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# No Exit

## The Expanding Use of Life Sentences in America

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THE SENTENCING PROJECT
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## INTRODUCTION

There are more than 2.3 million people incarcerated in prisons or jails throughout the United States. This figure that has been growing steadily since 1972 and represents a 600% increase over this period. The United States has achieved the dubious distinction of having the highest rate of incarceration in the world by enacting three decades of "tough on crime" policies that have made little impact on crime but have had profound consequences for American society.

These policies have been wide-ranging and include such features as an increased emphasis on drug enforcement, determinate sentences, and most significantly, a vastly expanded use of imprisonment. Simultaneously, there has been a diminishing of the value placed on the principle of rehabilitation that originally guided the nation's correctional philosophy.

Despite the adoption of a variety of alternatives to incarceration and a renewed consideration of expanding parole for certain non-violent, low-level offenses, developments since the 1970s have established a set of policies that extend considerably the length of time that people spend in prison. These include mandatory sentences, "truth in sentencing," and cutbacks in parole release. These initiatives apply not only to persons convicted of violent offenses, but also mandate long periods of incarceration for persons identified as habitual offenders and those convicted of certain drug offenses.

Foremost among the changes affecting the prison population in recent years are laws and policies regarding the expansion of life sentences. Even though life sentences have existed for a long time, historically they were generally indeterminate, with the possibility of parole to serve as an incentive for behavioral modifications and improvements. Over the past few decades, legislators have dramatically expanded the types of offenses that result in a life sentence and established a wide range of habitual offender laws that subject a growing proportion of defendants to potential life terms

of incarceration. At the same time, the restricting of parole, notably with the increase in life without parole sentences, paired with a steady flow of life sentenced admissions to prison, results in persons serving a life sentence constituting a rapidly expanding proportion of the incarcerated population.

Policy considerations for persons sentenced to life are very different than for persons who have been convicted of lesser offenses. For individuals who have taken lives or who pose a serious threat to public safety, incapacitation as a means of assuring public safety is a legitimate and compelling concern at sentencing. However, the issue of life sentences is far more complex and cannot be regarded as merely strict sentencing for a deserving population of persons convicted of serious offenses.
In this report, we assess the dramatic increase in the imposition of life sentences in the context of incapacitation and public safety, fiscal costs, goals of punishment, and the appropriateness of life sentences for juveniles.[1] We also report on trends in the life sentenced population since our previous report analyzing 2002/2003 data.[2]

Life in prison is of great consequence both to the individuals who receive these sentences and to the society that imposes them. The findings in this report demonstrate that the life sentenced population has expanded dramatically in recent decades, along with the explosion of the prison population overall.

While persons serving life sentences include those who present a serious threat to public safety, they also include those for whom the length of sentence is questionable. In particular, life without parole sentences often represent a misuse of

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[1] The term "life sentence" is used in a variety of ways and consequently there is much public confusion regarding its meaning. While the intuitive definition of a life sentence is a prison term for the remainder of one's natural life, in fact the term also includes various indeterminate sentences, or sentences whose length can be reduced by commutation, parole, or pardon. The term "life without parole" refers to sentences where parole is not possible. In this report, we do not consider sentences that would equate to one's life (e.g., a sentence of 90 years, after which one might be eligible for parole). Figures presented here are therefore conservative estimates of the number of people who will spend the rest of their lives in prison.

[2] Mauer, M., King, R. S., and Young, M. C. (2004). *The Meaning of Life: Long Prison Sentences in Context*. Washington, D.C.: The Sentencing Project.

- 140,610 individuals are serving life sentences, representing one of every 11 people (9.5%) in prison.
- Twenty-nine percent (41,095) of the individuals serving life sentences have no possibility of parole.
- The number of individuals serving life without parole sentences increased by 22% from 33,633 to 41,095 between 2003 and 2008. This is nearly four times the rate of growth of the parole-eligible life sentenced population.
- In five states—Alabama, California, Massachusetts, Nevada, and New York—at least 1 in 6 people in prison are serving a life sentence.
- The highest proportion of life sentences relative to the prison population is in California, where 20% of the prison population is serving a life sentence, up from 18.1% in 2003. Among these 34,164 life sentences, 10.8% are life without parole.
- Racial and ethnic minorities serve a disproportionate share of life sentences. Two-thirds of people with life sentences (66.4%) are nonwhite, reaching as high as 83.7% of the life sentenced population in the state of New York.
- There are 6,807 juveniles serving life sentences; 1,755, or 25.8%, of whom are serving sentences of life without parole.
- Seventy-seven percent of juveniles sentenced to life are youth of color.
- There are 4,694 women and girls serving life sentences; 28.4% of females sentenced to life do not have the possibility of parole.

Life in prison is of great consequence both to the individuals who receive these sentences and to the society that imposes them. The findings in this report demonstrate that the life sentenced population has expanded dramatically in recent decades, along with the explosion of the prison population overall.

While persons serving life sentences include those who present a serious threat to public safety, they also include those for whom the length of sentence is questionable. In particular, life without parole sentences often represent a misuse of limited correctional resources and discount the capacity for personal growth and

rehabilitation that comes with the passage of time. This report challenges the supposition that all life sentences are necessary to keep the public safe, compared to a term of fewer years. We conclude with recommendations for changes in law, policy and practice which would, if adopted, address the principal deficiencies in the sentencing of people to life in prison.

## GROWTH IN LIFE SENTENCES

Every state has provisions for sentencing people to prison for the remainder of their lives for some types of crimes. While life and life without parole (LWOP) sentences have long been incorporated into sentencing policy, the frequency with which they have been used has increased dramatically during the last 20 years as sentencing statutes, prosecutorial practices, and parole policies have evolved in a more punitive direction. In particular, support for the expansion of LWOP sentences grew out of the same mistrust of the judicial process that birthed sentencing guidelines, mandatory minimums, and "truth-in-sentencing" laws to restrict parole eligibility. These policies have often been politically inspired and fueled by accounts of people sentenced to life, often for violent crimes, being released on parole within a decade. Public dissatisfaction was part of a larger movement toward more legislative control of the criminal justice process at the expense of the discretion of judges and parole boards. The expansion of LWOP sentencing in particular was intended to ensure that "life means life."

While every state provides for life sentences, there is a broad range in the severity and implementation of the statutes (See Table 1). In six states – Illinois, Iowa, Louisiana, Maine, Pennsylvania, and South Dakota – and the federal system, all life sentences are imposed without the possibility of parole.[3] Only Alaska provides the possibility of parole for all life sentences, while the remaining 43 states have laws that permit sentencing most defendants to life with or without parole.

In the case of life sentences with the possibility of parole, the range of time that must be served prior to eligibility for release varies greatly, from under 10 years in Utah

[3] Parole is no longer an option in the federal system, as of 1987. The 886 individuals serving parole-eligible life sentences in the federal system were sentenced before parole was eliminated in 1987.

and California to 40 and 50 years in Colorado and Kansas.[4] The median length of time served prior to parole eligibility nationally is in the range of 25 years.[5] However, eligibility does not equate to release and, owing to the reticence of review boards and governors, it has become increasingly difficult for persons serving a life sentence to be released on parole.

TABLE 1: LIFE SENTENCING POLICY IN THE UNITED STATES

| LIFE SENTENCES AND LWOP SENTENCES | | ONLY LWOP SENTENCES | ONLY PAROLE-ELIGIBLE LIFE SENTENCES |
|---|---|---|---|
| Alabama | Nevada | Illinois | Alaska |
| Arizona | New Hampshire | Iowa | |
| Arkansas | New Jersey | Louisiana | |
| California | New Mexico | Maine | |
| Colorado | New York | Pennsylvania | |
| Connecticut | North Carolina | South Dakota | |
| Delaware | North Dakota | | |
| Florida | Ohio | Federal | |
| Georgia | Oklahoma | | |
| Hawaii | Oregon | | |
| Idaho | Rhode Island | | |
| Indiana | South Carolina | | |
| Kansas | Tennessee | | |
| Kentucky | Texas | | |
| Maryland | Vermont | | |
| Massachusetts | Virginia | | |
| Michigan | Washington | | |
| Minnesota | West Virginia | | |
| Mississippi | Wisconsin | | |
| Missouri | Wyoming | | |
| Montana | | | |
| Nebraska | | | |

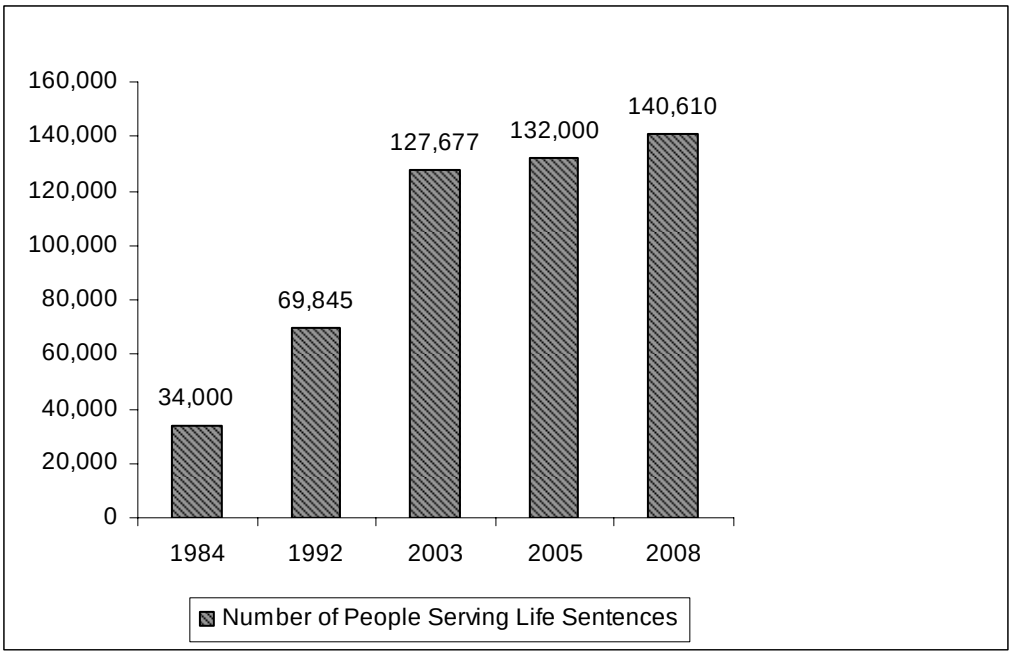
[4] Advisory Committee on Geriatric and Seriously Ill Inmates (2005). *A Report of the Advisory Committee on Geriatric and Seriously Ill Inmates*. Harrisburg: Joint State Government Committee of the General Assembly of the Commonwealth of Pennsylvania.

[5] Ibid.

## Life Sentences, 2008

Our national survey of departments of correction documented 140,610 persons serving a life term in 2008. One in 11 persons in a state or federal prison is now serving a life sentence. Over the last quarter-century, the number of individuals serving life sentences has more than quadrupled from 34,000 in 1984 (See Figure 1). Nearly 97% of those serving a life sentence are men, while women comprise 4,694 (3.3%) of persons serving a life sentence.

FIGURE 1: GROWTH IN LIFE SENTENCED POPULATION, 1984-2008




Sources: Figures for 1984 obtained from: American Correctional Association (1984). *Corrections Compendium*. Vol. 3 (9). Figures for 1992 obtained from: Maguire, K., Pastore, A. L., and Flanagan, T. J. (Eds.) (1993). *Sourcebook of Criminal Justice Statistics 1992*. Washington, D.C.: Bureau of Justice Statistics. Figures for 2003 obtained from: Mauer, M., King, R., and Young, M. (2004). *The Meaning of 'Life': Long Prison Sentences in Context.* Washington, D.C.: The Sentencing Project. Figures for 2005 obtained from: Liptak, A. (2005, October 5). Serving Life with No Chance at Redemption. *The New York Times*. Data for 2008 collected from each state's department of corrections by The Sentencing Project.

