



# NOTHING BUT TIME

Elderly Americans Serving Life Without Parole



**THE  
SENTENCING  
PROJECT**

RESEARCH AND ADVOCACY FOR REFORM



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# NOTHING BUT TIME:

## ELDERLY AMERICANS SERVING LIFE WITHOUT PAROLE

### EXECUTIVE SUMMARY AND RECOMMENDATIONS

Prisons are a particularly hazardous place to grow old. The carceral system is largely unprepared to handle the medical, social, physical, and mental health needs for older people in prison. Nearly half of prisons lack an established plan for the care of the elderly incarcerated.<sup>1</sup>

Because of the disadvantages affecting people in prison prior to their incarceration and the health-suppressing effects of imprisonment, incarcerated people are considered elderly from the age of 50.<sup>2</sup> Under current trends, as much as one third of people in U.S. prisons will be at least 50 years old by 2030, the predictable and predicted consequence of mass incarceration.

Warnings by corrections budget analysts of the crushing costs of incarcerating people who are older have gone almost entirely unheeded. Indeed, sociologist and legal scholar Christopher Seeds accurately described a transformation of life without parole “from a rare sanction and marginal practice of last resort into a routine punishment in the United States” over the last four decades.<sup>3</sup> And in the contemporary moment of rising concerns around crime, there are reasons to be concerned that ineffective, racially disproportionate, and costly tough-on-crime measures such as increasing sentence lengths will proliferate, leading to even higher numbers of incarcerated people who will grow old in prison. In this, as in many other aspects

of its carceral system, the United States is an outlier; in many Western democracies those in their final decades of life are viewed as a protected class from the harsh prison climate.<sup>4</sup>

Older incarcerated people describe sentences of life without the possibility of parole (LWOP)—with the expectation that they will die in prison—as particularly cruel, involving a devastating loss of human dignity. Considering the consistent observation across dozens of studies that people “age out” of criminal conduct, the dedication of resources toward a group that is of extremely low risk is a foolish investment. Yet people serving LWOP are a growing share of the overall life-sentenced population and the number of people in prison serving LWOP is at an all-time high. While LWOP sentences have been a sentencing component of the American punishment spectrum for much of its existence, recent mandatory and preferential imposition of life sentences with no chance for parole are a more prominent feature than ever. In 2020, The Sentencing Project produced a 50-state survey of departments of corrections that revealed that more than 55,000 Americans are incarcerated in state and federal prisons with no chance of parole, reflecting a 66% rise in people serving LWOP since 2003.<sup>5</sup>

Because compassionate release, whether based on chronological age (geriatric parole) or diagnosis of a terminal illness (medical parole), typically excludes

people serving life sentences by statute, the only option for an early release for people serving LWOP is executive clemency. While clemency was common for older people serving life sentences sixty years ago, it was nearly terminated by the 1970s, and is still rarely used today.<sup>6</sup>

This report explores the features of the LWOP population in more detail, focusing on the aging demographic in particular. The data presented in this report reflect the patterns of 40,000 people serving LWOP sentences across 20 states.<sup>7</sup> These 20 states reflect three quarters of the LWOP population nationwide. The main findings in this report are the following:

- Almost half (47%) of the people serving LWOP are 50 years old or more and one in four is at least 60 years old.
- In ten years, even if no additional LWOP sentences were added in these states, 30,000 people currently serving LWOP will be 50 or older.
- 60% of the elderly imprisoned serving LWOP have already served at least 20 years.
  - » In Arizona, Illinois, Louisiana, Michigan, Nebraska, and Pennsylvania, between 66% and 85% of the elderly population serving LWOP has already served at least 20 years.
- Half of aging people serving LWOP are Black and nearly 60% are people of color.
  - » Among those who were sentenced as young adults under 25 years old, the overrepresentation of elderly Black people serving LWOP is even more pronounced: two thirds of this segment is African American.
- The majority of people serving LWOP have been convicted of murder, but a growing share of the overall LWOP population has been convicted of less serious crimes, reflecting an over-expansion of LWOP.

We make a series of recommendations for reform based on the research presented in this report:

- Reinstate parole or resentencing opportunities for those currently ineligible.
- Give added weight to advanced age at review hearings. Advanced age considerations should begin at age 50 in light of the accelerating aging process that accompanies imprisonment.
- Allow immediate sentence review with presumption of release for people who are 50 and older and have served 10 years of their LWOP sentence.
- Revise medical parole release statutes to include all incarcerated people regardless of crime of conviction and age.
- Upon release, transition elderly persons, including those who have been convicted of a violent crime and those who are serving LWOP and other life sentences, to well-supported systems of community care if they are too frail to live independently.
- Require states to disclose the cost of incarcerating elderly people, including the cost of all medical care, as well as projections for future costs. Failing in such fiscal transparency keeps taxpayers in the dark about the true cost of mass incarceration.
- Expand clemency release opportunities to reflect their higher usage in earlier eras.

## CAROLYN MOORE

Carolyn Moore participated in an armed robbery in 1985 that tragically resulted in the death of two men. She was 28 years old, experiencing drug addiction and domestic abuse, and had two young children back in her hometown of San Antonio, Texas. Although she was not in the building when the victims were shot, Moore was convicted of murder along with her abuser, and sentenced to life without the possibility of parole. Moore has served 37 years so far. At 65, she has been in prison through the death of both her parents as well as the lives of her two children, including the birth of her grandchildren. Today, Moore encounters many hurdles to living a healthy lifestyle. Some of those challenges are the difficulties of moving around in a dorm she shares with nearly 100 other women, after having had two back surgeries in recent years. Moore never received the recommended follow-up appointments after her second surgery. Moore also suffers from high blood pressure, high cholesterol, and is pre-diabetic, direct results of the lack of access to fresh produce in the women's prison, not even available for purchase from the canteen. Moore takes pain medication, muscle relaxers, sleeping medication, and arthritis medication on a daily basis.

## ELDERLY AMERICANS SERVING LIFE WITHOUT PAROLE IN TWENTY STATES

In the prison environment, aging occurs much sooner than in the outside world;<sup>8</sup> studies show that imprisonment has negative effects on health and longevity.<sup>9</sup> Ailments associated with aging are compounded by the poorer health status of those entering prison, generally, as well as the effects of imprisonment itself. The outcome of this is a prison population in the United States with high rates of chronic and communicable disease, greater mental health issues, and cognitive decline.<sup>10</sup>

Research focused on health differences between the incarcerated and non-incarcerated shows that those who are or have been imprisoned have high chronic health problems, lower self-reported health, high obesity, and more infectious diseases, stress-related illness, and psychological disorders.<sup>11</sup> The Bureau of Justice Statistics reports that 73% of imprisoned people aged 50 or older reported having a chronic medical condition and two thirds of people in prison, regardless of age, were taking prescription medication.<sup>12</sup> Prisons are unsanitary, crowded, highly stressful, and offer comparatively poor health care services.

States differ in their definition of elderly status among incarcerated people, using benchmarks ranging from 50 to 65. However, researchers describe people aged 50 as having the health status equivalent to 60 or 65 among community-dwelling elderly.<sup>13</sup>

The data presented in this report reflect the patterns of 39,731 people serving life-without-parole sentences across 20 states (See Table 1).<sup>14</sup> These 20 states reflect three quarters of the LWOP population nationwide. Half of the national population of people serving LWOP are in California, Florida, Louisiana, Michigan, and Pennsylvania, all of which are included in the analysis.

**Table 1. Elderly LWOP Population in 20 States**

State	Individuals Serving LWOP	Individuals Serving LWOP 50 and Older	Percent of LWOP Individuals 50 and Older
Arizona	1,191	511	43%
California	4,634	1,808	39%
Colorado	736	256	35%
Florida	9,802	3,830	39%
Georgia	1,642	588	36%
Illinois	1,585	1,105	70%
Louisiana	4,177	2,398	57%
Michigan	4,837	2,817	58%
Mississippi	1,514	622	41%
Montana	55	33	60%
Nebraska	264	131	50%
New York	277	135	49%
North Carolina	1,569	573	37%
North Dakota	34	15	44%
Ohio	534	177	33%
Pennsylvania	5,486	2,906	53%
Rhode Island	25	15	60%
South Carolina	1,104	522	47%
Vermont	14	9	64%
Wisconsin	216	104	48%
Wyoming	35	10	29%
<b>Total</b>	<b>39,731</b>	<b>18,565</b>	<b>47%</b>

This analysis is restricted to people serving LWOP but should not be construed to mean that those serving life *with* the possibility of parole (LWP) or those with virtual life sentences (of 50 years or longer) are guaranteed release. There are 105,500 people serving LWP and 42,300 serving sentences of at least 50 years in the United States. Repeated parole denials are common for those with long sentences and many people die unnecessarily in prison as a result. We limit the focus of this report to LWOP for two reasons: First, the availability of individual-level data for people serving LWOP allows a larger number of states to be included in this study. Second, the problems

associated with parole board politics, composition, outside input, and decision making warrant a separate examination that explores the “growing wait” for parole.<sup>15</sup> Added to this is the disparate impact of a LWP or virtual life sentence on someone who is older when sentenced, and unable to outlive the minimum term of years before parole review. The element of mercy has vanished from most parole decisions. In a dozen states, the opportunity for parole review has been eliminated altogether.<sup>16</sup> Future reports will delve more deeply into aging Americans serving sentences of life with parole and virtual life.

### Age at Sentencing, Current Age

On average, people convicted of LWOP were sentenced at age 31,<sup>17</sup> and the average current age of people serving LWOP is 49 years old.<sup>18</sup> Figure 1 shows that nearly half of the LWOP population is currently 50 or more years old.

