THE NEXT STEP

ENDING EXCESSIVE PUNISHMENT FOR VIOLENT CRIMES

THE SENTENCING PROJECT

RESEARCH AND ADVOCACY FOR REFORM

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EXECUTIVE SUMMARY

While the First Step Act and other criminal justice reforms have limited the number of people imprisoned for drug crimes, they have yet to meaningfully reduce excessive penalties for violent crimes. Nearly half of the U.S. prison population is now serving time for a violent offense, including assault and robbery.[1]

Although the violent crime rate has plummeted to *half* of its early-1990s level, the number of people imprisoned for a violent offense grew until 2009, and has since declined by just 3%.[2] This trend stems from increased prison admissions and sentence lengths, despite evidence that excessive penalties are counterproductive.[3] Long sentences incapacitate older people who pose little public safety threat, produce limited deterrent effect since most people do not expect to be caught, and detract from more effective investments in public safety.[4]

For those who seek to end mass incarceration, there are signs of hope. In the past two decades, local, state, and federal lawmakers, governors, judges, and practitioners have rejected the death penalty, shortened excessive prison terms for violent convictions, scaled back collateral consequences, narrowed broad definitions of violence, and ended long term solitary confinement. The 15 reforms featured in this report, implemented in over 19 states, represent more effective, fiscally sound, and morally just responses to violence.[5] While exceptions in a punitive era, these reforms serve as models for the future. For example:

Rejecting torture in prison

In 2017, Colorado Department of Corrections' executive director Rick Raemisch restricted solitary confinement to only serious violations in prisons and set a maximum duration of 15 days.

Using discretion to reduce extreme sentences

Philadelphia District Attorney Larry Krasner seeks to end the city's heavy reliance on life without parole (LWOP) sentences.[6] He has made case-by-case evaluations when making resentencing offers to individuals convicted as juveniles, shown restraint in charging decisions and plea offers in homicide cases, and endorsed legislation to allow people serving LWOP to be evaluated for parole after 15 years of incarceration.[7]

Legislators reducing excessive sentences

Mississippi legislators reformed the state's truth-in-sentencing requirement for violent crimes in 2014, reducing the proportion of a sentence that individuals with certain violent convictions have to serve before becoming eligible for parole from 85% to 50%.

Recognizing the rehabilitative potential of youth and young adults

In 2010, the Supreme Court ruled that LWOP sentences were unconstitutional for non-homicide crimes committed by juveniles. The Court also later ruled that mandatory LWOP sentences for homicide failed to recognize young people's "diminished culpability and greater prospects for reform."[8] In 2018, California built on this precedent by directing individuals convicted under age 26 to "Youth Offender Parole Hearings."[9]

Scaling back collateral consequences

Floridians voted in 2018 to re-enfranchise people with felony convictions, including those convicted of most violent crimes.

The reforms identified in this report demonstrate that it is possible to undo excessive penalties for violent crimes while also promoting public safety. They are the next step of criminal justice reform and offer blueprints for policies that will better enable an end to mass incarceration within our lifetime.

Table 1. Featured Reforms Scaling Back Excessive Punishment for Violent Crimes, 1999-2019

Arkansas	• Governor commuted a number of sentences for violent crimes
California	• Governor commuted a number of life sentences and supported broader reforms • Legislature required that people serving life sentences for crimes committed under age 26 receive specialized parole hearings giving greater weight to the diminished culpability of youth and young adults • Legislature limited felony murder rule to those with intent to kill or who participated in the killing
Colorado	• Head of corrections limited use of solitary confinement to 15 days and only for serious disciplinary violations in prison • Governor commuted sentences of 12 individuals who were convicted of murder at young age
Connecticut	• Governor and corrections department developed a more rehabilitative venue of incarceration for group of 18-to-25 year olds
Florida	• Voters approved Amendment 4, re-enfranchising up to 1.4 million citizens who have completed all terms of their sentence, excluding only those convicted of murder or sex crimes
Illinois	• Legislature raised the minimum age for transferring juveniles to adult courts from 15 to 16 (allowing transfers of 15-year-olds with a hearing)
Iowa	• State Supreme Court ruled that all mandatory sentences for juveniles are unconstitutional
Louisiana	• Bipartisan legislative support and voter approval ended non-unanimous jury verdicts • Legislature enacted medical treatment furlough program
Maine	• Halved prison population held in solitary confinement
Maryland	• Court decision led to release of nearly 200 elderly people serving parole-eligible life sentences
Mississippi	• Legislature reduced from 85% to 50% the proportion of a sentence that individuals with certain violent convictions have to serve before becoming eligible for parole
New York	• Brooklyn and Bronx prosecutors allowing certain cases of serious and violent felonies to be diverted from incarceration to restorative justice program • Governor's executive order reinstated voting rights to 35,000 people on parole supervision • Courts and governor have pressured the parole board to follow the legislature's requirement that it give greater weight to risk assessments in parole decisions, rather than focusing on original crime and criminal history
Pennsylvania	• Philadelphia District Attorney (DA) has offered below-guideline resentencing to people sentenced to life without parole as juveniles • Philadelphia DA has encouraged his staff to select the appropriate, rather than maximum, charge in all homicide cases, and requires them to receive approval for any plea offer proposing a long prison term • Philadelphia DA has endorsed bill that would allow people serving LWOP to be evaluated for parole after 15 years of incarceration
Tennessee	• Governor commuted a handful of homicide sentences
Virginia	• Governor re-enfranchised over 173,000 people, including those convicted of violent offenses
Nationwide	• Four Supreme Court rulings have sharply limited the most severe punishments for people under age 18: death and life without parole • Supreme Court limited the reach of the federal Armed Career Criminal Act • Congress considered but ultimately rejected attempts to broadly expand collateral consequences for violent convictions as part of the Farm Bill • Supreme Court, legislative, gubernatorial, and international actions have made death sentences and executions uncommon in the United States, now imposed and carried out in only a small number of primarily Southern states

1 People with violent convictions comprised 55% of the 1.3 million people in state prisons in 2015 and 8% of the 173,000 people in federal prisons in 2016. Carson, E. A. (2018). *Prisoners in 2016*. Bureau of Justice Statistics. Available at: https://www.bjs.gov/content/pub/pdf/p16.pdf

2 FBI Uniform Crime Reports; Bureau of Justice Statistics *Prisoners Series*.

3 Travis, J., Western, B., & Redburn, S. (Eds.) (2014). *The growth of incarceration in the United States: Exploring causes and consequences.* National Research Council. Washington, DC: National Academies Press.

4 Mauer, M., & Nellis, A. (2018). *The meaning of life: The case for abolishing life sentences.* New York: The New Press.

5 In addition to the states listed in Table 1, this count also includes Delaware, New Jersey, New Mexico, and Washington, which outlawed the death penalty within the past two decades and were not otherwise counted. The report also references several other states that have reformed their juvenile life-without-parole sentencing policies or limited the transfer of youth into adult courts.

6 Philadelphia District Attorney's Office (2018, September 20). Action Alert: Supporting #SB942 Empowers PA Parole Board to Make Right Decisions. Available at: https://medium.com/philadelphia-justice/action-alert-supporting-sb942-empowers-pa-parole-board-to-make-right-decisions-32d617773983

7 Palmer, C. (2018, April 4). Philly DA Larry Krasner is changing the way his office prosecutes killers. Not everyone agrees. *Philadelphia Inquirer*. Retrieved from http://www.philly.com

8 Miller v. Alabama, 567 U.S. 460 (2012).

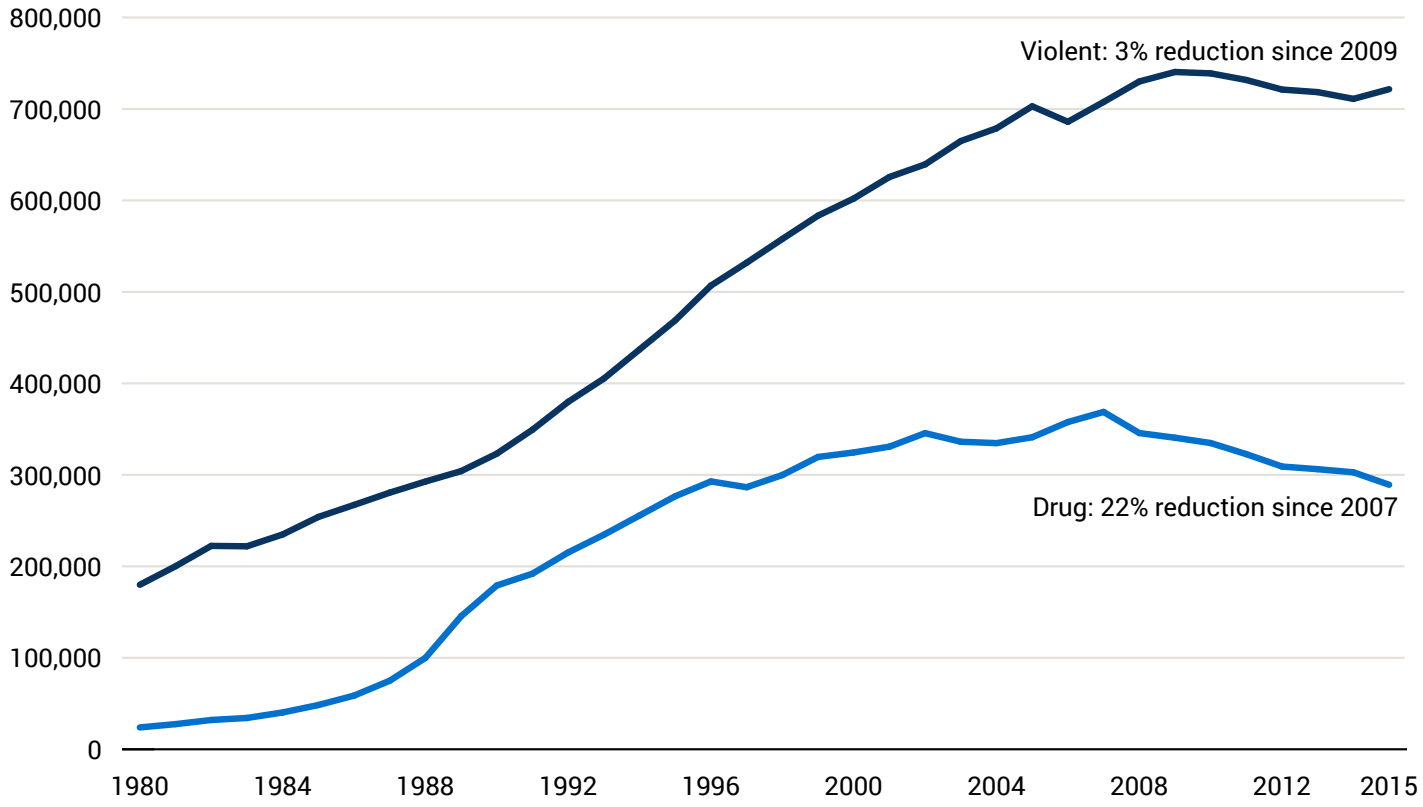
9 Gingrich, N. (2015, April 13). A second chance for young offenders. *HuffPost*. Retrieved from http://www.huffingtonpost.com

