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# FALSE HOPE

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HOW PAROLE SYSTEMS FAIL YOUTH  
SERVING EXTREME SENTENCES

November 2016



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## HOW PAROLE SYSTEMS FAIL YOUTH SERVING EXTREME SENTENCES

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American Civil Liberties Union  
125 Broad Street  
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[www.aclu.org](http://www.aclu.org)

*Cover image:* Raymond Thompson. Youth in a juvenile detention facility in Florida.

*Back cover image:* Jenn Ackerman

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# EXECUTIVE SUMMARY

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**John Alexander** is a 54-year-old Black man who has been in prison since he was 18. Mr. Alexander grew up in Detroit, where he lived with his mother and six sisters. He dropped out of school as a teen, working in his grandfather's auto shop and selling drugs to support himself and his family. On August 8, 1980, during a night of drinking and gambling, a fight broke out between Mr. Alexander and several other young men, during which Mr. Alexander shot and killed another man. Mr. Alexander was convicted of second-degree murder and given a life sentence with the possibility of parole. He recalls, "My sentence—I felt it was just for what I had done. But I did feel I was redeemable . . . Even if I die in prison, I want to be right with God."<sup>1</sup>



**John Alexander has been incarcerated for 36 years and denied parole six times.**

Since going to prison 36 years ago, Mr. Alexander has earned a near-perfect record for work performance, with prison staff commenting on his high level of participation and how well he gets along with them and fellow prisoners.<sup>2</sup> He has worked in food service, become a tutor for other prisoners in horticulture, and completed multiple educational programs. Staff have called Mr. Alexander a role model for other prisoners. The judge who sentenced Mr. Alexander has advocated for his parole. He has a supportive family, housing, and a job waiting for him.

Despite the overabundance of evidence in favor of releasing him, Mr. Alexander has been reviewed for parole and denied no fewer than six times.<sup>3</sup> Says Mr. Alexander, "I live for the possibility of getting out. But if I don't get out, I'm prepared for that. Getting my hope up, that bothers me more than anything."<sup>4</sup>

\* \* \*

In the United States, young people convicted of crimes can face extreme, lifelong sentences—punishments that, in other countries, cannot be applied even to adults. While the U.S. Supreme Court, in just over a decade, has dramatically shifted this landscape by prohibiting some of the harshest penalties for children, thousands of young people are still growing up and dying in prison under long sentences with no real hope of release. Overall, the number of children and youth in adult prisons has declined in most states over the past 15 years—Iowa and West Virginia are among the exceptions.<sup>5</sup> But this shift against extreme sentencing for youth has not been recognized by parole boards, which in many states have the ultimate authority to release those sentenced decades ago as juveniles.

As of 2013, close to 8,000 individuals were serving parole-eligible life sentences for offenses they committed when they were under age 18.<sup>6</sup> According to recent data procured by the ACLU, in 12 states alone, over 8,300 juvenile offenders are serving sentences of parolable life or at least 40 years.<sup>7</sup> Thousands more have been sentenced to life with the possibility of parole for offenses committed in their late teens and early 20s. The studies relied upon by the U.S. Supreme Court in its decisions on youth and punishment show that progression through this age range is characterized by significant developmental growth and maturation, and by a decline in criminal conduct as youth age and mature.<sup>8</sup> Young people

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**In 12 states alone, over 8,300 juvenile offenders are serving sentences of at least 40 years or life with parole.**

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## “ [C]hildren who commit even heinous crimes are capable of change.”

—Justice Anthony M. Kennedy, *Montgomery v. Louisiana* (2016)

who commit serious, even violent, offenses are not on the whole likely to participate in future crimes as they age into their mid-20s, which makes a lifetime sentence particularly disproportionate, unjust, and unnecessary.

Despite authoritative research and the corresponding legal recognition that young people are different and should rarely receive the harshest of punishments, thousands of people are serving extreme sentences for crimes they committed in their youth. In many cases they’ve grown, matured, and long since left violence behind—but their prospects for release are nonetheless uncertain. In most states, the responsibility for deciding who to release and when (if ever) has been delegated to parole boards. But these boards generally operate in secrecy with few (if any) constraints or due process protections; with enormous discretionary and politicized power but limited oversight; and with a near-exclusive focus not on who the individual is now but on the crime for which they were convicted, sometimes decades ago.

## A. U.S. CONSTITUTIONAL LAW AND HOW WE PUNISH YOUTH

Over the past decade, the U.S. Supreme Court has recognized that the most extreme sentences are disproportionate and cruel when applied to young offenders, whose moral culpability must be understood in light of their immaturity and their potential for growth and reform. The trio of cases acknowledging that young people grow and change—*Roper v. Simmons* (eliminating the death penalty for juveniles) to *Graham v. Florida* (prohibiting life without parole for juveniles who commit non-homicide crimes) to *Miller*

*v. Alabama* (banning life without parole as a mandatory sentence for juveniles)—“rested not only on common sense—on what ‘any parent knows’—but on science and social science as well.”<sup>9</sup>

Numerous studies conducted over the past two decades by criminologists, psychologists, and sociologists demonstrate that young people who get involved in criminal activity—including the most serious offenses, such as homicide—age out of this conduct by their mid-20s. Because research shows that we cannot know whether a youth’s criminal conduct is transient, the U.S. Supreme Court has held youth must have an opportunity for release so that those who have grown and changed are not serving extreme sentences.<sup>10</sup> Writing in early 2016 for the majority in *Montgomery v. Louisiana*, which made retroactive the court’s prior decision that mandatory life sentences without parole should not apply to juveniles, Justice Anthony M. Kennedy explained:

Those prisoners who have shown an inability to reform will continue to serve life sentences. The opportunity for release will be afforded to those who demonstrate the truth of *Miller’s* central intuition—that children who commit even heinous crimes are capable of change.<sup>11</sup>

That opportunity for release, in many parts of the country, is in the hands of a state parole board. Leaving this responsibility to parole boards without significant reform and oversight will not provide youth who commit crimes a real and fair shot at release but may merely abandon these individuals to the illusory promise of parole.

## B. PAROLE’S ILLUSORY PROMISE OF RELEASE

Parole boards today are both ill-equipped to provide meaningful individualized review and resistant to releasing people who, even if they were children at the time, committed a serious offense.

Parole boards’ hesitance to release individuals is evidenced by the abysmal rates at which many states grant parole,



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**IN 2015, THE PAROLE  
GRANT RATE FOR  
LIFERS IN GEORGIA WAS  
11 PERCENT**



particularly for people serving life sentences or those convicted of violent offenses. In 2015, Ohio's parole board decided 1,130 parole cases and granted parole to just 104 individuals (9.2 percent of parole decisions).<sup>12</sup> This was actually an increase from its parole approvals in 2014 (4.8 percent)<sup>13</sup> and in 2013 (4.2 percent).<sup>14</sup> In 2015, 366 individuals in Florida were serving a parole-eligible life sentence for an offense committed when they were under 18 years of age.<sup>15</sup> Two (0.5 percent) were granted parole.<sup>16</sup>

As legal scholar Sarah French Russell observes, “parole boards have not been required to make the possibility of parole release realistic for inmates,”<sup>17</sup> and they have not done so on their own. One reason for the low parole approval rates, even for those imprisoned as children, is the overwhelming focus in parole decision-making on the severity of the offense to exclusion of all other factors and evidence of rehabilitation.<sup>18</sup> In at least 30 states, the severity or nature of the crime is an explicit factor that state parole agencies can or must consider,<sup>19</sup> and this is not just a factor among many to be checked off but the decisive factor. A 2008 survey of 47 state parole boards found that “the top three [factors] are crime severity, crime type, and offender criminal history.”<sup>20</sup> These factors, which a prisoner can never change, outweigh or overshadow the things a prisoner can change through growth and rehabilitation. The seriousness of the offense should be and is—if imperfectly—considered by the court at sentencing, in determining the type of sentence and its length, and also when a person will be eligible for parole. But at the parole review, the focus on the severity of the original offense obscures a meaningful parole examination and release decision based on who the person is now and the life they could live if released.

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**IN OKLAHOMA,  
FROM JULY 2015 TO  
FEB. 2016, THE PAROLE  
APPROVAL RATE FOR  
VIOLENT OFFENDERS WAS  
1.3 PERCENT**



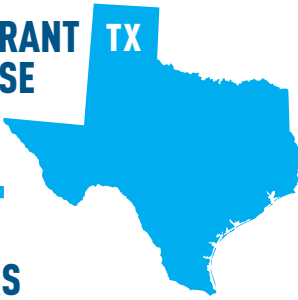
**Christine Lockheart, who was 17 at the time of her offense, is serving a life sentence in Iowa.**

**Christine Lockheart** is a 49-year-old white woman who has been incarcerated in Iowa since 1985. Throughout her childhood, Ms. Lockheart received inpatient and outpatient mental health treatment. When Ms. Lockheart was 17, her then-boyfriend stabbed and killed a man while Ms. Lockheart was outside of the victim's house.<sup>21</sup> Now eligible for parole post-*Miller*, Ms. Lockheart has been repeat-

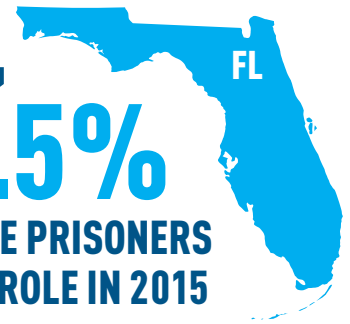
edly denied parole, despite being at the lowest level security available, working on a college degree, having numerous jobs while incarcerated, having family support, and not being considered at risk of reoffending according to the state's own risk assessment instrument. She has nonetheless been denied parole based on the seriousness of her offense and her “general attitude,” referring to “relationship issues” with her roommates, although she has had no violent disciplinary infractions in her 30 years in prison.<sup>22</sup> When Ms. Lockheart subsequently challenged her parole denial in court, the parole board responded that the *Miller* mitigation factors “are not necessarily relevant in the same way during a parole release review.”

**Richard Rivera**, who was 16 at the time that he shot a police officer in a botched robbery, has spent over 35 years in prison. At the time of the crime, he was living with his mother, who had a long history of psychiatric hospitalizations throughout his childhood,<sup>23</sup> and his abusive stepfather. Mr. Rivera says he had developed an addiction to cocaine by the time

THE AVERAGE PAROLE GRANT RATE IN TEXAS FOR THOSE CONVICTED OF CAPITAL MURDER HAS BEEN **8 PERCENT** OVER THE LAST 15 YEARS



IN FLORIDA, **ONLY 0.5%** OF PAROLE-ELIGIBLE PRISONERS WERE GRANTED PAROLE IN 2015



**Richard Rivera, who was 16 at the time of his offense, has been in prison for over 35 years.**

he was 16, and he could not read or write when he went to prison. Reflecting on the years leading up to his crime and the deep remorse and responsibility he feels, Mr. Rivera says, “The tragedy did not happen in a vacuum. . . . But my past is no excuse.”<sup>24</sup> Now 52, Mr. Rivera has earned a Bachelor of Arts degree from Syracuse University, a master’s degree from New York Theological Seminary, and

a second bachelor’s degree from Bard College. But each time he has been reviewed for parole, he has been denied based on the nature of his crime. In September 2016, Mr. Rivera was again denied parole, this time for his prior disciplinary history (Mr. Rivera’s last ticket, over two years ago, was for failure to report an injury).

“You have to remain hopeful,” says Mr. Rivera. “So you basically have to live in denial. You hope the dice are going to roll your way. It’s like being a gambler in a terrible game.”<sup>25</sup>



REUTERS/Brendan McDermid

**David McCallum, arrested at 16, spent 30 years in prison for a crime he did not commit.**

**David McCallum**, who was 16 when he was arrested and wrongfully convicted of murder, spent almost 30 years in prison before his exoneration. Despite his model conduct, Mr. McCallum was repeatedly denied parole based on the severity of his offense. Particularly damaging was his insistence on his innocence.<sup>26</sup> “Rather than talk about what happened in prison that would make me a candidate for parole, we talked about my

confession,” recalls Mr. McCallum.<sup>27</sup> His co-defendant, also innocent, died in prison.

**“Rather than talk about what would make me a candidate for parole, we talked about my confession.”**

—David McCallum

Beyond the offense, it is often unclear to people applying for parole what—if anything—the parole board has considered and based its decision on. States impose few required procedures on parole boards, and courts have allowed them to ignore or bypass whatever guidelines do exist. Operating in obscurity but with tremendous power, parole boards provide limited information to the public about their standards, conduct, or results.<sup>28</sup> Yet, the hearing or review determines the ultimate length of a sentence—a power particularly significant in states like Utah, which has an entirely indeterminate sentencing system; Hawaii, where the parole board has the unique authority to set the *minimum* term of

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IN NEW YORK, FROM JAN. TO OCT. 2014, THE PAROLE BOARD CONDUCTED

10,737

PAROLE INTERVIEWS



incarceration<sup>29</sup> (it is authorized to set a prisoner’s minimum term “at a period equal to his or her maximum sentence,” effectively giving a prisoner a no-parole sentence<sup>30</sup>); and in Colorado, where some sex offenders may receive a sentence range of one year to life, with the parole board deciding how long a person will actually serve.<sup>31</sup>

Parole hearings may be brief, hostile, and rare. They provide few rights to the person seeking their liberty. In the U.S. Supreme Court’s principal case on parole review, *Greenholtz v. Inmates of Nebraska Penal and Correctional Complex*, the court in 1979 held that only the most minimal protections are required to satisfy due process in discretionary parole proceedings because the mere possibility of release through parole did not create a liberty interest (i.e., an interest in freedom from deprivation of liberty by the government).<sup>32</sup>

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**“I typically voted 100 cases a day. The public would be astounded at the short period of time that the board has to make decisions on life and death.”**

—Georgia parole board member

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IN 2015, THE TEXAS PAROLE BOARD REVIEWED OVER  
**82,000 CASES**

The system the Supreme Court upheld in *Greenholtz* provided prisoners with almost no information as to why they were denied parole, and the hearings themselves lasted “an average of five to ten minutes.”<sup>33</sup>

The review parole applicants receive today is no more substantive given the enormous number of people reviewed by state parole boards each year. In New York, between January and October 2014, the 14-member parole board conducted 10,737 parole interviews either in-person or via video conference—almost 900 a month.<sup>34</sup> In Texas, in Fiscal Year 2014, the parole board (seven members who share responsibilities with 14 parole commissioners) considered over 77,000 cases—well over 6,000 a month.<sup>35</sup> A parole board member in Georgia told a reporter, “I typically voted 100 cases a day. That was just an average day . . . You’re just talking about two to three minutes to make a decision. The public would be astounded at the short period of time that the board has to make decisions on life and death cases.”<sup>36</sup>

Although parole hearings are not trials,<sup>37</sup> they are like trials in that they are focused on the original crime and include input from the prosecutor. But they do not provide the person seeking release with the resources, time, and legal assistance of a trial. Parole applicants rarely have an attorney, and even when they do, some parole boards do not permit a prisoner’s attorney to participate or even to be present.<sup>38</sup>

With or without a hearing, parole applicants may have no idea what information the parole board is considering or basing its decision on. As legal scholar Richard Bierschbach observes, “Parole release decisions require the most minimal opportunity to be heard, the barest statement of reasons, and the weakest evidentiary support on appellate review.”<sup>39</sup> In Georgia, where there are no parole hearings and no judicial review of parole denials, a parole applicant does not have a right to access their own parole file, considered by statute



a “confidential state secret.”<sup>40</sup> In North Carolina, the parole commission’s website states that “[t]he reasons for parole denial are considered confidential.”<sup>41</sup> In at least 24 states, the parole board does not need to explain what information it relied upon to reach its decisions.<sup>42</sup> This is particularly problematic given that parole boards have, on occasion, based their decisions on erroneous information that parole applicants are not aware of, let alone able to correct.

In many cases, the handful of individuals deciding a parole decision will never meet the person whose life and liberty is in their hands. In Texas and Georgia, for example, there is no hearing or required interview; the board only reviews a file. In Alabama and North Carolina, meeting the person seeking parole is not part of the decision-making process in *any* case; Alabama does have parole hearings, but the parole applicant’s presence is not required.<sup>43</sup>

In Michigan, for prisoners serving a life sentence, the board can decline to interview them, indefinitely and without giving reasons, and is required to conduct a file review only once every five years.<sup>44</sup>



**Patrick Cole has been incarcerated for over 40 years and has not been interviewed in person since 1992.**

a pharmacy to get more drugs. Mr. Cole shot and killed the pharmacist. “I am very remorseful for it,” says Mr. Cole. “I had never shot anyone. I was scared half to death when I pulled out the gun. I shot him out of fear—not to justify what I did.”<sup>45</sup>

For example, **Patrick Cole**, a 58-year-old Black man who has been in prison for over 40 years, is serving a life sentence with the possibility of parole, yet he has not been interviewed by the parole board in 15 years and has not had an in-person meeting in over 23 years. Mr. Cole was convicted of second-degree murder and aggravated robbery. At 18, he and a friend were taking heroin and decided to rob

Similarly, **John Alexander** has been reviewed and given a “no interest” notice (effectively a denial) on six occasions, at least once without any interview, in his 36 years in prison. Mr. Alexander observes that these notices include no information as to why he was denied, in spite of his stellar institutional record, family support, and rehabilitation. “I have a network of people waiting to assist me if I get out. It takes so much out of my wife to go through these reviews—to see the pain in her eyes, it destroys me,” says Mr. Alexander.<sup>46</sup>

The denials are exacerbated by the long time many prisoners face before they can be reconsidered for release. In California, parole applicants can be set off up to 15 years between reviews, with a presumption in favor of the 15-year denial period.<sup>47</sup> Parole boards can set prisoners off for reconsideration up to 10 years in Kansas, Ohio, Oregon, Tennessee, and Texas, depending on the conviction.<sup>48</sup>

In Utah and Rhode Island, it is entirely up to the parole board how long a person denied parole must wait for their next hearing; there is no statutory limit.



**Steven Parkhurst, pictured with a dog he trained through the prison NEADS/Dogs for Deaf and Disabled Americans’ Prison Pup program.**

**Steven Parkhurst**, for example, a 41-year-old white man incarcerated in Rhode Island since he was 17, is serving a life sentence for the murder of another teenager. At his first review, after 21 years in prison, he had a bachelor’s degree, was participating in community outreach programs, and was training service dogs through a prison program. The board’s decision praised his accomplishments but denied him parole because

of the seriousness of the offense and, despite his having completed all available programming, scheduled his next review in 2023, nine years later.<sup>49</sup>

**Brian Stack** is a 56-year-old white male prisoner serving a life sentence in Utah for the murder of a police officer, which occurred a few weeks after Mr. Stack turned 18 years

old. Mr. Stack was last reviewed in 2006, after he had served almost 28 years in prison. By that time he had earned his GED, associate degree, and a Bachelor of Science degree; had participated as a student and a facilitator in several institutional rehabilitation programs; and had numerous letters of support from community members and former counselors and caseworkers, as well as a letter of forgiveness from the victim's widow.<sup>50</sup> The Utah parole board denied Mr. Stack parole and scheduled his next hearing for December 2018—12 years after his 2006 review.<sup>51</sup>

These denials and accompanying “setoffs,” where the person is scheduled for a subsequent parole review potentially many years in the future, are particularly disheartening for those who have already served decades in prison before their initial review. In Georgia, individuals sentenced to life imprisonment after 2006 must serve at least 30 years before being reviewed by the parole board.<sup>52</sup> In Texas and Nebraska, individuals previously sentenced to juvenile life without parole (JLWOP) may be reviewed by the parole board but only after they have first served a mandatory 40 years in prison.<sup>53</sup> Many other Texas prisoners must serve a mandatory 30-35 years before becoming eligible for parole.<sup>54</sup>



**Deon Williams, who was 16 at the time of his crime, must serve 30 years before his first parole review.**

**Deon Williams**, a Black man serving a life sentence in Texas, was 16 at the time he was arrested and then convicted of the murder of an older woman, whose house he and his friends were burgling. Mr. Williams, who was not the triggerman and was younger than his co-defendants, has served 22 years of a 60-year sentence. Now 39, he will not be considered for parole until late 2024, after first serving 30 years.

In sum, by handing to parole boards the ultimate responsibility for deciding whether a young offender has grown, matured, and been rehabilitated enough to be released, states may have solved their constitutional sentencing problem in name only—and given false hope to thousands of individuals

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## In Texas, Colorado, and Nebraska, individuals previously sentenced to JLWOP must serve 40 years before parole review.

serving long sentences since they were children. Unless states significantly reform the parole system to ensure a fair, transparent, and forward-looking review, many people who were young at the time of their offense will continue to spend the majority of their lives in prison, with devastating costs to them, their families, and our communities. Releasing these prisoners as old men and women is not only unnecessary to protect public safety but also means that these individuals have little hope of finding work—to support themselves and the families that have stood by them—once released. It means releasing people to die but not to rebuild their lives, contribute to their communities, and atone for the harm their actions caused their victims’ and their own families.

## C. EXTREME SENTENCES, DIMINISHING PROSPECTS FOR RELEASE, AND THE COSTS OF DELAY

The failure to release people who have already served significant time in prison and grown and changed—despite being raised in a violent correctional environment with few rehabilitative services—is not just a human tragedy but also feeds the United States’ expensive and bloated reliance on mass incarceration. While the U.S. Supreme Court’s recent cases on extreme sentences have focused on just punishments for those who were young at the time of their crime, thousands of other prisoners around the United States are serving life and other extended prison terms with similarly

limited prospects of release. Not only does the United States have the highest incarceration rate in the world,<sup>55</sup> but U.S. prisoners now serve longer sentences than ever before, with shrinking possibilities for release.

According to the Urban Institute, from 1998 to 2010, the factor that contributed the most to the expansion of the federal prison population was length of stay.<sup>56</sup> Similarly, a recent study by the Pew Charitable Trusts showed that, between 1983 and 2013, the United States became 165 percent more punitive in the length of sentences people receive, despite declining crime rates, as states “increased criminal penalties, eliminated parole, and made other policy changes that collectively sent more offenders to prison and kept them there longer.”<sup>57</sup> Over half of the state prison population is incarcerated for a violent offense,<sup>58</sup> and sentence lengths for “violent” crimes in the United States have also increased dramatically, despite declining rates of violent crime. According to one study, between 1981 and 2000, the length of stay (meaning not just the imposed sentence but the actual number of years a person serves in prison) for a murder crime increased by 238 percent.<sup>59</sup> These sentences have expanded without a real conversation about their necessity, or about the harm they inflict on prisoners, their families, and their communities. As former New York parole commissioner Thomas Grant observes, “There has to be some type of reasoned discussion about how long is long enough. Does everything have to be sentenced to life?”<sup>60</sup>

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**Not only does the United States have the highest incarceration rate in the world, but U.S. prisoners now serve longer sentences than ever before, with shrinking possibilities for release.**

Moreover, even as these punitive sentences continue to grow in frequency and length, several studies demonstrate that recidivism rates among people convicted of violent offenses are significantly lower than recidivism among people convicted of nonviolent offenses,<sup>61</sup> and that people previously convicted of a violent offense are very unlikely to return to prison for another serious crime.<sup>62</sup> As The New York Times observed, the data on our prison systems reflect an unavoidable truth: “Big cuts in incarceration must come at the state level, and they will have to involve rethinking of sentences for violent criminals as well as unarmed drug users and burglars.”<sup>63</sup>

Parole systems are unlikely to start releasing people without political support, compulsory guidance, and a clear mandate to look beyond the original offense and instead to who the person is now. States once viewed parole as an essential part of penal policy, not simply as a management tool that could limit overcrowding and the costs of incarceration, but also because it provided an incentive for and evidence of rehabilitation. As legal scholar Cecelia Klingele observes, it wasn’t just that release was expected but that “failure to secure parole before the termination of the sentence was a sign that the system had failed to achieve its rehabilitative ends.”<sup>64</sup>

For parole boards, understaffed and overwhelmed, there is little incentive to release a person convicted of a serious offense when the risk—however remote—that the individual could reoffend looms above their decision. That remote danger may weigh more heavily than even a well-documented history of good institutional conduct, rehabilitation, and community support. As law professor W. David Ball observes:

Officials are also not directed to look at the costs and benefits of continued incarceration; they are only directed to evaluate the risks of release. ... Without considering the benefits of granting parole, there is no incentive for parole boards to vote in favor of release.<sup>65</sup>

Parole board members may never know about the success stories—people convicted of serious crimes who, once released, have become successful community leaders,

supporting themselves and their families, who grew up and moved beyond the worst thing they ever did.



**Eric Campbell spent 13 years in prison in New York.**

They may never hear about people like **Eric Campbell**, who spent 13 years in prison for felony-murder, a botched robbery in which he was not the triggerman. Mr. Campbell went to prison at age 15, and the first few years, he recalls, were “gladiator school.” But Mr. Campbell took every class he could in prison, eventually facilitating and designing other courses and composing music to

help other prisoners and himself learn and grow. He says it was seeing his co-defendant again after several years that helped him stop being angry and start to confront his own actions and responsibility for the crime: “It was my co-defendant’s genuine apology that changed me. And I realized, he didn’t ruin my life, I did. That was something we both needed.”<sup>66</sup> Released at 30 by the parole board, he went on to get a stable job packaging and handling art for galleries and also works as a music producer. “My actions affected a lot of people—the man who died, his family, my family, his kids’ kids...it goes beyond what I can think. There is a lifetime effect,” says Mr. Campbell. But he has used his experience, first in prison and now in the community, to help others and rebuild his life as an adult and a community member, working with at-risk youth and continuing to support others recently released from prison.

Too often, however, when people are finally granted parole, they are only released at an advanced age where the possibility of rebuilding their lives and supporting themselves has significantly diminished. For those who went to prison in their youth and have never driven a car, used the internet, or had a cell phone, release into a world where their parents and others in their support network no longer exist is terrifying. Geriatric and medical release (underutilized to date) will alleviate some significant costs of incarceration, but they are not enough to ensure that young people serving

long sentences will ever be released to live full lives once they have reformed.

The *Miller* mandate and its opportunity for release mean more than death outside of prison. Parole can and should be a meaningful review that provides individuals who have grown and matured since their crime with the opportunity to return to society where their continued growth and atonement can benefit their families and communities. When young people are facing the most severe sanctions and may lose their lives to prison, our moral and societal obligations to those incarcerated and those left behind require that states undertake meaningful reform both on front-end sentencing practices and the increasingly important but often ignored back end of incarceration.

