

# LIFE GOES ON: THE HISTORIC RISE IN LIFE SENTENCES IN AMERICA





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# INTRODUCTION

In recent years, states around the country have been reconsidering the value of using incarceration as the primary tool for responding to criminal behavior. After a decades-long surge, modest declines in prison populations are now occurring nationally and various state legislatures have reformed sentencing laws that reduce the incarceration of people convicted of certain offenses. In 2011 and 2012, this led to 17 states closing some of their prisons.<sup>1</sup>

Despite these developments, the number of prisoners serving life sentences continues to grow even while serious, violent crime has been declining for the past 20 years and little public safety benefit has been demonstrated to correlate with increasingly lengthy sentences.<sup>2</sup> This report details the rise of the lifer population in America's prisons, now standing at nearly 160,000, with almost 50,000 people serving life sentences without parole (LWOP). In order to comprehensively assess trends in the use of life imprisonment we undertook a survey of persons serving life sentences in the corrections systems in all 50 states and the Federal Bureau of Prisons during 2012. We sought to obtain data on the number of persons serving such sentences, demographic characteristics, type of offense, and trends in the use of life sentences over time.<sup>3</sup>

The lifer population has more than quadrupled in size since 1984. One in nine people in prison is now serving

a life sentence and nearly a third of lifers will never have a chance at a parole hearing; they are certain to die in prison.<sup>4</sup> This analysis documents long-term trends in the use of life imprisonment as well as providing empirical details for the offenses that comprise the life-sentenced population.

## KEY FINDINGS

- As of 2012, there were 159,520 people serving life sentences, an 11.8% rise since 2008.
- One of every nine individuals in prison is serving a life sentence.
- The population of prisoners serving life without parole (LWOP) has risen more sharply than those with the possibility of parole: there has been a 22.2% increase in LWOP since just 2008, an increase from 40,174<sup>5</sup> individuals to 49,081.
- Approximately 10,000 lifers have been convicted of nonviolent offenses.
- Nearly half of lifers are African American and 1 in 6 are Latino.
- More than 10,000 life-sentenced inmates have been convicted of crimes that occurred before they turned 18 and nearly 1 in 4 of them were sentenced to LWOP.
- More than 5,300 (3.4%) of the life-sentenced inmates are female.

1 Porter, N. (2012). *On the Chopping Block: State Prison Closings*. Washington, DC: The Sentencing Project.

2 Cole, D. (2011). Turning the Corner on Mass Incarceration? *Ohio State Journal of Criminal Law*, 9(1), 27-51.

3 The survey instrument is provided in Appendix A.

4 While release could be attained through a successful application for executive clemency, this mechanism for release is rarely utilized.

5 In our 2009 report, *No Exit: The Expanding Use of Life Sentences in America*, we noted that there were 41,095 people serving LWOP sentences and a total of 140,610 people serving life sentences nationally. Some state departments of corrections have revised these numbers slightly since our last report. The updated numbers are provided.



# THE RISE IN LIFE SENTENCES

In every state except Alaska, life sentences with and without the possibility of parole are part of state sentencing structures<sup>6</sup> and have been so for much of the 20<sup>th</sup> century. But for much of this time, “life” generally meant the possibility of a shorter term in prison and the presumption of eventual release. In the federal system, for example, as far back as 1913, parole reviews took place after serving 15 years, though remaining incarcerated for the rest of one’s life was still possible. In Louisiana, the so-called “10/6 law” that was in place from 1926 until the 1970s meant that life-sentenced prisoners were typically released after a decade if they demonstrated “good behavior.”<sup>7</sup> By the 1990s a life sentence came to mean life in prison, inspiring the popular saying in Louisiana, “life means life.”

The notion of a whole-life sentence gained popularity starting with the ban on the death penalty which was in place from 1972 to 1976.<sup>8</sup> Before the U.S. Supreme Court’s decision striking down the death penalty in *Furman v. Georgia*, only seven states had life without parole statutes. Even though they were authorized, LWOP was infrequently used. Beginning in 1972, several states enacted or toughened their statutes regarding all life sentences, particularly broadening those pertaining to life without the possibility for parole. For instance, Illinois, Alabama, and Louisiana passed LWOP statutes in direct response to the *Furman* ruling.

**Table A. State Enactment of Life without Parole Statutes**

1970 and earlier (7)	1971-1990 (26)	1991-2012 (17)
Massachusetts	Alabama	Arizona
Michigan	Arkansas	Florida
Mississippi	California	Georgia
Montana	Colorado	Indiana
Pennsylvania	Connecticut	Kansas
South Dakota	Delaware	Kentucky
West Virginia	District of Columbia	Minnesota
	Hawaii	Nebraska
	Idaho	New Jersey
	Illinois	New York
	Iowa	North Carolina
	Louisiana	North Dakota
	Maine	Ohio
	Maryland	Tennessee
	Missouri	Texas
	Nevada	Utah
	New Hampshire	Wyoming
	New Mexico	
	Oklahoma	
	Oregon	
	Rhode Island	
	South Carolina	
	Vermont	
	Virginia	
	Washington	
	Wisconsin	

Source: Data for this table obtained through review of individual state laws.

6 While Alaska does not formally allow these sentences, 8.9% of its prisoners are serving sentences of fifty years or longer.

7 Gottschalk, M. (2012). No Way Out? Life Sentences and the Politics of Penal Reform. In Charles Ogletree and Austin Sarat, Eds. *Life without Parole: America’s New Death Penalty*. New York: New York University Press. Pp: 227-281.

8 *Furman v. Georgia* 408 U.S. 238 (1972); *Gregg v. Georgia* 428 US 153 (1976).

The upward creep in life sentences has accelerated in recent decades as an element of the “tough on crime” political environment that began in the 1980s. The idea of whole-life prison sentences easily won approval in a period of growing skepticism about the value of rehabilitation. Instead, punishment and incapacitation became identified as the primary goals of imprisonment and many abandoned the idea of reforming offenders. During this time policymakers and the public grew comfortable with the idea of putting people away for either long, discrete terms of years or simply for the rest of their lives. As fear of crime among the public and policymakers was crystallized by sensationalized media accounts of formerly incarcerated persons reoffending, the corrections system came to be accepted principally as a retributive tool. The broadened use of life sentences

is a telling symbol of this transformation in corrections policy. Today, as diverse coalitions of lawmakers and stakeholders are engaged in meaningful discussions about the role of corrections, lifers continue to be largely excluded from the discussion of sentencing reform.

Life-sentenced prisoners bear the ultimate burden of the decision in a number of states to either eliminate or seriously curtail the use of parole that started in the late 1970s. Six states—Illinois, Iowa, Louisiana, Maine, Pennsylvania, and South Dakota—and the federal government eliminated parole entirely during this period; in these states all life-sentenced inmates spend the remainder of their lives in prison with no possibility for review or release.<sup>9</sup>

<sup>9</sup> In states without a parole system, inmates who were serving life with the possibility of parole at the time the system was abolished are typically called “old law” lifers and a limited parole structure remains in place for them as they become eligible.

# LIFE SENTENCES TODAY

Life sentences in America today stand at an unprecedented level: as of 2012, 159,520 people in prison were serving a life sentence and 49,081 (30.8%) of them have no possibility for parole. Nationally, one in every nine people in prison today is serving a life sentence.<sup>10</sup> Though LWOP is available in nearly every state,<sup>11</sup> such prisoners are disproportionately represented in Florida, Pennsylvania, Louisiana, California, and Michigan. Combined, these five states account for over half (57.7%) of all LWOP sentences nationwide. In seven states—Alabama, California, Massachusetts, Nevada, New York, Utah, and Washington—more than 15% of the prison population is sentenced to life.<sup>12</sup> Additionally, in 22 states and the federal government, at least 35% of the lifer population is ineligible for parole.<sup>13</sup>

Despite a shift toward determinate sentencing in recent decades, many states maintain some form of indeterminate sentencing framework that is applied to parole-eligible lifers. Offenders who fall within this structure can potentially earn parole within a range of years; in some states, these ranges include an upper limit of natural life. For example, in Colorado trial judges can sentence people convicted of a sex offense to an indeterminate

sentence that ranges from a minimum of one day to a maximum of life imprisonment.<sup>14</sup> In Vermont, failure to register as a sex offender can, in some instances, trigger a sentence of five years to life and prisoners are considered lifers until they are released.<sup>15</sup> Some empirical evidence suggests that prisoners serve longer terms in states with indeterminate sentencing schemes that have discretionary parole, especially for those convicted of violent offenses.<sup>16</sup> The large number of parole-eligible lifers in some of these states may partially be explained by indeterminate sentencing structures that allow for a maximum term of life and a minimum term as short as five years.

Regardless of whether a state has an indeterminate or determinate sentencing structure, excessively long sentences are available and used with increasing regularity. However, the alternative is also true: sentencing reforms that reflect fairness, proportionality, and a realistic opportunity for release can be incorporated into either a determinate sentencing structure or one that relies on a range of years to allow for individual tailoring.

10 The continued rise in lifers presents one aspect of the issues associated with the expansion of lengthy sentences. Lengthy sentences other than those identified as lifelong sentences are also a common feature of the American criminal justice system. An example would be a sentence of 120 years. Data on the extensive use of these “virtual life” sentences has not yet been systematically collected but would likely show that sentences spanning many decades, easily exceeding an average lifespan, are increasingly common.

11 Alaska is the exception.

12 Utah’s indeterminate sentencing system allows a range of up to life for all first degree felony convictions. Though most people are eventually released, there remains the potential for lifelong incarceration. During any year, about 5 to 6% of the total releases in Utah are offenders serving 5-to-life sentences.

13 The states are Arkansas, Delaware, Florida, Illinois, Indiana, Louisiana, Maine, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Carolina, North Dakota, Oklahoma, Pennsylvania, South Carolina, South Dakota, Virginia, and West Virginia.

14 C.R.S.A. § 18-1.3-904. This law went into effect in 1968.

15 13 V.S.A. 5411d, enacted 2003.

16 Petersilia, J. (2003). *When Prisoners Come Home: Parole and Prisoner Reentry*. Oxford: Oxford University Press.

**Table B. Distribution of Life and LWOP Sentences by State, 2012**

State	Life with Parole	LWOP	2012 Total	Prison Population	Percent of Prison Population
Alabama	3,811	1,507	5,318	32,038	16.6%
Alaska	0	0	0	3,899	0.0%
Arizona	1,053	441	1,494	39,885	3.7%
Arkansas	872	528	1,400	14,644	9.6%
California	35,759	4,603	40,362	133,883	30.1%
Colorado	2,015	606	2,621	20,628	12.7%
Connecticut	289	70	359	12,549	2.9%
Delaware	142	386	528	4,003	13.2%
Florida	4,157	7,992	12,149	99,866	12.2%
Georgia	7,125	813	7,938	56,246	14.1%
Hawaii	365	47	412	3,565	11.6%
Idaho	402	122	524	7,333	7.1%
Illinois	1,141	1,600	2,741	48,427	5.7%
Indiana	129	113	242	28,270	0.9%
Iowa	45	635	680	8,244	8.2%
Kansas	1,040	21	1,061	9,318	11.4%
Kentucky	809	99	908	22,411	4.1%
Louisiana	20	4,637	4,657	40,170	11.6%
Maine	4	55	59	2,125	2.8%
Maryland	2,090	380	2,470	21,398	11.5%
Massachusetts	930	1,045	1,975	10,175	19.4%
Michigan	1,502	3,635	5,137	43,444	11.8%
Minnesota	426	102	528	9,501	5.6%
Mississippi	555	1,518	2,073	22,187	9.3%
Missouri	1,744	1,063	2,807	31,057	9.0%
Montana	44	53	97	2,463	3.9%
Nebraska	95	236	331	4,782	6.9%
Nevada	2,228	491	2,719	12,639	21.5%
New Hampshire	134	79	213	2,614	8.1%
New Jersey	1,096	70	1,166	23,810	4.9%
New Mexico	408	0	408	6,647	6.1%
New York	9,999	246	10,245	54,397	18.8%
North Carolina	1,882	1,228	3,110	37,383	8.3%
North Dakota	38	27	65	1,536	4.2%
Ohio	5,667	408	6,075	50,964	11.9%
Oklahoma	1,735	780	2,515	26,257	9.6%
Oregon	627	180	807	14,212	5.7%
Pennsylvania	2	5,102	5,104	51,184	10.0%
Rhode Island	175	32	207	2,417	8.6%
South Carolina	1,231	988	2,219	22,567	9.8%
South Dakota	0	181	181	3,648	5.0%
Tennessee	1,908	317	2,225	20,079	11.1%
Texas	8,493	538	9,031	150,782	6.0%
Utah	1,943	105	2,048	7,025	29.2%
Vermont	107	14	121	2,084	5.8%
Virginia	1,371	774	2,145	37,182	5.8%
Washington	2,000	623	2,623	17,031	15.4%
West Virginia	359	276	635	7,036	9.0%
Wisconsin	956	229	1,185	22,041	5.4%
Wyoming	154	28	182	1,987	9.2%
<b>FEDERAL</b>	<b>1,362</b>	<b>4,058</b>	<b>5,420</b>	<b>218,830</b>	<b>2.5%</b>
<b>TOTAL</b>	<b>110,439</b>	<b>49,081</b>	<b>159,520</b>	<b>1,506,934</b>	<b>10.6%</b>

Notes: Hawaii and Virginia did not respond to several requests for data in 2012; therefore, 2008 figures are provided for these states. The federal system eliminated parole in 1987; the parole-eligible lifers listed here were convicted before 1987.