I. INTRODUCTION

A bipartisan consensus produced the main drivers of mass incarceration: The War on Drugs, longer prison sentences, and increased likelihood of imprisonment upon an arrest.[1] As a result the U.S. prison population grew from 315,000 people in 1980 to a peak of 1.6 million in 2009.[2] An emerging bipartisan consensus is now seeking to correct this counterproductive response to crime and substance use disorders. Hard-won reforms in drug sentencing have reduced the number of people imprisoned for a drug offense by 22% between 2007 and 2015.[3] Reforms have also helped to reduce the disparity in black-white imprisonment rates: African Americans experienced imprisonment at 7.3 times the rate of whites in 2000 versus 5.6 times in 2016.[4]

Despite this progress, most policymakers and practitioners have yet to meaningfully scale back sentences for serious and violent crimes. The number of people imprisoned for a violent crime increased by over 300% between 1980 and 2009, when it reached its peak level of 740,000 people.[5] By 2016, one quarter of people imprisoned for a violent crime were serving a life sentence.[6] Prison terms have grown longer for this population despite evidence that long sentences: 1) incapacitate people in old age when they no longer pose a public safety threat, 2) have limited deterrent value since people who commit crimes do not expect to be caught, and 3) detract from more effective investments in public safety.[7] These investments include expanding

U.S. Prison Population by Offense, 1980-2015



Note: Sentenced population in state and federal prisons. Reductions for each offense type are since peak year. The number of people imprisoned for a property crime has fallen by 11% since 2007.
Source: Bureau of Justice Statistics *Prisoners Series* (1994-2016).

health insurance coverage to prevent and treat substance use disorder, expanding enrollment in high-quality early education to improve young people's educational prospects, and promoting residential mobility programs to reduce neighborhood segregation.[8] Given that long sentences for violent crimes place upward pressure on the entire sentencing structure, scaling back the most excessive penalties is key to ending mass incarceration.[9]

The number of people imprisoned for a violent offense has declined by just 3% since reaching its peak level in 2009, even though violent crime rates have plummeted to half of their early-1990s level.[10] The number of people in prison serving a life sentence has yet to cease expanding.[11] In fact, some U.S. efforts to scale back prison sentences for lower level offenses have been coupled with measures to increase penalties for serious and violent crimes.[12] Lawmakers and practitioners have continued to impose long prison sentences for violent crimes even as 25 countries have experienced comparable crime drops to the United States, many without expanding levels of imprisonment.[13]

This report profiles reforms around the country that are paving the way toward more effective and humane policies for violent crimes. The champions of these reforms can be found in various branches of government, both sides of the political aisle, and in red and blue states. Driven by fiscal, moral, and evidence-based policymaking goals, they have overcome vehement opposition, shown that it is possible to undo excessive penalties for violent crimes while promoting public safety, and inspired others to follow suit. But their efforts remain too few. The Sentencing Project has estimated that at the existing pace of decarceration, it would take almost 75 years—until 2093—to cut the U.S. prison population in half.[14] To end mass incarceration within our lifetime, criminal justice leaders and policymakers must expand and accelerate the pace of reforms like these.

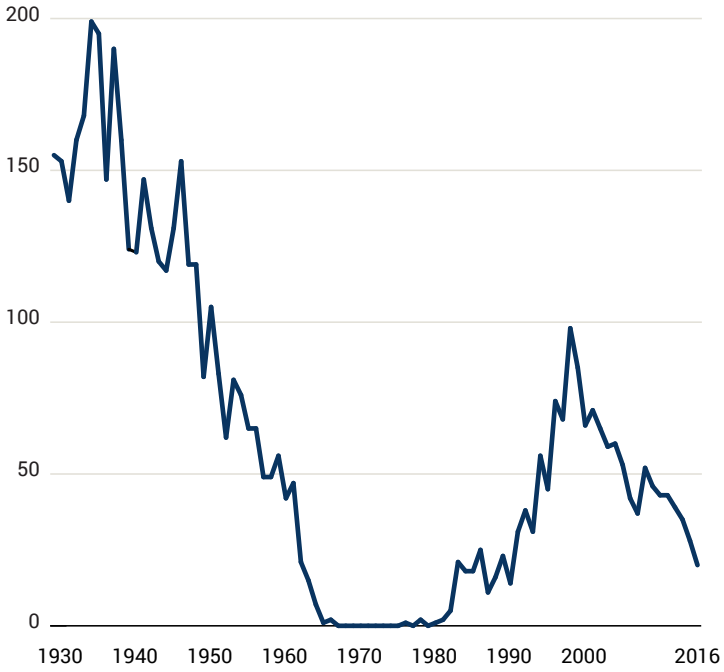
1 Travis, J., Western, B., & Redburn, S. (Eds.) (2014). *The growth of incarceration in the United States: Exploring causes and consequences.* National Research Council. Washington, DC: National Academies Press.
2 Bureau of Justice Statistics *Prisoners Series* (1994-2016).
3 The number of people imprisoned for a property crime has fallen by 11% since 2007. Bureau of Justice Statistics *Prisoners Series*.
4 Based on data provided by Ashley Nellis. For state data, see Nellis, A. (2016). *The color of justice: Racial and ethnic disparity in state prisons.* Washington, DC: The Sentencing Project. Available at: https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/
5 Bureau of Justice Statistics *Prisoners Series.*
6 This includes life with and without the possibility of parole as well as a "virtual life" sentence of 50 years or longer. Nellis, A. (2017). *Still life: America's increasing use of life and long-term sentences.* Washington, DC: The Sentencing Project. Available at: https://www.sentencingproject.org/publications/still-life-americas-increasing-use-life-long-term-sentences/; Bureau of Justice Statistics *Prisoners Series*.
7 Mauer, M., & Nellis, A. (2018). *The meaning of life: The case for abolishing life sentences*. New York: The New Press
8 Ghandnoosh, N. (2017). Minimizing the maximum: The case for shortening all prison sentences. In C. Pettus-Davis & M. Epperson (Eds.), *Smart decarceration: Achieving criminal justice transformation in the 21st century* (pp. 137-159). New York: Oxford University Press.
9 See also Mauer, M., & Cole, D. (2015, May 23). How to lock up fewer people. *The New York Times*. Retrieved from http://www.nytimes.com; Pfaff, J. (2015, July 26). For true penal reform, focus on the violent offenders. *The Washington Post.* Retrieved from https://www.washingtonpost.com; *The Economist*. (2015, July 20). The moral failures of America's prison-industrial complex. Retrieved from http://www.economist.com; King, R., Peterson, B., Elderbroom, B., & Pelletier, E. (2015). *Reducing mass incarceration requires far-reaching reforms*. Washington, DC: Urban Institute. Available at: http://webapp.urban.org/reducing-mass-incarceration/
10 FBI Uniform Crime Reports; Bureau of Justice Statistics *Prisoners Series*.
11 Nellis, 2017.
12 Gottshalk, M. (2015). *Caught: The prison state and the lockdown of American politics*. Princeton, NJ: Princeton University Press; Seeds, C. (2017). Bifurcation nation: American penal policy in late mass incarceration. *Punishment & Society*, 19(5), 590-610.
13 Beckett, K., Beach, L., Knaphus, E., & Reosti, A. (2018). US criminal justice policy and practice in the twenty-first century: Toward the end of mass incarceration. *Law & Policy*, 40(4), 321-345; Doob, A., & Webster, C. (2006). Countering punitiveness: Understanding stability in Canada's imprisonment. *Law & Society Review*, *40*(2), 325–367; Tseloni, A., Mailley, J., & Garrell, G. (2010). Exploring the international decline in crime rates. *European Journal of Criminology, 7*(5), 375–394; Tonry, M., & Farrington, D. P. (2005). Punishment and crime across space and time. *Crime and Justice, 33,* 1–39.
14 Ghandnoosh, N. (2018). *Can we wait 75 years to cut the prison population in half?* Washington, DC: The Sentencing Project. Available at: https://www.sentencingproject.org/publications/can-wait-75-years-cut-prison-population-half/

II. REJECTING DEATH AND TORTURE

THE NATIONWIDE DECLINE OF THE DEATH PENALTY

Death sentences and executions have become uncommon in the United States, now imposed and carried out in only a small number of primarily Southern states. In fact, just 2% of U.S. counties have been responsible for the majority of executions since 1976.[1] The number of executions plummeted from an average of 167 annually during the 1930s to none in 1968 and for 10 of the next 12 years.[2] The United States seemed poised to be at the "vanguard of abolition" of the death penalty in the late 1960s and a legal campaign by the NAACP Legal Defense Fund persuaded the Supreme Court to invalidate existing death penalty statutes in 1972, due to their discriminatory and capricious nature.[3] But the Court reinstated the death penalty in 1976 in response to revised state statutes. The number of executions then expanded and contracted again under growing constitutional regulations, reaching neither the highs nor lows of the earlier period. Executions peaked at 98 in 1999, then fell to 25 in 2018.[4] Twenty states and the District of Columbia now outlaw the death penalty and while a majority of states and the federal government still authorize the practice, only 11 states have executed anyone in the past two years.[5]

Number of People Executed by U.S. State or Federal Authorities, 1930-2016



Note: Excludes 160 executions carried out by military authorities from 1930 to 1961.
Source: Davis, E., & Snell, T. L. (2018). *Capital punishment, 2016.* Bureau of Justice Statistics. Retrieved from https://www.bjs.gov/content/pub/pdf/cp16sb.pdf.

