOP sentences continues to increase for everyone else (Figure 5). Since 2016, the LWOP population among people 18 and older grew 6% nationwide with increases across 36 states.

Figure 4. Change in Life Sentenced Population Among Those Under 18 at Time of Their Crime, 2016-2020

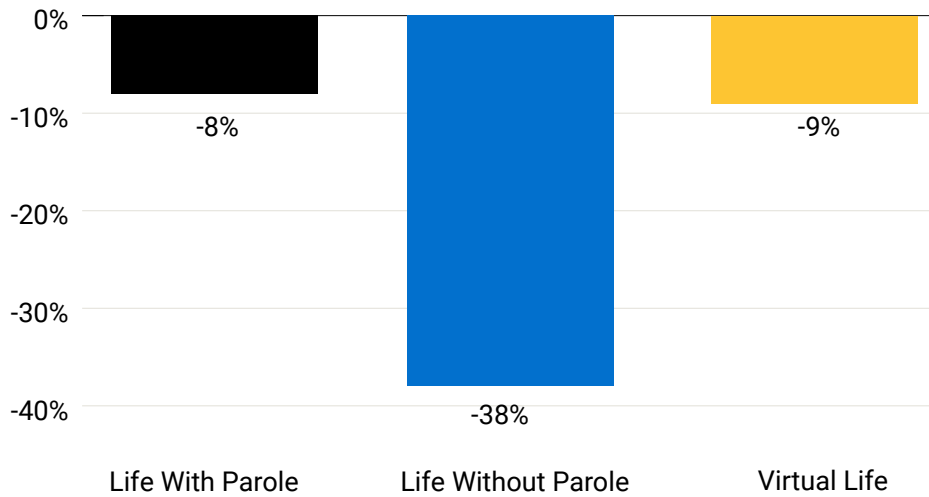
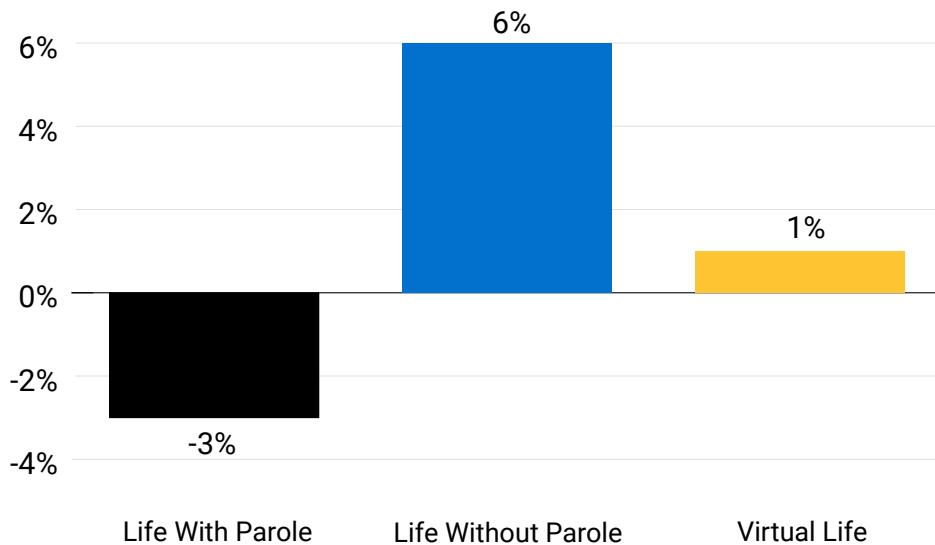


Figure 5. Change in Life Sentenced Population Among Those 18 and Older at Time of Their Crime, 2016-2020



Virtual Life

In 2020, 42,833 people were serving sentences that totaled a maximum of 50 years or longer. We refer to this group as serving a virtual life sentence because the term of years they must serve is so long they are unlikely to survive it even though they are not statutorily sentenced to life.

Texas dominates on this front with one in five people in prison serving a virtual life sentence. The remaining states with the highest proportions of the virtual life population are Indiana (9%), Pennsylvania (7%), and Illinois (6%). These four states account for 43% of the individuals serving virtual life sentences nationwide.

As depicted in Table 4, as a proportion of their overall state prison populations, Indiana, Nebraska, Iowa, Illinois, and Alaska rank among the highest with persons serving virtual life. In Indiana, 14% of prisoners have a sentence of at least 50 years.

Table 4. States with Highest Percent of Persons Serving Virtual Life Sentences Compared to Overall Prison Population

| State | Percent of Prison Serving Virtual Life |
|----------|--|
| Indiana | 14% |
| Nebraska | 11% |
| Iowa | 9% |
| Alaska | 8% |
| Illinois | 7% |

Though women comprise a small fraction of the life-sentenced population (about 3% of all lifers are women), the number of women serving life has increased 32% faster than men over the past decade. Today one in 15 women in prison has a life sentence. In some states, the representation of women serving life is astonishing: one in 4 women in California prisons and one in 5 women in Massachusetts prisons has life.

The rise in life imprisonment among women has also been far more rapid than the overall prison population increase in women serving time for violent offenses. Between 2008 and 2020, the number of women imprisoned for a violent crime increased 2%, but the number of women serving a life sentence increased 20%. When analysis is limited to life-without-parole sentences, we see that the number of women serving these sentences increased by 43% compared to 29% for men.

RACE AND GENDER

People of color are overrepresented among those serving life in nearly every state, as shown in Table 5. In Georgia, Illinois, Louisiana, and Maryland, more than two-thirds of the life-sentenced population is African American. While most lifers are men, 3% are women. Among African American women in prison, one in 9 is serving life. One in 5 Black men in prison is serving a life sentence.

Life sentences are being served disproportionately by African Americans, Latinxs, and other people of color. Nationally, two thirds of people serving life are people of color, with 46% Black and 16% Latinx. Among people serving LWOP, the most extreme life sentence, 55% are Black.

Table 5. Racial and Ethnic Composition of People Serving Life and Virtual Life Sentences, 2020

| Jurisdiction | Life and Virtual Life Population | Percent Black | Percent White | Percent Latinx | Percent Other |
|----------------|----------------------------------|---------------|---------------|----------------|---------------|
| Alabama | 5,660 | 65% | 34% | N/A | 0% |
| Alaska | 398 | 11% | 45% | 5% | 39% |
| Arizona | 2,570 | 19% | 42% | 32% | 6% |
| Arkansas | 2,213 | 54% | 43% | 2% | 1% |
| California | 40,878 | 33% | 20% | 39% | 8% |
| Colorado | 3,726 | 23% | 46% | 26% | 4% |
| Connecticut | 741 | 54% | 25% | 20% | 0% |
| Delaware | 692 | 63% | 37% | 0% | 0% |
| Florida | 15,116 | 54% | 35% | 11% | 1% |
| Georgia | 10,148 | 72% | 25% | 3% | 1% |
| Hawaii | 345 | 6% | 26% | 5% | 63% |
| Idaho | 673 | 2% | 77% | 15% | 6% |
| Illinois | 4,334 | 67% | 21% | 11% | 1% |
| Indiana | 3,940 | 48% | 47% | 4% | 1% |
| Iowa | 1,521 | 26% | 64% | 7% | 3% |
| Kansas | 1,487 | 38% | 48% | 11% | 3% |
| Kentucky | 1,339 | 29% | 68% | 2% | 1% |
| Louisiana | 5,997 | 74% | 25% | N/A | 0% |
| Maine | 122 | 7% | 80% | 3% | 9% |
| Maryland | 3,809 | 76% | 19% | 2% | 2% |
| Massachusetts | 2,091 | 34% | 41% | 20% | 4% |
| Michigan | 5,657 | 66% | 33% | 0% | 1% |
| Minnesota | 619 | 38% | 48% | 4% | 10% |
| Mississippi | 2,450 | 72% | 27% | 1% | 0% |
| Missouri | 3,326 | 49% | 50% | N/A | 1% |
| Montana | 164 | 1% | 86% | N/A | 13% |
| Nebraska | 970 | 35% | 47% | 13% | 5% |
| Nevada | 2,862 | 26% | 46% | 23% | 5% |
| New Hampshire | 252 | 6% | 86% | 5% | 3% |
| New Jersey | 1,715 | 64% | 21% | 13% | 1% |
| New Mexico | 798 | 9% | 33% | 51% | 7% |
| New York | 8,296 | 56% | 18% | 24% | 2% |
| North Carolina | 4,171 | 60% | 34% | 2% | 3% |
| North Dakota | 84 | 11% | 70% | 5% | 14% |
| Ohio | 8,466 | 52% | 45% | 2% | 1% |
| Oklahoma | 3,733 | 34% | 51% | 6% | 9% |
| Oregon | 1,074 | 11% | 72% | 12% | 5% |
| Pennsylvania | 8,242 | 62% | 28% | 9% | 1% |
| Rhode Island | 247 | 36% | 40% | 23% | 2% |
| South Carolina | 2,436 | 67% | 32% | 1% | 1% |
| South Dakota | 391 | 6% | 73% | 3% | 18% |
| Tennessee | 2,831 | 54% | 43% | 2% | 1% |
| Texas | 18,462 | 39% | 33% | 27% | 1% |
| Utah | 2,247 | 6% | 60% | 21% | 13% |
| Vermont | 167 | 5% | 92% | 1% | 3% |
| Washington | 3,214 | 16% | 61% | 13% | 10% |
| West Virginia | 727 | 16% | 83% | 0% | 0% |
| Wisconsin | 1,675 | 47% | 41% | 9% | 3% |
| Wyoming | 344 | 5% | 76% | 12% | 8% |
| FEDERAL | 6,252 | 59% | 28% | 10% | 3% |
| TOTAL | 203,865 | 46% | 32% | 16% | 3% |

Note: Virginia is not included because the state did not provide data.
 N/A = The state did not provide Latinx data

AGING LIFERS

In 1996 Clarence Givens was sentenced to 110 years in Wisconsin for selling less than three grams of heroin to an undercover informant. Because of prior nonviolent offenses on his record, the prosecutor was authorized to charge him under the state's habitual offender law, which allows additional years to be added to a sentence based on prior convictions, regardless of the severity of the present offense. The sentencing judge referred to him as a "genocidal merchant of death" and cautioned him and others not to expect "...leniency from the courts if they persist in their vile behavior." He said he wished to send "a message to those struggling to raise their children in neighborhoods ruled by violence and drugs that the courts will deal harshly with those who drain the lifeblood of their neighborhoods." Despite the high-blown rhetoric of the court, there is no evidence to support that sentencing Givens to 110 years in prison was necessary for either punitive or public safety reasons. Indeed, established research conducted well before Givens was sentenced, finds that as one seller is removed from the community through incarceration, a new one is frequently substituted so long as there is demand for drugs.²⁶

Since his arrival in prison, Givens developed prostate cancer, had two hip replacement surgeries, and, as a result of a botched second surgery, was confined to a wheelchair. During his 24 years of imprisonment, Givens remained steadily employed in various positions within the institution and routinely received the highest marks on his performance. He incurred few disciplinary records and was the quintessential model for other individuals in prison.