# CRIME OF CONVICTION

Life sentences were originally limited to those convicted of only the most serious crimes, such as homicide, particularly as an alternative to the death penalty, but their use has expanded considerably over time to include a greater range of offenses.<sup>17</sup> While homicide remains the offense for which a majority of lifers are sentenced, life sentences are today authorized for assault, robbery, sex-related crimes, drug offenses, and even some property offenses.

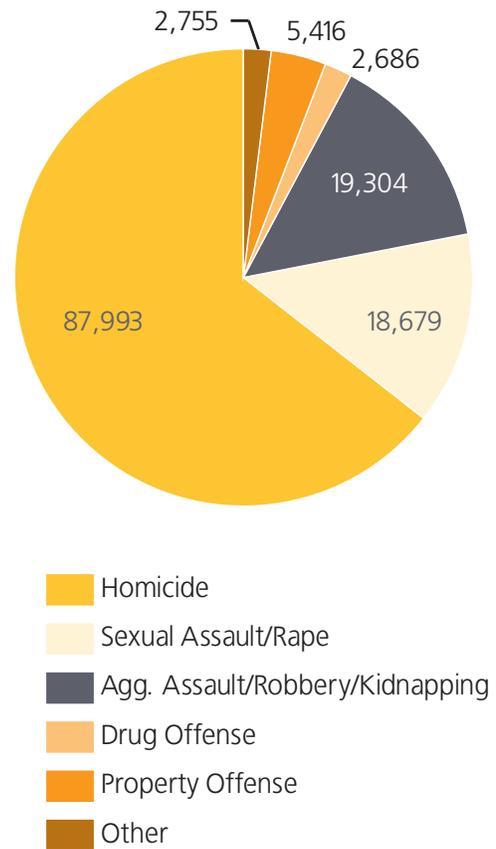
In our survey of state corrections agencies, we requested information about the crime of commitment for each person serving a life sentence.<sup>18</sup> Overall, 64.3% (87,933) of those serving a life sentence had been convicted of a homicide. However, it is notable that more than 10,000 people serving life sentences have been convicted of a nonviolent crime, including more than 2,500 for a drug offense and 5,400 for a property crime.

**Table C. National Distribution of Crime of Conviction among Lifers**

Crime	% Life-Sentenced
Homicide	64.3%
Sexual Assault/Rape	13.7%
Aggravated Assault/Robbery/ Kidnapping	14.1%
Drug Offense	2.0%
Property Offense	4.0%
Other	2.0%

Clarence Aaron was a 23-year-old college student and athlete at the time of his arrest in 1993. He had served as a liaison between two drug dealers and even though he was not present or knowledgeable about their drug transaction, Aaron was convicted in federal court of conspiracy. Because of federal mandatory minimum sentencing laws, Mr. Aaron was held responsible for the total amount of drugs involved in the offense and sentenced to three life terms in prison. He has been incarcerated for more than 20 years and is now in his mid-40s. Despite a recommendation for commutation and immediate release by the prosecutor and sentencing judge in this case, Mr. Aaron’s petition for clemency has failed to receive support from the Office of the Pardon Attorney at the U.S. Department of Justice, but growing media attention around the case has led the White House to note that there is an ongoing review of his application.

**Figure 1. Crime of Conviction for Life-Sentenced Population**



17 Capers, B. (2012). *Defending Life*. In Ogletree, C. J., and A. Sarat. *Life Without Parole: America’s New Death Penalty?* New York: New York University Press, Pp.167-189.

18 Offense data was not provided for approximately 23,000 prisoners, or 14.3% of the total number of people serving life sentences.

In eight states, more than 30% of the life without parole population has been convicted of a non-homicide offense. In Oklahoma, which has the third highest rate of incarceration in the nation and where 27% of the prisoners overall have been convicted of a drug offense, 6.4% of the LWOP inmates are drug offenders. This relatively high percentage of prisoners serving LWOP for a nonviolent offense is likely due to the state's especially harsh drug laws that require a life-without-parole-sentence for anyone with two previous felony convictions.

The U.S. Supreme Court has reviewed the constitutionality of life without parole for non-homicide offenses on different occasions, most recently as the sentence pertains to individuals whose offense occurred before they turned 18 years old.<sup>19</sup> In *Graham v. Florida*, the Court concluded that LWOP sentences for persons who were under 18 at the time of the crime amount to cruel and unusual punishment. While the ruling is limited to juveniles, it raises anew the question of whether it is ever appropriate to sentence individuals to life with no possibility of release when their crime was not a homicide.

## RACE AND ETHNICITY OF LIFE-SENTENCED INDIVIDUALS

It is widely established that racial and ethnic minorities are more likely to enter the criminal justice system and that racial and ethnic differences become more pronounced at the deeper stages of the system. In 2009, African Americans and Latinos comprised over 60% of people in prison, and black males were incarcerated in state and federal prisons at 6.4 times the rate of white non-Hispanic males.<sup>20</sup>

Racial disparities are evident among those serving life as well. Nationally, almost half (47.2%) of life-sentenced inmates are African American, though the black population of lifers reaches much higher in states such as Maryland (77.4%), Georgia (72.0%), and Mississippi (71.5%). In the federal system, 62.3% of the life-sentenced population is African American. Non-whites constitute nearly two-thirds of the total population serving life sentences.

Consider the case of 63-year-old Oklahoma lifer Larry Yarbrough, a married restaurant owner with five children and 13 grandchildren. Oklahoma's tough drug law resulted in sentencing Mr. Yarbrough to life without parole for selling an ounce of cocaine and three marijuana cigarettes. He has been in prison for 18 years. The Oklahoma Board of Pardons and Parole has repeatedly recommended his release, pointing to his successful rehabilitation in prison and service to the community's blind and disabled, a clean disciplinary record throughout his sentence, and the unnecessary cost of continuing to incarcerate him. The Parole Board most recently recommended a sentence commutation in 2011, which was again denied by the Governor.

**Table D. States with More than 30% of LWOP Population Convicted of a Non-Homicide**

State	Percent Convicted of a Non-Homicide
Idaho	54.1
Washington	46.2
Alabama	39.2
Georgia	38.7
Kansas	38.1
Delaware	36.3
South Carolina	36.2
Louisiana	33.2

<sup>19</sup> *Graham v. Florida*. 130 S.Ct. 2011 (2010).

<sup>20</sup> Mauer, M. (2013). *The Changing Racial Dynamics of Women's Incarceration*. Washington, D.C.: The Sentencing Project.

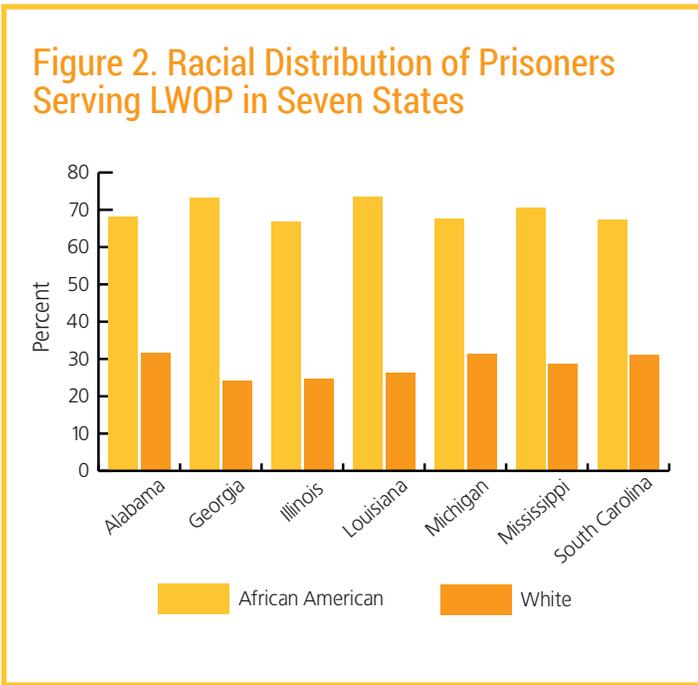
**Table E. Racial Distribution of Life Sentenced Population**

State	Life Population	Percent Black	Percent White	Percent Other
Alabama	5,318	65.8%	34.0%	0.2%
Arizona	1,494	19.5%	43.7%	36.8%
Arkansas	1,400	53.1%	45.2%	1.7%
California	40,362	34.2%	22.1%	8.0%
Colorado	2,621	19.6%	50.5%	3.4%
Connecticut	359	52.9%	27.0%	0.6%
Delaware	528	64.8%	35.0%	0.2%
Florida	12,149	54.1%	42.0%	3.9%
Georgia	7,938	72.0%	24.8%	0.6%
Hawaii	412	6.1%	23.1%	66.7%
Idaho	524	2.9%	76.9%	6.1%
Illinois	2,741	52.0%	32.8%	0.6%
Indiana	242	35.5%	59.5%	0.8%
Iowa	680	26.6%	70.9%	2.5%
Kansas	1,061	39.0%	58.2%	2.8%
Kentucky	908	27.3%	70.4%	2.3%
Louisiana	4,657	73.4%	26.2%	0.4%
Maine	59	1.7%	96.6%	1.7%
Maryland	2,470	77.4%	21.7%	0.6%
Massachusetts	1,975	35.6%	55.8%	8.6%
Michigan	5,137	64.8%	34.0%	1.0%
Minnesota	528	37.5%	52.5%	10.0%
Mississippi	2,073	71.5%	27.8%	0.7%
Missouri	2,807	52.3%	46.9%	0.8%
Montana	97	0.0%	73.4%	26.6%
Nebraska	331	32.6%	60.4%	6.9%
Nevada	2,719	25.5%	57.9%	16.6%
New Hampshire	213	5.2%	91.1%	3.8%
New Jersey	1,166	61.7%	25.0%	13.2%
New Mexico	408	10.3%	38.2%	7.4%
New York	10,245	60.5%	24.5%	15.1%
North Carolina	3,110	56.8%	34.9%	5.1%
North Dakota	65	7.7%	72.3%	20.0%
Ohio	6,075	52.0%	44.7%	3.2%
Oklahoma	2,515	32.2%	53.6%	8.9%
Oregon	807	12.1%	72.9%	5.2%
Pennsylvania	5,104	64.5%	25.7%	1.2%
Rhode Island	207	29.0%	45.9%	1.9%
South Carolina	2,219	64.9%	34.2%	0.9%
South Dakota	181	7.2%	69.6%	23.2%
Tennessee	2,225	49.8%	49.7%	0.6%
Texas	9,031	40.5%	34.3%	2.8%
Utah	2,048	6.7%	64.5%	28.9%
Vermont	121	8.3%	86.8%	4.1%
Virginia	2,145	41.9%	36.6%	0.5%
Washington	2,623	16.4%	74.6%	9.1%
West Virginia	635	14.8%	81.1%	3.5%
Wisconsin	1,185	45.1%	52.2%	2.6%
Wyoming	182	6.6%	74.2%	6.6%
FEDERAL	5,420	62.3%	33.6%	4.0%
TOTAL	159,520	47.2%	34.7%	6.0%

Note: Most states provided the ethnicity of "Hispanic" separately from race categories. In cases where "Hispanic" was provided as a mutually exclusive category, we divided the number of Hispanics by their representation in the general population, 2.5% Black, 53% White, and 44.5% Other, as reported in the 2010 U.S. Census (Humes, K. R., Jones, N. A., and Ramirez, R. R. (2011). *Overview of Race and Hispanic Origin: 2010*. Washington, DC: U.S. Census Bureau. See page 6. Tennessee did not provide data in 2012 other than life and LWOP totals. We used the proportions of information obtained in 2008 to arrive at current estimates for race, gender, ethnicity, and age. Alaska does not have life or LWOP sentences so it is excluded from this table.