The scope of life sentences varies greatly by state (See Table 2). In 16 states, at least 10% of people in prison are serving a life sentence. In Alabama, California, Massachusetts, Nevada and New York, at least 1 in 6 people in prison are serving a life sentence. On the other end of the spectrum, there are 10 states in which 5% or fewer of those in prison are serving a life sentence, including less than 1% in Indiana.

TABLE 2: LIFE POPULATION AND LIFE WITHOUT PAROLE POPULATION

| STATE | LIFE POPULATION | % OF PRISON POPULATION | LWOP | % OF PRISON POPULATION |
|---|---|---|---|---|
| Alabama | 5,087 | 17.3% | 1,413 | 4.8% |
| Alaska | 229 | 6.6% | NA | NA |
| Arizona | 1,433 | 3.7% | 208 | 0.5% |
| Arkansas | 1,376 | 9.5% | 541 | 3.7% |
| California | 34,164 | 20.0% | 3,679 | 2.2% |
| Colorado | 2,136 | 9.3% | 464 | 2.0% |
| Connecticut | 430 | 2.2% | 334 | 1.7% |
| Delaware | 526 | 13.8% | 318 | 8.3% |
| Florida | 10,784 | 11.3% | 6,424 | 6.7% |
| Georgia | 7,193 | 13.1% | 486 | 0.9% |
| Hawaii | 412 | 11.6% | 47 | 1.3% |
| Idaho | 523 | 8.3% | 102 | 1.6% |
| Illinois | 103 | Unk. | 103 | Unk. |
| Indiana | 250 | 0.9% | 96 | 0.4% |
| Iowa | 616 | 7.1% | 616 | 7.1% |
| Kansas | 806 | 9.2% | 2 | 0.0% |
| Kentucky | 1,073 | 7.8% | 66 | 0.5% |
| Louisiana | 4,161 | 10.9% | 4,161 | 10.9% |
| Maine | 58 | 2.6% | 54 | 2.4% |
| Maryland | 2,311 | 9.9% | 321 | 1.4% |
| Massachusetts | 1,760 | 17.1% | 902 | 8.7% |
| Michigan | 5,010 | 10.0% | 3,384 | 6.7% |
| Minnesota | 496 | 5.4% | 48 | 0.5% |
| Mississippi | 1,914 | 8.5% | 1,230 | 5.4% |
| Missouri | 2,582 | 8.7% | 938 | 3.1% |
| Montana | 171 | 5.0% | 51 | 1.5% |
| Nebraska | 515 | 11.8% | 213 | 4.9% |
| Nevada | 2,217 | 16.4% | 450 | 3.3% |
| New Hampshire | 177 | 6.1% | 63 | 2.2% |
| New Jersey | 1,257 | 4.8% | 46 | 0.2% |
| New Mexico | 391 | 6.2% | 0 | 0.0% |
| New York | 11,147 | 18.0% | 190 | 0.3% |
| North Carolina | 2,390 | 6.1% | 1,215 | 3.1% |

TABLE 2: LIFE POPULATION AND LIFE WITHOUT PAROLE POPULATION, continued

| STATE | LIFE POPULATION | % OF PRISON POPULATION | LWOP | % OF PRISON POPULATION |
|---|---|---|---|---|
| North Dakota | 40 | 2.8% | 11 | 0.8% |
| Ohio | 5,202 | 10.4% | 216 | 0.4% |
| Oklahoma | 2,135 | 8.5% | 623 | 2.5% |
| Oregon | 719 | 5.3% | 143 | 1.1% |
| Pennsylvania | 4,349 | 9.4% | 4,343 | 9.4% |
| Rhode Island | 182 | 4.8% | 32 | 0.8% |
| South Carolina | 2,056 | 8.4% | 777 | 3.2% |
| South Dakota | 169 | 5.1% | 169 | 5.1% |
| Tennessee | 2,020 | 10.5% | 260 | 1.3% |
| Texas | 8,558 | 6.1% | 71 | 0.1% |
| Utah | Unk. | Unk. | Unk. | Unk. |
| Vermont | 89 | 4.1% | 13 | 0.6% |
| Virginia | 2,145 | 5.8% | 774 | 2.1% |
| Washington | 1,967 | 12.5% | 542 | 3.4% |
| West Virginia | 612 | 10.4% | 251 | 4.3% |
| Wisconsin | 1,072 | 4.8% | 171 | 0.8% |
| Wyoming | 197 | 9.5% | 20 | 1.0% |
| FEDERAL | 5,400 | 2.7% | 4,514 | 2.2% |
| TOTAL | 140,610 | 9.5% | 41,095 | 2.8% |

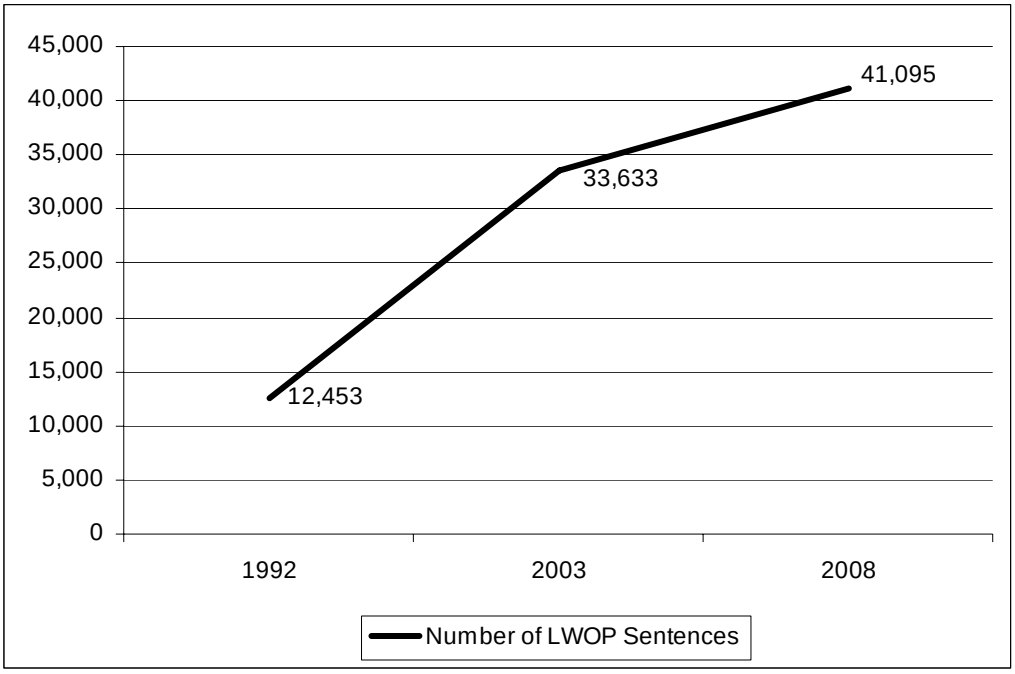
Notes: Illinois officials did not provide usable data on life sentences or LWOP sentences for 2008. In 2003, the year in which data were previously collected for our report, *The Meaning of Life*, Illinois reported 1,291 individuals serving life sentences, all of whom were LWOP. The prison population reported at this time was 43,418. The figure of 103 juveniles serving LWOP was confirmed through an independent report in 2008. The current number of adult life sentences and LWOP sentences in Illinois could not be determined. Utah officials did not provide data on life aentences.

## Life without Parole

Substantially longer sentences and the restriction or abolition of parole are two key contributing factors to the rapidly expanding prison population. This is perhaps best illustrated by the use of LWOP sentences. In 2008, 41,095 people, or 1 in 36 persons in prison, were serving a sentence of life without parole. Women comprise slightly more than 3% of this group (1,333). As with the overall population of life sentences, the number of people serving LWOP has increased dramatically in recent

years. In 1992, 12,453 persons – 1 in 68 – were serving LWOP sentences.[6] In the intervening 16 years that figure has tripled (See Figure 2).

FIGURE 2: GROWTH IN LIFE WITHOUT PAROLE POPULATION, 1992-2008




Sources: Figures for 1992 obtained from: Maguire, K., Pastore, A. L., and Flanagan, T. J. (Eds.) (1993). *Sourcebook of Criminal Justice Statistics 1992*. Washington, DC: Bureau of Justice Statistics. Figures from 2003 obtained from: Mauer, M., King, R.S., and Young, M. (2004). *The Meaning of 'Life': Long Prison Sentences in Context.* Washington, DC: The Sentencing Project. Figures for 2008 collected from each state's Department of Corrections by The Sentencing Project.

As with the overall life sentenced population, the use of LWOP varies greatly among states. In Louisiana, a state in which all life sentences lack the possibility of parole, one of every nine (10.9%) people in prison is serving an LWOP sentence. Pennsylvania, another LWOP-only state, incarcerates 9.4% of its prison population for the rest of their lives. Nationally, there are nine states in which more than 5% of persons in prison are serving an LWOP sentence. On the other end of the spectrum, 15 states incarcerate less than 1% of persons in prison for LWOP.

[6] LWOP data are unavailable for 1984.

States also vary in the relative proportions of parole-eligible life sentences and LWOP. For example, in California and New York, the states with the highest proportion of persons serving life sentences, only 2.2% and 0.3% respectively of incarcerated persons are serving a sentence of LWOP. In 16 states, 10% or more of the prison population is serving a life sentence, yet in 11 of these states, the LWOP population comprises less than 5% of the prison population. This is largely a reflection of statutory law and prosecutorial practices that deemphasize LWOP and underscores the local contours of life sentencing practices.

## Race/Ethnicity and Life Sentences

This study represents the first national collection of state-level life sentence data by race and ethnicity. Nationally, nearly half (48.3%) of the life-sentenced population is African American, comprising 67,918 people (See Table 3). The black proportion of persons serving a life sentence is considerably higher than the black representation in the general prison population (37.5%).

The portion of African Americans serving life sentences varies widely across states, as seen in Table 3. In 13 states and the federal system, African Americans comprise more than 60% of persons serving a life sentence.

TABLE 3: RACIAL AND ETHNIC DISTRIBUTION OF LIFE SENTENCED POPULATION

| STATE | LIFE POPULATION | BLACK | | WHITE | | HISPANIC | |
|---|---|---|---|---|---|---|---|
| | | # | % | # | % | # | % |
| Alabama | 5,087 | 3,342 | 65.7% | 1,732 | 34.0% | Unk. | Unk. |
| Alaska | 229 | 24 | 10.5% | 132 | 57.6% | 4 | 1.7% |
| Arizona | 1,433 | 285 | 19.9% | 670 | 46.8% | 392 | 27.4% |
| Arkansas | 1,376 | 728 | 52.9% | 630 | 45.8% | 13 | 0.9% |
| California | 34,164 | 12,036 | 35.2% | 8,163 | 23.9% | 11,182 | 32.7% |
| Colorado | 2,136 | 432 | 20.2% | 1,064 | 49.8% | 569 | 26.6% |
| Connecticut | 430 | 225 | 52.3% | 123 | 28.6% | 80 | 18.6% |
| Delaware | 526 | 334 | 63.5% | 190 | 36.1% | Unk. | Unk. |
| Florida | 10,784 | 5,660 | 52.5% | 4,753 | 44.1% | 301 | 2.8% |
| Georgia | 7,193 | 5,103 | 70.9% | 2,051 | 28.5% | Unk. | Unk. |
| Hawaii | 412 | 25 | 6.1% | 95 | 23.1% | 14 | 3.4% |
| Idaho | 523 | 11 | 2.1% | 425 | 81.3% | 66 | 12.6% |
| Illinois | 103 | 74 | 71.8% | 19 | 18.4% | 10 | 9.7% |
| Indiana | 250 | 86 | 34.4% | 153 | 61.2% | 9 | 3.6% |
| Iowa | 616 | 156 | 25.3% | 409 | 66.4% | 34 | 5.5% |
| Kansas | 806 | 338 | 41.9% | 372 | 46.2% | 68 | 8.4% |
| Kentucky | 1,073 | 312 | 29.1% | 747 | 69.6% | 7 | 0.7% |
| Louisiana | 4,161 | 3,049 | 73.3% | 1,105 | 26.6% | Unk. | Unk. |
| Maine | 58 | 2 | 3.4% | 55 | 94.8% | 0 | 0.0% |
| Maryland | 2,311 | 1,773 | 76.7% | 508 | 22.0% | Unk. | Unk. |
| Massachusetts | 1,760 | 561 | 31.9% | 827 | 47.0% | 318 | 18.1% |
| Michigan | 5,010 | 3,208 | 64.0% | 1,655 | 33.0% | 93 | 1.9% |
| Minnesota | 496 | 173 | 34.9% | 273 | 55.0% | Unk. | Unk. |
| Mississippi | 1,914 | 1,387 | 72.5% | 516 | 27.0% | 7 | 0.4% |
| Missouri | 2,582 | 1,370 | 53.1% | 1,170 | 45.3% | 21 | 0.8% |
| Montana | 171 | 3 | 1.8% | 137 | 80.1% | 8 | 4.7% |
| Nebraska | 515 | 165 | 32.0% | 280 | 54.4% | 39 | 7.6% |
| Nevada | 2,217 | 509 | 23.0% | 1,340 | 60.4% | 246 | 11.1% |
| New Hampshire | 177 | Unk. | Unk. | Unk. | Unk. | Unk. | Unk. |
| New Jersey | 1,257 | 787 | 62.6% | 356 | 28.3% | 46 | 3.7% |
| New Mexico | 391 | 44 | 11.3% | 153 | 39.1% | 170 | 43.5% |
| New York | 11,147 | 6,167 | 55.3% | 1,814 | 16.3% | 2,937 | 26.3% |

