

# The Sentencing Project

## Criminal Justice Issues and Prisoners' Rights

<https://www.sentencingproject.org/publications/still-life-americas-increasing-use-life-long-term-sentences/>

## Policy Issue Resources

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Every state and the federal government allow prison sentences that are so long that death in prison is presumed. This report provides a comprehensive profile of those living in this deep end of the justice system. Our analysis provides current figures on people serving life with parole (LWP) and life without parole (LWOP) as well as a category of long-term prisoner that has not previously been quantified: those serving virtual or de facto life sentences. Even though virtual life sentences can extend beyond the typical lifespan, because the sentences are not legally considered life sentences, traditional counts of life-sentenced prisoners have excluded them until now.

Calls for reform to the criminal justice system have been made at the state and federal level in recent years and policy changes have been adopted in many jurisdictions. The prison population overall has stopped its upward climb and in some states, substantial declines have been documented. Between 2010 and 2015, 31 states lowered their prison population and in five states, the decline was greater than 15 percent.<sup>4</sup>Carson, E. A. & Anderson, E. (2016). *Prisoners in 2015*. Washington, DC: Bureau of Justice Statistics; Guerino, P., Harrison, P. M., & Sabol, W. (2011). *Prisoners in 2010*. Washington, DC: Bureau of Justice Statistics. New Jersey has led the nation with a 35 percent decline in its prison population since 1999. Motivated by overcrowded prisons and tight budgets, policymakers in select states are reconsidering the value of a harsh criminal justice response to low-level offenses, especially drug offenses, and passing legislation to shorten prison stays. Reforms are evident at the other end of the punishment spectrum as well, as the death penalty has been increasingly disfavored for its exorbitant cost and the possibility of wrongful conviction.

Absent from most mainstream criminal justice discussions is the reconsideration of long prison sentences.<sup>5</sup>Kazemian, L. & Travis, J. (2015). Imperative for inclusion of long termers and lifers in research and policy. *Criminology and Public Policy*, 14(2), 355-395. Evaluation of the appropriateness of lifelong prison sentences is typically either omitted from policy discussions or deliberately excluded from reforms. An example lies in an Oklahoma bill introduced in January 2017 which purports to ease prison overcrowding through establishing more flexible geriatric release.<sup>6</sup>[Oklahoma Senate Bill 185 of the 1st session of the 56th legislature \(2017\)](#). The Parole of Aging Prisoners Act would afford the parole board the power to grant parole to a prisoner who is at least 50 years old and has served at least 10 years in prison or one third of his or her prison term (whichever is shorter). Eligible prisoners may request to go before the parole board on the next available docket. However, because the bill excludes 22 separate crimes, including murder, arson, first degree burglary, aggravated robbery, and any crime that would result in sex offender registration upon release, people serving life would not qualify. In fact, analysis of data from the Oklahoma Department of Corrections concerning the number of people who would qualify reveals that only one quarter of the prisoners who are 50 years older could become eligible for parole under this proposed law.<sup>7</sup>Gibson, B. (2017). [A call to give early release to older, medically frail prisoners](#). Oklahoma Watch.; Oklahoma Department of Corrections (2016). [Annual report, 2015](#). Oklahoma City: Oklahoma.

Bills that aim to reduce prison populations but exclude whole categories of crimes illustrate the tension policymakers face between responsibly addressing prison overcrowding while appearing tough on crime and increasing corrections expenses. It is not tough to imprison people long past their proclivity or even physical ability to commit crime; to the contrary, it is a poor use of resources that could be put toward prevention. Moreover, reforms that exclude those convicted of violent crimes will not have a sufficient impact on mass incarceration, as more than half of those in state prisons have been convicted of such offenses.

Imprisonment for those who commit serious crimes can serve to protect society as well as apply an appropriate level of punishment for the offense. Indeed, public concerns about serious crime and maintaining public safety are among the drivers of support for long prison sentences. Yet there are diminishing benefits of high levels of incarceration on public safety. A prominent reason is that the impulse to engage in crime, including violent crime, is highly correlated with age,<sup>8</sup>Farrington, D. P. (1986). Age and crime. In M. Tonry & N. Morris (Eds.) *Crime and justice: An annual review of research*. Volume 7. Chicago: University of Chicago Press; Sweeten, G., Piquero, A. R., & Steinberg, L. (2013). Age and the explanation of crime, revisited. *Journal of Adolescence* 42, 932-938. and by ones early 40s even those identified as the most chronic career criminals have tapered off considerably.<sup>9</sup>Blumstein, A., Cohen, J., & Hirsch, J. (1982).

*The duration of adult criminal careers: Final report.* Pittsburgh: Carnegie-Mellon University; Blumstein, A. & Nakamura, K. (2009). Redemption in the presence of widespread criminal background checks. *Criminology*, 46, 327-359. Lifelong imprisonment with limited or no chance for review only serves a retributive purpose and is often counterproductive for purposes of crime control.

Overall, 206,268 people are serving life or virtual life sentences and one quarter of them will never have an opportunity for parole. Looking at all states and the federal system combined, one in seven prisoners is serving a life or virtual life sentence.

In eight states, the proportion of state prisoners serving one of these sentences is at least one in five.

As of 2016, the life-sentenced prison population was nearly five times its size in 1984, the earliest available record of life sentences nationally. For much of the time that life sentences have been growing prison populations were also rising, although at a slower pace overall. Prison populations started to decline for the first time in four decades in 2010 and had declined by 4.8 percent by

2015.<sup>10</sup>Carson, E. A. & Anderson, E. (2016). *Prisoners in 2015*. Washington, DC: Bureau of Justice Statistics.

Crime is also at historic lows. Since its peak year in 1991, violent crime has been steadily dropping, now about half of its level in 1991. The murder rate, which peaked in 1993, is also approximately half of its level in 1993, with 4.9 murders per 100,000 residents reported in 2015.<sup>11</sup>Federal Bureau of Investigation, *Uniform Crime Report Series*, 1984-2015, Table 4. Between 2014 and 2015 there was a two percent increase in violent crime, which has caused some politicians to predict the next major crime wave. However, it is too soon to tell whether a more serious rise in crime is on the horizon.

Despite historic crime lows and falling prison figures, the number of people serving life sentences without the possibility of parole has continued to rise.

Within the technical category of life sentences are two classifications: life with the possibility of parole (LWP) and life without the possibility of parole (LWOP). For LWP sentences, the first opportunity for parole typically occurs after 25 or more years in prison and for LWOP, there is no chance for parole. Virtual life sentences, explained in more detail below, do not allow parole until an individual has served as much as 50 years in prison or longer.

Nearly all states allow or mandate the use of life with parole.<sup>12</sup>States that have abolished parole altogether or for those sentenced to life include: Arizona, Florida, Illinois, Iowa, Louisiana, Maine, Pennsylvania, South Dakota, Virginia and Wisconsin. In addition, the federal government has abolished its parole system. In these cases, the government maintains the right to keep an individual in prison for the remainder of his or her life, but there is the potential for release after a certain number of years. These sentences accounted for 108,667 prisoners in 2016. Some states report disproportionately large shares of prisoners serving indeterminate life sentences, the highest among which are Utah, California, New York, Nevada, and Alabama. In Utah, for instance, more than 30 percent of state prisoners are serving LWP sentences.<sup>13</sup>Utah is a state with an indeterminate sentencing scheme in which lifers are sentenced to terms that are indeterminate in length but have a maximum term of life in prison.

Life-without-parole-sentences eliminate the possibility of release from prison except in the rare case of a clemency or commutation by the executive branch. There are 53,290 people serving LWOP sentences as of 2016, amounting to one of every 28 prisoners overall. Like LWP sentences, LWOP sentences have been administered disproportionately in a handful of states: combined, Florida (16.7%), Pennsylvania (10.1%), California (9.6%), Louisiana (9.1%), and the federal system (7.2%) comprise just over half (52.7%) of the nation's total LWOP population. In Delaware, Louisiana, Massachusetts, and Pennsylvania more than 10 percent of the state prison population is serving a life sentence with no chance for parole.

As previously noted, this report provides the first-ever census of virtual or de facto life sentences, a third category of life sentence which refers to a term of imprisonment that a person is unlikely to survive if carried out in full. Though not considered under the technical definition of a life sentence, there are good reasons to include prisoners serving virtual life sentences in this report's count. To date, courts have been reluctant to view extremely lengthy term-of-years sentences as equivalent to life sentences. The plaintiff from a 2010 case before the 10th Circuit Court of Appeals argued that a sentence of 750 years was equivalent to life without parole, which was not allowed under the statute for the crime he committed. The appellate court denied the claim, noting that while LWOP was not allowed, one that was functionally the same was permissible and, in this case, reasonable.<sup>14</sup>*United States v. Lewis* 594 F. 3d 1270 (10th Circuit 2010).