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# RECOMMENDATIONS

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## To address extreme sentences, particularly for youth, states should:

1. Abolish juvenile life without parole in all circumstances;
2. Prohibit the use of other de facto life and disproportionate sentences (i.e., those in which there is no reasonable chance of release to return to the community during their available working years) on individuals who were young at the time of their offense;
3. Prohibit the prosecution of juveniles in adult court;
4. *For young offenders serving sentences of 20 years or more:* In general, set parole eligibility at no more than 10 years after they came into custody for this offense. At the parole eligibility date, there should be a presumption in favor of release, rebuttable based on their current conduct and risk;
5. Provide young offenders with an initial review no more than five years after they enter the prison system to evaluate their program needs and goals to be achieved prior to their parole eligibility date and to ensure these individuals are able to access and enroll in necessary programming.

## To reform the parole system and increase its efficacy, state legislatures should:

1. Adopt or expand presumptive parole models such as exist in South Dakota where the burden is on the parole board to provide evidence for why a person needs to remain in prison. Under this system, parole applicants would be released at the parole eligibility date unless the parole board, in consultation with the Department of Corrections and having reviewed the individual's record while incarcerated, objects:
  - a. If a majority of the parole board decides to object to release, it should hold an evidentiary hearing where the parole applicant is present and represented by counsel to determine the individual's current risk and the need for additional prison time;
  - b. If the board denies release, it should also identify program and development goals for the individual to meet before the next parole review;
  - c. Judicial review of parole decisions should be based on a presumption in favor of parole;
2. Eliminate the ability of governors to block the release of an individual whom the parole board has approved for release;
3. Utilize and expand medical parole programs so that patients who pose limited safety risks can be



released to care in the community. The Department of Corrections, having considered the medical and related eligibility criteria for medical-based parole, should be the final decision-maker;

4. Create qualification requirements for the parole board so that these entities can be professional and credible bodies. Boards should include a diverse set of voices, including individuals who have been through the prison system; individuals with experience on all sides of the criminal justice system, including as correctional staff, law enforcement, and defense attorneys; psychologists and psychiatrists; and social workers;
5. Provide parole boards with sufficient staff to properly consider each parole applicant's file and to provide an individualized review.

## To improve fairness within parole proceedings, states should:

1. Provide in-person hearings at which the parole applicant is represented by counsel irrespective of the prisoner's ability to pay;
2. Create binding guidelines that the parole board must adhere to. These guidelines should:
  - a. Be publically available and explained to the parole applicant;
  - b. Not include the severity of the offense, or similar factors considered and taken into account by the sentencing court, as an independent factor. The seriousness of the offense should not be considered except to the extent that it should already be considered in the risk assessment and/or parole eligibility date;
  - c. Focus on the individual's post-conviction conduct, their change over the years, and their participation in available prison programming;
3. Provide information about the parole process to parole applicants and provide programming prior to the initial parole review so that prisoners know how to prepare their parole application; additional assistance should be provided to individuals with disabilities and younger prisoners to prepare for and navigate this process;
4. *For people who were young at the time of their offense:* Implement binding specific guidelines and procedures that incorporate the *Miller* factors and require the parole board to consider the individual's youth at the time of the offense and subsequent development;
5. Require that the parole board allow parole applicants access to the information, redacted where necessary to protect sources, that it is reviewing to make its decisions, and provide individuals and their advocates with an opportunity to contest or correct information therein;
6. If parole is denied:
  - a. Provide the parole applicant with an opportunity to be reviewed again at regular intervals to measure their progress. In New York, for example, parole applicants are reviewed within two years of a prior denial;
  - b. Give the parole applicant written notice outlining the reasons for denial and programming or goals to complete before the next review that addresses the board's concerns;

- c. Require that the decision be reviewable by an independent decision-maker in the administrative review and also be subject to judicial review.

## To improve the transparency of the parole system, state parole systems should:

1. Provide parole applicants with a copy of the parole board's guidelines and factors used in the release decision-making process;
2. Maintain public data on the number of cases considered, denied, and granted that include the offense type and reason for denial. This information should be used to examine trends in their decisions. Periodic audits of these decisions should be conducted to ensure their fairness and quality;
3. Take care in their use of risk assessment tools and ensure that these instruments are open to scrutiny and study where used. The ACLU remains concerned with the use, design, and implementation of risk assessment instruments, particularly in light of their lack of transparency and absent long-term studies on their effect on racial or other impermissible disparities. For jurisdictions that continue to use these tools:
  - a. The risk assessment instrument should be open to public scrutiny so that the public, parole applicant, and advocates know what questions are asked and how responses are weighted, as well as who conducts the assessment and how;
  - b. Decisions using a risk assessment instrument should be tracked so that the legislature and the public can assess how these instruments are used, their accuracy, and whether these tools are replicating or creating racial disparities in who is or is not released;
  - c. The tools utilized should be validated on the population to whom they are applied.

## To improve prospects for reentry and rehabilitation, states should:

1. Ensure that young offenders are not held in adult prisons because the range of services in those facilities is limited, and youth safety and development are consequently stymied;
2. Provide access for all prisoners, including those serving long sentences, to rehabilitative programming, including educational and vocational programs as well as mental health counseling. These programs should be made available as soon as possible in order to accelerate the rehabilitative process and should be available to prisoners before they first become eligible for parole;
3. Provide prisoners with individualized plans at the beginning of their incarceration with education and treatment goals and programming, as well as timely access to those programs, so that individuals have participated in rehabilitative programming prior to their eligibility for release;
4. Ensure that prisoners are not excluded from prison programming and reentry services, necessary for their rehabilitation and preparation for release, on the basis of a mental disability;
5. Provide reentry programming before prisoners come up for parole review.

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# METHODOLOGY

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## WHAT A “LONG SENTENCE” IS AND WHO IS CONSIDERED “YOUNG”

As explained at length on page 25 on long sentences and youth in the criminal justice system, what a “long sentence” is and who is considered “young” for purposes of punishment and rehabilitation is not a fixed legal or factual concept. Around the world, and particularly in many European countries and Japan, individuals arrested and convicted of offenses through their early to mid-20s are not prosecuted and punished as adults but instead are given the benefit of rehabilitative services and shorter prison terms.<sup>67</sup> Even in the United States, some states such as Connecticut are exploring the possibility of raising the age at which an individual facing criminal sanctions is considered an adult to 20.<sup>68</sup> These experiments in the United States and existing systems in other parts of the world reflect the criminological and medical research on youth and development. Many studies now illustrate that a young person’s mind continues to develop until their mid-20s, particularly in the areas of impulse control, resistance to peer pressure, planning, and

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**There is an “age curve” whereby criminal conduct (both violent and nonviolent) escalates during adolescence, peaks in the late teenage years, and then steadily declines in the early 20s.**

thinking ahead.<sup>69</sup> Similarly, research on participation in criminal conduct shows that there is an “age curve” whereby criminal conduct (both violent and nonviolent) escalates in one’s adolescence, peaks in the late teenage years, and then steadily declines in the early 20s.<sup>70</sup>

In recognition of the growing consensus that young people continue to grow and develop into their mid-20s and also the research demonstrating that most people “age out” of criminal conduct by that same age range, this report includes not only individuals who committed crimes while under age 18 but also individuals who were up to age 25 at the time of their offense. Although 63 individuals interviewed for this report were nevertheless considered a “juvenile” at the time of their offense, as described below, we included many individuals who were 18 at the time of their offense and are not receiving any of the benefits of the post-*Miller/Graham* reforms, several individuals who were 19 to 21 at the time of their offense, and a handful who were 22 to 25 when they committed their offense.

In terms of what constitutes a long sentence, in addition to including individuals serving parole-eligible life and de facto life sentences, we included individuals serving sentences where the maximum term of imprisonment exceeds 20 years. In many countries and particularly in Europe, 20 years is the maximum sentence an individual can receive. Recently organizations such as the Sentencing Project have called for sentences to be capped at 20 years except in extraordinary circumstances.<sup>71</sup> For individuals convicted at a young age, like Terrance Sampson, who is serving a 30-year sentence and was 12 at the time of his crime, a 20- or 30-year sentence is a significant part of their lives, particularly at a time when the individual is growing up and may be a very different person at 28 than they were at 14.

## WHO WE INTERVIEWED

From July 2015 through April 2016, the ACLU conducted interviews by phone, in person, and through correspondence with currently or formerly incarcerated individuals regarding long sentences and the parole process. The ACLU utilized surveys and questionnaires, shared them with individuals who are currently incarcerated, and conducted follow-up interviews with individuals released or still in prison in nine states: Georgia, Indiana, Iowa, Massachusetts, Michigan, New York, Rhode Island, Texas, and Utah. All interviews and related file reviews were conducted by Sarah Mehta, Human Rights Researcher, ACLU. The majority of our interviews (86 out of 124) and related information come from individuals currently incarcerated in three states: Michigan, New York, and Texas. We selected states from which to solicit input based on a combination of factors, including the size of the population serving a parole-eligible life sentence, the state's response to date to U.S. Supreme Court law on juveniles and life without parole (LWOP), and whether length of stay appeared to be a factor in the state's incarceration rate. We further attempted to include states with a diversity of parole systems, from Massachusetts (which holds in-person hearings and publishes decisions for individuals serving life sentences) to Georgia (where there is no in-person hearing). We identified individuals to reach out to in state prisons with the enormous assistance of local prisoner advocacy groups, including prisoner family support groups, as well as local attorneys and other advocates.

The ACLU interviewed individuals with incarcerated relatives; former parole board and correctional staff as well as medical professionals and social workers who serve incarcerated populations; and local attorneys and advocates. The majority of this report, however, is based on the information provided by individuals who were young at the time of their offense, are or were serving a prison term where the maximum number of years exceeded 20 years, and are or were attempting to be released through the parole process.

The total number of individuals currently or formerly incarcerated interviewed for this report about their parole or incarceration experience is 124. All individuals interviewed by the ACLU had served a minimum of 10 years at the time of the interview. Most had seen the parole board at least twice, but we also included some individuals (particularly

in Texas) who must serve 30 to 40 years before they are first eligible to meet with the parole board and be considered for release. The ACLU interviewed 102 individuals serving parolable sentences and a further 13 individuals who were released, either through parole or exoneration, but who had previously been denied parole. In addition, the ACLU interviewed nine individuals who are still serving life *without* parole; one was 15 at the time of the offense, another was 16, five were 18, one was 19, and one was 21 years old at the time of the offense.

Of the 115 individuals interviewed who are or were serving parole-eligible sentences, 86 are or were serving life sentences. Of the remaining 29 individuals, two are serving sentences of 99 years, six are or were serving sentences with a maximum of 60 to 75 years, 10 are serving sentences with a maximum of 45 to 55 years, and the remaining 11 are serving sentences with a maximum of 20 to 35 years in prison. The ACLU interviewed six individuals previously sentenced to life without parole ("LWOP" or "JLWOP" for those who were juveniles at the time of the offense) who are now serving parole-eligible life sentences as a result of their state's reforms post-*Miller*.

Thirty-two individuals interviewed have been or were incarcerated for at least 30 years; a further 12 have been or were in prison for 40 to 45 years (nine of whom were sentenced in Michigan). The remaining 80 individuals have been or were incarcerated for 13 to 29 years to date.

Sixty-seven individuals interviewed were under age 18 at the time of their offense (the lowest age at offense was 12 years old). A further 22 individuals were 18 years old at the time of their crime (five of whom are serving LWOP). Twenty-five were between the ages of 19 and 21 at the time of their offense. The remaining 10 were between the ages of 22 to 25 at the time of their crime.

Sixty-two (50 percent) of the individuals interviewed by the ACLU are Black; 21 are Latino (17 percent); 40, white (32 percent); and one, Asian (0.8 percent). Eight (6.5 percent) are women; 116 are men (93.5 percent). Some individuals self-identified as having a mental disability, which, for the purposes of this report, includes psychiatric disabilities (such as bipolar disorder, schizophrenia, post-traumatic stress disorder, depression, and personality disorders) as

well as intellectual disabilities (such as low IQ, traumatic brain injury, or specific learning disabilities). The term also encompasses people who have processing disorders such as attention deficit hyperactivity disorder and autism.

For the majority of individuals interviewed, the controlling offense for which they were convicted was a homicide crime. One hundred and six individuals were convicted of murder either in the first or second degree; one individual was convicted of attempted murder, and one person was convicted of assault with intent to commit murder. Of the 106 homicide-related cases, based on self-reporting and our review of their case files, at least 20 of those interviewed were not the primary actor or triggerman in the homicide for which they were convicted.

Of the remaining 18 individuals interviewed, for whom a homicide crime was *not* the controlling offense, eight were convicted of armed or aggravated robbery and/or burglary; five were convicted of robbery and assault; and one was convicted of armed robbery, kidnapping, and aggravated sodomy. One additional individual was convicted of sexual assault and kidnapping. (In total, four individuals interviewed were convicted of a sex offense, including two cases where the controlling offense was homicide.) Two individuals (both women) were convicted of injury to a child. One individual was convicted of engaging in organized criminal activity (gang-related). Moreover, six interviewees convicted of homicide offenses have either been formally exonerated or are pursuing innocence claims with counsel.

For 22 individuals interviewed, based on both self-reporting and our review of their criminal case files, the offense for which they are or were serving a prison sentence is their first conviction as either a juvenile or an adult.

Out of respect for the privacy of the victims and their families, we did not include their names in this report.

## INDIVIDUAL RECORDS REVIEWED

The ACLU requested and collected where possible all parole decisions, court records, pre-sentence investigation reports, disciplinary reports, risk assessment scores (actuarial determinations of a person's risk to reoffend), and rehabilitative programming certificates. These records were requested directly from those interviewed, from courts, and from the appropriate Department of Corrections through public records requests. What information was publically available or existent varied by state, county, and facility. For example, in Massachusetts, the parole board posts its decisions and reasons for approving or denying parole for individuals serving life sentences on its website. By contrast, in Texas, the parole board decisions available to those applying for parole as well as their attorneys and the public list only the decision code and redact the parole guidance (risk assessment) score. In Michigan, although prisoners cannot request their own files through the Freedom of Information Act (FOIA), we were able to request and receive prisoners' parole decisions, work evaluations, disciplinary records, and pre-sentence investigation reports through our own public records requests and to share those materials with the individuals interviewed. The ACLU made similar requests to facilities in New York for individuals interviewed for this report. For individuals incarcerated in Iowa, the ACLU of Iowa requested their original sentencing and more recent resentencing transcripts.

## STATISTICAL INFORMATION

The ACLU requested data from all 50 states, as well as the federal government, regarding the number of individuals serving life and other long sentences for offenses committed in their youth; the demographic characteristics of that population, including race and sex; and parole grant rates. We received some responsive documents from 34 states, with most states responding that the information requested—particularly data regarding the age at offense but also parole rates by offender group—was not maintained. A sample FOIA request submitted for this report is available in Appendix C. States varied in the data they provided depending on what information they maintained, how crime categories and offender groups were identified, the range of



years for which information was available, and how data is maintained or organized. Given the significant differences in the data received and reviewed by the ACLU, where data from these FOIAs is cited in this report, we have included an endnote with the state agency’s own description of the data provided. In addition to statistical information, the ACLU requested policies and procedures utilized by each state parole board and governing issues such as guidance on young offenders, assistance for individuals with disabilities, and how to weigh disciplinary infractions and understand “rehabilitation.” Full responses to ACLU requests are available upon request.



Jenn Ackerman

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# I. MASS INCARCERATION, EXTREME SENTENCES, AND HOW WE TREAT YOUNG PEOPLE IN THE U.S. CRIMINAL JUSTICE SYSTEM

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The United States has the highest incarceration rate in the world.<sup>72</sup> In 2014, approximately 2.2 million people were incarcerated in adult correctional jails and prisons around the United States.<sup>73</sup> Almost half (48 percent) of this population came from six states (California, Florida, Georgia, Ohio, Pennsylvania, and Texas) and the federal system.<sup>74</sup> Many thousands of people, particularly people of color, are cycled in and out of state jails or prisons for minor offenses.<sup>75</sup> However, a growing source of the prison population and the costs of incarceration are the extremely long sentences that people convicted of crimes receive. More people are now spending longer periods of time in prison than at any previous time in U.S. history. Not only are prison sentences in the United States significantly more extreme than those used in many other countries, but these harsh penalties are also applied to youth. Despite the substantial and growing evidence that most young people will age out of criminal conduct,<sup>76</sup> youth in America can be sentenced to live their entire lives in prison with only an increasingly illusory hope of release.

## A. LONG SENTENCES (GETTING LONGER) IN THE UNITED STATES

The United States' staggering incarceration rate has recently garnered bipartisan condemnation for both fiscal and humanitarian reasons.<sup>77</sup> Approximately \$80 billion is spent each year on corrections in the United States,<sup>78</sup> and politicians and advocates agree that too many people are unnecessarily sent to prison, with devastating costs to them and their families.<sup>79</sup> While much of this attention has focused on the number of individuals unnecessarily

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**Youth in America can be sentenced to live their entire lives in prison with only an increasingly illusory hope of release.**

funneled into the prison system, the source of the United States' swelling prison population is not only who goes into prison but how long they will stay. As numerous studies now show, many states around the country sentence too many people to extremely long sentences. They also keep them in prison longer than ever before by failing to use parole or other release mechanisms at the back end of incarceration.<sup>80</sup>

According to a recent study by the Pew Charitable Trusts, between 1983 and 2013, the United States became 165 percent more harsh in its punishments, despite declining crime rates, as states "increased criminal penalties, eliminated parole, and made other policy changes that collectively sent more offenders to prison and kept them there longer."<sup>81</sup> As Alex Kozinski, a federal judge on the Ninth Circuit, observed:

The unprecedented growth in America's prison population was the result of a variety of factors, but the principal culprit was the increased length of criminal sentences. From 1973 to 2003, the prison population grew every year, yet arrests for felonies and conviction rates remained essentially

constant. Thus, to reduce incarceration rates, we must reduce sentence lengths. It is that simple.<sup>82</sup>

According to the Urban Institute, from 1998 to 2010, the factor that contributed the most to the expansion of the federal prison population was length of stay.<sup>83</sup> The Urban Institute's recent prison population forecaster shows that to reduce the state prison population, changes at the front end as to *who* comes into the system, or reforms that uniquely target nonviolent offenders, will not significantly reduce the prison population unless accompanied by a reduction in sentence length for violent offenses.<sup>84</sup> In Michigan, New Jersey, New York, and Rhode Island, the Urban Institute predicts, reducing the lengths of stay for violent offenses by 15 percent would result in a significantly larger decrease in the prison population than reducing drug admissions by 50 percent would.<sup>85</sup> As The New York Times observed, this population prediction tool highlights an unavoidable truth: "Big cuts in incarceration must come at the state level, and they will have to involve rethinking of sentences for violent criminals as well as unarmed drug users and burglars."<sup>86</sup>

Over half of the state prison population is incarcerated for a violent offense,<sup>87</sup> and sentence length for "violent" crimes in the United States (and the amount of time actually served by those convicted of violent offenses) is on the rise despite declining rates of violent crime. According to one study, between 1981 and 2000, the length of stay for a murder crime increased by 238 percent.<sup>88</sup> In Michigan, where people convicted of crimes already serve longer in prison

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**AS OF 2012, IN THE UNITED STATES,**  
**110,439**  
**PEOPLE WERE SERVING**  
**LIFE SENTENCES WITH THE**  
**POSSIBILITY OF PAROLE**

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**“To reduce incarceration rates, we must reduce sentence lengths. It is that simple.”**

—Judge Alex Kozinski

compared to the national average,<sup>89</sup> research shows that the length of sentences imposed (and time served) has increased exponentially in the past several decades. Whereas in the 1970s only four percent of Michigan prisoners sentenced to murder in the second degree served 20 years or more before becoming eligible for parole, by the 2000s, this number had skyrocketed to 46 percent.<sup>90</sup> In Utah, the state prison population has grown 18 percent since 2004, six times faster than the national average has, chiefly due to the increased time that people have remained behind bars (primarily for violent and sex-related offenses).<sup>91</sup>

Life sentences in particular have proliferated in recent years. Research from the Sentencing Project demonstrates that one out of every nine prisoners is serving a life sentence.<sup>92</sup> Marc Mauer of the Sentencing Project states that in the federal system alone, at least 45 statutes require a life sentence as the mandatory minimum penalty.<sup>93</sup> According to the U.S. Sentencing Commission, as of January 2015, 4,436 federal prisoners were serving a life imprisonment sentence and many more federal prisoners are serving extremely long sentences that are de facto life in prison.<sup>94</sup> As of 2012, according to the Sentencing Project, of those serving a life sentence, 49,081 people were serving life without parole and 110,439 were serving sentences of life imprisonment *with* the possibility of parole.<sup>95</sup> As the ACLU documented in 2013, over 3,000 people in the United States are serving life without parole for nonviolent offenses.<sup>96</sup>

However, while many prisoners in the United States are eligible for release, individuals serving long sentences for serious offenses are increasingly unlikely to be approved for release, despite their low risk of reoffending and the significant amount of prison time they must often serve

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# WHAT IS A VIOLENT OFFENSE?

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A conviction for a “violent offense” can comprise a huge range of conduct. Under the law, the term “violent offense” incorporates more than serious violent crimes in which a victim is physically harmed, and the definition varies greatly across states. Some jurisdictions define violent crime to include burglary, breaking and entering, manufacture or sale of controlled substances, possession of a firearm by a convicted felon, or extortion.<sup>97</sup> Still others include any offense involving the threat or risk of force against the person or property of another in the definition of violent crime, even if neither force nor a weapon is actually used.<sup>98</sup> Burglary is often treated as a violent offense under some state and federal laws even though only 2.7 percent of burglaries, at most, involve acts of violence where a person is harmed.<sup>99</sup> For example, an individual who points a fake gun at a shopkeeper during a robbery can be convicted of a violent offense.

Each jurisdiction has its own definition of what constitutes a “violent crime,” and even within jurisdictions, courts may interpret “violent” offenses in very different ways. For example, in interpreting sentencing laws that impose enhanced penalties on defendants with prior convictions for “violent crime,” some courts have defined violent crime to include burglary of an unoccupied dwelling, drunk driving, or fleeing a law enforcement officer, among other offenses. Moreover, even when a person is convicted of a serious violent offense such as murder, this definition might not correspond with the person’s level of participation in the offense. Several individuals interviewed by the ACLU were convicted under the felony-murder rule (also known as “law of the parties”) when they were accomplices to a crime such as a robbery or burglary but were convicted of more serious crimes committed by others in their group, such as murder. **Eric Campbell**, for example, was 15 when he acted as the look-out in a robbery in New York; when a fight ensued between his co-defendant and the shopkeeper in which the shopkeeper was shot, Mr. Campbell was also charged and convicted of murder and sentenced to life in prison. A few states, including Texas, still allow accomplices to a murder who were not the triggerman to be sentenced to death.



