

ABOUT TIME:

How Long and Life Sentences Fuel Mass Incarceration in Washington State

A Report for ACLU of Washington

PART V: THE FISCAL AND HUMAN COSTS OF LONG AND LIFE SENTENCES IN WASHINGTON

Research shows that long and life prison sentences are a costly and ineffective means of protecting public safety. The more sparing use of prisons, combined with enhanced crime prevention efforts, expanded and improved rehabilitative programming in prisons, and the development and expansion of restorative justice alternatives are far more promising. Reducing the prison population could also benefit crime survivors and help prevent crime, as the savings associated with reduced prison populations could be used to provide services for victims, buttress crime prevention programs, enhance community-based substance abuse and mental health services, expand rehabilitative programming, and improve the conditions of confinement for those who remain behind bars.

This section of the report describes the evidence that supports these claims. It also explores a number of concerns about justice and fairness raised by the increased imposition of long and life sentences. These include the racially disparate impact of long and life sentences, their incompatibility with emerging brain science, and their contribution to the costly, inefficient, and inhumane incarceration of the elderly.

A Costly and Ineffective Approach to Public Safety

Maintaining a large prison system is tremendously expensive. In 2016, Washington State spent over one billion dollars on corrections alone.¹⁰⁶ The prison system is currently operating over capacity,¹⁰⁷ and Washington State is one of a handful of states in which prison populations have continued to grow since 2011 despite falling crime rates.¹⁰⁸

Current projections indicate that Washington will need to spend significant additional monies to expand prison capacity in order to accommodate recent and expected growth. The Council of State Governments estimates that preventing future growth and additional prison construction could allow the state to avoid spending up to \$291 million, including \$193 million in construction costs and \$98 million in operating costs, that would otherwise be needed to accommodate forecasted growth.¹⁰⁹

Across the country, many states have undertaken efforts to reduce their prison populations. In many cases, these efforts have concentrated on reducing penalties for low-level offenses, mainly drug possession and theft.¹¹⁰ Yet avoiding the costs associated with prison expansion will also require reconsidering the frequent imposition of long and very long sentences, which have a disproportionately large impact on prison populations.¹¹¹ As the authors of a recent study explained, “States grappling with expanding prison populations must include those serving the longest prison terms in their efforts to curb mass incarceration.”¹¹²

Thoughtfully reducing the number of people serving long and life sentences would not pose a significant threat to public safety because lengthy and life-long prison sentences are not an effective means of achieving it. As the National Research Council recently concluded,

*There is little convincing evidence that mandatory minimum sentencing, truth-in sentencing, or life without possibility of parole laws had significant crime reduction effects. But there is substantial evidence that they shifted sentencing power from judges to prosecutors; provoked widespread circumvention; exacerbated racial disparities in imprisonment; and made sentences much longer, prison populations much larger, and incarceration rates much higher.*¹¹³

Comparative research shows that many countries that do not routinely impose long and life sentences have enjoyed recent crime declines similar to that which has occurred in the United States: crime fell as much in countries that did not implement harsh criminal justice policies as in those that have done so.¹¹⁴

Similarly, studies of state-variation within the United States show that prison populations can be reduced without imperiling public safety. In fact, states that decreased their imprisonment rates the most have also enjoyed the *largest* drops in crime.¹¹⁵ For example, between 1994 and 2012, New York State experienced the largest drop (24 percent) in imprisonment rates and also enjoyed the most substantial decline in the crime rate (54 percent) among the 50 U.S. states. The state with the next largest decline in imprisonment rates (15 percent) was New Jersey, where crime rates fell by an impressive 50 percent, the second biggest drop in the country.¹¹⁶ More generally, the ten states with the largest declines in imprisonment rates between 2009 and 2014 experienced a 16 percent drop in the overall crime rate, while those whose prison populations grew the most experienced a 13 percent decline in crime rates.¹¹⁷ These data show that policymakers can reduce prison populations without endangering the public.