Sixteen percent of the people serving life sentences nationwide are Latino, with the highest concentrations in New Mexico (44.1%), California (35.7%), Arizona (30.9%), and Colorado (26.4%).

Concerns about racial disparity become even more significant when examining the racial groups of those serving life without parole. While 47.2% of the lifer population is African American, 58% of LWOP prisoners are African American and reaching at least two-thirds of the LWOP population in seven states.



These figures mirror the broader pattern in the criminal justice system in which blacks are represented at an increasingly disproportionate rate across the continuum from arrest to incarceration. African Americans comprise 12% of the general population but 28% of total arrests, and 38% of those convicted of a felony in state court and in state prison.

**Table F. Latinos as a Proportion of Life Sentenced Population**

State	Percent Latino
Arizona	30.9%
Arkansas	0.9%
California	35.7%
Colorado	26.4%
Connecticut	19.5%
Florida	10.4%
Georgia	2.6%
Hawaii	3.4%
Idaho	14.1%
Illinois	14.6%
Indiana	4.1%
Iowa	6.3%
Kansas	10.0%
Kentucky	0.7%
Louisiana	0.1%
Maine	1.7%
Massachusetts	18.4%
Michigan	0.1%
Minnesota	4.7%
Mississippi	0.1%
Missouri	1.4%
Nebraska	8.8%
Nevada	11.3%
New Hampshire	2.8%
New Jersey	8.7%
New Mexico	44.1%
New York	25.0%
North Carolina	1.5%
North Dakota	6.2%
Ohio	2.3%
Oklahoma	5.4%
Oregon	9.8%
Pennsylvania	8.5%
Rhode Island	23.2%
South Carolina	0.6%
South Dakota	1.7%
Tennessee	1.3%
Texas	22.3%
Utah	20.8%
Vermont	3.3%
Virginia	0.2%
Washington	11.9%
West Virginia	0.6%
Wisconsin	9.3%
Wyoming	12.6%
FEDERAL	16.3%
TOTAL	16.4%

Note: Ethnicity data were not provided for Alabama, Delaware, Maryland, and Montana.

## FEMALE POPULATION OF LIFE-SENTENCED PRISONERS

There are now 5,361 women serving life sentences in the U.S., representing an increase of 14.2% since the most recent review of national data in 2008.<sup>21</sup> Among these, nearly 300 have no opportunity for parole. Women serving life sentences often have particularly tragic histories. Among the females serving LWOP for offenses committed in their teenage years, the vast majority experienced sexual abuse in their childhood.<sup>22</sup>

An example is the story of Sara Kruzan, a sex trafficking victim sentenced to life without parole for a crime committed as a teenager. Ms. Kruzan had been forced into prostitution at the age of 13 by a man 20 years her senior. At 16, after years of rape and abuse by him and others, she snapped and killed her pimp. Despite a recommendation by the California Youth Authority to handle Ms. Kruzan in juvenile court because of her amenability to treatment, the prosecutor and judge agreed she was competent to stand trial in adult court, where life sentences without the possibility of parole are the default sentence for homicide convictions. Ms. Kruzan served nearly 15 years in an adult prison while her legal team worked tirelessly for a review of her sentence and an opportunity for release. After gathering 60,000 signatures for a national petition and mounting a media and public education campaign, California Governor Schwarzenegger commuted her sentence in 2012 and in June 2013, Ms. Kruzan was released.

Far too many women have similar stories as Ms. Kruzan and are still in prison. Among women convicted of intimate partner violence-related homicides, the majority have been battered.<sup>23</sup> This is even more evident among women serving life sentences.<sup>24</sup> Statistics from nationally representative inmate survey data show that 83.8% of life-sentenced women were sexually or physically abused and

that abuse is significantly more common among female lifers than male lifers or female prisoners not serving life sentences.<sup>25</sup>

## JUVENILES SENTENCED TO LIFE IMPRISONMENT

Approximately 2,500 juveniles are serving a sentence of life without the possibility of parole.<sup>26</sup> The United States is the only country in the world that imposes this sentence on youth. Juveniles serving such sentences have recently garnered attention because of two major Supreme Court cases, *Graham v. Florida* and *Miller v. Alabama*.<sup>27</sup> In *Graham*, the Court decided in 2010 that because of their cognitive, behavioral, and emotional differences from adults, youth under 18 at the time of their crime who did not commit a homicide could not be sentenced to the harshest available sentence. In the *Miller* case two years later, the Court again relied on expert knowledge from the field of adolescent brain science to find an 8<sup>th</sup> Amendment violation in sentencing youth to LWOP in a mandatory way that did not allow for consideration of their age and other relevant factors. According to estimates, the *Miller* decision might affect the sentences of 2,000 of these life-sentenced individuals, but cases are pending in as many as ten state supreme courts about whether *Miller* applies retroactively. Despite these two decisions, juveniles can still receive LWOP sentences through discretionary judicial decisionmaking.

**Table G. Population of Men and Women Serving Life and LWOP**

Population	Female	Male
Adult Life	3,491	99,084
Adult LWOP	1,596	44,986
Juvenile Life	211	7,651
JLWOP	63	2,435
Gender Total	5,361	154,156
Pop. Total	159,520	159,520
Total %	3.4%	96.7%

21 Nellis, A. & King, R. 2009. *No Exit: The Expanding Use of Life Sentences in America*. Washington, D.C.: The Sentencing Project.

22 Nellis, A. (2012). *The Lives of Juvenile Lifers: Findings from a National Survey*. Washington, D.C.: The Sentencing Project.

23 Campbell, J. C. (1995). Prediction of Homicide of and by Battered Women. In Jacquelyn C. Campbell (ed.) *Assessing Dangerousness: Violence by Sexual Offenders, Batterers, and Child Abusers*. Thousand Oaks, CA: Sage; O'Keefe, M. (1997). Incarcerated Battered Women: A Comparison of Battered Women Who Killed Their Abusers and Those Incarcerated for Other Reasons. *Journal of Family Violence*, 12(1): 1-19.

24 Dermody-Leonard, E. (2002). Convicted Survivors: The Imprisonment of Battered Women Who Kill. New York: State University of New York Press; Dye, M. H. & Aday, R. H. (2013). 'I just wanted to die': Preprison and Current Suicide Ideation Among Women Serving Life Sentences. *Criminal Justice and Behavior*, 40 (8): 832-849.

25 Leigey, M. E. & Reed, J.K.L. (2010). A Woman's Life before Serving Life: Examining the Negative Pre-Incarceration Life Events of Female Life-Sentenced Inmates. *Women and Criminal Justice*, 20: 302-322.

26 In our 2009 report, *No Exit: The Expanding Use of Life Sentences in America*, we reported that there were 1,755 juveniles serving life without parole. This difference is partly due to a change in our definition of juvenile between the two reports and partly due to more accurate reporting by the states regarding the class of LWOP prisoners who were under the age of 18 at the time of the offense.

27 *Graham v. Florida*. 130 S.Ct. 2011 (2010); *Miller v. Alabama* 567 U.S. \_\_\_ (2012).

In addition to the juveniles serving life sentences without parole, 7,862 people are serving life sentences with the possibility of parole for offenses that occurred before they turned 18. Looking at overall life sentences, we note that in four states, more than 10% of all life-sentenced prisoners were under the age of 18 at the time of their offense: Nevada (12.5%), Wisconsin (11.0%), Maryland (10.5%), and Georgia (10.2%). Nationally, 6.5% of those serving life sentences with parole were under 18 at the time of their crime.

When a life sentence is imposed on a young person, it is precipitated by a mandatory or discretionary transfer of the case to the adult criminal court. Only youth who have been transferred out of the juvenile court system and into the adult criminal justice system are candidates for life

sentences; there is no such sentence in the juvenile justice system. Transferring youth to adult court became more common in the late 1980s and early 1990s with a political response to a rise in youth crime. The near doubling of cases transferred to the adult system from 7,200 in 1985 to 13,200 in 1994 contributed to many more youth being given life sentences. Because of the growing awareness of harm done to youth combined with increased public safety problems when young people are moved to the adult system, many states are beginning to reconsider the transfer mechanism that tries youth in the adult system,<sup>28</sup> but nearly all states and the federal government still maintain some process by which youth can be moved to criminal courts for prosecution and in some cases this transfer is mandatory.

<sup>28</sup> Since 2005, the following states have reversed or restricted their transfer laws: Arizona, Colorado, Connecticut, Delaware, Illinois, Indiana, Mississippi, Nevada, Utah, Virginia, and Washington.

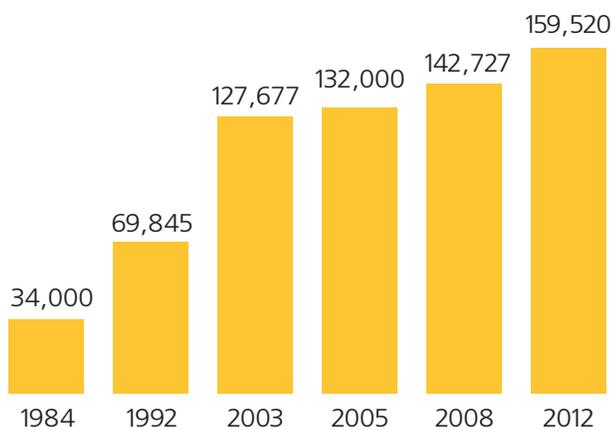
# UNDERSTANDING THE EXPANSION OF LIFE SENTENCES IN AMERICAN PRISONS

Life sentences have increased steadily over the years beginning with the first documented national census of this population in 1984. From 2008 to 2012, the lifer population rose 11.8%, and there are now more than four times as many people serving these sentences as in 1984. The percentage of the prison population comprised of people serving life continues to rise, too; whereas in the

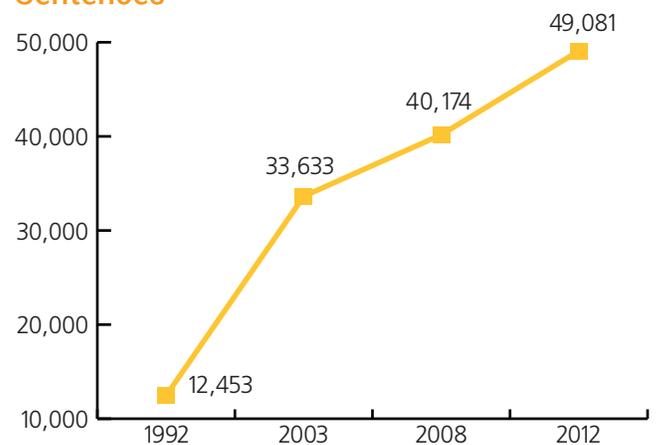
early 1980s roughly 4% of prisoners were serving life sentences, today 10.6% of individuals in prison are lifers.

The rise in parole ineligible life sentences is increasing at a faster pace than for those serving life sentences with the chance for release. Over the past four years, there has been a 22.2% rise in life without parole sentences.

**Figure 3. Expansion of Life Sentences, 1984-2012**



**Figure 4. The Rise in Life without Parole Sentences**



Sources: Figures for 1984 obtained from: American Correctional Association (1984). *Corrections Compendium*. Vol. 3 (9). Figures for 1992 obtained from: Maguire, K., Pastore, A. L., & Flanagan, T. J. (Eds.) (1993). *Sourcebook of Criminal Justice Statistics 1992*. Washington, D.C.: Bureau of Justice Statistics. Figures for 2003 obtained from: Mauer, M., King, R., & Young, M. (2004). *The Meaning of 'Life': Long Prison Sentences in Context*. Washington, D.C.: The Sentencing Project. Figures for 2005 obtained from: Liptak, A. (2005, October 5). *Serving Life with No Chance at Redemption*. The New York Times. Figures for 2008 obtained from Nellis, A., & King, R. S. (2009). *No Exit: The Expanding Use of Life Sentences in America*. Washington, D.C.: The Sentencing Project. Data for 2012 collected from each state's department of corrections by The Sentencing Project.