Bigstock



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**“This idea of total incarceration just isn’t working. And it’s not humane.”**


—Supreme Court Justice Anthony Kennedy

before even becoming eligible for parole. As the Sentencing Project’s analysis of life sentences demonstrates, the issue is not only that more individuals are sentenced to life and life without parole today (despite declining rates of crime across the United States) but also that individuals serving parole-eligible sentences “are increasingly less likely to be released or, if they are, their release comes much later than similarly situated individuals in earlier decades.”<sup>100</sup>

Long and harsh sentences are not just an extreme but cabined outlier in how America punishes. Rather, extreme sentences have the effect of lengthening the norm for a sentence. Observes law professor Jonathan Simon, “The existence of LWOP has also tended to increase the severity of even those murder sentences that permit parole after some number of years (typically 15 or 25) by establishing a political norm that life should mean life.”<sup>101</sup>

Even as rates of violent crime continue to decline—not only in the United States but in less punitive countries in Europe—Judge Kozinski notes, “We may be spending scarce

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**AS OF 2013,**  
**47.2%**   
**OF PEOPLE SERVING LIFE SENTENCES ARE BLACK**

taxpayer dollars maintaining the largest prison population in the industrialized world, shattering countless lives and families, for no good reason.”<sup>102</sup> As Supreme Court Justice Anthony Kennedy told Congress in his 2015 testimony on appropriations, “This idea of total incarceration just isn’t working,” he said. “And it’s not humane.”<sup>103</sup>

## **B. LONGER FOR SOME: RACIAL DISPARITIES IN SENTENCING**

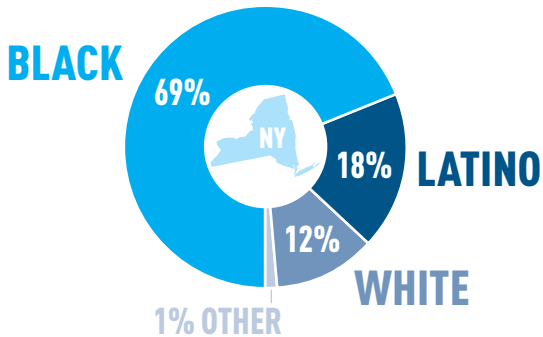
In the United States, extreme sentences are increasingly the norm, but they are disproportionately imposed on people of color. People of color are overrepresented at every contact point with the U.S. criminal justice system from arrests through sentencing, and also as victims of violent crime.<sup>104</sup> In the federal system, sentences imposed on Black males are nearly 20 percent longer than those imposed on white males convicted of similar crimes.<sup>105</sup>

Racial disparities increase with the severity of the sentence imposed. The level of disproportionate representation of Black people among prisoners who are serving life sentences without the possibility of parole (LWOP) is higher than that among parole-eligible prisoners serving life sentences. The disparity is even higher for juvenile offenders sentenced to LWOP—and higher still among prisoners sentenced to LWOP for nonviolent offenses. Although Blacks comprise about 13 percent of the U.S. population, according to 2009 Sentencing Project data, Blacks constitute 56.4 percent of those serving LWOP and 56.1 percent of those who received LWOP for offenses committed as a juvenile.<sup>106</sup> As of 2013, Blacks constitute almost half (47.2 percent) of all lifers, and, in the federal system, 62.3 percent of prisoners serving life sentences.<sup>107</sup> Based on 2012 data provided to the ACLU by the U.S. Sentencing Commission and state Departments of Corrections, the ACLU estimates that nationwide, 65.4 percent of prisoners serving LWOP for nonviolent offenses are Black, 17.8 percent are white, and 15.7 percent are Latino.<sup>108</sup>

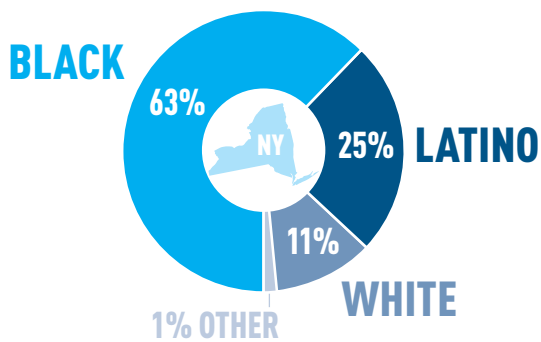
For violent offenses, once again, non-white individuals are disproportionately convicted and sentenced compared with their white counterparts. As the National Research Council’s 2014 report on mass incarceration observed,



## INDIVIDUALS SERVING LIFE SENTENCES IN NEW YORK WHO WERE 13 TO 15 AT THE TIME OF THEIR OFFENSE



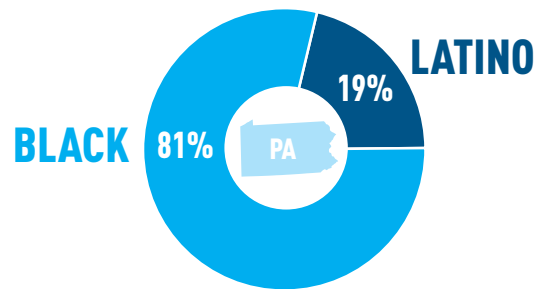
## INDIVIDUALS SERVING LIFE SENTENCES IN NEW YORK WHO WERE 16 TO 18 AT THE TIME OF THEIR OFFENSE



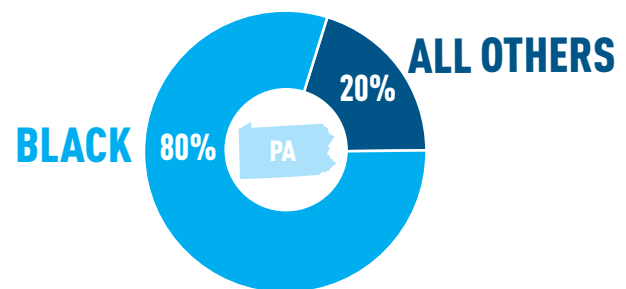
although participation in serious violent crimes by Blacks has significantly declined in recent years, “the incarceration rate for non-Hispanic black males remains seven times that of non-Hispanic whites.”<sup>109</sup> The severe sentencing laws of the 1980s and ’90s that dramatically expanded both mandatory minimums and the lengths of sentences for violent crimes disproportionately affected Blacks because they are arrested more often for violent crime “even though the black-white difference in these arrest rates has been declining since the 1980s.”<sup>110</sup>

Young people of color are overrepresented within and throughout the juvenile justice system.<sup>111</sup> Black youth account for 16 percent of all youth in the United States but 28 percent of all juvenile arrests, 35 percent of the youth waived to adult criminal court, and 58 percent of youth admitted to state adult prisons.<sup>112</sup> Black youth are twice as likely to be arrested as white youth. In New York alone, for example, Black and

## INDIVIDUALS IN PENNSYLVANIA SERVING SENTENCES OF 50 YEARS OR MORE WHO WERE JUVENILES AT THE TIME OF THEIR OFFENSE



## INDIVIDUALS IN PENNSYLVANIA SERVING SENTENCES OF 40 TO 50 YEARS WHO WERE JUVENILES AT THE TIME OF THEIR OFFENSE

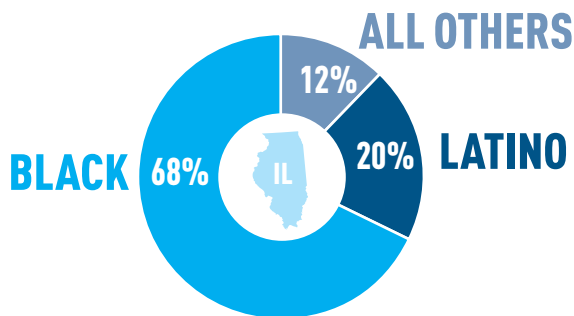


Latino youth comprise 33 percent of 16- and 17-year-olds but are 72 percent of all arrests and 77 percent of all felony arrests in the state.<sup>113</sup> Young men of color are 82 percent of all youth sentenced to adult prisons in New York.<sup>114</sup>

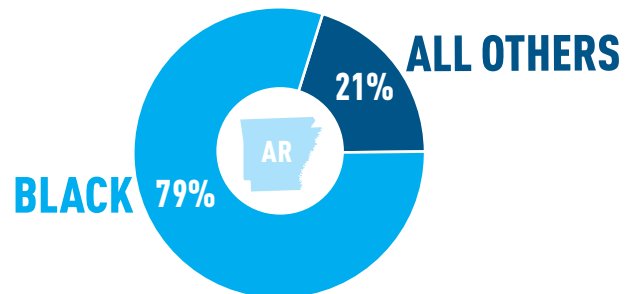
In California, as of September 2015, 2,994 individuals are serving parole-eligible life sentences for crimes committed when they were under 18 years old. Of those individuals, 942 (31.5 percent) are Black; 1,480 (49.4 percent) are Latino; 265 (8.9 percent) are white; 20 (0.7 percent) are Asian; and the remaining 287 (9.6 percent) are another race.<sup>115</sup>

These racial disparities and their consequences dramatically increase when it comes to youth processed through the adult criminal justice system. Black children are more likely to be prosecuted as adults, given adult sentences, and incarcerated with adults than other youth: Black youth are 35 percent of youth sent to adult criminal courts by judges and 58

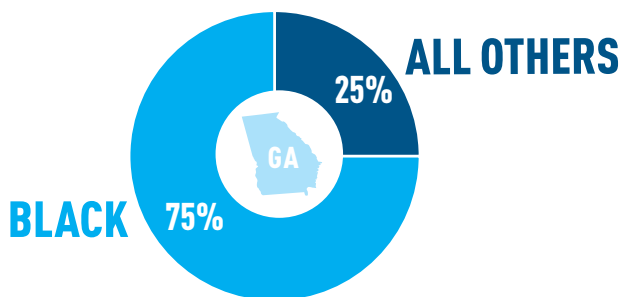
**INDIVIDUALS IN ILLINOIS SERVING SENTENCES OF 40 TO 50 YEARS WHO WERE JUVENILES AT THE TIME OF THEIR OFFENSE**



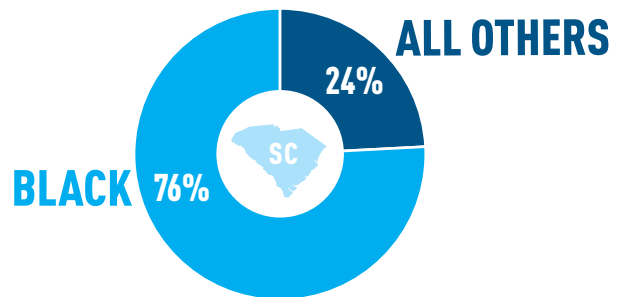
**INDIVIDUALS IN ARKANSAS SERVING SENTENCES OF 40 TO 50 YEARS WHO WERE JUVENILES AT THE TIME OF THEIR OFFENSE**



**INDIVIDUALS IN GEORGIA SERVING SENTENCES OF 40 TO 50 YEARS WHO WERE JUVENILES AT THE TIME OF THEIR OFFENSE**



**INDIVIDUALS IN SOUTH CAROLINA SERVING SENTENCES OF 40 TO 50 YEARS WHO WERE JUVENILES AT THE TIME OF THEIR OFFENSE**



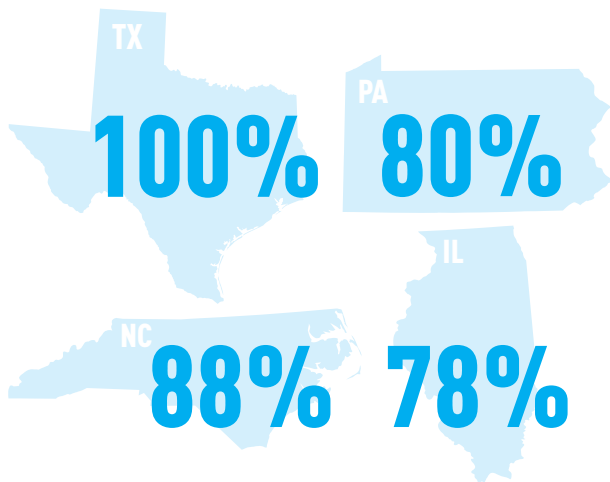
percent of youth sent to state adult prisons.<sup>116</sup> According to the Juvenile Justice Institute, “Black young adults ages 18-21 were overrepresented at a level 2.42 times higher than the general population while white young adults were underrepresented.”<sup>117</sup>

The racial disparities among children sentenced to life without parole are stark. A national 2012 Sentencing Project survey of individuals serving life without parole for crimes committed as juveniles found that 60 percent were Black, 24.9 percent were white, and the remaining 15 percent were other youth of color, of multiple races, or listed as “other.”<sup>118</sup> According to a 2015 study by the Phillips Black Project, those racial disparities were particularly pronounced in states such as Texas, where *all* persons serving JLWOP were people of color, and in several other states, such as North Carolina (88 percent), Pennsylvania (80 percent), and Illinois (78 percent).<sup>119</sup>

While the roots of those disparities are manifold, the Phillips Black Project traced those disparities, most immediately, to the policies and practices that evolved in response to the popular myth of the late 1980s and early 1990s that a generation of juvenile “superpredators” would launch an unprecedented wave of violent crime:

Starting in 1992, the height of the superpredator panic, a black juvenile arrested for homicide has been twice as likely to be sentenced to LWOP as his white counterpart. This difference was found to be statistically significant, when controlling for other variables. . . . Because many of the superpredator era reforms removed sentencing discretion from judges and juries, prosecutors’ charging decisions are the most likely source of the disparity.<sup>120</sup>

## PERCENT OF PEOPLE SERVING JLWOP WHO ARE PEOPLE OF COLOR



These disparities are prevalent among juvenile offenders serving life without parole and among young offenders serving other excessive sentences—including life *with* parole.

For example, in Connecticut, as of July 2015, 55 individuals are serving sentences of 50 years or more for offenses committed as juveniles; 61 percent of those individuals are Black.<sup>121</sup> In New York, as of January 2016, 632 individuals are serving life sentences for offenses committed between the ages of 13 and 17.<sup>122</sup> Of the 78 individuals serving a life sentence in New York who were 13 to 15 at the time of their offense, 54 (69.2 percent) are Black, 14 (17.9 percent) are Latino, and nine (11.5 percent) are white (the final person is listed as other).<sup>123</sup> Of the 1,012 individuals serving life with parole who were 16-18 at the time of their offense, 634 (62.6 percent) are Black, 250 (24.7 percent) are Latino, 110 (10.9 percent) are white, and 18 (1.8 percent) are listed as other or “unknown.”<sup>124</sup>

In South Carolina, 191 individuals are serving life sentences for offenses committed under age 18; of those individuals, 138 (72.3 percent) are Black.<sup>125</sup> Beyond life sentences in South Carolina, 23 individuals are serving sentences of 50 years or more for crimes committed as juveniles; 96 percent are Black.<sup>126</sup> South Carolina also has 58 individuals (76

percent of whom are Black) serving sentences of 40 to 50 years for crimes committed as juveniles.<sup>127</sup>

According to the Pennsylvania Department of Corrections, as of June 2015, 86 juvenile offenders were serving sentences of 50 years or more (79.1 percent of whom were Black), and another 73 were serving sentences of 40 to 50 years (79.5 percent of whom were Black). A further 2,616 individuals who were 18 to 25 at the time of their offense were serving life sentences in Pennsylvania as of June 2015.<sup>128</sup> An additional 690 individuals in that age range were serving sentences of 40 to 50 years, 67 percent of whom were Black, and 665 were serving sentences of 50 years or more, 73 percent of whom were Black.

In Illinois, of the 80 individuals serving a life sentence with parole eligibility for an offense committed as a juvenile, 70 percent are Black, whereas 17.5 percent are white and 12.5 percent are Latino.<sup>129</sup> Of the 283 individuals serving a sentence of 50 years or more for an offense committed as a juvenile, 69 percent are Black, 20 percent are Latino, and 12 percent are white.<sup>130</sup> Of the 167 individuals serving a sentence of 40 to 50 years for an offense committed as a juvenile, 68 percent are Black, 20 percent are Latino, and 8 percent are white.<sup>131</sup>

As of August 2015, the Georgia Department of Corrections housed 779 people serving life with parole who were under 18 at the time of their offense, 80 percent of whom are Black. Beyond those serving life, 38 individuals who were juveniles at the time of their offense were serving sentences of 50 years or more, 74 percent of whom are Black; 75 were serving sentences of 40-49 years, 74 percent of whom are Black.<sup>132</sup>

And in Arkansas, as of February 2016, of the 106 individuals serving life sentences for offenses committed as juveniles, over 63 percent are Black.<sup>133</sup> An additional 33 individuals are serving sentences of 40-49 years for offenses committed as juveniles, 79 percent of whom are Black, and 167 individuals are serving sentences of 50 or more years for crimes committed as juveniles, 68 percent of whom are Black.

## C. YOUTH AND LONG SENTENCES IN THE UNITED STATES

Youth who come into contact with the criminal justice system are not protected from its harshest punishments. To the contrary, particularly in the 1980s and 1990s, many judges, prosecutors, and legislators were convinced that young people were the most dangerous criminals—“super-predators”—and that their crimes at a young age indicated irredeemable depravity.<sup>134</sup> Two decades of research by sociologists, criminologists, psychologists, and neurologists has now debunked this theory, showing instead that very few

people who commit offenses in their youth continue to participate in serious criminal conduct as they get older. Instead, they age out of this conduct, which is often a reflection of their immaturity, lack of impulse control, and chaotic, even traumatic, childhood experiences.<sup>135</sup> In recognition of the fact that youth are different from adults in why they commit crimes and what sanctions work, many countries around the world now treat young people into their early 20s differently from older adults in the criminal justice system, providing more rehabilitative services, alternatives to incarceration, and shorter prison terms. The United States, on the other hand, remains the only country in the world that still sentences children under the age of 18 to life without parole.<sup>136</sup> It also prosecutes and detains many more youth as adults to grow up and die in prison.

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### Research has debunked the “superpredator” myth and shown that most youth age out of crime.

#### 1. Why Youth Should Be Treated Differently

In its core decisions on juvenile sentencing over the past decade, the U.S. Supreme Court has relied on the growing body of scientific studies illustrating that neurological development continues into a person’s early or mid-20s.<sup>137</sup> Youth has a particular impact on a person’s capacity for impulse



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control, resistance to peer pressure, planning, and thinking ahead.<sup>138</sup> Similarly, studies now suggest that there are significant opportunities for individuals to change as they get older as a result of the brain's continued development.<sup>139</sup> This transience makes it difficult for experts to predict which adolescents' delinquent conduct is due to their youth and which may be "life-course persistent offending" behavior.<sup>140</sup> Dr. Laurence Steinberg, who has been working on adolescent development and legal decisions for almost two decades and is the author of many of the studies relied upon by the Supreme Court, notes that only around "10 percent of serious juvenile offenders become chronic adult criminals" and that "research indicates that one cannot predict whether an adolescent who has broken the law is likely to become a persistent offender on the basis of his adolescent offense alone, even if the offense is a serious one."<sup>141</sup>

While it may be difficult to predict whether a young offender will continue criminal behavior, most sociological studies demonstrate that there is an "age curve" where criminal conduct (both violent and nonviolent) escalates in one's adolescence, peaks in the late teenage years, and then steadily declines in the early to mid-20s.<sup>142</sup> For example, while three percent of New York City arrests in 2013 involved people under the age of 16, four out of 10 adult arrests and nearly 50 percent of adult violent felony arrests in New York City involve youth ages 16-25.<sup>143</sup> Similarly, public data from Georgia shows that the number of people per age of admission to prison increases steadily until age 22 and then begins steadily decreasing.<sup>144</sup> Vincent Schiraldi, former Commissioner of the New York City Department of Probation, has advocated in favor of treating older adolescents on a continuum with younger children in the criminal justice system, in light of the neurological similarities.<sup>145</sup>

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**While there is a shift against sentencing children as adults, many people convicted decades ago as juveniles are still trapped in prison.**

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## **TEENS IN ADULT PRISONS ARE 36 TIMES MORE LIKELY TO COMMIT SUICIDE THAN TEENS HELD IN A JUVENILE FACILITY**

Psychologists, including Dr. Steinberg, Dr. Thomas Grisso, Elizabeth Scott, and Richard Bonnie, have recommended that young adults be treated as a distinct category, rather than conflating them with juveniles.<sup>146</sup>

Not only do studies indicate that young people who commit crimes are likely to "age out" of this conduct, but also that the youth who nevertheless receive the harshest penalties in the criminal justice system (1) are disproportionately youth of color and (2) may be those in most need of assistance from the state and the very systems that punish them.<sup>147</sup> Several studies show that these individuals tended to be raised in poor neighborhoods, had limited education, had mental disabilities, and were themselves subject to physical and sexual violence.<sup>148</sup> Some individuals interviewed for this report similarly report that they, or else a parent or sibling, had been victims of violent crime prior to their offense; many others spoke of being abandoned and surviving without a stable home prior to their offense.

**Hector Custodio** is a 43-year-old Latino man serving a life sentence in Massachusetts. At 21 years old, committed to and dependent upon a gang, Mr. Custodio shot and killed a teenager, erroneously believing him to be a member of a rival gang. Mr. Custodio grew up in New York, the only child of a single mother. "It was a bad life. My mom did the best she could but she died of cancer when I was 11," recalls Mr. Custodio. "My father was never really around—he was on drugs and alcohol and would come by once in a while."<sup>149</sup> As a teenager, Mr. Custodio says he participated in Job Corps and worked at McDonald's but he was homeless and unable



to support himself. “I had been homeless for a while and that’s when I joined the gang. It was for acceptance,” says Mr. Custodio. “I needed that, having grown up without a father and now having no one, and at the time I thought I was getting that from them but getting involved with the gang was the worst mistake of my life.”<sup>150</sup> Mr. Custodio renounced his relationship with the gang in prison and has now completed his GED and been accepted into a reentry program.

According to a 2012 survey of 1,579 juvenile lifers conducted by the Sentencing Project, 79 percent of individuals reported witnessing violence in their homes, and over half said they witnessed weekly violence in their neighborhoods.<sup>151</sup> Close to half (46.9 percent) of surveyed lifers said they experienced physical abuse, including 79.5 percent of girls—77.3 percent of whom also reported histories of sexual abuse (compared with 20.5 percent of all juveniles surveyed).<sup>152</sup> Eighteen percent (17.9 percent) said they were not living with an immediate adult relative just before their offense. Indeed, some reported being homeless or being housed in a treatment center or group home prior to their arrest and conviction.<sup>153</sup> Two out of five reported they had been enrolled in special education classes before their offense, but less than half of all surveyed said they had been attending school at the time of their offense.<sup>154</sup> Recent scientific literature on education also suggests that children subjected to trauma before adolescence have markedly different brain functioning in memory, focus, and response to punishment compared with children who don’t experience the same high levels of trauma.<sup>155</sup>

Studies also demonstrate that many youth who become involved in criminal activity also have mental disabilities and/or have experienced trauma prior to entering the adult criminal justice system, which often has few resources to support and assist them.<sup>156</sup>

**Sean Rhomberg** is a 40-year-old white man serving a parolable life sentence for murder in Iowa. At 15, Mr. Rhomberg broke into the home of an elderly neighbor and, in the course of the robbery, murdered her. He was sentenced to life without parole in 1992. He has been in prison for over 24 years. As a child, Mr. Rhomberg struggled with his learning disabilities, in particular his inability to read. Recalls Mr. Rhomberg, “When I first came to prison, I could not read. At school I was embarrassed and would throw things when they wanted me to read aloud. I know it was wrong, but as a kid



**Sean Rhomberg, now 40, was 15 at the time of his offense.**

I was so embarrassed.”<sup>157</sup> On one occasion, when Mr. Rhomberg was 12 years old, he was placed in a psychiatric unit when he was acting out in class and the school could not get in contact with his parents.<sup>158</sup> His mother testified at his resentencing hearing that after the school called the police, he was taken to two facilities. At the second, he was placed in the adult ward for suicide watch.<sup>159</sup>

**Broderick Davis**, a 33-year-old Black man, has been in prison for half his life for two counts of aggravated robbery. At 16, he broke into a home, tied up the family, and burgled the house. He must serve 17.5 years of his concurrent 35-year sentences before even being reviewed for parole. Growing up, Mr. Davis says, he experienced significant mental health problems and attempted suicide on multiple occasions:

I had anger problems and I didn’t know how to have any relationships. I had tried to commit suicide twice—once after my mom was robbed because I thought it was my fault. My dad was there on and off but when she was hurt, I thought it was my fault. The second time I was in jail and tried to hang myself. I thought I should just remove myself from the situation.<sup>160</sup>

Mr. Davis says he was treated in an inpatient psychiatric facility in Houston for several months, but upon release, struggled to continue with treatment: “I went to counseling once a month, but my parents didn’t have a car and so they would have to pay to have me picked up.”<sup>161</sup>

## 2. Youth in the U.S. Adult Courts and Prisons

### a. Children in Adult Prisons

From a young age, many children—particularly students of color and those with disabilities—are funneled out of the schoolroom and into prison for juvenile behavior. Children

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# CHILDREN AS YOUNG AS 8 YEARS 8 OLD HAVE BEEN PROSECUTED AS ADULTS



as young as five years old have been removed from the classroom in handcuffs for throwing temper tantrums.<sup>162</sup> Others have been arrested for throwing an eraser at a teacher or having rap lyrics in a locker.<sup>163</sup>

This early and unnecessary police intervention puts kids on a harrowing path. Juvenile prisons are not centers of rehabilitation. As Vincent Schiraldi, former Commissioner of the New York City Department of Probation, stated, even in juvenile facilities, “horrific institutional conditions are common, not exceptional.”<sup>164</sup> Removed from their families, children in these prisons are denied a meaningful education and adequate mental health treatment, have been held in solitary confinement, and are sometimes physically and sexually abused.<sup>165</sup>

While these conditions are problematic in and of themselves, many children are processed in the much harsher adult criminal justice system, where they receive adult sanctions and, once sentenced, can find themselves incarcerated alongside adults. While there has been a critical shift against sentencing children as adults over the past 10-15 years (including but not limited to the declining use of juvenile life without parole), many people who were sentenced as juveniles before

this shift took place are still trapped in prison, where they grew up, with limited opportunities for release.

Years of research on youth incarcerated with and as adults demonstrates that adult prisons do not provide young offenders the range of services appropriate for their age and level of development. Worse, they directly threaten the safety of these children. Compared with children who are sent to juvenile facilities, teenagers in adult prisons are 36 times more likely to commit suicide in an adult facility than in a juvenile facility,<sup>166</sup> are significantly more likely to be sexually assaulted by other prisoners or staff,<sup>167</sup> are more likely to face physical violence, including attacks with a weapon,<sup>168</sup> and are more likely to commit increasingly violent offenses upon release if housed with adults.<sup>169</sup> Policies that transfer young offenders to the adult criminal justice system for violent offenses, according to the Centers for Disease Control and Prevention, “do more harm than good.”<sup>170</sup>

For many young offenders, entering and growing up in prison has been a traumatic experience that took years for them to adjust to, even if rehabilitative programming was available.

**Harold Kindle**, a 43-year-old Black man serving a life sentence in Texas for murder, recalls coming to the adult system at age 16: “Being young you really had to fight; there were people who preyed on weak individuals. At that age, you aren’t mature enough to handle the manipulation.”

**Jose Velez**, a 53-year-old Latino man incarcerated in New York, said that in his first few years in prison, being around the violence made it hard to focus on his own growth: “I did 16 years in Green Haven and saw seven men murdered. I’m here to be rehabilitated but all I’m seeing is violence.”<sup>171</sup> Mr. Velez was 17 at the time of his offense.

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## Fourteen states have no minimum age for when a child can be prosecuted, tried, and punished as an adult.

**Eric Campbell**, a 37-year-old Black man who was sentenced to life for felony murder at 15 years old, recalls that even in a facility with younger prisoners (where he was held until he was 20), there was a lot of violence that affected him and others. Mr. Campbell, who was convicted of murder in the second degree for a felony murder during an armed robbery in which he was not the triggerman, said this was his first offense and that he had never been involved in any physical fights until he went to prison:

They called it “gladiator school.” You have 15- to 20-year-olds in one facility, no library, nothing to entertain you, and the violence—we fought for everything. The officers didn’t make it any better. Growing up, I never got into a fight, but I learned to fight [in prison]. The first time you get hit, you decide you never want that to happen again. You never want to wake up with a black eye. And you become aggressive. It becomes exhausting.<sup>172</sup>

School helped, says Mr. Campbell, and he quickly got his GED and enrolled at Ithaca Community College. “But after school it was back to war. Back to a fighting zone,” says Mr. Campbell. “A lot of friends never made it out mentally from that experience.”<sup>173</sup>

#### **b. Youth in Adult Court, Facing Adult and Lifelong Punishments**

Fourteen states have no minimum age for when a child can be prosecuted, tried, and punished as an adult.<sup>174</sup> Children as young as eight years old have been charged and prosecuted as adults for committing a crime.<sup>175</sup> Very young children cannot generally be tried in adult court without a judicial determination that the adult process and sanctions are appropriate. But often that critical determination is made with very limited process and, in some states, with a presumption that the child will be treated as an adult.<sup>176</sup>

Whereas in the majority of the United States, youth under 18 at the time of their offense are treated as juveniles, in nine states—Georgia, Louisiana, Michigan, Missouri, New York, North Carolina, South Carolina, Texas, and Wisconsin—17-year-olds are automatically treated as adults in the criminal justice system.<sup>177</sup> In New York and North Carolina, all 16-year-olds are automatically prosecuted as adults. There is movement in some of these states to raise the age of

automatic adult criminal responsibility. For example, New York’s governor, Andrew Cuomo, supports raising the age of criminal responsibility to 18 years.<sup>178</sup> A measure to raise the age to 18 in Texas failed to pass before the end of the 2015 biennial legislative session, despite strong momentum. Advocates plan to renew their efforts for the 2017 session.<sup>179</sup> However, some of the proposed measures, including New York’s and Wisconsin’s, would limit raising the age to individuals charged with nonviolent offenses,<sup>180</sup> and these bills would not prohibit the transfer of a child to adult court after a hearing or other procedure. Thus, some 13- and 14-year-olds will continue to be processed through the adult system, and 16- and 17-year-olds charged with serious, violent offenses will continue to receive the longest sentences in high security facilities.