As crime rates rose between the 1970s and 1990s, policymakers responded to and stoked growing punitive sentiment, raising incarceration rates to unprecedented levels and reviving the death penalty. But both crime rates and executions have fallen since the late 1990s, though imprisonment levels kept expanding for another decade. Public support for the death penalty for people convicted of murder increased from a low of 42% in 1966 to a high of 80% in 1994, and gradually fell to 56% in 2018.[6] When given a choice between a death sentence or life in prison without parole for someone convicted of murder, a minority of Americans now support the death sentence.[7]

The Supreme Court's constitutional regulatory structure around capital punishment has responded to and helped to shape public sentiment, while changing international and corporate norms have reduced access to lethal injection drugs. Growing constitutional protections have also dramatically increased the cost of carrying out executions and have enabled the exoneration of 164 innocent people on death row between 1973 and 2018—facts that have propelled many governors, courts, and legislatures to reject the death penalty as an inhumane, ineffective, and unfair form of punishment.[8]

After reinstating the death penalty in 1976 (*Gregg v. Georgia),* the Supreme Court erected additional procedural safeguards and required individualized sentencing.[9] In addition, in a series of cases responding to the "evolving standards of decency"—which were based on state statues, jury verdicts, professional opinion, international norms, and polling data—the Supreme Court gradually narrowed the crimes and people for whom death could be sought.[10] This included prohibiting capital punishment for certain crimes such as for raping an adult woman (*Coker v. Georgia*, 1997) and later for most crimes other than homicide (*Kennedy v. Louisiana,* 2008). This narrowing also included barring capital punishment for individuals who are intellectually disabled (*Atkins v. Virginia, 2002*) or under the age of 18 (*Roper* v. *Simmons*, 2005).[11] Yet legal scholars Carol and Jordan Steiker caution that because of the undemanding standard of enforcement in constitutional regulation of the death penalty, "the last four decades have produced a complicated regulatory apparatus that achieves extremely modest goals while maximizing political and legal discomfort."[12]

While 2018's level of executions was one-quarter of that in 1999, three problems remain. First, the United States remains the only Western democracy still using the death penalty, with 2,738 people on death row in 2018.[13] This continued practice runs counter to the position of faith organizations including the Catholic Church—which now works towards the worldwide abolition of a practice that is "an attack on the inviolability and dignity of the person"—and is against the recommendation of legal experts including the American Law Institute—which in 2009 removed the death penalty from its set of permissible forms of punishment for murder.[14]

Second, the death penalty continues to be applied in a racially biased manner. Black defendants are more likely than their white counterparts to be charged with crimes eligible for capital punishment, to be convicted, and to be sentenced to death. Racial disparities in death case are most prevalent when the defendant is black and the victim is white.[15] The Supreme Court's narrowed definition of unconstitutional racial bias in capital sentencing, to that which can be proven to be intentional (*McCleskey v. Kemp*, 1987), has prolonged this problem.

Lastly, the movement to abolish the death penalty has contributed to a dramatic expansion of life-without-parole sentences, as statutes and charging practices have "enhanced use of such sentences well beyond the numbers that would be generated if it were *only* an 'alternative' to the death penalty."[16] Over 50,000 people were serving parole-ineligible life sentences in 2016, over four times the number in 1992.[17] The dramatic growth in the number of people sentenced to die in prison underscores the need for recognizing, as Pope Francis told Congress in 2016, "that a just and necessary punishment must never exclude the dimension of hope and the goal of rehabilitation."[18]

COLORADO LIMITS SOLITARY CONFINEMENT TO 15 DAYS

"[L]ong-term isolation manufactures and aggravates mental illness. It has not solved any problems; at best it has maintained them," wrote Rick Raemisch, executive director of Colorado's Department of Corrections (DOC), explaining why in 2017 he limited the state's use of solitary confinement to 15 days and only for serious disciplinary violations in prisons, such as assault.[19] He built on the work of his predecessor, Tom Clements, who was killed in 2013 by a man released directly into the community after spending nearly six years in solitary confinement.[20] During Clements's two-year term, the state closed a newly built supermax prison dedicated to solitary confinement and halved the total solitary prison population from 1,500 to 700.[21] Raemisch cut this figure down to 18 by 2017.[22] In addition to being more humane and less costly, Raemisch has credited these reforms for helping to reduce violence against prison staff and for promoting safer returns to communities.

In 2014, Colorado's legislature restricted the use of solitary confinement for individuals with serious mental illness, solidifying the DOC's previously developed policy.[23] That year, Raemisch received national attention for subjecting himself to 20 hours of solitary confinement, known in the state as Administrative Segregation, and described himself as troubled even by this relatively short stint.[24] He later concluded that long-term solitary confinement (longer than 15 days) in "a cell the size of a parking space" is counterproductive and a form of torture—a view shared by the United Nations' Special

Rick Raemisch, while executive director of Colorado's Department of Corrections, spent 20 hours in solitary confinement and described himself as troubled by the experience. Photograph by David Kidd, 2018.

"Ending long-term solitary confinement and instituting programmatic reforms can be accomplished in prison systems across the country."

— Rick Raemisch
CO Dept. of Corrections

Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the New York State Bar Association, and the National Commission on Correctional Health Care.[25]

The DOC's 2017 reforms set 15 days as the upper limit for solitary confinement and required that those held in solitary receive at least four hours per day outside their cell for recreation or group classes. The state also bans solitary confinement in its two prisons dedicated to treating mentally ill individuals—allowing them to visit "de-escalation rooms" that offer various resources for calming down.[26]

"I am convinced that ending long-term solitary confinement and instituting programmatic reforms can be accomplished in prison systems across the country," Raemisch has written.[27] He has worked to realize his vision by helping to modernize international standards for the treatment of people in prison, now known as the Nelson Mandela Rules, and by helping to develop standards for the American Correctional Association.[28] He has also served on the advisory board of the Vera Institute of Justice to develop the Safe Alternatives to Segregation (SAFE) Initiative, which advances alternatives to segregated housing in prisons.[29] According to SAFE's website:[30]

> These alternatives can include implementing a structured sanctions grid to ensure appropriate and proportionate responses are utilized and using alternative responses to less serious rule violations, such as mediation or anger management classes, withholding access to the commissary, removing TV privileges, restricting visitation rights, making the incarcerated person responsible for the costs of damaged property, and assigning the person to an undesirable work shift.

Colorado leads a group of states implementing significant reforms in solitary confinement policies.[31] Maine, for example, has cut its solitary confinement population in half,[32] Mississippi has downsized and eventually closed the solitary confinement unit at one prison,[33] and California has dramatically reduced its reliance on long-term solitary confinement following a hunger strike and as part of a legal settlement.[34]

1 The same counties also hold the majority of today's death row population and have imposed the majority of recent death sentences. Death Penalty Information Center (2013, October). *The 2% death penalty: How a minority of counties produce most death cases at enormous costs to all*. Washington, DC. Available at: https://deathpenaltyinfo.org/twopercent

2 Davis, E., & Snell, T.L. (2018, April). *Capital Punishment, 2016*. Bureau of Justice Statistics. Available at: https://www.bjs.gov/content/pub/pdf/cp16sb.pdf

3 Steiker, C.S., & Steiker, J.M. (2016). *Courting death: The Supreme Court and capital punishment.* Cambridge, MA: Harvard University Press, p. 77.

4 Similarly, new death sentences peaked at 315 in 1996 and fell to 42 in 2018. Death Penalty Information Center (2018a, January 30). *Facts about the death penalty*. Washington, DC. Available at: https://deathpenaltyinfo.org/documents/FactSheet.pdf; Davis & Snell, 2018; Death Penalty Information Center (2018b). *The death penalty in 2018: Year end report.* Washington, DC. Available at: https://deathpenaltyinfo.org/documents/2018YrEnd.pdf

5 In addition, nearly all American Indian tribes have rejected the option of pursuing the death penalty against their citizens for federal crimes committed on their land. Fonseca, F. (2017, August 21). Most American Indian tribes opt out of federal death penalty. *The Associated Press*. Retrieved from http://www.apnews.com; Death Penalty Information Center, 2013; Death Penalty Information Center, 2018b.

6 A 2016 Pew survey found that support for the death penalty had fallen below 50%. Oliphant, B. (2016, September 29). *Support for death penalty lowest in more than four decades*. Pew Research Center. Available at: http://www.pewresearch.org/fact-tank/2016/09/29/support-for-death-penalty-lowest-in-more-than-four-decades/; McCarthy, J. (2018, October 22). New low of 49% in U.S. say death penalty applied fairly. *Gallup*. Available at: https://news.gallup.com/poll/243794/new-low-say-death-penalty-applied-fairly.aspx

7 Note also vast racial disparities in support for the death penalty: Ghandnoosh, N. (2014). *Race and punishment: Racial perceptions of crime and support for punitive policies.* Washington, DC: The Sentencing Project. Available at: https://sentencingproject.org/wp-content/uploads/2015/11/Race-and-Punishment.pdf; Berman, M. (2018, June 11). American support for the death penalty inches up, poll finds. *The Washington Post.* Retrieved from https://www.washingtonpost.com/; Ergun, D. (2014, June 5). New Low in Preference for the Death Penalty. *ABC News*. Retrieved from https://abcnews.go.com

8 Death Penalty Information Center. (n.d.). *Last exoneration November 5, 2018* (#164). Washington, DC. Available at: https://deathpenaltyinfo.org/innocence-list-those-freed-death-row

9 Steiker & Steiker, 2016.

10 Steiker, C. S., & Steiker, J. M. (2011, September 27). Why death penalty opponents are closer to their goal than they realize. *The New Republic.* Retrieved from https://newrepublic.com

11 Key professional associations including the American Psychiatric Association, the American Psychological Association, the National Alliance for the Mentally Ill, and the American Bar Association have called for also exempting the severely mentally ill from executions. Death Penalty Information Center, 2018a.

12 Steiker & Steiker, 2016, p. 176.

13 Death Penalty Information Center, 2018b.

14 Steiker, C. S., & Steiker, J. M. (2010). No more tinkering: The American Law Institute and the death penalty provisions of the Model Penal Code. *Texas Law Review, 89(353);* Holy See Press Office (2018, February 2). New revision of number 2267 of the Catechism of the Catholic Church on the death penalty – Rescriptum "ex Audentia SS.mi". Available at: https://press.vatican.va/content/salastampa/en/bollettino/pubblico/2018/08/02/180802a.html.

15 Fagan, F., & Geller, A. (in progress). Police, race, and the production of capital homicides. June 25 2018 draft. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3202470

16 Mauer & Nellis, 2018, p. 161 (emphasis in original); see also Steiker & Steiker, 2016.

17 In 2016, an additional 44,000 people were serving "virtual life" sentences, of 50 years or longer, and nearly 109,000 were serving parole-eligible life sentences. Nellis, A. (2017). *Still life: America's increasing use of life and long-term sentences.* Washington, DC: The Sentencing Project. Available at: https://www.sentencingproject.org/publications/still-life-americas-increasing-use-life-long-term-sentences/; The Sentencing Project (2018). *The facts of life imprisonment: 1 in 7 people in prison is serving a life sentence.* Retrieved from https://www.sentencingproject.org/wp-content/uploads/2018/12/Facts-of-Life.pdf

18 Pope Francis (2016). *Congressional address.* Address presented at Joint Session of U.S. Congress, Washington, DC.

19 Raemisch, R. (2017, October 12). Why we ended long-term solitary confinement in Colorado. *The New York Times.* Retrieved from http://www.nytimes.com

20 In 2012, the year before Clements was killed, Colorado prisons released 140 people directly from Administrative Segregation. Raemisch ended this practice. Raemisch, R. (2014, February 20). My night in solitary. *The New York Times.* Retrieved from http://www.nytimes.com; Goode, E., & Frosch, D. (2013, April 4). Mysteries multiply in prison chief's killing. *The New York Times.* Retrieved from http://www.nytimes.com

21 Alexander, R. (2012, March 21). DOC explains closing CSP II. *Canon City Daily Record.* Retrieved from http://www.canoncitydailyrecord.com; Raemisch, 2014.