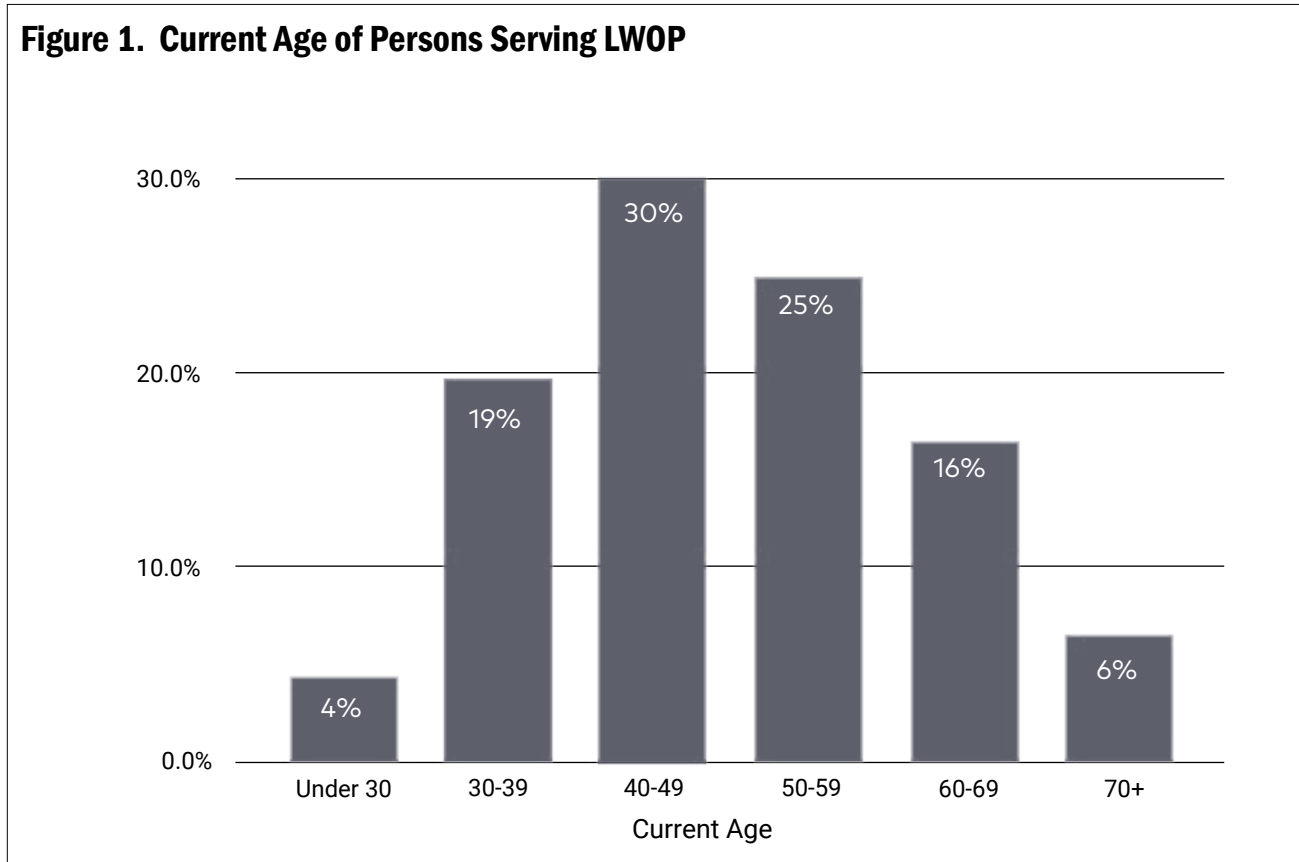
Elderly individuals in our dataset began their sentences as long ago as in 1961 and as recently as 2021 with the most common year of conviction being 2009. In that year alone, 1,338 people received LWOP sentences across the 20 states in this study. New sentences did not decline much after 2009, however: over 6,200 people were sentenced to LWOP between 2010 and 2014. Whereas other sentences allow an exit other than death and thus the population serving under such sentences would decrease appreciably year by year without new sentences, each new LWOP sentence increases the number of people serving the sentence.<sup>19</sup>

In 10 years, even if no additional LWOP sentences were added in the 20 states we analyzed, 30,000 people currently serving LWOP will be 50 or older. Analysis of the proportion of people with LWOP who are elderly suggests the worst of the aging crisis among people serving life sentences is yet to come.

The use of LWOP was historically reserved for persons who had engaged in chronic, years-long, offending, and were generally old at the time of sentencing. But a shift has emerged. In 1995, only one third of those sentenced to LWOP were younger than 50 but by 2009, this was the case for 70% of the persons sentenced to LWOP.

### Time Served

The data in Table 2 illustrate that the rhetoric and ill-conceived policymaking of the mass incarceration era have had a long-lasting effect on sentencing and prison population trends. Sixty percent of people 50 or more have already served at least 20 years. This is





**Table 2. States with Substantial Time Served Among the Elderly LWOP Population**

State	Percentage of Elderly LWOP Population Who've Served 20 Years or More
Michigan	86%
Pennsylvania	76%
Nebraska	74%
Illinois	73%
Louisiana	71%
Arizona	71%
California	70%
Rhode Island	60%
Montana	52%
Georgia	51%
Colorado	45%
Mississippi	45%
New York	41%
North Carolina	39%
South Carolina	37%
Florida	37%
Wisconsin	36%
North Dakota	33%
Ohio	11%
Wyoming	10%
Vermont	0%
<b>Total</b>	<b>62%</b>

even more pronounced in Arizona, Illinois, Louisiana, Michigan, Nebraska, and Pennsylvania, where between two-thirds and 85% of the elderly population serving LWOP has already been incarcerated for at least 20 years.

### Longest Serving Elderly Individuals

People who are at least 50 years old now and were sentenced when young<sup>20</sup> have experienced the devastating impacts of extreme sentences at both ends of the age spectrum. Arguably their sentences are the harshest among any lifers. They have had to

contemplate decades of imprisonment at a young age, experience the accumulating health challenges created by prison's challenging environment over years, and age in a context that is woefully ill-prepared to serve their growing physical, mental, emotional, and social needs. In these 20 states, 31% of the LWOP population was under 25 at the time of their offense and among those who are 50 and older we find that one in seven were under 25. Except in the rare event of executive clemency, these people will serve some of the longest periods in prison before they die.

### Race, Ethnicity, and Gender

Due to the fact that African Americans are sentenced to longer prison terms<sup>21</sup> and are more frequently convicted for violent offenses than other groups,<sup>22</sup> they comprise a larger share of the older, life-sentenced prison population. Whereas Black people comprise 39% of those imprisoned and people of color are 58% of the total imprisoned population, 48% of elderly people serving LWOP are Black and nearly 60% are people of color. As to the age at sentencing among Black people serving LWOP who are over 50, 66% were under 25 at the time of sentencing.

Among the overall elderly LWOP-serving population, the vast majority, 96%, are men while 4% are women.<sup>23</sup> Colorado, Mississippi, and North Carolina, however, lead the states in terms of the percentage of women serving LWOP who are elderly. In Colorado, almost 10 percent of the women serving LWOP are at least 50 years old; North Carolina and Mississippi are at 8%. There are 88 women who are 70 or older serving LWOP in these 20 states; half are in Michigan or Pennsylvania.

Women both in and out of prison tend to live longer than men and are also more inclined to report mental health, cognitive, and physical challenges they are experiencing. This translates to higher prison costs for their care relative to men, though they make up a substantially smaller share of the prison population. Gendered effects of imprisonment are well-documented, with disproportionate harms to women because prisons were designed with only cisgender men in mind.<sup>24</sup>

## Crime of Conviction

The majority of elderly people serving LWOP have been convicted of homicide (72.1%), 17% have been convicted of a sex offense, 6% have been convicted of a robbery, 4% have been convicted of a property offense, and the remaining 6% have been convicted of a drug offense, kidnapping, a property crime, or an offense coded as “other.” In all, 95% had been convicted of a violent offense.

When we look at the breakdown of the offenses according to the age when the person was sentenced, we see that younger persons were more likely to have been convicted of homicide than those who are sentenced at 50 or older, and that those who are 50 and older take up a greater share of persons convicted of sex offenses.

**The documented “graying of the prison population” in the general prison population will be worsened by the growing segment of persons serving LWOP who will age and, by virtue of their terminal sentence, die in prison at great social and fiscal cost to society.**

## THE SCOPE OF THE PROBLEM

Much has been written about the exponential growth of the elderly population within prisons generally in the U.S.<sup>25</sup> A broad range of people including budget analysts, prison administrators, doctors, scholars, and human rights activists, view the accelerating aging of America’s prison population as a human rights violation as well as a failure to ensure proportional punishment or recognize limited resources.<sup>26</sup> A 2021 report by New York State Comptroller, Thomas Di Napoli, to the state legislature called on policymakers to reduce the elderly incarcerated population based on the findings that the percentage of incarcerated people over age 50 more than doubled between 2008 and 2021.<sup>27</sup> In Mississippi, similar caution appears in a report by the state Department of Corrections in 2020 showing that persons aged 60 and above were the source of rising costs to the state’s overall corrections budget and attributing the state’s weak geriatric release policy to this growth.<sup>28</sup>

In both states lawmakers failed to heed the call to action. Analysis of the governing statute on the terms for geriatric release in Mississippi found that because of the many restrictions in the law, including that persons be serving nonviolent, discretionary terms that did not include a life sentence, and that they had served 10 years or 25% of their sentence, and that persons identified as “habitual offenders” did not qualify, only two people met the statutory criteria for release.<sup>29</sup>

A sense of urgency is apparent in the scholarship on geriatrics and health policy, but policymakers show few signs of heeding these warnings.<sup>30</sup> Correctional agency reports to state legislatures frequently cite aging as a primary concern for infrastructure and conditions of confinement, but these reports, too, gain little attention from policymakers positioned to introduce meaningful reform proposals.