TABLE 3: RACIAL AND ETHNIC DISTRIBUTION OF LIFE SENTENCED POPULATION, continued

| STATE | LIFE POPULATION | BLACK | | WHITE | | HISPANIC | |
|---|---|---|---|---|---|---|---|
| | | # | % | # | % | # | % |
| North Carolina | 2,390 | 1,511 | 63.2% | 786 | 32.9% | 23 | 1.0% |
| North Dakota | 40 | 1 | 2.5% | 33 | 82.5% | 1 | 2.5% |
| Ohio | 5,202 | 2,741 | 52.7% | 2,304 | 44.3% | 103 | 2.0% |
| Oklahoma | 2,135 | 655 | 30.7% | 1,200 | 56.2% | 98 | 4.6% |
| Oregon | 719 | 80 | 11.1% | 544 | 75.7% | 58 | 8.1% |
| Pennsylvania | 4,349 | 2,742 | 63.0% | 1,200 | 27.6% | 356 | 8.2% |
| Rhode Island | 182 | 53 | 29.1% | 88 | 48.4% | 36 | 19.8% |
| South Carolina | 2,056 | 1,318 | 64.1% | 717 | 34.9% | 10 | 0.5% |
| South Dakota | 169 | 11 | 6.5% | 122 | 72.2% | 2 | 1.2% |
| Tennessee | 2,020 | 1,007 | 49.9% | 975 | 48.3% | 25 | 1.2% |
| Texas | 8,558 | 3,721 | 43.5% | 2,893 | 33.8% | 1,886 | 22.0% |
| Utah | Unk. | Unk. | Unk. | Unk. | Unk. | Unk. | Unk. |
| Vermont | 89 | 3 | 3.4% | 76 | 85.4% | Unk. | Unk. |
| Virginia | 2,145 | 1,334 | 62.2% | 786 | 36.6% | 12 | 0.6% |
| Washington | 1,967 | 315 | 16.0% | 1,303 | 66.2% | 207 | 10.5% |
| West Virginia | 612 | 89 | 14.5% | 494 | 80.7% | 2 | 0.3% |
| Wisconsin | 1,072 | 466 | 43.5% | 478 | 44.6% | 97 | 9.0% |
| Wyoming | 197 | 10 | 5.1% | 154 | 78.2% | 21 | 10.7% |
| FEDERAL | 5,400 | 3,494 | 64.7% | 962 | 17.8% | 738 | 13.7% |
| TOTAL | 140,610 | 67,918 | 48.3% | 47,032 | 33.4% | 20,309 | 14.4% |

Notes: Individuals identified as "Other" not included in this table. Race and ethnicity were not available for all individuals. Illinois officials did not provide usable data on life sentences or LWOP sentences for 2008. In 2003, the year in which data were previously collected for our report, *The Meaning of Life*, Illinois reported 1,291 individuals serving life sentences, all of whom were LWOP. The prison population was reported at this time was 43,418. The figure of 103 juveniles serving LWOP was confirmed through an independent report in 2008 and is included in this table. The current number of adult life sentences and LWOP sentences in Illinois could not be determined. Utah officials did not provide data on life sentences. New Hampshire does not maintain race/ethnicity data for its adult population but does have this information for juveniles serving a life sentence and JLWOPs. Please see Tables 8 and 9 for this information.

The issue of racial disparity becomes even more pronounced in examining LWOP sentences. As mentioned, African Americans comprise 48.3% of those serving life sentences; yet, as seen in Table 4, while 45% of the parole-eligible population is African American, blacks comprise 56.4% of the LWOP population.

TABLE 4: NATIONAL LIFE SENTENCED POPULATION, BY RACE AND ETHNICITY

| RACE/ETHNICITY | LIFE SENTENCES | LWOP | | PAROLE ELIGIBLE | |
|---|---|---|---|---|---|
| | | # | % | # | % |
| WHITE | 47,032 | 13,751 | 33.5% | 33,281 | 33.4% |
| BLACK | 67,918 | 23,181 | 56.4% | 44,737 | 45.0% |
| HISPANIC | 20,309 | 3,052 | 7.4% | 17,257 | 17.3% |
| OTHER | 5,174 | 1,048 | 2.6% | 4,126 | 4.1% |
| TOTAL LIFE SENTENCES | 140,610 | 41,095 | | 99,515 | |

Note: Race and ethnicity were not available for all individuals. Therefore, totals do not add up to 100%.

These figures are consistent with a larger pattern in the criminal justice system in which African Americans are represented at an increasingly disproportionate rate across the continuum from arrest through incarceration. African Americans comprise 12% of the general population but represent 28% of total arrests and 38% of persons convicted of a felony in a state court and in state prison. These disparities increase with the severity of punishment.

It is more difficult to identify the involvement of Hispanics in the criminal justice system due to frequent state-level data shortcomings; often, the category of ethnicity is combined with race, resulting in a serious undercount of the national Hispanic population. Nevertheless, when counted accurately, Hispanics are usually shown to be overrepresented in various stages of the criminal justice system. For instance, even though Hispanics represent 15% of the general population, 22.3% of those in prison are Hispanic.[7] In our survey of individuals serving life sentences, we find that the 20,309 Hispanics serving a life sentence comprise 14.4% of all persons serving a life sentence, a figure lower than their proportion of the general prison population.[8]

[7] U.S. Census Bureau (2007). *American Community Survey Demographic and Housing Estimates: 2007*. Washington, D.C.: U.S. Census Bureau; West, H.C. (2008). *Prisoners in 2007*. Washington, DC: Bureau of Justice Statistics. .

[8] Some states' department of corrections only collect and report race data but not ethnicity data. Because of this we encountered challenges in ascertaining the true representation of Hispanics among state life sentenced populations. In particular, the following states do not report life sentence data for Hispanics: Alabama, Delaware, Louisiana, Maryland, New Hampshire, and Vermont. Please see the Methodology section for more discussion of the challenges with ethnicity data.

Hispanics comprise only 7.4% of LWOP sentences. Yet, these figures may be misleading, as 6 states do not collect ethnicity data from their prison population.

Among states that did report ethnicity information, there are five in which 25% or more of the LWOP population is Hispanic – Arizona, California, Colorado, Texas, and Wyoming. Except for Wyoming, these are states that also have a sizeable Hispanic population. Meanwhile, in 30 states, the representation of the LWOP population that is Hispanic is less than 1 in 10.

TABLE 5: RACIAL AND ETHNIC DISTRIBUTION OF LWOP POPULATION

| STATE | LWOP POPULATION | BLACK LWOP | | WHITE LWOP | | HISPANIC LWOP | |
|---|---|---|---|---|---|---|---|
| | | # | % | # | % | # | % |
| Alabama | 1,413 | 963 | 68.2% | 447 | 31.6% | Unk. | Unk. |
| Alaska | 0 | 0 | 0.0% | 0 | 0.0% | 0 | 0.0% |
| Arizona | 208 | 40 | 19.2% | 92 | 44.2% | 68 | 32.7% |
| Arkansas | 541 | 305 | 56.4% | 230 | 42.5% | 3 | 0.6% |
| California | 3,679 | 1,332 | 36.2% | 960 | 26.1% | 1040 | 28.3% |
| Colorado | 464 | 143 | 30.8% | 167 | 36.0% | 134 | 28.9% |
| Connecticut | 334 | 170 | 50.9% | 96 | 28.7% | 66 | 19.8% |
| Delaware | 318 | 207 | 65.1% | 109 | 34.3% | Unk. | Unk. |
| Florida | 6,424 | 3,615 | 56.3% | 2,581 | 40.2% | 196 | 3.1% |
| Georgia | 486 | 359 | 73.9% | 127 | 26.1% | Unk. | Unk. |
| Hawaii | 47 | 2 | 4.3% | 10 | 21.3% | 4 | 8.5% |
| Idaho | 102 | 2 | 2.0% | 89 | 87.3% | 6 | 5.9% |
| Illinois | 103 | 74 | 71.8% | 19 | 18.4% | 10 | 9.7% |
| Indiana | 96 | 30 | 31.3% | 61 | 63.5% | 4 | 4.2% |
| Iowa | 616 | 156 | 25.3% | 409 | 66.4% | 34 | 5.5% |
| Kansas | 2 | 0 | 0.0% | 2 | 100.0% | 0 | 0.0% |
| Kentucky | 66 | 21 | 31.8% | 42 | 63.6% | 2 | 3.0% |
| Louisiana | 4,161 | 3,049 | 73.3% | 1,105 | 26.6% | Unk. | Unk. |
| Maine | 54 | 2 | 3.7% | 51 | 94.4% | 0 | 0.0% |
| Maryland | 321 | 224 | 69.8% | 88 | 27.4% | Unk. | Unk. |
| Massachusetts | 902 | 307 | 34.0% | 424 | 47.0% | 142 | 15.7% |
| Michigan | 3,384 | 2,264 | 66.9% | 1,040 | 30.7% | 44 | 1.3% |
| Minnesota | 48 | 17 | 35.4% | 25 | 52.1% | Unk. | Unk. |
| Mississippi | 1,230 | 877 | 71.3% | 346 | 28.1% | 4 | 0.3% |
| Missouri | 938 | 505 | 53.8% | 419 | 44.7% | 3 | 0.3% |