22 Raemisch, 2017.

23 ACLU Colorado. (2014, March 25). *CDOC takes momentous step toward providing better treatment to prisoners with serious mental illness*. Available at: https://aclu-co.org/cdoc-takes-momentous-step-toward-providing-better-treatment-prisoners-serious-mental-illness/; ACLU Colorado. (n.d.). *Senate passes ban on long-term solitary confinement of inmates with serious mental illness.* Retrieved from https://aclu-co.org/statement-aclu-colorado-unanimous-senate-approval-sb14-64-restricting-use-long-term-solitary-confinement-inmates-serious-mental-illness/

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III. LEGISLATIVE REFORMS REDUCING EXCESSIVE SENTENCES

LOUISIANA ENDS NON-UNANIMOUS JURY VERDICTS AND BEGINS MEDICAL FURLOUGH PROGRAM

Louisiana, the state with the nation's highest imprisonment rate, has taken modest steps to reform its criminal justice system, including for those accused or convicted of violent crimes.[1] Voters passed Amendment 2 in 2018, ending a Jim Crow-era law that allowed non-unanimous jury verdicts in felony trials.[2] In addition, the state has begun a new medical furlough program to release ill, imprisoned people with limited mobility to off-site medical care under parole supervision.

After the U.S. Constitution allowed African Americans to serve on juries, Louisiana adopted a policy of requiring just 9 out of 12 jurors to agree on a verdict (later increased to a minimum of 10) as a way to limit the power of African American jurors.[3] An investigation by *The Advocate* revealed that in recent years, 40% of Louisiana jury convictions came over the objections of one or two holdout jurors.[4] The newspaper found that black defendants—who make up nearly two-thirds of imprisoned people in the state—were 30% percent more likely than whites to be convicted by split jury verdicts.

The new law went into effect at the beginning of 2019 but is not retroactive. Introduced by State Senator J.P. Morrell and led in the House by Sherman Mack, the measure won bipartisan support to be put on the ballot and was approved by 64% of voters.[5] Both the Koch network and George Soros's Open Society Foundations supported the reform, which the American Civil Liberties Union and the Southern Poverty Law Center had sought for years, and the Louisiana District Attorneys Association assumed a neutral position after initial opposition.[6] The passage of Amendment 2 leaves Oregon as the only remaining state allowing non-unanimous jury convictions. Lawmakers there have begun reform efforts as well.[7]

Louisiana also began a new medical treatment furlough program in 2017 as part of its package of Justice Reinvestment reforms.[8] Part of Act 280, the reform allows for the temporary release of imprisoned people who do not pose a public safety risk and whose serious or chronic health condition limits their mobility, allowing them to receive care in a non-prison facility. The policy targets individuals who are "unable to perform activities of daily living without help or [are] bedbound" but who are expected to live longer than 60 days and are therefore excluded from the compassionate release program.[9] Their release requires approval from the Louisiana Board of Pardons and Parole and they are monitored by a probation or parole officer and returned to prison if they recover. While the original law excluded people on death row, in 2018 the legislature also excluded people convicted of first-degree murder from the program (Act 573).[10]

In a state where nearly one in three imprisoned people is serving a life sentence, reformers noted that medical furlough would reduce prison healthcare costs since released individuals can receive treatment through federally-funded Medicare. In 2017, the Louisiana Department of Corrections spent approximately $75 million on healthcare costs for people in prison.[11] Some lawmakers had hoped to extend their medical furlough program by also offering geriatric parole, which would have allowed people over age 50 who had served at least 30 years of their life sentence and met specific requirements to be eligible for a parole hearing, excluding those convicted of first-degree murder.[12] This bill failed to pass, but was being reconsidered.[13]

MISSISSIPPI REDUCES TRUTH-IN-SENTENCING REQUIREMENT FOR CERTAIN VIOLENT CRIMES

Mississippi Governor Phil Bryant reduced the state's truth-in-sentencing requirement for certain violent crimes by signing House Bill 585 in 2014. Among several reforms, this law reduced from 85% to 50% the proportion of a sentence that individuals with certain violent convictions have to serve before becoming eligible for parole.

Mississippi created its 85% truth-in-sentencing threshold after the federal Violent Crime Control and Law Enforcement Act of 1994 created federal grants for states implementing this measure.[14] This sentencing change, supported by Governor Bryant when he was a State House member, helped to double the state's prison population between 1995 and 2008 and resulted in Mississippi having the country's second-highest imprisonment rate, after Louisiana.[15] The state reduced the truth-in-sentencing threshold for non-violent crimes in 2008 and applied this reform retroactively. Based on recommendations from the Corrections and Criminal Justice Task Force—comprised of stakeholders including judges, prosecutors, law enforcement, and victim advocates—legislators in 2014 reduced the truth-in-sentencing threshold for certain violent crimes as well, from 85% to 50%.[16] "House Bill 585 will save tax dollars without compromising public safety," Governor Bryant wrote in support of the legislation.[17]

In the course of passing these reforms, legislators partially offset their decarceration goals by designating some additional crimes as "violent" and thereby subjecting them to longer time-served requirements.[18] While this tradeoff may "weaken or even reverse the anticipated impact of reforms," thus far the truth-in-sentencing reforms appear to have contributed to reducing the prison population by 14% between 2008 and 2016.[19] During this time, the state's reported violent crime rate declined by 8% and the reported property crime rate fell by 5%.[20]

PURSUING TRUTH-IN-SENTENCING REFORMS IN MISSOURI, OKLAHOMA, AND SOUTH CAROLINA

Policymakers in other states hope to follow in Mississippi's footsteps.[21] Missouri lawmakers have advanced legislation to reduce mandatory time served from 85% to 50% for offenses classified as dangerous, including robbery and assault.[22] Oklahoma Department of Corrections Director Joe Allbaugh has called for his state to reduce the requirement that people convicted of violent crimes serve 85% of their sentences before being released, as are advocates in South Carolina.[23] Louisiana has already made modest reductions in how long people with violent convictions must serve before becoming eligible for parole and "good time" release.[24]

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Hearts for Inmates, a South Carolina-based group founded by Erica Fielder (center), advocates for lowering the state's truth-in-sentencing law from 85% to 65% for all offenses. Photograph courtesy of Hearts for Inmates.

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IV. USING DISCRETION TO REDUCE EXTREME SENTENCES

CALIFORNIA GOVERNOR EASES LIFE SENTENCES THROUGH PAROLE AND COMMUTATION

Recent California governors have had an unusual amount of authority in determining prison terms for serious violent crimes. Jerry Brown was the first to extensively use this power to alleviate excessive sentences. In a state that leads the nation in the size of its parole-eligible lifer population—with over 34,000 individuals in 2016—governors have since the 1980s been able to reverse or modify the parole board's decisions regarding this population.[1] While his predecessors reversed over half (54%) of all parole grants for lifers between 1991 and 2010, Brown reversed only 12% by 2018.[2] The governor also appointed parole board commissioners who dramatically increased the state's low parole grant rate, commuted a number of parole-ineligible life sentences, and helped to pass laws that would give convicted youth a more meaningful chance at parole and narrow the imposition of life sentences (see Sections 5 and 7 in this report).[3]

A former Jesuit seminarian, Brown's approach was driven by moral conviction and concerns about the counterproductive effects of excessive prison terms as well as their cost. Although during his first tenure as California governor beginning in the 1970s he approved legislation that contributed to mass incarceration, and he later defended prison overcrowding as Attorney General in the 2000s, in his second gubernatorial term he led the state to become a leader in decarceration.[4]

Brown outpaced his recent predecessors and peers in commuting excessive prison sentences for violent crimes. During his last year in office, Brown commuted the sentences of 284 people, most of whom had received lengthy sentences for murder or attempted murder.[5] The commutations were often limited to extending parole eligibility to people sentenced to life without the possibility of parole (who total over 5,000 in the state) or expediting parole eligibility dates. Some commutations shortened the length of a prison term and led to immediate release. "Many people in today's society do not believe in either forgiveness or redemption," said Brown. "They believe that what you do is who you are. That philosophy is not something that I share. I don't think it's Christian ... and it does not comport with historical notions of justice."[6] The state Supreme Court intervened in some of Brown's commutations, rejecting 10 sentence adjustments for individuals who had multiple felony convictions.[7]

> **"Many people in today's society do not believe in either forgiveness or redemption... They believe that what you do is who you are. That philosophy is not something that I share."**
>
> **— Jerry Brown**
> **Former Governor of California**

But Brown's mercy had limits. Despite his own opposition to the death penalty and encouragement from groups including six former U.S. governors, faith leaders, and the *Los Angeles Times* editorial board, Brown did not grant a blanket commutation for the 740 people on California's death row.[8] Such an act would have echoed that of Illinois Governor George Ryan's, who in 2003 commuted all of the state's 167 death sentences to prison terms of life or less.[9]

THE SCOPE OF GUBERNATORIAL CLEMENCY

During the era of mass incarceration, most governors have strayed from the tradition of using executive clemency powers to correct injustices. But some have shown mercy, even to people convicted of serious violent crimes. These include:

Arkansas

During his decade as governor of Arkansas beginning in 1996, Mike Huckabee granted 1,058 pardons and commutations—including to people with violent convictions. A former Baptist minister, Huckabee sought to honor redemption and correct unfairness. He defended these decisions when they came under scrutiny during his presidential bids. Preceding the 2008 Republican primaries, Mitt Romney criticized Huckabee's clemency record.[10] Huckabee countered that Romney's unwillingness to use his clemency powers as governor amounted to "playing politics with people's lives,"[11] while boasting of his own record of overseeing executions.[12] In 2009, Huckabee again defended his clemency record after someone whose sentence he commuted allegedly killed four police officers. He explained that he could not have made a better decision at the time of the commutation given the information that he had. The man's crime of robbery and burglary at age 16 would typically result in a sentence of a few years, "but because he was a young black kid, he got 108 years!" Huckabee explained.[13]