On the other hand, some states are beginning to recognize that young people should not be treated as adults and that even older teenagers deserve the benefit of a more rehabilitative system.<sup>181</sup> For example, Connecticut is considering raising the minimum age at which a person can be tried as an adult to 21 years old.<sup>182</sup> In a recent unpublished decision, one court in Illinois has also suggested that the Supreme Court’s reasoning in *Miller* and *Graham* may apply to other young offenders facing severe sentences. In considering life without parole for a 19-year-old, the court observed:

Although the Court in *Roper* delineated the division between juvenile and adult at 19, we do not believe that this demarcation has created a bright line rule. . . . Rather, we find the designation that after age 18 an individual is a mature adult appears to be somewhat arbitrary.<sup>183</sup>

Similarly, a Washington state court held in *State v. O’Dell* that an 18-year-old’s youth at the time of the offense was a mitigating factor and supported a sentence “below the standard range applicable to an adult felony defendant.”<sup>184</sup>

These few experiments with raising the age at which a young person receives the harshest punishments may be few and far between in the United States, but around the world, appreciation that young people involved in crime need help—the most extreme punishment—is gaining currency.

### 3. Youth in the U.S. Criminal Justice System: A Human Rights Outlier

In the United States, while some states like Connecticut are considering reforms that expand the use of the juvenile justice system, in many others, young people involved in crimes continue to be treated as adults and processed through the adult criminal justice system. But in Europe, young offenders into their early 20s are adjudicated through the juvenile justice system, *particularly* when facing serious criminal charges. Even when their cases are handled by adult courts, they cannot receive the same range of sentences, which are generally much shorter for adults than they are in the United States.

In Germany, since the 1950s, all young offenders between the ages of 18 and 21 have been tried in juvenile court, which sentences young adults as juveniles if “a global examination of the offender’s personality and of his social environment indicates that at the time of committing the crime the young adult in his moral and psychological development was like a juvenile.”<sup>185</sup> Unlike in the United States, where the severity of the charge increases the likelihood that a child will be tried as an adult, receive an adult sentence, and be sent to an adult prison, in Germany, the more severe the offense, the more likely the individual will be processed through the juvenile court system. According to the Juvenile Justice Institute,

[O]ver 90 percent of young adults in Germany ended up sentenced under juvenile law for homicide, rape and serious body injury crimes, as opposed to fraud and traffic offenses (56% and 41% respectively). This approach has resulted in reduced rates of repeat offending by young adult offenders given juvenile services and sanctions.<sup>186</sup>

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**In Europe, young offenders into their early 20s are adjudicated through the juvenile justice system.**

In the Netherlands, 18- to 21-year-olds can also receive punishment as a juvenile if certain circumstances apply; in Sweden, young adults can be tried in juvenile court until they turn 25 years old.<sup>187</sup>

In Europe, life imprisonment without the opportunity for parole is generally not permissible for children. Twenty-two of the 28 states within the European Union explicitly ban life imprisonment, including *de facto* life imprisonment. Croatia, Portugal, and Spain prohibit life sentences for all individuals, regardless of age at offense.<sup>188</sup> In Sweden, individuals who were under age 21 at the time of their offense cannot receive more than 14 years for murder and no more than 10 years for other offenses.<sup>189</sup> In Bulgaria, children cannot receive a life sentence; if they were 16 or 17 at the time of the offense, the maximum number of years they can be sentenced to prison is 12.<sup>190</sup> Young offenders who were 16 or 17 and would receive a life sentence as an adult cannot receive more than 20 years for charges involving multiple crimes.<sup>191</sup>

Japan treats young offenders under 20 years old as children. Children 14 and older can be tried as an adult upon the Family Court’s determination, but according to the Juvenile Justice Institute,

[B]ecause the number of children tried and sentenced as adults is so low in Japan, the “youth” prison now houses young adults up to age 26 (or sometimes older), who are separated from minors, where they can receive rehabilitative programs. Thus, in Japan young adults age 20 to 26 (or older) are protected from older adults and provided services to facilitate rehabilitation.<sup>192</sup>

While the U.S. Supreme Court no longer allows juveniles to be executed, has limited their exposure to life without parole, and has officially recognized the import of research on youth and development, the United States continues to utilize severe sanctions for youth.

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## II. THE POST-MILLER WORLD: STATE REFORMS FOR YOUNG OFFENDERS AND THE WORK THAT REMAINS

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### A. THE U.S. SUPREME COURT AND PUNISHMENTS FOR YOUTH: *ROPER* THROUGH *MONTGOMERY*

The United States is the only country in the world that sentences children under age 18 to life imprisonment without the possibility of parole.<sup>193</sup> However, in just over a decade, the Supreme Court’s jurisprudence on punishments for juveniles has advanced dramatically. The trend started in 2005 with *Roper v. Simmons*, which prohibited the death penalty for those who were under age 18 at the time of their offense.<sup>194</sup> In *Roper* and the subsequent cases on juvenile sentencing, the Supreme Court recognized that extreme punishments are disproportionate for children both because their immaturity, susceptibility to peer pressure, and other influences diminish their culpability and because of their capacity for growth and rehabilitation.<sup>195</sup> “From a moral standpoint,” the court found, “it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor’s character deficiencies will be reformed.”<sup>196</sup>

Subsequently, in 2010, in *Graham v. Florida*, the Supreme Court banned life without parole for juveniles at the time of their offense who committed a non-homicide crime.<sup>197</sup> Basing its decision in part on a juvenile’s “capacity for change and limited moral culpability,” the court required that states give juveniles “some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.”<sup>198</sup> Extending this reasoning in *Miller v. Alabama*, in 2012 the Supreme Court held that the *mandatory* application of life without parole sentences to juveniles—without taking their age, maturity, and related individual circumstances into account—violated the Eighth Amendment’s prohibition on cruel and unusual punishment. One remaining question after *Miller* was whether this decision must apply to individuals who were sentenced before the 2012 *Miller* decision; *Montgomery v. Louisiana* resolved that it did.<sup>199</sup>

This quartet of cases, acknowledging that youth have a different level of moral criminal culpability and the capacity to grow and change, relied “not only on common sense—on what ‘any parent knows’—but on science and social science as well.”<sup>200</sup>

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### TIMELINE: U.S. SUPREME COURT AND PUNISHMENTS FOR YOUTH

2005

**Roper v. Simmons**

Prohibits death penalty for juveniles at the time of their offense.

2010

**Graham v. Florida**

Bans LWOP for juveniles who committed a non-homicide crime.

2012

**Miller v. Alabama**

Determines mandatory application of LWOP to juveniles violates the Eighth Amendment.

2016

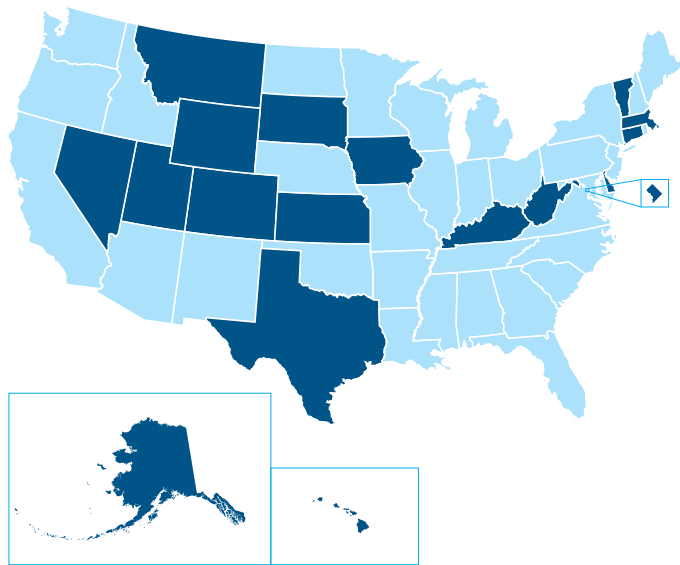
**Montgomery v. Louisiana**

Holding *Miller* retroactive.



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## SEVENTEEN STATES HAVE ABOLISHED JLWOP



### B. STATE REFORMS FOR YOUTH IN THE CRIMINAL JUSTICE SYSTEM—AND THEIR LIMITS

Although the recent Supreme Court decisions in *Graham*, *Miller*, and *Montgomery* have not completely eradicated juvenile life without parole (JLWOP) (a juvenile may still be sentenced to life without parole but only after the court has taken their age and maturity into account), these decisions and state-led legislative and court developments now significantly limit this punishment. Even before the *Montgomery* decision, several state legislatures and courts either limited or eliminated the number and type of situations where a juvenile offender may receive a life without parole (LWOP) sentence.

In the years leading up to the *Graham* and *Miller* decisions, the use of juvenile life without parole was limited to a handful of states. Although 34 states allow juvenile offenders to be sentenced to life without parole, nine states accounted for over 80 percent of all JLWOP sentences, and four—Pennsylvania, Michigan, Louisiana, and California—have been responsible for over 50 percent of JLWOP sentences.<sup>201</sup>

Even among those four states, it is often only a handful of counties responsible for issuing these extreme sentences.<sup>202</sup>

In the wake of *Miller*, several states took significant steps to limit or eliminate juvenile life without parole and to reform sentencing practices for youth. Seventeen states and the District of Columbia have abolished juvenile life without parole completely (Alaska, Colorado, Connecticut, Delaware, Hawaii, Iowa, Kansas, Kentucky, Massachusetts, Montana, Nevada, South Dakota, Texas, Utah, Vermont, West Virginia, and Wyoming).<sup>203</sup> In Massachusetts and Iowa, the decision to abolish JLWOP came from the state supreme courts.<sup>204</sup> In addition, the Campaign for the Fair Sentencing of Youth notes that four additional states—California, Florida, New Jersey, and New York—have eliminated JLWOP in most cases.<sup>205</sup> Meanwhile, seven states (Indiana, Maine, New Jersey, New Mexico, New York, Rhode Island, and Utah) currently authorize JLWOP but have not moved to eradicate it from their statutes; not one has a single prisoner serving that sentence.<sup>206</sup>

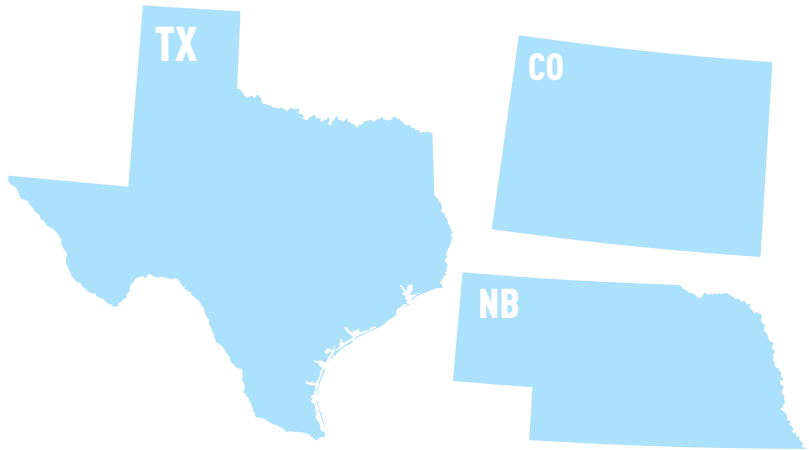
Since 2012, 21 states have amended their laws concerning juveniles convicted of homicide to allow for resentencing, as in Florida<sup>207</sup> and Washington state,<sup>208</sup> or for review by the state parole board after a certain number of years.<sup>209</sup> However, in states that allow for review by a parole board, that review and opportunity for release was rarely immediate. To the contrary, in some states, eligibility for review for these young offenders comes only after the individual has spent decades incarcerated.

In Nevada and West Virginia, individuals convicted of homicide offenses that they committed as juveniles are eligible for parole review after they have served 15 or 20 years,

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**The United States is the only country in the world that sentences children under age 18 to life imprisonment without the possibility of parole.**

# JUVENILE LIFERS IN SOME STATES MUST SERVE 40 YEARS BEFORE PAROLE REVIEW



depending on the crime.<sup>210</sup> In Massachusetts, after a state Supreme Court decision, some juvenile offenders serving life without parole are now eligible for parole after serving 15 years;<sup>211</sup> subsequently, the Massachusetts Legislature passed a law requiring others to serve a minimum of 20 to 30 years, depending on the nature of the crime, before they are eligible for parole.<sup>212</sup>

State courts in Nebraska, a state that retains non-mandatory juvenile life without parole as a sentencing option,<sup>213</sup> and Texas, which prohibits juvenile life without parole,<sup>214</sup> found *Miller* to be retroactive in 2014,<sup>215</sup> but the state legislatures required that those juvenile offenders now eligible for parole (post-*Miller*) must serve a minimum of 40 years before they are even reviewed by a parole board, let alone released.<sup>216</sup> Similarly, Colorado had already eliminated life without parole for juveniles in 2006; however, the Legislature also required that juveniles convicted as adults of a Class 1 felony be sentenced to life with a mandatory 40 years before the possibility of parole.<sup>217</sup> Fortunately, in 2016, Colorado passed Senate Bill 16–181, which amended the statute to allow juvenile lifers a potential earlier release, based on earned time credits. A full list of states and the number of years a person sentenced to life imprisonment must serve before becoming eligible for parole is at Appendix A.

Certainly, the movement in the United States is to limit or eliminate JLWOP in practice and on the books. The speed and scale of related reforms is less certain. States that prohibited JLWOP did not necessarily reform their sentencing or parole practices; on the other hand, some of the (few)

states that *did* reexamine their sentencing or parole practices did not necessarily get rid of JLWOP.

Take Iowa and Texas as two examples.

In 2012, after the *Miller* decision, Iowa Governor Terry Branstad commuted the sentences of the 38 individuals then serving life without parole for offenses committed as juveniles and required them to instead serve a mandatory 60-year sentence before they could be reviewed for parole.<sup>218</sup> The Iowa Supreme Court subsequently considered the case of Jeffrey Ragland, who, at the age of 17, was charged with and then convicted of first-degree murder. Mr. Ragland, who was not the triggerman, had received a mandatory life without parole sentence in 1986. The court found that *Miller* was retroactive and negated not only the original mandatory life without parole sentence but also the mandatory 60-year sentence as a “practical equivalent to life without parole.”<sup>219</sup> Individuals like Mr. Ragland, the court explained, are entitled to an individual sentencing hearing “tailored to account in a meaningful way for the attributes of juveniles that are distinct from adult conduct.”<sup>220</sup> Furthermore, recognizing that the *Miller* mandate was more than a requirement to have an additional procedure in place for young offenders, the court stated, “At the core of all of this also lies the profound sense of what a person loses by beginning to serve a lifetime of incarceration as a youth.”<sup>221</sup>

The Iowa Supreme Court has continued to extend the constitutional requirement of individualized sentencing for youthful offenders to other lengthy sentences in *State v. Pearson*, which applied the *Miller* reasoning to a juvenile

offender's sentence of 35 years without the possibility of parole, and *State v. Null*, which recognized that "the prospect of geriatric release," meaning release when the individual is elderly, "does not provide a 'meaningful opportunity' to demonstrate the 'maturity and rehabilitation required' to obtain release and reenter society as required by *Graham*."<sup>222</sup> The Iowa Supreme Court has also held that *all* mandatory minimum sentences of incarceration for youthful offenders violate the Iowa State Constitution's prohibition of cruel and unusual punishment.<sup>223</sup>

Most recently, in May 2016, the Iowa Supreme Court categorically struck down juvenile life without parole, finding that the sentence violates the Iowa State Constitution. In this case, *State v. Sweet*, the court held:

[S]entencing courts should not be required to make speculative up-front decisions on juvenile offenders' prospects for rehabilitation because they lack adequate predictive information supporting such a decision. The parole board will be better able to discern whether the offender is irreparably corrupt after time has passed, after opportunities for maturation and rehabilitation have been provided, and after a record of success or failure in the rehabilitative process is available.<sup>224</sup>

In the Iowa Legislature, meanwhile, the record has been mixed. After amending a sentencing statute in 2013 to prohibit *mandatory* sentencing for juveniles in most cases,<sup>225</sup> in 2015 Iowa passed a law that (1) allows life without parole to remain a sentencing option for youthful offenders (since prohibited by *State v. Sweet*); (2) requires courts to consider aggravating factors (without distinction as to which factors are mitigating and which are aggravating so that factors that should weigh in favor of release may instead be used to deny release); and (3) permits the possibility of additional, non-enumerated aggravating factors to be used against a youthful offender.<sup>226</sup>

By contrast, in Texas, where the Legislature completely abolished juvenile life without parole, courts have held that the mandatory 40 years that juveniles convicted of capital murder must face (prior to being reviewed for parole) did not violate due process or the Eighth Amendment's prohibition of cruel and unusual punishments.<sup>227</sup>

Post-*Miller*, the Texas Legislature has not yet created *any* additional procedural safeguards for young offenders in their parole proceedings. Under the current system in Texas, there is no hearing, nor is there a requirement in the existing parole statute, regulations, or guidelines that youth be evaluated for its mitigating effect. And the parole grant rate for individuals serving sentences of first-degree murder has historically been low—ranging from a 1.6 percent approval rate (two individuals) in FY 2001 to 14.9 percent (15 individuals) in FY 2014.<sup>228</sup>

## C. THE POST-MILLER WORLD: THE PERSISTENCE OF LONG SENTENCES FOR YOUTH

While the number of juveniles sentenced to life without parole spiked in the mid-1990s and then declined (well before the Supreme Court considered whether this punishment was cruel and unusual),<sup>229</sup> the number of people serving life sentences has steadily grown over the years. And life sentences are not the only long sentences that youth face in America. To date, most legislative and judicial efforts to reform life without parole as applied to young offenders have not examined other disproportionate sentences applied to young offenders, including *de facto* life without parole, life *with* parole, and other harsh sentences.

The Sentencing Project estimates that, as of 2013, close to 8,000 individuals are serving parole-eligible life sentences

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**In four states—Nevada, Wisconsin, Maryland, and Georgia—over 10 percent of the prisoners serving a life sentence were juveniles at the time of their crime.**

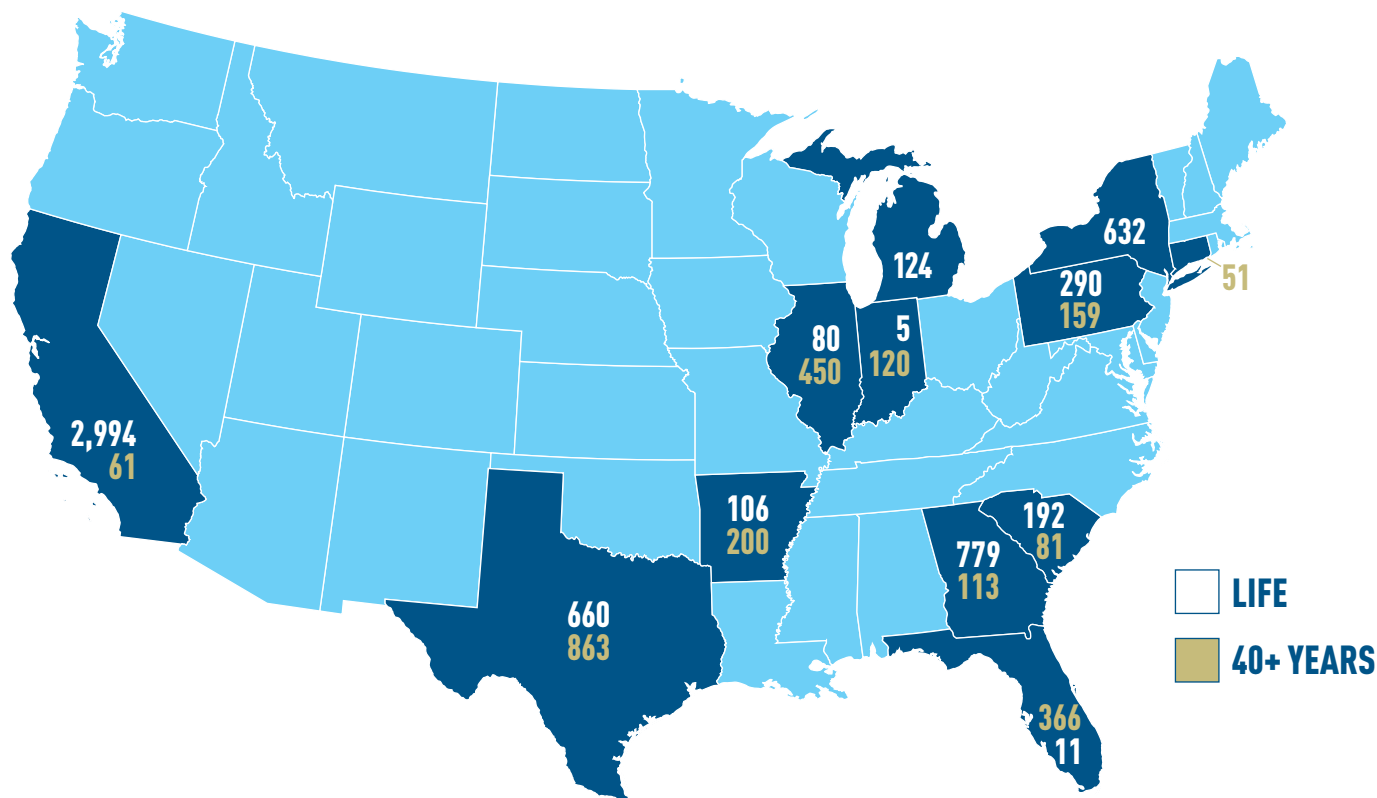
for offenses committed when they were under age 18.<sup>230</sup> In four states—Nevada, Wisconsin, Maryland, and Georgia—over 10 percent of the prisoners serving a life sentence were juveniles at the time of their crime.<sup>231</sup>

Responses to ACLU public records requests similarly show that around the country, thousands of people are serving life or other long, even de facto life, sentences for offenses committed as juveniles.

According to the Michigan Department of Corrections, in 2014, 124 people in Michigan were serving a life sentence for offenses committed as juveniles.<sup>232</sup>

**In 12 states alone, over 8,300 juvenile offenders are serving sentences of parolable life or over 40 years.**

## JUVENILE OFFENDERS SERVING LIFE OR DE FACTO LIFE (40+ YEARS) WITH PAROLE



Source: Arkansas Department of Corrections, Response to ACLU Request for Public Records, February 8, 2016 (data for 2015); California Department of Corrections and Rehabilitation, Response to ACLU Request for Public Records, June 30, 2016 (data for 2015); Connecticut Department of Corrections, Response to American Civil Liberties Union Public Records Request, July 2015 (data from 2015); Florida Commission on Offender Review, Response to Public Records Request from the American Civil Liberties Union, August 28, 2015 (data from 2015); Georgia Department of Corrections, Response to ACLU Request for Public Records, August 28, 2015 (data from 2015); Illinois Department of Corrections, Response to ACLU Public Records Request, August 10, 2015 (data from 2015); Indiana Department of Corrections, Response to ACLU Request for Public Records, November 13, 2015 (data from 2015); Michigan Department of Corrections, Response to ACLU Request for Public Records, June 3, 2016 (data from 2014); New York Department of Corrections and Community Supervision, FOIL Response to American Civil Liberties Union, May 16, 2016 (data as of January 2016); Pennsylvania Department of Corrections, Response to ACLU Request for Public Records, June 29, 2015 (data from 2015); South Carolina, South Carolina Department of Corrections, Response to Public Records Request from the American Civil Liberties Union, June 25, 2015 (data from FY 2015); Texas Department of Criminal Justice High Value Dataset, Analyzed by the ACLU (data as of July 2016).

In New York, as of January 2016, 632 individuals are serving life sentences for offenses committed between the ages of 13 and 17.<sup>233</sup> A further 1,906 are serving life sentences for offenses committed between the ages of 18 and 21.<sup>234</sup>

In California, 2,994 individuals are serving parole-eligible life sentences for crimes committed when they were under 18 years old. In addition to prisoners serving life sentences, 24 individuals in California who were under 18 at the time of their offense are serving sentences of 50 years or more; 37 are serving sentences of 40-49 years in prison. A further 15,605 California prisoners are serving life sentences for offenses committed when they were 18 to 25 years old.<sup>235</sup>

According to ACLU calculations, in Texas, of the 6,602 individuals incarcerated in Texas for felonies committed as juveniles, 660 are serving life sentences (as of July 2016). A further 863 individuals are serving sentences of 40 years or more for offenses committed as juveniles. Thus, almost a quarter (23 percent) of the juvenile offenders in Texas incarcerated for felonies are serving either life sentences or sentences of 40 years or more. An additional 1,928 individuals in Texas are serving life sentences for offenses committed between the ages of 18-21. An additional 2,417 individuals in Texas who were 18-21 at the time of their crime are serving sentences of 40 years or more.

In South Carolina, 192 individuals are serving life sentences for offenses committed under age 18.<sup>236</sup>

In Pennsylvania, as of June 2015, 290 juvenile offenders were serving parole-eligible life sentences.<sup>237</sup> A further 86 juvenile offenders were serving sentences of 50 years or more.<sup>238</sup>

As of August 2015, the Georgia Department of Corrections housed 779 people serving life with parole who were under 18 at the time of their offense, and a further 2,345 individuals serving life imprisonment who were between the ages of 18 and 22 at the time of their offense.<sup>239</sup> Beyond those serving life, 38 individuals who were juveniles at their offense were serving sentences of 50 years or more, 75 were serving sentences of 40-49 years, and 199 were serving sentences of 30-39 years.<sup>240</sup>

In 2015, 366 individuals in Florida were serving a parole-eligible life sentence for an offense committed when they were under 18 years of age.<sup>241</sup> A further 1,897 were serving

parole-eligible life sentences for offenses committed between the ages of 18 and 25.<sup>242</sup>

In Indiana, five individuals are serving life imprisonment for offenses committed as juveniles,<sup>243</sup> a further 85 are serving sentences over 50 years, and 24 are serving sentences of 40 to 49 years for offenses committed as juveniles.<sup>244</sup>

In Illinois, as of June 2015, 80 individuals were serving life sentences for offenses committed as juveniles, 283 are serving sentences of 50 years or more, and 167 are serving sentences of 40 to 50 years for offenses committed as juveniles.<sup>245</sup>

The post-*Miller* laws do not necessarily address the parole procedures and the likelihood that those young people sentenced to life *with* parole will actually be released once rehabilitated. In delegating to parole boards the ultimate responsibility for whether a young offender will be released, states may have solved their constitutional sentencing problem in name only—and given false hope to thousands of individuals serving long sentences since they were children under the age of 18. The possibility of parole often means little when prisoners must first serve a significant number of years in prison before they even become eligible for it.