Some opponents of criminal justice reform argue that long sentences protect society by deterring would-be criminals and by physically separating (i.e. incapacitating) people who have been convicted of a crime from those who have not. However, according to

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the National Research Council, research provides little support for these claims. With respect to deterrence, “the evidence base demonstrates that lengthy prison sentences are ineffective as a crime control measure” because long prison sentences do not deter more than short ones.¹¹⁸ This is because “the certainty of apprehension and not the severity of the legal consequences ensuing from apprehension is the more effective deterrent.”¹¹⁹

Using long and life sentences to incapacitate is also an inefficient means of protecting the public because recidivism rates decline markedly with age.¹²⁰ Young people commit most crimes, with rates peaking in the teenage years followed by rapid declines. Studies show that the offending trajectories of *all* groups decline sharply with age.¹²¹ Even those with the most extensive criminal records desist from crime at relatively early ages, most commonly by their thirties.¹²² As two prominent criminologists conclude, “crime declines with age even for active offenders.”¹²³

For these reasons, the National Research Council recently concluded that “statutes mandating lengthy prison sentences cannot be justified on the basis of their effectiveness in preventing crime.”¹²⁴ Its fuller explication of this finding reads as follows:

The deterrent value of long sentences is minimal, as the decision to commit a crime is more likely influenced by the certainty and swiftness of punishment than by the severity of the criminal sanction. Research on criminal careers shows that recidivism rates decline markedly with age. Prisoners serving long sentences necessarily age as they serve their time and their risk of re-offending declines over time. Accordingly, unless sentencing judges can specifically target very high-rate or extremely dangerous offenders, imposing long prison sentences is an inefficient way to prevent crime. Finally, the evidence is clear that long prison sentences incur substantial costs to state and federal budgets and will likely add significant future costs as the prison population ages.¹²⁵

As the National Research Council notes, the proliferation of long and life sentences

is not just ineffective; it is also an important cause of the aging of the prison population. According to the Bureau of Justice Statistics, the number of U.S. prisoners aged 55 or older increased by 400 percent from 1993 to 2013.¹²⁶ As a result of this trend, one in ten U.S. prisoners was aged 55 or older in 2013.

In Washington State, nearly 1 in 5 prisoners (18 percent) are 50 or more years old.¹²⁷ The increased and on-going imposition of long and life sentences, combined with the accumulation of prisoners with life sentences behind bars, suggest that these figures are likely to continue to climb in the future.

The aging of the prison population has important fiscal implications. Research shows that the cost of incarcerating older people is approximately twice that of incarcerating the non-elderly, mainly due to the expense associated with the provision of medical care in secured environments.¹²⁸ As noted previously, the fact that recidivism declines markedly with age, and that the vast majority of people over 50 pose very little risk to the public, means that the incarceration of large numbers of older prisoners is a poor use of taxpayer dollars.

Public dollars currently spent on incarceration, and especially on long-term incarceration, could be reallocated to prioritize crime prevention in ways that would enhance public safety and improve the quality of life of many Washington residents. For example, increasing access to high-quality, early education programs improves educational outcomes and reduces subsequent criminal justice involvement.¹²⁹ Nevertheless, the U.S. Department of Education has acknowledged that “Children in countries as diverse as Mexico, France and Singapore have a better chance of receiving preschool education than do children in the United States.”¹³⁰ WSIPP has evaluated a number of prevention and correctional programs in terms of their costs and benefits, and identified numerous other non-confinement public safety interventions that are highly cost effective. These include employment training/job assistance in the community and outpatient drug treatment.¹³¹ Within prison settings, substance abuse treatment, education (both K-12 and post-secondary), and vocational training are also cost-effective means of reducing recidivism.

Reliance on long and life prison sentences is an expensive and inefficient way of protecting public safety; a variety of prevention and treatment programs represent a far better investment. But the proliferation of long and life sentences in Washington State is not only inefficient and ineffective; it also raises important questions about justice and fairness. These concerns are discussed below.

Racial Disproportionality in Long and Life Sentences

Recent scholarship shows that the very high rates of incarceration found across the United States and in Washington State have a variety of negative effects on individuals, families, and communities. People and communities of color have disproportionately suffered these adverse effects. Collectively, these effects undermine economic well-being, mental and physical health, and family bonds in communities that are disproportionately affected by high levels of criminal justice involvement.

Nationally, the black imprisonment rate is five times higher than the white imprisonment rate; Latinx and Native American people are also notably over-represented in prisons.¹³² Some racial disparities are even more pronounced in the Washington State prison population than is the case nationally. For example, in 2014, the black imprisonment rate (1,272 per 100,000 residents) was 5.7 times higher than the white imprisonment rate (224 per 100,000) in Washington.¹³³ If jail inmates and federal prisoners are included along with state prisoners, the black incarceration rate (2,372 per 100,000 residents) is six times higher than the white rate (392), and the incarceration rate for Native Americans (1,427) is 3.6 times higher than the white incarceration rate in Washington.¹³⁴