Colorado

Before leaving office in January 2019, Colorado Governor John Hickenlooper used his clemency power for the first time to commute sentences. He granted parole eligibility or expedited parole for 18 individuals, including 12 who were convicted of murder as young men or teens, most of whom were sentenced to life without parole.[14] One of the men, Curtis A. Brooks, was convicted of felony murder at age 15 and will be released after serving 24 years in prison.[15] "Their crimes were severe," Hickenlooper said in a statement, but added: "It's our belief that young offenders who have grown into exemplary individuals, and who have clearly learned from their mistakes, should be considered for a second chance."[16]

Tennessee

Before leaving office in 2019, Tennessee Governor Bill Haslam commuted Cyntoia Brown's sentence from life with parole consideration after 51 years to a sentence of 15 years, and showed mercy in at least two other homicide cases.[17]

"THE UNGERS" BYPASS MARYLAND'S BROKEN PAROLE PROCESS

Maryland is among a handful of states that like California allows its governor to reject the Parole Commission's decisions to parole people serving eligible life sentences.[18] Since the mid-1990s, Maryland governors have used this authority to practically eliminate the possibility of parole for lifers, and the Commission has been reluctant to make parole recommendations.[19] In 2011, the General Assembly passed legislation requiring governors to act within 180 days of the Commission's parole recommendations for lifers who had served at least 25 years.[20] In 2017, a bill to end gubernatorial review of parole decisions (House Bill 723) passed the House but its companion bill (Senate Bill 694) stalled in committee amidst Governor Larry Hogan's veto threats.[21] The governor's office restated its opposition to this reform in 2019.[22] Former Governor Parris Glendening, who initiated the policy of uniformly denying all lifer parole grants, has since disavowed the policy for its erosion of hope and financial burdens.[23]

"The Ungers" are a subset of Maryland's lifer population who bypassed these roadblocks and gained their release through the courts. In 2012, the Maryland Court of Appeals found in *Unger v. State* that a jury instruction used by Maryland courts until 1981 had denied defendants due process, leading to retrials for nearly 250 people given life sentences during the 1970s and 1980s.[24] Since then, 188 elderly lifers have been released.[25] Recidivism rates for this group have been extremely low: only five have returned to prison for a violation of parole or for a new crime, well below the state's overall recidivism rate.[26]

"The Ungers" are a group of nearly 188 Maryland lifers who gained their freedom through the courts. Their extremely low recidivism rate underscores the need for the state to eliminate roadblocks to parole. Photograph by Michael Millemann, 2017.

PHILADELPHIA DISTRICT ATTORNEY REDUCES RELIANCE ON LIFE SENTENCES

A civil rights lawyer and former public defender who campaigned against mass incarceration, its racial disparities, and unfairness to the poor, Larry Krasner was elected the District Attorney of Philadelphia in November 2017.[27] During his first year in office, Krasner's reforms included directing the city's prosecutors to not require cash bail for a number of low-level offenses, not press charges for marijuana possession and initial prostitution arrests, increase accountability for police officers and prosecutors, and seek shorter probation terms for most crimes.[28] Recognizing that mass incarceration would not end without reforming sentences for violent crimes, Krasner is using his office's discretion and political weight to end the state's ignoble status as a leader in life-without-parole (LWOP) sentences.[29] "It is simply not normal to be in a state with so many people doing life without parole and to be unwilling to look at alternatives," Krasner has said, adding, "What I am proposing here is using a scalpel instead of a chainsaw."[30]

In 2016, Pennsylvania had the country's second largest population of people serving parole-ineligible life sentences: 5,398 individuals who comprised 11% of the state's prison population.[31] Nearly two-thirds of this population was African American.[32] Moreover, the subset of individuals serving life-without-parole sentences for crimes committed as juveniles, 479, was the largest in the country.[33] Because life sentences divert public safety resources to incarcerate people long after they have aged out of their crime-prone years, Krasner sees the move away from life sentences as an opportunity to free up resources for policing, public education, drug treatment, job training, and economic development.[34] He explained to staff:

> Pennsylvania and Philadelphia have been incarcerating at an even higher rate than comparable U.S. states and cities for decades.… Yet Pennsylvania and Philadelphia are not safer as a result, due to wasting resources in corrections rather than investing in other measures that reduce crime.[35]

"It is simply not normal to be in a state with so many people doing life without parole and to be unwilling to look at alternatives," says Philadelphia District Attorney Larry Krasner. Photograph courtesy of Jared Piper/ Philadelphia City Council, 2018.

Pennsylvania mandates LWOP sentences for adults convicted of first- and second-degree murder and required the same for juveniles until the Supreme Court's rulings in *Miller v. Alabama* and *Montgomery v. Louisiana* invalidated mandatory juvenile life-without-parole (JLWOP) sentences. In response, the Pennsylvania General Assembly set juvenile sentencing guidelines to a minimum of 25-35 years to life for first-degree murder and 20-30 years to life for second-degree murder, depending on age, and left life without parole as a discretionary option.[36] Krasner's office has navigated these mandatory sentencing laws and sentencing guidelines to seek less extreme sentences for violent crimes:

- Since the Supreme Court has declared many JLWOP sentences to be unconstitutional, Krasner's case-by-case evaluations of those awaiting resentencing has offered shorter prison terms than the previous district attorney who largely adhered to the sentencing guidelines.[37]
- Krasner has directed assistant district attorneys to explicitly quantify and justify the fiscal costs of recommended terms of imprisonment. He has

State Senator Sharif Street introduced legislation to allow people serving life without the possibility of parole to be evaluated for parole after 15 years of incarceration. Photograph courtesy of the office of Sen. Street, 2018.

encouraged his staff to select the appropriate, rather than maximum, charge in homicide cases (choosing from a spectrum which ranges from involuntary manslaughter to first-degree murder) and requires them to receive approval for any plea offer proposing a prison term greater than 15 to 30 years.[38] "We are not going to overcharge. We are not going to try to coerce defendants," said Krasner, adding: "We are going to proceed on charges that are supported by the facts in the case, period."[39]

- His office has endorsed legislation to allow people serving LWOP to be evaluated for parole after 15 years of incarceration, a reform that is in line with the recommendation of national sentencing and parole experts.[40] Introduced in 2017 by State Senator Sharif Street and State Representative Jason Dawkins, Senate Bill 942 (HB 135) created "no right to parole" but would end the unnecessary imprisonment of people who are unlikely to reoffend because they are reformed, ill, or elderly.[41]

While seeking to address the lasting effects of mass incarceration on communities through sentencing reforms, Krasner's office is also seeking to improve public safety by reducing the likelihood of retaliatory violence. These reforms include assigning nonfatal shootings to homicide prosecutors, so as to improve the department's response, and the development of a rapid-response program to expedite the staff's involvement with victims during pending investigations.[42]

Krasner's efforts have received a range of responses. Activist groups who supported his election and the Philadelphia Defender Association praise this progress but emphasize the need for further reforms.[43] Some judges have resisted his office's plea offers as too merciful.[44] Some victims have done the same, though others have joined his team.[45] While Krasner faces opposition from the Fraternal Order of Police, the Guardians—the association representing African-American police officers in Philadelphia—have supported his office's reforms.[46]

RESTORATIVE JUSTICE IN NEW YORK CITY

In New York prosecutors in Brooklyn and the Bronx have allowed certain cases of serious and violent felonies, including assault and robbery, to be diverted from incarceration as part of a restorative justice program. The program is run by Common Justice, a local organization that offers alternatives-to-incarceration and victim-services programs. Consenting survivors who participate seek to reach agreements with the responsible party to address the harm that they experienced and to develop non-carceral strategies of accountability. This may include restitution, extensive community service, and commitments to attend school and work, and includes the completion of a 12- to 15-month intensive violence intervention program. Through this approach, Common Justice aims to "repair rather than sever communal ties in the aftermath of serious crime."[47]

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V. RECOGNIZING THE REHABILITATIVE POTENTIAL OF YOUTH AND YOUNG ADULTS

SUPREME COURT AND STATES LIMIT LIFE-WITHOUT-PAROLE SENTENCES FOR YOUTH

Four U.S. Supreme Court rulings from the past fifteen years have sharply limited the most severe punishments for people under age 18. Under *Roper* v. *Simmons* (2005), youth cannot be sentenced to death.[1] At the time, 12 states banned the death penalty in all instances and 18 others banned it for juveniles.[2] *Roper* left life without parole as the harshest punishment for youth (including for those previously sentenced to death). Five years later, *Graham* v. *Florida* limited juvenile life without parole to homicide convictions (requiring a new sentence for youth sentenced to life without parole for non-homicide offenses).[3] *Graham* did not require states to guarantee eventual freedom for young people convicted of non-homicide crimes, but it did entitle them to a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation."[4]

Bryan Stevenson, founder and executive director of Equal Justice Initiative, successfully argued Miller v. Alabama (2012), in which the Supreme Court ruled that the mandatory imposition of a life-without-parole sentence for homicide is a cruel and unusual sentence for youth under age 18. Photograph courtesy of the Equal Justice Initiative.

As of 2012, more than 2,500 people were serving life without parole for crimes committed before turning 18. Disproportionately people of color, roughly two-thirds of these individuals were convicted in just five states: Pennsylvania, Michigan, Florida, California, and Louisiana.[5] In *Miller* v. *Alabama* (2012), the Court ruled that the mandatory imposition of a life-without-parole sentence for homicide is a cruel and unusual sentence for a juvenile.[6] The discretionary imposition of the sentence is still constitutional, wherein trial courts consider mitigating factors of youth prior to issuing it. This mandatory/discretionary distinction is important because courts have been reticent to impose life without parole to juveniles when given an alternative: more than three-quarters of juveniles received the sentence as a mandatory minimum.[7]

Prior to *Miller*, only a handful of states had banned juvenile life without parole ("JLWOP"), though several others rarely or never used it. Sixteen additional states and the District of Columbia have banned JLWOP since the ruling, either through legislation or state Supreme Court rulings, bringing the total to 21 states and DC that have banned its use.