Long-term imprisonment that is not statutorily defined as a life sentence should be of concern to policymakers, advocates, courts, and prison administrations, all of whom have an interest in knowing the true prevalence of long-term imprisonment and the associated consequences. Establishing a cut-off for the number of years that defines a virtual life sentence is challenging, as its survivability is a factor both of the number of years one is sentenced to as well as the age of the individual at sentencing. Given that the average age of admission to prison for those convicted of serious crime is in one's mid-to-late thirties, we establish that a maximum sentence of at least 50 years before parole is equivalent to life in prison. Overall, we find there are 44,311 individuals serving such sentences.

States with particularly large segments of the population serving virtual life sentences are Alaska, Indiana, Louisiana, Montana, and New Mexico, ranging from 8.5 to 17.4 percent of the state prison population. Among these states, Alaska, Indiana, and Montana are particularly noteworthy because of the disproportionately high number of virtual life sentences in comparison to LWP and LWOP sentences. Alaska receives special mention in many discussions about the use of life sentences across the nation because it is the only state in the U.S. that does not statutorily allow life sentences. However, one in 12 prisoners in Alaska has been sentenced to 50 years or more, comprising 8.5 percent of prisoners overall in the state. Likewise, Indiana imprisons relatively few people with life sentences, reflecting less than one percent of all prisoners. At the same time, there are 3,537 prisoners in the state serving virtual life, amounting to 13.5 percent of the state's overall prison population. Montana, too, imprisons a relatively small number of people for LWP or LWOP, but nearly four times as many prisoners are serving de facto life sentences.

For each group of life-sentenced prisoners, states supplied data on crime of conviction, race, ethnicity, gender, and juvenile/adult status at the time of the offense. The following sections present the findings for each of the three life-sentenced prisoner categories.

Thirty-eight percent of people serving life or virtual life sentences have been convicted of first degree murder and an additional 20.5

percent have been convicted of second degree, third degree or some other type of murder. Approximately one third of people serving life or virtual life sentences have been convicted of other violent crimes that include rape, sexual assault, robbery, aggravated assault, or kidnapping. One in 12, or 17,120 prisoners serving life or virtual life, has been convicted of a nonviolent crime. Certain jurisdictions stand out with particularly large segments of their population serving life sentences for nonviolent crimes. In Nevada and Delaware nearly one-third (32.8% and 31.9% respectively) were convicted of a nonviolent crime. In Oklahoma, one in six people serving life or de facto life has been convicted of a nonviolent crime; in Alabama, it is one in seven and in New York one in nine.

Conviction for second degree murder can result from a range of levels of involvement in the crime. Pennsylvanias statute, for instance, reads: a criminal homicide constitutes murder of the second degree when it is committed while defendant was engaged as a principal or an accomplice in the perpetration of a felony.<sup>15)</sup>Pennsylvania Code, Title 18, Chapter 25, Section 2502(b). A murder conviction other than for first degree murder may occur when an individual was present during a felony that resulted in death but played an auxiliary role. A scenario where two individuals commit a drugstore robbery but one serves as a getaway driver even when never entering the store can result in a felony murder conviction if someone is killed during the robbery. Various referred to as felony murder, law of parties, or joint venture, these cases typically involve identical punishments for all those engaged in a felony that results in a homicide even though only one person in the group committed the actual homicide. Felony murder doctrines, those which regard unintended killings during certain felonies as identical to intended killings, exist in nearly every jurisdiction.<sup>16)</sup>Binder, G. (2011). Making the best of felony murder. *Boston University Law Review* 91: 403-559. In some states, the death penalty can be sought in these cases as well.<sup>17)</sup>The U.S. Supreme Court has limited but not banned the use of the death penalty for those convicted of felony murder. See *Enmund v. Florida* 458 U.S. 782 (1982) and *Tison v. Arizona* 481 U.S. 137 (1987).

In Pennsylvania, 23 percent of the LWOP population was convicted of second degree murder. Before his release through commutation in 2016, Thurmond Berry was one of these prisoners. At the age of 29, Berry engaged in a robbery in which his accomplice killed a bystander. Because state statute requires life without parole for first and second degree murder convictions, Berry, a first-time offender, was sentenced to LWOP. Berrys case gained the attention of a group of law students who worked for his release. Their advocacy led to the commutation of his sentence by Governor Tom Wolf in 2016. Berry was 68 years old when he was released and had been in prison for nearly 40 years.<sup>18)</sup>Benshoff, L. (2017). [With commutation the window to freedom opens a crack for lifers in Pa.](#) *Newsworks*.

The composition of crimes leading to a life sentence in the federal prison system is quite different from the composition at the state level. Unlike state imprisonment trends, where 15.7 percent of individuals in prison overall have been convicted of a drug offense, half (49.5%) of federal prisoners have been convicted of a drug offense.<sup>19)</sup>Carson, E. A. & Anderson, E. (2016). *Prisoners in 2015*. Washington, DC: Bureau of Justice Statistics. More than two-thirds of federal prisoners serving life or virtual life sentences have been convicted of nonviolent crimes,<sup>20)</sup>There are 1,517 federal prisoners serving a life sentence with parole (117) or without parole (1,400) serving life for a crime categorized as other. Upon request, the Bureau of Prisons provided us with a disaggregated list of the crimes that are grouped under this category. The list is consistent with research published by the United States Sentencing Commission. See: Schmidt, G. R. & Konfrst, H.J. (2015). *Life sentences in the federal system*. Washington, DC: United States Sentencing Commission. including 30 percent for a drug crime. Among those serving LWOP sentences almost half 49.1% have been convicted of a drug crime, and 103 are serving virtual life for a drug crime (6.4%). Individuals convicted of drug offenses and sentenced to life or virtual life at the state level comprise only two percent of these sentences overall.

Addressing life sentences for nonviolent drug cases was part of a bipartisan federal criminal justice reform package introduced in 2015 and believed by many reform advocates to have the political support needed to become law. Though the bill ultimately did not pass during the 114th Congressional session, it is noteworthy that reconsideration of lifelong sentences was included at all. In part to compensate for the lack of advancement of criminal justice reform in the Congress and to acknowledge the disproportionality of life sentences for nonviolent drug offenses, President Obama granted commutations to 1,715 people in the federal prison system, one-third of who were serving mandatory life sentences with no option for parole.<sup>21)</sup>The federal government eliminated parole beginning in 1987.

Two-thirds of people in federal prison serving terms of 50 years or more have a controlling offense that was classified as other by the Bureau of Prisons. Further examination of these prisoners revealed that 55 percent of those in this group had been convicted under 18 USC 924(c), a mandatory minimum term of imprisonment associated with having a weapon.<sup>22)</sup>The Congressional Research Service states that 18 U.S.C 924(c) requires, one of a series of mandatory minimum terms of imprisonment upon conviction for misconduct involving the firearm and the commission of a federal crime of violence or a federal drug trafficking offense. The terms vary according to the type of firearm used, the manner of the firearms involvement, and whether the conviction involves a single, first-time offense. Liability extends to co-conspirators and to those who aid or abet in the commission of a violation of the section. The categorization of this crime as the controlling offense means that violation of USC 18 924(c) was the most serious offense. Another 18.5 percent of crimes identified as other related to child sexual exploitation and the transfer of pornographic images of children.

Nationwide, 6,781 women are serving life or virtual life sentences. This figure represents 3.5 percent of the overall life-sentenced population which is half their representation in the general prison population (7%).<sup>23)</sup>Carson, E. A. & Anderson, E. (2016). *Prisoners in 2015*. Washington, DC: Bureau of Justice Statistics. All states report one or more women serving a life sentence, but two states California and Texas represent a considerable proportion of the national count: 19.8 percent of the countrys female lifers are in California and another 9.9 percent are in Texas.

Renae Green is a Missouri prisoner who is serving indeterminate life plus 30 years for a 1989 robbery in which she held up two pharmacists while in the throes of her drug addiction. Green had endured a troubled childhood marked by abuse and neglect and she became addicted to drugs at an early age. Since her imprisonment, she has taken responsibility for her crime, maintained steady employment while in prison, fostered friendships with mentors, and secured housing if released. As it stands, however, Greens first parole hearing will not occur until 2029; she will be 74 years old.

Abuse is frequently part of the history of women who end up in prison. Research conducted by the U.S. Department of Justice has reported that between 23 and 37 percent of female state prisoners were physically abused before age 18 and one in four was sexually abused. These figures are considerably higher than reported rates of abuse among all women. This study also found that nearly half of

women in state prisons had experienced abuse at some time before their arrest and that the victims of most women convicted of murder were their intimate partner or a family member.<sup>24</sup>)Harlow, C. W. (1999). *Prior abuse reported by inmates and probationers*. Washington, DC: Bureau of Justice Statistics. Research finds that abuse histories are especially common for women serving life sentences compared to their male counterparts.<sup>25</sup>)Crewe, B., Hulley, S., & Wright, S. (2017). The gendered pains of life imprisonment. *Journal of British Criminology*; Leigey, M. and Reed, K. (2014). A woman's life before serving life: Examining the negative pre-incarceration life events of female life-sentenced inmates. *Women and Criminal Justice* 20: 302-322. Our own work in this area found that while almost half of LWOP prisoners sentenced as children had suffered physical abuse (46.9%) and one in 5 suffered sexual abuse (20.5%), the prevalence was much higher among girls, 79.5% and 77.3% respectively.<sup>26</sup>)Nellis, A. (2012). *The lives of juvenile lifers: Findings from a national survey*. Washington, DC: The Sentencing Project.