Sources: Figures for 1992 obtained from: Maguire, K., Pastore, A. L., & Flanagan, T. J. (Eds.) (1993). *Sourcebook of Criminal Justice Statistics 1992*. Washington, D.C.: Bureau of Justice Statistics. Figures for 2003 obtained from: Mauer, M., King, R., & Young, M. (2004). *The Meaning of 'Life': Long Prison Sentences in Context*. Washington, D.C.: The Sentencing Project. Figures for 2005 obtained from: Liptak, A. (2005, October 5). *Serving Life with No Chance at Redemption*. The New York Times. Figures for 2008 obtained from Nellis, A., & King, R. S. (2009). *No Exit: The Expanding Use of Life Sentences in America*. Washington, D.C.: The Sentencing Project. Data for 2012 collected from each state's department of corrections by The Sentencing Project.

The persistent growth in life sentences even during a period of declining rates of crime is likely to reflect two trends. First, more people are being admitted to prison with life and LWOP sentences. Second, those with parole-eligible life sentences are increasingly less likely to be released or, if they are, their release comes much later than similarly situated individuals in earlier decades. Early research by The Sentencing Project found that lifers admitted to prison in 1991 could expect to serve an average of 21.2 years, but that lifers admitted in 1997 served an average of 29 years, reflecting a 37% increase in time served.<sup>29</sup> Thus, in contrast to the public misperception that lifers serve short prison terms, the average life sentence today results in nearly three decades of incarceration.

More recently, research from Stanford University on California prisoners found that lifers have an 18% chance of being approved for release by the Board of Parole Hearings and that this approval rate has never risen above 20% in the past 30 years. Moreover, the length of time candidates must wait to go before going in front of the parole board has increased in recent years.<sup>30</sup>

The reluctance to use the parole or clemency mechanisms is partly explained by the politicization of this procedure for release. In recent decades many candidates for political office and elected officials were eager to demonstrate how tough on crime they could be and often used their authority to grant or deny parole as an illustrative tool. For example, in 1995, Maryland Governor Parris Glendening instructed his Parole Commission to “not even recommend—to not even send to my desk—a request for murders and rapists” unless they are suffering from a terminal illness or are “very old.” It is important to note that the former Governor has since rescinded his view, acknowledging the influence of political gains on his previous practice. He recently stated publicly that he no longer supports policies that fail to allow parole consideration for eligible lifers.<sup>31</sup>

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Those with parole-eligible life sentences are increasingly less likely to be released or, if they are, their release comes much later than similarly situated individuals in earlier decades.

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However, since he is no longer in office, his influence on parole policies and practices is now minimal.

In a political environment characterized by a “tough on crime” ideology, confidence in the criminal justice system was challenged when high profile cases of paroled offenders committed a new offense, raising concerns about judicial or correctional leniency. Part of the problem is a public misconception that life sentences require whole-life imprisonment and that when a lifer is paroled, somehow the system has failed. The reality, however, is that most lifers have the opportunity for parole as part of their original sentence.

Misperceptions are bolstered by statements from policymakers such as “life means life.” Former California Governor Gray Davis famously announced that individuals convicted of homicide would only leave prison “in a pine box” and that, “[i]f you take someone else’s life, forget it. I see no reason to parole people who have committed an act of murder.” And he upheld this promise: only eight lifers in California were released during his 1999-2003 term.

When the public struggles to believe that lengthy sentences would be carried out in their entirety, lifelong sentencing structures are preferred despite evidence that lengthy prison sentences produce diminishing returns for public safety.<sup>32</sup> Consider as well the public outrage that ensued following outgoing Mississippi Governor Barbour’s release of 198 prisoners in early 2012, four of whom had been convicted of murder. Three of the murders occurred nearly 20 years previously and the fourth occurred more than a decade ago. While the state Supreme Court upheld Barbour’s decision, it was not without political backlash: incoming Governor Phil Bryant abruptly ended the decades-old practice of allowing prison “trusties” to work in the governor’s mansion. In addition, attempts were quickly made to limit the governor’s pardoning power through legislation or a change to the Constitution.

29 Mauer, M., King, R., & Young M. (2004). *The Meaning of 'Life': Long Prison Sentences in Context.* Washington, DC: The Sentencing Project.

30 Weisberg, R. Mukamal, D., & Segall, J.D. (2011). *Life in Limbo: An Examination of Parole Releases for Prisoners Serving Life Sentences with the Possibility of Parole in California.* Stanford University: Stanford Criminal Justice Center.

31 Rodricks, D. (2011, February 20). Glendening: ‘Life means Life’ Absolutism Was Wrong. *Baltimore Sun.*

32 Clear, T. (2007). The Impact of Incarceration on Public Safety. *Social Research, 74*(2), 613-630; Durlauf, S. N., & Nagin, D. S. (2011). Imprisonment and Crime: Can Both Be Reduced? *Criminology and Public Policy, 10*(1): 13-54.

## EXPANDING LIFE SENTENCES DESPITE DECLINES IN PRISON POPULATIONS

Life sentences have proliferated even as crime rates have generally declined and as some states are reducing their overall prison populations. Analysis of prison data compared to lifer data in New York, New Jersey, and Michigan, illustrate this trend. Multi-year trends in life sentences for all states are provided in Appendix B.

In New York, the prison population dropped 19.6% between 2000 and 2010, from 70,199 to 56,461. During this same period, however, the number of parole ineligible lifers rose 249% from 61 in 2000 to 213 in 2010. The same is true in New Jersey: despite a 16% decline in the prison population from 29,784 in 2000 to 25,007 in 2010, the state increased its total lifer population, driven principally by the 232% rise in LWOP sentences over the same period. In 2000, there were 19 people serving LWOP but by 2010, that figure had increased to 63.

Michigan also stands out as particularly aggressive in populating its prisons with lifers despite a significant drop in its overall prison population. Between 2000 and 2010, Michigan's overall prison population decreased by 7.6% from 47,718 to 44,113, including a modest decline in the population of those serving life with parole. Over this same period, there was an increase of 965 persons serving life sentences without parole.

## THE IMPACT OF "THREE- STRIKES" LAWS

In certain states the adoption of "three strikes and you're out" laws has significantly expanded the number of individuals sentenced to life. California maintains a quarter (25.2%) of the nation's life-sentenced population. Twenty-two percent (8,914 of the 40,362 lifers) are serving life sentences because of the state's notoriously tough Three-Strikes law.<sup>34</sup> This law, enacted in 1994, mandated a life sentence with the possibility of parole upon a third conviction but unlike other states, the third offense could be any felony, not necessarily a serious or violent one.

The extent to which parole denials can lead to excessive incarceration can be seen in the case of Frank Soffen, a 74-year-old lifer who has been incarcerated for more than half his life. Mr. Soffen was convicted of second degree murder and sentenced to a Massachusetts prison for a double homicide in 1972. Massachusetts does not have a medical release program for elderly or chronically ill prisoners, so his release depends entirely on a favorable review by the parole board and approval of the Governor. He has been eligible for parole since 1987 but despite an exemplary prison record that includes saving a correctional officer's life during an attempted stabbing by another inmate, has been repeatedly denied release. Today, Mr. Soffen is confined to a wheelchair and has suffered numerous medical problems including liver disease, kidney disease, and four heart attacks while incarcerated.

The second factor driving the rise in the lifer population is that more people are entering prison with life sentences without a chance for parole. For example, in 1994 Georgia passed a "two-strike" law which requires that upon conviction of a first strike, individuals convicted of kidnapping, armed robbery, rape, aggravated sodomy, aggravated sexual battery, and aggravated child molestation be sentenced to at least 10 years without parole. A second strike results in life without parole. The mandatory sentence for all homicide convictions is LWOP. Within the first few years, 57 people had been sentenced to LWOP under the new law. By mid-2012, 737 Georgia prisoners were serving LWOP, a 270% increase over its population of 199 LWOP prisoners in August 2000. And, despite the intended purpose of its law, LWOP sentences have not been reserved for the worst of the worst: only a slight majority (56.5%) of life-sentenced Georgia inmates with no chance for parole have been convicted of a homicide.

In 2006, Kansas enacted a habitual sex offender law that required LWOP upon a third conviction for a sex-related offense. Between 2006 and 2012, the number of LWOP prisoners jumped from six to 21, with seven of these prisoners having been sentenced under the new law.<sup>33</sup>

<sup>33</sup> KSA Chapter 21, Article 66, 21-6626.

<sup>34</sup> California Department of Correction and Rehabilitation (2013). Second and Third Striker Felons in the Adult Institution Population. Sacramento: CDCR.

While the law was passed with the promise that it would take persons convicted of serious and violent offenses off the streets, in reality fewer than half of the individuals sentenced under the law had been convicted of a violent offense as their third strike. Fifty-five percent were convicted of a nonviolent offense, including 16% for a drug offense and 30% for a property crime.<sup>35</sup> Passage of Proposition 36 in 2012 changed the law by narrowing the scope of eligible offenses.<sup>36</sup> Because reform to the law applies retroactively, as many as 3,000 prisoners serving life sentences qualify to be resentenced.

California is also undergoing changes to its overall prison population as a result of the 2011 *Brown v. Plata* Supreme Court ruling. This decision effectively ordered a massive reduction in the state's prison population in order to bring the state into compliance with the 8<sup>th</sup> Amendment ban on cruel and unusual punishment.<sup>37</sup> As a result, the drop in the overall prison population as part of the Public Safety Realignment makes the proportion of life-sentenced inmates more pronounced.

Although the three-strikes structure in California receives attention for its severity, the state is not alone in adopting habitual offender laws that result in life or LWOP upon a second or third conviction. Life without parole is a mandatory sentence upon conviction under three strikes laws in 13 states and the federal government.<sup>38</sup> In some states, the impact of these laws on the life-sentenced population is profound. In Washington, for instance, two-thirds of the people serving parole-ineligible life sentences have been sentenced under the state's three strikes law which went into effect in 1994.

**Table H. Impact of Three Strikes Law on LWOP in Washington**

Year	LWOP Population	% LWOP Prisoners Sentenced Under Three-Strikes
1999	358	6.7%
2000	412	18.2%
2001	429	24.9%
2002	448	33.9%
2003	470	38.7%
2004	500	42.8%
2005	510	47.1%
2006	537	50.8%
2007	554	54.5%
2008	557	58.7%
2009	559	64.4%
2010	554	69.7%
2011	665	61.4%
2012	637	68.1%

Sources: Washington Department of Corrections; Washington Sentencing Guidelines Commission (2012). Third Strike Offenses Triggering Mandatory LWOP in Washington 1999-2012. *Statistical Survey of Adult Felony Sentencing*. Washington Sentencing Commission. Available online: [www.cfc.wa.gov/Publications.html](http://www.cfc.wa.gov/Publications.html).

## THE U.S. AS AN INTERNATIONAL OUTLIER

A look at sentencing policies internationally shows that America is far out of step with other countries in terms of sentencing individuals to life in prison without the possibility of parole. Whole-life sentences are exceedingly rare in other countries. In the United Kingdom, for example, only 49 persons are serving such sentences compared to more than 49,000 in the U.S. Despite these modest numbers, life without parole sentences were recently ruled unconstitutional in the United Kingdom in a decision by the European Court of Human Rights. In the case of *Vinter and Others v. The United Kingdom*, three prisoners' life sentences were reviewed for possible

35 Nellis, A. & King, R. (2009). *No Exit: The Expanding Use of Life Sentences in America*. Washington, DC: The Sentencing Project.  
 36 Text of California's Proposition 36 can be reviewed here: <http://vig.cdn.sos.ca.gov/2012/general/pdf/text-proposed-laws-v2.pdf#nameddest=prop36>.  
 37 *Brown v. Plata* (563 US \_\_ (2011)).  
 38 Ogletree, C., & Sarat, A. (2012). Introduction: Lives on the Line: From Capital Punishment to Life without Parole. In C. Ogletree & A. Sarat (Eds.), *Life without Parole: America's New Death Penalty?* (pp. 1-24). New York: New York University Press.

international human rights violations (i.e., Article 3 in the European Convention on Human Rights). It was determined by a vote of 16-1 that whole-life imprisonment without the possibility of parole review was indeed a violation and as a result, the 49 people in the UK serving life will be resentenced.

