



**THE
SENTENCING
PROJECT**

RESEARCH AND ADVOCACY FOR REFORM

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ON PUBLIC PROTECTION**

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Thank you for the opportunity to submit testimony on behalf of The Sentencing Project. The Sentencing Project is a national non-profit organization engaged in research and advocacy on criminal justice policy issues. The Sentencing Project has produced a series of publications documenting sentencing policy at the federal and state level. This testimony will present a brief overview of the national scale of lifelong imprisonment and recent developments. The Sentencing Project believes that improving release opportunities for persons sentenced to parole-eligible life terms and eliminating life without parole as a sentencing option would help address the scale of incarceration in New York.

NATIONAL OVERVIEW

Calls to reform to the criminal justice system have been made at the state and federal level in recent years and policy changes have been adopted in many jurisdictions. New York is among a handful of states that have reduced its prison population by over 30 percent since it peaked in 1999. It's been widely documented that overcrowded prisons and tight budgets motivated policymakers in New York and other states to reconsider harsh criminal justice responses to low-level offenses, especially drug offenses, and passing legislation to shorten prison stays.

For the nation to meaningfully address mass incarceration addressing, lawmakers, practitioners and advocates must scale back the use of lifelong prison terms. For a range of reasons, considering the public safety benefits of life prison terms has been largely absent from criminal justice policy discussions. An example lies in an Oklahoma bill introduced in January 2017, which purports to ease prison overcrowding through establishing more flexible geriatric release.¹ The "Parole of Aging Prisoners Act" would afford the parole board the power to grant parole to a prisoner who is at least 50 years old and has served at least 10 years in prison or one third of his or her prison term (whichever is shorter). Eligible prisoners may request to go before the parole board "on the next available docket." However, because the bill excludes 22 separate crimes, people serving life would not qualify. In fact, analysis of data from the Oklahoma Department of Corrections concerning the number of people who would qualify reveals that only one quarter of the prisoners who are 50 years older could become eligible for parole under this proposed law.²

MASS INCARCERATION IN NEW YORK

New York's prison population more than doubled in recent decades, growing from 21,819 in 1980 to 50,716 in 2016.³ Yet, New York's prison population declined 31% between 1999 and 2016, substantially exceeding the national rate of decarceration. This reduction is due to a mix of changes in policy and practice to address overcrowding and prison population growth. At current levels, the scale of incarceration has had modest success at best in producing public safety, while contributing to family disruption, exacerbating racially disparate outcomes in public policy, and the weakening of informal social controls in many communities.⁴

And the rate of decarceration in New York since the late 1990s is modest when compared to the prison system's growth since 1980. The sobering reality, is that the current pace of decline must challenge lawmakers to seriously consider the policies and practices that sustain high levels of incarceration despite recent reforms.

¹ Oklahoma Senate Bill 185 of the 1st session of the 56th legislature (2017). Available online: http://webserver1.lsb.state.ok.us/cf_pdf/2017-18%20ENGR/SB/SB185%20ENGR.PDF.

² Gibson, B. (2017). A call to give early release to older, medically frail prisoners. Oklahoma Watch. Available online: <http://oklahomawatch.org/2017/03/06/should-older-medically-frail-prisoners-berelased-early/>; Oklahoma Department of Corrections (2016). Annual report, 2015. Oklahoma City: Oklahoma. Available online: <https://www.ok.gov/doc/documents/annual%20report%202015.pdf>.

³ E. Ann Carson. Prisoners in 2016. U.S. Dept. of Justice. Web. January 2019

⁴ Mauer M. and King, R.S. 2007. *Uneven Justice: State Rates of Incarceration by Race and Ethnicity*. Washington, DC: The Sentencing Project.

PUBLIC SAFETY *and* LIFELONG PRISON TERMS

Paroled lifers have very low recidivism rates, like other older people released from prison after serving long sentences even for serious or violent offenses.⁵ For example, former California lifers with murder convictions have a “minuscule” recidivism rate for new crimes: among a group of 860 individuals convicted of murder who were paroled between 1995 and 2011, less than 1% were sentenced to jail or prison for new felonies, and none recidivated for life-term crimes.⁶ This compares to the approximately one-in-three rate of re-incarceration for new crimes within three years of release for all formerly imprisoned individuals in California.⁷

Despite historic crime lows and falling prison figures, the number of people serving life sentences—life without the possibility of parole sentences in particular—has continued to rise. The violent crime rate measures the incidence of four crime categories (murder, forcible rape, robbery, and aggravated assault) per 100,000 residents. Between 1999-2012, the nationwide violent crime rate decreased by 26%; New York outpaced this decline, with a reduction of 31%. New York’s violent crime reductions have exceeded nationwide trends despite recent upticks. Between 2010 and 2012, while the nationwide violent crime rate slowed its decline, New York’s violent crime rate increased each year – by 3.7% between 2010 and 2012. Because this uptick has only brought the state back to its 2007 level, New York maintains its historically low violent crime rate.