The last two decades have recorded a steady and alarming rise in the number of people growing old in prison. The expanding rates of imprisoned people in their 50s and beyond reflects the rising median age<sup>31</sup> in free society but has been made more rapid by harmful crime policies that require life with no chance for release for a larger number of people than ever before – without any evidence that doing so deters crime.<sup>32</sup>

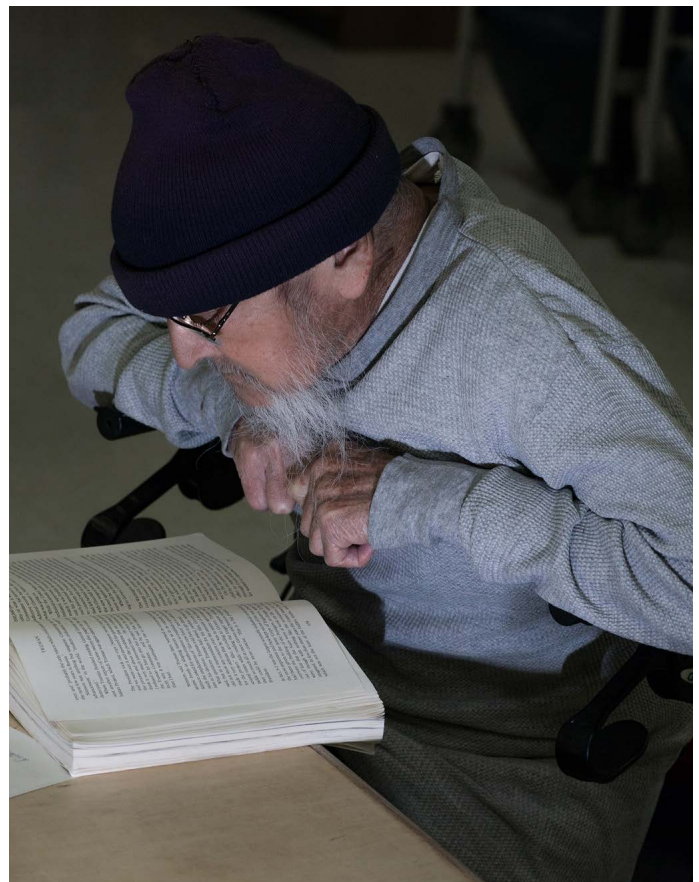
**“[The aging of the incarcerated population] is an unintended but in-principle foreseeable consequence of judicial and political decisions that mandate that more people go to prison for a certain range of [offenses] and that some of them stay there for substantially longer periods.”<sup>33</sup>**

Aside from the lack of public safety evidence for long prison terms, policymakers and prison officials also failed to consider the full impact of relying primarily on long-term imprisonment to reduce crime, including the logistics of caring for an aging prison population. Prisons are designed to accommodate young, able-bodied individuals. Independence is discouraged and individuals conform to strict rules of group conduct. For any age group there are hierarchies, political gamesmanship, and unconventional methods to stay safe in a naturally dangerous environment, what one lifer called “a system within a system.”<sup>34</sup>

Extant research shows that elderly incarcerated people, much like their counterparts in the community, frequently reported problems associated

with activities of daily living such as walking long distances, moving up to the top bunk, standing for long periods, keeping pace with others, ascending and descending stairs, and hearing or seeing.<sup>35</sup> Such challenges can mean losing the ability to participate in daily supportive activities like visiting the chapel or library, taking classes, or working. In their two-year study of the implications of aging in the United Kingdom’s prison environment, Elaine Crawley and Richard Sparks noted the cognitive and mental health decline that follows an inability to keep up with the activities of daily living in prison.<sup>36</sup>

All of the mild correlates of aging, medical problems that are destabilizing and all but certain as people age, make older individuals increasingly vulnerable to harm by younger, fitter, people in prison. Older prisoners experience fear, violence, and humiliation in addition to a lack of specialized social care.<sup>37</sup>



“Being given a life sentence is like being told by a doctor that you’re going to die, you know, like you’ve got a terminal illness. You feel as if your life’s effectively over. And even when you’ve got your head down and started doing your time it doesn’t get any better.... It’s every prisoner’s greatest fear you know...that they’ll be taken out of here in a coffin.”

### **Disproportionate Pains Imposed by LWOP**

Many lifers describe life in prison with no hope for release as an alternate death penalty, a death sentence imposed in slow motion.<sup>38</sup> While people with life sentences may find meaning in their lives, the constant consciousness that they will likely die in prison may torture them daily. In June 2022, the Canadian Supreme Court unanimously ruled LWOP unconstitutional because of its finding that sentences that extend beyond one’s natural ability to outlive them are both cruel and unusual.<sup>39</sup>

**“A life sentence without a realistic possibility of parole presupposes the offender is beyond redemption and cannot be rehabilitated. This is degrading in nature and incompatible with human dignity.”**

**— R. v. Bissonnette 2022 Canadian Supreme Court**

People serving life sentences by and large make peace with their predicament and take ownership of harms they created. Over time, with maturity and reflection, they typically emerge as models for new arrivals in prison and many are considered mentors and guides within the prison culture.<sup>40</sup> Yet, the ability to adapt to prison does not mean they adapt to dying in prison. Many say they never do. Indeed, for those serving LWOP who suffer dementia, which may mean they do not even recall what brought them to prison initially, the punishment must surely be considered to be disproportionate even on retributivist grounds.

Punishment until death fails on humanitarian grounds as well. In many Western democracies those in their final decades of life are viewed as a protected class from the harsh prison climate. Punishment exists but is balanced with a respect for age and infirmity. In the United States, such considerations are extremely muted. Geriatric release policies, which can lead to the release of non-life-sentenced individuals,<sup>41</sup> have higher minimum ages than their European, English, and Australian counterparts and, unlike those counterparts, typically require an accompanying terminal illness.<sup>42</sup>

One justification used for incarcerating people until death is that the sentence is proportionate to the harm they have done. The expansion of the applicable uses of LWOP around the country, however, means that many more people will grow old and die in prison for conduct that would not have produced this outcome in past eras - or in other states.

## Mujahid Farid, Founder of RAPP<sup>43</sup>

“In 2011, at my tenth parole board appearance, I was finally released—approaching 62 years of age. The closer I got to the release date, the more I looked around at the men I would be leaving behind, many of whom had, like me, been incarcerated since their teens and twenties and who were now, like me, more than 60 or 70 years of age. I became more sharply aware of the increasing infirmities they faced; the frailties of age; the illnesses affecting them; and their loss of hope through repeated parole denials. Like me, they had spent their entire adult lives in prison, and most were different from the person who had first entered the system. Unlike me, they were not going home.”

### Cost

Medical cost data associated with an aging prison population are obscure, but some estimates report that medical costs are the second highest cost in state corrections agencies’ operating budgets; behind the expense of salaries and benefits is provision of healthcare.<sup>44</sup> A 2015 analysis by Pew Research Center reported that corrections departments spend \$8.1 billion a year collectively on medical costs for people under their care. Since incarcerated elderly

people are the most expensive to care for, the bulk of these costs are spent on the aging population.<sup>45</sup> Within the federal prison system, facilities with the greatest share of elderly prisoners spent *five times more per person on medical care, including 14 times more on medication costs*, than other facilities.<sup>46</sup>

Current resources invested in health care for aging prisoners account for as much as one quarter of prison health care costs, despite the fact that persons 50 and older are still a relatively small share of the overall prison population.<sup>47</sup> It is not uncommon for states to report increases of more than \$100 million in the past decade.<sup>48</sup> The aging population of people in prison drives up the cost of housing them through elevated medication costs, updating facilities to accommodate more elderly people, and so on. Because prison medical care is barely adequate, visits to offsite specialists are typical as ailments accrue with age. For this, extra security to accompany the individual is required, leading to overtime and other affiliated costs.

States must face growing costs that come with an aging prison population, including whether to build new facilities or retrofit prisons into skilled nursing facilities. Some states are developing geriatric units within prisons. Ohio is building a new facility to house geriatric individuals. However, persons convicted of violent offenses will be ineligible to live in it.

State legislative budget offices routinely include the number of incarcerated elderly people and attending costs of housing them, but lawmakers appear to be untroubled by these rising figures. Table 3 provides the annual per person cost of housing incarcerated people for a sample of states and the number of persons serving LWOP in their 50s and beyond for that state. This produces a baseline estimate of imprisoning elderly people with LWOP sentences. It is however a vast underestimation of costs as it does not reflect the fact that medical costs are far higher for this group than the average daily cost.