Miller set in motion many resentencings, though some states were slow in ensuring parole eligibility to say nothing of granting parole. A key question remained as to the retroactivity of *Miller*, made more pressing by negative state supreme court decisions in those states most prone to impose life without parole sentences on youth. In *Montgomery* v. *Louisiana* (2016), the Court found *Miller* applied retroactively, meaning that any person who had received life without parole as a mandatory sentence while a juvenile was entitled to reconsideration of his or her sentence.[8]

Twenty-nine states have passed reforms to amend their juvenile sentences for homicide since the *Miller* rulings and some state Supreme Courts have interpreted the new strictures on youth sentencing broadly.[9] The Iowa Supreme Court ruled that all mandatory sentences for youth are unconstitutional.[10]

The new laws specify the ways that a young person's personal history should be used to mitigate their sentence, such as under Missouri's SB 590 (2016) and West Virginia's HB 4210 (2014). States including California and New York require their parole boards to weigh the significance of youth in parole hearings (see Sections 5 and 6). The other key feature is shorter time periods prior to parole eligibility. In Nevada and West Virginia juveniles convicted of homicide can be eligible for parole after serving 15 years.[11] South Dakota law offers no guidance for juveniles convicted of homicide, leaving the sentence to judicial discretion.[12] The limits of these reforms are highlighted by the case of Henry Montgomery himself, the named plaintiff in the Supreme Court's landmark decision. Though eligible, he was denied parole by the Louisiana parole board in February 2018, even after spending over 50 years in prison.[13]

The Campaign for the Fair Sentencing of Youth reported 1,100 people are still serving life without parole for offenses committed under age18 following the legislation that passed in *Miller*'s wake and the resentencings that followed.[14] The Sentencing Project has estimated that about 7,000 others are serving parole-eligible life sentences for crimes committed before age 18 and 2,000 more are serving virtual life sentences, defined as 50 years or longer.[15] In 2016, over three-quarters of people serving a life sentence (including virtual life) for a juvenile offense were people of color.[16]

STATES REDUCE TRANSFERS OF YOUTH TO ADULT COURTS

While most states handle offenses committed by youth under age 18 in juvenile courts, all allow serious youth offenses to be transferred to adult courts. This occurs either through laws requiring certain offenses be tried in adult courts or through the discretion granted to juvenile court judges or prosecutors to select those youth, within certain parameters, who will be tried in adult courts. Juvenile transfer laws are so wide-ranging that, as of 2016, all but four states allowed even drug charges to be tried in adult courts.[17] However, recent legislative reforms, in nearly a dozen states including Connecticut, Illinois, Utah, and Vermont, have limited transfers by raising the minimum transfer age and by limiting the offenses for which youth can be charged as if they were adults. These reforms, along with declines in youth offending, have sharply decreased the number of youth charged as if they were adults. By 2015, approximately 9,200 youth under age 18 were prosecuted as adults through transfer laws, judicial waivers, or prosecutorial discretion.[18]

Transferring youth to the adult criminal justice system has proven to neither broadly deter youth offending nor to reduce reoffending among those convicted.[19] In fact, a systematic review of scientific studies found increased reoffending among those youth who had been tried as adults compared to those tried as juveniles for similar offenses.[20]

Transferring youth to the adult system exposes them to an array of well-documented damaging consequences. An adult conviction carries harsher punishment and imposes an array of collateral

consequences since it is more difficult to expunge adult records than juvenile records. If incarcerated in an adult prison, youth receive inferior rehabilitative programming and poorer education than in juvenile facilities. Youth in adult facilities are also at greater risk of harm from themselves or other imprisoned individuals and guards than youth in juvenile facilities.[21]

Youth of color are especially likely to experience the negative consequences of being transferred to adult courts, although data on juvenile transfers and their racial composition are incomplete, particularly for non-judicial waivers. The federal Office of Juvenile Justice and Delinquency Prevention estimates that among the small subset of transfers that followed a hearing in juvenile court, youth of color comprise 66% of such transfers despite comprising 57% of delinquency cases.[22] The Burns Institute's review of prosecutorial waivers in California showed even worse disparities when the decision to prosecute in adult courts was made by District Attorneys, research that helped end the practice in that state.[23]

States have limited the transfer of young people into adult courts through two key types of reforms, to which the Campaign for Youth Justice has been instrumental.[24] One approach has been to raise the minimum age at which a transfer is permitted. Vermont raised its minimum transfer age from 10 to 12, Kansas from 12 to 14, and Connecticut and New Jersey from 14 to 15.[25] Fourteen-year olds in those states can still be transferred, but only after a hearing in juvenile court. Illinois raised its minimum automatic transfer age from 15 to 16.[26] As in Connecticut, adult trials are still an option for Illinois's 15-year olds, but a transfer hearing must take place. California, Delaware, and Texas passed procedural reforms that have the potential to send more youth cases to juvenile courts despite starting in adult criminal courts.

A second set of reforms has limited the offenses for which youth can be charged as adults. Illinois no longer automatically charges youth as adults on certain gun-related theft charges and Utah sharply limited the list of charges that are automatically sent to criminal courts.[27] Indiana now allows for reverse waivers to return youth to the juvenile courts.[28] Voters passed procedural reforms in California to limit the power of prosecutors to send youth to adult courts, as did Vermont's legislature.[29]

Another avenue for reform has been allowing a second look at lengthy sentences imposed on juveniles. In Louisiana and Connecticut people given lengthy terms as youth are entitled to a sentencing review.[30] Following passage of the law, Rachel Gassert of the Louisiana Center for Children's Rights noted, "Keeping rehabilitated kids locked up serves no purpose other than to punish them, which is not what the juvenile system is meant to do."[31]

RAISE THE AGE

Nationwide, arrested adolescents under age 18 are typically charged in juvenile courts and those 18 years and older are charged as adults. But states that are exceptions to this rule have generated the bulk of criminal prosecutions of youth under age 18: 66,700 cases in 2015.[32] Two decades ago, there was more variety in these age boundaries: thirteen states routinely charged 17-year olds as if they were adults, including three that did so for 16-year old arrestees.[33] More recently, these states have passed legislation to raise the age of juvenile court jurisdiction to 18, though the implementation of these laws means the reforms are still underway. Between 2007 and 2014, these reforms helped to cut in half the number of youth under age 18 excluded from the juvenile justice system because of their state's low cutoff age for juvenile jurisdiction.[34] By the end of 2018, only Georgia, Michigan, Texas and Wisconsin had yet to pass laws to keep most adolescents under age 18 in juvenile courts. In 2018, Vermont became the first state to add 18- and 19-year-olds into the juvenile system, excluding those charged with serious violent crimes.[35]

CONNECTICUT CREATES YOUNG ADULT PRISON UNITS TO FOCUS ON REHABILITATION

Research on adolescent brains proves that development continues through one's mid-20s. These findings suggest that the age of juvenile court jurisdiction, generally ending at 18, is outdated. Columbia University's Vincent Schiraldi and Bruce Western note that the current age of adulthood was an arbitrary choice made over 100 years ago.[36] Political barriers, even in progressive states, have thus far prevented raising the age of juvenile court jurisdiction further into adolescence.

For much of his second term, Connecticut Governor Dannel Malloy attempted to convince the legislature to include older adolescents (those under age 21) in the juvenile courts.[37] These proposals did not pass the legislature or even attain a vote in committee. But working with the Vera Institute of Justice, Governor Malloy and Department of Correction Commissioner Scott Semple undertook reforms to provide a more rehabilitative venue of incarceration for 18-to-25 year olds. In 2017 the state opened the TRUE Program (an acronym for Truthfulness, Respectfulness, Understanding, and Elevating) at the Cheshire Correctional Institution, with capacity for 90 young men and plans for expansion.[38] A parallel program named WORTH (Women Overcoming Recidivism Through Hard Work) opened for young women opened in 2018 at the York Correctional Institution, with capacity for 50.[39] The two programs, which do not exclude those with violent convictions, enroll a small slice of the total imprisoned population in this age group.[40]

The young adult units were inspired by Malloy and Semple's visit to Germany with Vera, where they saw institutions that emphasize human dignity, rehabilitation, and reentry. They also align with experts' recommendations to "consider creating special correctional facilities for young adult offenders."[41]

John Pittman (left) is mentoring Davon Eldemire (right) as part of Connecitcut's TRUE program. Pittman, who is serving 60 years for murder, says: "Some of us have taken lives, so it's only fair that we try to save lives." Photograph by Karsten Moran, 2018.

Young people housed at TRUE and WORTH are paired with older imprisoned adults who serve as mentors. Current Governor Ned Lamont has visited the TRUE Unit with new Correction Commissioner Rollin Cook, who Lamont chose in part because of his willingness to expand on therapeutic prison programming.[42]

CALIFORNIA GRANTS YOUTH AND YOUNG ADULTS MORE MEANINGFUL PAROLE HEARINGS

Based on scientific evidence showing that adolescent brains are not fully mature until people reach their mid-to-late 20s, the California Legislature has created "Youth Offender Parole Hearings" to give greater weight to the diminished culpability of youth and young adults serving lengthy sentences and to emphasize their potential for growth and maturity. Senate Bill 260, which went into effect in 2014, applied this reform to youth under the age of 18 who were convicted as adults.[43] Senate Bill 261, implemented in 2016, extended it to those convicted under age 23—corresponding to the Department of Juvenile Justice's jurisdiction.[44] Assembly Bill 1308, which took effect in 2018, expanded these specialized hearings to young adults convicted under age 26, to incentivize efforts towards rehabilitation.

"If you're a 15-year-old when you're convicted of even a very serious crime, by the time you're 35 you're going to be a different person," State Senator Loni Hancock, SB 260's sponsor, said in a press interview about the bill.[45] "Those who don't significantly change in prison," she added, "are not going to be eligible for … this opportunity."[46] Newt Gingrich praised SB 260 as "a significant achievement," and described SB 261 as "compassionate, fair, and backed up by the latest scientific understanding of brain development."[47] Assemblymember Mark Stone, who introduced Assembly Bill 1308, explained that the policy should extend to those up to age 25 because people "are much more likely to enroll in school, drop out of a gang, or participate in positive programs if they can sit before a parole board sooner, if at all, and have a chance of being released."[48] Organizations including Human Rights Watch, #cut 50, the Anti-Recidivism Coalition, National Center for Youth Law, and Youth Justice Coalition co-sponsored these bills.[49]

The *San Francisco Chronicle* reported that by December 2017, 900 people had been paroled under the first two reforms, while 2,600 who had sought release had been denied.[50] Southwestern Law School professor Beth Caldwell's study of SB 260 found that at first the new policy "created at least marginally more meaningful opportunities for release."[51] The 109 individuals who had such hearings in the first six months of 2014 had served an average of 24.7 years in prison. But in the first four months of 2015, the parole board granted parole to youth offenders at a lower rate than it did to their adult-convicted counterparts. This disparity may have occurred because some individuals convicted as youth had not yet sufficiently participated in programming to demonstrate their rehabilitation prior to their expedited parole hearings.[52]

> **"If you're a 15-year-old when you're convicted of even a very serious crime, by the time you're 35 you're going to be a different person."**
>
> **— Loni Hancock**
> **Former California State Senator**

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VI. DEPOLITICIZING PAROLE DECISIONS: NEW YORK STATE

"Broken, terribly broken," is how former New York Board of Parole commissioner Thomas Grant described the state's parole process in 2012, noting that commissioners have an incentive to limit parole grants to improve odds of their reappointment, especially in cases that will attract media attention.[1] Robert Dennison, a former chairman and commissioner of the New York Board of Parole, echoed this point in 2014, explaining: "If you let someone out and it's going to draw media attention, you're not going to be re-appointed."[2] State courts have repeatedly chastised the parole board for failing to follow the law in its decisions. With pressure from the courts, advocates, and the Governor, the board finally proposed new regulations in 2016 to comply with the 2011 statutory requirements. This change, coupled with the appointment of several new parole board members, helped to increase the parole grant rate for people serving life sentences from 27% to 37% during comparable periods between 2017 and 2018.[3]

The Legislature's 2011 parole statute requires the board to:[4]

> establish written procedures for its use in making parole decisions as required by law. Such written procedures shall incorporate risk and needs principles to measure the rehabilitation of persons appearing before the board, the likelihood of success of such persons upon release, and assist members of the state board of parole in determining which inmates may be released to parole supervision.