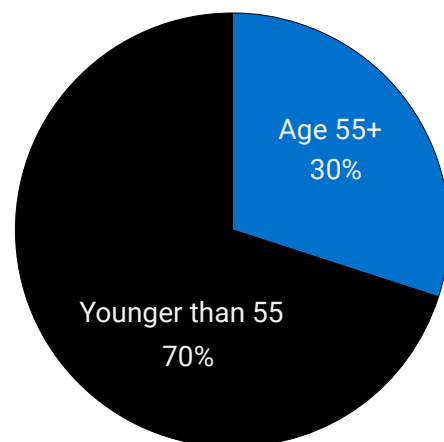
As COVID-19 began its inevitable spread through the U.S. prison system, Givens, like thousands of others, asked for mercy in the form of release from prison to be home with his wife and family. But on November 13, 2020, Givens developed a high fever. His cellmate relayed the events of the day before his admission to the hospital, writing:

"...the whole pod donated vitamins, some emergency vitamin tea...I love him like my own father and look out for him as best I can or would for my own...I don't know what we would do if we [lost] him for he is a peacekeeper around here, he keeps the other inmates from fighting with each other and guides many of us when we are going down the wrong paths in here."

Givens was admitted to the hospital the day after this note was sent and within 24 hours he was unconscious and breathing on a respirator. Clarence Givens passed away from COVID-19 on December 7, 2020. He was 68 years old.

In 2020, 61,417 people who are at least 55 years old were serving life sentences, part of a growing trend of elderly imprisoned Americans. In fact, the number of people in prison today who are age 55 or older has tripled since 2000.²⁷ The tough-on-crime policies that expanded life sentencing, prolonged the time to review cases for possible parole releases, or abolished parole altogether, have accelerated the build-up as well.²⁸ Between 1993 and 2013, the prevalence of individuals age 55-65 expanded by more than 150%. Today, people who are 55 and older account for 12% of state prison populations. Even more troubling, elderly persons account for 30% of the life-sentenced population.

Figure 6. Percent of Life Sentenced Population Who Are 55 and Older



CLARENCE GIVENS

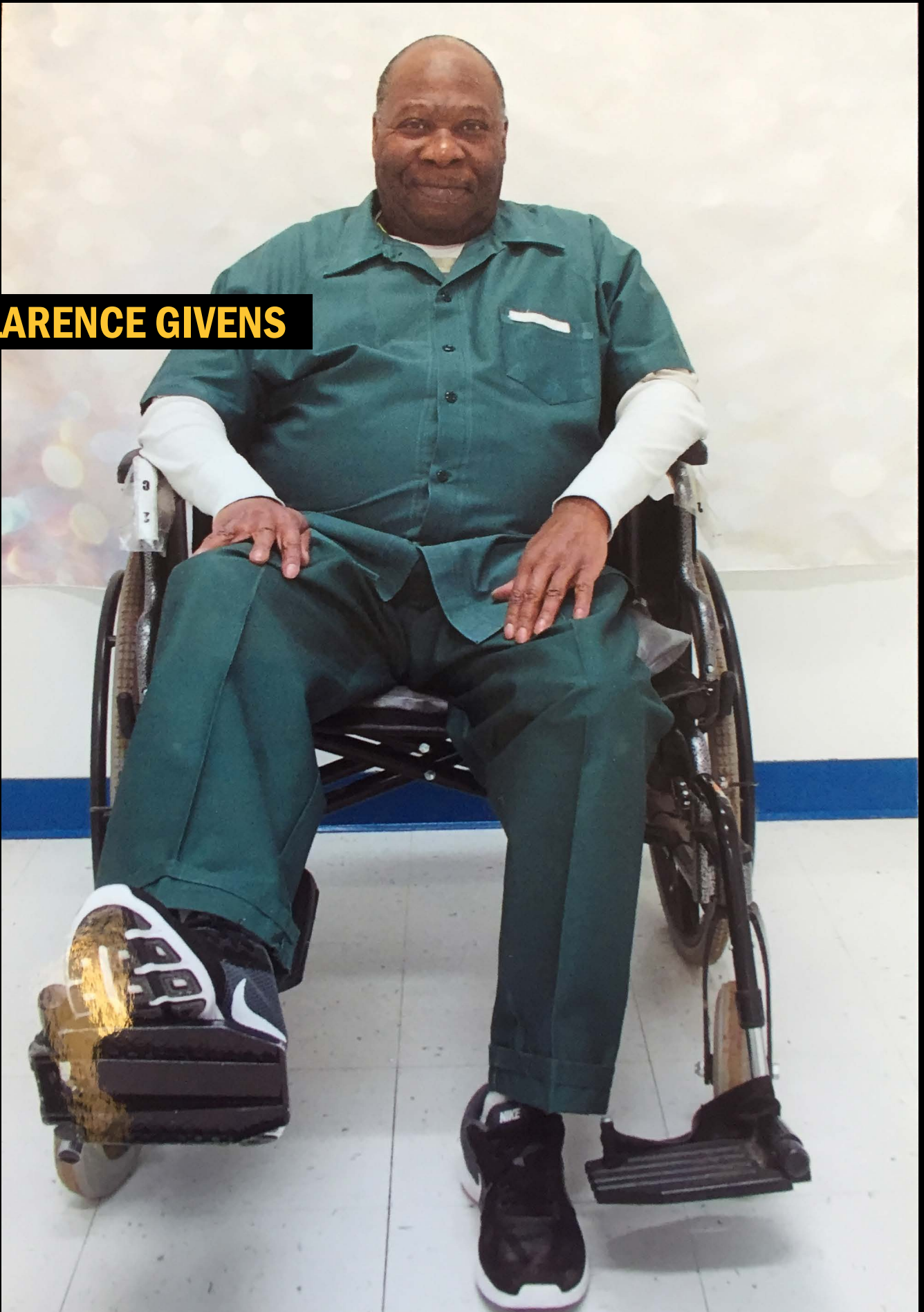


Table 6. Elderly Lifers

| State | Percent of Lifers Who are 55 and Older |
|----------------|--|
| Montana | 44% |
| North Carolina | 43% |
| Delaware | 42% |
| New Jersey | 42% |
| Maine | 42% |
| Wyoming | 40% |
| South Carolina | 40% |
| Idaho | 39% |
| Massachusetts | 39% |
| Michigan | 39% |
| South Dakota | 39% |
| Florida | 39% |
| Alaska | 38% |
| Missouri | 37% |
| Arizona | 37% |
| Oregon | 36% |
| New Hampshire | 36% |
| Louisiana | 36% |
| Maryland | 35% |
| Oklahoma | 34% |
| Connecticut | 34% |
| Nevada | 34% |
| Arkansas | 34% |
| North Dakota | 33% |
| Minnesota | 33% |
| Pennsylvania | 33% |
| Colorado | 32% |
| Ohio | 32% |
| Wisconsin | 32% |
| Illinois | 32% |
| Rhode Island | 31% |
| Texas | 31% |
| New Mexico | 31% |
| California | 31% |
| Washington | 31% |
| Vermont | 31% |
| New York | 30% |
| Mississippi | 30% |
| Tennessee | 30% |
| Nebraska | 27% |
| Georgia | 26% |
| Kansas | 26% |
| Utah | 25% |
| Kentucky | 25% |
| Indiana | 22% |
| Alabama | 18% |
| Iowa | 11% |
| Hawaii | 1% |
| West Virginia | 0% |
| TOTAL | 30% |

Note: Data on elderly lifer population not provided from the Federal Bureau of Prisons, Virginia, or West Virginia.

The aging population of people in prison has serious cost implications. Medical costs consume a large proportion of prison budgets and those costs will continue to grow as people age and confront worsening health.²⁹

The percentage of people in prison serving all types of life sentences who are now elderly is provided in Table 6. States with the highest percentage of life-sentenced prisoners who are elderly include Delaware, Maine, Michigan, New Jersey, and North Carolina. In these states, approximately 43% of the life-sentenced population is at least 55 years old. In some states, the number of older persons serving LWOP is even more staggering: more than half of the LWOP population in Idaho, Massachusetts, and South Dakota are over 55 years old.