TABLE 5: RACIAL AND ETHNIC DISTRIBUTION OF LWOP POPULATION, continued

| STATE | LWOP POPULATION | BLACK LWOP | | WHITE LWOP | | HISPANIC LWOP | |
|---|---|---|---|---|---|---|---|
| | | # | % | # | % | # | % |
| Montana | 51 | 0 | 0.0% | 38 | 74.5% | 1 | 2.0% |
| Nebraska | 213 | 72 | 33.8% | 111 | 52.1% | 18 | 8.5% |
| Nevada | 450 | 71 | 15.8% | 309 | 68.7% | 35 | 7.8% |
| New Hampshire | 63 | Unk. | Unk. | Unk. | Unk. | Unk. | Unk. |
| New Jersey | 46 | 32 | 69.6% | 13 | 28.3% | 1 | 2.2% |
| New Mexico | 0 | 0 | 0.0% | 0 | 0.0% | 0 | 0.0% |
| New York | 190 | 118 | 62.1% | 32 | 16.8% | 36 | 18.9% |
| North Carolina | 1,215 | 761 | 62.6% | 389 | 32.0% | 18 | 1.5% |
| North Dakota | 11 | 1 | 9.1% | 7 | 63.6% | 1 | 9.1% |
| Ohio | 216 | 103 | 47.7% | 105 | 48.6% | 5 | 2.3% |
| Oklahoma | 623 | 187 | 30.0% | 343 | 55.1% | 40 | 6.4% |
| Oregon | 143 | 17 | 11.9% | 108 | 75.5% | 14 | 9.8% |
| Pennsylvania | 4,343 | 2,738 | 63.0% | 1198 | 27.6% | 356 | 8.2% |
| Rhode Island | 32 | 11 | 34.4% | 16 | 50.0% | 5 | 15.6% |
| South Carolina | 777 | 515 | 66.3% | 250 | 32.2% | 5 | 0.6% |
| South Dakota | 169 | 11 | 6.5% | 122 | 72.2% | 2 | 1.2% |
| Tennessee | 260 | 123 | 47.3% | 130 | 50.0% | 5 | 1.9% |
| Texas | 71 | 27 | 38.0% | 19 | 26.8% | 25 | 35.2% |
| Utah | Unk. | Unk. | Unk. | Unk. | Unk. | Unk. | Unk. |
| Vermont | 13 | 1 | 7.7% | 10 | 76.9% | Unk. | Unk. |
| Virginia | 774 | 478 | 61.8% | 285 | 36.8% | 8 | 1.0% |
| Washington | 542 | 144 | 26.6% | 319 | 58.9% | 31 | 5.7% |
| West Virginia | 251 | 36 | 14.3% | 207 | 82.5% | 1 | 0.4% |
| Wisconsin | 171 | 58 | 33.9% | 88 | 51.5% | 15 | 8.8% |
| Wyoming | 20 | 1 | 5.0% | 9 | 45.0% | 6 | 30.0% |
| FEDERAL | 4,514 | 3,104 | 66.8% | 704 | 15.6% | 664 | 14.7% |
| TOTAL | 41,095 | 23,181 | 56.4% | 13,751 | 33.5% | 3,052 | 7.4% |

Notes: Individuals identified as "Other" not included in this table. Race and ethnicity were not available for all individuals. Illinois officials did not provide usable data on life sentences or LWOP sentences for 2008. In 2003, the year in which data were previously collected for our report, *The Meaning of Life*, Illinois reported 1,291 individuals serving life sentences, all of whom were LWOP. The prison population was reported at this time was 43,418. The figure of 103 juveniles serving LWOP was confirmed through an independent report in 2008. The current number of adult life sentences and LWOP sentences in Illinois could not be determined. Utah officials did not provide data on life sentences.

## INDIVIDUALS SERVING LIFE SENTENCES FOR CRIMES COMMITTED AS JUVENILES[9]

Life in prison is the most severe punishment available for juveniles. This has been this case since 2005 when the U.S. Supreme Court ruled in *Roper v. Simmons* that juveniles cannot be executed. Every state allows for life sentences for juveniles, and 46 states hold juveniles serving such terms.[10] There are currently 6,807 individuals serving life sentences for crimes committed when they were a juvenile. Among these, 1,755 have a sentence of life without parole.

### Juveniles Serving Life

As with persons serving life overall, there is significant statewide variation in the use of life sentences for juveniles. Juveniles serve life sentences in nearly every state, but more than 50% of the national population is located in five states: California (2,623), Texas (422), Pennsylvania (345), Florida (338), and Nevada (322) (See Table 6).

[9] In this report, we define juveniles according to each state's statutory definition of juvenile rather than the alternative definition of individuals under 18. Therefore, our estimates are frequently lower than estimates that may be found elsewhere because we exclude cases where state law automatically excludes certain youth from juvenile jurisdiction because of their age. Our use of the term "juvenile" is used deliberately instead of the term "individuals under 18," though in some states, these are synonymous.

[10] Indiana, Maine, Vermont, and West Virginia do not currently have any juveniles serving life sentences though state law permits it.

TABLE 6: JUVENILE LIFE AND JLWOP POPULATION BY STATE

| STATE | JUVENILE LIFE POPULATION | JUVENILE LWOP POPULATION |
|---|---|---|
| Alabama | 121 | 89 |
| Alaska | 8 | 0 |
| Arizona | 149 | 25 |
| Arkansas | 58 | 57 |
| California | 2,623 | 239 |
| Colorado | 49 | 49 |
| Connecticut | 18 | 14 |
| Delaware | 31 | 19 |
| Florida | 338 | 96 |
| Georgia | 6 | 0 |
| Hawaii | 8 | 2 |
| Idaho | 21 | 4 |
| Illinois | 103 | 103 |
| Indiana | 0 | 0 |
| Iowa | 37 | 37 |
| Kansas | 64 | 0 |
| Kentucky | 101 | 6 |
| Louisiana | 133 | 133 |
| Maine | 0 | 0 |
| Maryland | 269 | 19 |
| Massachusetts | 52 | 22 |
| Michigan | 206 | 152 |
| Minnesota | 9 | 1 |
| Mississippi | 63 | 42 |
| Missouri | 87 | 35 |
| Montana | 6 | 1 |

| STATE | JUVENILE LIFE POPULATION | JUVENILE LIWOP POPULATION |
|---|---|---|
| Nebraska | 68 | 29 |
| Nevada | 322 | 69 |
| New Hampshire | 15 | 4 |
| New Jersey | 17 | 0 |
| New Mexico | 30 | 0 |
| New York | 146 | 0 |
| North Carolina | 46 | 26 |
| North Dakota | 3 | 1 |
| Ohio | 212 | 0 |
| Oklahoma | 69 | 9 |
| Oregon | 14 | 0 |
| Pennsylvania | 345 | 345 |
| Rhode Island | 12 | 1 |
| South Carolina | 55 | 14 |
| South Dakota | 4 | 4 |
| Tennessee | 179 | 12 |
| Texas | 422 | 3 |
| Utah | Unk. | Unk. |
| Vermont | 0 | 0 |
| Virginia | 107 | 28 |
| Washington | 56 | 28 |
| West Virginia | 0 | 0 |
| Wisconsin | 67 | 2 |
| Wyoming | 6 | 0 |
| FEDERAL | 52 | 35 |
| TOTAL | 6,807 | 1,755 |

Notes: JLWOP is prohibited in Alaska, Colorado, Kansas, New Mexico, and Oregon. JLWOP was eliminated in Colorado in 2005, but does not apply retroactively. Therefore, the 49 youth who were sentenced before the 2005 law was enacted continue to serve JLWOP sentences. Utah officials did not provide data on life sentences. Illinois officials did not provide data on life sentences of LWOP sentences. 103 juvenile LWOP prisoners were confirmed through an independent report in 2008.

Looking at overall life sentences, we note that in four states, more than 10% of the life population were juveniles at the time of their offense. These states are Nevada (14.5%), Nebraska (13.2%), Maryland (11.6%), and Arizona (10.4%). (See Table 7)

TABLE 7: JUVENILES AS PERCENT OF LIFE SENTENCED POPULATION

| STATE | JUVENILES AS % OF LIFE SENTENCED POPULATION |
|---|---|
| Nevada | 14.5% |
| Nebraska | 13.2% |
| Maryland | 11.6% |
| Arizona | 10.4% |
| Kentucky | 9.4% |
| Tennessee | 8.9% |
| New Hampshire | 8.5% |
| Kansas | 7.9% |
| Pennsylvania | 7.9% |
| California | 7.7% |
| New Mexico | 7.7% |
| North Dakota | 7.5% |
| Rhode Island | 6.6% |
| Wisconsin | 6.3% |
| Iowa | 6.0% |
| Delaware | 5.9% |
| Virginia | 5.0% |
| Texas | 4.9% |
| NATIONAL | 4.8% |
| Arkansas | 4.2% |
| Connecticut | 4.2% |
| Michigan | 4.1% |
| Ohio | 4.1% |
| Idaho | 4.0% |
| Montana | 3.5% |
| Alaska | 3.5% |

| STATE | JUVENILES AS % OF LIFE SENTENCED POPULATION |
|---|---|
| Missouri | 3.4% |
| Mississippi | 3.3% |
| Oklahoma | 3.2% |
| Louisiana | 3.2% |
| Florida | 3.1% |
| Wyoming | 3.0% |
| Massachusetts | 3.0% |
| Washington | 2.8% |
| South Carolina | 2.7% |
| Alabama | 2.4% |
| South Dakota | 2.4% |
| Colorado | 2.3% |
| Oregon | 1.9% |
| Hawaii | 1.9% |
| North Carolina | 1.9% |
| Minnesota | 1.8% |
| New Jersey | 1.4% |
| New York | 1.3% |
| FEDERAL | 1.0% |
| Georgia | 0.1% |
| Indiana | 0.0% |
| Maine | 0.0% |
| Vermont | 0.0% |
| West Virginia | 0.0% |

Among these juvenile life sentences, 25.8% of the juveniles (1,755) are serving life without parole. Four states comprise half of the juvenile life without parole (JLWOP) population nationally: Pennsylvania (345, or 19.7%), followed by California (239, or 13.6%), and Michigan (152, or 8.7%), and Louisiana (133, or 7.6%).

In many of these cases, judges were not permitted to consider sentences other than LWOP because of legislatively mandated restrictions concerning certain crimes. Therefore, mitigating circumstances—which almost universally accompany these cases (e.g., mental health status, history of trauma, and amenability to treatment)—are not allowed to be considered. Researchers in the state of Washington reviewed case files for each juvenile serving a sentence of life without parole and identified mitigating circumstances in each of the twenty-eight cases, yet none of this information was permitted in the court's determination of sentence because all were mandatorily given JLWOP.[11]

## Youth of Color Serving Life Sentences

Racial and ethnic disparities are pronounced at each stage of the juvenile justice system, from referral through secure confinement. Transfer to the adult system is the stage at which these disparities are most severe; African American youth represent 35% of judicial waivers to criminal court and 58% of youth sent to adult prisons.[12] Our data document that racial and ethnic disparities persist within the juvenile life sentenced population as well. Overall, nearly half (47.3%) of juveniles sentenced to life are African American (See Table 8).

Racial disparity in juvenile life sentences is quite severe in many states. In Alabama, 102 of the 121 persons serving life, or 84.3%, are black. In Maryland, 226 of the 269

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[11] Washington Coalition for the Just Treatment of Youth (2009). *A Reexamination of Youth Involvement in the Adult Criminal Justice System in Washington: Implications of New Findings about Juvenile Recidivism and Adolescent Brain Development.* Seattle: Columbia Legal Services.

[12] National Council on Crime and Delinquency (2007). *And Justice for Some: Differential Treatment of Youth of Color in the Justice System.* Oakland: National Council on Crime and Delinquency.