Racial and ethnic disparities are a persistent feature of prisons. At the state level, African Americans are incarcerated at five times the rate of whites, and in some states the disparity reaches 10-to-1 or higher. Even in the states with the lowest reported racial disparity, African Americans are incarcerated at more than twice the rate of whites.<sup>27</sup>)Nellis, A. (2016). *The color of justice*. Washington DC: The Sentencing Project.

Like prison populations in general, the life and virtual life-sentenced population is disproportionately composed of people of color, representing two-thirds (67.5%) of this group nationally as of 2016. Nearly half (48.3%) of life and virtual life-sentenced prisoners are African American, and in Alabama, Georgia, Illinois, Louisiana, Maryland, Mississippi, and South Carolina two thirds or more are African American. Overall, 15.7 percent are Hispanic, with the highest percentages in New Mexico, California, Texas, and New York. Table 4 presents the racial and ethnic composition of lifers in each state and the federal system.

In many states, the racial and ethnic overrepresentation is most pronounced among people serving LWOP sentences when compared to the representation for LWP and virtual life sentences. African Americans make up two-thirds or more of the LWOP population in nine states: Alabama (68.8%), Illinois (66.9%), Georgia (75.1%), Louisiana (73.5%), Maryland (66%), Michigan (68.4%), Mississippi (70.4%), New Jersey (66.2%), and South Carolina (68.5%).

Finally, people of color comprise 65.6 percent of those serving de facto life sentences. African Americans comprise just over half of the virtual life-sentenced population (51.9%) and another 11.7 percent are Latino.<sup>28</sup>)The remainder were identified as other. States with the greatest share of de facto life sentences being served by African Americans are Alabama (64%), Illinois (68.5%), Maryland (78.1%), Mississippi (75.6%), and South Carolina (68.4%).

Juveniles are serving life or de facto life sentences in every state except Maine and West Virginia.<sup>29</sup>)The juvenile/adult status of those serving life or virtual life sentences was not provided by the federal Bureau of Prisons because it was claimed to be too burdensome to calculate. Washington, DC does not have any individuals serving LWP or LWOP for crimes committed under 18, and the number of juveniles serving terms of 50 years or more was not obtained. Across the country, 11,745 individuals are serving a life or virtual life sentence for crimes committed before age 18, representing 5.7 percent of the total life-sentenced population. One in every 17 life-sentenced prisoners was a juvenile at the time of his or her crime. In select states, the proportion of such individuals is remarkable: in Wisconsin, for example, one of every nine (11.1%) of those serving LWOP, LWP, or a de facto life sentence was under 18 at the time of the crime.

The U.S. Supreme Court has addressed the constitutionality of life-in-prison sentences for juveniles in three separate rulings since 2010. In 2010, the Court in *Graham v. Florida* ruled that LWOP sentences for nonhomicide convictions committed by juveniles violate the 8th Amendment clause regarding cruel and unusual punishment. In his opinion Justice Anthony Kennedy wrote that juveniles must be provided with a meaningful opportunity for release based on demonstrated maturity and rehabilitation.<sup>30</sup>)*Graham v. Florida*, 130 S. Ct. 2011, 2030 (2010).

In 2012, the Court extended this line of thinking in *Miller v. Alabama*<sup>31</sup>)*Miller v. Alabama* 1325 S. Ct. 2455 (2012). to juveniles who had been convicted of homicide offenses and mandatorily sentenced to LWOP because of a statutory requirement associated with the crime of conviction. In the majority opinion, Justice Elena Kagan wrote that mandatory life sentences preclude the consideration of mitigating age-related factors. The so-called *Miller* factors were described in the following excerpt from the opinion:

Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him. Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth.

*Miller* was made retroactive in 2013 through the ruling in *Montgomery v. Louisiana*. Since that time, sentences are slowly being converted to lesser terms and some individuals are being released from prison altogether.

In Nebraska Luigi Grayer is a beneficiary of the High Courts rulings. At age 15 Grayer committed a homicide—the result of a botched purse-snatching—and was sentenced to life in prison with no opportunity for parole. At 60 years old, he had served 45 years in prison, had suffered a stroke while incarcerated, and was confined to a wheelchair.<sup>32</sup>)Cooper, T. (December 4, 2015). [Resentenced at 60 for killing at 15](#). NP Telegraph. He was finally granted a new sentence in the aftermath of the *Miller* ruling that allowed his release in December 2015.

California, Florida, Louisiana, Michigan and Pennsylvania have the greatest total number of JLWOP prisoners; combined these states account for 73.9 percent of the nation's JLWOP population.

Nineteen states and the District of Columbia now ban life without parole sentences for juveniles. In some states the reforms have been retroactive so that prisoners currently serving will benefit. In March 2017 Arkansas became the latest state to do so, voting to replace



mandatory JLWOP with the opportunity for parole occurring after 20 to 30 years in response to the *Miller* and *Montgomery* decisions. This state reform is notable because Arkansas has a relatively large number of individuals serving juvenile LWOP sentences, and 8.6 percent of all Arkansas LWOP prisoners were juveniles at the time of the crime. Senate Bill 294 was passed as retroactive, so all 55 individuals serving the sentence stand to have an opportunity for release.

Aside from the 2,310 individuals who are the subject of recent court rulings, departments of corrections report an additional 7,346 parole-eligible life-sentenced prisoners whose crimes occurred before age 18. This population represents 6.8 percent of all reducible life-sentences nationwide. Indeterminate life sentences for juveniles are most heavily concentrated in California, Texas, New York, and Georgia. Together these states account for 63 percent of the total population of those serving LWP for crimes committed as juveniles. California alone accounts for 37 percent of the total number of juveniles serving life with parole in the U.S. with 2,717 people serving this sentence who were convicted of crimes from their youth. In some states, such as New York, children as young as 13 years old can be sentenced to mandatory terms of life with parole.<sup>33</sup>)Kohler-Hausemann, I., Gilbert, A. P., & Seeds, C. (2017). [Children sentenced to life: A struggle for the N.Y. Board of Parole](#). *New York Law Journal*.

Amelia Bird, now 27 years old, is serving two life-with-parole sentences to be served consecutively for a second-degree murder in which she was an accomplice. At age 17, she confided in her boyfriend that she had been physically and sexually abused by her brother and father. While she slept one night, her boyfriend broke into the home and shot both of Bird's parents, killing her mother and wounding her father. Bird agreed to a plea from prosecutors to avoid the threat of a death sentence; she was then sentenced to two consecutive indeterminate life sentences. Under current policy, she will not become eligible for parole until at least age 60. Bird represents the thousands of individuals who do not stand to benefit from any of the recent Supreme Court rulings because they were not sentenced to LWOP.

Apart from the 9,656 individuals serving LWP and LWOP for crimes committed as juveniles, an additional 2,089 young people have been sentenced to terms of 50 years or more in prison, or virtual life. Like trends observed in the overall life-sentenced population, life- and virtual-life sentenced youth are overwhelmingly male (98%) and the majority are people of color (80.4%) with 55.1 percent being African American.

When compared to the representation of adults serving LWOP, LWP, and virtual life, we see that youth of color comprise a considerably greater share of the total than their adult counterparts for each of the three types of life sentences. Table 5 provides a comparison by race and ethnicity between juvenile and adult status for each category of life sentence.

One of every 21 virtual life-sentenced individuals was convicted of a crime committed as a juvenile. States with the highest concentrations of virtual lifers who were juveniles at the time of the crime include Washington (9.7%), Louisiana (9.5%), Kentucky (8.8%), and Florida (8.3%).

In Louisiana, a remarkable 600 young people have been sentenced to terms of at least 50 years before release. Around the U.S. nearly two-thirds (64.4%) of young people with virtual life sentences are African American; in Alabama, all but one of the 10 juvenile virtual lifers is African American; in Wisconsin 10 of the 12 juveniles sentenced to terms of 50 years or more are African American; and in South Carolina, 21 of the 22 virtual life prisoners who were juveniles are African American.

Texas, which has relatively few JLWOP prisoners,<sup>34</sup>)Texas first adopted LWOP in 2005 but eliminated it for juveniles in 2009; those serving life-with-parole sentences in Texas first become eligible for parole after 40 years in prison. nevertheless currently holds 449 prisoners with sentences of at least 50 years for crimes committed in their youth. More than one quarter of Texas prisoners serving virtual life for a crime in their teenage years had been convicted of aggravated assault as their primary offense.<sup>35</sup>)This is also the case for adult prisoners serving virtual life sentences in Texas. Here, too, the sentence has disproportionately fallen on youth of color, where 80 percent are either African American or Latino.

More than 200,000 people were serving life or virtual life prison sentences as of 2016, amounting to 13.9 percent of the total prison population. The majority are male (96.7%), most are people of color (67.6%), and nearly all (91.5%) have been convicted of a violent offense.