**Table 3. Incarceration Costs for People Serving LWOP**

State	Annual Imprisonment Cost Per Person		Persons 50 and Older Serving LWOP		Minimum Cost for Elderly LWOP Pop.
Georgia	\$24,070	x	588	=	\$14,153,160
Pennsylvania	\$42,000	x	2,906	=	\$122,052,000
Illinois	\$34,233	x	1,105	=	\$37,827,465
Florida	\$28,042	x	3,830	=	\$107,400,860

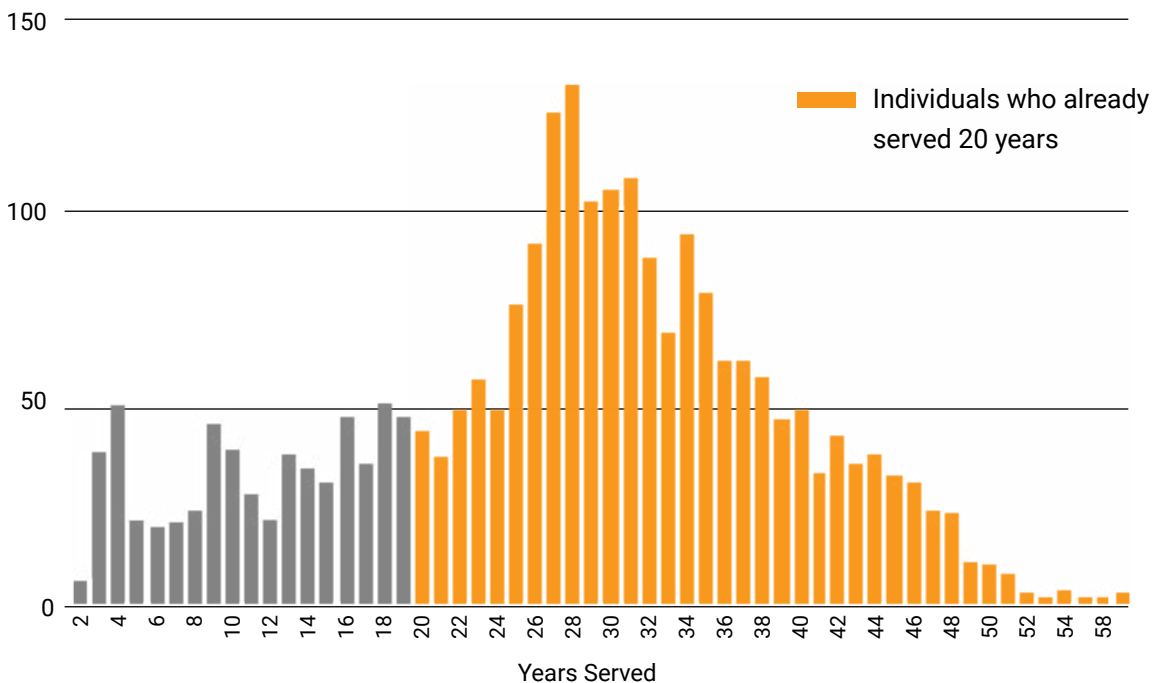
Source: Per-prisoner cost data were obtained from state departments of corrections.

A look at the elderly imprisoned population in **Georgia** brings the exorbitant costs of LWOP into sharper focus. One in five of imprisoned Georgians is at least 50 years old, and among them 588 people are serving life-without-parole sentences, an eight-fold increase since 2000. Many are serving their sentences under the state’s especially tough “habitual offender” law, which requires LWOP upon a second conviction of a range of felonies.<sup>49</sup> While homicide still dominates as the crime of conviction, the variety of offenses for which LWOP has been imposed has broadened, with a particularly dramatic impact on Black people.<sup>50</sup> Three quarters of elderly people serving LWOP in Georgia are Black. Based on the state’s annual per-prisoner-cost of \$24,070, the cost to the state for incarcerating

people serving LWOP who are elderly is \$14 million per year, plus the significant medical costs that the per-prisoner cost does not fully account for.<sup>51</sup> About half of this cost goes to incarcerating those who have already served at least 20 years in prison. The corrections department released an analysis in 2013 which reported that medical costs for the elderly population in Georgia were nearly *nine times* the cost of nonelderly incarcerated people in the state’s prison system.<sup>52</sup>

The **Pennsylvania** Department of Corrections reports that as of year end 2019, there were 10,697 prisoners over age 50, amounting to 23% of the overall prison population, double that of the figure in 2000. Over

**Figure 2. Years Served Among Elderly Pennsylvanians Serving LWOP**



half of the LWOP population in Pennsylvania is 50 and older. The state spends \$3.2 million *per month* on medication costs for prisoners, the bulk of the cost devoted to older people who are on several medications. The average annual medication costs per person under 50 is approximately \$1,000 while it is over \$3,600 for those over 50—all for people who pose the smallest security threat of any age group.<sup>53</sup>

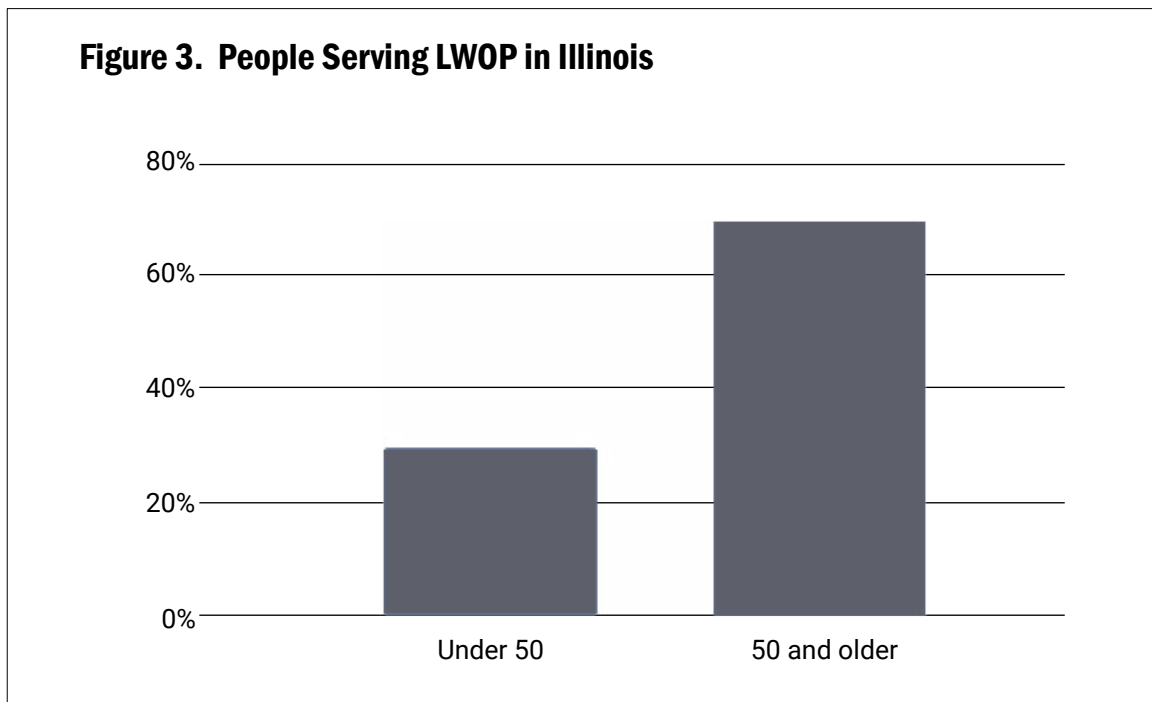
Pennsylvania has three long-term care facilities for elderly prisoners in need of long-term daily nursing care or dialysis, those who are wheelchair-bound, and other geriatric adults.<sup>54</sup> Among these is Laurel Highlands, a converted state hospital with a capacity to house 1,343 people at a cost of \$182,625 per person annually. There are 70 people currently serving LWOP sentences in this institution. We estimate that it costs a minimum of \$12.8 million per year just to house these individuals, who are 50 years old and committed their crimes long ago. The fact that they have the needs that qualify them to be in that facility

suggests they are too infirm to inflict most possible harms.

There are 2,906 people serving LWOP in Pennsylvania who are 50 years old or more, including 1,885 people who have completed 20 years of their sentence. If the state were to release just this subset of those who have served 20 years *and* who are aged 50 and above, it could save the state taxpayers a total of \$79 million dollars in prison costs alone.

**Illinois** abolished its parole system in 1978 and does not have any mechanism for release of elderly people unless they are also medically incapacitated or terminally ill. An estimated 1,585 of the imprisoned are serving LWOP and a staggering 70% are at least 50 years old.

Of this group that is at least 50, three quarters have already been in prison for 20 years. Given the annual cost per prisoner of \$34,000,<sup>55</sup> the state is investing



\$27.4 million in continued incarceration for this group per year, in addition to medical costs.<sup>56</sup>

Ten thousand people are serving LWOP sentences in **Florida** and 39% are at least 50 years old. Florida abolished parole in 1995 for capital felonies<sup>57</sup> and, like Illinois, does not have a release mechanism for people based on advanced age. The state does, however, hear requests for release based on extreme medical need, including those with life sentences. A review of all hearings between 2017 and March, 2022, revealed that seven people with life sentences were considered among the 351 total number of hearings, and none were granted release.<sup>58</sup>

In terms of individual state contributions to the overall LWOP population, Florida outpaces all other states considerably. The state of Florida sentences approximately 380 people to LWOP annually. Even though the state leads the nation in number of new LWOP sentences, its rate of LWOP prison population per capita is less than the national average because of its position as the third most populous state. Still, 18% of the elderly LWOP population in this study, or one in five, is in Florida. Almost one quarter of the Florida state personnel work for the Department of Corrections.<sup>59</sup>

In December 2019 Florida Republican State Senator Jeff Brandes attempted to mitigate the harms done by imprisonment of the state's large volume of elderly people by introducing legislation that would have allowed release for persons 70 and older.<sup>60</sup> Like many legislative proposals, this bill excluded those convicted of homicide as well as those with three or more felony convictions. Though the bill received broad support and included an endorsement from the *South Florida Sun Sentinel* editorial board, in the end the bill did not pass. This failure to pass demonstrates the hard work ahead in terms of compassionate release policies.

## RELEASING OLDER PEOPLE SERVING LIFE WITHOUT PAROLE

There are essentially two avenues for release of older imprisoned people serving life without parole who pose minimal risk to public safety: geriatric release policies and executive clemency.

### Geriatric Release Policies

Most "compassionate release" policies that exist in state correctional systems and the federal Bureau of Prisons require that individuals are both *very old and extremely sick* in order to qualify for reconsideration of their continued imprisonment. Compassionate release laws of some form are in effect in all states but Iowa, and those that pay special attention to geriatric candidates are authorized in less than half the country. Most include a stipulation of having had a nonviolent or nonhomicide conviction.

Appendix Table 3 depicts U.S. statutes and policies concerning compassionate release laws which encompass elderly parole and medical parole.<sup>61</sup> *In nearly all instances*, persons convicted of a violent offense and/or sentenced to life are excluded from compassionate release such as geriatric release policies regardless of their health status, age, or public safety risk. Such release policies are not compassionate in the slightest; instead, they pointedly exclude those people who would be the best candidates.