For example, Georgia has repeatedly increased the minimum number of years a prisoner serving a life sentence would have to serve before becoming eligible for parole, first from seven years to 14 in 1995, and then from 14 years to 30 years in 2006.<sup>246</sup> If the prisoner is serving multiple consecutive life sentences and one of the convictions is for murder, the minimum number of years was expanded to 60 years.<sup>247</sup> In Massachusetts, individuals who were serving JLWOP must now serve up to 30 years before they become eligible for parole.<sup>248</sup> In Texas, in addition to the individuals previously serving JLWOP, who must serve a minimum 40 years before parole review, individuals convicted of other serious crimes such as aggravated robbery or murder must serve a mandatory 30 years before becoming eligible for parole.<sup>249</sup> Others convicted of certain sex offenses must serve a minimum 35 years before their review.<sup>250</sup>

**Deon Williams** (full summary in Section X), a Black man serving a life sentence in Texas, was 16 at the time he was arrested and was subsequently convicted of a murder,





**Deon Williams, age 16 at the time of his offense, is serving a 60-year sentence in Texas.**

although he wasn't the triggerman. Mr. Williams and a group of older teens were robbing a house, and one of them shot and killed the woman who lived there. Mr. Williams has served 22 years of a 60-year sentence. He will not be considered for parole until late 2024, when he will be 46 years old. While in prison, Mr. Williams has gotten his GED, taken vocational programming, worked as a store clerk, and rebuilt his

relationship with his mother and siblings.

**Jacob Blackmon**, a white man serving a life sentence in Texas, was charged with capital murder of a college student

when he was 15 years old; Mr. Blackmon has maintained his innocence and is pursuing post-conviction relief with an attorney. In 1994, he was convicted and sentenced to life in prison; he must serve 40 years before he is eligible for parole, Mr. Blackmon will not be reviewed by the parole board until 2034, at which time he will be 56 years old.



**Aron Knall, photographed around the time of his offense at age 15, is serving a 40- to 60-year sentence.**

Meanwhile, in Michigan, although individuals sentenced as juveniles to LWOP for first-degree murder may now be resentenced to a term of years equivalent to a minimum of 25 to 40 years with a maximum of 60 years,<sup>251</sup> individuals like **Aron Knall**, serving a 40- to 60-year sentence for second-degree murder, continue to serve long sentences for years before they become eligible for parole. Mr. Knall (full summary in Section X) is a 44-year-old Black man who has been incarcerated in Michigan for almost 30 years. He was 15 at the time of his offense (a murder that he says resulted

from a shootout with another young man during a botched robbery) and will not be eligible for parole until 2022. He has twice applied for commutation through the parole board, but despite substantial support from correctional staff as well as his family, he has been denied both times.

The sentencing landscape for juveniles is certainly changing after decades of research and advocacy around youth and criminal responsibility. However, extreme sentences persist.

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# III. PAROLE: LEGAL BACKGROUND AND NATIONAL OVERVIEW OF A SYSTEM DESIGNED TO FAIL

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In many states, the primary response has been to defer dealing with these questions by placing the ultimate responsibility for who gets released, when, and why on the parole board. Deferring release to some future and potentially non-existent date may be the most politically expedient response to *Miller* and *Graham*, but without reforms to the fractured parole system, individuals now technically eligible to return to their communities at some point may find release to be illusive.

At its inception in the United States, parole (also known as “discretionary release”) was viewed as a tool for rehabilitation in the correctional system.<sup>252</sup> But even in the early 20th century, legal scholar Daniel Medwed observes, parole became attractive for many of the same reasons it has resurgent appeal in states like California today<sup>253</sup>—aside from its

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**The parole system, despite its power, is hidden from view, with nominal oversight and accountability.**

rehabilitative role, parole as “early release” was appealing to “the more mundane desire to reduce prison expenses and overcrowding.”<sup>254</sup>

In the 1990s, as part of the “truth in sentencing” movement, many states eliminated parole and moved to a “determinate sentencing” system, where prisoners receive fixed sentences from courts.<sup>255</sup> California is now considering a return to the indeterminate sentencing regime.<sup>256</sup> While some prisoners may still be released before the end of their court-imposed sentence by accruing good time and related credits, most states require prisoners to serve at least 85 percent of their sentences.<sup>257</sup> However, parole boards generally still exist in these states and have authority over prisoners serving life sentences or convicted of certain offenses, and also over prisoners sentenced before the truth-in-sentencing reforms. While in some state prison systems the proportion of prisoners incarcerated prior to these reforms may be relatively small, as earlier discussed, the number of people serving parole-eligible life sentences continues to grow.

For tens of thousands of people, and particularly those serving the most extreme sentences in the United States, parole boards remain a central part of the criminal justice system.

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## PAROLE BOARDS IN



**44 STATES  
ARE ENTIRELY APPOINTED  
BY THE GOVERNOR**

Their discretionary power to release remains significant both in allowing them to decide who deserves release and in dictating the ultimate sentence length. The rights and protections prisoners are afforded in parole proceedings vary across states but overall are extremely limited. In most parole systems, there is no recognition of due process rights for individuals in parole proceedings, even when they are facing years or decades more in prison if denied release, because courts and legislatures view parole as a privilege, not a right.

Moreover, the parole system, despite its power, is hidden from view, with nominal oversight and accountability, and it has been described by both prisoners and board members as arbitrary and lawless. Parole boards have enormous discretion in what factors they consider, how they weigh those factors, and when and if to release an individual. This discretion matters for prisoners serving life sentences and convicted of violent offenses, both because these are the populations that are often the most dependent upon parole boards for their release and also because they are the least likely to be approved for parole. Although people incarcerated for violent offenses must often serve decades before they are even eligible for parole and have markedly low recidivism rates,<sup>258</sup> these individuals are unlikely to be released because the seriousness of the original offense is typically the primary (and authorized) factor weighed against them.

It is the parole system that now has primary responsibility to ensure that individuals sentenced to life without parole as

juveniles will actually be given a meaningful opportunity to be released. This presents unique challenges. As legal scholar Sarah French Russell notes, “parole boards have not been required to make the possibility of parole release realistic for inmates.”<sup>259</sup> Without attention to the parole system and significant reforms to make these processes meaningful, individuals who came to prison when they were young may continue to die there, without or despite parole.

## A. WHO IS THE PAROLE BOARD?

In its original design and intention, the parole board was to be an expert administrative body whose role was to evaluate an individual’s rehabilitation and to determine whether they could be released. As legal scholar Jonathan Simon observes, “Parole boards were insulated both by their appointment (rather than election) and by the concept that they were making penological judgments based on expert knowledge and detailed information about the prison records of individuals not generally available to the public.”<sup>260</sup> In reality, however, appointment does not preserve independence from political pressure, few states require that parole board members have relevant expertise, and boards make release decisions with only limited knowledge of the individual being reviewed.

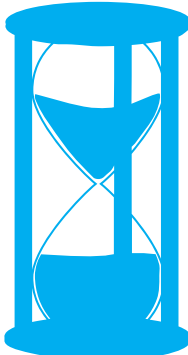
While qualifications and composition vary across states, in general, parole board positions are full-time jobs, often well-paid,<sup>261</sup> and tend to be filled by individuals with experience in law enforcement. In 44 states, the parole board is entirely appointed by the governor.<sup>262</sup> Many states do not have statutory qualifications for parole board members (although six states have recently passed bills to include minimum qualifications such as a bachelor’s degree), let alone require that members have any experience with the criminal justice system.<sup>263</sup> This is contrary to the American Correctional Association’s “essential” standards for parole boards, which recommend that at least two-thirds of members have a minimum of three years of experience in a criminal justice or related field.<sup>264</sup>

There is no requirement that parole boards be representative either of the population they are reviewing or the community to which these individuals, if released, will return. In

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**THE PAROLE HEARINGS UPHELD  
BY THE SUPREME COURT LASTED  
AN AVERAGE OF**

**5-10  
MINUTES**



New York, the only parole commissioner who is a person of color recently retired.<sup>265</sup> Connecticut is unique in that its parole board includes an individual who was previously incarcerated.<sup>266</sup> Having the perspective of someone who has been through the system is invaluable because people who have not been through the prison system may not understand the challenges in accessing programming, to personal safety, and to finding reentry and community services in preparing for parole. Two common recommendations from prisoners interviewed by the ACLU were (1) that correctional staff who see the individual seeking parole every day and have monitored their conduct and progress over the years be more involved in the decision; and (2) that community members be a part of the decision.



**Stephen Smith, now 43, has been serving a life sentence since he was 17.**

**Stephen Smith**, a Black man who was 16 at the time of the murder of an older man he believed to be bullying other kids, for which he is serving a life sentence, said, “The parole process should be something the public is involved with.... People are going back to the community and yet no one from the community is involved in the decision. It should be community leaders, clergy, even local police.”<sup>267</sup> **Huwe Burton**,

who was 16 when he was arrested for the murder of his mother (a charge he continues to protest even now that he has finally been released on parole after 30 years in prison), said, “Until there is involvement from the communities that many of us came from, they are always going to send back people who won’t do any good while people with degrees, who’ve done what they can, are stuck in prison.”<sup>268</sup>

## B. PAROLE AND/VS. DUE PROCESS

In the Supreme Court’s seminal 1979 case on parole review, *Greenholtz v. Inmates of Nebraska Penal and Correctional Complex*, the court held due process rights are limited in discretionary parole proceedings because the mere possibility of release through parole did not create a liberty interest (i.e., an interest in freedom from deprivation of liberty by the government).<sup>269</sup> Absent statutory language creating a presumption of or entitlement to parole, the court held, the parole board has significant discretion to decide whether to release, along with the factors to be considered and conditions to be met before a person is granted parole.<sup>270</sup>

As legal scholars and commentators have observed, the court’s distinction between systems where parole is a matter of right and those where it is discretionary—the first system entitling an individual to a range of constitutional protections and the second to virtually nothing—is not borne out in practice.<sup>271</sup> There are few states that have some form of “presumptive” parole (including Arizona, California, Florida, South Dakota, and West Virginia<sup>272</sup>) where release is presumed and the burden is on the parole board to provide reasons to the contrary. With the exception of South Dakota, where the structure of the parole system reflects its commitment to presumptive parole, the due process protections that attach in these presumptive parole systems are still limited, and courts defer to parole boards’ broad discretion under both regimes.<sup>273</sup> Without due process rights to a meaningful hearing with legal representation, an opportunity to present and challenge evidence, and to be heard, individuals do not have a real chance to demonstrate their suitability for release. As a result, regardless of the parole system in place, few eligible prisoners are actually released through parole.<sup>274</sup>

The system the Supreme Court upheld in *Greenholtz* provided prisoners with almost no information as to why they were denied parole, and the hearings themselves lasted “an average of five to ten minutes.”<sup>275</sup> The court nevertheless determined that the individual “is permitted to appear before the Board and present letters and statements on his own behalf. He is thereby provided with an effective opportunity first, to insure [sic] that the records before the Board are in fact the records relating to his case; and second, to present any special considerations demonstrating why he is an appropriate candidate for parole.”<sup>276</sup>

To pretend that this limited hearing provided prisoners with a meaningful opportunity to inspect the evidence used against them or to provide their own information in support of release dismisses the critical issues at stake for prisoners wholly dependent on those five minutes to plead their case. Decades after *Greenholtz*, prisoners, advocates, and even former parole board staff raise the same concerns about parole processes around the country. Moreover, *Greenholtz* continues to be relied upon to defend the lack of due process in parole proceedings where there is *no hearing* at all. Even in states without the nominal procedures the Supreme Court pointed to in upholding *Greenholtz*, courts are unwilling to intervene.<sup>277</sup>

Instead, and despite the growing authority and caseloads of parole boards, the Supreme Court and lower courts have continued to defer to these boards, pointing to the significant discretion afforded them by state legislatures. Courts and legislatures continue to view parole as “an act of grace,”<sup>278</sup> rather than as a central part of penal policy, instrumental to the reduction of mass incarceration. As legal scholar Richard Bierschbach observed, the discretionary nature of parole decision-making, rather than calling for more external scrutiny, transparency, and guidance, “is reflected in a constitutional doctrine that commits parole to the virtually unfettered judgment of the states and their parole boards.”<sup>279</sup>

## C. PAROLE AS A SECOND SENTENCING

The Supreme Court in *Greenholtz* and many subsequent court decisions around the country have often insisted that the parole release proceeding is not akin to sentencing and, accordingly, that applicants have limited rights in parole hearings. But in some states, the parole board’s authority in setting the range and ultimate number of years a person will spend in prison, often based on that individual’s offense, operates like a sentencing.

In some states, parole boards set the range of years a prisoner will be incarcerated. For example, in Hawaii, the parole board has the unique authority to set the *minimum* term of incarceration.<sup>280</sup> The court imposes the maximum sentence,

based on statutory options aligned with the offense,<sup>281</sup> while the state Supreme Court has held that the parole board is authorized to set a prisoner’s minimum term “at a period equal to his or her maximum sentence,” effectively giving a prisoner a no-parole sentence.<sup>282</sup>

In Utah, where length of stay has contributed significantly to the state’s

escalating incarceration rate,<sup>283</sup> the parole board has extensive power to determine how long an individual spends in prison. Under Utah’s entirely indeterminate sentence structure, defendants face a limited sentence range imposed by the court: 0-1 year, 1-5 years, or 5 years to life.<sup>284</sup> Defendants can receive five years to life for a range of crimes from possession with intent to distribute controlled substances near a school to murder.<sup>285</sup> Thereafter, the parole board decides when they first become eligible for parole, how long they must serve in between reviews, and when they will eventually be released.<sup>286</sup> **Jordan Calliham**, for example, a 33-year-old white man serving a life sentence in Utah for the murder of his friend, was 16 at the time of his offense in 1999. In 2000, after he had been sentenced to a five-to-life term of imprisonment, the Utah parole board scheduled his first hearing for 2024—24 years later, at which time he will be 42.<sup>287</sup>

The parole board appears even more like a sentencing authority when its power to set terms of imprisonment is also explicitly tied to its assessment of the crime. As noted by Kevin Reitz in his report for the Model Penal Code, and discussed at length in Section V of this report:

Section 1.02 of the revised Code defines sentence proportionality with reference to “the gravity of offenses, the harms done to crime victims, and the blameworthiness of offenders.” American statutory schemes of parole release explicitly require, or tacitly allow, parole boards to reassess the seriousness of the offense. They are not bound by



**Jordan Calliham has been serving a life sentence since he was 16.**



the sentencing courts' views of the matter, so long as they stay within the minimum and maximum terms of confinement.<sup>288</sup>

The Michigan Parole Board's views on release have had a substantial impact on length of stay, particularly for individuals serving life sentences. According to a report from the Council of State Governments, "the range of time that falls under the parole board's discretion is usually 300 to 400 percent longer than the minimum sentence."<sup>289</sup> In the 1990s, the Michigan Parole Board adopted a formal position that "life means life," making it extremely difficult for lifers to be paroled.<sup>290</sup> According to the parole board,

There are many misconceptions about the lifer law process, and what exactly constitutes a life sentence. There are some who believe a life sentence equates to a number of years of confinement; *i.e.* a life sentence equals 10, 20, 30 years, etc. The parole board believes a life sentence means life in prison. There is nothing which exists in statute that allows the parole board to think, or do, otherwise.<sup>291</sup>

For many years thereafter, very few lifers were released by the Michigan Parole Board—at most, three lifers per year between 1996 and 2006.<sup>292</sup> This stance from the parole board was in direct opposition to the sentencing practices of judges in Michigan who did not intend for life with parole to mean life without release. According to a 2002 survey conducted by the State Bar of Michigan, 95 Michigan judges stated that when they imposed life sentences in the 1970s and '80s, they did not intend for a person to spend their entire life in prison; to the contrary, most believed a person would spend less than 20 years.<sup>293</sup> A group of prisoners challenged the parole board's "life means life" policy, demonstrating that the parole board was substituting its judgment for that of the sentencing judges in extending the sentence these individuals were given by the courts; however, the Sixth Circuit upheld the parole board's authority.<sup>294</sup>

The similarity of parole review to a resentencing is particularly concerning in states where the parole board can deny release and schedule a distant subsequent review. The American Law Institute's Model Penal Code recommends that young offender cases be reviewed in a shorter timeframe because they "can generally be expected to change more

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**IN 2010 IN CALIFORNIA, OVER 500 PEOPLE DENIED PAROLE WERE GIVEN SETOFFS OF 7 TO 15 YEARS**



rapidly in the immediate post-offense years, and to a greater absolute degree, than older offenders."<sup>295</sup> By the same token, these individuals should be reviewed again regularly, if denied, because they will continue to grow and change. In New York, for example, the parole board is statutorily required to review each person within two years of a denial,<sup>296</sup> but in many other states, boards can set a person off for many years, in some cases with no statutory limit.

Texas recently expanded the maximum time between reviews for individuals serving a life sentence for a capital felony or who were convicted of an aggravated sexual assault from five years to 10.<sup>297</sup> Parole boards can "set off" prisoners (*i.e.*, defer the review) convicted of certain felonies for reconsideration up to 10 years in Kansas, Ohio, Oregon, Tennessee, and Texas, depending on the conviction.<sup>298</sup> In Michigan, prisoners serving a parole-eligible life sentence are reviewed every five years, but that review need only be a file review, and the board can decide it has "no interest" in conducting an interview and so decide not to conduct any further review.

Similarly, in Georgia, where the parole board review is always a file review (although a board member *may* decide to meet the individual<sup>299</sup>), the board reviews non-life sentences automatically every five years but is required to review prisoners serving life sentences only every eight years.<sup>300</sup> A full state list

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# IN SOME STATES, PAROLE BOARDS CAN SET OFF PRISONERS FOR 10 YEARS, AND IN OTHERS, THERE IS NO LIMIT



of review deferral (setoff) times between parole reviews can be found in Appendix B.

In California, since the 2008 passage of Marsy’s Law (a victims’ rights bill providing, amongst other things, the right of victims to participate in and be informed of parole proceedings), prisoners can be set off up to 15 years between reviews, with a presumption in favor of the 15-year denial period absent clear and convincing evidence that the gap before the next review should be shorter.<sup>301</sup> According to a report from the Stanford Criminal Justice Center, before Marsy’s Law was introduced in 2006, two-thirds of the individuals denied parole were subsequently reviewed one or two years later, but this number dropped dramatically after 2008.<sup>302</sup> In 2010, over 500 parole applicants denied release were given setoffs of seven to 15 years.<sup>303</sup> The new laws on young offenders have not mandated that these individuals, when eligible for parole, be reviewed more regularly with less time between each review.

Some states have no statutory limit for setoffs, which gives parole boards huge discretion in determining not only how long a person must serve in prison before being released but also how often and under what circumstances a person is reviewed. In Hawaii, the parole board can essentially decide not to review a person again, or ever, by setting the prisoner’s minimum term “at a period equal to his or her maximum

sentence.”<sup>304</sup> In Rhode Island, the board’s own website explains that individuals should expect to be denied parole at their first review and that most individuals are reconsidered for the parole at “6, 12, 18, or 24-month intervals.”<sup>305</sup> Nothing, however, prohibits the parole board from going well beyond this hearing interval. Similarly, in Utah, the parole board decides both when a person first becomes eligible for parole and how long they must serve in between reviews, with no statutorily imposed limit.<sup>306</sup> In both Utah and Rhode Island, prisoners have been set off for many years after a parole review in the absence of statutory constraint.

**Steven Parkhurst** (full summary in Section X), a 41-year-old white man incarcerated in Rhode Island, has been in prison since 1992. He is serving a life sentence for first-degree murder with related 10-year sentences for offenses connected to the same events. At the time of the offense, Mr. Parkhurst was 17 years old.<sup>307</sup> Mr. Parkhurst grew up in a violent household and describes his life at 17 as reckless. By that time, he had already been sent to a training school and, having fallen out with his mother after his parents’ separation, he was living on the streets, using alcohol, and felt his life was spiraling out of control: “I thought, ‘my life is over;’” said Mr. Parkhurst. “It wasn’t going good and I didn’t know how to figure things out. Back then it was on me. But what can you figure out at 17.”<sup>308</sup> On the night of November 27, 1992, Mr. Parkhurst was at the home of a 20-year-old acquaintance with whom he argued and then shot and killed. Mr. Parkhurst was subsequently convicted of first-degree murder and sentenced to life in prison. In prison, he



**Steven Parkhurst when he came to prison at 17 (left), and today, with his mother, sister, and nephew (right).**

sought out programs, counseling, and any opportunity to rebuild his relationship with his family.<sup>309</sup> Mr. Parkhurst has now developed a relationship with both of his parents, who wrote to the parole board in support of his release. His sister has offered her home to him when he is finally released.<sup>310</sup> Mr. Parkhurst turned to education, completing his GED, associate degree, and bachelor's degree through Adams State University, as well as additional courses through a Brown University program.<sup>311</sup> He is now working on his master's degree. Not only has Mr. Parkhurst pursued education for himself, but his parole packet is filled with letters of support from college and community programs discussing his commitment to supporting other prisoners in achieving education. Much of Mr. Parkhurst's time in prison has been spent training service dogs for people with disabilities through the facility's dog training program. (One of the dogs he trained, Rescue, was placed with a survivor of the Boston Marathon bombing.<sup>312</sup>) Mr. Parkhurst is also an avid artist and has developed art and related materials for Rhode Island reentry programs, domestic violence groups, and other trainings and programs for at-risk youth.<sup>313</sup>

Mr. Parkhurst served 21 years before he first came up for parole in 2014. The parole board commended him on his program participation, but it denied him “due to the seriousness of the offense” and set his next hearing for 2023—nine years later.<sup>314</sup> Having now spent 23 years in prison and completed all available programming, it is unclear what more Mr. Parkhurst is expected to do. “I have the most support I’ve ever had,” observes Mr. Parkhurst, who says he understands that he deserved prison for his offense but wants a chance to be productive in the community: “The main witnesses in the case have completed victim/offender reconciliation with me. My remorse and regret are genuine; my mind and spirit are still positive and intact. . . . At some point, if not already, prison will do more harm than good for me.”<sup>315</sup>

**Brian Stack** is a 56-year-old white male prisoner serving a life sentence in Utah for the murder of a police officer a few weeks after Mr. Stack turned 18 years old. Mr. Stack was last reviewed in 2006, after he had served almost 28 years in prison. By that time he had earned his GED, associate degree, and a Bachelor of Science degree; had participated as a student and a facilitator in several institutional rehabilitation programs; and had numerous letters of support from community members and former counselors and caseworkers,

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## In most states, there is virtually no review of parole denials.

as well as a letter of forgiveness from the victim's widow.<sup>316</sup> The Utah parole board denied Mr. Stack parole and scheduled his next hearing for December 2018—12 years after his 2006 review.<sup>317</sup>

Proposing their reforms to parole release policies, legal scholars Edward Rhine, Joan Petersilia, and Kevin Reitz suggest states curb the power of parole boards over sentence length by restricting the amount of time beyond the court-imposed minimum sentence that parole boards control.<sup>318</sup> Such limits could also encourage parole boards to think of the minimum sentence not as a starting point but as a meaningful limit absent continued need for incarceration.

## D. LACK OF JUDICIAL REVIEW / INDEPENDENT OVERSIGHT

In addition to the lack of strict and enforceable guidance for parole decision-making, there is little oversight, transparency, or review of those decisions. According to the ACLU's research, approximately eight states currently have some form of administrative procedure for reviewing the parole board's initial decision to deny parole under any circumstances.<sup>319</sup> This review, however, is very limited and often means reconsideration by the same individuals who made the prior decision to deny parole. In Texas, for example, a prisoner may receive a “special review” by a different panel only if (1) a parole board member requests it or (2) a prisoner cites information that was not available at the time of the parole review.<sup>320</sup> Prisoners in Massachusetts and New York described their frustration that the appeal went back to the board instead of to a fresh set of independent eyes.

In most states, there is virtually no administrative review, and parole denials can be reviewed in court based only on a “gross abuse of discretion” standard. In light of the significant discretionary authority of parole boards in many states, an abuse of discretion standard is almost insurmountable for the prisoner. In some states, judicial review is granted only on constitutional grounds during post-conviction reviews.<sup>321</sup> When granted, courts tend to emphasize the parole board’s “absolute” or “near absolute” discretion under the state statutes.<sup>322</sup>

When courts have been called upon to examine state parole boards’ procedures, they have almost universally declined to censure boards for their lack of guidance or to confine their discretionary authority. Instead, Bierschbach writes, courts “afford parole only the most anemic procedural due process protections. Parole release decisions require the most minimal opportunity to be heard, the barest statement of reasons, and the weakest evidentiary support on appellate review.”<sup>323</sup> Laura Cohen, a law professor who also represents prisoners in parole proceedings, writes that “the combination of highly subjective decisional standards and limited reviewability affords parole board members virtual *carte blanche* to deny release for almost any reason, as long as they mouth the correct statutory language in doing so.”<sup>324</sup>

Not only do courts rely on the fact that most authorizing statutes give the parole board huge discretion in what to consider and how to conduct a review, they also tend to allow parole boards to ignore what guidance and procedures *do* exist, including the tools parole boards develop themselves. For example, in 1988, several prisoners in Georgia filed a *pro se* lawsuit, claiming that the parole board had violated their rights to due process and equal protection by departing from its own release calculations.<sup>325</sup> The court, finding for the parole board and pointing to its discretionary authority, held that “the Georgia statutes actually create a presumption *against* parole.”<sup>326</sup> Dissenting from this decision, Senior Circuit Judge Thomas Clark recognized why due process is so important in the parole decision-making process:

Due process protects prisoners entitled to parole consideration from decisions of a paroling authority mistakenly made, infected by discrimination or lack of equal protection, resulting from bribery or political influence, or from some other unjustifiable

cause. Due process provides protection from unaccountable arbitrary action on the part of government (invisible people), which is what this country is all about.<sup>327</sup>

The huge amount of authority placed in the hands of (so few) parole board members, as suggested by Judge Clark, is particularly problematic given the lack of transparency in these boards and that the individuals making release decisions are not generally regulated or supervised.

## E. PAROLE GRANT RATES

The lack of fair procedures and transparency in the system, along with the primary focus on the seriousness of the offense, has dire consequences for who and how many people are approved for parole. Parole grant rates vary dramatically across the United States. Due to the states’ move to determinate sentencing, states with a relatively low number of parole-eligible prisoners still approved few people for release on parole, suggesting that the problem is not solely an overburdened parole process.