Some striking features of this population include the more than 17,000 individuals who have been convicted of a nonviolent crime, the 12,000 people who were convicted as juveniles, and the overrepresentation of African Americans, particularly among those convicted in their teens. It is also notable that in recent years there has been a divergence between life with- and life-without parole sentences.

This report has described the composition of the life and virtual life-sentenced population in America's prisons as of 2016. It is helpful to place this analysis in the perspective of previous years data to see how and where trends have changed over time. The Sentencing Project has collected data regarding the prevalence of life sentences on four occasions since 2003. This data was first published in our 2004 report, *The Meaning of Life: Long Prison Sentences in Context*. In 2008 we again asked the states and federal government to provide data on life sentences and reported the findings in our 2009 report, *No Exit: The Expanding Use of Life Sentences in America*. In 2012, we expanded our survey of the states and federal government to include, along with standard LWP and LWOP figures for 2012, a request for annual census data of LWP and LWOP prisoners going back to 1980. These findings were released in our 2013 report, *Life Goes On: The Historic Rise in Life Sentences in America*. In this section, we consider notable long-term trends in the use of life sentences that emerge from a multi-year review.

### **Long-Term Trends: 2003-2016**

As noted in this report, U.S. prisons have steadily increased their life-sentenced population from a starting point of 127,677 in 2003 to 161,957 in 2016. The rise in LWOP has grown nearly four times as quickly as the rise in indeterminate life sentences, reflecting a 17.8 percent increase in parole-eligible life sentences compared to a 59 percent increase in LWOP between 2003 and 2016 (Figure 7). Though the pace of growth in life sentences has slowed somewhat over these years, the population of people serving life sentences has continued to rise.

Not all states are equally responsible for the rise, though all states grew their life-sentenced population to some extent. A look at states with considerable increases in life sentences shows that, regarding LWP, Colorado increased its parole-eligible life sentences from 943 to 2,131 a 126 percent rise between 2003 and 2016. In Washington, life-with-parole sentences nearly quadrupled from a reported 529 in 2003 to 2,052 in 2016. Regarding LWOP, Wyoming increased its number of sentenced prisoners from 4 to 35 over this period, reflecting a 775 percent increase. In Ohio, the number of people serving LWOP increased from 105 to 560.

### Recent Trends: 2012-2016

Looking only at the most recent period of growth, we see that nearly 3,000 more individuals are serving life sentences nationwide in 2016 compared to 2012, reflecting a 2.5 percent increase overall. Yet this increase incorporates contrasting developments: life sentences with the possibility for parole have declined slightly while life sentences without the possibility of parole have increased by 8.6 percent.

Four states, shown below, have increased the proportion of LWP and LWOP prisoners within their prison population by 15 percent or more.

### Female Lifers Rising More Quickly

Overall, 2016 data reveal more women serving life in prison than in either 2012 or 2008.<sup>36)</sup> Though data on life sentences was first reported by The Sentencing Report in *The meaning of life: Long prison sentences in context*, the data were not disaggregated by gender. Between 2008 and 2016, states added approximately 20,000 life sentences for men and 1,000 new life sentences for women, but the pace of change has been more rapid for women given their relatively low representation in the life-sentenced population. Overall, the pace of growth reflects a 20 percent increase in the female life-sentenced population between 2008 and 2016, compared to a rise of 15 percent for men.

The differing pace of change may reflect more life sentences being assigned to women than in the past, and/or fewer paroles granted to women than to men serving life. If the decline in LWP is due to paroles being granted to life-sentenced prisoners, the data presented here suggest that men may be benefitting from parole release more frequently than women, particularly between 2012 and 2016; while the population of men serving life with parole declined slightly the population of women serving parole-eligible life continued to grow. The quicker pace of growth among women serving LWP and LWOP as compared to men runs parallel to prison growth patterns overall.<sup>37)</sup> This is particularly the case for white women. See, for example, Mauer, M. (2013). *The changing racial dynamics of womens incarceration*. Washington, DC: The Sentencing Project. This is true even though womens involvement in violent crime (for which most people serving life are incarcerated) has not changed considerably.

### A Closer Look at the Expansion of LWOP

Logic suggests that trends in the prison population would mirror trends in crime. Fluctuations in violent crime, particularly murder, should translate to similar trends in the prison population, especially among those serving life sentences. We would expect to see rises in murder and other violent crime associated with a greater number of people in prison. As crime rates decline, we would expect a decline in the number of people in prison, especially a decline in admissions for life without parole sentences.<sup>38)</sup> There is some evidence that LWP sentences have grown due to longer wait times before parole in certain states, which would have less to do with crime rate fluctuations and more to do with politics of parole. See Ghandnoosh, N. (2017). *Delaying a second chance: The declining prospects for parole on life sentences*. Washington, DC: The Sentencing Project. In particular, we would expect that LWOP sentences would increase only with a corresponding rise in serious crime. If there was a close correlation, the unprecedented rise in life sentences should correspond to elevated levels of serious crime over roughly the same period. Yet, this is not what emerges from the LWOP data. Instead, while serious crimes, including murder, have generally declined for the past 25 years nationwide the number of lifers in prison has continued to rise.

Table 8 shows that California, Georgia, Florida, Louisiana, Pennsylvania, and Virginia all report considerable increases in their LWOP population since 2003.<sup>39)</sup> This is the first year for which LWOP data are publicly available. despite a considerable decline in the violent crime rate in each of these states over this period.<sup>40)</sup> 2016 crime data has not yet been publicly released.

### Georgia

More detailed data from Georgia illustrates the mismatch between serious crime and LWOP sentences. Despite actively working toward reducing its prison population through statewide criminal justice reforms, the Georgia Department of Corrections reports that there were more than 2.5 times as many individuals serving LWOP sentences in 2016 than in 2003 when 354 individuals were serving LWOP. Between 2003 and 2016, an average of 69 people serving LWOP sentences were added to the population each year. Georgia has also experienced growth in its indeterminate life-sentenced population, though at a slower pace. At the same time, violent crime in Georgia has declined by 16.6 percent since 2003. More recently, the state prison population has also been decreasing, with 2,985 fewer prisoners reported in 2015 than in 2010.<sup>41)</sup> Carson, E. A. & Anderson, E. (2016). *Prisoners in 2015*. Washington, DC: Bureau of Justice Statistics; Guerino, P., Harrison, P. M., & Sabol, W. (2011). *Prisoners in 2010*. Washington, DC: Bureau of Justice Statistics.

Harsh new sentencing laws help to explain the rapid rise in Georgias LWOP sentences during this period. In 1992, Georgia passed a habitual offender bill known as the Seven Deadly Sins law that required life with parole sentences for murder and required a 10-year minimum sentence for kidnapping, armed robbery, rape, aggravated sodomy, aggravated sexual battery, and aggravated child molestation. Upon a second felony conviction for one of these crimes individuals must be sentenced to life without the possibility of parole. In 1996, the state abolished parole for all the felonies listed above, meaning that all life sentences are ineligible for parole. State statistics show that 32 percent of state prisoners have been convicted under the Seven Deadly Sins law.<sup>42)</sup> Georgia Department of Corrections (2017). [Friday Report, February 24, 2017](#). Atlanta: Author.

In addition to rapidly rising LWOP figures, statutory changes have also caused a build-up of LWP prisoners in Georgia. The states life-with-parole population is the fourth highest in the country, with 7,553 people serving indeterminate life sentences. Among the states prisoners, 14.2 percent are serving LWP. Legislative changes may explain this build up: in 1995, the state moved to double the length of

time before a first opportunity for parole from seven years to 14 years; in 2006 this was extended to 30 years.

A variety of factors other than crime trends explain the continued nationwide increase in life sentences. One driver is fear: singular stories provoke a desire for safety because of their cruelty and violence, and too often set the tone for crime policy and practice. There is a tendency to generalize the outcome of a single released prisoner who goes on to commit a violent crime as indicative of all prisoners if they are given the chance. In reality, these tragic outcomes are rare, and even more so among people serving life sentences despite the gravity of their original crime.<sup>43</sup>)Liem, M. Zahn, M., & Tichavsky, L. (2014). Criminal recidivism among homicide offenders. *Journal of Interpersonal Violence*, 1-22; Mauer, M., King, R. S., & Young, M. C. (2004). *The meaning of life: Long prison sentences in context*. Washington, DC: The Sentencing Project.

A second driver is related to the first and centers on the political gains made by elected officials through appearing sufficiently tough on crime, even when criminologists have discredited the effectiveness of overly harsh justice policies. In describing Connecticut's plan to eliminate the death penalty in 2012, officials assured the public that its replacement would impose an even harsher penalty than just LWOP. The 11 prisoners on death row, as well as all future individuals convicted of capital murder crimes, would spend the rest of their lives in solitary confinement. Governor Dannel Malloy said, Going forward, we will have a system that allows us to put these people away for life, in living conditions none of us would want to experience.<sup>44</sup>)Ridgeway, J. & Casella, A. (2012). [Connecticut votes to replace the death penalty with life in solitary confinement](#). *Solitary Watch*.)