In the 2022 legislative cycle, seven states introduced bills to allow some type of early release of older people: Connecticut, Louisiana, Maryland, Mississippi, Nebraska, New Jersey, New Mexico, New York, Oregon, and Pennsylvania. Among these only Pennsylvania and New York did not specifically exclude persons serving life sentences and/or persons convicted of homicide from eligibility. Table 4 provides a summary of these proposals.



**Table 4. Legislative Proposals Introduced in 2022 Pertaining to Parole for Elderly Prisoners**

State	Bill Number	Summary
Louisiana	HB 321	Creates geriatric parole for persons 70 and older who have served half their sentence. Individuals who have been convicted of first- or second-degree murder are excluded.
Maryland	HB 600/ SB 562	Creates geriatric parole for persons 60 and older and establishes a requirement for biannual reporting on grants/denials of parole that includes the reasons for decisions. Persons serving LWOP are excluded.
Nebraska	LB 920	Creates geriatric parole for 70 years old and older who have served at least 10 years. Persons serving LWOP and those convicted of a Class I or IA felony are excluded.
New York	S 15/A 3475	Grants parole eligibility to individuals 55 years old or older who have served at least 15 years. The bill applies to people serving both determinate and indeterminate sentences.
New Jersey	A 1059	Creates geriatric parole for persons 65 and older who have served one third of their sentence, or 60 and older who have served half of their sentence. Persons convicted of certain sex offenses are excluded from applying, as are persons convicted of committing or attempting to commit murder, manslaughter, kidnapping, robbery, second-degree arson, or terrorism. Additionally, persons are not eligible for geriatric parole if serving a sentence for various white-collar crimes.
New Mexico	SB 29	Creates geriatric and medical parole for persons 55 and older. The bill includes a “rebuttable presumption that an inmate does not constitute a danger to the inmate’s self or to society and is therefore eligible for medical or geriatric parole.” However, persons convicted of first-degree murder are not permitted to apply for either medical or geriatric parole.
Pennsylvania	SB 835	Creates geriatric and second-look mechanisms for persons 55 and older or those who have served 25 years, whichever comes first. There are no restrictions.

## Clemency

Clemency can be a meaningful way to adjust prison sentences midcourse as acts of mercy or to correct injustices but is rarely used. This is a change of course from its routine use in much of the history of American penal practice. As sociologist and legal scholar Christopher Seeds writes, many states offered executive clemency “with regularity” from 1900 to 1960.<sup>62</sup>

Clemency authorizes the executive branch to reduce a person’s sentence post-conviction. Originally, there was only a structural difference between parole and clemency; while paroling authorities decided the release date for most crimes, it was left to the governor to decide when release would occur for certain crimes, often murder. Judges factored the likelihood of executive clemency in the event of full rehabilitation in their decision to impose life sentences,<sup>63</sup> and proponents of such sentences argued that governors would commute many such sentences after some time, including if the prison population became excessively expensive to maintain.<sup>64</sup> For incarcerated people, clemency was a reliable exit from a life sentence because of its alignment with the prevailing prison aims of rehabilitation and redemption.<sup>65</sup>

Historically, clemency was used on a case-by-case basis, though many “lifers” were included in regular consideration by the governor’s office and an advisory executive agency that reviewed applications. Clemency was not unusual as it is today, and most life-sentenced persons were granted release anywhere from seven to 20 years after they were sentenced. Louisianians serving life sentences were recommended for commutation by prison administrators after ten years and six months if their conduct was satisfactory; in Pennsylvania, a typical life sentence was 15 years long, and in the federal system the life sentence typically translated to 12 years of imprisonment.<sup>66</sup> Seeds explained, “Even in the historically punitive southern region, the majority of life sentences, with or without parole, carried a reasonable possibility of release, generally after a decade of imprisonment.”<sup>67</sup> The federal level mirrored the state level; categorical clemencies were

commonly granted early on and through much of the 20th century, but abandoned for appearing “soft on crime” starting in the 1970s.<sup>68</sup> Retrenchment in the use of clemency, perhaps even more than laws directly expanding LWOP, have propelled the spread of LWOP to its current levels.

Categorical clemency to persons who meet a minimum age requirement would be a powerful way to reduce mass incarceration and limit the suffering of people who are currently incarcerated with no expectation of release.<sup>69</sup> There is precedent for the use of categorical clemency based on age: in 2007, Colorado governor Bill Ritter established a juvenile clemency advisory board to review clemency applications of all persons under 18 at the time of their crime who were tried and sentenced as adults. During his governorship, in addition to the 4 selected by this board, he granted clemency to a total of 49 people, only 3 of whom were returned to prison.<sup>70</sup> And, following the U.S. Supreme Court rulings that narrowed the allowability of LWOP sentences for persons who were less than 18 years old when they committed their crimes, some states categorically commuted the group of persons who were already serving these sentences. A third instance is the use of clemency for women convicted of murder who were victims of domestic violence. Twenty-six such women were granted clemency by Ohio Governor Richard Celeste in 1980; only one returned to prison (for a drug offense). Of the 12 Illinois women granted clemency between 1988 and 1999, none committed new crimes.<sup>71</sup>

At the federal level, President Barack Obama’s Clemency Initiative was designed to review sentences of all people in federal prison who met a series of requirements and who would not have been sentenced today as harshly as they were at the time of their sentence.<sup>72</sup> The premise of the initiative was that, just as individuals change and evolve in their thinking and conduct over time, so should our laws; as new assessments of proportionality take hold, those sentenced under previous assessments should not continue to suffer. President Obama’s initiative led to the commutation of 1,715 federal prisoners, including 504 people serving life sentences.<sup>73</sup>

Clemency on its own is not an effective means of undoing the harms of the massive prison buildup, but it is wise to attack this problem with a multipronged approach, incorporating this tool in combination with others. There is also strong evidence, contrary to political rhetoric, that it will not imperil public safety.

### **The Low Risk of Recidivism**

A robust body of empirical literature shows that people released after decades of imprisonment, including for murder, have low recidivism rates.<sup>74</sup> In 2021, New York's Department of Corrections and Community Supervision reported that persons released after serving time for murder had the lowest return-to-prison rate of all crimes. In fact, only three of the 319 people released after serving time for murder were reimprisoned for a new crime in the three-year follow-up period, reflecting a recidivism rate of less than 1%.<sup>75</sup> Findings from other states, including California, New York, New Jersey, Maryland, Michigan, and Pennsylvania, are similar.<sup>76</sup> Recidivism is particularly uncommon among older releasees, including those who committed violent crimes.<sup>77</sup>

Low recidivism comes about largely as the result of the "aging out" that occurs for most people who engage in criminal conduct. The age-crime curve is evident across dozens of empirical studies on the topic and reflects the fact that people are most at-risk for committing crime in the late teenage years to their mid-twenties. After this age, proclivity toward committing more crime typically declines steadily. We notice slightly higher ages for those sentenced to LWOP, but even these individuals were still young at the time of offense. This relationship between age and crime exists consistently regardless of race or ethnicity, education level, community disadvantage, or income. While those who engage in violence may take a while longer to distance themselves from crime, on average the aging out process begins its downward slope during one's twenties.

States nationwide have made significant progress since incarceration rates peaked in 2009.<sup>78</sup> However, reforms to date have generally focused on people convicted of nonviolent offenses, which will have limited impact on people serving life. Likewise,

the rise in violent crime in 2020 and 2021 and the accompanying media reporting around it has many anxious about expanding reforms to crime policies despite empirical evidence that demonstrates low public safety risks associated with releasing elderly prisoners. Fear-based, racialized reactions to temporary shifts in crime dominate the news cycle. Misinformation transmitted by media reporters and policymakers about exceptional cases confuse the public about their true risk of victimization.

### **Concerns about Transition**

When people are released from prison after decades of incarceration, the transition is challenging emotionally, economically, socially, and mentally. Government services can be difficult to access for those returning from prison, especially after long periods. For example, although people who exit prison are disproportionately poor and many should qualify for Medicaid, not all states assist released individuals with reapplying for this benefit. Also, Medicare benefits are not available for incarcerated people because health care costs are covered through state budgets. While a person may enroll in Medicare upon release, such enrollment often faces serious barriers because corrections systems and community health services do not always communicate effectively.<sup>79</sup> Even those who may be eligible could have to wait until the standard enrollment window, and if the timing of their release vis-à-vis the next window or other factors delay their enrollment more than three months before or after their 65th birthday, they must pay a penalty to enroll.

For people released after long term imprisonment a range of nonprofit organizations exist to support a continuity of care after prison. More federal and state funds should be redirected to support releasees reentering society successfully. The Louisiana Parole Project, for instance, provides free, comfortable housing to people exiting prison after decades of incarceration, eliminating the possibility that releasees will go from prison to a homeless shelter. Lawmakers can also merge reform efforts to increase elderly releases with greater funding for measures to transition individuals to available services like Medicare, Medicaid, and food assistance programs.<sup>80</sup>

## CONCLUSION AND RECOMMENDATIONS

This report explores the segment of life-sentenced people who pose the lowest risk to public safety: those who have sufficiently “aged out” of their high-crime years and who have also spent considerable time in prison. The period of crime risk is relatively short-lived for most people, but will involve high rates of criminal involvement for a subset, almost all of whom pose no threat to public safety in later adulthood.<sup>81</sup> By better understanding this cohort of incarcerated persons, policymakers can better understand the impact of past sentencing policies and redirect limited resources for the years ahead.

The first step will be correcting misinformation. Confronting the utility and fairness of extreme sentences remains out of reach so long as misinformation about crime dominates the conversation. Fear of crime, often racialized, threatens effective dialogue about sensible solutions. This report has laid out a number of critical facts about the costs, both moral and financial, and the futility of continued incarceration for older people generally and those serving LWOP specifically. Lawmakers and advocates should become well-versed in these facts and learn how to communicate them to the public.