In Florida, which essentially eliminated parole in 1983 for new sentences and moved to a determinate sentencing model, only 23 of the 4,626 parole-eligible prisoners (0.5 percent) were granted parole in FY 2013-2014.<sup>328</sup> According to the Florida Commission on Offender Review, in 2015, 366 individuals in Florida were serving a parole-eligible life sentence for an offense committed when they were under 18 years of age.<sup>329</sup> Two (0.5 percent) were granted parole.<sup>330</sup> In the same year, 1,897 individuals were serving a parole-eligible life sentence for an offense committed between the ages of 18-25; four (0.2 percent) were granted parole.<sup>331</sup> Also in 2015, 73 individuals who were 25 or younger at the time of their offense were serving sentences of 50 years or more and were reviewed for parole. Ten (13.7 percent) of those individuals were granted parole, three of whom were under age 18 at the time of their offense.<sup>332</sup>

In 2015, Ohio’s parole board, which also has authority over individuals serving an indeterminate sentence for an offense committed before July 1, 1996, decided 1,130 parole cases

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**OHIO'S PAROLE APPROVAL RATE WAS 5% IN 2014 AND 9% IN 2015**



and granted parole to 104 individuals (9.2 percent of parole decisions).<sup>333</sup> This small number of releases was nevertheless a significant increase from the parole approvals in 2014 (4.8 percent)<sup>334</sup> and in 2013 (4.2 percent).<sup>335</sup>

By contrast, in Pennsylvania, which has one of the largest populations of individuals serving life *without* parole (5,102 prisoners, of whom 480 were juveniles at the time of their offense<sup>336</sup>), the percentage of decisions granting parole ranged from 51 percent to 71 percent between February 2015 and January 2016—a monthly average of 58 percent.<sup>337</sup> In Idaho, the parole board approved release on parole in 71 percent of cases and in 54 percent of cases where the individual was serving for a violent or sex-related offense.<sup>338</sup> During FY 2015, Arkansas' parole board granted parole in 71 percent of the cases it reviewed.<sup>339</sup>

However, the number of people released often drops for more serious offenses. In Missouri, the general parole approval rate in 2015 was approximately 81 percent; however, of the 14 individuals serving a juvenile life sentence, only four (29 percent) were approved for parole.<sup>340</sup> In Maryland,

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**IN FLORIDA, ONLY 0.5% OF PAROLE-ELIGIBLE PRISONERS WERE GRANTED PAROLE IN 2015**



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**MARYLAND'S PAROLE GRANT RATE IS 40 PERCENT. FOR JUVENILE LIFERS, IT IS ZERO**



where the general parole grant rate is 40 percent,<sup>341</sup> the ACLU found that *no* individuals sentenced to life with parole as juveniles have been approved for release in 20 years.<sup>342</sup>

In Michigan, the state reported parole approval rates as high as 68 percent for some offenses;<sup>343</sup> however, the grant rate is significantly lower for people serving life sentences. According to the Michigan Department of Corrections (MDOC), “Over the past 30 years, Michigan has released an average of 8.2 prisoners serving a life sentence per year.”<sup>344</sup> According to MDOC data procured by the ACLU through FOIA, in 2014, Michigan had 1,379 prisoners serving parole-eligible life sentences, of whom 124 were under age 18 at the time of their offense.<sup>345</sup> In 2015, Michigan granted parole to 38 prisoners serving life sentences, four of whom were under age 18 at the time of their offense.<sup>346</sup>

In Georgia, in FY 2015, the State Board of Pardons and Paroles issued parole decisions for 1,381 individuals serving a parole-eligible life sentence; it approved 151 cases (10.9

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**OVER THE PAST 30 YEARS, MICHIGAN HAS RELEASED AN AVERAGE OF 8.2 LIFERS PER YEAR**





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**IN 2015, THE PAROLE  
GRANT RATE FOR  
LIFERS IN GEORGIA WAS  
11 PERCENT**



percent).<sup>347</sup> By contrast, in 2014, the general parole grant rate in Georgia was 56 percent.<sup>348</sup>

According to its 2014 legislative report, the New York Board of Parole approved on average 24.5 percent of cases and 19 percent of A-1 violent felony offenders.<sup>349</sup>

In Oklahoma, between July 2015 and February 2016, the parole board approved on average 25.7 percent of the non-violent cases it reviewed but only 1.3 percent of the cases involving a violent offense.<sup>350</sup> In three of those eight months, the board didn't approve a single person incarcerated for a violent offense.<sup>351</sup> During that same time period, the board received three victim protests, but all those victim objections were in nonviolent cases.<sup>352</sup>

In Texas, the overall parole grant rate is approximately 36 percent.<sup>353</sup> By contrast, the parole grant rate for individuals serving sentences of capital murder (which includes murder in the commission of certain other felonies and murder where the victim is a peace officer) has historically been low—around 8 percent on average over the last 15 years.<sup>354</sup>

As these statistics suggest, individuals serving long sentences for violent offenses, including those who were young at the time of their offense, have not had high rates of success

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**THE NEW YORK 2014 PAROLE  
APPROVAL RATE FOR  
VIOLENT OFFENDERS WAS  
19 PERCENT**



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**IN OKLAHOMA,  
FROM JULY 2015 TO  
FEB. 2016, THE PAROLE  
APPROVAL RATE FOR  
VIOLENT OFFENDERS WAS  
1.3 PERCENT**



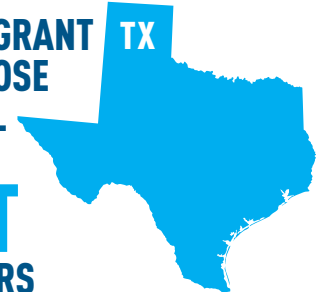
before the parole board. Those individuals previously serving juvenile life without parole (JLWOP) may not fare much better before the parole boards without fortified procedural protections to ensure a meaningful hearing. Indeed, the traditionally low parole approval rates for parole-eligible young offenders serving lengthy sentences suggest that delegating to the parole boards the ultimate authority to release those previously sentenced to die in prison may not result in their freedom.

## F. PAROLE AND YOUNG OFFENDERS

For numerous individuals serving long sentences in prison, the problem with parole review is not simply that it is too rare, too hostile, and too superficial. It is also that, for a serious offense, parole does not provide a meaningful avenue for release. As legal scholar W. David Ball observes, “The de facto policy is no parole, even though this is not a policy that has been endorsed by the legislature or any other representative body.”<sup>355</sup>

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**THE AVERAGE PAROLE GRANT  
RATE IN TEXAS FOR THOSE  
CONVICTED OF CAPITAL  
MURDER HAS BEEN  
8 PERCENT  
OVER THE LAST 15 YEARS**



# MILLER AND PAROLE IN THE COURTS

The ACLU is currently challenging the parole process in three states. In Michigan, in *Hill v. Snyder*, the ACLU is challenging the process as applied to individuals who were juveniles at the time of their offense because the existing procedures do not provide the now constitutionally required meaningful opportunity for release.<sup>356</sup> In May 2016, the Sixth Circuit Court of Appeals remanded the case to the district court to address the Michigan parole procedures in light of *Montgomery v. Louisiana*.<sup>357</sup> Similarly, in Maryland, the ACLU is challenging the parole system's failure to provide a meaningful opportunity for release for individuals who were juveniles at the time of their offenses, as demonstrated by the fact that no "juvenile lifer" has been granted parole in two decades.<sup>358</sup> The ACLU is also challenging the parole process of juvenile offenders in Iowa in order to ensure that these individuals receive a meaningful parole review where their youth at the time of the offense and subsequent

rehabilitation are taken into account.<sup>359</sup> An individual case is also pending in North Carolina, where a federal district court ruled in September 2015 that the existing North Carolina parole review process violates the rights of juvenile offenders and required that the state provide a plan to ensure these individuals receive a meaningful opportunity for release.<sup>360</sup>

In New York, a state court recently held that **Dempsey Hawkins**, who was 16 at the time of his offense and received a parole-eligible life sentence, was entitled to and yet denied a meaningful opportunity for release in his parole hearing.<sup>361</sup> While incarcerated for the murder of his girlfriend, Mr. Hawkins focused on his education and participated in vocational and other available programming. Recalls Mr. Hawkins, "I just thought, 'I've got to get better.' I hit the gutter and the only way up was self-improvement. I wanted to get a measure of redemption for myself."<sup>362</sup> Mr. Hawkins, a 56-year-old Black man who was convicted in 1979, was denied parole nine times, generally for the nature of the offense. The case was remanded for a de novo parole hearing to consider Mr. Hawkins' youth and related characteristics at the time of the offense. Outside of this recent litigation, however, few states have been compelled or else chosen to overhaul their parole procedures to comply with *Graham* and *Miller*.



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The key question after *Graham* and *Miller* is whether young offenders who have been rehabilitated will be released to live a meaningful life outside prison walls, or if they will at best be released to die outside them. As Bierschbach observes, “Absent a constitutional mandate imposing substantive conditions for release, offenders sentenced to life with parole can—and often will—still serve a life sentence. It is just that the parole board, not the sentencing judge, ultimately makes the judgment that they will do so. And it does so slowly, by degrees, and over time.”<sup>363</sup>

The challenge for young offenders now facing parole review is not necessarily that they are stuck with the same insufficient system that has frustrated other parole-eligible prisoners. Rather, individuals incarcerated since their youth face unique challenges in getting parole approval *because of* their age at time of the offense. As Cohen observes, when young offenders come up for their initial parole review:

[M]any have few contacts in the outside world, no job prospects, and no previously forged relationships; in other words, they are even less prepared for reentry than their adult counterparts. They thus come before the Board in a high “risk state,” unlikely candidates for release unless their circumstances are considered from an appropriate developmental perspective.<sup>364</sup>

Moreover, individuals who grew up in prison have been almost entirely reliant on the adult correctional system for their education, socialization, and reentry training.

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**Individuals who grew up in prison have been almost entirely reliant on the adult correctional system for their education, socialization, and reentry training.**

Legal scholars and advocates, including the ACLU, maintain that the language of *Miller* creates a constitutional requirement that parole proceedings provide a meaningful opportunity for release for young offenders. Without requirements for the parole board to ensure that youth is viewed as a mitigating and not an aggravating factor, the possibility of release may be illusive.

## 1. Youth-Specific Guidelines and Their Impact on Parole

In most states, even after the *Miller* and *Graham* reforms, there are few procedures to ensure that a person’s youth at the time of the offense is appreciated for its impact on the individual’s state of mind at that time and their subsequent growth. This lack of appreciation for the importance of youth is seen in parole outcomes—few individuals who were young at the time of their offense are released before they are old.

The low parole rates for young offenders, similar to the low parole approval statistics for adults serving long sentences for serious offenses, suggest that, without reform, the current parole system will not release a significant number of parole-eligible prisoners. As law professor Megan Anitto observed, “[T]he standards used by parole boards lack any component that would afford ‘meaningful review’ of parole board decisions as they currently exist.”<sup>365</sup> Juvenile law experts Marsha Levick and Robert Schwartz have suggested that in order to make the *Miller* decision’s “meaningful opportunity for release” a reality, “state laws and regulations should also explicitly direct parole boards to consider the offender’s youth at the time of any offense(s) or rules violation(s) and subsequent evidence of maturation. In other words, parole boards should be required to replace the offense-centered and largely discretionary evaluation of juvenile offenders’ parole eligibility with the offender-centered approach established in *Roper*, *Graham*, and *Miller*.”<sup>366</sup>

A handful of states, including California, Connecticut,<sup>367</sup> Louisiana,<sup>368</sup> Nebraska,<sup>369</sup> Nevada,<sup>370</sup> and West Virginia,<sup>371</sup> have reformed their parole processes in response to these legal developments for juveniles. To date, the state that has done the most to address whether a juvenile serving a life

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## In California, the parole board now considers youth a mitigating factor for those who were under 23 at the time of their offense.

sentence will actually be given a meaningful opportunity for review is California.

In 2013, California enacted another law that directly addressed the parole board and its procedures.<sup>372</sup> In this legislation, California instructed the parole board to “give great weight to the diminished culpability of juveniles as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner in accordance with relevant case law.”<sup>373</sup> Risk assessments, based on instruments that seek to determine an individual’s future risk of offending, conducted for young offenders must also take youth and subsequent growth into consideration.<sup>374</sup> Moreover, under the statute, the board must meet with the juvenile offender six years prior to their parole eligibility date and provide information about the parole process, including “individualized recommendations for the inmate regarding his or her work assignments, rehabilitative programs, and institutional behavior.”<sup>375</sup>

Most dramatically, in 2015, California enacted a law that expands the definition of “youth offenders” for purposes of parole hearings to include individuals who committed their “controlling offense” before age 23.<sup>376</sup> As a result, individuals who were 18-22 at the time of their offense benefit from the parole board’s new mandate to consider the mitigating impact of an individual’s youth and related characteristics at the time of the offense.

The effects of these new review opportunities and procedures have already been felt, if on a small scale. Annetto observed that approximately 57 percent of the first group of young offenders reviewed under S.B. 260 (12 out of 21 individuals) were granted parole: “These results stand in

stark contrast when compared to the annual rates of decisions granting parole release to life sentenced offenders in California in prior years—which in some years was as low as zero percent.”<sup>377</sup>

A few other states, like Connecticut, Louisiana, and West Virginia, have introduced legislation requiring parole boards to consider youth and factors related to a person’s youth at time of the offense in the review.

In *Diatchenko v. District Attorney (Diatchenko II)*, the Massachusetts Supreme Court went even further, holding that individuals previously sentenced to life without parole as juveniles are now entitled to legal representation in their parole hearing, limited judicial review of the board’s decision, and, at the discretion of the court, funding to procure an expert witness to prepare for the hearing.<sup>378</sup> In 2014, the parole board held 20 hearings for individuals previously sentenced to JLWOP. According to the parole board, nine (45 percent) were granted parole and eight (40 percent) were denied; the remaining three (15 percent) had pending decisions.<sup>379</sup> By comparison, in 2013, when none of these individuals were eligible for parole, the Massachusetts parole board denied parole to 75 percent of the individuals serving a life sentence who received a hearing.<sup>380</sup> The overall grant rate for parole applicants sentenced to life as juveniles since 2013 has been approximately 37 percent, with the number of such individuals granted parole dropping dramatically since mid-2015. Of the 14 juvenile lifers reviewed between August and December 2015, none were granted parole.<sup>381</sup>

But these states are the exception. In most, parole applicants who were young at the time of their offense are not given any additional protections or assistance in the parole process.

## 2. Youth as an Aggravating Factor

The ACLU’s review of all 50 state parole board guidelines, governing statutes and regulations, and policy manuals found only a handful of states that explicitly address youth in the parole review.<sup>382</sup> Some states, through their risk assessment instrument or as an independent factor,<sup>383</sup> count youth at the time of the offense, arrest, or admission to prison as a negative or aggravating factor in risk assessments (determining future risk based on a calculation of factors). The



assumption behind this determination appears to be that criminal conduct at a young age is a relevant factor in predicting the likelihood of future criminal conduct. However, as found in the research relied upon by the Supreme Court in *Miller* and *Graham*, serious criminal conduct in youth may not correlate with future criminal activity.<sup>384</sup>

Nevertheless, as law professor Megan Annitto has documented, “Under *Graham* and *Miller*, the youth of the offender is viewed as a factor suggesting a greater likelihood of redemption. Yet, in parole release risk assessment, age generally works to increase the potential risk scores of those who offend at a young age.”<sup>385</sup> (See page 64 on risk assessments.) This tension presents a problem absent transparency and guidance as to how parole boards use the risk assessment and otherwise consider youth.

For example, in some states, risk assessment instruments, which seek to determine risk of re-offense based on a series of individual factors, treat age at first arrest as a static or aggravating factor that increases the risk score.<sup>386</sup> In Texas, being under 18 years of age at first incarceration increases your risk score,<sup>387</sup> as does age at first criminal behavior in Oregon.<sup>388</sup> At least 11 states explicitly include juvenile records as part of the prisoner’s criminal history for purposes of calculating risk or making parole decisions.<sup>389</sup>

By contrast, California explicitly treats youth as a mitigating factor in its parole guidance,<sup>390</sup> and New York has special “juvenile offender guidelines” that apply under certain circumstances.<sup>391</sup> In Connecticut, if the individual committed their offense before turning 18 years old, the board must

consider additional factors, including rehabilitation since the offense and the individual’s increased maturity today.<sup>392</sup> In Louisiana, the board must consider “a written evaluation of the offender by a person who has expertise in adolescent brain development and behavior and any other relevant evidence pertaining to the offender” during a parole hearing for someone who was under 18 when they committed the offense.<sup>393</sup>

\* \* \*

The existing and chaotic parole landscape around the United States is one of few binding rules, huge discretion, and limited review. Even though parole boards have power that looks and feels like sentencing authority, courts and legislatures have allowed these boards considerable power without corresponding oversight. On the contrary, these boards have been given the license to provide very limited review with nominal rights for those seeking release. But they have also been given limited resources in staffing and time in order to make these critical determinations. As discussed in the next section, in the absence of meaningful procedures, guidelines, assessment tools, and a requirement to comply with due process, parole proceedings in many parts of the country consist of a brief file review and a quick denial.

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**As found in the research  
relied upon by the Supreme  
Court in *Miller* and *Graham*,  
serious criminal conduct in  
youth may not correlate with  
future criminal activity.**



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# IV. PAROLE IN PRACTICE: HUGE DISCRETIONARY POWER, NO TRANSPARENCY, AND LIMITED RIGHTS

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## A. PALTRY PROCESS WITH SIGNIFICANT CONSEQUENCES

As discussed above, courts and state legislatures authorize parole systems wherein the parole board's power is significant and the rights and procedures for the applicant are nominal at best. The parole systems in place exemplify this broad mandate. According to Kevin Reitz's parole study for the Model Penal Code, "The shortfalls of the parole-release process have remained a blind spot for lawmakers, courts charged with constitutional review, and many academics."<sup>394</sup> The latitude given to parole boards is reflected in both low parole approval rates and a process that does not make release seem viable. In many states, parole proceedings take place without a hearing, may consist of a few minutes of review, and are inscrutable to both the public and the people whose lives depend upon the board for release.

### 1. Parole Review in the Absence of a Hearing

The parole system upheld by the Supreme Court in *Greenholtz*, however deficient, did at least include an in-person interview with the person applying for parole, a fact relied upon in the court's decision.<sup>395</sup> However, in some states, such as Georgia, Texas, and Michigan, there is no hearing and only occasionally (if ever) an in-person interview between the parole applicant and a parole board member. According to a survey of parole boards conducted by legal scholar Sarah French Russell, Alabama and North Carolina reported that interaction with the individual seeking parole is not part of the decision-making process in any case.<sup>396</sup>

Texas does not have hearings, and its parole board only recently instituted a policy requiring a board member interview for a prisoner who has served *at least* 20 consecutive years in prison and has not been interviewed by a voting panel member in their two previous parole interviews.<sup>397</sup> Individuals in Texas are instead interviewed by an institutional parole officer, an entry-level paid position employed by the parole board.<sup>398</sup> But that officer is not reviewing the prisoner's case; the officer is merely checking factual details like the individual's release address and current health status for a case summary. Three panel members review the applicant's file in succession, but if the first two members agree, the third panel member does not even have to review the file.<sup>399</sup> While the board may choose "at its discretion" to meet with the individual seeking parole and/or their supporters, the board must meet with any victim requesting to be heard.<sup>400</sup>

Similarly, in Georgia, a parole investigator interviews the parole applicant to check factual details for the individuals' file.<sup>401</sup> The file is then reviewed by the five parole board members, who read the file sequentially until a majority decision is reached.<sup>402</sup>

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**In several states, there is *no hearing* and only rarely (if ever) an in-person interview with the parole applicant.**



**Harold Kindle has been serving a life sentence in Texas since he was 16.**

**Harold Kindle**, a 43-year-old Black man serving a life sentence in Texas, has been incarcerated since 1989. At the time of his offense, he was 16 years old. Mr. Kindle has been reviewed by the Texas Board of Pardons and Paroles five times (in 2002, 2005, 2008, 2011, and 2014); each time he has been denied solely based on the nature of his offense (murder).<sup>403</sup> He has seen one parole commis-

sioner on one occasion, after he had been incarcerated for over 20 years, during which time he had earned his GED, developed trade skills in electronics, and worked in food services in the facility. “Otherwise,” says Mr. Kindle, “it’s just the counselor and that meeting is maybe 10-15 minutes. They just ask if anything has changed since the last review.” Those check-ins and the file review, Mr. Kindle says, feel insufficient to demonstrate a person’s aptitude for release: “I wish there was something where [the board] could get an understanding of who we are. Maybe they could talk to staff and others who know us. You get 20 minutes to convince someone about who you are. . . . I can say what class I took but that doesn’t tell you who I am as a person.”<sup>404</sup>

For people serving a life sentence in Michigan, the parole board has to review their file only every five years. But it can decide at that review not to interview the individual and to instead set them off for another five years. This decision to take “no interest” and thereby effectively deny a prisoner parole with no further explanation is not governed by statutory requirements, does not require a written explanation, and is not reviewable in court.<sup>405</sup>

**Patrick Cole**, a 58-year-old Black man, has been in prison in Michigan since he was 18. He is serving a life sentence for second-degree murder and a 40- to 80-year sentence for armed robbery. Mr. Cole was raised in Detroit, where he lived with his mother and two sisters. His father, brother, cousin, and uncle died in a car accident when he was 15. Mr. Cole played all-state high school football as a teenager.<sup>406</sup> That ended when Mr. Cole was shot by police officers who

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**“Do they think five years is nothing? Like you can do that in your sleep?”**

—Patrick Cole

mistook him for a suspect in an armed robbery.<sup>407</sup> He was 16. The bullet left Mr. Cole with a permanent disability in his left arm.<sup>408</sup> Not only did this injury end his football career, Mr. Cole recalls, but it introduced him to drugs: “I was on powerful drugs at the hospital, and I could never get off them.”<sup>409</sup> On the night of August 5, 1976, while high on heroin, Mr. Cole and his co-defendant drove to a pharmacy to steal prescription drugs.

Mr. Cole says he did not mean to harm anyone, but when the pharmacist resisted, he shot him in the abdomen: “I am very remorseful for it. I had never shot anyone. I was scared half to death when I pulled out the gun. I shot him out of fear—not to justify what I did.”<sup>410</sup> In his 40 years in prison, Mr. Cole has been reviewed by the parole board several times, but, in at least four of those reviews, the parole board gave him a “no interest” notice and did not interview him in person. His last interview was in 2001, and it was conducted by videoconference. He has not been interviewed in person since 1992. “They just keep telling me to keep up the good work,” Mr. Cole says. “Do they think five years is nothing? Like you can do that in your sleep?”<sup>411</sup>

**Michael Jackson** (full summary in Section X) is a 43-year-old Black man who has been in prison in Michigan since he was 17 years old. In 1990, Mr. Jackson pled guilty to murder in the second degree and received a sentence of life in prison with the possibility of parole. Leading up to his offense, Mr.



**Patrick Cole, pictured here with his sister and niece, has not been interviewed in person for parole since 1992.**



**Michael Jackson has been in prison in Michigan since he was 17.**

Jackson was going through a tumultuous several years. He had dropped out of school in seventh grade and was living with his grandmother. This was because his father had long since relocated to Missouri and his mother was in a treatment center for her substance abuse problems.<sup>412</sup> According to Mr. Jackson, on February 3, 1990, he confronted another youth who he believed to be harassing

his friend and his friend's mother.<sup>413</sup> Mr. Jackson believed he heard the other youth say he was going to shoot him; Mr. Jackson pulled out a gun and shot him.<sup>414</sup> This offense led to his first contact with the criminal justice system and came as an enormous shock to Mr. Jackson and his family.<sup>415</sup> Once in prison, Mr. Jackson quickly got his GED, enrolled in vocational and group counseling activities, and completed substance abuse treatment.<sup>416</sup> His job reports over the past two decades give increasingly strong ratings to his commitment and attitude, as do his reports from the housing units, which have described him as a "role model for other prisoners."<sup>417</sup> To date, Mr. Jackson has been reviewed by the parole board on four occasions but interviewed only once, 16 years ago. In other reviews, the board has given him a notice of "no interest."<sup>418</sup> To Mr. Jackson, this is the most frustrating part of the process: "I think the board needs to speak to people and find out who they are today to give an explanation for why they aren't interested and to give direction for what a person should work on."<sup>419</sup> That he has gone 16 years without being interviewed by a parole board member, Mr. Jackson notes, limits the board's ability to appreciate how he has matured:

People do change. There are a lot of people who have changed their way of thinking and have maintained a model lifestyle in here. And it's because they've maintained a sense of hope. There are a lot of people here who, if you let them out, you wouldn't see them back in prison ever again.<sup>420</sup>

## The decision to deny parole may come from someone who was not part of the hearing or interview.

In Alabama, although there is a parole hearing that takes place in Montgomery, the state capital, prisoners are often not present, particularly when incarcerated farther away. The board observes that "transport[ing] inmates to the Board for their parole hearing would create an added financial responsibility for the Department of Corrections."<sup>421</sup> Florida uses a similar practice of holding a hearing where the prosecutor, victim, and others can participate, but the person applying for parole is absent.<sup>422</sup>

Even in states that do have a hearing, or at least an in-person interview, prisoners and their advocates said that the hearing may not reveal whether the individual will be approved or denied parole and what the board is concerned with. This is particularly true where only one of the decision-making board members actually interviews the parole applicant. For individuals convicted in Washington, D.C., the U.S. Parole Commission, a federal agency, has jurisdiction over parole proceedings. Avis E. Buchanan, director of the Public Defender Service for the District of Columbia, wrote that the commission lacks transparency in both the parole release and revocation hearings: "In many cases, a person leaves a hearing with a favorable recommendation only to find that the decision has been overturned and a harsher sentence imposed by an unnamed commissioner he or she has never met and who did not attend the hearing."<sup>423</sup> That the decision to approve or deny parole may be made by someone who was not part of the interview or hearing process is common around the United States; Sarah French Russell's survey of parole board practices found that in 11 states (Connecticut, Idaho, Maryland, Massachusetts, Missouri, Nevada, New Jersey, Pennsylvania, Tennessee, Texas, and Utah), parole boards use people who are not the decision-maker to conduct some or all of the parole interviews and hearings.<sup>424</sup>

## 2. Hostile Hearings

Many prisoners described hearings as a hostile resentencing, where they were confronted by angry parole members who dismissed their growth, cut them off before they could provide responses, and focused solely on the details of the offense. This experience, prisoners said, eviscerated their sense of accomplishment and sent them into depression. The impersonal nature of the process, many felt, made it easier for the board to ignore who they are now and to focus instead on the severity of the offense and person they used to be. When a hearing takes place, it is often very brief, and the parole board members may have only a few minutes to examine the decades' worth of files on the parole applicant, their record in prison, and the letters of support and evidence of growth.