(84.0%) youth serving life sentences are black. And in South Carolina, 42 of the 55 (76.4%) youth in adult prisons serving life sentences are black. Finally, in the federal system, 28 of the 52 youth serving life sentences, or 53.8%, are black. Nationally, Hispanics represent 23.7% of juvenile life sentences, considerably higher than the percentage of youth nationwide who are Hispanic (18.0%).[13]

TABLE 8: RACIAL AND ETHNIC DISTRIBUTION OF JUVENILE LIFE POPULATION

| STATE | JUVENILE LIFE POPULATION | BLACK | | WHITE | | HISPANIC | |
|---|---|---|---|---|---|---|---|
| | | # | % | # | % | # | % |
| Alabama | 121 | 102 | 84.3% | 18 | 14.9% | Unk. | Unk. |
| Alaska | 8 | 2 | 25.0% | 4 | 50.0% | 0 | 0.0% |
| Arizona | 149 | 41 | 27.5% | 55 | 36.9% | 43 | 28.9% |
| Arkansas | 58 | 38 | 65.5% | 19 | 32.8% | 1 | 1.7% |
| California | 2,623 | 826 | 31.5% | 306 | 11.7% | 1,185 | 45.2% |
| Colorado | 49 | 15 | 30.6% | 17 | 34.7% | 14 | 28.6% |
| Connecticut | 18 | 10 | 55.6% | 3 | 16.7% | 5 | 27.8% |
| Delaware | 31 | 17 | 54.8% | 14 | 45.2% | Unk. | Unk. |
| Florida | 338 | 226 | 66.9% | 103 | 30.5% | 9 | 2.7% |
| Georgia | 6 | 4 | 66.7% | 2 | 33.3% | Unk. | Unk. |
| Hawaii | 8 | 0 | 0.0% | 1 | 12.5% | 0 | 0.0% |
| Idaho | 21 | 1 | 4.8% | 17 | 81.0% | 3 | 14.3% |
| Illinois | 103 | 74 | 71.8% | 19 | 18.4% | 10 | 9.7% |
| Indiana | 0 | 0 | 0.0% | 0 | 0.0% | 0 | 0.0% |
| Iowa | 37 | 8 | 21.6% | 24 | 64.9% | 5 | 13.5% |
| Kansas | 64 | 35 | 54.7% | 15 | 23.4% | 12 | 18.8% |
| Kentucky | 101 | 32 | 31.7% | 68 | 67.3% | 0 | 0.0% |
| Louisiana | 133 | 97 | 72.9% | 35 | 26.3% | Unk. | Unk. |
| Maine | 0 | 0 | 0.0% | 0 | 0.0% | 0 | 0.0% |
| Maryland | 269 | 226 | 84.0% | 39 | 14.5% | Unk. | Unk. |
| Massachusetts | 52 | 16 | 30.8% | 19 | 36.5% | 12 | 23.1% |
| Michigan | 206 | 131 | 63.6% | 68 | 33.0% | 5 | 2.4% |

[13] Annie E. Casey Foundation (2008). *The Annie E. Casey Foundation 2008 KIDS COUNT Data Book.* Baltimore: Annie E. Casey Foundation.

TABLE 8: RACIAL AND ETHNIC DISTRIBUTION OF JUVENILE LIFE POPULATION, continued

| STATE | JUVENILE LIFE POPULATION | BLACK | | WHITE | | HISPANIC | |
|---|---|---|---|---|---|---|---|
| | | # | % | # | % | # | % |
| Minnesota | 9 | 5 | 55.6% | 2 | 22.2% | Unk. | Unk. |
| Mississippi | 63 | 44 | 69.8% | 18 | 28.6% | 0 | 0.0% |
| Missouri | 87 | 63 | 72.4% | 22 | 25.3% | 1 | 1.1% |
| Montana | 6 | 0 | 0.0% | 4 | 66.7% | 2 | 33.3% |
| Nebraska | 68 | 34 | 50.0% | 31 | 45.6% | 0 | 0.0% |
| Nevada | 322 | 101 | 31.4% | 144 | 44.7% | 56 | 17.4% |
| New Hampshire | 15 | 2 | 13.3% | 13 | 86.7% | Unk. | Unk. |
| New Jersey | 17 | 9 | 52.9% | 8 | 47.1% | 0 | 0.0% |
| New Mexico | 30 | 5 | 16.7% | 6 | 20.0% | 15 | 50.0% |
| New York | 146 | 89 | 61.0% | 16 | 11.0% | 40 | 27.4% |
| North Carolina | 46 | 30 | 65.2% | 14 | 30.4% | 0 | 0.0% |
| North Dakota | 3 | 0 | 0.0% | 1 | 33.3% | 1 | 33.3% |
| Ohio | 212 | 142 | 67.0% | 66 | 31.1% | 3 | 1.4% |
| Oklahoma | 69 | 33 | 47.8% | 23 | 33.3% | 5 | 7.2% |
| Oregon | 14 | 3 | 21.4% | 11 | 78.6% | 0 | 0.0% |
| Pennsylvania | 345 | 231 | 67.0% | 79 | 22.9% | 33 | 9.6% |
| Rhode Island | 12 | 3 | 25.0% | 3 | 25.0% | 5 | 41.7% |
| South Carolina | 55 | 42 | 76.4% | 11 | 20.0% | 0 | 0.0% |
| South Dakota | 4 | 0 | 0.0% | 3 | 75.0% | 0 | 0.0% |
| Tennessee | 179 | 122 | 68.2% | 54 | 30.2% | 2 | 1.1% |
| Texas | 422 | 205 | 48.6% | 85 | 20.1% | 130 | 30.8% |
| Utah | Unk. | Unk. | Unk. | Unk. | Unk. | Unk. | Unk. |
| Vermont | 0 | 0 | 0.0% | 0 | 0.0% | 0 | 0.0% |
| Virginia | 107 | 87 | 81.3% | 20 | 18.7% | 0 | 0.0% |
| Washington | 56 | 10 | 17.9% | 30 | 53.6% | 4 | 7.1% |
| West Virginia | 0 | 0 | 0.0% | 0 | 0.0% | 0 | 0.0% |
| Wisconsin | 67 | 30 | 44.8% | 25 | 37.3% | 6 | 9.0% |
| Wyoming | 6 | 0 | 0.0% | 4 | 66.7% | 2 | 33.3% |
| FEDERAL | 52 | 28 | 53.9 | 8 | 22.9% | 6 | 17.1% |
| TOTAL | 6,807 | 3,219 | 47.3% | 1,547 | 22.7% | 1,615 | 23.7% |

Notes: Individuals identified as "Other" not included in this table. JLWOP is prohibited in Alaska, Colorado, Kansas, New Mexico, and Oregon. JLWOP was eliminated in Colorado in 2005, but does not apply retroactively. Therefore, the 49 youth who were sentenced before the 2005 law was enacted continue to serve JLWOP sentences. Illinois officials did not provide data on life sentences of LWOP sentences. The figure of 103 juveniles serving LWOP was confirmed through an independent report in 2008. Utah officials did not provide data on life sentences or LWOP sentences.

Not surprisingly, racial disparity among JLWOP sentences is also very apparent. Juveniles serving life without parole are even more disproportionately African American, 56.1% (See Table 9). In 17 states, more than 60% of the JLWOP population is African American. In Alabama, for instance, 75 of the 89 persons serving JLWOP (84.3%) are black, and in Maryland 15 of the 19 (78.9%) persons serving JLWOP are black. In South Carolina, 11 of 14 persons serving JLWOP are black. In the federal system, 19 of the 35 (54.3%) persons serving JLWOP are black.[14]

TABLE 9: RACIAL AND ETHNIC DISTRIBUTION OF JLWOP POPULATION

| STATE | JLWOP POPULATION | BLACK | | WHITE | | HISPANIC | |
|---|---|---|---|---|---|---|---|
| | | # | % | # | % | # | % |
| Alabama | 89 | 75 | 84.3% | 13 | 14.6% | Unk. | Unk. |
| Alaska | 0 | 0 | 0.0% | 0 | 0.0% | 0 | 0 |
| Arizona | 25 | 6 | 24.0% | 8 | 32.0% | 9 | 36.0% |
| Arkansas | 57 | 38 | 66.7% | 19 | 33.3% | 0 | 0.0% |
| California | 239 | 77 | 32.2% | 36 | 15.1% | 100 | 41.8% |
| Colorado | 49 | 15 | 30.6% | 17 | 34.7% | 14 | 28.6% |
| Connecticut | 14 | 9 | 64.3% | 1 | 7.1% | 4 | 28.6% |
| Delaware | 19 | 13 | 68.4% | 6 | 31.6% | Unk. | Unk. |
| Florida | 96 | 59 | 61.5% | 31 | 32.3% | 6 | 6.3% |
| Georgia | 0 | 0 | 0.0% | 0 | 0.0% | Unk. | Unk. |
| Hawaii | 2 | 0 | 0.0% | 0 | 0.0% | 0 | 0.0% |
| Idaho | 4 | 0 | 0.0% | 4 | 100.0% | 0 | 0.0% |
| Illinois | 103 | 74 | 71.8% | 19 | 18.4% | 10 | 9.7% |
| Indiana | 0 | 0 | 0.0% | 0 | 0.0% | 0 | 0.0% |
| Iowa | 37 | 8 | 21.6% | 24 | 64.9% | 5 | 13.5% |
| Kansas | 0 | 0 | 0.0% | 0 | 0.0% | 0 | 0.0% |
| Kentucky | 6 | 2 | 33.3% | 3 | 50.0% | 0 | 0.0% |
| Louisiana | 133 | 97 | 72.9% | 35 | 26.3% | Unk. | Unk. |
| Maine | 0 | 0 | 0.0% | 0 | 0.0% | 0 | 0.0% |
| Maryland | 19 | 15 | 78.9% | 4 | 21.1% | Unk. | Unk. |
| Massachusetts | 22 | 6 | 27.3% | 11 | 50.0% | 3 | 13.6% |

[14] Parole is no longer an option in the federal system, as of 1987. Seventeen of the 52 juvenile life sentences represent individuals who are serving parole-eligible life sentences, since they were sentenced before parole was eliminated in 1987.

TABLE 9: RACIAL AND ETHNIC DISTRIBUTION OF JLWOP POPULATION, continued

| STATE | JLWOP POPULATION | BLACK | | WHITE | | HISPANIC | |
|---|---|---|---|---|---|---|---|
| | | # | % | # | % | # | % |
| Michigan | 152 | 96 | 63.2% | 50 | 32.9% | 5 | 3.3% |
| Minnesota | 1 | 1 | 100.0% | 0 | 0.0% | Unk. | Unk. |
| Mississippi | 42 | 27 | 64.3% | 15 | 35.7% | 0 | 0.0% |
| Missouri | 35 | 24 | 68.6% | 11 | 31.4% | 0 | 0.0% |
| Montana | 1 | 0 | 0.0% | 1 | 100.0% | 0 | 0.0% |
| Nebraska | 29 | 14 | 48.3% | 14 | 48.3% | 0 | 0.0% |
| Nevada | 69 | 11 | 15.9% | 48 | 69.6% | 5 | 7.2% |
| New Hampshire | 4 | 1 | 25.0% | 3 | 75.0% | Unk. | Unk. |
| New Jersey | 0 | 0 | 0.0% | 0 | 0.0% | 0 | 0.0% |
| New Mexico | 0 | 0 | 0.0% | 0 | 0.0% | 0 | 0.0% |
| New York | 0 | 0 | 0.0% | 0 | 0.0% | 0 | 0.0% |
| North Carolina | 26 | 17 | 65.4% | 7 | 26.9% | 0 | 0.0% |
| North Dakota | 1 | 0 | 0.0% | 0 | 0.0% | 1 | 100.0% |
| Ohio | 0 | 0 | 0.0% | 0 | 0.0% | 0 | 0.0% |
| Oklahoma | 9 | 4 | 44.4% | 4 | 44.4% | 0 | 0.0% |
| Oregon | 0 | 0 | 0.0% | 0 | 0.0% | 0 | 0.0% |
| Pennsylvania | 345 | 231 | 67.0% | 79 | 22.9% | 33 | 9.6% |
| Rhode Island | 1 | 1 | 100.0% | 0 | 0.0% | 0 | 0.0% |
| South Carolina | 14 | 11 | 78.6% | 1 | 7.1% | 0 | 0.0% |
| South Dakota | 4 | 0 | 0.0% | 3 | 75.0% | 0 | 0.0% |
| Tennessee | 12 | 7 | 58.3% | 5 | 41.7% | 0 | 0.0% |
| Texas | 3 | 2 | 66.7% | 1 | 33.3% | 0 | 0.0% |
| Utah | Unk. | Unk. | Unk. | Unk. | Unk. | Unk. | Unk. |
| Vermont | 0 | 0 | 0.0% | 0 | 0.0% | 0 | 0.0% |
| Virginia | 28 | 21 | 75.0% | 7 | 25.0% | 0 | 0.0% |
| Washington | 28 | 3 | 10.7% | 14 | 50.0% | 3 | 10.7% |
| West Virginia | 0 | 0 | 0.0% | 0 | 0.0% | 0 | 0.0% |
| Wisconsin | 2 | 0 | 0.0% | 0 | 0.0% | 1 | 50.0% |
| Wyoming | 0 | 0 | 0.0% | 0 | 0.0% | 0 | 0.0% |
| FEDERAL | 35 | 19 | 54.3% | 9 | 25.7% | 6 | 17.1% |
| TOTAL | 1,755 | 984 | 56.1% | 497 | 28.3% | 205 | 11.7% |

Notes: Individuals identified as "Other" not included in this table. JLWOP is prohibited in Alaska, Colorado, Kansas, New Mexico, and Oregon. JLWOP was eliminated in Colorado in 2005, but does not apply retroactively. Therefore, the 49 youth who were sentenced before the 2005 law was enacted continue to serve JLWOP sentences. Utah officials did not provide data on life sentences or LWOP sentences. Illinois officials did not provide data on life sentences of LWOP sentences. The figure of 103 juveniles serving LWOP was confirmed through an independent report in 2008.