The negative effects of incarceration imposed by Washington's criminal legal system have been disproportionately imposed on people of color. These adverse effects include reduced employment and earnings, worsened mental and physical health, exacerbated housing instability, and increased debt.¹³⁵ Long and life sentences create especially significant hardship, as people serving long and life sentences are exposed to the pains of imprisonment for extended periods of time. This takes an especially large toll on their physical and mental well-being and their ability to sustain relations with with families and communities.¹³⁶

Moreover, incarceration's adverse effects extend beyond incarcerated and formerly incarcerated people. For example, the children, partners, and relatives of the incarcerated experience a number of hardships, including diminished mental well-being, increased stress, and reduced income.¹³⁷ As the National Research Council concludes, "Incarceration is strongly correlated with negative social and economic outcomes for former prisoners and their families. Men with a criminal record often experience reduced earnings and employment after prison. Fathers' incarceration and family hardship, including housing insecurity and behavioral problems in children, are strongly related."¹³⁸ Moreover, recent research indicates that

widespread incarceration has had especially adverse effects on the health and well-being of black communities.¹³⁹ Long and life sentences exacerbate these effects.

Racial disparities in the prison population are starkest among those serving the longest prison terms. Black people comprise

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of those sentenced to life without the possibility of parole

High incarceration rates also impact the poor neighborhoods and communities from which the incarcerated are overwhelmingly drawn, exacerbating poverty, hardship, marginality, and inequality. As the National Research Council recently concluded,

A growing proportion of people in the United States—especially from poorer and minority communities—has been increasingly marginalized in civic and political life. These developments are creating a distinct political and legal universe for whole categories of people. These “partial citizens” or “internal exiles” are now routinely denied a range of rights and access to many public benefits. These consequences pose a significant risk to achievement of the nation’s aspirations for democratic self-government and social and racial justice.¹⁴⁰

Nationally, racial disparities in the prison population are starkest among those serving the longest prison terms.¹⁴¹ This is also true in Washington State. As shown in Part III of this report, black people comprise 3.5 percent of the state population, but 19 percent of those sentenced to prison and 28 percent of the defendants sentenced to life without the possibility of parole since 1986. Native Americans are also notably over-represented among those who receive long and life sentences relative to their representation in the state population.

Racial disproportionality in long and life sentences raises important concerns about justice and fairness. Although it is true that most of the people who receive long sentences in Washington State were convicted of a violent offense, it is also clear that high rates of violence in poor and disproportionately minority communities stem from

persistent poverty, inequality, and racial segregation. As the National Research Council explains,

*Those who are incarcerated in U.S. prisons come largely from the most disadvantaged segments of the population. They comprise mainly minority men under age 40, poorly educated, often carrying additional deficits of drug and alcohol addiction, mental and physical illness, and a lack of work preparation or experience. Their criminal responsibility is real, but it is embedded in a context of social and economic disadvantage.*¹⁴²

In addition, numerous studies have found that racial bias influences case processing and sentencing outcomes in Washington State in ways that worsen racial disparities.¹⁴³ For example, a study of probation officers' assessments of youth found that black youth receive more negative attributional assessments about the causes of their offenses than white youth, and these characterizations lead to more punitive sentence recommendations.¹⁴⁴ In the adult system, defendants of color are held on bail at higher rates than other defendants even after taking relevant case characteristics into account.¹⁴⁵ Researchers have also found that prosecutors are significantly less likely to file charges against white defendants than they are against defendants of color, and that this finding persists after legally relevant factors are taken into account. This study also showed that prosecutors recommended longer confinement sentences for black defendants (after legal factors were held constant) and were 75 percent less likely to recommend alternative sentences for black defendants than for otherwise similar white defendants.¹⁴⁶

Similarly, across the state, defendants of color are significantly less likely than similarly situated white defendants to receive sentences that fall below the standard range.¹⁴⁷ Black felony drug defendants were 62 percent more likely to be sentenced to prison than otherwise similar white defendants.¹⁴⁸ Studies also indicate that black defendants in capital trials are more than four times as likely as non-black defendants to be sentenced to death in Washington State.¹⁴⁹ Moreover, Latinx defendants are assessed higher fees and fines, after controlling for other relevant factors, than non-Latinx defendants.¹⁵⁰

In sum, people of color, and especially black people, are notably over-represented among those serving long and life sentences. While the data analyzed here do not enable analysis of the causes of this over-representation, the research literature suggests that it stems from a combination of the concentration of poverty and

disadvantage in communities of color, which fuels violence, as well as widespread racial bias in the operation of the criminal justice system. These studies further show that disparities in violence, incarceration, and long and life sentences worsen community well-being in the neighborhoods from which prisoners tend to be drawn, reproducing inequality and perpetuating an unfortunate cycle. The racially disparate imposition of long and life sentences thus raises important concerns about justice and fairness — as does the the imposition of such sentences on adolescents and young adults of all demographic backgrounds.