Though parole-eligible life sentences exist in other countries, these typically result in release after a reasonable term of years, unlike those in the United States. Numerous international and comparative law materials demonstrate consistent support for life sentences that allow parole review after 25 years.<sup>39</sup>

## THE FALSE PROMISE OF PUBLIC SAFETY

Support for life and LWOP sentences is in part premised on the assumption that the recipients of these sentences will reoffend if released. Recidivism among life-sentenced prisoners who are granted parole is low, however, calling into question the accuracy of public safety arguments in support of lengthy terms of imprisonment. A 2004 analysis by The Sentencing Project found that individuals released from life sentences were less than one-third as likely to be rearrested within three years as all released persons.<sup>40</sup> More recently, a 2011 California-based study tracked 860 people convicted of homicide and sentenced to life, all of whom were paroled beginning in 1995. Longitudinal analysis of their outcomes finds that in the years since their release, only five individuals (less than 1%) have been returned to prison or jail because of new felonies.<sup>41</sup>

To measure the potential for public safety implications of life-sentences, it is valuable to examine the behavior of life-sentenced prisoners who are still incarcerated; the behavior of people in prison is likely to be predictive of their behavior on release. Research literature is replete with support for the perspective that persons serving life sentences are some of the easiest prisoners to manage because of their compliance with

prison rules and their interest in mentoring newer prisoners in positive ways.

For lifers, prison becomes their social universe for the long-term and maintaining order is a priority. Lifers are frequently lauded by correctional workers and called upon to be models for younger inmates.<sup>42</sup> Despite their ability to cope with prison life, the consequences of long-term imprisonment are still apparent. Those sentenced to lengthy terms of incarceration are more likely to become institutionalized, lose pro-social contacts in the community, and become removed from legitimate opportunities for success upon release.<sup>43</sup>

## A NEW ERA OF SENTENCING REFORM

Many of the current sentencing and corrections policy reforms aim to correct overly harsh sentences for those convicted of nonviolent offenses. Amid mounting concerns about mass incarceration, in part rooted in fiscal concerns, states have begun to depopulate their prisons and reform sentencing laws that have driven the expansion of the prison population since the mid-1970s. In August 2013, Attorney General Holder delivered a substantial speech that has reinvigorated discussions on mass incarceration and created the potential to ease the overcrowded federal prison system.

National leadership of this sort can provide momentum for state reforms that ease harsh sentences for offenders who are better served in treatment or community-based alternative settings, or for shorter terms of incarceration. The Attorney General's speech represents a pivotal and long-awaited opportunity for criminal justice reforms across a wide spectrum of penalties.

Recent developments hold promise for a new criminal justice era that relies less on incarceration and more so on alternatives that promote public safety, reform offenders, heal victims, and stay within the boundaries of limited budgets. Addressing the overincarceration of drug

39 *Vinter and Others v. The United Kingdom* – 66069/09 [2012] European Court of Human Rights 61 (17 January 2012).

40 Mauer, M., King, R.S., & Young, M. (2004). *The Meaning of 'Life': Long Prison Sentences in Context*. Washington, DC: The Sentencing Project.

41 Weisberg, R. Mukamal, D., & Segall, J.D. (2011). *Life in Limbo: An Examination of Parole Releases for Prisoners Serving Life Sentences with the Possibility of Parole in California*. Stanford University: Stanford Criminal Justice Center.

42 Johnson, R., & Dobranska, A. (2005). Mature Coping among Life Sentenced Inmates: An Exploratory Study of Adjusted Dynamics. *Corrections Compendium*: 8-28.

43 Orsagh, T & Chen, J.R., (1988). The Effect of Time Served on Recidivism: An Interdisciplinary Theory. *Journal of Quantitative Criminology*,4(2):155-171.

offenders alone is a significant undertaking. The number of people in state prisons for a drug offense rose more than 550% in the past twenty years<sup>44</sup> and half the people in federal prison are serving time for a drug offense.

Policies and practices around life sentences in America, though, remain largely unchallenged despite a sustained period of low crime. The violent crime rate is now close to half of what it was 20 years ago.<sup>45</sup> One plausible explanation for the mismatch between falling crime and rising life sentences is that these sentences are excluded from serious consideration in sentencing reform discussions. Most of the dialogue regarding sentencing reform centers on nonviolent offenses.

Yet, it is not necessary to limit reforms to those convicted of nonviolent or minor offenses. In order to truly address our nation's prison problem, policymakers should also substantially revise policies affecting those serving long sentences, including life sentences with and without parole. There are important legal, moral, and fiscal/public safety reasons to do so. To date, the broad and increasing use of life sentences is rarely a part of crime policy discussions.

There are several key reasons to rethink our crime policies for life sentences. In many ways, Americans support the belief in second chances, but there is a reluctance to apply this perspective to those who commit crime,

especially serious crime. However, many prisoners go on to demonstrate true personal reform, remorse, and ability to contribute positively to society if given the chance.

There is also the high financial cost of incarcerating people for the rest of their lives, particularly given the low recidivism of life-sentenced prisoners. While there are cases where release of long-term prisoners is not realistic or prudent, a reliable mechanism should always be in place to review personal change and consider evidence of remorse, as well as to assess the cost of continued confinement, including paying mounting medical and housing costs for those who no longer pose a threat to public safety.

**In order to truly address on our nation's prison problem, policymakers should also substantially revise policies affecting those serving long sentences, including life sentences with and without parole.**

The Supreme Court's recent conclusions about the constitutionality of life sentences

for youth are important. Many of the arguments presented to support parole review for this category of lifer could be applied to adult offenders as well. That is, adolescence is not the only period in which transformation and reform are possible and a meaningful opportunity for release does not have to be limited to those who commit crime in their youth. The capacity for change is inherent in most people given time and engagement in rehabilitative programming. In a system where all prisoners receive parole review, denial of parole is still an option for those who fail to show they have earned it, but the possibility of reducing unnecessary incarceration can emerge.

44 Travis, J. (2012). *Summoning the Superheroes: Harnessing Science and Passion to Create a More Effective and Humane Response to Crime: Twenty-Fifth Anniversary Keynote Address*. Washington, DC: The Sentencing Project.

45 Federal Bureau of Investigation (2013). *Crime in the United States: 2011*. Table 1: Crime in the United States by Volume and Rate Per 100,000 Inhabitants, 1992-2011. Washington, DC: FBI. The violent crime rate in 1992 was 757.7 per 100,000 and was 386.3 per 100,000 in 2011.

# RECOMMENDATIONS FOR REFORM

## ELIMINATE SENTENCES OF LIFE WITHOUT PAROLE

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

Such a change would not necessarily mean that all parole eligible persons would be released; individualized calculations of public safety risk would determine this. However, each person in prison should have a meaningful opportunity for release that serves as a goal to work toward. The decision for release could be made by a professional parole board or the original sentencing judge and would take into account the individual's prospects for a successful transition to the community.

## INCREASE THE USE OF EXECUTIVE CLEMENCY

One might think that clemency is an option for relief from an LWOP sentence, but governors nationwide have denied virtually all clemency requests over the past three decades.<sup>46</sup> Petitioners must depend on a shift in the political

landscape in order to hope for relief through clemency. One's readiness for release should be a decision that is determined by a panel equipped to review the prisoner's original sentence and his or her rehabilitation since then, rather than being subject to the political atmosphere.

Some states have eased the ways in which inmates can be released from long sentences. And, in June 2009, a federal judge in Pennsylvania reaffirmed a lower-court ruling that eases the clemency request process for Pennsylvania inmates serving life sentences which began before 1997. Before this time, pardon recommendations required a simple majority vote by the state Pardons Board before being passed to the governor for review, but the law changed in late 1997 to require a unanimous vote instead. The present ruling allows inmates sentenced before 1997, perhaps as many as 3,000, to apply for a pardon under these earlier rules.

Pennsylvania is not alone in modifying its clemency application procedures; other states have made changes too. Unfortunately, these early release valves are rarely used. In Wisconsin, for instance, the Governor expanded a policy in 2009 that permits LWOP inmates to petition for release on the basis of age and infirmity but so far there have not been any inmates released under this policy. Virginia and several other states have a mechanism in place for geriatric release, but this, too, is rarely utilized.

46 Gill, M. M. (2010). Clemency for Lifers: The Only Road Out Is the Road Not Taken. *Federal Sentencing Reporter*, 23(1), 21-26.

## **PREPARE PERSONS SENTENCED TO LIFE FOR RELEASE FROM PRISON**

The emergence of reentry as a criminal justice policy issue in the last decade has largely ignored persons serving a life sentence. Typically, reentry programs are provided to persons within six months of their release date and offer transition services in the community upon release. However, for persons serving a life sentence, their release date is not fixed and they are often overlooked as policymakers and correctional administrators consider reentry strategies. Additionally, persons serving a life sentence have unique reentry needs based upon the long duration of their prison term. The failure to design reentry strategies for persons serving a life sentence neglects one in nine persons in prison by denying them the opportunity to participate in valuable programming.

Reentry and reintegration principles must be extended to persons serving a life sentence. Correctional programs can contribute to a successful release and persons serving life should be encouraged to access the types of services that will help them transform their lives and improve their presentation before the parole board. One model is the *Life-Line* program, first enacted in Canada and now in its

early stages in Colorado. In *Life-Line*, persons who have successfully reintegrated into society after serving a life sentence serve as mentors to those about to be released. So-called “in-reach workers” prepare individuals while they are still in prison for the challenges they will face and also assist those who have been released to the community.

## **RESTORE THE ROLE OF PAROLE**

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

# APPENDIX A.

## SURVEY INSTRUMENT USED TO COLLECT DATA FROM DEPARTMENTS OF CORRECTIONS

Thank you for completing the following information about your state's population of life-sentenced and LWOP sentenced inmates. If you have any questions, please be in touch with Ashley Nellis at [anellis@sentencingproject.org](mailto:anellis@sentencingproject.org) or 202-628-0871. Your completed form can be emailed, faxed or mailed to our office at the address listed at the bottom of this form.

Current State Prison Population = \_\_\_\_\_.

### SECTION 1: PERSONS SERVING LIFE WITH THE POSSIBILITY OF PAROLE

#### A. Number of Persons 18 or Older on Date of Offense

1. Total Number = \_\_\_\_\_.
- a. **Gender**
  - i. Male \_\_\_\_\_.
  - ii. Female \_\_\_\_\_.
- b. **Race**
  - i. White \_\_\_\_\_.
  - ii. African American \_\_\_\_\_.
  - iii. Other \_\_\_\_\_.
- c. **Ethnicity**
  - i. Hispanic/Latino \_\_\_\_\_.
- d. **Crime of Commitment**
  - i. 1<sup>st</sup> Deg. Murder = \_\_\_\_\_.
  - ii. 2<sup>nd</sup> Deg. Murder = \_\_\_\_\_.
  - iii. Other Death (not 1<sup>st</sup> or 2<sup>nd</sup> Deg. Murder) = \_\_\_\_\_.
  - iv. Sexual Assault/Rape = \_\_\_\_\_.
  - v. Agg. Assault/Robbery/  
Kidnapping = \_\_\_\_\_.
  - vi. Drug Offense = \_\_\_\_\_.
  - vii. Property Offense = \_\_\_\_\_.
  - viii. Other = \_\_\_\_\_.