### **Lasting Politics and Policy from the Tough on Crime Era**

Statutory changes over the past three decades have extended prison sentences to include or mandate life in prison for certain crimes. This has been accomplished through tough on crime laws such as habitual offender laws, truth-in-sentencing laws, mandatory minimums, and the abolition of parole.

Life-sentenced prisoners make up 22 percent of the state prison population in Alabama, and the states proportion of life sentences for nonviolent crimes is one of the highest in the nation; 16 percent of lifers have been convicted of a nonviolent offense. Alabama has also experienced an above average pace of growth in life sentences over time, surpassing the growth in its overall prison population. ((Schartmueller, D. (2015). Settling down behind bars: The extensive use of life sentences in Alabama. *The Prison Journal* 95(4), 449-471.

Individuals receive LWOP for nonhomicide offenses via the states Habitual Felony Offender Act (HFOA), first enacted in 1977.<sup>45</sup>)Schartmueller, D. (2015). Settling down behind bars: The extensive use of life sentences in Alabama. *The Prison Journal* 95(4), 449-471. The law requires that persons convicted of Class A felonies<sup>46</sup>)Class A felonies include murder and first degree kidnapping, rape, robbery, burglary, and arson. receive LWOP if they have three prior felony convictions. Though the intent of the law was to seek tougher sanctions for those who commit multiple serious offenses, the outcome was that most individuals sentenced under the HFOA had committed a less serious, often nonviolent offenses such as a burglary. Revisions have been made to the law to correct for this, but they have not been made retroactive.

Individuals like Lydia Diane Jones were swept up under the law. In 1997, Jones moved out of her home and into her childhood home to care for her terminally ill father. She returned to her home four months later to retrieve items and was arrested. Unbeknownst to her, Jones' former boyfriend had been using her home while she was away to store and sell marijuana. She was convicted for marijuana possession but because it was her fourth felony, she was sentenced to life without parole. Her initial three felonies resulted from a single incident 17 years earlier. Jones was ultimately exonerated based on demonstration of an inadequate legal defense.

Habitual offender laws have also broadened the use of LWOP in Massachusetts. In 2012, the state revised its habitual offender law under House Bill 4286 to require that individuals convicted under the law serve the maximum time with no parole opportunity after a third felony conviction. Before the law was passed, LWOP was limited to convictions for first degree murder; the legislation expanded to 20 the number of crimes that could result in LWOP.<sup>47</sup>)Haas, G. & Fillion, L. (2016). *Life without parole: A Reconsideration*. Boston: Criminal Justice Policy Coalition. [The bill is available online](#).

Delaware revised its three strikes statute in 2016 to increase the number of prior convictions for certain offenses required to trigger the classification as a habitual offender and replaced the mandatory sentence of life in prison with a sentence of up to life.<sup>48</sup>)Delaware Code, Senate Bill 163; Porter, N. (2017). *State advances in criminal justice reform, 2016*. Washington, DC: The Sentencing Project. Because the law will be applied retroactively, some of these prisoners could be resentenced to lesser terms. At the bill signing, Delaware governor Markell noted the trend of stiffer mandatory sentences for an increasing number of crimes hasn't worked.<sup>49</sup>)Delaware.Gov. (2016). [Markell signs mandatory sentencing reform into law](#). Dover.

### **Extending Wait Times Before Parole Review**

Tough on crime rhetoric has misrepresented life sentences as lenient and aided in spreading the idea that life-sentenced prisoners only serve a fraction of their original punishment. One study of Texas jurors who served in capital murder trials found that they routinely underestimated the number of years to be served for a capital murder conviction in the absence of the death penalty, with the average juror believing a person sentenced to life in prison will be paroled after 15 years.<sup>50</sup>)Sorenson, J. R. & Pilgrim, R. (2000). An actuarial risk assessment of violence posed by capital murder defendants. *Journal of Criminal Law and Criminology*, 90(4), 1251-1271. In fact, the impetus for truth-in-sentencing laws derives partly from a conviction that the public is being lied to in regard to the amount of time served in prison.<sup>51</sup>)Mauer, M. (1996). *The truth about truth in sentencing*. Washington, DC: American Correctional Association. Under Texas law at the time of the study, prisoners would have to serve a minimum of 40 years before parole consideration.

The 2014 analysis of prison growth in the United States by the National Academies National Research Council is widely considered the most comprehensive study of the U. S. system of sentencing and incarceration. Its authors find that increases in admissions combined with lengthening of prison sentences, has been driving the upward climb of prison populations; 51 percent of prison growth between

1980 and 2010 can be attributed to longer prison sentences.<sup>52)</sup>National Research Council (2014). *The growth of incarceration in the United States: Exploring causes and consequences*. Washington, DC: The National Academies Press. Indeterminate life sentences have become a more prevalent segment of the prison population through prolonging the initial wait time before appearing in front of the parole board and/or extending the wait period between parole eligibility hearings.<sup>53)</sup>Ghandnoosh, N. (2017). *Delaying a second chance: The declining prospects for parole on life sentences*. Washington, DC: The Sentencing Project. In recent decades, several states have extended the minimum term of years to be served by people serving life before parole consideration. For example, in Georgia the initial wait time before parole review at one time was seven years but has been moved to 30 years for crimes committed after 1995. In Missouri, a 1994 law extended the initial wait time from 13 years to 23 years. In Missouri, prisoners used to wait two years after a parole denial before their next possible review; in 1993 lawmakers changed this to five years.<sup>54)</sup>Ghandnoosh, N. (2017). *Delaying a second chance: The declining prospects for parole on life sentences*. Washington, DC: The Sentencing Project.

As part of Tennessee's Truth in Sentencing Act of 1995, life-sentenced prisoners must serve their full 60-year minimum term, with a possibility of sentence credits allowing a preliminary parole review after 51 years. Jacob Davis is one of the prisoners serving life with parole in Tennessee. In a jealous rage, high school senior Davis killed his former girlfriend's new boyfriend in 1997. Though his crime was very serious, he had never previously been in trouble with the law. He was convicted of first degree murder, reckless endangerment with a deadly weapon, and carrying a weapon on school property and sentenced to life with parole. His case is currently on appeal and his attorneys claim that the life-with-parole sentence in Tennessee is equivalent to LWOP because of its duration, and therefore duplicative of the LWOP statute. Unless there is a modification to his sentence, Davis will be 70 years old by the time he becomes eligible for parole.

With the exception of Alaska LWOP sentences are permissible in all 31 states that allow the death penalty as well as 18 states that do not have the death penalty.<sup>55)</sup>[Death Penalty Information Center](#). Retrieved April 5, 2017. In some states Alabama, Illinois, and Louisiana, specifically the adoption of an LWOP statute was motivated directly by the Supreme Court's ruling in *Furman v. Georgia* in 1972, which temporarily banned the death penalty nationwide.<sup>56)</sup>*Furman v. Georgia* 408 U.S. 238 (1972). The expanded use of LWOP has been attributed to *Furman* and, though the death penalty was reinstated in *Gregg v. Georgia* four years later, some states used the instability of the legal issues to justify broadening the use of LWOP by, for example, making it mandatory in cases of first degree murder and other offenses.<sup>57)</sup>Schartmueller, D. (2015). Settling down behind bars: The extensive use of life sentences in Alabama. *The Prison Journal* 95(4), 449-471.

Some of the spread of non-capital LWOP may be due, paradoxically, to the promotion of LWOP in campaigns to repeal the death penalty.<sup>58)</sup>Gottschalk, M. (2006). *The prison and the gallows: The politics of mass incarceration in America*. Cambridge, UK: Cambridge University Press; Steiker, C. & Steiker, J. *Courting death: The Supreme Court and Capital Punishment*. Boston: Harvard University Press. The push to exchange death sentences for LWOP sentences has been successful in part due to this strategy, though most of the success should be attributed to innocence campaigns, demonstrations of inefficiency, and complications with execution methods. Death sentences have been steadily declining for many years now. While some proponents of LWOP contend that it serves as an effective alternative to the death penalty, a causal relationship between the two is not evident. Between 1992 and 2016, there was a 12.7 percent increase in the number of people on death row while over the same period the LWOP population rose 328 percent. With 53,290 people serving LWOP as of 2016, it is not plausible that all, or even most, would be on death row if not for LWOP as the alternative.<sup>59)</sup>Tonry, M. (2016). *Sentencing fragments: Penal reform in America, 1975- 2025*. Oxford: Oxford University Press. Legal scholars Jordan Steiker and Carol Steiker show that even if the entire decline in death sentencing were (implausibly) attributed to LWOP, the number of capital defendants affected by LWOP's introduction would still be dwarfed by the number of noncapital defendants affected by its widespread adoption and use.<sup>60)</sup>Steiker, C. & Steiker, J. (2016). *Courting death: The Supreme Court and capital punishment*. Boston: Harvard University Press: 286. Instead of receiving death sentences, it is more likely the case that many of the LWOP sentences would have otherwise been sentences that included the possibility for parole. LWOP's widespread use in both capital and noncapital crimes has had a normalizing effect on extreme sentences and places an upward pressure on sentences across the spectrum.<sup>61)</sup>Mauer, M. (2015). *Testimony to Charles Colson Task Force on Federal Corrections: A proposal to reduce time served in federal prison*. Washington, DC: The Sentencing Project; Steiker, C. & Steiker, J. (2016). *Courting death: The Supreme Court and Capital Punishment*. Boston: Harvard University Press.