Finally, 675 people who are at least 55 years old are still imprisoned on a life sentence for crimes committed in their youth, amounting to 7% of the juvenile life-sentenced population. For this cohort we estimate an average least amount of time-served of 37 years, when accounting for entering prison at 18 and reaching age 55. This average time-served is an underestimate, however, as there are many life-sentenced prisoners who are well above 55 but who have been incarcerated since their mid to late teens. And in some states, such as Georgia, children sentenced as young as 13 years old are still serving life sentences.

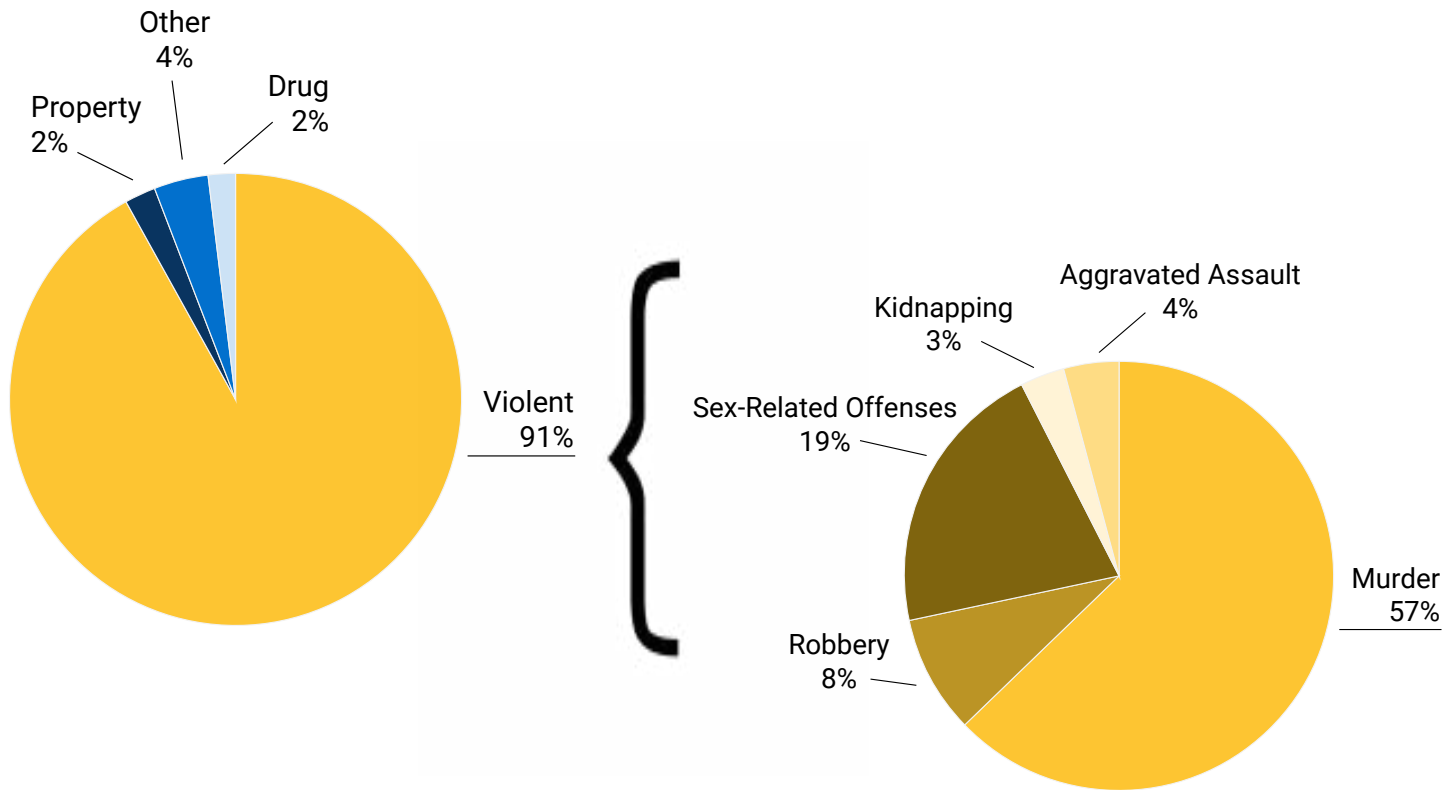
CRIME OF CONVICTION

As depicted in Figure 7, most people (91%) serving life sentences have been convicted for a violent offense.³⁰

Homicide

Fifty-seven percent of lifers have been convicted for murder, and 72% of those convicted of murder had been convicted of first-degree murder. While state and federal statutes differ in their naming conventions, it is typical that within the offense category of murder there is a range of degrees which indicate aggravating or mitigating factors. First-degree murder is weighted more heavily than second-degree murder, which is weighted more heavily than third-degree murder. In many states, the role of the defendant as an accessory or auxiliary actor

Figure 7. Crime of Conviction Within the Life Sentenced Population



Note: Some offenses categorized by the state as "other" may include violent crimes.

in the crime may permit a reduction in the degree from first to second. In other places, such as Texas, the distinction is less apparent in the statute. Texas has a "law of parties" clause which requires that all individuals involved in an underlying felony that resulted in a homicide receive the same life sentence, even if they were not the principal actor.³¹

In Pennsylvania and Louisiana, second degree murder indicates "felony murder," which generally means that someone was killed during the commission of a felony, such as a gas-station robbery gone bad. A person can be found guilty of felony murder even if they did not kill anyone or plan to kill anyone during the commission of the felony. However, in these two states, second degree murder, like first degree, carries with it a mandatory LWOP sentence. In Pennsylvania, 31% of the lifers convicted of murder have been convicted of second or third degree.

Other Crimes of Violence

Nineteen percent of people sentenced to life have been convicted of a sex-related offense. In some states, convictions are accompanied by indefinite prison terms that might range from one year to life. This is the case in Nevada and Utah, which has allowed for the states' long sentences for most sex-related offenses. These crimes are disproportionately responsible for their high number of life sentences overall. In Utah 54% of lifers have been convicted of a sex-related offense; in Nevada it's 28%.

Though life imprisonment was historically used only for the most serious offenses, over time lawmakers have expanded the allowable use of life sentences for convictions of robbery, aggravated assault, and kidnapping. Today, 15% of life-sentenced persons,

amounting to one in 7 lifers, had a governing crime of robbery, aggravated assault, or kidnapping. Among these are 16,700 people sentenced to life for a robbery, 8,500 people sentenced to life for an aggravated assault, and 5,000 people sentenced to life for a kidnapping.

In Florida, 20% of the state's 10,000 people serving LWOP sentences have been convicted of a robbery and 23% of the 1,500 individuals serving virtual life terms have been convicted of a robbery. Virginia reports that 14% of its life-sentenced population has been convicted of an aggravated assault, including 50% of the virtual life population. Like Virginia and Florida, Iowa is a state that no longer uses a parole mechanism for its life-sentenced population; 14% of the LWOP population in this state has been convicted of kidnapping.

Drug Crimes

The federal drug laws adopted in the late 1980s and early 1990s dramatically reshaped the federal prison population. The federal system also abolished parole in 1987. This means that all life sentences in the federal system imposed since this time require that prisoners serve their time until they die or in the unlikely event of a presidential commutation or grant of compassionate release. Nationally, 3,974 people are serving life sentences for a drug-related offense, and 38% of these people are in the federal prison system.

Forty-one states have incarcerated people on life sentences for drug-related offense. While nationally only 2% of those serving life have been convicted of a drug crime, some states rely on life for drug crimes much more readily. In Iowa, for instance, 18% of lifers have been convicted of a drug crime, and in Alabama, it is 12%. Across 11 states a total of 250 people are serving LWOP for a drug-related crime.³²

PROBLEMS WITH LIFE IMPRISONMENT

The tough-on-crime era beginning in the 1980s ushered in laws that removed discretion from the federal and state legal systems. In place of individualized assessment that was responsive to individual needs and allowed post-conviction adjustments when warranted, jurisdictions throughout the United States have implemented a host of laws and policies that create permanent punishment through diminishing exit points from the system. Some of the key hallmarks of this era were the proliferation of habitual offender laws, truth-in-sentencing schemes and other mandatory minimum statutes, and the abolishment or politicization of parole. Because of these extreme measures, sentences can be arbitrary and disproportionate to the seriousness of the crime.

Fair Wayne Bryant was sentenced to life with no chance for parole in 1997 for attempting to steal a pair of hedge clippers. Such a disproportionate sentence was possible because of Louisiana's habitual offender law which allowed prosecutors to obtain a life sentence after a fourth felony, only one of which must be violent. In Bryant's case, his qualifying "violent offense" of *attempted armed robbery* occurred years earlier in 1979. He had already served ten years "hard labor" in prison for the offense. His remaining crimes before the incident with the hedge clippers were nonviolent and theft-related, all committed to fuel his untreated substance use disorder. Louisiana's 2017 criminal justice reform package, though limited in overall scope, modified the habitual offender law, which allowed for a review of Bryant's case and prompted his release in August 2020.³³

Extreme penalties are misaligned with what we know about age and criminal behavior, worsen racial disparity in the system, and impose heavy costs to taxpayers with diminishing returns on public safety. Informed by the known data and outcomes of current laws and policies, we outline the specific problems with life imprisonment next.

AGING OUT: YOUNG AND OLD

Youth Sentenced to Life

Lengthy prison sentences ignore the fact that most people who commit crime, even those who have committed a series of crimes, age out of criminal conduct. The age-crime curve is evident across dozens of empirical studies on the topic and reflects the fact that people are most at-risk for committing crime in the late teenage years to their mid-twenties.³⁴ After this age, proclivity toward committing more crime typically declines steadily.³⁵ This relationship between age and crime exists consistently regardless of race or ethnicity, education level, community disadvantage, or income.³⁶ While those who engage in violence may take a while longer to distance themselves from crime, the aging out process begins its downward slope in the average case by one's mid-20s.