#### B. Number of Persons Under 18 on Date of Offense

1. Total Number = \_\_\_\_\_.
- a. **Gender**
  - i. Male \_\_\_\_\_.
  - ii. Female \_\_\_\_\_.
- b. **Race**
  - i. White \_\_\_\_\_.
  - ii. African American \_\_\_\_\_.
  - iii. Other \_\_\_\_\_.
- c. **Ethnicity**
  - i. Hispanic/Latino \_\_\_\_\_.
- d. **Crime of Commitment**
  - i. 1<sup>st</sup> Deg. Murder = \_\_\_\_\_.
  - ii. 2<sup>nd</sup> Deg. Murder = \_\_\_\_\_.
  - iii. Other Death (not 1<sup>st</sup> or 2<sup>nd</sup> Deg. Murder) = \_\_\_\_\_.
  - iv. Sexual Assault/Rape = \_\_\_\_\_.
  - v. Agg. Assault/Robbery/  
Kidnapping = \_\_\_\_\_.
  - vi. Drug Offense = \_\_\_\_\_.
  - vii. Property Offense = \_\_\_\_\_.
  - viii. Other = \_\_\_\_\_.

SECTION 2: PERSONS SERVING LIFE **WITHOUT** THE POSSIBILITY OF PAROLE.

A. Number of Persons **18 or Older** on Date of Offense

1. Total Number = \_\_\_\_\_.
- a. **Gender**
  - i. Male \_\_\_\_\_.
  - ii. Female \_\_\_\_\_.
- b. **Race**
  - i. White \_\_\_\_\_.
  - ii. African American \_\_\_\_\_.
  - iii. Other \_\_\_\_\_.
- c. **Ethnicity**
  - i. Hispanic/Latino \_\_\_\_\_.
- d. **Crime of Commitment**
  - i. 1<sup>st</sup> Deg. Murder = \_\_\_\_\_.
  - ii. 2<sup>nd</sup> Deg. Murder = \_\_\_\_\_.
  - iii. Other Death (not 1<sup>st</sup> or 2<sup>nd</sup> Deg. Murder) = \_\_\_\_\_.
  - iv. Sexual Assault/Rape = \_\_\_\_\_.
  - v. Agg. Assault/Robbery/  
Kidnapping = \_\_\_\_\_.
  - vi. Drug Offense = \_\_\_\_\_.
  - vii. Property Offense = \_\_\_\_\_.
  - viii. Other = \_\_\_\_\_.

B. Number of Persons **Under 18** on Date of Offense

1. Total Number = \_\_\_\_\_.
- a. **Gender**
  - i. Male \_\_\_\_\_.
  - ii. Female \_\_\_\_\_.
- b. **Race**
  - i. White \_\_\_\_\_.
  - ii. African American \_\_\_\_\_.
  - iii. Other \_\_\_\_\_.
- c. **Ethnicity**
  - i. Hispanic/Latino \_\_\_\_\_.
- d. **Crime of Commitment**
  - i. 1<sup>st</sup> Deg. Murder = \_\_\_\_\_.
  - ii. 2<sup>nd</sup> Deg. Murder = \_\_\_\_\_.
  - iii. Other Death (not 1<sup>st</sup> or 2<sup>nd</sup> Deg. Murder) = \_\_\_\_\_.
  - iv. Sexual Assault/Rape = \_\_\_\_\_.
  - v. Agg. Assault/Robbery/  
Kidnapping = \_\_\_\_\_.
  - vi. Drug Offense = \_\_\_\_\_.
  - vii. Property Offense = \_\_\_\_\_.
  - viii. Other = \_\_\_\_\_.

SECTION 3: NUMBER OF PEOPLE WITH LIFE SENTENCES, PER YEAR, 1980-2012

For each year beginning in 1980, please provide the number of individuals who were in your state’s Department of Corrections serving a life sentence *with* parole as well as the number of people who were serving an LWOP sentence.

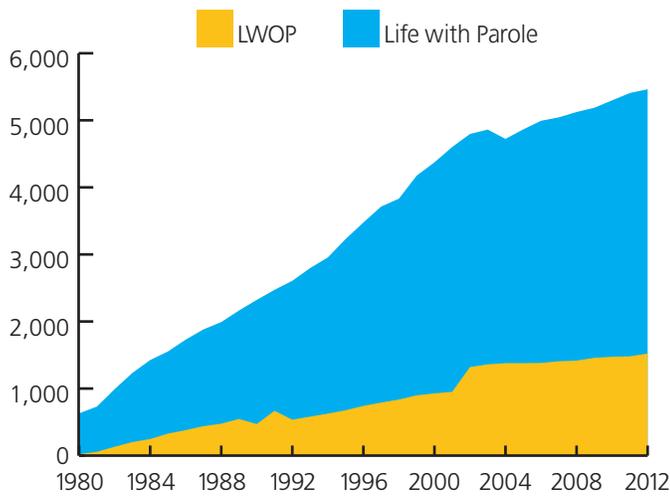
Year	Number of Persons Serving a Life Sentence <b>with</b> parole	Number of Persons Serving an LWOP Sentence
1980		
1981		
1982		
1983		
1984		
1985		
1986		
1987		
1988		
1989		
1990		
1991		
1992		
1993		
1994		
1995		
1996		
1997		
1998		
1999		
2000		
2001		
2002		
2003		
2004		
2005		
2006		
2007		
2008		
2009		
2010		
2011		
2012		



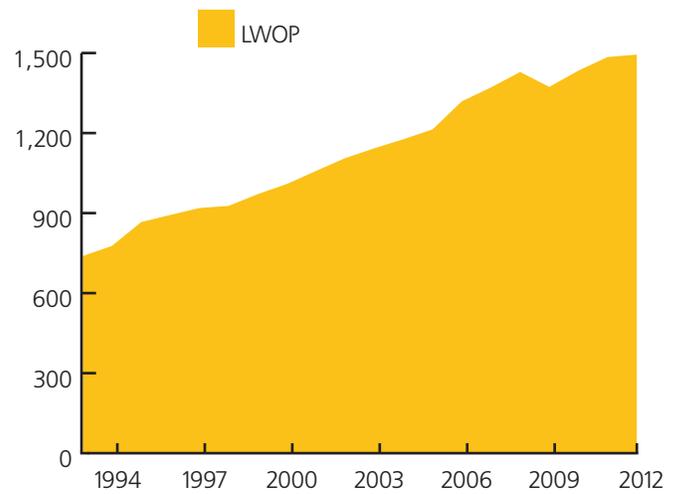
# APPENDIX B.