According to Philip Genty, professor at Columbia Law School, these changes sought to "shift the primary focus of Parole Board decisionmaking away from the static factors of criminal history and seriousness of the crime, to a more dynamic and nuanced set of risk-assessment 'procedures.'"[5] But the board resisted implementing these reforms. In testimony before the Assembly's Corrections Committee in 2013, the Correctional Association of New York stated that the board "denies parole release, often repeatedly to far too many people, frequently based on the nature of applicants' crimes of conviction or past criminal history while failing to consider people's accomplishments, readiness for reentry, or objective risk."[6] State courts have chastised the board for failing to follow laws guiding parole decisionmaking, and the board has twice been held in contempt of court for ignoring directives to give greater weight to factors other than the underlying offense and to provide its reasoning behind parole denials.[7]

In 2011, the Legislature directed the parole board to develop and implement a risk assessment instrument.[8] After some delay, the board adopted the COMPAS Reentry Risk Assessment Instrument tool but it did not consistently use the instrument or apply its results to guide its decisions.[9]

Finally in 2016, in response to pressure from the courts, advocates, and Governor Andrew Cuomo, the board proposed new regulations to comply with the 2011 statutory requirements.[10] The proposed regulation requires that the board's decision be guided by the parole applicant's risk and needs score and that the board provide an explanation when it departs from the risk assessment to deny parole. The regulation would also require the board to consider the reduced culpability and demonstrated growth in maturity of lifers who committed their crimes under age 18.[11] In 2017,

Governor Cuomo also appointed six new parole board commissioners, "many of whom more closely reflect the identities and experiences of people in prison, and come from a broader range of professional backgrounds," according to The Release Aging People in Prison (RAPP) Campaign.[12]

These changes came too late for John MacKenzie. He was sentenced to 25 years to life for killing police officer Matthew Giglio during a robbery attempt in 1975. By age 70, he had served over 40 years in prison, having been denied parole 10 times. Despite becoming a model person in prison with many supporting his release—including the *New York Times* editorial board, the bishop of the Roman Catholic Diocese of Albany, and a state judge who held the board in contempt for its unwillingness to evaluate MacKenzie's rehabilitation—the parole board issued its 10th parole denial in 2016.[13] A week later, MacKenzie hanged and killed himself in Fishkill Correctional Facility in Beacon, NY.

Although recent reforms have helped to modestly improve parole grant rates, problems persist. RAPP and other advocates are urging the Governor to fully staff the parole board and to appoint more individuals "from a broad range of professional backgrounds who believe strongly in the principles of rehabilitation, mercy, and redemption."[14] Advocates and the press are also awaiting the Governor's response to findings that racial bias among correctional officers is driving racial disparities in parole hearing outcomes.[15] The future of people sentenced to life with the possibility of parole, of whom there are over 9,000 in the state, hangs in the balance.[16]

John MacKenzie killed himself in a New York prison after being denied parole for the tenth time in 2016. Photograph by Nathaniel Brooks/*New York Times*, 2016.

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VII. CORRECTING OVERLY BROAD DEFINITIONS OF VIOLENT CRIME

SUPREME COURT NARROWS THE FEDERAL ARMED CAREER CRIMINAL ACT

In 2015, the Supreme Court limited the reach of The Armed Career Criminal Act (ACCA). The law imposed a mandatory 15-year sentence on anyone convicted of possessing a gun or ammunition who has three prior convictions for a "violent felony" or a "serious drug offense."[1] The ACCA defined a violent felony to include burglary, arson, and extortion as well as a residual category including any crime that "involves conduct that presents a serious potential risk of physical injury to another" and could be punishable by a one-year prison term. In an 8-1 decision in *Johnson v. United States*, the Court struck down the ACCA's residual clause for being unconstitutionally vague. In 2016, the Supreme Court held that this decision would apply retroactively to individuals seeking reviews of previously imposed sentences.[2]

Reflecting on the residual clause after the Supreme Court decision, Ohio State University law professor Douglas A. Berman explained: "If a prosecutor really wants to slam a guy with a long record, they have an interest in portraying any and every part of that history as qualifying."[3] The United States Sentencing Commission had previously underscored the lack of clarity in the ACCA, noting in particular that the ACCA "can apply to offenders who served no or minimal terms of imprisonment for their predicate offenses, further increasing the potential for inconsistent application insofar as the penalty may be viewed as excessively severe in those cases."[4] The Commission estimated that between 2013 and 2016, the *Johnson* decision and reforms in federal charging practices contributed to reducing the number of people convicted under the ACCA from 582 to 304.[5]

In addition to calling for more clarity on the statutory definitions in the ACCA, the Sentencing Commission has recommended that Congress reduce the severity of the mandatory sentence.[6] The Commission estimated that reducing the ACCA's mandatory penalty from 15 to 10 years, as the Sentencing Reform Act of 2015 (H.R. 3713) would have done, would reduce the sentences of 277 people per year and if applied retroactively, could reduce the sentences of up to 2,317 people in federal prisons.[7] In a recent report, the Commission also noted that 70% of individuals convicted of offenses carrying a mandatory penalty under the ACCA in 2016 were African American.[8] Despite these facts, Attorney General Jeff Sessions criticized the Court's ruling while then-Senator Orrin Hatch of Utah and Senator Tom Cotton of Arkansas proposed legislation to undo it.[9]

THE IMMIGRATION AND NATIONALITY ACT

In *Sessions v. Dimaya* in 2018, the Supreme Court struck down a provision of the Immigration and Nationality Act that led to the deportation of immigrants convicted of an "aggravated felony," including "a crime of violence," for being unconstitutionally vague.[10] Justice Elena Kagan, writing for the majority, compared the definition of "crime of violence" to the unconstitutionally vague definition of "violent felony" in the ACCA and struck down this provision.

CALIFORNIA LIMITS SCOPE OF FELONY MURDER RULE

Among the significant bills that California Governor Jerry Brown signed to reshape the state's criminal justice landscape was one scaling back the "felony murder rule." Similar to other states, California law had stated that individuals could be held liable for first-degree murder for a killing that occurred during the commission of felonies such as burglary and robbery, even if they were not the actual killer or present when the murder took place.[11] The resulting penalty would be death, life without parole, or life with the possibility of parole after 25 years. In September 2018, Governor Brown signed Senate Bill (SB) 1437 into law, limiting felony murder prosecutions to those who intended to kill, had a direct role in a murder, intentionally assisted the killer, or played a major role in the underlying felony and "acted with reckless indifference to human life."[12] The law is retroactive, allowing those previously convicted to petition for resentencing.

California's new felony murder bill was a bipartisan effort by Democratic State Senator Nancy Skinner and Republican State Senator Joel Anderson. Lawmakers in support of the bill said the previous law was outdated and unfairly applied lengthy sentences to people who did not kill anyone.[13] Proponents also stressed that the previous felony murder rule unfairly punished women, young people, and people of color. Approximately three-quarters of women imprisoned under California's felony murder were not the killers and the average age of people sentenced under the law is 20 years old.[14] Almost 40% of those convicted under the law are black and about 27% are Hispanic.[15] According to Senator Skinner:[16]

> The law is not fairly applied. If it were universally applied to any and every person that was in or around a crime that resulted in a homicide, then many more people would have been charged with felony murder and the statute would have been changed a long time ago.

The new law allows between 400 to 800 people who were previously convicted of felony murder to apply for resentencing.[17] California is one of several states—including Hawaii, Arkansas, Massachusetts, Kentucky, and Michigan—that have narrowed how the felony murder rule can be applied.[18]

Jacque Wilson (left) testified at the State Capitol about SB 1437 with his father Mack Wilson (right) on behalf of his brother, Neko Wilson, who was awaiting trial under the felony murder rule. Photograph by Max Whittaker/*New York Times,* 2018.

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VIII. SCALING BACK COLLATERAL CONSEQUENCES

CONGRESS LARGELY UPHOLDS FOOD STAMPS ACCESS FOR PEOPLE WITH VIOLENT CONVICTIONS

As part of 1996's "Welfare Reform," Congress required states to ban people with felony drug convictions from accessing federal cash assistance and food stamps. Over a dozen states have used the bill's provision to fully opt out of both of these bans, and 30 others and the District of Columbia have chosen to at least partly opt out of one ban.[1] Despite state-level reforms to scale back collateral consequences and the federal government's support for re-entry through the Second Chance Act in 2007 and its reauthorization in 2018, Congress has repeatedly considered excluding people with certain violent convictions from food stamps eligibility.

In 2013, the Senate unanimously approved then-Senator David Vitter of Louisiana's amendment to the Farm Bill, imposing a lifetime ban on food stamps eligibility for people with certain violent convictions (including sexual assault, murder, and particular crimes against children.) The restriction on the Supplemental Nutrition Assistance Program, or SNAP, would have been retroactive, denying nutritional assistance to people who long ago completed their sentences. States would not have the option to opt out of the ban.