Analysis of Bureau of Justice Statistics data shows the peak age of arrest for robbery is 19, declining by more than half by the late twenties. Likewise, the peak age for murder is 20, a rate that is more than halved by one's 30s and is less than one quarter of its peak by one's 40s.³⁷ Even among the small number of people identified as "chronic offenders" who have committed a series of serious crimes, most no longer engage in criminal behavior past their late 30s.³⁸ And yet, a growing segment of prisoners sentenced when they were young have served decades in prison beyond their point of public safety risk. Our analysis reveals that the numbers of youth sentenced to life are not insignificant: in Georgia, Maryland, and Tennessee, and Wisconsin, nearly 10% of the people serving a life sentence were under 18 at the time of their crime.

Elderly Persons with Life Sentences

The experience of aging in prison is different from aging in free society for two main reasons. First, people who engage in street crime are often in poorer health generally before they arrive in prison.³⁹ Damaging lifestyle habits that include substance abuse and other high-risk behaviors, as well as neglect of routine medical care and lack of access to medical care, often underlie poor health. Second, the experience of prison itself ages individuals more quickly. Prison is a high-stress environment. Medical conditions develop sooner in life among imprisoned people with disproportionately high rates of dementia, cancer, arthritis, and hypertension, as well as declines in mental health.⁴⁰ As prisoners grow old, they also become more vulnerable to assault and other types of mistreatment from younger prisoners.⁴¹

Correctional institutions are obligated under law to provide adequate health care to people in prison, as established by two landmark Supreme Court cases, *Estelle v. Gamble*, 429 U.S. 97 (1976) and *Brown v. Plata*, 563 U.S. 493 (2011). Prisons are ill-equipped to serve as infirmaries or nursing homes and they do it badly at enormous human and fiscal cost. At the federal level, facilities spend approximately five times more on medical care for older persons than those who are younger.⁴² At the state level, the cost of treating an older population is likewise increased. A recent national analysis of health care spending on imprisoned persons 55 and older found that the median cost per prisoner was 37% higher in the ten states with the highest share of individuals 55 and older.⁴³

Preeminent scholars on the worldwide use of life imprisonment, Dirk van zyl Smit and Catherine Appleton, argue that the United States' general acceptance of sentencing people to die in prison contradicts international human rights standards and practices.⁴⁴ Indeed, several countries prohibit life sentences for elderly persons and most countries place limits on elderly persons being sentenced to prison.⁴⁵

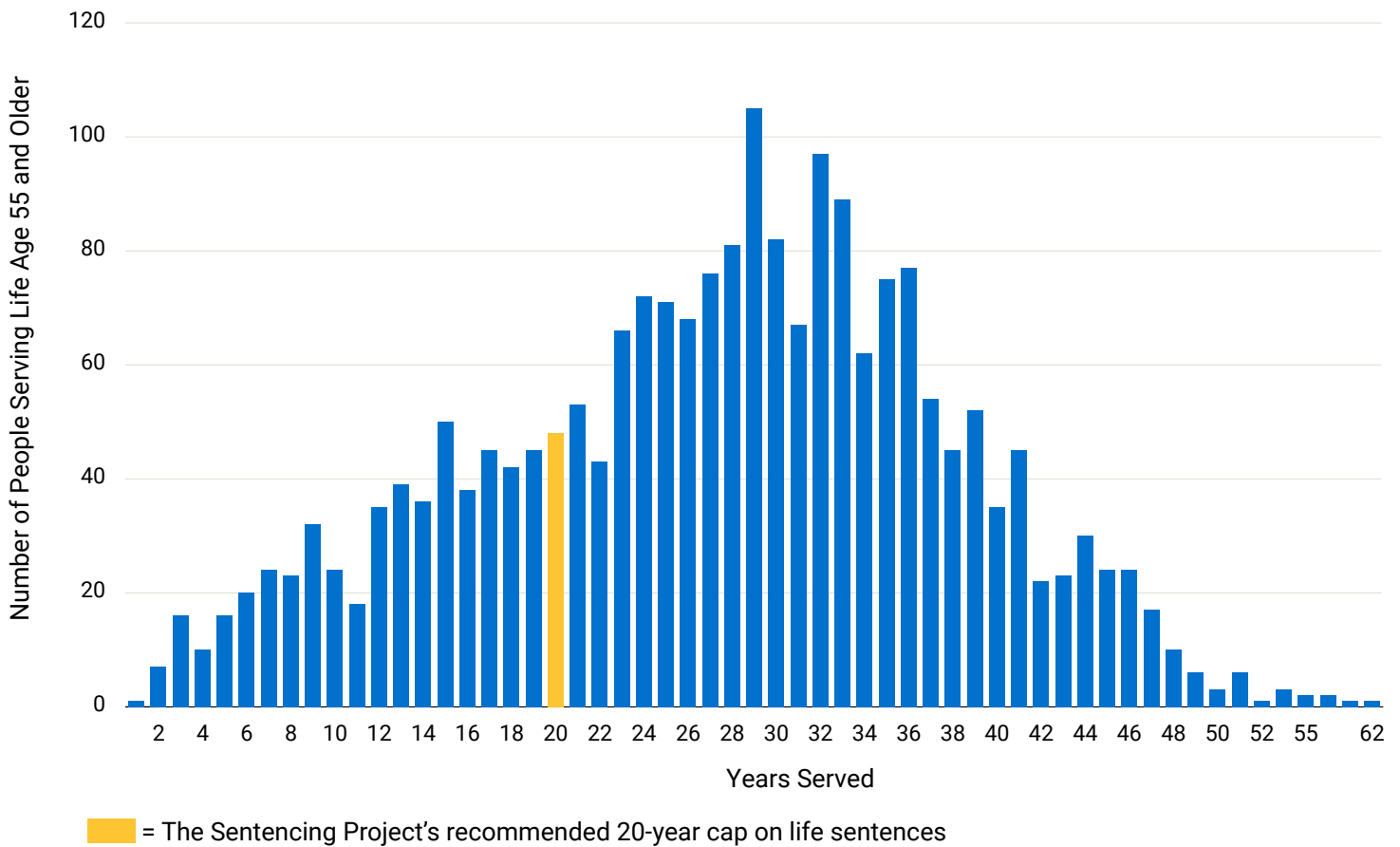
In Russia, people 65 or older cannot receive a life sentence because, like children, elders are “vulnerable social groups who have an underdeveloped and weakened

capacity to understand the implications of their conduct, to control it and to foresee the consequences of their actions. They were prone to impulsive, unconsidered behaviour that could result in criminally reprehensible conduct.” The government further explains that sentencing someone at age 65 to a life sentence of at least 25 years would not provide a realistic chance of freedom before their death and is therefore unacceptable.⁴⁶ Throughout Europe, all life sentences must include a reasonable expectation of release and the details of possible release are discussed at sentencing.⁴⁷

To commit just one person to spend the rest of his or her life in prison is at least a one-million-dollar investment for the state.⁴⁸ A look at parole-eligible lifers in Georgia brings this into sharper focus. To begin, 10% of the prison population in the state is 55 years old or older, including 2,159 parole-eligible lifers. On average, these individuals have served 26 years of their life sentence so far, with a range from one to 62 years of time-served. Per prisoner cost in Georgia is \$24,070 a year.⁴⁹

The yellow bar in Figure 8 indicates our recommended 20 year-cap for life sentences. After this point most prisoners are at very low risk of offending and should be released. If these 2,159 elderly individuals serving LWP were released at 21 years of time-served,⁵⁰ 19,436 prison-years would be saved and the state could avoid spending approximately \$462 million to continue to incarcerate them. Even the release of just 25% of elderly lifers at 21 years would lead to a savings of 4,859 prison-years, or \$116 million. This same analysis could be done in every state reflecting billions of dollars in savings billions of dollars that could be positively invested in evidence-based crime prevention and intervention strategies.

Figure 8. Time Served Among Persons 55 and Older Serving Life With Parole in Georgia



REDEMPTION AND REFORM

Public support for punitive policies played a role in creating mass incarceration, but punitive attitudes have more texture when crime, punishment, and redemption are explained.⁵¹ Public sentiment supports the notion that people can redirect their lives, change for the better and, in many instances, deserve a second chance. Polling in this area, though admittedly underdeveloped and sometimes contradictory, finds that most people believe in redemption.⁵² Politicians are unapologetic about their endorsement of criminal justice reforms when conjoined with redemptive principles. Consider the statement by then-governor of Ohio John Kasich in 2015:

Look, redemption is real, second chances are real. We need to not only practice that individually, but we need to practice that collectively...We're all in this together restoring a human being's hope, originality, and purpose. It changes the world.⁵³

Belief in redemption is a moral stance, but there are also good public safety reasons to reexamine the dangerousness among people who have inflicted harm on others, including those with life sentences. Those who commit crime, including violent crime, are not forever trapped in a criminal lifestyle. Research repeatedly demonstrates this.⁵⁴ A misinterpretation of the connections between the seriousness of an incarcerated person's crime and their recidivism risk after release often justifies policymakers' endorsement of life imprisonment. Most people serving life, including for murder, do not forever present a risk to public safety.

Louisiana Deputy Warden Perry Stagg of Louisiana's Elayn Hunt Correctional Center, who has worked with life-sentenced individuals for many years, corroborates this transformation. He says, "I am a staunch Republican conservative, as are more people that I work with here, and I believe that 99% of us would agree that life without the possibility of parole...does not make sense in most

“I am a staunch Republican conservative, as are more people that I work with here, and I believe that 99% of us would agree that life without the possibility of parole...does not make sense in most cases...these are not bad people, but people who did a bad thing, and at some point in their lives they deserve to tell their story...they deserve hope.”