## STATE TRENDS IN THE USE OF LIFE SENTENCES

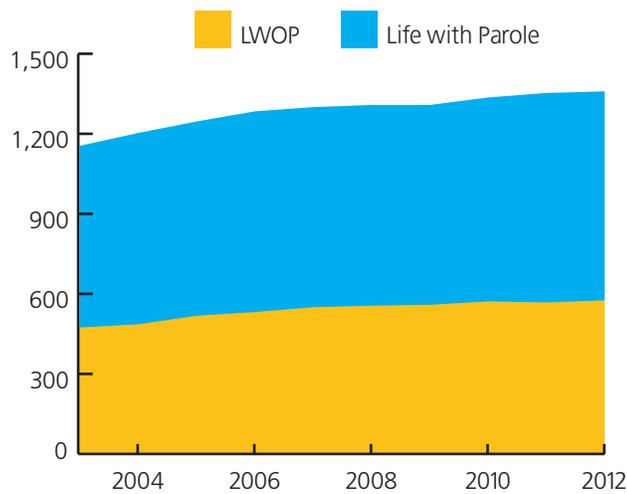
### Alabama



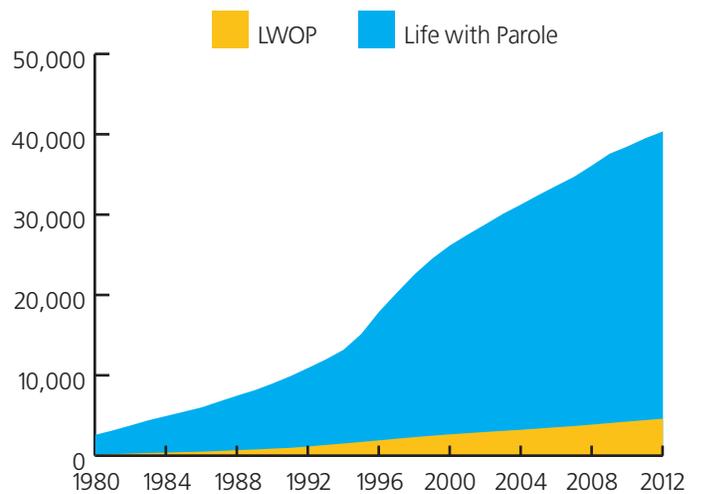
### Arizona



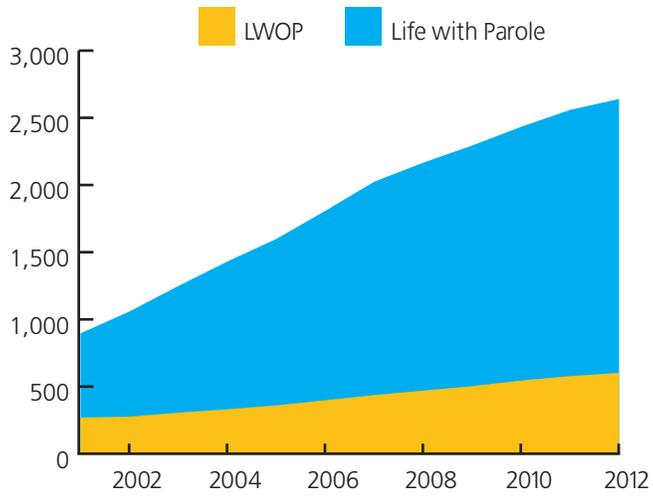
### Arkansas



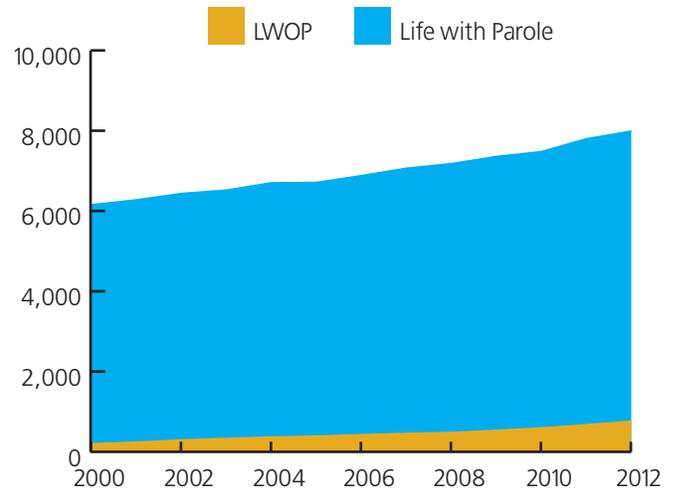
### California



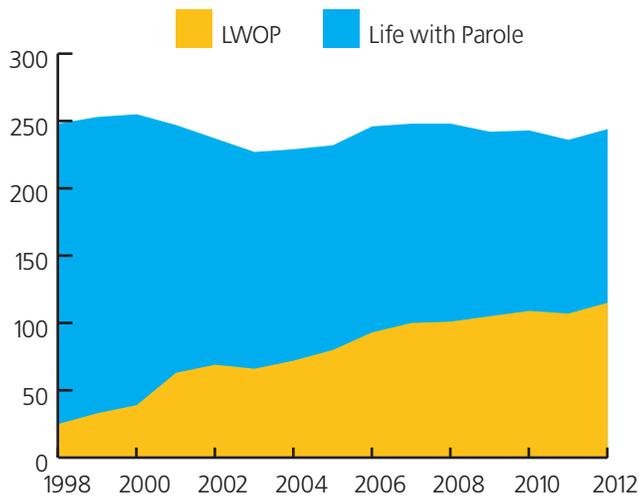
### Colorado



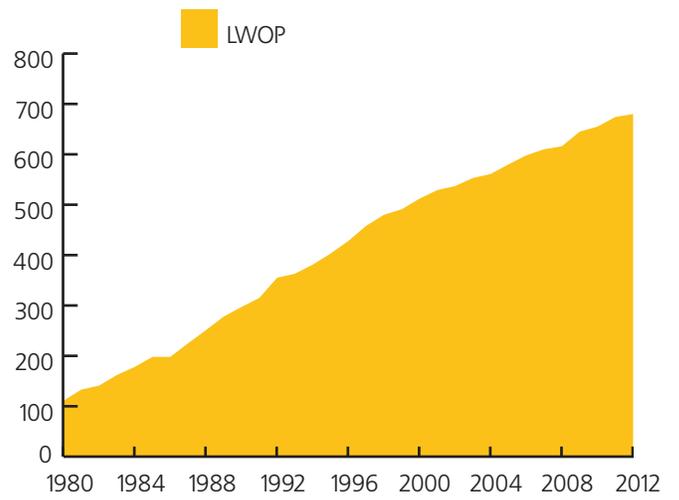
### Georgia



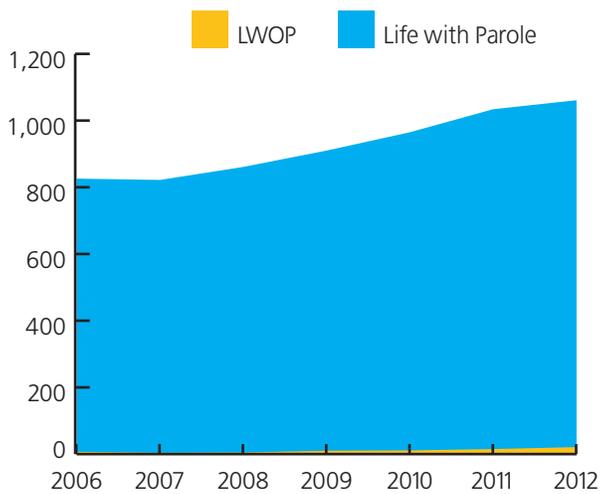
### Indiana



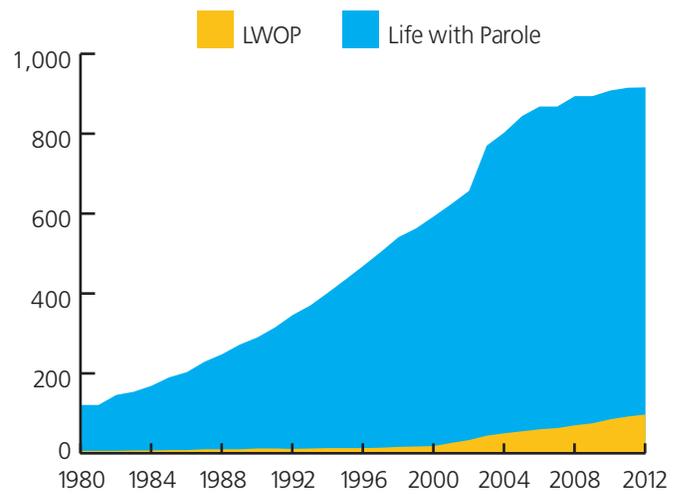
### Iowa



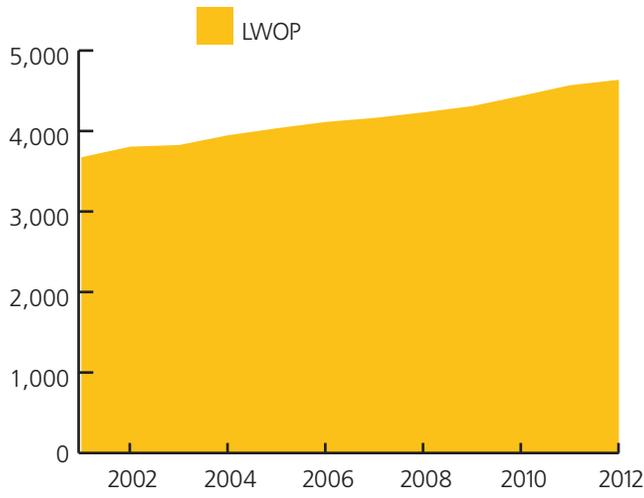
### Kansas



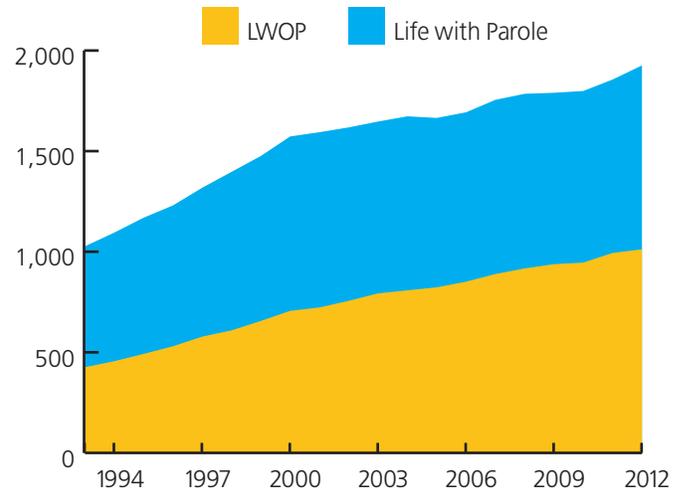
### Kentucky



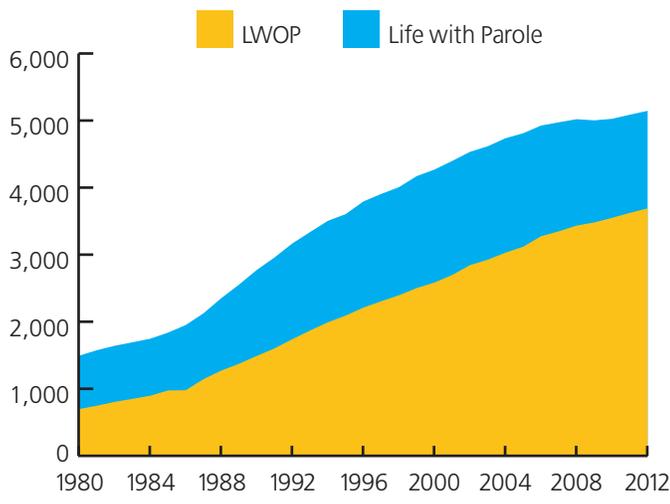
### Louisiana



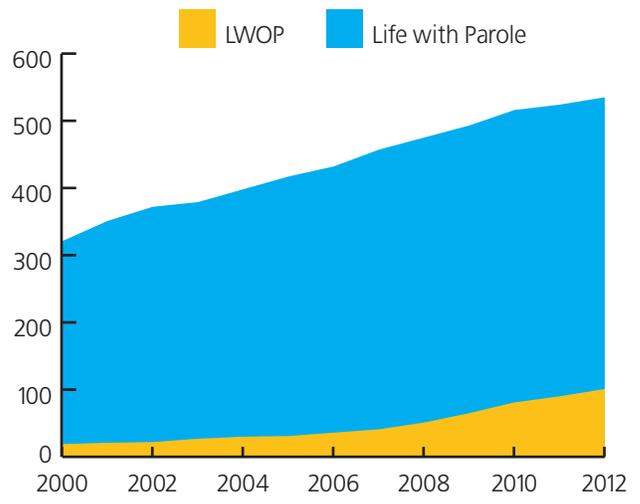
### Massachusetts



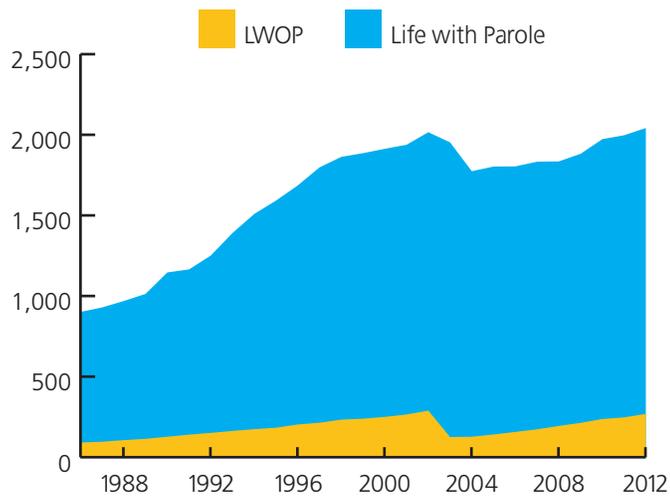
### Michigan



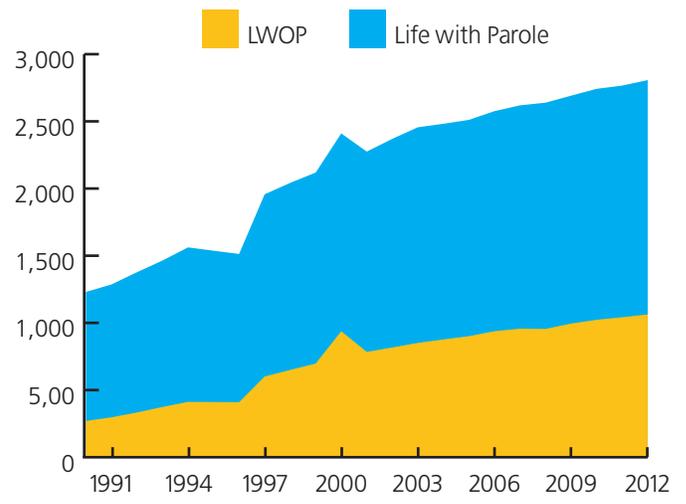
### Minnesota



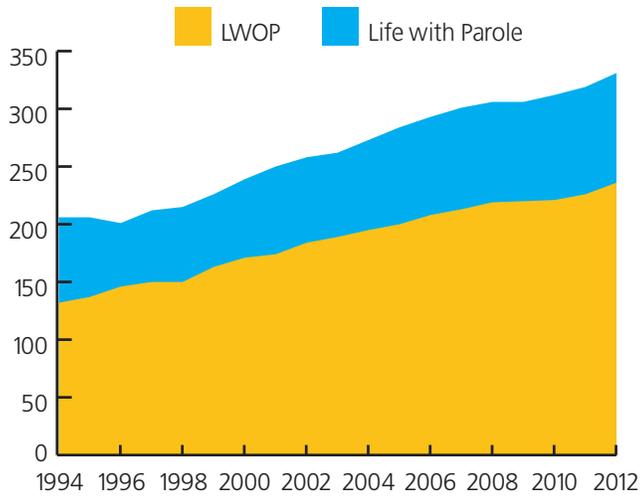
### Mississippi



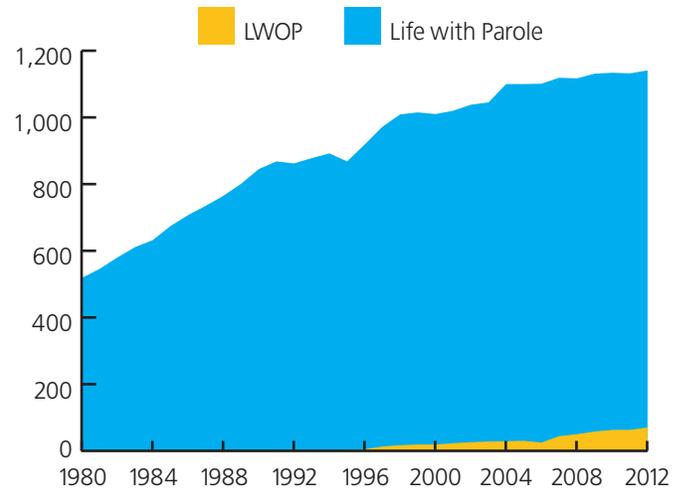
### Missouri



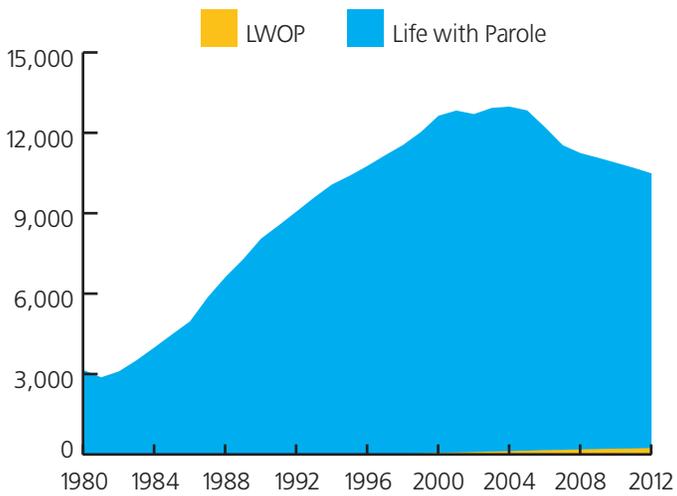
## Nebraska



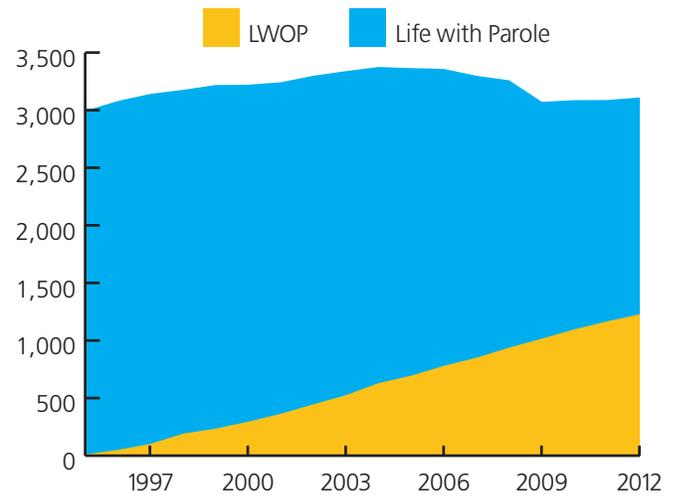
## New Jersey



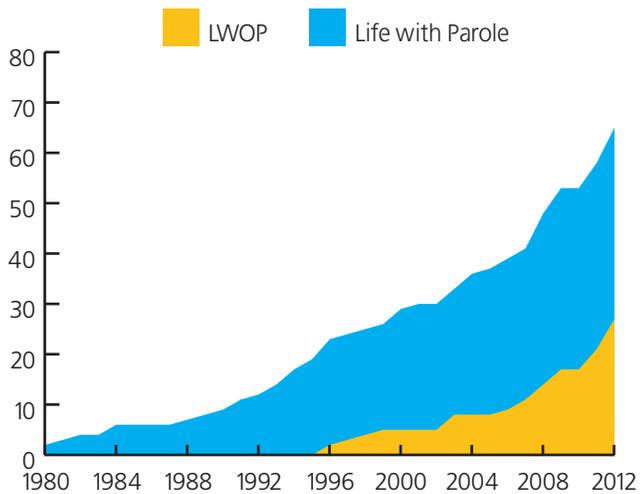
## New York



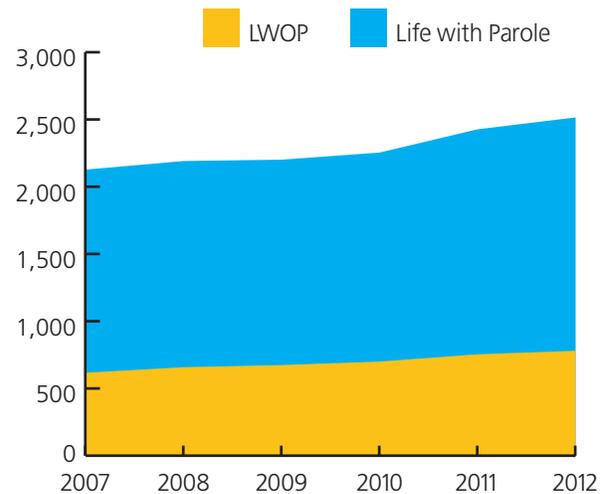