Updated policies, such as expanding geriatric release and categorical clemency, that prioritize release for individuals 50 and older after serving a maximum of 20 years would provide manageable prison populations that ensured better medical care and more humane treatment, and would advance efforts to dismantle mass incarceration.

Many crime experts agree that poorly crafted sentencing policies, not fluctuations in crime, have

led to the unnecessary expansion of lengthy prison terms, including mandatory minimums requiring life terms.<sup>82</sup> Today, LWOP is a mandatory sentence in more than half the states upon conviction for first degree homicide, and is authorized for many additional crimes as well.

The expanding population of people serving LWOP confounds both crime and sentencing trends of the past 15 years. Even as crime has generally trended downward and prison populations have begun to fall in many states, numbers of persons serving LWOP have continued to expand. As we have seen from the numbers provided in this report, the worst is yet to come as the largest segment of people serving LWOP grows into their elderly years. If these trends continue, policymakers and institutions can expect to face enormous cost and medical care issues.

Though outright alternatives to incarceration for the most serious violent offenses may not be advisable, many now agree that the harsh sentences applied in the previous era have produced too little and cost states and communities too much with little to no public safety benefit. States should divert tens of millions of dollars by releasing older, low-risk people from prison who have been punished sufficiently - a maximum of 20 years - for their crimes. If applied to a broader segment beyond only those with LWOP sentences, this could lead to the closure of entire prisons. We recommend accomplishing this through reinstatement of parole or resentencing opportunities for those who are currently ineligible, with added weight afforded to those of advanced age at review hearings. Such age considerations should begin at age 50.

We also advise revision of medical parole release statutes to include all incarcerated people regardless of crime of conviction and age. Restrictions, based on crime of conviction, against eligibility for review callously add additional punishment without defensible justification. There is no evidence of higher rates of reoffending among older persons or persons convicted of violence who have served long periods of imprisonment.

Systems of community care should not be permitted to exclude services to those whose crime had included violence. Similarly, upon release, states should routinely support the transition of elderly persons, including those who have been convicted of a violent crime and those who are serving LWOP and other life sentences, to living freely. Well-supported systems of community care for those who need it can be funded easily by money saved through releasing elderly persons from their life sentences. If states are required to disclose the cost of incarcerating elderly people, including the cost of all medical care, as well as projections for future costs, they will quickly gain more public support for such measures. Failing in such fiscal transparency keeps taxpayers in the dark about the true cost of mass incarceration.

The tool of clemency should be reinvigorated to return our system to its previous regular use of it. Disentangling the back-end review process from political incentives and setbacks will go far to establish a clemency process that is fair and just. Policymakers are too timid to use clemency because of uncommon but sensationalized instances in which released individuals committed new crimes. This is not the typical outcome however; most people released through clemency have been heavily vetted for public safety and go on to live in their communities without incident. Together with limiting life sentences at the front end, we urge the robust use of clemency for older Americans serving LWOP who have been incarcerated for at least 10 years because they have no other opportunity for release.



# METHODOLOGY

The data used in this report are compiled from state data we obtained through Freedom of Information Act requests between 2019 and 2022 requesting individual-level data on people serving life sentences without the opportunity for parole. Specifically, we requested the following elements for each person serving an LWOP sentence:

- DOC ID number
- Date of birth
- Date of offense
- Date of sentence
- Sex
- Race
- Ethnicity
- County of conviction
- Offense
- Sentence

This is the first dataset to our knowledge that provides individual-level information for such a large number of people serving LWOP. We received usable datasets from 20 states, representing 75% of the LWOP national population. Though we hoped to receive data from all states, we expect the data provided in this report are still of value. Representativeness to all states is not possible because of state-specific dynamics in the general population, politics, and prison administration.

Some states are very aggressive in their application of LWOP sentences and/or have statutes that authorize it or require it based on certain convictions, while others do not.

States were inconsistent about the completeness of their data. Though we requested all data elements listed above, some states provided the date of sentence but not the date of offense or vice versa. For the states that provided both we were able to calculate the amount of time between offense and sentence, which is an average of 1.5 years. For the complete dataset, in order to rely on one variable (instead of alternating calculations from “date of

sentence” states to “date of offense” states), we added 1.5 years to the date of offense and created a universal variable from this. This small difference is unlikely to change results.

From the data we received, we were able to calculate new variables, such as years served. Years served was calculated using the date-difference between March 15, 2022 and the individual’s date of offense or date of sentence. We presume people charged with the crimes that result in life sentences are usually incarcerated from the point of arrest, which is closer to the date of offense than date of sentence because this is often the case.

South Carolina, Montana, and Wyoming provided “current age” rather than date of birth; calculations were still possible because of the provision of other age-related data from these states.

A special note about Florida: all people convicted of murder before May 24, 1994 were eligible for parole, but this changed statutorily in 1994 to eliminate parole for life-sentenced individuals after this time. Aggregate data provided to us as of January 1, 2020 reported 10,348 people serving LWOP and 3,147 people serving LWP. However, people in prison for a murder before May 24, 1994 were eligible for parole. A data download directly from the state does not report any persons serving LWP but does report approximately 3,000 people serving LWOP who appear to have been sentenced before May 24, 1994, which would not have been allowed. We have limited this dataset to persons sentenced to LWOP May 24, 1992 and later.

Finally, states did not submit datasets reflecting the same periods in all instances. We rely on the years 1994-2018 for the majority of the analysis in this report. We received usable data from all 20 states for each of these years. These years are the most informative of the impact of the tough on crime years. The state-by-state descriptive reports of all years provided by states are available on request.

## APPENDICES

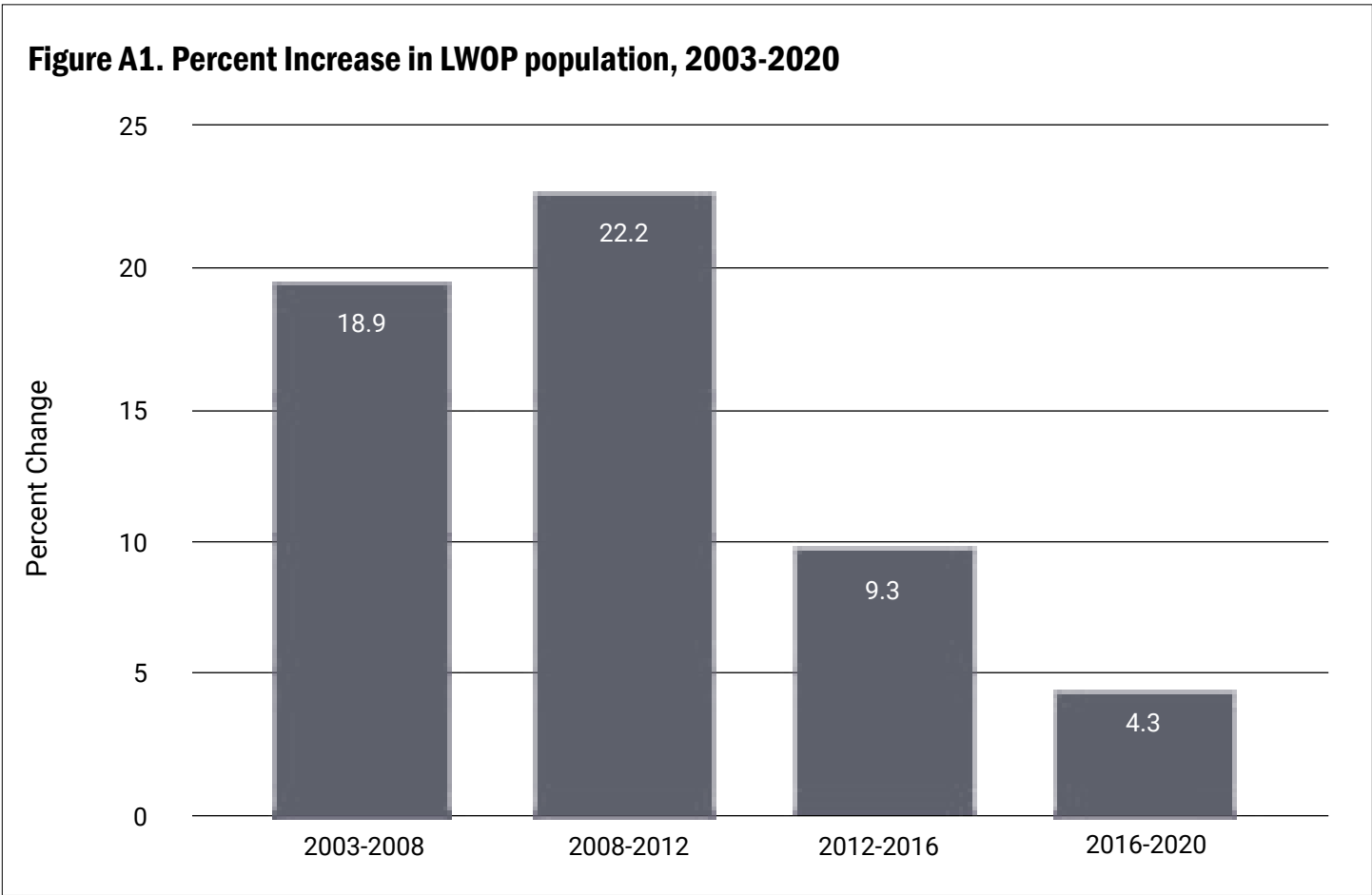
**Table A1. Summary Statistics for Current Age, Offense Age, Sentence Age, and Years Served Variables**

Statistic	Current Age	Offense Age	Sentence Age	Years Served
N	39,708	7,719	30,779	39,253
Mean	49	28	31	18
Median	48	26	29	17
Minimum	18	13	14	0
Maximum	94	78	85	61