## The Public Safety Argument and the Abandonment of Rehabilitation

Parole boards are subject to a range of pressures. Life-sentenced prisoners who become eligible for parole encounter a process often hindered by undue political influence, lack of rigorous professional qualifications, and bureaucratic obstacles that delay or deny their opportunity for release. Perhaps the chief obstacle that life-sentenced prisoners must cope with is the gravity of their original crime, which weighs heavily on parole decisions even though it typically has occurred decades ago and was taken into account at sentencing.<sup>62)</sup>Rhine, E., Petersilia, J., & Reitz, K. (2010). Implementing parole reform in America. *Federal Sentencing Reporter* 28(2): 96-104.

Some argue that the crimes committed by those serving life sentences are so serious that rehabilitation is simply unattainable or that lifelong punishment fits the crime. An exception to this line of thinking has recently emerged concerning juveniles, who are seen as amenable to rehabilitation because of their developmental immaturity.

The evolving maturity of young adults leads to a sharp decline in criminal tendencies by the late-thirties; and therefore incarceration beyond a period of 15 to 20 years, even for serious crimes, produces diminishing returns for public safety. The National Research Council is the latest authority to note that long term sentences serve little purpose other than to reinforce the retributive goal of corrections. This is partially explained by the age-crime curve, which reliably predicts the tendency to commit crime at various ages.<sup>63)</sup>Laub, J. & Sampson, R. (2003). *Shared beginnings, divergent lives: Delinquent boys to age 70*. Cambridge: Harvard University Press. It shows that most criminal offending declines substantially beginning in the mid-20s and has tapered off substantially by one's late 30s. This is partially explained through neuroscientific evidence that shows brain development reaching its final form during one's mid-20s. Before this time, accurate calculations of risk are still maturing and appreciation for consequences of behavior is not fully in



place.<sup>64</sup>)Cauffman, E. & Steinberg, L. (2000). (Im)maturity of judgment in adolescence: Why adolescents may be less culpable than adults. *Behavioral Sciences and the Law*, 18(6), 741-760; Scott, E., & Steinberg, L. (2010). Rethinking juvenile justice Boston: Harvard University Press; Steinberg, L. & Scott, E. (2003). Less guilty by reason of adolescence: Developmental immaturity, diminished responsibility, and the juvenile death penalty. *American Psychologist*, 58(12), 1009-1018. The researchers conclude that [a]ge is one of the most robust predictors of criminal behavior.<sup>65</sup>)Sweeten, G., Piquero, A.R., & Steinberg, L. (2013). Age and the explanation of crime, revisited. *Journal of Youth and Adolescence*, 42(6), 921-938. This is not due to an inexplicable association of age and crime, however, but to social and psychosocial developments that co-occur with age. Even those defined as career offenders tend to desist from crime at relatively early ages.

Rene Lima-Marín is a Colorado prisoner serving virtual life. Lima-Marín was originally sentenced to 98 years for his role in a robbery of a video store in 1998.<sup>66</sup>)According to media reports, the long sentence assigned to this crime was possible because of a particularly aggressive prosecution strategy in which the prosecutor dissected the various components of the crime as individual crimes. This allowed him to add a charge of kidnapping because Lima-Marín and his accomplice moved video store employees from one room to another during the robbery. Because of a clerical error made by the Department of Corrections that listed his sentences as concurrent instead of consecutive, he was released decades before his prison sentence was supposed to end, after serving 10 years in prison. During his years of freedom, Lima-Marín married, had two children, purchased a home, and held down steady employment. Most importantly, he completed five crime-free years on parole. But once the Department of Corrections error was discovered in 2014 Lima-Marín was returned to prison. The clerical error allowed a natural experiment to unfold and showed that Lima-Marín had reformed his life and was capable of being a productive member of society. After his return to prison in 2014, Lima-Marín was informed that his parole date will be in the year 2054. He will be 74 years old and his children will be close to middle-aged.<sup>67</sup>)Simpson, K. (2016). [How an inmates second chance was yanked away](#). *Denver Post*. He is currently appealing his sentence.

Many of the prisoners serving life sentences demonstrate considerable personal transformation. Life-sentenced prisoners are frequently called upon by prison staff to serve as mentors to newly arrived prisoners.<sup>68</sup>)Johnson, R. & Dobranska, A. (2015). Mature coping among life sentenced inmates: An exploratory study of adjusted dynamics. *Corrections Compendium*, 8-28. In addition, multiple studies confirm that the prevalence of misconduct is quite low compared to non-life prisoners, in contrast to the theory that life-sentenced prisoners are more volatile because they have nothing to lose.<sup>69</sup>)Cunningham, M. & Sorenson, J. (2006). Nothing to lose? A comparative examination of prison misconduct rates among lifewithout-parole and other long-term high-security inmates. *Criminal Justice and Behavior*, 33(6), 683-705; Cunningham, M., Sorenson, J., & Reidy, J.T. (2005). An actuarial model for assessment of prison violence risk among maximum security inmates. *Assessment* 12, 40-49; Weisberg, R. Mukamal, D., & Segall, J.D. (2011). *Life in limbo: An examination of parole releases for prisoners serving life sentences with the possibility of parole in California*. Stanford Law School: Stanford Criminal Justice Center. Research on people sentenced to life who exit prison finds remarkably low recidivism rates among them. In 2012, Maryland's appellate court ruled in *Unger v. State* that life sentences handed down before 1981 violated due process protections due to misleading jury instructions. As a result, more than 100 lifers have been released, and not a single one had been convicted of a new felony as of 2016.<sup>70</sup>)Justice Policy Institute (2016). *Defining violence: Reducing incarceration by rethinking Americas approach to violence*. Washington, DC: Justice Policy Institute; Siegel, R. (2016). *From a life term to life on the outside: When aging felons are freed*. Washington, DC: National Public Radio.

Sixty-one-year-old Alva Polke is serving a virtual life sentence in Georgia. He has been incarcerated for 18 years and has not had a disciplinary infraction in 14 years.<sup>71</sup>)Polke had two disciplinary infractions throughout his imprisonment and both were minor and nonviolent. Polke currently serves as a mentor to other prisoners and has earned several certificates for in-prison accomplishments, including completion of a course on reentry. He has maintained close ties with his family through his incarceration. Polke is currently serving a de facto life sentence for possession with intent to sell approximately \$200 worth of cocaine. Polke was subjected to the states recidivist statute because of prior drug convictions and, because of the transactions proximity to public housing. Polkes 40-year sentence was increased to 60 years. Attorneys for Polke have noted that his sentence exceeds the maximum allowable punishment for certain homicides, sex offenses, and other violent crimes.

This report makes clear that life sentences are a growing portion of the prison population. In 2016 more than 200,000 prisoners were serving some form of a life sentence, representing one of every seven (13.9%) prisoners overall. Despite the pursuit of necessary criminal justice reforms at the margins of the system, reforms to the laws and practices that perpetuate life sentences have been rare, and the focus has been too narrow to fully challenge mass incarceration.

Growing support for decarceration and proposals for sentencing reforms for low-level offenses are frequently paired with the preservation of harsh penalties for serious and violent crimes. This strategy has been pursued without consideration of its impact on the exact problem that policymakers are attempting to fix: a bloated and expensive prison population that far surpasses that of any other nation in the world. Individuals with violent crimes in their past even their distant past do not qualify for inclusion in most comprehensive reform discussions that attempt to ease prison populations because of the serious nature of their crimes. These policy approaches are likely to disappoint lawmakers who expect considerable savings generated from reform.

The cost for life imprisonment is high, in the range of \$1 million per adult prisoner, with prison expenses rising precipitously after middle-age.<sup>72</sup>)American Civil Liberties Union (2012). *At Americas expense: The mass incarceration of the elderly*. Washington, DC: ACLU. A partial cause of the eventual doubling of expenses as prisoners age is the heavy toll that prison itself has on human health. Typically, people entering incarceration already exhibit poorer health compared to the general population, but the harsh prison environment, accompanied by inadequate treatment, exacerbates prisoners health status and accelerates the aging process. People in prison experience higher rates of both chronic and infectious diseases as compared to the general population.

Internationally, human rights concerns surrounding life sentences are evident. Consider the case of *Vinter and Others v. The United Kingdom*, where the imposition of three life sentences triggered concerns about the practice. The cases were reviewed for possible international human rights violations<sup>73</sup>)Such as Article 3 in the European Convention on Human Rights. and the Court ruled in a vote of 16-1 that lifelong imprisonment without the possibility of parole review was indeed a violation. A total of 49 people were serving life sentences at the time and were ordered to receive modified sentences. Notably, at the time of the ruling the United States had 100 times

more people serving such sentences.

