

The Sentencing Project

Criminal Justice Issues and Prisoners' Rights

<https://www.sentencingproject.org/publications/no-end-in-sight-americas-enduring-reliance-on-life-imprisonment/>

Campaign and Advocacy

1705 DeSales St, NW
8th Floor
Washington, D.C. 20036
202.628.0871
(fax) 202.628.1091
staff@sentencingproject.org

1705 DeSales St, NW
8th Floor
Washington, D.C. 20036
202.628.0871
(fax) 202.628.1091
staff@sentencingproject.org

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.

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.

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. 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.

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.

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.

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. 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.

[Click here to download the full report.](#)

Black men born in 2001 can expect to go to prison in their lifetime

COVID-19

1705 DeSales St, NW
8th Floor
Washington, D.C. 20036
202.628.0871
(fax) 202.628.1091
staff@sentencingproject.org

The Sentencing Project (EIN 52-1472546) is a registered 501(c)(3) nonprofit organization.
Copyright 2022 The Sentencing Project All Rights Reserved [Terms of Use](#) // [Privacy Policy](#)