**Table A2. Descriptive Statistics for States Reporting Age at Sentencing**

State	Mean	Median	N	Std. Deviation	Minimum	Maximum
California	29.84	27	4,634	9.536	17	80
Florida	33.34	31	9,802	10.952	15	84
Illinois	32.49	31	1,585	9.794	17	79
Louisiana	30.95	29	4,176	9.817	15	85
Mississippi	31.75	30	1,514	10.035	15	74
Nebraska	29.74	27	264	9.793	17	73
New York	32.38	31	277	9.529	16	66
North Carolina	31.65	29	1,569	10.712	15	77
North Dakota	38.26	35	34	11.715	17	65
Ohio	33.37	31	512	11.416	17	74
Pennsylvania	29.43	27	5,016	9.575	14	79
Rhode Island	33.28	27	25	14.049	18	67
South Carolina	34.19	33	1,104	10.237	16	70
Vermont	48.07	42	14	15.539	30	76
Wisconsin	33.89	32	216	11.45	16	66
Wyoming	34.23	33	35	11.003	19	60
<b>Total</b>	<b>31.65</b>	<b>29</b>	<b>30,779</b>	<b>10.368</b>	<b>14</b>	<b>85</b>

<b>Table A3. Descriptive Statistics for States Reporting Age at Offense</b>						
State	Mean	Median	N	Std. Deviation	Minimum	Maximum
Arizona	29.95	28	1,191	10.437	15	78
Georgia	30.04	28	1,636	10.364	13	77
Michigan	26.99	25	4,837	8.739	13	73
Montana	36.13	35	55	12.16	17	70
<b>Total</b>	<b>28.16</b>	<b>26</b>	<b>7,719</b>	<b>9.539</b>	<b>13</b>	<b>78</b>





**Table A3. Geriatric Release Policies**

State	Policy Name	Age of Eligibility	Exclusions Based on Sentence or Crime
Alabama	Medical Parole and Medical Furlough	60+ with infirmity, illness, or disease related to aging; Age 55+ with infirmity, illness, or disease related to aging	Individuals convicted of capital murder or sex offenses.
Alaska	Geriatric Parole/ Discretionary Parole Based on Age	60+ and served at least 10 years	Persons convicted of certain “unclassified felonies” or sex offenses.
California	Elderly Parole	50+ and served 20 years	Persons sentenced to LWOP, death, and persons convicted of first-degree murder of current or retired law enforcement.
Colorado	Special Needs Parole	55+ with chronic infirmity, illness, condition, disease, or mental health disorder, or age 64+ and served at least 20 years	Persons sentenced to LWOP and convicted of Class 1 felony, and served less than 20 years; or Class 2 felony and served less than 10 years. Exclusions do not apply for persons with terminal illness and life expectancy of 12 months or less.
Connecticut	Compassionate Parole Release	Age-related incapacitation	Persons convicted of capital felonies or murder with special circumstances.
Washington, D.C.	Compassionate Release; Medical and Geriatric Suspension of Sentence; Medical and Geriatric Parole (individuals designated as “Old-Law” prisoners)	60+ and served 20 years or with a serious medical condition and served 15 years; 65+ with chronic infirmity, illness, or disease related to aging; 65+ with chronic infirmity, illness, or disease related to aging	Persons convicted of first-degree murder or certain crimes while armed. These individuals may be eligible for medical suspension of sentence but are not eligible for geriatric suspension of sentence.
Georgia	Parole Due to Disability or Advanced Age	62+	No exclusions listed.
Iowa	No compassionate release mechanism	NA	NA
Maryland	Geriatric Parole	60+ and served at least 15 years	Persons registered (or eligible for registration) under state’s sex offender registration law.
Mississippi	Geriatric Parole	60+	Persons sentenced to LWOP, and those convicted of a violent offense or sentenced to a mandatory minimum. Others must have served 10 years and 25% of their term. Habitual offenders also excluded.

**Table A3. Geriatric Release Policies**

Missouri	Medical Parole; Executive Clemency Due to Illness of Advanced Age	Advanced age with need for long-term nursing home care	People sentenced to LWOP are not eligible for medical parole consideration.
Nevada	Geriatric Parole	65+ and has served majority of maximum term or maximum aggregate term	Persons sentenced to LWOP or death.
New Mexico	Medical and Geriatric Parole	65+ and chronic infirmity, illness, or disease related to aging	Persons convicted of first-degree murder, the penalty for which is LWOP.
North Carolina	Medical Release	65+ and chronic infirmity, illness, or disease related to aging	Persons sentenced to LWOP or death. All persons convicted of Class A, B1, or B2 felonies, including first-degree murder, injuring another by the unlawful use of weapons of mass destruction, second-degree murder, any first degree sexual offense; offenses related to the manufacture, possession, or acquisition of weapons of mass destruction; and offenses that require registration under North Carolina law, including categories of statutory rape, incest, and other sex offenses.
Oklahoma	Parole Based on Advanced Age	60+ and served 10 years OR 1/3 of sentence (whichever is shorter)	Persons convicted of certain crimes of violence and sex offenses.
Oregon	Early Medical Release	Advanced age	Persons sentenced to LWOP. In addition, individuals with severe medical conditions are not eligible for early medical release if (1) serving a mandatory minimum sentence for any of 26 specific offenses considered violent and/or sexual in nature or (2) there is a sentencing order stating the person is not entitled to any form of early release. These exclusions do not apply to individuals seeking Early Medical Release who meet the elderly and permanently incapacitated criteria. (Note that the Early Medical Release regulation, but not the statute, says that individuals sentenced to death for aggravated murder may be granted early medical release only if the Governor commutes the sentence).
South Carolina	Medical Parole for Terminally Ill, Geriatric, or Permanently Disabled Inmates	65+ expensive medical needs and served 10+ years; 70+ and served at least 30 years	Persons sentenced to LWOP or death.
South Dakota	Compassionate Release		Persons sentenced to a capital punishment sentence.

**Table A3. Geriatric Release Policies**

Tennessee	Geriatric Parole	70+ and likely to die due to a chronic and incurable condition	Persons serving LWOP, and persons convicted of a violent sexual offense, more than one conviction for first-degree murder, or facilitation of first-degree murder.
Texas	Medically Recommended Intensive Supervision	65+	Persons sentenced to LWOP or death, and persons convicted of aggravated offenses of a violent or sexual nature.
Utah	Compassionate Release	Advanced age	No exclusions listed.
Virginia	Geriatric Conditional Release	60+ and served at least 10 years; 65+ and served at least 5 years	Persons convicted of Class 1 felonies.
Washington	Extraordinary Release	Advanced age	None listed.
Wisconsin	Sentence Modification Due to Extraordinary Health Condition or Age; or Parole Due to Extraordinary Circumstances (individuals designated as "Old-Law" Prisoners)	60+ and served at least 10 years; 65+ and served at least 5 years	Persons sentenced to LWOP and persons convicted of Class A or B felonies.
Wyoming	Medical Parole	Age-related incapacitation	Persons sentenced to LWOP or death

Source: Price, M. (2020). *Everywhere and Nowhere: Compassionate Release in the States*. FAMM.