While some lawmakers had suggested that the Vitter Amendment would deter crime, advocates countered that "if the threat of prison does not keep people from offending, it's hard to see how a ban on assistance following incarceration has a deterrent effect."[2] Such restrictions on cash assistance and food stamps are not just ineffective, they are also harmful: they impede re-entry and disproportionately impact people of color who are caring for children.[3]

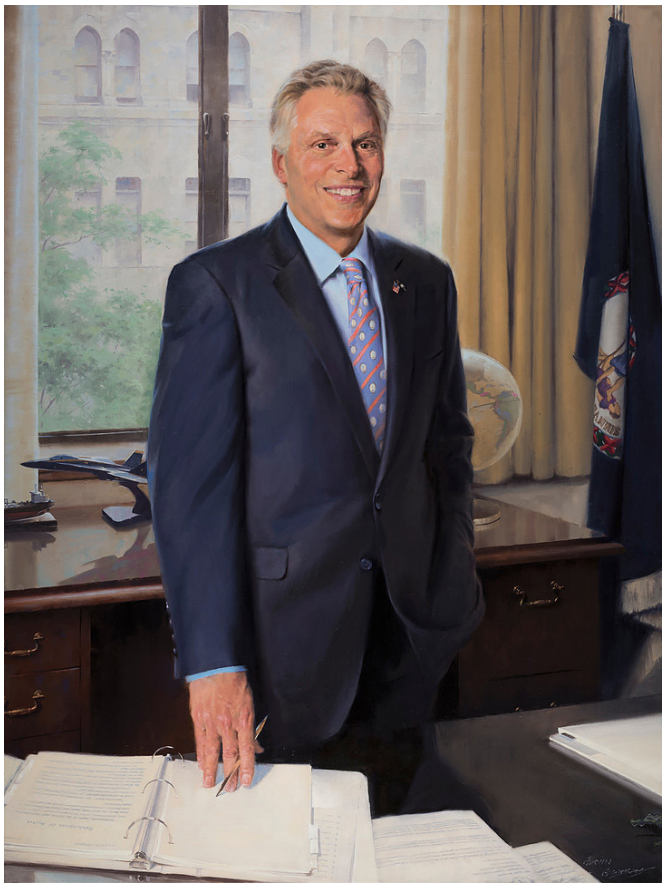
Although the Senate passed the Vitter Amendment with little debate and one of the House versions of the Farm Bill included the amendment, advocates persuaded lawmakers to limit its impact when merging the bills.[4] The final version of the restriction applied only to individuals who are not in compliance with the terms of their sentence, and it was not applied retroactively.

In 2018, Congress again considered and ultimately rejected a proposal by Representative George Holding of North Carolina to pass the original Vitter Amendment.[5] "I believe we should not have to wait before a criminal who has already been convicted of these acts violates the terms of their sentence before terminating the benefits," Holding said of his amendment.[6] A broad coalition of groups opposed the restriction. Over 100 organizations addressing poverty and hunger submitted a letter opposing Holding's SNAP amendment and other restrictions, as did over 60 organizations of faith, civil rights, and human rights.[7] Americans for Prosperity and Freedom Partners, two groups funded by the Koch brothers, also urged Congress to reject the amendment, writing: "By rejecting barriers that keep those returning individuals from being full members of our society, you show that everyone is worthy of a second chance, regardless of past mistakes."[8] Although the House unanimously approved a version of the Farm Bill with Holding's amendment, advocates persuaded the Senate to pass a version without the new restriction.[9] The final package that passed Congress excluded the Holding amendment.

VIRGINIA GOVERNOR'S RESTORATION OF VOTING RIGHTS INCLUDES VIOLENT CONVICTIONS

Virginia is one of only four states in the nation—along with Florida, Iowa, and Kentucky—to disenfranchise all individuals with felony convictions for life, unless they can secure a pardon from the governor. As a result of the state's restrictive policy, 8% of all adult Virginians were unable to vote due to a felony conviction in 2016, as were 22% of voting-age black Virginians.[10] In April 2016, Democratic Governor Terry McAuliffe issued an executive order to restore voting rights to an estimated 206,000 people who had completed their felony prison, probation, or parole sentence—including those who were convicted of a violent offense.[11] He intended to issue additional orders to reenfranchise those who completed their sentence before he left office in 2018. In July 2016, the state's Republican leaders successfully persuaded the state Supreme Court to overturn the executive order, on the grounds that it exceeded gubernatorial authority by restoring voting rights en masse instead of individually. McAuliffe responded with an individualized process for voting-rights restoration which withstood further court challenge and reenfranchised over 173,000 people before he left office.[12]

McAuliffe, who had campaigned on this issue, had previously taken steps to streamline the process for voting rights restoration, including reducing the waiting period for applying from five to three years for people convicted of a violent crime and eliminating the waiting period for those with a drug conviction.[13] His executive order, he said, rattled those "who desperately hold on to the last vestiges of the Jim Crow era" and his administration produced dozens of testimonials of newly-enfranchised voters.[14] The Sentencing Project's Marc Mauer described McAuliffe's action as "the single most significant action on disenfranchisement that we've ever seen from a governor."[15] The governor, whose restoration order is depicted in his official portrait, described this work as his "proudest moment as governor."[16]



For his official portrait, Virginia Governor Terry McAuliffe chose to be depicted at work in his "proudest moment as governor," restoring voting rights to people with felony convictions. Photograph courtesy of Gavin Glakas, 2018.

The state Democratic party rallied around the policy "as the premier achievement of his term" according to the *Washington Post*, and Ralph Northam, a member of McAuliffe's administration and his successor, called it "one of our greatest feats."[17] Pledging to continue this work, Northam overcame attack ads criticizing the former lieutenant governor for helping to institute the "automatic restoration of rights for violent felons and sex offenders."[18] Before leaving office, McAuliffe argued that lasting change would require the state to amend its Constitution "to create an automatic process for restoration of rights for all."[19]

THE RE-ENFRANCHISEMENT MOVEMENT

Virginia is one of 23 states that have taken steps to reduce felony disenfranchisement since 1997.[20] In 2005, then Iowa Governor Tom Vilsack's executive order re-enfranchised approximately 100,000 citizens who had completed their sentences.[21] While some recent reforms have excluded people with violent convictions, some of the most far-reaching have not. Other recent examples include:

- Amendment 4 in Florida, approved by 64% of voters in 2018's election, is expected to reinstate the voting rights of up to 1.4 million Floridians who have completed all terms of their sentence—potentially affecting four-fifths of the population disenfranchised in that state due to a felony conviction. [22] While the ballot initiative covered most violent convictions, it did exclude those convicted of murder or sex crimes.[23]
- New York's Governor Andrew Cuomo issued a 2018 executive order to grant voting rights to 35,000 people under parole supervision, noting that 71% of this population are African Americans or Hispanic.[24] The state's Republican leaders released advertisements and held hearings denouncing the reform, highlighting cases of people convicted of murder and sex crimes.[25] Democrats dismissed these reactions as politically motivated and Governor Cuomo plans to re-enfranchise people who enter the parole system on a rolling basis while he is in office.

In addition to these examples, felony re-enfranchisement reforms in states including Maryland, New Mexico, and Rhode Island did not carve out people with violent convictions.[26]

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IX. CONCLUSION

"There comes a point where you really have to ask yourself if we have achieved the societal end in keeping these people in prison for so long. Is the societal cost and expenditure worth it to keep somebody who's older — higher medical costs and the like — in prison? This is a conversation this country really needs to have."

— U.S. Senator Cory Booker, 2016[1]

Excessive penalties for violent crimes are not only ineffective—incapacitating people who no longer pose a public safety threat and producing little deterrent effect—they also divert investment from more effective public safety programs. These facts have been borne out by criminological research and criminal justice practice, including the reforms described in this report. This is why Rick Raemisch, executive director of Colorado's Department of Corrections, credited his department's reduced reliance on solitary confinement with helping to reduce violence against prison staff and for promoting safer returns to communities. This is why reductions in executions and restrictions in juvenile life-without-parole sentences have not stalled the nationwide decline in violent crime rates. This is why the Ungers, a subset of Maryland's lifer population who gained their release through the courts, have a recidivism rate that is well below the state's average. These successful reforms underscore the need to consider the human and fiscal costs of excessive punishment and to rely on evidence, rather than emotion, to invest effectively in public safety.

Given that nearly half of the U.S. prison population is serving time for a violent offense, policymakers, criminal justice practitioners, and courts will need to build on the models presented here to end mass incarceration. For some jurisdictions, this requires ending their outlier status. This was the case, for example, with Louisiana's elimination of non-unanimous jury verdicts, Florida's restoration of voting rights to people who had completed their term of prison, jail, or community supervision, and Mississippi's reduction of its truth-in-sentencing requirement for most violent crimes. Potential future reforms in this vein would include the abolition of the death penalty in the handful of states that continue to impose the sentence, the elimination of gubernatorial review of parole decisions in California and Maryland, and raising the age of criminal responsibility to 18 in Texas, Georgia, Wisconsin, and Michigan.

But catching up with other states is insufficient given that penalties for violent crimes are excessive nationwide. Leadership on this issue has taken at least three forms. First, reforms have incrementally carved out certain crimes and certain people from excessive penalties. This has been the case with nationwide reforms honoring the rehabilitative potential of youth and young adults, promulgated by the Supreme Court and notably advanced in California. The next step in addressing crimes

committed by youth is to recognize the difference between adolescence and adulthood, regardless of the seriousness of the offense. Young people are more amenable to rehabilitation and, as such, should not be burdened with harsh penalties that do not consider their immaturity. States should eliminate mandatory minimums for youth, as Iowa has done, and raise the age of criminal responsibility into later adolescence.

Second, leaders have advanced legislation to scale back excessive penalties for all. This has been the case with states that have abolished the death penalty and in New York State, where the courts and governor have pressured the parole board to follow the legislature's requirement to give greater weight to risk assessments in parole decisions, rather than focusing on the original crime and criminal history. The Sentencing Project has called on policymakers to expand on these efforts and abolish life imprisonment, setting maximum prison terms to 20 years.[2]

Third, leaders have used their discretionary authority to take bold action to end unjust penalties. Examples here include Philadelphia District Attorney Larry Krasner's case-by-case evaluations to make resentencing offers in juvenile life-without-parole cases and his intention to not overcharge in homicide cases, California Governor Jerry Brown's commutation of a number of parole-ineligible life sentences, and Virginia Governor Terry McAuliffe's restoration of voting rights to people regardless of their conviction offense. Prosecutors can use evidence and experience to scale back the penalties they seek while governors, and the president, can return to the tradition of using executive clemency powers to correct past injustices. Only bold leadership like this will end mass incarceration within our lifetime.

1 Lopez, G. (2016, May 17). Cory Booker: Senate bill is "in my lifetime the first reversal of mass incarceration." *Vox.* Retrieved from https://www.vox.com; see also Lustbader, S., & Gullapalli, V. (2019, February 6). "Special Edition: Will Cory Booker continue talking about second chances for people convicted of violent crimes?" Email from *The Appeal*.
2 The Sentencing Project. (n.d.). Campaign to End Life Imprisonment. Washington, DC. Available at: https://endlifeimprisonment.org

The Next Step: Ending Excessive Punishment for Violent Crimes

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