## Girls Serving Life Sentences

Girls represent a small proportion of juvenile offenses, especially for violent offenses: in 2006, girls accounted for 29% of all juvenile arrests, 17% of violent crime index arrests, and only 5% of arrests for juvenile homicides.[15] Girls are also transferred to the adult court less frequently than boys.[16] These differences notwithstanding, girls are sometimes transferred to adult court and, in some instances, given life or LWOP sentences. Our data reveal that in 2008, there were 176 female juveniles serving life sentences. Moreover, nearly 60% were concentrated in four states: California (64), Texas (13), Tennessee (13), and Nevada (12). In California, 5.4% of all females serving life were juveniles when they committed their offense.

LWOP sentences for girls are relatively rare, but there are 38 girls (representing 27.5% of female juveniles serving life) around the nation who are currently serving life without parole. They are concentrated in Pennsylvania (9), California (5), Iowa (4), Louisiana (4) and Michigan (4). The sentences in these five states comprise 68.4% of the total female JLWOP sentences in the nation.

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[15] Snyder, H. (2008). *Juvenile Arrests 2006*. Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention.

[16] Poe-Yamagata, E. and Butts, J. A. (1996). *Female Offenders in the Juvenile Justice System: Statistics Summary.* Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention.

## POLICIES AND PRACTICES THAT DRIVE LIFE SENTENCES

Each state's prison population is affected by a variety of policies and practices, but some trends in policymaking and practice have emerged to drive the life sentenced population.

### Prosecutorial Discretion

There are multiple ways in which prosecutorial discretion can influence whether a defendant may be sentenced to life, including the selection of the offense to charge, the decision to prosecute a juvenile in the adult court system, or whether to seek a habitual offender sentence, such as a "three-strikes" sentence. For example, in California, there is significant interstate variation in the charging patterns of prosecutors regarding the decision to seek a "three-strikes" sentence. This is reflected in the incarceration figures by county of conviction. Of the 8,381 persons serving a "third-strike" sentence in September, 2008, 3,140 were from Los Angeles County and 659 were from San Diego County, while only 39 were from San Francisco County. While population size and differential rates of crime may explain some of this difference, charging decisions by local prosecutors are a critical contributing factor.

### Politicizing Parole

For persons who have been sentenced to life but are parole eligible, prospects for release have become increasingly politicized in recent years. These developments trace back to the roots of the "tough on crime" movement as parole became a target for policymakers by which their resolution could be measured.

In 1995, Maryland Governor Parris M. Glendening instructed the Parole Commission to "not even recommend – to not even send to my desk – a request for murders and rapists" unless they are suffering from a terminal illness or are "very old."

Former California Governor Gray Davis famously said that persons convicted for murder will only leave prison "in a pine box." Upon taking office in 1999, he said "If you take someone else's life, forget it. I see no reason to parole people who have committed an act of murder." And he upheld this promise, only permitting eight persons sentenced to life to be released between 1999 and 2003.

California Governor Arnold Schwarzenegger then vowed to change the policies of the Davis administration and to grant parole to more individuals recommended for release by the parole board. In 2004, Governor Schwarzenegger permitted 72 persons serving a life sentence to be released. However, he was criticized for these releases by victims' rights groups and the California Correctional Peace Officers Association. In the ensuing years, including a period when Governor Schwarzenegger was facing an electoral campaign, he only approved the release of 35 persons serving life in 2005 and 23 in 2006.

In other states, the release of persons serving a life sentence to parole has been similarly restrictive. State such as Illinois, Louisiana, and Pennsylvania, which used to grant release to persons on life with some regularity have drastically reduced their use of clemency.[17] For example, in June, 2009, Governor Edward Rendell of Pennsylvania commuted the sentence of George Gregory Orlowski, who had been serving a life sentence for murder since 1980.[18] This commutation was only the third granted in Pennsylvania since 1994. Between 1971 and 1994, the state averaged 12 commutations per year. However, in the wake of a high-profile double murder committed by an individual whose sentence had been commuted in 1994, both the Pennsylvania Board of Pardons and subsequent governors have proven highly reluctant to recommend or grant future commutations.

These examples illustrate the powerful way in which parole for persons serving a life sentence has become increasingly politicized. There is a strong disincentive for a sitting

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[17] Mauer, King, and Young, *supra* note 2, pp. 6-7.

[18] King, L. (2009, June 16) In A Rarity, Rendell Commutes a Life Sentence. *The Philadelphia Inquirer*.

governor to approve the release of life-sentenced individuals. Both governors and parole board members generally receive only negative feedback on releases (when someone reoffends), which reinforces a reticence to grant release. Victims' rights groups closely monitor the process, as do other "watchdog organizations" in some states, and politicians are vulnerable to being held accountable for any potential future transgressions of people released on parole.

Parole for persons serving a life sentence has become a political liability, even if all reliable indicators suggest to an independent parole review board that the individual is suitable to be released. While the recommendation of a parole review board may be intended to serve as a buffer for a governor should a person released on parole reoffend, in practice this is not the case. This is perhaps no more clearly apparent than in the 1988 presidential campaign, in which it is widely held that the linking of Massachusetts Governor and Democratic candidate Michael Dukakis with Willie Horton, a man who was released and later convicted of kidnapping and rape while on furlough from a state prison, doomed the campaign. In the 2008 presidential campaign, former Arkansas Governor Mike Huckabee was criticized for the parole of a person who had been serving a life sentence and subsequently reoffended within a year of release.

When the choice must be made between granting parole at the risk of political backlash or denying parole, many decisionmakers will opt for the less risky option. Such politically-driven decisions in the case of life imprisonment are frequently at cross-purposes with sound public policy.

### Three-Strikes Laws

As previously noted, there is widespread variation in the use of life sentences among the states. It often reflects the state political climate and conscious decisions by practitioners and policymakers to emphasize or minimize the use of life sentences. For example, in California, 1 in 5 persons serving a prison term - more than 34,000 people – will potentially spend the remainder of his or her life incarcerated. This is nearly a tripling of the total persons serving a life sentence since 1992.

One of the driving forces in this change dates back to 1994 when the California legislature established a "three-strikes" habitual offender law which, among other provisions, mandated a sentence of 25 years to life for a third felony as long as the prior two "strikes" were for serious or violent crimes. Unlike in other states, the California third-strike is not required to be a serious or violent offense. By December 2008, there were 8,409 Californians serving a third-strike sentence of 25 years to life. This represents nearly one-quarter of all persons serving a life sentence in California. The law was presented to the California public as targeting serious, repeat offenders. However, in practice, less than half the persons sentenced under the law were convicted of a violent crime as their third strike. Fifty-five percent were convicted of a non-violent offense, including 16% for a drug offense and 30% for a property offense.

In fact, there are nearly as many people incarcerated for a third-strike for driving under the influence (55) as there are for the most serious offense, murder (69). Less than 2% of people serving a third-strike were convicted of murder or manslaughter. While it is safe to assume that some of the 8,409 people convicted of serious offenses such as murder or armed robbery would be serving life even in the absence of the three-strikes law, persons convicted of those types of offenses represent a minority of third-strikes sentences. By and large, the majority of individuals convicted of a third-strike offense would not be serving a life sentence in the absence of these laws.

**Ali Forutan**

Ali Forutan is currently serving a life sentence in California under that state's "three strikes" law. In 2000, Forutan was convicted of possession of 0.03 grams of methamphetamine. Since an early age, Forutan had abused alcohol and drugs and suffered abuse at the hands of his father and peers. But, because of his prior felony residential burglary charges in 1990 and 1992 (neither of which involved any violence) the sentencing court subjected Forutan to a "third strike" sentence of 25 years to life for the possession of methamphetamine.

### Transfer of Juveniles to Adult Court

When a life sentence is given to a juvenile, it is precipitated by a mandatory or discretionary transfer out of juvenile court. Transferring juvenile cases to the adult court became more common in the late 1980s and early 1990s through political responses to rising juvenile crime. Judicial waivers, one of three mechanisms used to waive youth to the adult system, increased by 83% between 1985 and 1994.[19] Fear-producing statements such as that of John DiIulio's warning that "…on the horizon…are tens of thousands of severely morally impoverished juvenile superpredators,"[20] paved the way for sweeping changes to juvenile crime policy that produced today's system. At the time DiIulio made this statement, juvenile crime was already coming down from its peak in 1994, and it has continued to decline with only slight fluctuations since.

The near doubling of juvenile cases transferred to the adult system from 7,200 in 1985 to 13,200 in 1994 has contributed to many more juveniles being given life sentences. Since the number of such transfers has declined since then, it is possible that the number of life sentences given to juveniles has also dropped over time, though these data are not routinely collected. Another unknown figure is the number of youth serving "blended" sentences, or those who are charged as adults but retained in juvenile detention until the age of 21 or 24 years old. It is unknown how many of these youth have a life or LWOP sentence.

### The "Adult Crime, Adult Time" Perspective

Concerns over rising juvenile crime in the 1980s were elevated by media reports and ill-informed warnings by policymakers that a "new breed" of especially violent youth was emerging. Calls for action at that time were enacted and implemented quickly, sending thousands of youth into the juvenile justice system because of harsh mandates. Catch

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[19] Snyder, H. and Sickmund, M. (2006). *Juvenile Offenders and Victims: 2006 National Report*. Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention.

[20] DiIulio, J. (1995). The Coming of the Superpredators. *The Weekly Standard.*

phrases such as "adult crime, adult time" made an impression on a fearful public, but made for very poor policy.

Once transferred to the adult court, young people face the same sentencing options as adults, including the possibility of sentences to life or life without parole. For some cases, there are no sentencing options available to judges; mandatory life sentences are required for certain crimes through state statute. In these cases, one's young age or other mitigating factors cannot be included in determining the appropriate sentence length. Twenty-nine states require mandatory JLWOP sentences for at least one crime, usually homicide.[21]

Pennsylvania leads the nation in the number of youth sentenced to life without parole: there are 345 juveniles serving life sentences in Pennsylvania. As in most states, youth of color are overrepresented in the juvenile justice system in Pennsylvania from the point of arrest through the point of placement. In 2007, 39.9% of juveniles arrested in Pennsylvania were African American. Among Pennsylvania's youth in detention, 53.9% are African American and nearly 70% of the JLWOP population is comprised of youth of color.

Some children serving life sentences have committed heinous and gruesome acts; it is a murder conviction that typically prompts the sentence of life or life without parole for juveniles. For especially violent acts, long-term incarceration can be the most appropriate option for them as well as for public safety goals. However, a parole hearing, offered at regularly scheduled intervals, would provide the appropriate venue at which to determine which individuals should remain incarcerated and which have been sufficiently reformed and demonstrate the maturity to warrant release.

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[21] Human Rights Watch/Amnesty International (2005). *The Rest of Their Lives: Life without Parole for Child Offenders on the United States.* San Francisco: Human Rights Watch.

**Joe Sullivan**

Many, but not all, children serving life without parole have committed acts of murder. One such exception is the case of Joe Sullivan, now 33 years old and serving an LWOP sentence in Florida for a crime committed when he was 13 years old.