Around the world an estimated 536,000 individuals are serving life sentences as of 2014. With the United States comprising 30 percent of the world total, this means that nearly one in three life-sentenced prisoners worldwide is a U.S. prisoner.<sup>74)</sup>Van Zyl Smit, D. & Appleton, C. (2017). *Life imprisonment worldwide*. [Webinar]United Kingdom: University of Nottingham.

### Utilize Momentum from the Juvenile Rulings

One approach to limiting life sentences is to adapt the recent policy shifts in the juvenile arena for adults. *Graham v. Florida* ruled that LWOP sentences were disproportionate when applied to nonhomicide crimes. If applied to all adults, this would have the potential to impact 12,250 people currently serving LWOP, or 23 percent of the LWOP population. *Miller v. Alabama* ruled that juveniles could not receive LWOP for a homicide conviction in states that apply the sentence mandatorily. If this same judgment was applied to all prisoners serving mandatory LWOP for first-degree murder, 20,342 people, or 38 percent of the LWOP population, could potentially earn a sentence review. This would not necessarily lead to a release of any given prisoner, but would allow for a sentence review when applied retroactively.

Legal scholars are generally not optimistic about the successful extension of *Graham*, *Miller*, and *Montgomery* to adults through the courts.<sup>75)</sup>Gertner, N. (2013). *Miller v. Alabama*: What it is, what it may be, and what it is not. *Missouri Law Review* 78(4), 1041-1052.; Steiker, C. S. & Steiker, J. M. (2008). Opening a window or building a wall? The effect of eighth amendment death penalty law and advocacy on criminal justice more broadly. *Journal of Constitutional Law*, 11(1), 155205. To the contrary, the rulings may have made it even more difficult for adults to demonstrate their amenability for reform, as they set the upper age limit at 17. Specifically, the *Graham* opinion stated a child's character is not as well formed as an adult's; his traits are less fixed and his actions are less likely to be evidence of irretrievable depravity.<sup>76)</sup>*Miller v. Alabama*, 132 S. Ct. 2455, 2464 (2012), quoting *Graham v. Florida*, 130 S. Ct. at 2026; *Roper v. Simmons*, 543 U.S. at 569, 570 Just as jurisprudence on the death penalty has been clear to say that death is different, the Court has made clear that in these cases, the second look is because children are different.

The limitations of the parole process for lifers have been underscored by the requirement for a meaningful opportunity for parole for life-sentenced juveniles in *Graham v. Florida*. *Graham* called for a review mechanism that is problematic on its own. In a recent report by The Sentencing Project, we documented a series of problems with parole, including long wait times, the politicization of the parole process, gubernatorial overreach in the decision to grant parole, an absence of the presumption of release at parole hearings, and limited rights and protections afforded to prisoners appearing before the parole board.<sup>77)</sup>Ghandnoosh, N. (2017). *Delaying a second chance: The declining prospects for parole on life sentences*. Washington, DC: The Sentencing Project.

The severity of the crime is a prime factor in the original sentencing decision, but many parole boards either through policy or practice, take it upon themselves to incorporate the severity of the crime into the decision to grant or deny parole, a practice which amounts to relitigating the case.<sup>78)</sup>Rhine, E., Petersilia, J., & Reitz, K. (2015). Improving parole release. *Federal Sentencing Reporter* (28)2: 96-104. Most parole systems rely heavily on the crime of conviction in deliberating the parole decision, which places people serving an indeterminate life sentence at a distinct disadvantage due to the severity of the crime in many cases.<sup>79)</sup>Kinnevy, S.C. & Caplan, J. M. (2008). *Findings from the APAI International Survey of Releasing Authorities*. Center for Research on Youth and Social Policy, University of Pennsylvania; Ruhland, E.L., Rhine, E.E., Robey, J.P., & Mitchell, K.L. (2016). *The continuing leverage of releasing authorities: Findings from a national survey*, Minnesota: The Robina Institute of Criminal Law and Criminal Justice. Research suggests that those convicted of violent crimes are less likely to be granted parole than those convicted of other offenses despite their assessed risk to public safety.<sup>80)</sup>Turpin-Petrinoso, C. (1999). Are limiting enactments effective? An experimental test of decision making in a presumptive parole state. *Journal of Criminal Justice*, 27(4), 328-329; Tewksbury, R. & Connor, D.R. (2012). Predicting the outcome of parole hearings. *Corrections Today*, 55-56; Huebner, B. & Bynum T. (2008). The role of race and ethnicity in parole decisions. *Criminology*, 46(4), 907- 938. In a study of parole decisions in New Jersey, the authors found that crime of conviction was the most influential factor in parole decisions. This result is surprising considering that under the New Jersey Parole Act of 1979, crime of conviction was identified as a factor that should not influence parole decision-making.<sup>81)</sup>Turpin-Petrinoso, C. (1999). Are limiting enactments effective? An experimental test of decision making in a presumptive parole state. *Journal of Criminal Justice*, 27(4), 328-329.

Second, time served prior to appearing before a parole board plays a significant role in decision-making which, like crime of conviction, disproportionately impacts life-sentenced individuals. A punitive measure enacted in many states has been to extend the initial wait time before parole appearance and the wait time between parole hearings. A prisoner who historically served 10 years until his or her first parole hearing may wait 20 years today.

Two final shortcomings of many parole systems are the lack of experience and lack of distance from political influence that is required of its members. A recent comprehensive review of parole systems in the United States concluded that parole boards should be reconstructed to require a degree of expertise in criminal justice fields, advanced education degrees, and independence from political influence. A New York Times expose of the New York parole process revealed only cursory reviews of prisoner files before a parole hearing and fewer than 20 minutes spent in any given hearing.

Improvements in the structure and composition of the process can begin to move eligible life-sentenced prisoners through the system, releasing those who show they are qualified for freedom and holding back those who require more time in prison before they are ready.

Clemency is one meaningful way to adjust prison sentences mid-course. A power reserved for the president and state governors, clemency ensures a method of checks and balances on the other branches of government. In any prison sentence, the executive reserves the power to correct or mitigate the effects of an overly harsh law or judicial decision. Over the past half century, its use has become increasingly scrutinized and a result is that governors are increasingly reluctant to use this authority. In *Graham v. Florida*, Justice Kennedy acknowledged the lack of dependability on clemency, noting that it fails as a reliable tool to mitigate the harshness of a sentence because it is used only in exceptional cases.<sup>82)</sup>*Graham v Florida* 130 Sup Ct. 2027-2030 (2010).

The recent use of clemency at the federal level can serve as an example for state-level clemencies, which have declined considerably over the past several decades.<sup>83)</sup>Gottschalk, M. (2016). *Caught: The prison state and the lockdown of American politics*. New Jersey: Princeton University Press. Seeds, C. (2016) Life without parole: From sanction to condition. [The Liman Report: Moving Criminal Justice](#). New Haven: Yale Law School. For most of the 20th century, life-sentenced prisoners in the federal system were eligible for parole after 15 years; this was reduced to 10 years in 1976.<sup>84)</sup>Hoffman, P. B. (2003) [History of the federal parole system](#). Washington, DC: U.S. Department of Justice. Beginning in 1987, however, parole was abolished and all prospective life sentences were ineligible for parole.

President Barack Obama granted an unprecedented number of clemencies to federal prisoners, an act that is unusual both for any modern president or governor. By the time he left office, Obama had commuted 1,715 federal sentences, one third of which were life sentences for nonviolent crimes. President Obama's actions in this regard called attention to a sentencing system and corrections system that was unsustainable and had become overgrown, leaving little recourse except this sort of backend adjustment.<sup>85)</sup>Passing legislative reforms to the harsh federal sentencing policies that created the massive federal prison population in the first place would be a more practical and proactive response. In the current political environment, these policies have been proposed and received bipartisan support but not yet enacted.

Before he was granted clemency by President Obama in March 2015, Norman Brown had already served 24.5 years of a life sentence with no opportunity for parole for a nonviolent drug offense. The sentencing judge admitted Brown's sentence was disproportionate but was unable to alter because of mandatory minimums. Brown applied for clemency in 2010, a process he describes as like a drowning man reaching for a spider web, which illustrates the futility of his hopes for release. He eventually did receive clemency and has been free since July of 2015. In describing his experience of life in prison, he makes the following observation: If you leave us in prison there [for] too long, we can become rotten. And as I seen many people left in prison these draconian sentences have left them in there and they're rotting away. And in the process of them rotting away, society loses out on the gifts that we have to give them.<sup>86)</sup>Obama White House YouTube channel (2016). [Clemency recipient Norman Brown](#).