Youth and the Imposition of Long and Life Sentences

One in four of those sentenced to 10-20 years to life in prison without the possibility of parole, and one in three of those sentenced to 20-40 years, were

25

or younger at the time of their sentencing

Recent neuroscientific research shows that areas of the brain involved in reasoning and self-control, such as the prefrontal cortex, are not fully developed until people reach their mid- or late 20s.¹⁵¹ As researchers at the Harvard Kennedy School of Government explain, “Neurological research over the last two decades has found that brain development continues into early adulthood (mid-20s or beyond) and that adolescents are particularly prone to risky behavior, a proclivity that naturally declines with maturity.”¹⁵² Specifically, research shows that adolescents and young adults are prone to be more impulsive, more sensitive to immediate

rewards, less future-oriented, more volatile in emotionally charged settings, and highly susceptible to peer and other outside influences.¹⁵³ These tendencies are especially pronounced among young adults who have experienced trauma, which is the case for the vast majority of justice-involved youth.¹⁵⁴

This body of research confirms common sense understandings of how young people differ from older adults. In a series of important rulings, the Supreme Court recognized the importance of brain development and affirmed the idea that youth should be understood and treated as a mitigating circumstance.¹⁵⁵ For example, in *Montgomery vs. Louisiana* (2016), the Court ruled that LWOP sentences may only be imposed on juveniles whose offenses are indicative of “irreparable corruption,” a standard that Justice Scalia argued may lead to the eventual elimination of LWOP sentences in cases involving juveniles.¹⁵⁶

The body of research on which this and other similar rulings rest calls into question the fairness of treating adolescents and young adults as though they are just as culpable as older adults. In Washington State, about one in four of those sentenced to ten to twenty years or to life in prison without the possibility of parole, and one in three of those sentenced to twenty to forty years, were 25 or younger at the time of their sentencing. Sentencing adolescents and young adults to long and especially life sentences is in tension with evidence that young prisoners have diminished capacity due to incomplete brain development. It is also incompatible with evidence that young adults are likely to benefit from educational and other rehabilitative programming. The tension between young people's capacity for growth and development and the paucity of rehabilitative programming is especially pronounced in Washington and other states that send juveniles to adult prisons and have notably curtailed rehabilitative programming in prisons.

In short, the long-term incarceration of young people, most of whom have experienced significant deprivation and trauma, combined with limited opportunities to engage in rehabilitative programming in prison, is in tension with a substantial body of research that demonstrates that youth is best understood as a mitigating circumstance, and that most young people benefit enormously from education and other rehabilitative programming.¹⁵⁷

The Neglect of Crime Survivors

Long prison sentences do little to mitigate the adverse effects of violent victimization, are not favored by most crime survivors, and often end up punishing people who are themselves victims of abuse, crime, and violence. Although sometimes justified in terms of victims' needs and preferences, current criminal justice and sentencing policies do not serve violence survivors well. Most victims never enjoy their "day in court," either because they do not file a police report or because arrest and prosecution do not occur.¹⁵⁸ Furthermore, the majority of crime survivors do not receive the services they need even if they do report their victimization to authorities.¹⁵⁹ Violence survivors who are poor and/or of color are especially unlikely to receive needed services following victimization.¹⁶⁰

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Although policies that allow for the imposition of long and life sentences are often said to reflect victims' preferences, this is misleading. A recent survey found that 61 percent of those who have experienced inter-personal violence favor *shorter* prison terms and enhanced spending on rehabilitation and prevention; only 25 percent preferred sentences that keep people in prison as long as possible.¹⁶¹ Similarly, significant majorities of violence survivors of all political orientations favor investing

additional public safety dollars in education rather than in prisons and jails.¹⁶² In fact, in California, crime victims are a leading force in the movement for criminal justice reform.¹⁶³

Moreover, although people who experience violence and those who perpetrate it are often assumed to be two distinct and unrelated groups of people, this is not the case. Instead, violence survivors are notably over-represented among arrestees, prisoners, and ex-prisoners.¹⁶⁴ Indeed, a history of violent victimization appears to be the norm in the biographies of those serving time, and this association persists when risk factors such as poverty are taken into account. For example, black Americans who have experienced four or more traumatic, violent events are more than four times more likely to be arrested, jailed, or imprisoned than those who have not experienced violent trauma, even after controlling for risk factors such as poverty.¹⁶⁵

Long and life sentences thus quite frequently end up punishing the very people (i.e. crime survivors) they are ostensibly intended to protect. Long prison sentences also consume significant public dollars that could be reallocated to improve victim services and crime prevention efforts. Moreover, emerging evidence suggests that restorative justice alternatives to long-term incarceration better serve both survivors and those who have caused harm.