Some parole boards are now using videoconferencing for their parole interviews and, in some cases, hearings. At least one study has demonstrated that individuals interviewed in person are more likely to be approved for parole than individuals interviewed via videoconferencing. Videoconferences are characterized by “less intimate interactions, resulting in reduced exchanges of information and decreased interpersonal connections.”<sup>425</sup> Prisoners interviewed for this report described the videoconference experience as dehumanizing and alienating.



**Kenneth Cobb, pictured here with his brother, is serving a life sentence in New York.**

**Kenneth Cobb**, a 46-year-old Black man serving a life sentence in New York, said of videoconferencing, “I know it’s convenient but you should have a real conversation face-to-face. You can’t tell [who a person is] on a monitor.”<sup>426</sup> Former parole commissioner Thomas Grant says that giving a parole applicant an in-person hearing is a matter of respect: “You have someone in front of you who has prepared, not just for this interview

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**“ We already know the details of the crime. What we want to know is has the rehabilitative programming worked?”**

—Doug Tjapkes, *Humanity for Prisoners*

but for their life outside. I don’t think you capture the full person and the work they’ve done [by video].”<sup>427</sup> Moreover, when commissioners are not going into the facilities to conduct these interviews, suggests Grant, it allows them to distance themselves not only from the parole applicant but from where a denial leaves them—in prison.<sup>428</sup>

A hearing is not always an opportunity for the individual to demonstrate rehabilitation and community support; rather, it may be a hostile and graphic exchange about the crime. Although parole hearings are not considered to be trials,<sup>429</sup> they are often adversarial in nature and typically focus on the original crime, and yet without the resources, time, and legal assistance of a trial. Doug Tjapkes from *Humanity for Prisoners* has observed parole interviews and public hearings for many prisoners over the years and says the interviews and hearings can both be devastating for individuals serving life sentences, who are rarely interviewed and put forward for a public hearing:

The emphasis is all wrong. [The board members] want to hammer away on that crime. They want to go back to it and keep digging, digging, digging. . . . it would seem to me that we already know about the details of the crime. What we want to know is has the rehabilitative programming worked? Are these programs effective? Are you ready to go back to society? A very minimal percentage of time is placed on the individual’s record since they’ve been in prison and their rehabilitation and it’s so wrong. The prisoners don’t want to keep reliving the crime either—to spend two to three hours



going through it in the public hearing just leaves these people in ruins.<sup>430</sup>

Many prisoners observed that, after many years of not talking about their crime and given the limited education and counseling available to prisoners, the requirement to talk about the crime in the hearing was a challenge, especially without the help of counsel or other preparation.

**T.J. Smith\*** (pseudonym), a 56-year-old white man sentenced to life imprisonment for his role in the felony murder of a woman in Michigan (he was 15 and his co-defendant committed the murder), said that when he finally did have a public hearing after 40 years in prison, it was a challenge to talk about his crime: “When people go to prison, you’re told not to tell anyone anything about your case and you’re in a macho environment where any sign of weakness is going to hurt you. This is the system you are in for 10-15 years, and when you do see the parole board, you are unable to articulate your feelings of remorse. We know why that is.”<sup>431</sup>



**Terrance Sampson, pictured around the time of his crime when he was 12 years old, is now 39.**

I didn’t know that my choices could affect people’s lives forever. I am deeply sorry for my actions on December 2nd[,] 1989. I am sorry for not knowing how much I needed help. I am sorry for not knowing how to ask for the help that I needed. . . . There were choices made on that night that I deeply regret to the core of my soul; choices made out of anger at first and then quickly made out of fear. I truly regret my callous and violent behavior on that night and how my

**Terrance Sampson** is a 39-year-old Black man who has been in prison in Texas since he was 12 for the murder of a young girl. He was subjected to continuous physical abuse throughout his childhood from his father, who he has since reconciled with, and says that experience of violence and victimization was one he didn’t know how to cope with as a child. According to Mr. Sampson, “I didn’t know I was a time bomb waiting to explode. I

actions changed the course of many lives, forever.”<sup>432</sup> While in prison, however, Mr. Sampson says he has sought out support and classes and anything that could both give him insight into his actions and help to better himself. But there are few prison programs designed and required to help individuals like Mr. Sampson understand and then explain their past offenses. Says Mr. Sampson, “The strange thing about this system is that people come in for 20 years and never talk about their crime. There is no programming before you make parole to talk about your offense and why you did it. Even the cognitive program, you take that in 90 days, but what am I supposed to do for the next 19 years?”<sup>433</sup>



**Ronald Webb, 19 at the time of his offense, was recently granted parole in Michigan.**

**Ronald Webb** is a 45-year-old white man who was recently granted parole in Michigan after 25 years in prison for the murder of his father and his father’s girlfriend; he was 19 at the time. Mr. Webb says his father was both physically and emotionally abusive throughout his life and Mr. Webb himself was becoming more volatile and reliant on drugs and alcohol. “To me, the physical abuse was the norm,” says

Mr. Webb. “When I got mad in the past I broke things. I got aggressive. But this was a moment I knew I couldn’t fix. . . . I brought a lot of the violence from my dad but I realize . . . this came from me.”<sup>434</sup> What has made the biggest difference to his growth and development, says Mr. Webb, has been the programming: “When I came in [to prison], the only thing I could get into was my GED. But violence prevention, substance abuse, I couldn’t get into any of that. You really had to take care of yourself and change. . . . When I took mediation training, a light bulb went off—I understood what happened with my father and me. I wish I had had these skills then.” But in many facilities and for prisoners serving long sentences, says Mr. Webb, the lack of counseling and assistance for individuals before they go to the parole review is problematic because many individuals don’t know how to talk about their offense, why they think they committed it, and how they’ve changed since. “If a guy can’t express how



he feels, he shouldn't be penalized for it. There should be a parole workshop at every facility. Everyone should have the chance to prepare," says Mr. Webb.<sup>435</sup> Mr. Webb, who has now been released on parole, says the programs in prison have helped him to readjust to the community and rebuild his family relationships, beyond helping him gain insight into who he was when he committed this offense and who he is now.

The parole process, as described by prisoners, does not offer a real opportunity for prisoners to convey who they are now, what their plans are for release, and how they've changed. A 1972 official New York State report found:

The average time of the hearing, including the time for reading the inmate's file and deliberation among the three Commissioners present, is 5.9 minutes. The parole folder may have as many as 150 pages of reports on the inmate which he has never seen. Two of the Commissioners often read the files of the inmates next in line while an inmate is questioned by a third Commissioner. Thus, the inmate, after years of anticipation, is left with the impression that nobody was or is really interested in his case or gives it due consideration. The questions are often superficial: "Do you feel you have the capabilities of functioning on the outside as a cook?" If the questions delve more deeply, they often concentrate on the inmate's past crime, rather than on his present condition or plans for the future. . . . The legal requirement that all three Commissioners participate in the decision is satisfied only in the most perfunctory way.<sup>436</sup>

More than 40 years later, individuals interviewed for this report, incarcerated in New York and around the United States, leveled the same criticisms and said the hearing or interview was extremely quick despite the critical issue at stake.

**Aaron Talley**, who was imprisoned for murder stemming from a drug feud and was reviewed 17 times before finally being released from prison in New York in 2015, recalled, "I went to one board where there were 48 of us. They saw all of us in an hour and a half. What real thought did you give to that decision? Only three or four were released. I've

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## Forty-three states allow prosecutor input while 14 prohibit a prisoner's attorney from participating in the hearing or interview.

been to boards where they only deliberate for a minute before bringing in the next person. These decisions are pre-determined."<sup>437</sup>

**Lisa McNeil**, a 49-year-old Black woman serving 28 years into a life sentence in Texas for the murder of her former husband's girlfriend, said her last interview with the parole officer was just five minutes: "The interview is so cold and quick to be dealing with someone's life."<sup>438</sup> Ms. McNeil, who reports being in an abusive and traumatic relationship with her husband for years before her offense, says she understands that her offense was horrific and how parole board members would view her: "I didn't mind being in prison because I had done this but they are holding someone who would never do this again."<sup>439</sup>

"My first hearing was about three minutes," says 57-year-old **Daniel Boucher**, a white man who has been incarcerated in Rhode Island for the murder of his girlfriend during a

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## IN NEW YORK, FROM JAN. TO OCT. 2014, THE PAROLE BOARD CONDUCTED

# 10,737

## PAROLE INTERVIEWS



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# IN 2015, THE TEXAS PAROLE BOARD REVIEWED OVER 82,000 CASES

fight over 31 years ago. Mr. Boucher says he was using drugs and alcohol heavily at the time of his offense but has taken substance abuse treatment in prison as well as anger management and courses on domestic violence and victims' impact. He recalls, "They are looking at the paper in front of them and saying, 'That guy's no good.' And when I look at that paper, I say that 'guy isn't any good.' But that guy doesn't exist anymore."<sup>440</sup>

Part of the reason the review is so abbreviated is parole boards' lack of resources. A handful of parole board members are responsible for thousands of cases each year, making it nearly impossible to provide robust individualized review, with or without a hearing.

In New York, between January and October 2014, the 14-member parole board conducted 10,737 parole interviews either in-person or via videoconference.<sup>441</sup> Attorney Alan Rosenthal observes that staffing and the amount of information to be covered limit the degree of individualization in the process: "There are 19 commissioners and you get a file that is three to four inches thick—they couldn't possibly go through that in less than a couple of hours. It's not incorrect to assume they may only spend five minutes on a file."<sup>442</sup>

In Texas, in FY 2015, the parole board (seven members who share responsibilities with 14 parole commissioners) considered over 82,000 cases.<sup>443</sup> Attorney Gary Cohen observed that, given the enormous number of cases each parole member processes, it is beyond their ability to make individualized decisions and to thoroughly review a prisoner's file: "The board members are people who take their jobs and their decisions seriously. I'm impressed by what they put into the job. But it's unwieldy right now when you have only 21 members making over 600 decisions a week. The pressure they face on time and each file is immense."<sup>444</sup>

**Michael Elizondo**, who has been incarcerated in Texas since 1992 for murder, says, "The real problem in the process is that there are too many of us and not enough of them to go through the files and information."<sup>445</sup>

Similarly, in Michigan, Doug Tjapkes of Humanity for Prisoners observes, "We have a parole board of 10 people and they are handling between 10,000 to 20,000 cases a year. Which means they can't do it."<sup>446</sup> A parole board member in Georgia told a reporter, "I typically voted 100 cases a day. That was just an average day . . . You're just talking about two to three minutes to make a decision. The public would be astounded at the short period of time that the board has to make decisions on life and death cases."<sup>447</sup> One parole board staff member in Missouri explained to a reporter that some members never read the files at all and instead based their decision on how the reviewing board member before them voted.<sup>448</sup>

**Thomas McRoy**, a 50-year-old white man serving a life sentence in New York for murder and attempted sodomy, says, "When you go into the hearing, the commissioners aren't familiar with each person's file. And for each person who has been in prison for 30 years, that is a lot of material. There are hundreds and hundreds of people who they are reviewing each month and they are completely unprepared to see us. When they get a pile of material and are given five minutes to review, how can they make an informed decision about someone's life?"<sup>449</sup>

**Andre Pea**, a 44-year-old Black man serving a life sentence in Texas for a murder he allegedly committed at age 17 (Mr. Pea maintains his innocence), observed, "The last person I saw at the review said they were so backed up she didn't have my file yet."<sup>450</sup>

**Ronmel Martinez**, a 42-year-old Latino man, was approved for release in 2016 after serving a life sentence for felony murder during an armed robbery in which he was not the shooter. He said of the parole hearing, "You're meeting me for the first time and only giving me 15 minutes to get to know me. It's not easy for them either—they have all things information to cover. It's not enough time to really get to know an individual."<sup>451</sup> Mr. Martinez was 17 at the time of his offense.

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## “When they get a pile of material and are given five minutes to review, how can they make an informed decision about someone’s life?”

—Thomas McRoy

### 3. No Legal Assistance

Applicants experience parole review as an adversarial proceeding where their liberty is at stake. Even if they are not officially recognized as such, parole proceedings often resemble sentencing hearings, particularly in the emphasis on input from the prosecutor’s office, which 43 states allow.<sup>452</sup> By contrast, parole applicants rarely have attorneys, and in fact, parole systems rarely provide attorneys for indigent individuals seeking parole.

While California and Massachusetts both provide counsel to individuals serving a life sentence in parole proceedings, they are unique in this recognition of right to counsel.<sup>453</sup> Aside from these two states, New Jersey appoints counsel for individuals with mental or physical disabilities.<sup>454</sup> Ohio provides attorneys for all prisoners at public hearings where the prosecutor, victim, or court objects to release after the parole board has voted in favor.<sup>455</sup> Law professor Sarah French Russell found that some parole boards do not permit a prisoner’s attorney to even participate in the hearing or review, six boards will not consider a prisoner’s attorney’s input, and seven permit some input but not at the actual hearing.<sup>456</sup> Forty-three states allow prosecutor input while 14 prohibit a prisoner’s attorney from participating in the hearing or interview.<sup>457</sup> By contrast, Russell’s research found, almost all states consider input from the prosecutor’s office, with 30 permitting that input to be in-person, and every board accepts input from the victim.<sup>458</sup>

While few people interviewed by the ACLU had ever had an attorney represent them in a parole board hearing, those

who did felt the attorney’s participation in the hearing itself was essential. **Scott Ebanks**, a 46-year-old Black man recently released on parole after almost 26 years in prison for second-degree murder, said, “You need legal representation because you are going before a tribunal that says it isn’t one. They say they aren’t an extension of the criminal justice system but how can that be? I wouldn’t be sitting before three people arguing for my life if it wasn’t. . . . Having [a lawyer] represent me is great but not having her in the room is horrible.”<sup>459</sup>

While an attorney’s participation in the hearing itself should be permitted in order to help the individual present their claims, attorneys told the ACLU that much of their work is to identify reentry resources such as housing, mental health and substance abuse treatment, and transportation plans to demonstrate preparation for release. These plans can take months to put together and the availability of community services is constantly changing. As most states and facilities offer little in reentry planning (see Section VII), this is a critical service provided by attorneys. Too few individuals, however, have attorneys or other assistance in the parole and reentry process.

## B. A CLOSED SYSTEM: THE LACK OF TRANSPARENCY IN THE PAROLE PROCESS

Parole boards have few required procedures or guidelines, which not only gives parole boards significant discretionary power but also makes it difficult for parole applicants (and their advocates) to understand what is happening in the parole review. At a basic level, many people interviewed by the ACLU said they didn’t know the reason they were denied parole—they had no idea what was of concern to the board, what they needed to work on, and whether the information considered by the board was in fact correct. Many prisoners with good institutional conduct who were assessed to be a low risk of recidivism have been repeatedly denied parole without an explanation.

## 1. Uncertainty About the Factors Considered in a Parole Decision

Based on the ACLU’s review of state parole board websites and public records, nearly every state has a statute that outlines the scope of parole board authority and provides some degree of guidance for making parole decisions.<sup>460</sup> While many list specific factors that must be considered by the parole board, six states’ statutes simply require that the parole board determine that release is in the best interest of the state or that the prisoner is unlikely to recidivate, leaving the parole board with vast discretion on how to reach such a determination.<sup>461</sup> While the overwhelming majority of states now use some form of risk assessment tool, state parole boards vary in how they use this instrument. (See page 64 on risk assessments.)

Parole boards have also been allowed to ignore or depart from what criteria they *do* have. Considering the case of a prisoner in Georgia who was denied parole after the parole board departed from its own guidelines for his release date, the 11th Circuit found that because “the procedures followed in making the parole determination are not required to comport with standards of fundamental fairness,” the parole board is not required to even explain its decisions.<sup>462</sup> According to the Marshall Project/Washington Post review of parole procedures around the United States, in 24 states, the board does not have to disclose what material its members relied upon to reach their decisions.<sup>463</sup>

“You’re chasing a phantom—you don’t know how to navigate the parole system because they don’t communicate.”

—Kenneth Barnett

As earlier discussed, courts and legislatures continue to give parole boards significant latitude in deciding who to release, when, and why. For prisoners interviewed by the ACLU, the lack of information about what parole boards considered contributed to a feeling that the boards’ conduct was arbitrary. It also created additional obstacles to demonstrating suitability for parole.



The Innocence Project

**Cornelius Dupree spent over 30 years in prison for a crime he did not commit. Source: NBC News, “Texan Declared Innocent After 30 Years in Prison,” (Jan. 4, 2011).**

**Cornelius Dupree**, who was released from prison after spending over 30 years in prison in Texas for a crime he did not commit, recalls, “I asked the parole officer what the criteria was and she said there is none. Just stay out of trouble.”<sup>464</sup> **Kenneth Barnett**, a 60-year-old Black man incarcerated in Michigan for 42 years (since he was 17) on a life sentence for second-degree murder of a man in a drug-related dispute, said of the parole process: “You’re chasing a phantom—you don’t know how to navigate the parole system because they don’t communicate.”<sup>465</sup>

## 2. Lack of Transparency in Parole Denial

For individuals denied parole, but particularly in states with no hearing, one of the primary stated concerns by applicants is the lack of information as to why the board denied release and what more these individuals could do to earn it. Given the high level of secrecy around the proceedings themselves and a parole applicant’s files, individuals interviewed by the ACLU said they had no idea what was of concern to the board.

In Texas, where prisoners serving long sentences rarely receive an in-person interview, the parole decision that prisoners receive lists the denial or approval code, which encompasses a number of factors that could explain the decision to deny parole, but does not state which factors apply to them. For example, the “2D” code that formed the basis

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## IN GEORGIA, AN INDIVIDUAL CANNOT ACCESS THEIR OWN PAROLE FILE, WHICH IS CONSIDERED A "STATE SECRET"



for denials received by most individuals who contacted the ACLU states the following:

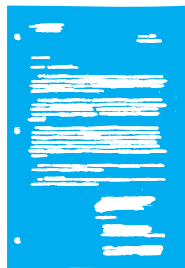
The record indicates the instant offense has elements of brutality, violence, assaultive behavior, or conscious selection of victim's vulnerability indicating a conscious disregard for the lives, safety, or property of others, such that the offender poses a continuing threat to public safety.<sup>466</sup>

According to the Texas Board of Pardons and Paroles' website, "Each standard denial reason contains several factors, only some of which will likely apply to a specific case. Because not every component within a particular reason will apply to your relative's case, you should not conclude on this basis that the file is incorrect."<sup>467</sup> Texas courts have held that this printed form "is sufficient to comply with whatever due process rights a prisoner may have to be informed as to why he was denied parole."<sup>468</sup> Moreover, an individual's risk guideline score is also confidential in Texas; prisoners and their attorneys are not permitted to view the score, which is redacted on their parole minutes.

Aside from the lack of transparency in the parole decision, in many states, parole applicants are not permitted to

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## IN TEXAS, PRISONERS CANNOT SEE THEIR RISK GUIDELINE SCORE



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## IN NORTH CAROLINA, REASONS FOR A PAROLE DENIAL ARE CONSIDERED CONFIDENTIAL



know what information the board considers and bases its decision on. In Georgia, where there are no parole hearings, an individual considered for parole does not have a right to access their own parole file, which is considered by statute a "confidential state secret."<sup>469</sup> The votes of individual board members can be made public only if *all* five members agree to release the information.<sup>470</sup> In Kentucky, information obtained by a parole officer "shall be privileged."<sup>471</sup> In North Carolina, the parole commission's website states that "[t]he reasons for parole denial are considered confidential."<sup>472</sup>

In Michigan, prisoners are not allowed to request their own records through FOIA,<sup>473</sup> and so many have not seen the parole decisions or related information relied upon by the board in denying them. Individuals who have family and funds or an attorney can ask those individuals to request documents for them, but many longtime prisoners do not have the family or the funds to make this request.

**John Alexander** (full summary in Section X) is a 54-year-old Black man who has been in prison since he was 18. In 1981, Mr. Alexander was convicted of second-degree murder and sentenced to life in prison, with an additional two-year sentence for a related felony firearms offense. Mr. Alexander grew up in Detroit with his mother and six sisters; his father died when he was seven years old. In high school, Mr. Alexander dropped out and started working in his grandfather's auto shop to help support his family. He also started selling drugs for money for his family. On August 8, 1980, during a night of gambling, a fight broke out between Mr. Alexander and several other men; during the fight, Mr. Alexander shot and killed one of the young men.

The court, in sentencing him to life in prison, recommended that Mr. Alexander receive two years for the firearms charge and serve 10-20 years in prison;<sup>474</sup> Mr. Alexander has now been incarcerated for 36 years. Since coming to prison, Mr.



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**“If I don’t get out, I’m prepared for that. Getting my hope up, that bothers me more than anything.”**

—John Alexander

Alexander has been involved in numerous rehabilitative programs. He has near-perfect work performance results, and staff note that he gets along well with them and other prisoners and has acted as a role model for prisoners over the past 25 years in particular.<sup>475</sup> But despite his positive institutional record and continued support from family and friends, Mr. Alexander continues to be denied parole.

Mr. Alexander first came up for parole review in 1992. Since then, he has been reviewed for and denied parole six times. His 2009 risk assessment indicates that he had a job offer lined up, that he does not need any additional programming, and that he is a low risk of recidivism and violence.<sup>476</sup> In his last review in 2011, the board did not even interview him but deferred his review again for five years with a “no interest” notice (where the parole board need not even review the file). These notices do not include information about why the individual is denied. “I have a network of people waiting to assist me if I get out. It takes so much out of my wife to go through these reviews—to see the pain in her eyes, it destroys me,” says Mr. Alexander. “Sometimes I do think there is nothing else for me to do here. I’ve worked and taken every class. . . . I live for the possibility of getting out. But if I don’t get out, I’m prepared for that. Getting my hope up, that bothers me more than anything.”<sup>477</sup>

**Earl McBride**, a 59-year-old Black man, has been in prison in Texas for over 35 years. In 1980, at the age of 21, Mr. McBride was arrested and later convicted of capital (first-degree) murder for the murder and robbery of a man in Houston. Mr. McBride maintains his innocence in the murder. After trial, Mr. McBride received a sentence of life imprisonment. It was his first experience with prison, and at the time, his wife was eight and a half months pregnant with

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**“You’re fighting a ghost.”**

—Earl McBride



**Earl McBride, pictured with his sister Patricia, has been in prison in Texas for over 35 years.**

their fifth child.<sup>478</sup> He is now a grandfather.

By the time Mr. McBride first came up for parole in 2000, after serving 20 years in prison, he had already received his GED and junior college degrees.<sup>479</sup> “When I first came into prison,” recalls Mr. McBride, “I was looking for anything that I thought would benefit me and help me to grow and change.” His record as of May 2015 indicates that he

has had only six disciplinary reports in prison, with the last in 2000.<sup>480</sup> Nonetheless, in four parole reviews over the span of 14 years, Mr. McBride has been repeatedly denied parole based on the seriousness of the offense for which he was convicted.<sup>481</sup> Mr. McBride has submitted letters of support from former wardens and other prison staff, as well as letters offering employment upon release.<sup>482</sup> While in prison, he has worked as a peer educator for other prisoners, and he says he also works to educate prisoners about the parole process: “When you come into a situation like this, I’ve just tried to help other people. I feel like a gatekeeper because [of] so many people here who have no information about the

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**At his 14th review, Mr. McBride’s parole was granted and then revoked based on confidential information.**

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## “Real-offense sentencing—punishment for crimes for which there has been no conviction—is the norm in parole proceedings.”

—American Law Institute (2011)

system. . . . I am just trying to keep myself morally grounded. They already took my life.”<sup>483</sup>

In May 2014, Mr. McBride was notified that the Texas Board of Pardons and Paroles had voted to grant him parole.<sup>484</sup> It contacted Mr. McBride’s wife to inform her that he would be home soon and invited her to participate in an orientation program for individuals sponsoring parolees.<sup>485</sup> Two months later, however, the decision to grant parole was revoked. This time, at his 14th review, the board informed Mr. McBride that he was denied parole based both on the seriousness of the offense (2D) and also because of “new information” (10D). However, the new information and its source are considered “confidential” records and cannot be disclosed to either Mr. McBride or his attorney.<sup>486</sup>

Without knowing what the new information consists of, says Mr. McBride, it is impossible to prepare a response or even assess its veracity. He fears he may be denied parole at his next hearing in 2017 and for the rest of his life based on this information. “You’re fighting a ghost,” says Mr. McBride.<sup>487</sup> Looking ahead to his next parole hearing in 2017, without knowing what more he can do in prison or what information is being held against him, Mr. McBride says he can only continue his work and maintain hope: “You go to the bottom of the barrel and you lose everything and you never know when you are coming back up.”<sup>488</sup>

Gary Cohen, an attorney in Texas who represents prisoners in parole proceedings, observes that the secrecy around the review and the parole file not only obstructs a fair review but is unnecessary:

The contents of a parole file are specifically exempt from open records requests. So lawyers like myself are in the dark. They could redact any sensitive information, but I should have a right to examine who is sending in negative information on my client that is certainly relevant and material to the decision-making process. I should be able to examine and rebut that information, if incorrect.<sup>489</sup>

The lack of transparency around what the parole board considers is particularly problematic when parole boards rely on information that may be incorrect and goes beyond what the individual was convicted of. The American Law Institute 2011 Reporters’ Study on parole observed, “Often, there is no formal burden of proof a parole board must apply for its factual determinations. . . . [T]here is no requirement that the parole board’s factfinding be consistent with the facts established when a prisoner was convicted, or those found by the sentencing court. Real-offense sentencing—punishment for crimes for which there has been no conviction—is the norm in parole proceedings.”<sup>490</sup> Some prisoners told the ACLU that the parole board was insisting they admitted to facts and conduct they were not convicted of; many others observed that, without a hearing or in-person review, the facts used against them were never disclosed.

**Rommel Martinez**, granted parole in 2016, spent approximately 24 years in prison for his role in a felony murder, where he participated in an armed robbery and one of his co-defendants shot and killed the victim. Mr. Martinez was 17 at the time of the murder. Mr. Martinez said that at one hearing, the parole commissioner incorrectly thought Mr. Martinez was the triggerman.