– Louisiana Deputy Warden Perry Stagg of Louisiana’s Elayn Hunt Correctional Center

cases...these are not bad people, but people who did a bad thing, and at some point in their lives they deserve to tell their story...they deserve hope.”⁵⁵

For those previously sentenced to life imprisonment who earn release, reengagement in violence is rare.⁵⁶ Consider outcomes from a 2013 study of released prisoners in Louisiana who served long sentences. Edward Shihadeh and colleagues examined three and five year “return to prison” rates among long-term sentenced prisoners, and found that people returned to prison at a rate of 5-8%. When analysis was limited to those who had been convicted of first degree murder, the recidivism rate was 5%.⁵⁷

Similar findings are seen in recidivism studies of released lifers in Michigan, Pennsylvania, Maryland, New York, and California.⁵⁸ Combined, studies of released lifers find recidivism rates less than 5% among people who previously committed violence and were sentenced to life.⁵⁹

U.S. Bureau of Justice Statistics data reveal that 98% of persons released from prison after serving time for a homicide conviction are not arrested for another homicide. Just as encouraging, this analysis shows that people released from prison who were originally convicted of homicide are less likely than other released prisoners to be rearrested for a violent crime.⁶⁰

Low recidivism rates among released lifers could lead one to believe that it was the length of the sentence that “worked,” suggesting that long sentences deter crime. Here, the logic fails because it is frequently *in spite of the harsh prison environment* that life-sentenced individuals transform their lives, demonstrate remorse, and mentor other prisoners.⁶¹ Men and women overcome great obstacles in the prison environment in order to move beyond their past mistakes and traumas.

RACIAL PREJUDICE

The racism and bias documented at every stage of the criminal legal system breeds public distrust of the justice system. People of color, particularly African Americans, are disproportionately arrested and convicted.⁶² Decades of research also demonstrate that racial differences in sentencing often derive from race-based decision making.⁶³

Unsurprisingly, we find evidence of sentencing differences by race among lifers as well. Sentencing data of North Carolina’s LWOP population reveals that while 62% of people serving LWOP for a homicide are African American, a remarkable 81% of those sentenced to LWOP under the state’s habitual offender law are African American.

In Mississippi, we find the same disturbing trends. Nearly one-quarter of those serving LWOP were sentenced under the state's habitual offender law, impacting those convicted of their third felony offense. Notably, under Mississippi's law, any person with two felony convictions, including one violent, receives a mandatory sentence to LWOP. Burglary, defined as a nonviolent offense in most states, is defined as a violent crime in Mississippi, whether or not the individual was armed or a person was in the dwelling that was burgled.

In Mississippi, 75% of people whose LWOP sentence is triggered by the habitual offender statute are Black. Moreover, two-thirds of the crimes triggered by the habitual offender law and resulting in LWOP are non-homicide, including 9% for property offenses and 12% for drug-related offenses. For these, Black people are highly overrepresented, making up 87% and 79%, respectively.

Elevated rates of Black and Latinx imprisonment have been recorded for many decades, partly caused by higher levels of engagement in violent offenses among Black people,⁶⁴ but greatly exacerbated by overly harsh policies advanced in the 1980s and 1990s, including increasing mandatory minimums, three strikes laws, and the abandonment of parole.

Criminologists Ruth Peterson and Lauren Krivo note that African Americans comprise a disproportionate share of those living in poverty-stricken neighborhoods and communities where a range of socioeconomic vulnerabilities contribute to higher rates of crime, particularly violent crime.⁶⁵ In fact, 62% of African Americans reside in highly segregated, inner city neighborhoods that experience a high degree of violent crime, while the majority of whites live in "highly advantaged" neighborhoods that experience little violent crime.⁶⁶ Their work builds on earlier research focused on the harms done to the African American community by disparate living environments, and extends this knowledge to evidence that this actually produces social problems including crime.

An abundance of recent scholarship also finds harsher sentencing outcomes among Black and Latinx defendants across the board, including in decisions whether to incarcerate and the length of sentence.⁶⁷ Some research

finds that sentencing guideline departures *above* the recommended range are more readily applied to Black and Latinx defendants as well.⁶⁸ Research elsewhere finds that white defendants in the federal system are more likely to receive sentences *below* the range recommended by the federal sentencing guidelines than Black defendants.⁶⁹

These differences could signal that judges and juries rely on racial and ethnic cues imported from societal stereotypes that African American and Latinx communities are more dangerous.⁷⁰ Attributional stereotypes, applied by race and ethnicity, can lead decisionmakers to see an individual as a greater public safety threat.⁷¹

PAROLE BOARD DECISIONS

Though all states maintain some form of back-end release, such as parole or executive clemency, there are frequently restrictions on their application that exclude most lifers. Researcher Tina Maschi and colleagues identify 11 states that exclude people convicted of sex-related offenses from release on geriatric or compassionate release grounds, and seven states deny this opportunity to persons convicted of first or second degree murder.⁷² Since most people serving life have been convicted of one of these crimes, this would result in the exclusion of many of them from early release consideration.

Other than the diminishing odds of being granted parole, few backend releases are available and/or utilized for individuals serving life.⁷³ Illinois, a system that abolished parole decades ago, also does not have either a medical or geriatric release policy. Executive clemency authority to grant commutations are in place statutorily in many jurisdictions, but even this is not universally the case. Georgia and Wyoming, for instance, do not allow executive clemency for persons serving LWOP except under limited claims of innocence.⁷⁴ Even when executive authority to commute a prison sentence exists, the decision is mired in political calculations that have little to do with public safety.

Parole boards, too, can delay or deny a meaningful opportunity to demonstrate readiness for release. Parole board policies have further shifted the punishment

system to one that errs toward permanent exclusion for people serving extreme sentences.⁷⁵

Utah provides a useful illustration. The state relies on an indeterminate sentencing structure except in the cases of death and LWOP, but life with parole and virtual life sentences allow release before one arrives at their maximum term. In all cases that go before the parole board, individuals receive a notice within six months of the start of their sentence that indicates when they will go before the board. The board has the sole authority to set the initial parole date, and factors it considers include the nature of the crime, prior offenses, progress evaluations to date, recommendations by the sentencing judge or prosecutor, and input from the victim and family. These considerations are fairly routine across parole boards (though not without critique). Two especially disturbing features of Utah's parole policies are evident. First, the board can also consider *new information about the crime* that was not revealed during the trial or verified by a court of law. Board instructions state:

[I]f the Board obtains and consider additional information which was not available to the court or offender prior to or at the time of sentencing, the additional information shall be provided to the offender, who shall be afforded a minimum of 21 days to consider and respond to the additional information prior to the Board making a decision that schedules an original hearing.⁷⁶

In other words, parole board members in Utah, appointed by the Governor and confirmed by the legislature, play a judicial role.

The second problematic feature of the Utah parole board policy is that it has the authority to move an indeterminate sentence (a sentence without a fixed end point) to a life sentence with no opportunity for parole, though this state already allows LWOP to be sentenced at trial. Once a lifer goes before the parole board at his or her initial scheduled time, the board chooses between approving for release, scheduling a rehearing at the parole board's discretion, or *denying release*, which means that the individual must serve their sentence in full.⁷⁷ Someone who has a sentence of 10-to-life, for example, can be denied release by the board and the result is LWOP. Again, Utah allows the parole board to usurp the role of the judge and jury.

Nationally, legislators have also delayed the chance for parole by extending the initial wait time for a first parole hearing, as well as the intervals one must wait before a subsequent review. Parole boards are now more likely to deny parole grants to lifers than in the past. Combined, these factors have led to a considerable downtrend in prison releases for lifers.⁷⁸

INTIMATE PARTNER VIOLENCE

Many women are in prison today as a direct result of defending themselves against intimate partner violence. These women were sentenced when medical understanding, much less societal views about domestic violence and trauma, were not evolved. As with emerging science on the developmental differences between young people and mature adults, more is known now about the impacts of trauma on people affected by intimate partner violence, usually women, than in past decades. Exact figures for the number of women serving life sentences for killing their abuser are not yet established, though national survey research of women prisoners is underway by Stanford's Criminal Justice Center to ascertain this much-needed information.⁷⁹

Today we know more about the short- and long-term impact of physical, sexual, and verbal abuse on criminal conduct. We know, for instance, that almost all who commit violence have also experienced it.⁸⁰ Yet allowance for trauma as a mitigating factor in culpability and punishment is still rarely recognized in court. New York has attempted to correct for this with the 2019 passage of its Domestic Violence Survivors Justice Act (DVSJA), Penal Law Section 60.12. The law allows relief for defendants and currently incarcerated persons who have been sentenced to at least eight years in prison for a crime in which domestic abuse was a significant contributing factor to the crime. Some crimes are excluded, including first-degree murder, certain forms of second-degree murder,⁸¹ aggravated murder, terrorism, or any attempt or conspiracy to commit these offenses. People who are required to be on the state's sex offense registry are also excluded from applying for review. Though the law is flawed in its restrictions, it is a first step in the legal acknowledgement that trauma and abuse correlate with violent crime, a fact which has been demonstrated clearly by many government and academic reports.