CHALLENGING MASS INCARCERATION *and* LIFELONG SENTENCES

New York has one of the highest lifer and virtual life populations in the country: 9,889 persons are sentenced to lifelong or virtual life (defined as 50 years or more) prison terms. One out of every 5 New York prisoners or 18.9% is serving a lifelong prison term.⁸ Meaningfully addressing mass incarceration will require sentencing reform, improving the process for parole-eligible lifers, and mid-course adjustments for persons sentenced to life without parole.

Sentencing Reform

Addressing lifelong sentences will involve a range of changes in law and practices. Incarcerated persons should have a meaningful opportunity for release that acknowledges their capacity for change. New York’s pursuit of necessary criminal justice reforms has been at the margins of the system while statutory reforms to the laws and practices that perpetuate life sentences have been limited. This focus has been too narrow to fully challenge mass incarceration.

Improving the Parole Process

In addition to statutory reforms, lawmakers could guide the New York State Parole Board to improve practices to meaningfully address parole-eligible life terms with the goal improve the scale of decarceration. In recent years, officials have advocates and litigators in New York have led the courts, lawmakers, and the governor to seek to redirect the parole board’s decision-making criteria away from static factors such as criminal history and the seriousness of the crime towards assessments of rehabilitation.

Major weaknesses in New York’s parole system is the myopic views of parole board members lack of distance from political influence that is required of its members. A recent comprehensive review of parole systems in the United States concluded that parole boards should be reconstructed to require a degree of expertise in

⁵ See: Ghandnoosh, N. (in press). 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*. New York: Oxford University Press.

⁶ Weisberg, R., Mukamal, D. A., & Segall, J. D. (2011, September). *Life in limbo: An examination of parole release for prisoners serving life sentences with the possibility of parole in California*. Retrieved from Stanford Criminal Justice Center website, p. 17.

⁷ Fischer, R. (2005). *Are California’s recidivism rates really the highest in the nation? It depends on what measure of recidivism you use*. Irvine, CA: UC Irvine Center for Evidence-Based Corrections.

⁸ Nellis, N. 2017. *Still Life: America’s Increasing Use of Life and Long-Term Sentences*. Washington, DC: The Sentencing Project.

criminal justice fields, advanced education degrees, and independence from political influence. A *New York Times* expose of the New York parole process revealed only cursory reviews of prisoner files before a parole hearing and fewer than 20 minutes spent in any given hearing. Improvements in the structure and composition of the process can begin to move eligible life-sentenced prisoners through the system, releasing those who show they are qualified for freedom and holding back those who require more time in prison before they are ready.

Mid-Course Reviews for Persons Sentenced to Life without Parole

Life without parole should be eliminated as a sentencing option. As of 2016, 275 persons in New York state prisoners were sentenced to life without parole while 354 were sentenced to virtual life terms of 50 years or longer.⁹ Clemency is one meaningful way to adjust prison sentences mid-course. A power reserved for the governors, clemency ensures a method of checks and balances on the other branches of government including the courts. In any prison sentence, the executive reserves the power to correct or mitigate the effects of an overly harsh law or judicial decision. Over the past half century, its use has become increasingly scrutinized and a result is that governors are increasingly reluctant to use this authority. To address this, the legislature could explore and prioritize resources for a comprehensive clemency process that meaningfully reviews life without parole prison terms.

Recent use of clemency at the federal level may serve as an example. President Barack Obama granted an unprecedented number of clemencies to federal prisoners, an act that is unusual both for any modern president or governor. By the time he left office, Obama had commuted 1,715 federal sentences, one third of which were life sentences for certain crimes. President Obama's actions in called attention to challenging sentencing practices that required a backend adjustment.

These recommended reforms align with current priorities advanced by New York based advocates including:

- **Fair and Timely Parole (S2144):** Ensures that the parole release process is based on rehabilitation, who someone is today and their current risk to public safety. Creates a presumption of release that requires the Board to parole all individuals at their first hearing unless there is a current unreasonable public safety risk.
- **Elder Parole (S497):** Grants a consideration of parole release to older people, aged 55 and older who have served 15 years in prison. The bill would applies to aging people who are not yet eligible for parole, or who will never to eligible for parole in their natural life, and have already served decades in prison.
- **A Fair & Fully Staffed Parole Board:** The Parole Board should be fully staffed by 19 Commissioners who are social workers, psychologists, nurses, and other professionals that embrace notions of mercy, redemption and rehabilitation.

CONCLUSION

On behalf of The Sentencing Project, thank you for the opportunity to submit testimony to the New York Joint Legislative Budget Hearing on Public Protection.

The continued prevalence of life sentences stands at odds with New York's attempt to scale back mass incarceration. The massive use of incarceration has come under scrutiny over the past decade as unlikely allies have joined to call for reforms on both fiscal and moral grounds. Lifelong imprisonment is not the best course of action for most people for the reasons outlined above, nor is it a valuable outcome for society.

⁹ Ibid.