Joe Sullivan, who is severely mentally disabled, was convicted of sexual battery. A co-defendant in the offense, an older boy, was given a shorter sentence and served his time in juvenile detention. The lawyer who represented Sullivan during his one-day trial has since had his legal license suspended. Finally, Sullivan is now physically disabled because of multiple sclerosis and has been confined to a wheelchair since entering prison. In December 2008, a petition for writ of certiorari was filed with the U.S. Supreme Court challenging Sullivan's case under the Eighth Amendment and in May 2009, the Court agreed to hear the case.

## Juveniles Convicted of Murder More Likely to Receive a Life Sentence than Adults

A review of juvenile life without parole cases contradicts the general assumption that these sentences are reserved only for the most chronically violent youth, "the worst of the worst." In a 2005 assessment of JLWOP, a Human Rights Watch study reported that in 59% of the sentences nationwide, the youth was a first-time offender.[22] This fact runs contrary to the commonly-held assumption that individuals serving LWOP sentences are chronic, repeat offenders. In addition, in 26% of cases, the juvenile serving an LWOP sentence was not the primary assailant and, in many cases, was present but only minimally involved in the crime. However, because of state law, they were automatically given a sentence of life without the possibility of parole. Evidence of disparate LWOP sentences for juveniles versus adults is also apparent, and not in the expected direction; in fact, during eleven of the 17 years between 1985 and 2001, youth convicted of murder were more likely to receive a sentence of life without parole than adults with murder convictions.[23]

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[22] Ibid.

[23] Ibid.

There is broad variation across the states in sentencing young people to life, a function of several factors. First, states differ in the age at which children can be waived to the adult court, thus triggering their initial eligibility for a life sentence. In addition, in some states, persons charged with certain crimes are automatically transferred and sentenced to life upon conviction, while in other states they are not. Specifically, state law mandates life without parole upon conviction of certain offenses in 29 states, but can be granted or overruled at a judge's discretion for the same offenses in 15 states.[24] The use of juvenile life without parole is prohibited in Alaska, Colorado,[25] Kansas, New Mexico, and Oregon.

### Felony Murder Rule

One final problem with JLWOP is its application in association with the felony murder rule.[26] This rule, which accounts for 26% of youth serving LWOP sentences,[27] refers to an instance where the defendant was present during the commission of a murder but did not actually commit the act. In some instances a felony murder rule is invoked if, during the commission of a felony such as a robbery, someone is unintentionally killed. The felony murder rule often results in excessive punishment for juveniles who are present during the commission of a felony.

The application of the felony murder rule is especially egregious for juveniles because of the well-documented evidence that youth often go along with group-based plans out of a desire to fit in with their peers. This desire dissipates over time with individual maturity and executive functioning skills. If they are among older peers, as is often the case, the drive to fit in may be even more difficult to resist.

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[24] Ibid.

[25] JLWOP was banned in 2005, but the law was not retroactive so youth sentenced to LWOP before 2005 are still serving their sentences.

[26] The felony murder rule applies for adults as well, but there are no national data available on the proportion of adults serving LWOP sentences because of this policy.

[27] Human Rights Watch/Amnesty International , *supra* note 21.

**Patrick McLemore**

Patrick McLemore was 16 years old at the time of a robbery in Michigan in which his 20-year-old accomplice committed a murder. McLemore was not even in the residence at the time of the murder. His co-defendant pled guilty to second degree murder and was sentenced to 30-60 years in prison. McLemore went to trial and was convicted of first degree murder; he is now serving a life sentence with no possibility of parole.

One scholar refers to the felony murder rule as "…the pinnacle of inconsistency between an actor's culpability and his subsequent punishment."[28] Life sentences are allegedly reserved for the most culpable individuals, yet the children and adolescents subjected to this especially harsh sentence associated with the felony murder rule did not commit the homicide, rendering them less culpable. In addition, the rule is applied without benefit of judicial discretion in most cases.

Though one argument for this rule is that it should serve as a deterrent for potential offenders, it has been pointed out that one cannot deter unforeseen events such as death in the commission of a felony. If one argued that deterrence was effective as a crime reducing strategy, which is difficult to determine,[29] a more logical solution would be to enhance the penalties associated with intentional felonies.[30]

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[28] Flynn, E. H. (2008). Dismantling the Felony Murder Rule: Juvenile Deterrence and Retribution Post *Roper v. Simmons*. University of Pennsylvania Law Review, 156: p.1062.

[29] Nagin, D. and Pogarsky, G. (2004). Time and Punishment: Delayed Consequences and Criminal Behavior. *Journal of Quantitative Criminology 20*(4): 295-317.

[30] Flynn, *supra* note 28, p. 156.

# THE CONSEQUENCES OF LIFE SENTENCES ON SOCIETY

## The Struggle to Balance Punishment and Proportionality

For what purpose are so many people incarcerated for life at an exponentially increasing cost? The rationale for opposing the use of parole for persons serving a life sentence generally pivots around issues of punishment, retribution, and incapacitation in the interest of public safety. This goal conjures up the question of the appropriate duration of time in prison. How are these various goals met by a life sentence, as opposed to a term of 15 or 25 years, for example?

This question came before the California Supreme Court in 2008 in reviewing the habeas petition of Sandra Davis Lawrence, who is serving a life term for murder. In January of 2006, Governor Arnold Schwarzenegger reversed the decision of the Board of Parole Hearings and denied the release of Ms. Lawrence, stating that the murder she had committed in 1971 "demonstrated a shockingly vicious use of lethality and an exceptionally callous disregard for human suffering." At issue was whether she had served enough time in prison relative to the circumstances of the crime to warrant her release.

Sandra Lawrence was convicted in 1983 for the 1971 murder of the wife of a man with whom she had been having an affair. She fled California after the murder and voluntarily returned in 1982 to face trial. Ms. Lawrence was sentenced to life in prison in 1983, with a first date of parole eligibility in 1990. While incarcerated, Ms. Lawrence made substantial progress addressing the underlying causes of her criminal activity and, beginning in 1993, was recommended by the Board of Parole Hearings for release on four separate occasions. "[T]he Board concluded that [Lawrence] committed the crime as a result of significant stress, and had demonstrated motivation, growth, and a greater understanding of herself and the crime she committed." She participated in prison-based programs, earned a bachelor's degree, became a mentor to others in prison, and took responsibility for her past actions. She was found to exhibit little risk for recidivism and

was not considered to pose a danger to society. Despite substantial evidence of her suitability for return to the community, Governors Wilson, Davis, and Schwarzenegger reversed the positive parole recommendations. In 2004, Governor Schwarzenegger stated that the crime was committed for an "incredibly petty" reason and that this rationale was "reason enough to pose an unreasonable risk to public safety."

At issue in the Lawrence case is the broader question of whether the circumstances of the crime should act as a permanent barrier to release and, albeit indirectly in this case, are there some criminal histories that can never be overcome, no matter how much a person has changed in the intervening decades? The latter strikes at a central concern regarding life sentences: the failure to recognize the fact that someone who has been in prison for two decades is likely to be very different than when they were sentenced. One of the primary purposes of incarceration is to work toward rehabilitation. Parole and earned sentence reductions are intended both as an incentive for reform and a measure of one's suitability to be returned to society. Historically, life sentences were seen as indeterminate, with the possibility of parole as a catalyst for seeking personal redemption and growth. The widespread decline in granting parole, even in cases of clearly demonstrated personal change, undermines the incentive for reform and sends an inconsistent message to persons in prison regarding how to spend their years behind bars.

While concerns about public safety may fade as an individual ages in prison and becomes less of a threat, the rationale of retribution, frequently linked to the heinousness of the crime, does not diminish at the same rate. In the case of Ms. Lawrence, the reasons for denying her release had little to do with concerns about safety or her unwillingness to accept responsibility for her actions. Instead, these decisions were grounded in the retributive desire to continue to punish her based on the details of her crime. The California Supreme Court challenged this contention, reversing the lower court's denial of Lawrence's petition for habeas corpus and stating: "At some point . . . when there is affirmative evidence, based upon the prisoner's subsequent behavior and current mental state, that the prisoner, if released, would not currently be dangerous, his or her past offense may no longer realistically constitute a reliable or accurate indicator of the prisoner's current dangerousness."

## Recidivism and Public Safety

It is argued by some that incapacitating certain people for decades, if not for their natural life, is necessary for the sake of public safety. This argument turns on the point that to release someone who has been sentenced to life will jeopardize the public because of an imminent threat of reoffending. However, recidivism rates for persons serving a life sentence are considerably lower than for the general released population. A 2004 analysis by The Sentencing Project found that persons who were released from a life sentence were less than one-third as likely to be rearrested within three years as all released persons.[31] While two-thirds of all persons released in 1994 were rearrested within three years, only 1 in 5 persons who were released from a life sentence was rearrested.[32]

Though not specifically addressing recidivism rates for persons sentenced to life, a study in Ohio of 21 people released in 2000 who were 50 years of age or older and had served 25 years or more at the time of release found that none of these persons committed a new crime during the three years after their release. In Pennsylvania, the recidivism rate of persons convicted of a new crime who were 50 years of age or older and released in 2003 was 1.4% in the first 10 to 22 months after release. While Pennsylvania does not permit parole for persons convicted of a life sentence, research on 285 persons who had their life sentence commuted and were released from prison found a recidivism rate for a new criminal conviction of just 1%.[33]

These studies do not evaluate life sentences directly, but they are drawn from a similarly situated population – older persons who have served upwards of 20 years. Thus, they are illustrative of likely outcomes among individuals who have been sentenced to life should they be released. In fact, the research literature is replete with support for the perspective

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[31] Mauer, King, and Young, *supra* note 2, p. 24.

[32] Ibid.

[33] Advisory Committee on Geriatric and Seriously Ill Inmates, *supra* note 4, p. 81.

that persons serving a life sentence are some of the most well-adjusted persons in prison.[34] For these individuals, the prison becomes their social universe for the long-term and maintaining order becomes a priority. Persons serving a life sentence are frequently lauded by correctional administrators and called upon to serve as mentors.

## The Costs of an Aging Prison Population

In 1997, 13% of persons serving a life sentence were 50 years of age or older. By 2004 that figure had increased to 22%.[35] This figure will likely increase, as more people are admitted to prison on an LWOP sentence.

### William Heirens

The effects of life without parole sentencing policies can be seen in the Illinois case of William Heirens, who has now served more than 63 years for a triple-murder he committed in 1946. He currently suffers from diabetes and is confined to a wheelchair in ailing health, costing the state a substantial premium above and beyond the routine costs of incarceration. In 1946, Heirens was sentenced to three consecutive life terms, but with the possibility of parole. Mr. Heirens has served a model term of incarceration, becoming the first person in an Illinois prison to earn a four-year college degree and acting as a mentor to other incarcerated persons. Yet at 78 years old, his application for parole was unanimously denied in August 2008, with one Parole Board member saying, "God will forgive you, but the state won't."

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[34] Johnson, R. and Dobranska, A. (2005). Mature Coping among Life Sentenced Inmates: An Exploratory Study of Adjusted Dynamics. *Corrections Compendium.* November/December: 8-38; Johnson, R. and McGunigall-Smith, S. (2008). Life without Parole, America's Other Death Penalty: Notes on Life under Sentence of Death by Incarceration. *The Prison Journal 88*(2): 328-346.

[35] Bureau of Justice Statistics and Federal Bureau of Prisons (2000). *Survey of Inmates in State and Federal Corrections Facilities, 1997* [computer file]; Bureau of Justice Statistics and Federal Bureau of Prisons (2006). *Survey of Inmates in State and Federal Corrections Facilities, 2004* [computer file].

The case of William Heirens raises the issue of what utility his continued incarceration offers for the citizens of Illinois and at what cost. At the national level, with more than 40,000 persons serving a sentence of LWOP and more than 140,000 persons serving a life sentence with diminished prospects for release, the issue of aging in prison is becoming a serious policy consideration for correctional administrators.