Patrice Smith was the first life-sentenced beneficiary of New York's *Domestic Violence Survivors Justice Act*. Released in September 2020, she served more than 20 years of her sentence. At 16-years-old, Smith was convicted for murdering a 71-year-old pastor with whom she had had an eight-month relationship. The relationship began when she was 15 years old and homeless. Interactions consisted principally of her perpetrator giving her money and gifts in return for sexual favors. Her trial and sentence were prominently highlighted in the media. In Smith's words, "they politicized my shame."⁸² During her years of imprisonment, Smith steeped herself in academic study and earned a college degree. She also engaged in psychotherapy to address her past abuse and was mentored by fellow women living at the Bedford Hills Correctional Facility who supported her journey. In her newfound freedom, she works with local advocacy groups to push for continued, stronger implementation of the law because she believes that "no one should ever wipe away a child."⁸³

Narrative accounts from women serving life sentences suggests that many played a supporting role in the underlying crime but were not the primary mastermind. Among 72 interviewed women lifers in Michigan, 60% had been convicted of "aiding and abetting" a criminal act, but were not principal actors. "For women convicted as aiders and abettors, it was their connection to violent partners, most often male, whose violent choices, directly or indirectly, resulted in women's sentences of life imprisonment."⁸⁴

LIFE LESSONS: WHERE DO WE GO FROM HERE?

All states use life imprisonment despite significant evidence that the penalty does not make us any safer. Criminality is impermanent; the pattern of aging out of criminal conduct is widely understood as criminological fact. Long prison terms, therefore, produce diminishing returns on public safety but rob communities of necessary resources needed to thrive. Society can and should do more to support those most at-risk of criminal conduct in the first place, responding to crime as, fundamentally, a public health problem. Instead, the knee-jerk reaction is often to endorse policies that put the public at ease in order to gain political traction, often at the expense of the most vulnerable. Lawmakers bare much responsibility to reverse the policies that launched us into mass incarceration, with the expansion of life imprisonment being one of the signature policies of this era.

Too often, sentencing reform proposals pointedly exclude some categories of crimes or sentences. For instance, crimes of violence are typically excluded from most modern sentencing reform proposals, which eliminates prospects for most lifers to earn their release. Such exclusionary reform proposals reject the fact one's crime of conviction does not preclude one's ability to change for the better. The low reoffending rates among released lifers supports the notion that even those who commit violent crimes are capable of reform. A concentration of reforms directed at scaling back punishments for low-level and nonviolent crimes – *because* they are low-level and nonviolent – has the unintended consequence of further legitimizing long-term imprisonment for offenses classified as violent. Legal scholar Christopher Seeds refers to this as “bifurcation nation.”⁸⁵

At the deepest end of the punishment spectrum, efforts to eliminate the death penalty have condoned life imprisonment as the replacement, and this has had the effect of normalizing, justifying, and even expanding the use of life imprisonment.

People serving life sentences need not be caught in this bind, and as recently as 40 years ago, they were not. To

eliminate life sentences writ large, many intermediary steps will need to be undertaken. They include reforms at the front end and the back end of the criminal legal system.

Fortunately, some jurisdictions are leading the charge. In 2018, California passed a law that allows prosecutors to seek sentence modifications from judges if sentences are seen as excessive. And in 2020, the Council of the District of Columbia passed the Second Look Amendment Act, which provide people sentenced to long terms during their adolescence and young adulthood a second look after 15 years. At the federal level, U. S. Senator Cory Booker of New Jersey introduced the Second Look Act in 2019, which would have allowed individuals in federal prison to petition the court for a sentence modification after 10 years.

ABOLISH LIFE WITHOUT PAROLE

Life without the possibility of parole (LWOP) is virtually unheard of in the rest of the world. International human rights bodies recognize the value in preserving human dignity and view rehabilitation and transformation as embodiments of that dignity. It is believed that LWOP sentences foreclose this opportunity.⁸⁶

The United States largely rejects that view, leaving jurisdictions saddled with the heavy cost of housing, feeding, and providing medical care for the more than 55,000 people serving LWOP for the remainder of their lives.

The elimination of LWOP will have a recalibration effect on all other less extreme sentences as well. Indeed, the public can minimize the impact of a five- or ten-year sentence on an individual and his or her loved ones when compared to extreme sentences, as this shorter period of time pales in comparison. Creation of a more just and proportional criminal legal system is dependent on ending extreme penalties. In addition, it will help lead to public acceptance of restorative justice principles and understanding the consequences and human costs of mass incarceration.



RENALDO HUDSON

Illinois Governor J.B. Pritzker granted clemency to 32 Illinois prisoners serving LWOP in 2020; nearly one third of the total clemencies granted that year.⁸⁷ One is Renaldo Hudson, initially sentenced to death row. Hudson was incarcerated for 37 years, through seven governors. Over his imprisonment, he came to terms with his past deeds and experienced an internal transformation that allowed him peace and a sense of redemption.

In a recent interview, Hudson provided a compelling analogy between the justice system's response compared with a car badly in need of repair: "If your car doesn't work right, you don't take a hammer to it and start beating it; you take it to a mechanic."⁸⁸ But, he noted, the justice system does not work in the same way; instead it serves as a junkyard. This was not Hudson's path, nor is it the path for many lifers. While imprisoned, he created the prison's "Building Block" program to assist incarcerated peers in coming to terms with their crime and their past, finding within themselves the resources to turn their lives around was his pathway to redemption and healing. Today as a free man he works for the Illinois Prison Project to help others fight for a second look.

IMPOSE A 20-YEAR CAP ON ALL LIFE SENTENCES EXCEPT IN RARE CIRCUMSTANCES

Since 2016, The Sentencing Project has recommended a 20-year maximum for life sentences except in rare circumstances based on individualized determination. We arrive at this recommendation after decades of witnessing heavy-handed punishments being added to the criminal legal system while social science makes clear that extreme punishment produces little public safety benefit.

A 20-year cap will provide necessary pressure on corrections systems to work with the individuals in their care to produce positive results. Even for persons with chronic prior criminal histories or those who have committed violent crime, it should not take corrections systems more than 20 years to accomplish rehabilitation.

There may be rare exceptions. If, after 20 years of imprisonment, it is clear that an individual remains a substantial public safety risk, a period of civil confinement might follow, as is done in Norway. Such civil confinement could only be imposed on an individual by a court with strong due process protections and legal representation. The goal here would still be rehabilitation and reintegration, not exclusion, and mandatory periodic review to assess readiness for release would continue.

The move toward a 20-year cap necessitates a cultural shift in our misplaced faith in heavy punishment. A challenge to be sure, but a cultural shift is certainly possible and, in our view, urgently needed. Public polling suggests that Americans believe that punishment just for the sake of incapacitation should not be the principle aim of the corrections system. Internal transformation, redemption and victim restitution should be central to the criminal legal response to harms done. Many people serving life sentences are capable and eager to demonstrate how they can contribute to society in a positive way. A range of research on the lived experiences of those serving life sentences makes it very clear that lifers, once adjusted to prison, evolve into model prisoners, have few disciplinary infractions, and “cope” with prison in admirable ways.⁸⁹

Our current system of life imprisonment forecloses almost all possibilities for the over 200,000 people now serving life imprisonment to give back to their communities.

ACCELERATE AND BROADEN RELEASE OPPORTUNITIES

The COVID-19 pandemic offers a prime opportunity to release thousands of people who pose little risk to public safety but who are at high risk of contracting the disease and dying from it. The responsibility, morally, legally and fiscally, for medical care falls on the state, which is especially draining on resources during this era of COVID-19.⁹⁰ When we apply scientific knowledge about risk to make release calculations, the solution is relatively simple: a presumption of immediate release for all older life-sentenced prisoners.

Beyond the urgency of the pandemic, parole boards and other releasing authorities can and should still ramp up reviews and releases for those who no longer pose a threat to public safety. In most cases this requires a comprehensive overhaul of the review process for incarcerated persons with a life sentence. An effective parole system would include several key characteristics that are currently absent. The composition of parole boards could be improved by removing involvement of the executive branch from the process.

In most jurisdictions, there is the option of petitioning the governor (or President in federal cases) for release. Too often in these deliberations, however, the focus quickly turns to one’s original crime, even if it was committed decades ago and even if the individual has a strong record in prison of abiding by rules and contributing to a positive environment.⁹¹ If the underlying crime included violence (as is usually the case with people serving life sentences) petitions for release are usually denied. Clemency campaigns can work to educate decision makers on the low crime risk posed by most people serving life sentences after a period of time.

The idea of instituting robust conviction and sentencing review units within prosecutor offices has taken hold in a small number of cities and states that range the political gamut, including Baltimore, Los Angeles, Philadelphia, Minnesota, and Virginia. The presence of these units represents the acknowledgement that some sentences are the product of a previous era and convictions are sometimes arrived at in error.

States should also adopt robust “second look” policies that reconsider the appropriateness of continued incarceration given the passage of time and changed

circumstances within the individual. Beginning this review at 10 or 15 years aligns the U.S. with the international legal community and with recommendations of the American Law Institute, a nonpartisan body of legal scholars. It should not take the corrections system more than 20 years to empower an individual with the healing and skills necessary to live crime-free after release.