## North Carolina



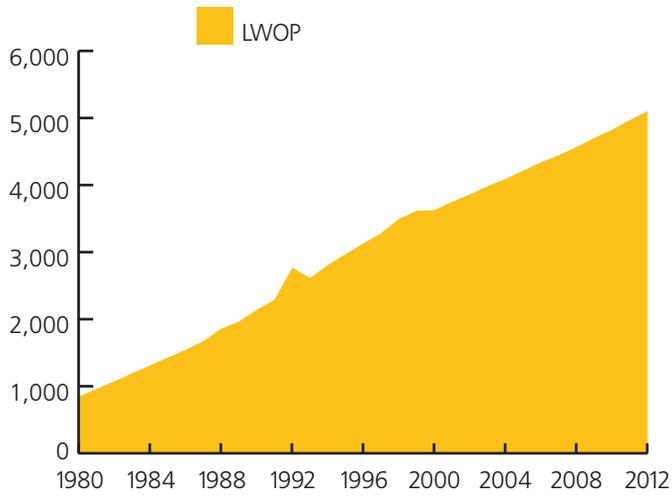
## North Dakota



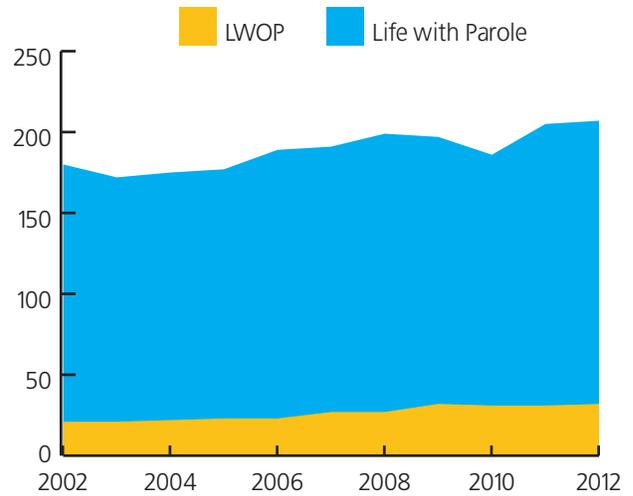
## Oklahoma



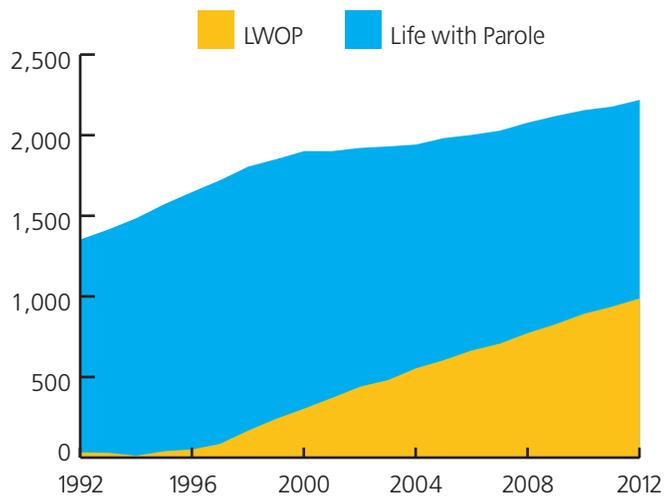
## Pennsylvania



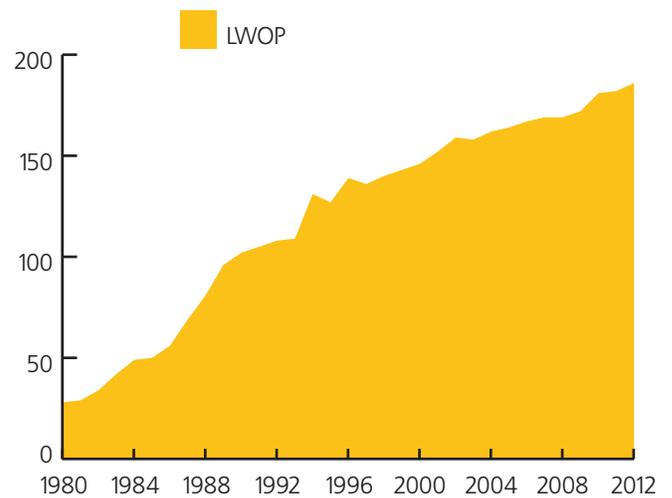
## Rhode Island



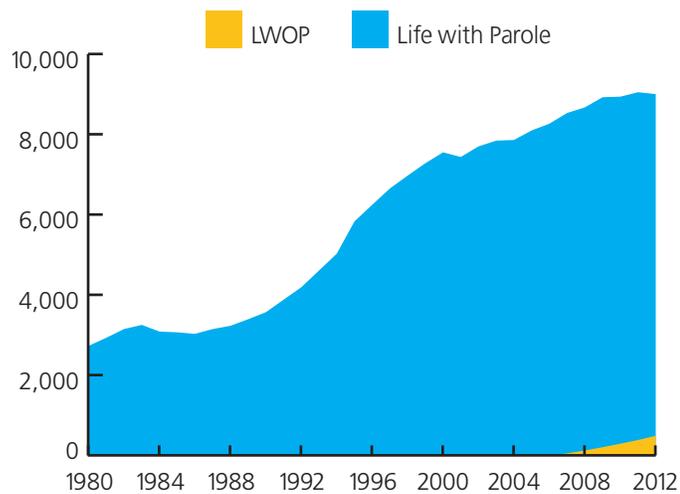
## South Carolina



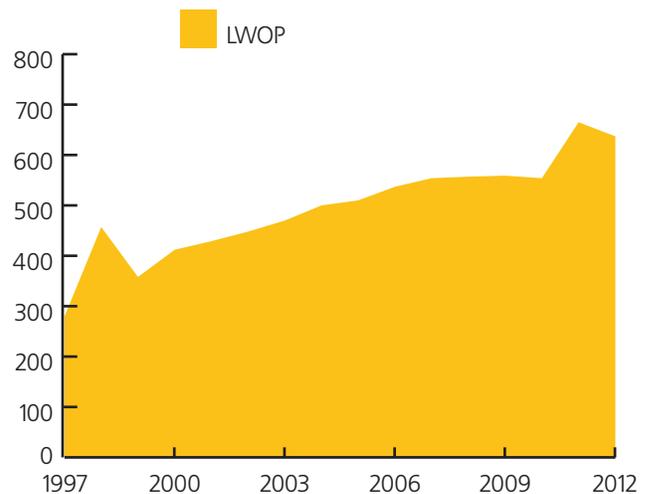
## South Dakota



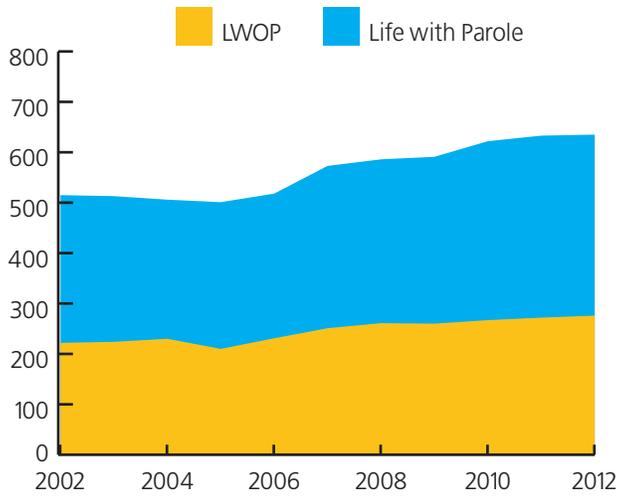
## Texas



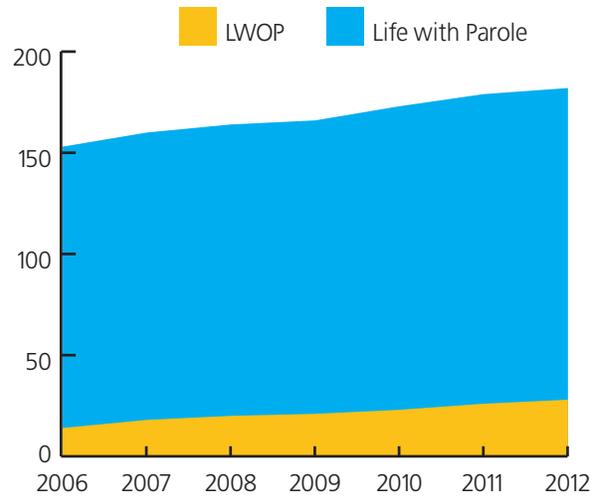
## Washington



## West Virginia



## Wyoming



Trend data were not available from Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois, Maine, Maryland, Montana, Nevada, New Mexico, Ohio, Oregon, Tennessee, Utah, Vermont, Virginia, Wisconsin, or the Federal Bureau of Prisons.



# Life Goes On: The Historic Rise in Life Sentences in America

**Ashley Nellis, Ph.D.**

September 2013



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The Sentencing Project works for a fair and effective U.S. justice system by promoting reforms in sentencing policy, addressing unjust racial disparities and practices, and advocating for alternatives to incarceration.