

Center For Constitutional Rights

Criminal Justice Issues and Prisoners' Rights

<https://ccrjustice.org/home/blog/2020/07/13/prison-abolition-and-cruelty-pennsylvania-s-death-incarceration-sentencing>

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The CCR blog

On July 8th, the Abolitionist Law Center, Amistad Law Project, and the Center for Constitutional Rights [filed a lawsuit](#) in Pennsylvania, seeking to abolish the state's cruel mandatory Life Without Parole (LWOP) sentencing scheme for people convicted of felony murder, aka second-degree murder. LWOP is commonly referred to as Death By Incarceration (DBI), because those serving these sentences are deprived of any opportunity to ever rejoin society, no matter the circumstances, and are forced to cope with the cruel reality that they will die in prison. In [our case](#), this means that prosecutors are allowed to punish a person who may not have killed anyone, for a tragic, unintended death that occurred during the commission of a particular felony.

[Our plaintiffs](#) are six individuals (three men and three women) who began serving DBI sentences at very young ages. Their lawsuit seeks to invalidate a statutory prohibition on parole eligibility for people convicted of felony murder and sentenced to life in prison. They argue that the DBI sentencing scheme violates the Pennsylvania state constitution's ban on cruel punishments. Despite the fact that none of them actually killed anyone or intended to take a life, our plaintiffs have collectively served 199 years behind bars. This legal claim is rooted in the humanist ideal of abolition: our plaintiffs are fighting to eliminate the prohibition on parole eligibility, because they seek to be assessed as individuals endowed with dignity, humanity, and worthy of a second chance at freedom. If the challenge is successful, more than 1,100 incarcerated people serving DBI sentences in Pennsylvania, 70 percent of whom are Black people, could eventually be eligible for parole.

This case raises broader questions of how the problems related to crime and violence in society should be addressed. As our plaintiffs' complaint illustrates, mandatory DBI sentencing is not a plausible solution. This sentencing scheme fails to consider any of the underlying social, economic, or political problems associated with violent crime. It also requires human beings convicted of felony murder at a very young age to sit in prison indefinitely, long after they have held themselves accountable for the harm they caused. Some of our plaintiffs are elderly and unlikely to commit another offense if released. For people who did not commit murder or intend to do so, death by incarceration is a disproportionate sentence in relation to the level of culpability they possess.

Although this case is narrow and focuses on people serving DBI for second-degree murder offenses, it does not mean they are more deserving of parole eligibility than people who have been convicted of first degree murder. Our plaintiffs' efforts to abolish the mandatory DBI sentencing scheme for second degree/felony murder is rooted in larger efforts to abolish the [prison-industrial complex](#) (PIC), a term that refers to a web of laws, regulations, informal rules, and policing institutions that criminalize and incarcerate young Black, Brown, and poor communities at disproportionate rates. The essence of racism and inequality in Pennsylvania's DBI sentencing scheme is borne out by the simple fact that although Black people only make up 12 percent of the state's population and 46 percent of the overall prison population, nearly 70 percent of all people serving DBI sentences for felony murder are Black. In Pennsylvania, Black people are disproportionately sentenced to die in prison for homicides they did not commit or intend to commit. It is no secret that racial disparities exist in the criminal justice system, but it is not enough to merely acknowledge injustice; it must be actively opposed. Thus, the DBI challenge is a necessary step in giving incarcerated people some sense of self-determination and abolishing the prison-industrial complex as a whole.

The prison-industrial complex serves the pecuniary and political interests of various industries and politicians who profit from imprisonment and view it as a solution to economic, social, and political problems. In reality, the prison system does very little to address the underlying problems related to crime. It merely assumes that crime will always exist and will always need to be punished. By proceeding in this way, the prison system simply relieves us of the responsibility to seriously engage with problems in our society, especially those produced by inequality, racism, and gender-based violence. This is part of the reason why abolitionists call for the elimination of the prison system. The system is inherently violent and, in order to achieve an overall less violent world, it will take more than simply avoiding violence as individuals; it is also necessary to destroy the patterns that perpetuate institutional and systemic violence in our communities.