REORIENT VICTIM & COMMUNITY INVOLVEMENT TOWARD TRUE HEALING

Major legal developments in the 1970s and 1980s reshaped the powerful role of victims in the criminal justice system. Beginning with a key ruling in *Linda R. S. v. Richard D.*, the majority opinion acknowledged that private citizens lack the judicial authority to compel a criminal prosecution, but offered the remedy of congressional enactment of laws which would entitle victims to legal standing. A range of federal and state statutes followed and today most states have incorporated victims' rights provisions into their constitution.⁹² These rights often include a virtually unfettered right to weigh in at important proceedings.⁹³

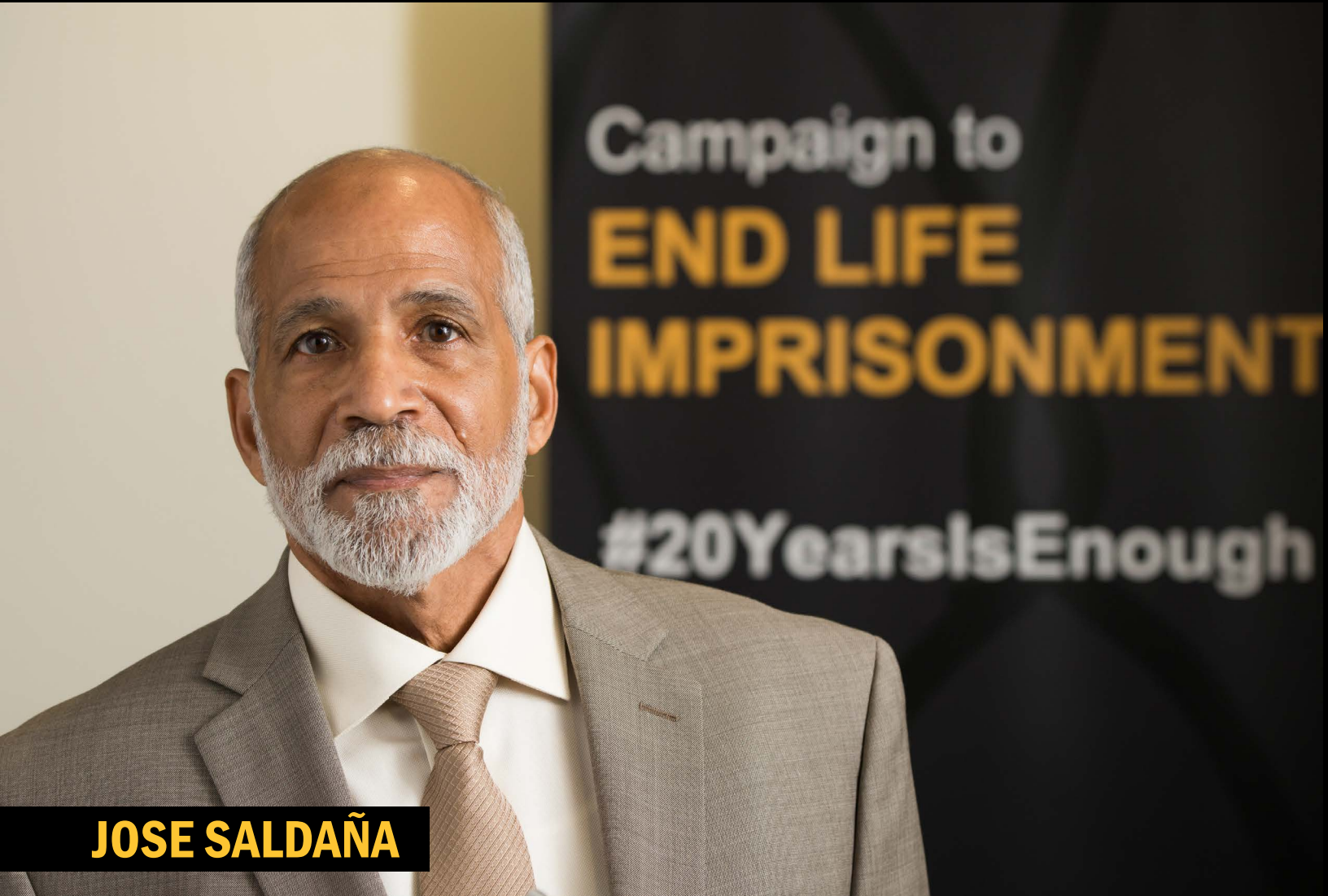
In its present orientation, the justice system--and prosecutors specifically--employ victim testimony at high risk of re-traumatization to obtain tough sanctions for the defendant. Though there is little evidence that the testimony of victims at criminal trials actually influences sentencing outcomes, victim *satisfaction* in both the process and sentence outcome is highly associated with sentence severity.⁹⁴ Given the political potency of victims' rights groups, this is powerful: as victim participation increases, parole denials also increase.⁹⁵

The face and voice of the victims' rights movement does not accurately reflect typical victims of crime.⁹⁶ Moreover, survivors are not provided with the tools and resources sufficient to cope with the emotional, physical, and financial effects of criminalization. The harms caused by their victimization stay for years, often untreated by the system aiming to help them. The corrections system and the criminal legal system at large are simply not designed or equipped to provide the healing to victims that they deserve.

A reorientation of the role of victims requires investing in restorative justice models that heal the harm caused by violence at their root, creating a system that is "survivor-centered, accountability-based, safety driven, and racially equitable."⁹⁷ Expert work is underway by groups including Common Justice as well as the National Black Women's Justice Institute. Both esteemed organizations anchor their work in the belief that we are all safer when we uplift victims, hold everyone accountable for their actions, and do so with empathy and compassion. The involvement of crime survivors in the process of justice through healing will help to undermine the misguided assumption that victims have been well-served by mass incarceration.⁹⁸

Similarly, rather than commit scarce public resources toward perpetual incarceration, funds could be invested in positive community development approaches that improve access to housing, jobs, education and health care. Such investments also improve public safety for all.

Since we already know where most violence and other crimes take place, we can mitigate crime-risk by immersing highly disadvantaged communities with early intervention and prevention resources. Considerably larger investments in community strengthening, such as universal preschool education, effective parenting initiatives, victim restitution, and treatment for substance use and mental health disorders will no doubt provide more justice in the end than pointlessly long prison terms. These resources make communities more secure by building systems that prevent the economic and social dislocation that greatly contributes to violence and other crime. By de-emphasizing incarceration and scaling back punishment we can use scarce public resources to support victims and communities to heal and thrive. This is the path to crime prevention and true public safety.



JOSE SALDAÑA

Jose Saldaña, 69, served 38 years in New York for shooting and partially blinding a police officer in 1979. He was released in 2018. Today he is the Director of RAPP (Release Aging People in Prison) which works toward the freedom of New York prisoners who are 50 years and older, many of whom are serving life sentences. He argues that if the New York corrections system truly was concerned about victims finding healing and closure from the harms done by violent victimization, it would have been required of him to reflect and gain insight on the impact of his crimes. But, he says, he came to these realizations on his own, having to overcome the negative influence of the prison environment to do so.

“It wasn’t until years later, during my incarceration, that I started to see the harm, the real totality of harm that victims of crime suffer.”⁹⁹

METHODOLOGY AND NOTES

States were contacted in January 2020 to request completion of our survey instrument. Due to the spread of COVID in prisons, departments of corrections took longer than anticipated to submit their data, but by November 30, 2020 all states and the federal government submitted completed questionnaires with the exception of Virginia. As in all years past, Virginia refused to participate in The Sentencing Project’s census claiming FOIA exemptions that are particularly limiting in this state. We estimated Virginia’s use of life imprisonment using data obtained from the Virginia Criminal Sentencing Commission as well as through published reports on the state’s website. We were not able to estimate gender, race, ethnicity, or juvenile status for Virginia.

Three jurisdictions did not provide data on the number of lifers who are 55 and older: Virginia, West Virginia and the federal Bureau of Prisons. Indiana did not provide elderly status among its LWOP population but did include it for LWP and virtual life-sentenced people.

The federal BOP submitted aggregate counts for most of the data, but did not submit a breakdown juvenile status at the time of the crime or number of persons currently 55 or older. We estimated race and ethnicity for the federal life-sentenced population based on the 2016 submission but urge caution in analysis.

When we contacted states, we offered them the opportunity to modify their previous submission. Revisions to 2016 figures were made in Louisiana, Montana, New Jersey, and Nebraska. The total count of life-sentenced prisoners in 2016 has been revised to 204,191 from 206,268.

Some definitional issues are also in order, beginning with our decision to define elderly lifers as 55 or older. There is no empirically determined age when imprisoned individuals are deemed elderly; however, there are health concerns that begin to develop at an earlier age than in those who are not in prison. While there is not yet consensus in the research as to the appropriate age to

classify an inmate as elderly, we frequently see 50 or 55 used as the cut-off. In an effort to be conservative, we asked states to report ages 55 and older.

“Virtual” life imprisonment is another term without a set definition. Though the mention of virtual life or de facto life sentences has become a more frequent part of scholarly and policy discussions about life in prison generally, the term of years that should amount to virtual life is not yet settled. Jessica Henry notes the difficulty in setting a term of years to define virtual life since the age of the individual at the time of prison admission is a critical component of the calculation. The courts have been even more unclear on where to draw the line.

We conservatively selected 50 years as the low point of a virtual life sentence based on the following rationale: life expectancy of a 33-year-old male (the typical age for someone entering prison with a homicide conviction) serving a long-term or life sentence was about 40 additional years. This suggests that to survive a lengthy sentence, one must be released before the age of 73. Add to this the increased probability of a premature death for those who are incarcerated, one can see that a minimum sentence of 50 years or more as equivalent to “virtual life” is reasonable.

Finally, we are aware of the growing calls for an “emerging adult” category of individuals who are not yet adults but not juveniles either. Twenty-first century developments in brain science and patterns of offending suggest that the adolescent brain is not fully developed until about age 25, later than what is typically recognized by the law.

[U]nlike logical reasoning abilities, which appear to be more or less fully developed by age 15, psychosocial capacities that improve decision making and reduce risk taking—such as impulse control, emotion regulation, delay of gratification, and resistance to peer influence—continue to mature well into young adulthood.¹⁰⁰

These are sound arguments for including those under 25 as a class protected from the harshest available punishments. We separate “juvenile status” as limited to those under 18 at the time of their crime in order to maintain our consistency with previous reports on this topic, and in line with state and federal jurisprudence which generally makes the same cutoff for juvenile versus criminal court matters. Nevertheless, The Sentencing Project is fully supportive of advocacy efforts to expand the definition of youth or juvenile to include all who have not fully matured.