Restorative Justice Alternatives to Long-Term Incarceration

Programs based on restorative justice principles “involve, to the extent possible, those who have a stake in a specific offense to collectively identify and address harms, needs and obligations, in order to heal and put things as right as possible.”¹⁶⁶ When given

the option, many crime survivors choose to participate in restorative justice programs rather than pursue conventional prosecution for a variety of reasons: to learn why the responsible party committed the crime, to communicate to the responsible party the impact of the crime, and to increase the chances that the responsible party will not re-offend.¹⁶⁷

Studies of restorative justice programs indicate that all involved parties report high levels of satisfaction with those processes.¹⁶⁸ For any given mediation, the victim and the responsible party tend to report the similar levels of satisfaction, regardless of the type of offense or the agreed upon restitution.¹⁶⁹ In addition, research assessing the impact of restorative justice conferencing on post-traumatic stress symptoms (“PTSS”) associated with robbery and burglary found that restorative justice practices reduce the traumatic impact of crime. Specifically, participants in restorative conferences reported a more than 40 percent reduction in PTSS immediately and six months after completion.¹⁷⁰

Victim satisfaction with restorative justice alternatives stems, in part, from increased feelings of safety and security. For example, one study found that victims who participated in mediation reported feeling safer than they had not only before the mediation, but also before the offense, whereas victims who went through traditional court processes reported that the experience had substantially *lessened* their sense of safety.¹⁷¹ Victim satisfaction also appears to reflect the positive impact of restorative justice processes on perceptions of fairness. A study of burglary victims in Minneapolis, for example, found that 80 percent of victims who went through victim-offender mediation experienced the criminal justice system as fair, compared with only 38 percent who had participated in standard court processes.¹⁷²

Furthermore, many studies find that restorative justice programs reduce recidivism. A recent and exhaustive meta-analysis, for example, found that restorative justice conferences cause a “modest but highly cost-effective reduction in the frequency of repeat offending by the consenting incarcerated/formerly incarcerated individuals randomly assigned to participate in such a conference.”¹⁷³ Another recent meta-analysis found that restorative justice programs generated a 34 percent reduction in recidivism.¹⁷⁴ Although less is known about diversion programs based on restorative justice principles, an evaluation of a restorative program that was designed to divert defendants from prisons and jails found that recidivism rates were significantly lower for program participants than for comparison groups who received confinement sentences.¹⁷⁵

Insofar as people who are convicted of violent crimes have often been a victim of violence,

RESTORATIVE JUSTICE

practices provide a means of addressing the trauma that often underlies criminal wrongdoing

Although many restorative justice programs do not include cases that involve violence, research suggests that restorative justice mediation may be most effective in such cases. For example, one Canadian study found no significant results for individuals convicted of low-level offenses, but did report a 38 percent reduction in recidivism for people who committed violent crimes and went through a restorative justice process.¹⁷⁶ Another study found a direct and positive correlation between the long-term success of the restorative justice program

and the seriousness of the offense.¹⁷⁷ The implication of these findings is that restorative justice programs may have the *most* potential to improve victim healing and reduce recidivism if cases that involve inter-personal violence are included.¹⁷⁸

Studies thus show that restorative justice interventions can reduce violence and facilitate victim healing from violent trauma. Insofar as people who are convicted of violent crimes have often been a victim of violence, restorative justice practices provide a means of addressing the trauma that often underlies criminal wrongdoing. Restorative justice processes provide a promising means of addressing the harm caused by inter-personal violence without exacerbating it.

Summary

The widespread imposition of long and life prison sentences represent an expensive and ineffective approach to public safety, one that has led to on-going prison expansion in Washington State. Absent a concerted shift in sentencing policy, this trend is likely to persist and the costly construction of a new prison will likely be required to accommodate the continued growth of the prison population.

Fortunately, research suggests that reducing reliance on long and life sentences and creating release options for long-term prisoners does not pose a significant threat to public safety. Moreover, a number of investments in education and health have been shown to improve public safety. Shifting policy in this manner could also benefit crime survivors and help prevent crime, as the savings associated with reduced prison

populations could be used to provide much-needed services for victims (including those who choose not to report their crime or whose assailants are not arrested), buttress crime prevention programs, enhance community-based substance abuse and mental health services, expand rehabilitative and restorative justice programming, and improve the conditions of confinement.