## ENDNOTES

- <sup>1</sup> Forsyth, K. J. et al. (2013). Health and social care services for older male adults in prison: The identification of current service provision and piloting of assessment and care planning model. *Health Services and Delivery Research*.
- <sup>2</sup> Williams, B. A., Goodwin, J. S., Baillargeon, C. A., & Walter, L. C. (2012). Addressing the aging crisis in U.S. health justice care. *Journal of American Geriatrics Society*, 60(6):1150-6.
- <sup>3</sup> Seeds, C. (2018), Disaggregating LWOP: Life without parole, capital punishment, and mass incarceration in Florida, 1972-1995. *Law & Society Review*, 52(1), 172.
- <sup>4</sup> van Zyl Smit, D. & Appleton, C. (2019). *Life imprisonment*. Harvard University Press.
- <sup>5</sup> Nellis, A. (2021). *No end in sight: America's enduring reliance on life imprisonment*. The Sentencing Project.
- <sup>6</sup> Seeds, C. (forthcoming). *Death by prison: The emergence of Life without Parole and perpetual confinement*. University of California Press.
- <sup>7</sup> Please see the methodology section for a more complete description of the underlying data that were used in this analysis.
- <sup>8</sup> Williams, B. A., Goodwin, J. S., Baillargeon, C. A., & Walter, L. C. (2012). Addressing the aging crisis in U.S. health justice care. *Journal of American Geriatrics Society*, 60(6):1150-6.
- <sup>9</sup> Maschi, T., & Morgen, K. (2020). *Aging behind prison walls: Studies in trauma and resilience*. Columbia University Press.
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- <sup>11</sup> Daza, S., Palloni, A., & Jones, J. (2020). The consequences of incarceration for mortality in the United States. *Demography*, 57(2):577-598.
- <sup>12</sup> Maruschak, L. M., Berzofsky, M., & Unangst, J. (2015). *Medical problems of state and federal prisoners and jail inmates, 2011-12*. Bureau of Justice Statistics.
- <sup>13</sup> Metzger, L., Ahalt, C., Kushel, M., Riker, A., & Williams, B. (2017). Mobilizing cross-sector community partnerships to address the needs of criminal justice-involved older adults: A framework for action. *International Journal of Prisoner Health*, 13(3/4): 173-184; Spaulding, A.C., Seals, R.M., McCallum, V.A., Perez, S.D., Brzozowski, A.K., Steenland, N.K. (2011). Prisoner survival inside and outside of the institution: Implications for health-care planning. *American Journal of Epidemiology*, Vol. 173:479–487.
- <sup>14</sup> See Methodology for a full description of this dataset.
- <sup>15</sup> Ghandnoosh, N. (2017). *Delaying a second chance: The declining prospects for parole on life sentences*. The Sentencing Project.
- <sup>16</sup> States that have eliminated parole for life sentences include Arizona, Florida, Illinois, Iowa, Louisiana, Maine, Pennsylvania, South Dakota, Virginia and Wisconsin. In addition, the federal government has abolished its parole system.
- <sup>17</sup> Please see table A1 and A2 in the methodology section for descriptive statistics.
- <sup>18</sup> Please see table A1 and A2 in the methodology section for descriptive statistics.
- <sup>19</sup> An unknown number of people also die in prison while serving LWOP each year, but the accumulation of new persons serving LWOP sentences, as documented by official statistics from departments of corrections suggests that the total count of persons serving LWOP continues to rise. For historical data on life sentences, see: Mauer, M. (2003). *The meaning of life: Long prison sentences in context*. The Sentencing Project; Nellis, A. & King, R. (2009). *No exit: The expanding use of life sentences in America*. The Sentencing Project; Nellis, A. (2013). *Life goes on: The historic rise in life sentences in America*. The Sentencing Project; Nellis, A. (2016). *Still life: America's increasing use of life and long-term sentences*. The Sentencing Project. Appendix Figure A1 illustrates the percentage increase in the LWOP population over time.
- <sup>20</sup> We use an age definition of under 25 at time of offense. See Methods for more details on this variable.
- <sup>21</sup> Kutateladze, B., Andiloro, N. R., Johnson, B. D., and Spohn, C. C. (2014). Cumulative disadvantage: examining racial and ethnic disparity in prosecution and sentencing. *Criminology* 52(3): 514-551.
- <sup>22</sup> Krivo, L., Peterson, R., Kuhl, D. C. (2009). Segregation, racial structure, and neighborhood violent crime. *American Journal of Sociology*, 114(6), 1765-1802; Warren, P., Chiricos, T., & Bales, B. (2011). The imprisonment penalty for young Black and Hispanic males: A crime specific analysis. *Journal of Research in Crime and Delinquency* 49(1), 56-80.
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- <sup>32</sup> Atabay, T. (2009). [Handbook on prisoners with special needs](#). United Nations Office on Drugs and Crime.; Hantke, V., Bretschneider, W., Elgar, B., & Wangmo, T. (2017). [The collision of care and punishment: Aging prisoners' views on compassionate release](#). *Punishment & Society*, 19(1), 5–22.
- <sup>33</sup> Cobb, J., Sennett, R. (1972). *The hidden injuries of class*. W. W. Norton & Company. Page 347.
- <sup>34</sup> Personal communication. Warren Allen served more than two decades of a 35-to-life sentence in Washington, D.C. and was released in 2020. He is a Fellow at The Sentencing Project. years in DC released in 2021.
- <sup>35</sup> Aday, R. (2001). *A comprehensive health assessment of aged and infirmed inmates*. Nashville: Tennessee Department of Correction.
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- <sup>40</sup> Leigey, M. (2015). *The forgotten men: Serving a life without parole sentence*. Rutgers University Press; Mauer, M. & Nellis, A. (2018). *The meaning of life: The case for abolishing life sentences*. The New Press
- <sup>41</sup> At the federal level, the U.S. Sentencing Guidelines allow for release of persons in the case of circumstances that are 'extraordinary and compelling', and could be allowed for an individual who is the only available caregiver for a minor or adult. For further information on this, see [here](#).
- <sup>42</sup> Price, M. (2020). [Everywhere and nowhere: Compassionate release in the States](#). FAMM.
- <sup>43</sup> Mujahid Farid founded and served as the director of RAPP, which stands for Release Aging People in Prison. Farid served 33 years in New York state's prison system before he was released at age 62. He founded RAPP in 2013 and died in 2018.
- <sup>44</sup> Bunting, W. C. (2015). The high cost of incarcerating the elderly. *Center for Justice at Columbia University*.
- <sup>45</sup> Pew. (2017). [Prison Health Care Costs and Quality](#). Pew Research Center.
- <sup>46</sup> U.S Department of Justice, Office of the Inspector General (revised 2016). [The impact of an aging inmate population on the Federal Bureau of Prisons](#).
- <sup>47</sup> In Michigan, for instance, 25.6% of the health care costs go to people 50 and older, though only 14.4% of the prison population falls in this age group. See, (2021). [Budget briefing: Correction FY 20-21](#).
- <sup>48</sup> Virginia's House Appropriations Committee, for instance, reported a \$100 million dollar increase between 2007 and 2019 in medical care needs.
- <sup>49</sup> These are armed robbery, kidnapping, rape, aggravated sodomy, aggravated sexual battery, and aggravated child molestation.
- <sup>50</sup> Georgia Department of Corrections (2000). [Profile of Life without Parole for Inmates during 2000](#); Georgia Department of Corrections (2020). [Profile of Life without Parole for Inmates during 2020](#).
- <sup>51</sup> The Georgia Department of Corrections graciously provided a breakdown of what is included in annual prisoner costs. The per person (per day) cost calculations for prison facilities includes: actual fiscal year facility operating costs (inclusive of staff salaries, fringes, operating supplies/materials, food expenses, utilities, maintenance, travel/per diem expenses, motor vehicle expenses, equipment expenses and contractual services); actual fiscal year employer share of retirement contributions; an administrative overhead allocation of Georgia Department of Corrections central office and prisoner intake/management expenses; and an allocation of prisoner healthcare expenses (physical, mental and dental).
- <sup>52</sup> Dawkins, K. (2013). [The aging inmate population project](#). Georgia Department of Corrections.
- <sup>53</sup> Wetzel, J. E. (2020). [FY 2020-21 budget: Budget testimony](#).

ny. Pennsylvania Department of Corrections, pp. 12-13.

<sup>54</sup> Silber, R., Shames, A., Reid, K. (2017) *Aging out: Using compassionate release to address the growth of aging and infirm prison populations*. Vera Institute of Justice.

<sup>55</sup> Illinois Department of Corrections (2021). *Annual report, 2020*.

<sup>56</sup> In January 2022, the Jim Coleman Medical Release Act went into effect in Illinois. This law allows people suffering from medical incapacitation or terminal illness to file a medical release application. It is too soon to determine the impact of this law on the elderly LWOP population in Illinois, but the law will only have an impact on those who are extremely sick and unlikely to recover.

<sup>57</sup> The state abolished parole in 1983 for all except capital felonies including first degree murder and sexual battery of a child under 12. In 1995, the state extended the ban on parole to these crimes as well.

<sup>58</sup> Data provided by the Florida Department of Corrections at our request.

<sup>59</sup> Florida Department of Corrections. (2021). *Florida Department of Corrections annual report, FY 20-21*.

<sup>60</sup> Florida Senate Bill 574 excluded people convicted of murder and those with three or more felony convictions committed on or after July 1, 1999.

<sup>61</sup> See Appendix Table 4 for a list of statutes pertaining to geriatric release, and we are grateful to the careful research by our partners at FAMM for supplying this list.

<sup>62</sup> Seeds, C. (forthcoming). *Death by prison: The emergence of Life without Parole and perpetual confinement*. University of California Press, 42.

<sup>63</sup> Sakala, L., Taylor, R., Marcellin, C., Matei, A., (2020). *How governors can use categorical clemency as a corrective tool*. Urban Institute.

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<sup>65</sup> Seeds, C. (forthcoming). *Death by prison: The emergence of Life without Parole and perpetual confinement*. University of California Press.

<sup>66</sup> Mauer, M. & Nellis, A. (2018). *The meaning of life: The case for abolishing life sentences*. The New Press.

<sup>67</sup> Seeds, C. (forthcoming). *Death by prison: The emergence of Life without Parole and perpetual confinement*. University of California Press. Page 49.

<sup>68</sup> Ofer, U. (2021, November 21). *Mass clemency*. Inquest.

<sup>69</sup> Ofer, U. (2021, November 21). *Mass Clemency*. Inquest.

<sup>70</sup> Migoya, D. (2021, May 30). *Clemency doesn't guarantee good behavior; several felons found their way back into prison*. Canon City Daily Record.

<sup>71</sup> Romero, B. B., Collins, J., Johnson, C., Merrigan, J., & Perkins, L. (2004). The Missouri Battered Women's Clemency Coalition: A Collaborative Effort in Justice for Eleven Missouri Women. *St. Louis University Public Law Review*, 23(1), 192-227.

<sup>72</sup> U.S. Department of Justice (n.d.) *Obama Administration Clemency Initiative*. U.S. Department of Justice.

<sup>73</sup> White House (n.d.). *A nation of second chances: Obama's record on clemency*. The White House.

<sup>74</sup> See, for example, Antenangeli, L., & Durose, M. R. (2021). *Recidivism of prisoners released in 24 states in 2008: A 10-year follow-up period (2008-2018)*. Bureau of Justice Statistics. ADD CITES.

<sup>75</sup> Division of Program Planning, Research & Evaluation (2021). *2015 Releases from Custody: Three Year Post Release Follow-Up*. New York Department of Corrections and Community Supervision.

<sup>76</sup> Nellis, A. (2021). *A new lease on life: The Sentencing Project*.

<sup>77</sup> O'Leary, R. (2022). Compassionate release and decarceration in the states. *Iowa Law Review* 107(XX): 101-152.

<sup>78</sup> Ghandnoosh, N. (2021). *Can we wait 60 years to cut the prison population in half?* The Sentencing Project.

<sup>79</sup> Camhi, N., Mistak, D., & Wachino, V. (2020). *Medicaid's Evolving Role in Advancing the Health of People Involved in the Justice System*. The Commonwealth Fund.

<sup>80</sup> Pew. (2017). *Prison Health Care Costs and Quality*. Pew Research Center.

<sup>81</sup> Mauer, M. & Nellis, A. (2018). *The Meaning of life: The case for abolishing life sentences*. The New Press.

<sup>82</sup> National Research Council (2014). *The growth of incarceration in the United States: Exploring causes and consequences*. National Academies.



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