APPENDIX: SURVEY INSTRUMENT

Thank you for providing the following information about your state's population of prisoners sentenced to: (1) life with the possibility of parole, (2) life without the possibility of parole, and (3) those sentenced to prison for a maximum of 50 years or more. If you have any questions as you complete this form, please be in touch with Ashley Nellis at anellis@sentencingproject.org or 202-628-0871. Your completed form can be emailed, faxed or mailed to our office at the address listed at the bottom of this form.

State: _____ State Prison Population: _____ as of _____.

SECTION 1: PERSONS SERVING LIFE WITH THE POSSIBILITY OF PAROLE

| A. Number of Persons 18 OR OLDER AT OFFENSE | B. Number of Persons UNDER 18 AT OFFENSE |
|---|---|
| TOTAL: | TOTAL: |
| Total Currently 55 Years Old or Older: | Total Currently 55 Years Old or Older: |
| Male | Male |
| White: African American: Hispanic: | White: African American: Hispanic: |
| Other: | Other: |
| Female | Female |
| White: African American: Hispanic: | White: African American: Hispanic: |
| Other: | Other: |
| Crime of Commitment | Crime of Commitment |
| 1 st Degree Murder: | 1 st Degree Murder: |
| 2 nd Degree Murder: | 2 nd Degree Murder: |
| Other Negligent Death (not listed above): | Other Negligent Death (not listed above): |
| Sex Offense: | Sex Offense: |
| Assault/Aggravated Assault: | Assault, Aggravated Assault: |
| Robbery/Aggravated Robbery: | Robbery, Aggravated Robbery: |
| Kidnapping: | Kidnapping: |
| Drug Offense: | Drug Offense: |
| Property Offense: | Property Offense: |
| Other (not listed above): | Other (not listed above): |

SECTION 2: PERSONS SERVING LIFE WITHOUT THE POSSIBILITY OF PAROLE

A. Number of Persons 18 OR OLDER AT OFFENSE

TOTAL:

Total Currently 55 Years Old or Older:

Male

White: African American: Hispanic:

Other:

Female

White: African American: Hispanic:

Other:

Crime of Commitment

1st Degree Murder:

2nd Degree Murder:

Other Negligent Death (not listed above):

Sex Offense:

Assault/Aggravated Assault:

Robbery/Aggravated Robbery:

Kidnapping:

Drug Offense:

Property Offense:

Other (not listed above):

B. Number of Persons UNDER 18 AT OFFENSE

TOTAL:

Total Currently 55 Years Old or Older:

Male

White: African American: Hispanic:

Other:

Female

White: African American: Hispanic:

Other:

Crime of Commitment

1st Degree Murder:

2nd Degree Murder:

Other Negligent Death (not listed above):

Sex Offense:

Assault, Aggravated Assault:

Robbery, Aggravated Robbery:

Kidnapping:

Drug Offense:

Property Offense:

Other (not listed above):

SECTION 3: PERSONS SENTENCED TO 50 YEARS OR MORE BEFORE RELEASE

The numbers provided in this section should include inmates who could potentially be released prior to their maximum through good-time credits and/or parole.

EXAMPLES OF THE TYPE OF INMATE WHO SHOULD BE COUNTED:

1. An inmate who has been sentenced to 60 years but is parole eligible after 25 years.
2. An inmate who has been sentenced to two separate terms of 25 years to be served consecutively.
3. An inmate who has been sentenced to a range of years from 40 to 50 years.

| <u>A. Number of Persons 18 OR OLDER AT OFFENSE</u> | | |
|---|-------------------|-----------|
| TOTAL: | | |
| Total Currently 55 Years Old or Older: | | |
| Male | | |
| White: | African American: | Hispanic: |
| Other: | | |
| Female | | |
| White: | African American: | Hispanic: |
| Other: | | |
| Crime of Commitment | | |
| 1 st Degree Murder: | | |
| 2 nd Degree Murder: | | |
| Other Negligent Death (not listed above): | | |
| Sex Offense: | | |
| Assault/Aggravated Assault: | | |
| Robbery/Aggravated Robbery: | | |
| Kidnapping: | | |
| Drug Offense: | | |
| Property Offense: | | |
| Other (not listed above): | | |

| <u>B. Number of Persons UNDER 18 AT OFFENSE</u> | | |
|--|-------------------|-----------|
| TOTAL: | | |
| Total Currently 55 Years Old or Older: | | |
| Male | | |
| White: | African American: | Hispanic: |
| Other: | | |
| Female | | |
| White: | African American: | Hispanic: |
| Other: | | |
| Crime of Commitment | | |
| 1 st Degree Murder: | | |
| 2 nd Degree Murder: | | |
| Other Negligent Death (not listed above): | | |
| Sex Offense: | | |
| Assault, Aggravated Assault: | | |
| Robbery, Aggravated Robbery: | | |
| Kidnapping: | | |
| Drug Offense: | | |
| Property Offense: | | |
| Other (not listed above): | | |

ENDNOTES

1. This does not include those in jails, which brings the figure to two million.
2. See, for example: *Vinter and Others v. United Kingdom*, App nos. 66069/09, 130/10 and 3896/10 (July 9 2013).
3. Sered, D. (2019). *Until we reckon: Violence, mass incarceration, and a road to repair*. New York: The New Press.
4. We use the word “lifer” intermittently throughout this report to refer to individuals serving life sentences. We are cognizant and careful of the potential of “othering” when it comes to applying terms to groups of people, particularly those who are incarcerated. For many people serving life sentences, the term “lifer” is not viewed as pejorative. Rather, it is a self-identified label used with pride. Many “lifers’ groups” have emerged in prisons around the nation, named as such by the prisoners. Serving a life sentence is a point of distinction among prisoners generally, and a term most prefer as an identity within the prison population. Indeed, these individuals have so far survived the most extreme sentence other than the death penalty and consider themselves to be “lifers” because of it.
5. Gottschalk, M. (2016) *Caught: The prison state and the lockdown of American politics*. Trenton; Princeton University Press; Mauer, M. and Nellis, A. (2018). *The meaning of life: The case for abolishing life sentences*. New York: The New Press.
6. National Institute of Justice (2016). Five things about deterrence. Washington, DC: Office of Justice Programs, U.S. Department of Justice.
7. Clear, T. (2018). *The community justice ideal*. New York: Routledge.
8. Mauer, M. (2003). *The meaning of life: Long prison sentences in context*. Washington, DC: The Sentencing Project; Nellis, A. and King, R. (2009). *No exit: The expanding use of life sentences in America*. Washington, DC: The Sentencing Project; Nellis, A. (2013). *Life goes on: The historic rise in life sentences in America*. Washington, DC: The Sentencing Project; Nellis, A. (2016). *Still life: America’s increasing use of life and long-term sentences*. Washington, DC: The Sentencing Project.
9. See methodology for our operationalization of virtual life sentences.
10. Seeds, C. (2019). “Life Without Parole Sentencing.” In Oxford Research Encyclopedia of Criminology and Criminal Justice. Oxford University Press; see also, Seeds, C. (2019). Historical modes of perpetual penal confinement: Theories and practices before life without parole. *Law & Social Inquiry* 44(2): 305-332.
11. Cullen, F. T., Lee, H., Butler, L. C., and Thielo, A. J. (2020). Rehabilitation and redemption: Building a new corrections.” In, Cecelia Chouhy, Joshua C. Cochran, and Cheryl Lero Johnson, (Eds.) *Criminal Justice Theory: Explanations and Effects (Advances in Criminological Theory. Vol 27: 309-335*. New York: Routledge.
12. Seeds, C. (2019). “Life Without Parole Sentencing.” In Oxford Research Encyclopedia of Criminology and Criminal Justice. Oxford University Press; see also, Seeds, C. (2019). Historical modes of perpetual penal confinement: Theories and practices before life without parole. *Law & Social Inquiry* 44(2): 305-332.
13. Prescott, J.J. Pyle, B. and Starr, S. B. (2020). Understanding violent-crime recidivism. *Notre Dame Law Review*, Vol. 95(4): 1643-98.
14. This count does not include jails, which brings the total to two million.
15. Ghandnoosh, N. (2014). *Race and punishment: Racial perceptions of crime and support for punitive policies*. Washington, DC: The Sentencing Project.
16. Van Zyl Smit, D. and Appleton, C. (2019). *Life imprisonment worldwide: A global human rights analysis*. Cambridge: Harvard University Press.
17. *Vinter and Others v. United Kingdom*, App nos. 66069/09, 130/10 and 3896/10 [July 9 2013].
18. Mauer, M. and Nellis, A. (2018). *The meaning of life: The case for abolishing life sentences*. New York: The New Press.
19. National Research Council (2014). *The growth of incarceration in the United States: Exploring causes and consequences*. Washington, DC: National Academies; Spohn, 2014; Tonry, Michael (2014). Remodeling American sentencing: A ten-step blueprint for moving past mass incarceration. *Criminology & Public Policy*, 13:503–533.
20. Life with or without parole is not statutorily defined in Alaska’s criminal code, but the state allows sentences we identify as “virtual life” terms of 50 years or more.

21. Van Zyl Smit, D. and Appleton, C. (2019). *Life imprisonment worldwide: A global human rights analysis*. Cambridge: Harvard University Press.
22. *Graham v. Florida* 130 S. Ct. 2011, 2030 (2010); *Miller v. Alabama* 1325 S. Ct. 2455 (2012); *Montgomery v. Louisiana* 136 S. Ct. 718 (2016).
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No End in Sight: America's Enduring Reliance on Life Imprisonment

Ashley Nellis, Ph.D.

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1705 DeSales Street NW, 8th Floor
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Tel: 202.628.0871
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