A second method for mid-course review has been proposed by the American Law Institute (ALI), a nonpartisan body of legal scholars who make recommendations for model penal codes. Regarding long prison terms including life sentences, they offer a second look provision.<sup>87)</sup>Rhine, E. E., Petersilia, J., & Reitz, K. R. (2015). Improving parole release in America. *Federal Sentencing Reporter* 28(2): 96-104. The ALI recommends that a judge or judicial panel revisit the sentence of any prisoner who has served 15 years or more in prison, and decide if, under present circumstances, the sentence originally imposed or a different sentence better serves the purposes of sentencing. The emphasis is on changed circumstances, which may mean changed societal assessments of offense gravity, new technologies of risk assessment or treatment, or major changes in the individual or their family circumstances, the crime victims or the community. The idea behind the second look provision is that not only can the individual change, but society can change as well.

Such a mechanism would help to allay the concerns of judges whose hands are tied by mandatory minimum sentences. Consider the remarks of Oklahoma Judge Charles Chapel in response to a denied appeal of an LWOP sentence given to a 15-year-old boy:

[H]is sentence in my judgment, violates the 8th Amendment to the U.S. Constitution. He was barely 15 when he committed the crime; he is emotionally and psychologically immature; he is learning disabled and functioned for several years below his peers; he has strong family support; he had never before been in any kind of legal trouble; and the evidence in support of his motion [to be transferred to the juvenile court] was overwhelming and essentially un rebutted. Sentencing him to life without parole is quite simply hideous and a travesty of justice.<sup>88)</sup>Dissenting Opinion of Judge Chapel, *Cipriano, v. Oklahoma*, F-2000- 890, 2001.

Northwestern University philosophy professor Jennifer Lackey teaches life-sentenced prisoners in Illinois. Over her years of teaching she has come to know that prisoners are not the only ones who change in remarkable ways. Victims and their families can come to see the prisoner as worthy of forgiveness and of a second chance. Public attitudes can also change, evolving from the zealous war on crime approach to one that incorporates a broader view of immense societal disadvantages that frequently accompany criminal acts.<sup>89)</sup>Lackey, J. (2016). The irrationality of life sentences. [Editorial] *New York Times*.

Life sentences are at an all-time high, with 161,957 people serving life with or without parole sentences nationwide. A third of them will never have the opportunity for parole, a term which released LWOP prisoner Norman Brown aptly calls super-punishment.<sup>90)</sup>Obama White House YouTube channel (2016). [Clemency recipient Norman Brown](#). If we include those sentenced to de facto life terms of 50 years or more before parole, this brings the total to 206,268, or 13.9 percent of the prison population. In 2016, one in seven prisoners was serving a life or virtual life prison sentence.

The increased prevalence of life sentences stands at odds with attempts to scale back mass incarceration. The massive use of incarceration has come under scrutiny over the past decade as unlikely allies have joined to call for reforms on both fiscal and moral grounds. The shifting climate for criminal justice reform has been encouraging, with bipartisan support for long-recommended revisions to sentencing laws at the federal and state level. Opportunities to further shift the direction of our criminal justice system must be seized by advocates to incorporate reform for life sentences in order to dismantle the uniquely American structure of mass incarceration.

Scholars provide empirical evidence that shows diminishing public safety benefits associated with incarceration beyond a certain point. Some also reason that the expansive and somewhat arbitrary use of imprisonment weakens its general deterrence value. In a speech to members of the American Bar Association in 2013, former Attorney General Eric Holder acknowledged that too many Americans go to prisons for too long and for no truly good law enforcement reason.<sup>91)</sup>Holder, E. (2013). [Attorney General Eric Holder delivers remarks at the Annual Meeting of the American Bar Associations House of Delegates](#). San Francisco. These are among the factors that have brought the issue of mass incarceration to the center of criminal justice reform debates in a way not previously seen, arguing that it is a system that is both wasteful and unjust.<sup>92)</sup>Hamilton, M. (2016). Extreme prison sentences: Legal and normative consequences. *Cardozo Law Review*, 38, 59-120; National Research Council (2014). *The growth of incarceration in the United States: Exploring causes and consequences*. Washington, DC: The National Academies Press. These same concerns arise in lifelong imprisonment.

The broad use of long-term and life sentences for nonhomicide crimes despite claims that these sentences are reserved for the worst of the worst is troubling; more than 17,000 lifers have been convicted of nonviolent crimes, and nearly 12,000 people serving life sentences were juveniles at the time of their crime.

Disproportionate racial and ethnic composition is another worrying feature of this population, with one in five black prisoners serving a life sentence. Persistent racial disparities are harmful on their own but also serve to delegitimize the system more broadly.

Lifelong imprisonment is not the best course of action for most people for the reasons outlined above, nor is it a valuable outcome for society. Legal scholar Michael O'Hear reminds us that policies rooted in fear and anger are misguided, and that providing even those who have committed serious crimes with a realistic path back to ordinary civic life in a free society may be as much for our benefit as for theirs.<sup>93</sup>O'Hear, M. (2013). Not just kid stuff? Extending *Graham* and *Miller* to adults. *Missouri Law Review*, 78(4), 1087-1146.

The data in this report come directly from the state and federal departments of corrections. We first contacted research divisions within the state and federal departments of corrections in January 2016 requesting the total number of people in prison as well as those serving life with parole, life without parole, and sentences of 50 years or more before release on the most recent date available. The most common date provided was the date of the query. Within each of these three groups of prisoners (LWP, LWOP, and virtual life), we also requested breakdowns by race, ethnicity, gender, juvenile status, and crime of conviction. A complete copy of the survey that jurisdictions received is provided in Appendix B. Follow-up emails and phone calls were made until November 2016 for reminders of our request or for clarification on data submitted. States were invited to review their submission from 2012 and adjust their reported figures for that year if needed.

In most states the revisions were minor but Illinois revised its LWP count significantly from an original count of 1,141 LWP prisoners to a total of five individuals serving LWP. The explanation for this revision in 2016 to the number in 2012 lies in an error in the original count for 2012: the persons initially listed as LWP were in fact term-of-years prisoners who are required remain under correctional supervision for life, but do not have life with parole.

In two states, California and New Jersey, we were required to provide full research proposals as well as to submit our survey to an independent Institutional Review Board for approval before gaining access to the requested data. We were approved in both instances. In total, we received data from all states and the federal Bureau of Prisons, with the exception of the state of Virginia. Though Virginia refused to supply data (as it has in all past years that we have submitted data requests, citing its very broad FOIA statute), we received helpful data from the states Criminal Sentencing Commission. In specific, we received data on new life sentences added for each year between 1995 and 2016. The data from the Criminal Sentencing Commission does not include capital offenses, which are punishable by death or life in prison. To arrive at the most accurate count possible, we also reviewed data concerning life sentences provided by research staff from the department of corrections for the states Parole Reform Commission in 2015.<sup>94</sup>Parole Reform Commission (2015). *VADOC Demographics*. Richmond: Virginia Parole Reform Commission.

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.<sup>95</sup>The United States Sentencing Commission, for instance, defines virtual life as approximately 40 years. See: Schmidt, G. & Konfrst, H. J. (2015). *Life sentences in the federal system*. Washington, DC: United States Sentencing Commission. Criminologist Doris Schartmueller has defined virtual life sentences as those exceeding 35 years. See: Schartmueller, D. (2015). Settling down behind bars: The extensive use of life sentences in Alabama. *The Prison Journal* 95(4), 449-471. Scholar Jessica Henry has written extensively on the need to incorporate de facto life sentences into the broader conversation about life sentences overall. In her comments she notes that there is 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.<sup>96</sup>Henry, J. S. (2013). Death in prison sentences: Overutilized and underscrutinized. In C. Ogletree, C. & A. Sarat (Eds), *Life without parole: Americas new death penalty?* New York: New York University Press. The courts have been even more unclear on where to draw the line. We selected 50 years as a conservative estimate of virtual life based on the following rationale: in 2013, the life expectancy of a 39-year-old male (the typical age someone entering prison) for a long-term or life sentence was about 40 additional years.<sup>97</sup>United States Social Security Administration (2016). *Actuarial life table*. Washington, DC: Social Security Administration. This suggests that to survive a lengthy sentence, one must be released before the age of 79. Add to this the increased probability of a premature death for those who are incarcerated,<sup>98</sup>Patterson, E.J. (2010). Incarcerating death: Mortality in U.S. state correctional facilities: 1985-1998. *Demography*, 47(3), 587-607. and one can see that a minimum sentence of 50 years or more as equivalent to virtual life is reasonable.

Click [here](#) to view the survey instrument.

Footnotes[+]

## **Lasting Politics and Policy from the Tough on Crime Era**

Statutory changes over the past three decades have extended prison sentences to include or mandate life in prison for certain crimes. This has been accomplished through tough on crime laws such as habitual offender laws, truth-in-sentencing laws, mandatory minimums, and the abolition of parole.

Life-sentenced prisoners make up 22 percent of the state prison population in Alabama, and the states proportion of life sentences for nonviolent crimes is one of the highest in the nation; 16 percent of lifers have been convicted of a nonviolent offense. Alabama has also experienced an above average pace of growth in life sentences over time, surpassing the growth in its overall prison population. ((Schartmueller, D. (2015). Settling down behind bars: The extensive use of life sentences in Alabama. *The Prison Journal* 95(4), 449-471.

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



## Sentencing Policy

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