The aging prison population is of paramount importance in contributing to the rising cost of healthcare for older prisoners. Older persons in prison frequently exhibited higher rates of health problems than the general population when they were sentenced to prison.[36] This is the result of a number of factors, including higher rates of substance abuse, physical abuse, and inconsistent access to health care. Higher rates of incarceration among persons from low-income, communities of color mean that disparities in overall health are elevated in the incarcerated population and magnified further among older, incarcerated individuals. The cumulative effect of an unhealthy lifestyle coupled with a prison environment that is not conducive to healthy living results in declining standards of health among aging prisoners.

Thus, older persons in prison are substantially more expensive to incarcerate. Higher rates of chronic illness among persons over the age of 50 result in an increased frequency of medical visits, procedures, and dispensed medication. While cost estimates vary for the care of an aging individual in prison, it has been estimated to be more than three times that of incarcerating a younger, healthy person. In one facility in Pennsylvania, it is estimated that a person receiving long-term care costs $63,500 per year incarcerated.[37] In California, the cost is estimated to be between $98,000 and $138,000 per year for the incarceration of older persons. An estimate by The Sentencing Project found that a state would be spending upwards of $1 million to incarcerate a life sentenced person for 40 years (from age 30 through 70).[38] Unsurprisingly, the intersection of increasing health

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[36] Marquart, J. W., Merianos, D. E., and Doucet, G. (2000). The Health-Related Concerns of Older Prisoners: Implications for Policy. *Aging and Society, 20*: 79-96; Fazel, S., Hope, T., O'Donnell, I., Piper, M., and Jacoby, R. (2001). Health of Elderly Male Prisoners: Worse Than the General Population, Worse Than Younger Prisoners. *Age and Aging, 30*: 403-407.

[37] Advisory Committee on Geriatric and Seriously Ill Inmates, *supra* note 4, p. 2.

[38] Mauer, King, and Young, *supra* note 2, p. 25.

costs and a rapidly aging prison population has placed an enormous burden upon correctional administrators to pay for these required services. In no state has this struggle been starker than in California, where the correctional system is under federal receivership and has recently been ordered to cut the prison population by as much as 58,000. It is estimated that the state will need $8 billion to fund the construction of 10,000 prison hospital beds.

## Housing Youth with Adults

Numerous problems have been documented with housing young people with adults and these problems pertain to the young life sentenced population as well. Youth serving adult sentences comingle with adults because they are legally considered to be adults. Young people are exposed to the extreme violence that frequently takes place within adult prisons. They are also denied age-appropriate prison programs that they could participate in if housed in a juvenile detention center. Juveniles in adult settings are much more likely to be sexually assaulted than those in juvenile correctional facilities: the Bureau of Justice Statistics estimates that in 2005, 21% of all victims of sexual violence in jails were under the age of 18. Considering that persons under 18 make up only 1% of the jail population, this number is quite high.[39] In addition, juveniles are at a higher risk of physical assault by staff in adult facilities than when housed in juvenile detention.[40]

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[39] Arya, N. (2007). *Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America.* Washington, D.C.: Campaign for Youth Justice.

[40] Woolard, J. L., Odgers, C., Lanza-Kaduce L., and Daglis, H. (2005). Juveniles within Adult Corrections: Legal Pathways and Developmental Considerations. *International Journal of Forensic Mental Health 4* (1): 1-18.

# RECOMMENDATIONS FOR REFORM

## Eliminate Sentences of Life without Parole

Life without parole sentences are costly, shortsighted, and ignore the potential for transformative personal growth. The 43 states that have both life and LWOP sentences should amend their statutes to make all life sentences parole-eligible. The six states and the federal system with LWOP-only sentences should replace this structure with parole-eligible terms. An example may come from Canada, where all persons serving life are considered for parole after serving 10 to 25 years.

Such a change would not necessarily mean that all parole eligible persons would be released at some point during their term. In the interest of public safety, many individuals sentenced to life will serve the remainder of their natural lives in prison. However, this reform would provide that a decision on release be made by a professional parole board at the time of eligibility, taking into account a person's prospects for a successful transition to the community.

Such policy changes are gaining traction among key practitioners. In its draft standards, The American Law Institute, a professional body of judges, lawyers, and academics has called for the elimination of life without parole except as an alternative to the death penalty.[41] And, in June 2009, a federal judge in Pennsylvania reaffirmed a lower-court ruling that eases the clemency request process for Pennsylvania inmates serving life sentences which began before 1997. Before this time, pardon recommendations required a simple majority vote by the state Pardons Board before being passed to the governor for review, but the law changed in late 1997 to require a unanimous vote instead. The present ruling allows inmates sentenced before 1997, perhaps as many as 3,000, to apply for a pardon under these earlier rules.[42]

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[41] The American Law Institute (2009). *Model Penal Code: Sentencing Discussion Draft 2 No. 2*. Philadelphia: The American Law Institute.

[42] Jackson, Peter. (2009, June 26). Ruling Offers Hope to Pennsylvania Life Inmates. *The Associated Press.*

*Eliminate Juvenile LWOP*

As an intermediate step toward a wholesale repeal of LWOP, policymakers should eliminate JLWOP. The United States is the only country in the world that imposes JLWOP sentences, placing it in violation of international law. The committee that oversees the International Covenant on Civil and Political Rights notes that "…sentencing children to life sentences without parole is…not in compliance with Article 24(1) of the Covenant." And, the Committee Against Torture, which oversees the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, finds that JLWOP "…could constitute cruel, inhuman treatment or degrading treatment or punishment" in violation of the treaty.[43]

Many view the elimination of JLWOP as a natural evolution of the U.S. Supreme Court's decision in *Roper,* in which the death penalty was determined to be unconstitutional for juveniles because of the Court's admission that juveniles are much more amenable to reform than adults. In *Roper,* the Court also recognized that there should be different standards for judging culpability for children than for adults; this reasoning applies to JLWOP as well. Efforts are underway in a number of states to eliminate JLWOP because of the growing awareness that this sentence is particularly inappropriate and cruel when applied to young people. In recent years, legislation has been introduced in Alabama, Arkansas, California, Florida, Illinois, Iowa, Michigan, Missouri, Nebraska, Texas, and Washington that would allow parole hearings at some point during a juvenile's sentence. Federal leadership is needed to eliminate JLWOP in the federal system and to serve as an example to states that this sentence type is unacceptable.

## Prepare Persons Sentenced to Life for Release From Prison

The emergence of reentry as a criminal justice policy issue in the last decade has largely ignored persons serving a life sentence. Typically, reentry programs are provided to persons within 6 months of their release date and offer transition services in the

[43] Human Rights Watch/Amnesty International , *supra* note 21.

community upon release. However, for persons serving a life sentence, their release date is not fixed and they are often overlooked as policymakers and correctional administrators consider reentry strategies. Additionally, persons serving a life sentence have unique reentry needs based upon the long duration of their prison term.

The failure to design reentry strategies for persons serving a life sentence neglects 1 in 11 persons in prison by denying them the opportunity to participate in valuable programming. Reentry and reintegration principles must be extended to persons serving a life sentence. Correctional programs can contribute to a successful release and persons serving life should be encouraged to access the types of services that will help them transform their lives and improve their presentation before the parole board. One model is the *Lifeline* program, first enacted in Canada and being considered in Colorado. In *Lifeline*, persons who have successfully reintegrated into society after serving a life sentence serve as mentors to those persons who are going to be released. "In-reach workers" help prepare individuals while they are still in prison for the challenges they will face and assist those who have been released to the community. The program has been in place for more than 15 years in Canada and 8 in 10 persons serving life reported the service to be helpful.

### Restore the Role of Parole

In 1967, the President's Crime Commission recommended that parole boards be staffed by correctional professionals rather than political appointees. However, more than 40 years later, parole boards remain the domain of political appointees and two-thirds of states lack any standardized qualifications for service. This has resulted in a highly politicized process that too often discounts evidence and expert testimony. Parole boards should be staffed with members who have a background in corrections or relevant social services in order to best assess suitability for release. They should also use risk-based release polices that consider a range of static and dynamic factors including criminal history, offense severity, prison disciplinary record, and program participation while incarcerated.

# APPENDIX A: METHODOLOGY

Data were collected from state's Department of Corrections (DOC) between April 2008 and December 2008. DOCs were contacted through email, followed by telephone calls placed to the appropriate department when original requests were unanswered. Several unsuccessful attempts were made to obtain usable data from Illinois and Utah. We also received data from the federal Bureau of Prisons.

In this report, we define juveniles according to each state's statutory definition of juvenile rather than the alternative definition of individuals under 18. Therefore, our estimates are frequently lower than estimates that may be found elsewhere because we exclude cases where state law automatically excludes certain youth from juvenile jurisdiction because of their age. Our use of the term "juvenile" is used deliberately instead of the term "individuals under 18," though in some states, these are synonymous.

One final caveat in our data concerns ethnicity. Data on Hispanics are often unreliable and suffer frequently from problems of double-counting or undercounting because ethnicity is conflated with race, though substantial improvements have been noted in the past few years in many crime data systems.

# APPENDIX B: SURVEY OF STATE DEPARTMENTS OF CORRECTIONS ON LIFE-SENTENCED POPULATION

Hello,
I am conducting a national census of state departments of corrections in order to document the number of individuals serving a life sentence. I would be grateful if you would take a few moments and provide me with the following information for [STATE]. Thank you in advance for your time. If you have any questions about this project, please do not hesitate to be in touch. I can be reached at [EMAIL ADDRESS] or 202-628-0871.

TOTAL PRISON POPULATION:_____

SECTION I. PERSONS SERVING A LIFE SENTENCE WITH THE POSSIBILITY OF PAROLE

A. PERSONS WHO COMMITTED THE OFFENSE WHEN THEY WERE ADULTS:

TOTAL:_____ MALE:_____ FEMALE:_____
AFRICAN AMERICAN:_____ WHITE:_____
HISPANIC:_____ OTHER:_____

B. PERSONS WHO WERE CONVICTED IN ADULT COURT FOR OFFENSES COMMITTED WHEN THEY WERE JUVENILES:

TOTAL:_____ MALE:_____ FEMALE:_____
AFRICAN AMERICAN:_____ WHITE:_____
HISPANIC:_____ OTHER:_____

SECTION II. PERSONS SERVING AN LWOP SENTENCE

C. PERSONS WHO COMMITTED THE OFFENSE WHEN THEY WERE ADULTS:
TOTAL:_____ MALE:_____ FEMALE:_____
AFRICAN AMERICAN:_____ WHITE:_____
HISPANIC:_____ OTHER:_____

D. PERSONS WHO WERE CONVICTED IN ADULT COURT FOR OFFENSES COMMITTED WHEN THEY WERE JUVENILES:
TOTAL:_____ MALE:_____ FEMALE:_____
AFRICAN AMERICAN:_____ WHITE:_____
HISPANIC:_____ OTHER:_____
AS OF (DATE):_____

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**FURTHER READING AVAILABLE AT www.sentencingproject.org:**

**The Meaning of "Life": Long Prison Sentences in Context**

**Incarceration and Crime: A Complex Relationship**

**Lessons of the "Get Tough" Movement in the United States**

**The State of Sentencing 2008: Developments in Policy and Practice**

ERRATA: After the printing of the report, The Sentencing Project was contacted by a representative of the Nebraska Department of Corrections, notifying us that the state had furnished inaccurate data. The corrected data are 306 persons serving a life sentence, 220 of whom are serving LWOP. Among all persons serving a life sentence, 100 are African American, 165 are white, 22 are Hispanic, and 19 are "other." Among LWOP, 79 are African American, 110 are white, 18 are Hispanic, and 13 are "other." There are 37 persons serving a sentence of life for a crime committed when they were a juvenile, 29 of whom are serving LWOP. Among those serving a juvenile lie sentence, 20 are African American, 15 are white, and 2 are "other." Among JLWOP, 14 are African American, 14 are white, and 1 is "other." The adjusted national life sentence count is 140,401 and the adjusted LWOP count is 41,102. The adjusted national juvenile life sentence count is 6,747 and the JLWOP count remains the same. The adjusted totals do not alter the national percentages to any significant degree.

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