However, abolition is not simply about decarceration, bulldozing prisons, or releasing all of the so-called criminals out on the streets. Fundamentally, abolition is an effort to reorganize how we live our lives together in the world. It seeks to undo the way of thinking that sees prison and punishment as solutions for all kinds of societal problems. Abolition demands that we as a society think of alternatives to vengeance or retribution as a solution to societal or interpersonal harm. In the context of prison abolition, this means that society must prioritize healing, restoration, and accountability in response to crime. Restoration and accountability mean asking the question: what do those who have been harmed need to heal and move forward? What do those who have committed harm need to transform their lives and avoid committing interpersonal or societal harm in the future?

In places where the state government, municipalities, social justice organizations, faith communities, and other community stakeholders work together to lift up human life, incidents of crime and punishment are less likely to occur. Lifting up human life means empowering, providing love, and caring for our most vulnerable communities by establishing or supporting existing mutual aid funds, mental health resources, restorative justice centers, economic support, housing co-ops, employment programs, and programs aimed at mitigating the

effects of post-release restrictions on returning citizens. In other words, the work of abolition involves creating and maintaining life-affirming structures in communities affected by violence, policing, mass incarceration, and other social issues. Abolition means living life every day in service of creating a better world by breaking down things that oppress and building up things that nourish.

Those of us who consider ourselves abolitionists must continue the work of Black women abolitionists like Angela Davis, Mariame Kaba, Joy James, Ruth Wilson Gilmore and so many others who are committed to freedom. Abolition also recognizes the struggles of our ancestors who fought for the abolition of white supremacist slavery, settler colonialism, racial genocide, dehumanizing anti-Black violence, convict leasing, and Jim Crow segregation. The fundamental ideas of abolition live on today through vulnerable peoples who wage the contemporary struggle to be understood as full, complicated human beings in a world free of all dehumanizing systems of social control. Indeed, the greatest promise of abolition is nothing short of a comprehensive transformation of society as we know it.

For our generation, abolition must mean something more than what it meant before. How might we achieve a world in which we truly provide love and care to our communities and how might we assure that the long, historical, and repeated systems of dehumanization and brutalization cease to exist? Those of us who are law students and aspiring movement lawyers like myself have taken on the responsibility of partnering with community members to forward a platform of justice from which the community can highlight our collective voices for positive legal and social change. From my perspective, movement lawyers and abolitionist organizers embody the true meaning of service. They recognize and serve those who have been wrongfully accused, targeted, jailed, and beaten in the name of justice. They acknowledge and defend the rights of those who celebrate life, stand up and let their voices be heard even as they struggle to survive, and I would be honored to join their ranks and fight for the cause of abolition. But in order to achieve abolitionist wins, we must first recognize the challenge of holding an abolitionist politic.

A major challenge of the abolitionist movement is to do the work that will create more humane environments for people in prison without legitimizing the permanence of the prison system. Our plaintiffs in this case are fighting for a chance at parole after serving many decades behind bars and taking extraordinary steps to work towards a better future for themselves through educational, employment, and mentorship programs. In challenging Pennsylvania's sentencing scheme, the plaintiffs present the state with a moral confrontation: it must answer the question of how a sentencing scheme that makes death by incarceration mandatory without considering the individualized circumstances associated with crime can purport to be a solution to crime. Further, the suit raises the question of how such a sentencing scheme can be compatible with the notion that people convicted of felony murder are still full, complicated human beings who can change.

Black lives still matter, even when someone has committed significant harm, and the prohibition on parole eligibility, in this case, serves no purpose other than the cruel, lifelong, dehumanization of people who never murdered or intended to murder anyone. By fighting for parole eligibility, our plaintiffs have situated this case in the larger context of abolition because they call for a more humane alternative to the state's prevailing system of retributive punishment and incarceration. The alternative challenges the false dichotomy between victim and offender defined by lifelong punishment or vengeance and centers the possibility for accountability, redemption, and rehabilitation to be proven and shown through an individualized assessment of each person convicted of felony murder and sentenced to life. It creates room for second chances for people who, at a very young age, made a mistake and have now moved on to live better lives.

[View the discussion thread.](#)

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