New York courts have recognized that the parole board does not have authority to deny parole or base a prisoner’s minimum period of imprisonment on crimes the individual has not been convicted of and denied involvement with.<sup>491</sup> But in most cases around the United States, because parole applicants have no information as to why they are denied parole or access to the evidence used against them, erroneous information may be used against them by the parole board indefinitely with no way for these individuals to contest or correct it.

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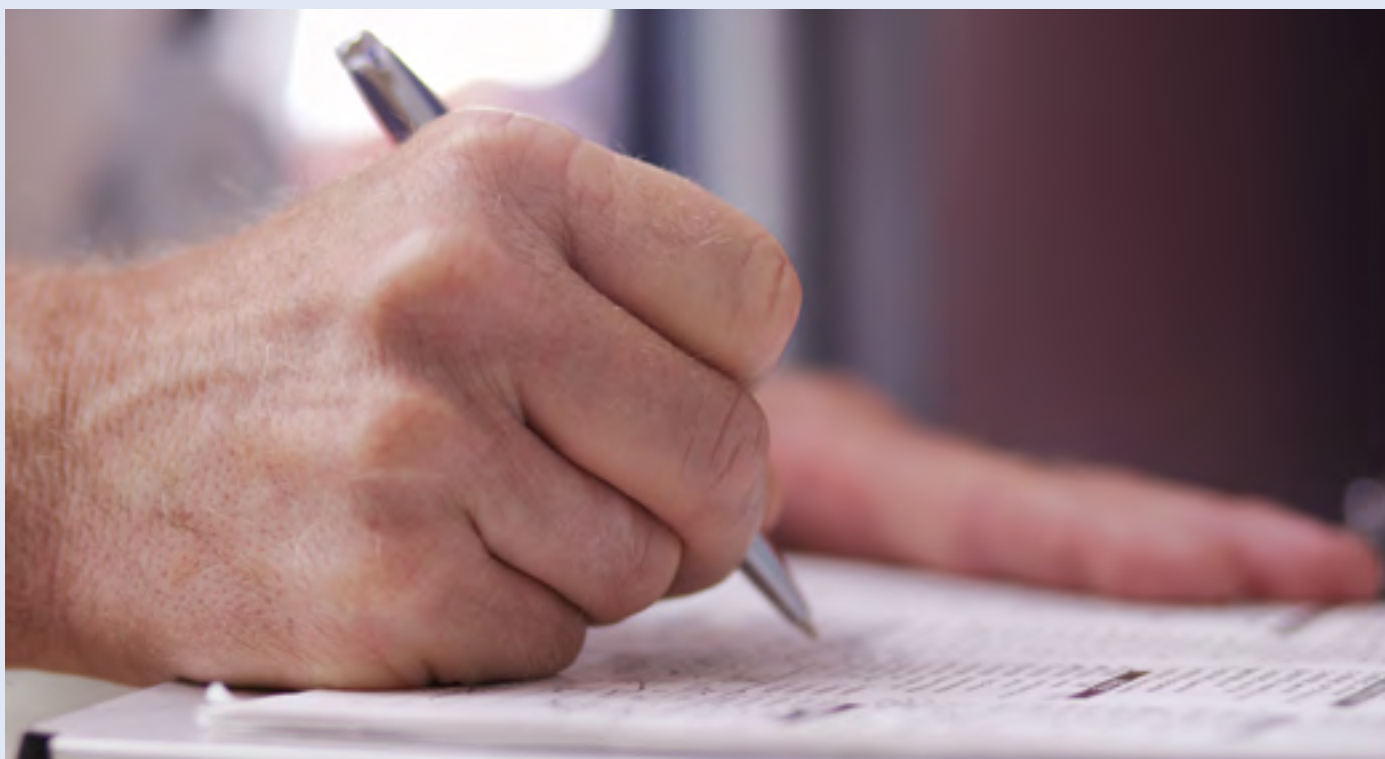
# RISK ASSESSMENTS

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Given the highly discretionary nature of parole release decisions and the lack of transparency that often accompanies them, many lawmakers, advocates, and prisoners favor expanding the use of risk assessment instruments in parole decision-making. These instruments vary greatly; some look like worksheets that are filled out by correctional officers and others are determinations calculated by computer programs that may be privately developed by companies and sold to state departments of correction. Proponents look to risk assessment tools as a way to counter the discretion inevitable in parole decision-making and point to studies demonstrating the greater validity of these actuarial tools compared with an individual decision-maker's judgment.<sup>492</sup> But others argue that these tools merely mask bias while reproducing racial disparities, using ostensibly neutral factors—education, marital status, employment, for example—that function as proxies for race and class.<sup>493</sup>

In states that already use a risk assessment tool, it has been difficult to assess the impact of that tool, in part because of their novelty,<sup>494</sup> but also because of the limited public data tracking how they are used in the release decisions.<sup>495</sup> Apart from the normative question as to whether these tools should be used at all, what is certainly clear in the parole context is that in many cases, these tools lack transparency, may be ignored by the parole board making the ultimate release decision, and may disadvantage young offenders in particular given the weight most tools give to static factors like age at offense.

Today, the vast majority of states use risk assessment tools in some capacity: At least 45 either used the tools or, at the time this report was written, were in the process of developing a tool.<sup>496</sup> Some states require the Department of Corrections to develop a tool and/or make it available to the parole board,<sup>497</sup> or they require the parole board to consider the risk assessment score if the prisoner has been assessed.<sup>498</sup> In at least 10 states, the statute explicitly requires the board to consider the risk assessment score in reaching its decision.<sup>499</sup> The Colorado Parole Board uses both an Administrative Guidelines matrix and a risk assessment tool, and it must provide reasons for a decision that deviates from the outcome suggested by those tools.<sup>500</sup> Advocates expressed



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concern that the private companies that own these tools refuse to disclose the risk assessment questions and factors considered.<sup>501</sup>

In New York, on the other hand, there has been litigation around what the parole board's obligation to "consider" the risk assessment score actually means. In 2015, in *Linares v. Evans*, a prisoner argued that the parole board violated state law, requiring that it "consider" the New York risk assessment instrument (COMPAS), when the board denied him parole despite his low risk of recidivism and without providing any reasons for overriding his low score.<sup>502</sup> COMPAS, developed by Northpointe Inc. and used in several states, is an instrument designed to measure static and dynamic individual factors to evaluate an individual's risk level and supervision needs.<sup>503</sup> The board's position, however, remains that while it must consider the score, it does not need to defer to it above all other factors—for example, the seriousness of the offense.<sup>504</sup>

The level of secrecy around a tool that is supposed to create objectivity and transparency is troubling given its professed goal to increase fairness and consistency. And while some of this secrecy may immunize risky decisions and those who make them from public backlash,<sup>505</sup> this lack of transparency makes it hard for individuals being reviewed for parole, their advocates, and the public in general to know what the instrument shows and how that information is used. In Texas, for example, both the risk assessment scoring and the score are confidential; neither the prisoner being assessed nor their attorney can see the risk assessment guidance score.<sup>506</sup>

An additional concern with risk assessments in the parole context is their heavy emphasis on static factors—for example, age at offense, the offense itself, and any prior criminal conduct. These factors, like the original crime, cannot be changed and may not provide a clear picture of who the individual is now and whether they are suitable for parole. These factors may reproduce racial disparities in who is and remains incarcerated because of racial disparities in policing and poverty.<sup>507</sup> While these assessment tools increasingly do include "dynamic" factors that address the individuals, many advocates around the country observed that even when they are permitted to see the risk assessment questions, it is unclear how different responses are weighted in the final score. Attorney Alan Rosenthal from the Center for Community Alternatives observes that with the COMPAS

risk assessment tool used in New York, "You get the answers and a bar code showing risk of re-offense, but what you don't see, because it's hidden behind the wizard's curtain, is what weight is given to each factor."<sup>508</sup>

In many cases, it is also unclear *who* conducts the risk assessment, what training they have (if any), and what questions they ask. James Austin, president of the JFA Institute, observes that when risk assessments are used in the correctional setting, it is imperative that an independent and objective researcher conduct the assessment, that the tool used match the skill level of the individual conducting the assessment, and that the tool be tested on the specific correctional population.<sup>509</sup> According to a survey of parole authorities in 2008 by the Association of Paroling Authorities International, however, only 60 percent of the risk assessment tools used by parole boards had been validated on local populations.<sup>510</sup>

With or without a risk assessment tool, parole boards are making a predictive judgment—or educated guess—about the future conduct of a person who has committed an offense. The question is what information forms the basis of a parole board member's decision that a person is a risk to public safety and/or of committing a violent offense if released. Too many of these instruments are opaque, in both their content and operation, and so cannot bring the consistency and transparency to the parole decision-making process that it desperately needs. However, the observation that risk assessments are too secretive for their merit to be assessed is also a call for more public scrutiny, reporting, and studies into how these tools are used and to what effect. Some advocates and prisoners interviewed by the ACLU felt that risk assessment tools, while imperfect, were a more transparent and objective test for parole eligibility than other discretionary parole factors. Amongst risk assessments for individuals in this report that the ACLU was able to see, the vast majority indicated a low risk of re-offense or violence, in spite of the negative static factors. As Alan Rosenthal observed, for all these instruments' problems or potential problems, "You'd be hard pressed to find a prisoner who wouldn't say, if used properly, this is better than what we have."<sup>511</sup> Similarly, the overwhelming majority of individuals interviewed for this report said they wanted the board to use and rely upon the risk assessment.

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# V. DENIED FOR THE SERIOUSNESS OF THE OFFENSE

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## A. THE SEVERITY OF THE CRIME: AN EXPLICIT, REQUIRED, AND DECIDING FACTOR

In February 2016, writing for the majority in *Montgomery v. Louisiana*, Justice Kennedy explained that to allow juvenile offenders, sentenced to life in prison, the opportunity to be reviewed by a parole board “ensures that juveniles whose crimes reflected only transient immaturity—and who have since matured—will not be forced to serve a disproportionate sentence in violation of the Eighth Amendment.”<sup>512</sup> He continued:

Those prisoners who have shown an inability to reform will continue to serve life sentences. The opportunity for release will be afforded to those who demonstrate the truth of Miller’s central intuition—that children who commit even heinous crimes are capable of change.<sup>513</sup>

For these individuals (many of whom are now old prisoners), the inquiry into whether they have changed, and the associated opportunity for release, comes through a review by the state parole board. This second look through parole, as legal scholar Jonathan Simon observes, was once viewed as an administrative fix to the pressure courts may feel, at the time of sentencing, to provide a harsh punishment for a serious crime.<sup>514</sup> Looking at who the person is now through parole offered the chance to individualize the sentence and to perhaps soften an unnecessarily long punishment. The reality, however, is very different.

Today, the overwhelming focus in parole release decisions across the country is on the severity of the original offense.<sup>515</sup> In at least 30 states (where the parole board guidelines were

public and could be reviewed), the nature of the crime is an explicit factor that state parole agencies can or must consider (according to state statute, regulations, or agency guidelines) in making their release decisions.<sup>516</sup> This inquiry into the nature or severity of the offense is mandatory in states such as Indiana, Maryland, Michigan, New Hampshire, New York, Pennsylvania, and Texas.<sup>517</sup>

The severity of the crime is not a minor factor or just one of many. Rather, years after sentencing, the offense is the primary deciding factor in parole review. A 2008 survey of 47 states’ parole boards by the Association of Paroling Authorities International found that “the top three are crime severity, crime type, and offender criminal history.”<sup>518</sup> Moreover, five of the top 10 factors considered by the board all related to the original crime (as opposed to the individual’s conduct since then or other factors related to rehabilitation);<sup>519</sup> those facts were generally known to and considered by the court at sentencing.

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**“The opportunity for release will be afforded to those who demonstrate the truth of *Miller’s* central intuition—that children who commit even heinous crimes are capable of change.”**

—Justice Anthony Kennedy, *Montgomery v. Louisiana* (2016)



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# RECIDIVISM AND PEOPLE CONVICTED OF SERIOUS OFFENSES

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**F**or people incarcerated for violent offenses, parole release decisions are shaped by the fear that those individuals could, if released, commit another serious crime. However, research shows that people convicted of violent crimes are not more (and may be less) likely to be arrested again than other individuals, and they have extremely low rates of re-offense for another felony crime.<sup>520</sup> Information about recidivism is imperfect, given significant differences in how states categorize recidivism and also differences between states that have post-release supervision and those that do not.<sup>521</sup> However, national-level data suggests that while approximately three-quarters of released prisoners came back into contact with the legal system, only approximately 25 percent of these individuals came back to prison for a new crime.<sup>522</sup> Those who subsequently returned to prison were typically incarcerated for technical parole or probation violations (as opposed to new crimes), which can include failing to report for a scheduled office visit, missing a curfew, or testing positive for drug use.<sup>523</sup> Even for technical violations, this recidivism rate is lower for people previously convicted of violent or sex offenses.<sup>524</sup> But in general, research illustrates that people previously convicted of a violent offense are less likely to return to prison for any reason, and they are very unlikely to return to prison for another serious crime.<sup>525</sup>

One study of individuals incarcerated for murder in California who were released between 1995 and 2011 found that only five of the 860 individuals released had returned to jail for a new offense, and none of those individuals were convicted of a new life-term offense.<sup>526</sup> Similarly, a study by the California Department of Corrections and Rehabilitation found the number of lifers released and subsequently convicted of a new offense was significantly smaller than the non-lifer population.<sup>527</sup> Of the 83 individuals serving a life sentence released on parole in FY 2006–2007, only four people (4.8 percent) were subsequently convicted of a

new offense, compared with 51.5 percent for prisoners who had been released after finishing a determinate sentence.<sup>528</sup> These results correspond with lifers' generally low risk scores: 75 percent of lifers receive a low risk of recidivism score and 90 percent score a low or moderate risk score under the California Static Risk Assessment Instrument.<sup>529</sup> In New York, between 2009 and 2010, only 2.6 percent of all individuals released on parole were rearrested and convicted for committing a new felony offense.<sup>530</sup>

According to the Release Aging People in Prison Campaign, between 1985 and 2009, 2,130 individuals sentenced for murder in New York were released; 47 (2.2 percent) were returned with a new conviction, but none for murder.<sup>531</sup> In Florida, a study of recidivism from 2001 to 2008 found that individuals convicted of murder or manslaughter had the lowest recidivism rate,<sup>532</sup> and a 2007 study in Washington state found the individuals previously convicted of murder not only had the second-lowest recidivism rate (after sex offenses) but also were the least likely to commit another similar offense (1.3 percent).<sup>533</sup> Studies further indicate that lengthy prison sentences do not help public safety and may be counterproductive.<sup>534</sup>

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**A FLORIDA STUDY FROM 2001 TO 2008 FOUND THAT THOSE CONVICTED OF MURDER OR MANSLAUGHTER HAD THE**

# LOWEST RECIDIVISM RATE

While one goal of incarceration is incapacitation (preventing an individual from committing a crime), there are diminishing returns to that goal through long sentences, even for violent offenses.<sup>535</sup> Former New York parole commissioner Thomas Grant observes, “Most people can be supervised in the community. There are maybe a few people who just can’t be. You have some inmates who 20 years later are still harming other inmates. But these cases are relatively rare and you shouldn’t be basing policy on the most extreme and horrendous cases.”<sup>536</sup>

The focus on the severity of the crime—even when there is a substantial record of rehabilitation and growth—is a central part of the parole decision-making system. The former chair of the New York State Board of Parole wrote that “more often than not” it is the seriousness of the prisoner’s offense that justifies a denial of parole.<sup>537</sup> More dramatically, a member of the Alabama parole board recently explained, “There’s some offense conduct you just can’t outrun.”<sup>538</sup>

## B. WHERE THE OFFENSE RULES, PAROLE IS FORECLOSED

Many of the individuals who wrote to the ACLU regarding this research from around the country had been denied parole multiple times, each time either explicitly or implicitly for the seriousness of the offense. In states where prisoners must serve decades in prison before first becoming eligible, the resistance to releasing an individual at their initial parole date because of the severity of the offense is particularly inappropriate. Scholars Rhine, Petersilia, and Reitz recommend that the board take seriously the minimum sentence and that it “should have no power to deny release based on its belief that a longer sentence is necessary or better on retributive grounds.”<sup>539</sup>

The focus on the offense is also inappropriate because talking about the severity of the offense without placing it in context and with an eye to the likelihood the individual will commit a similarly severe offense in the future does not help the parole board determine whether this person is likely to reoffend if released. As attorney Gary Cohen observed, a blanket refusal for what the crime is—without further inquiry into why it took place and who the person is now—will not result in a fair or accurate decision:

Where you have serious violent crime, all of those contextual details matter if you are going to have reasoned decisions about a person’s future. . . . If we can analyze the history and the context, then we can more reasonably judge whether a person has been impacted by incarceration. We want prison to get someone’s attention and get them to do something with their life. Have they been positive

in their behavior? Have they gone to school? We can look at those things and start to think about whether this has been enough time. Without that, it’s shooting in the dark—it’s just a gut feeling about whether the time served is enough. But if that’s what you are basing decisions on, then you can’t get fair and consistent results.<sup>540</sup>

Similarly, Ronald Day at the Fortune Society in New York observes, “When we look at a person who committed a serious crime, the question is how likely it is that a person is going to commit a serious crime like that again. There are a lot of other factors to consider at the same time. We are trying to protect the community from a re-offense, so how much punishment is enough punishment?”<sup>541</sup>

The original offense and its severity, once considered, distracts from the other forward-looking factors a parole board is supposed to consider regarding who the individual is now, their growth, and what assistance they may need for a successful reentry.



**Chester Patterson, 17 at the time of his offense, has been incarcerated in Michigan for over 45 years.**

**Chester Patterson** (full summary in Section X), a 63-year-old Black man serving a life sentence in Michigan, has been in prison for over 45 years. At 17, during a robbery where he stole \$55.00, Mr. Patterson murdered the shop clerk. Mr. Patterson and his co-defendant were both convicted. Mr. Patterson pled guilty and received a life sentence for the murder and a life sentence for armed robbery. Mr. Patterson was the youngest

of four children and his mother visited him regularly until her death in 2006. “My being in here really broke her. . . . Two mothers lost their sons because of what I did,” he said.<sup>542</sup>

As soon as he started serving his sentence, he began working on his education: “I came right in and got [my] GED and started college in prison. Once I started going to college,

each time I got a diploma it made me want another one.”<sup>543</sup> Mr. Patterson says he has not had a disciplinary ticket in prison for a conduct violation since 1999 and his file contains numerous certificates, including his bachelor’s degree (cum laude) from Spring Arbor College, substance abuse treatment, food sanitation, and paralegal studies.<sup>544</sup> A psychological evaluation of Mr. Patterson, performed at the parole board’s request in preparation for his public hearing in 2013, noted that he has only a handful of disciplinary tickets during his over 40 years in prison, was evaluated as having a low risk of violence and recidivism under the COMPAS assessment tool, and displayed “genuine regret” and “genuine empathy” for the victim.<sup>545</sup> Nevertheless, Mr. Patterson has continually been denied parole, most recently because the board determined he showed insufficient remorse for his crime.<sup>546</sup> Mr. Patterson hopes he can be released to help support his older brother, who had a stroke and continues to be in frail health.<sup>547</sup> Says Mr. Patterson, “I’m not the same 17-year-old. I wouldn’t be a threat if released. I’m an old man. I want to get out and get a job and live out the rest of my years. I don’t know what more the board wants me to do.”<sup>548</sup>

**Marlon Branch** (full summary in Section X) is a 51-year-old Black man who has been incarcerated for murder since 1981. At the time of his offense, he was 15 years old. He grew up in Harris County, Texas, and was raised by his great-grandparents. His family, Mr. Branch recalls, “lived in great poverty—we had no running water. We would walk 50 yards to a faucet in the ground for water and had an outhouse.”<sup>549</sup> At the time of his offense, Mr. Branch says that he was looking for guidance and support: “At the time of the offense, my great-grandmother who raised me had just passed. I was looking for acceptance. I just wanted to fit in with the older guys. It wasn’t hate that got me here. It was fear.”<sup>550</sup> When he was 15 years old, Mr. Branch says that he and two older teenagers broke into a house and, in the course of the burglary, killed a young girl. Mr. Branch was convicted of capital murder and sentenced to life in prison. Mr. Branch, who earned his GED and has been working in the culinary arts since coming into prison, has been reviewed six times for parole, starting on his eligibility date in 2001. Each time, he has been denied parole based solely on the nature of the offense.<sup>551</sup>

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“People change but my crime never can.”

—Santonio Whetstone

**Santonio Whetstone** is a 39-year-old Black man who has been in prison for 23 years. Mr. Whetstone, who is incarcerated in Georgia for murder in the course of a botched robbery, says, “I’ve been locked up since I was 15. I know I’m not coming back [here, if released] because I’m more focused now and I would never put myself in a position where I committed another crime. People change but my crime never can. . . . Some lifers aren’t ever going to get out if they just look at your offense. But we do the best we can to keep hope.”<sup>552</sup>



**Richard Rivera, 16 at the time of his offense, is serving a life sentence in New York.**

**Richard Rivera** (full summary in Section X), a 52-year-old Latino man from New York, has been in prison for over 35 years. At 16, Mr. Rivera and three other boys attempted to rob a bar and restaurant. An off-duty New York City police officer intervened to stop the robbery, and Mr. Rivera shot and killed him; he says it was his first time ever firing a weapon.<sup>553</sup> Mr. Rivera was sentenced to 30 years to life for murder

in the second degree, attempted robbery, criminal use of a

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“You have to remain hopeful. So you basically have to live in denial.”

—Richard Rivera

firearm, and criminal possession of a firearm.<sup>554</sup> When Mr. Rivera was still a baby, he says, his mother left his father. He grew up in poverty, one of nine children supported by his mother, who had a long history of psychiatric hospitalizations throughout his childhood.<sup>555</sup> Mr. Rivera had learning difficulties and, as he grew older, developed substance abuse problems.<sup>556</sup> He said that his mother's boyfriend, with whom she had several children, was physically abusive to her and the children, and had a severe drug addiction.<sup>557</sup> By the night of the murder in 1981, Mr. Rivera writes, his life had "ratcheted out of control"; he was addicted to cocaine, could neither read nor write, and was increasingly involved in robberies: "The tragedy of January 12, 1981[,] did not happen in a vacuum," wrote Mr. Rivera. "I was not standing there with a gun in each hand by accident. I was there for the same reasons that I am here now: my past. But my past is no excuse."<sup>558</sup>

In his more than three decades in prison, Mr. Rivera has earned a Bachelor of Arts degree from Syracuse University, a master's degree from New York Theological Seminary, and a second bachelor's degree from Bard College. He works as an Inmate Peer Assistant, a facilitator for the Alternatives to Violence Project, and a certified HIV/AIDS peer counselor, and he also has certificates in law library management and masonry.<sup>559</sup> Mr. Rivera has been reviewed four times by the parole board; each time, he has been denied for the nature of the offense, but most recently, upon information and belief, for his prior disciplinary record. Mr. Rivera's last ticket was over two years ago for failure to report an injury. Mr. Rivera has a job offer to work at the library at Cornell University and friends willing to support him upon his release, but he worries that the continued focus on his offense means he won't be released: "You have to remain hopeful. So you basically have to live in denial. You hope the dice are going to roll your way. It's like being a gambler in a terrible game."<sup>560</sup>

**Christine Lockheart** (full summary in Section X) is a 49-year-old white woman who has been incarcerated in Iowa since 1985. At 17, she was convicted of felony murder and sentenced to life without parole for her participation in the robbery and murder of an older man who Ms. Lockheart knew. Ms. Lockheart's then-boyfriend, who was 25 years old, stabbed and killed the victim while Ms. Lockheart was outside the house.<sup>561</sup> Early in the morning on February 17, 1985, Ms. Lockheart and her boyfriend went to the victim's house,

which Ms. Lockheart occasionally cleaned, to ask for money. When the victim, a family friend, refused, Ms. Lockheart says she went out to the car and waited for her boyfriend, who subsequently came out screaming, "I killed him, I killed him."<sup>562</sup> Ms. Lockheart served 28 years in prison before she was resentenced to life with parole in 2014, following Iowa's post-*Miller* reforms.

In April 2014, the parole board reviewed Ms. Lockheart for parole. Ms. Lockheart was then working on her college degree. She was working full time in the facility as a clerk and had numerous work assignments throughout her incarceration.<sup>563</sup> According to the Board of Parole's risk assessment, she scored low/moderate for risk of violence and victimization.<sup>564</sup> Ms. Lockheart was nevertheless denied parole based on the seriousness of the offense.<sup>565</sup> She has now had five paper reviews by the parole board and been denied every time.

Some states, either through legislation or court decisions, have attempted to limit this acute focus, or at least to ensure that the crime is not the only factor considered. Despite those reforms, the severity of the offense remains hard to look beyond for many parole board members.

In the late 1990s, the New Jersey parole board moved to a presumptive parole model in which the parole board was supposed to approve parole at the initial parole eligibility date unless a preponderance of evidence found the individual had substantial likelihood of recidivism—and that evidence could not be the original offense. Nevertheless, a



**Christine Lockheart, age 17 at the time of her offense, has been in prison in Iowa since 1985.**

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**As of 2008, in California, a parole denial must be based on *current* dangerousness.**



1999 study of the New Jersey system’s transition found the board was still weighing the seriousness of the offense and denying parole in 57 percent of cases.<sup>566</sup> The board decided to develop a risk assessment tool as one response to this finding.<sup>567</sup>

In California, the parole board’s mandate is to determine whether the “prisoner will pose an unreasonable risk of danger to society if released from prison”; if not, they must be granted parole.<sup>568</sup> Despite this statutory language presuming parole, the parole board continued to rely on the seriousness of the offense in denying individuals parole. In response, the state’s Supreme Court adopted a “current dangerousness” test in 2008. In *In re Lawrence*, the court required that a parole denial be based on evidence that demonstrates the individual is *currently* dangerous.<sup>569</sup>

In 2011, the New York State Legislature amended its laws to require the board to establish written procedures that include “risk and needs principles to measure the rehabilitation of persons appearing before the board” and “the likelihood of success of such persons upon release” to be used in making parole release decisions.<sup>570</sup> New York subsequently adopted the COMPAS risk assessment tool, which is administered to a parole applicant and considered as part of the review.

Despite the requirement to use and consider the risk assessment, the law does not mandate the weight to be given to that risk assessment score. As a result, the parole board continues to deny individuals release based on their offense, even when the risk assessment indicates the individual is a low risk of re-offense, violence, or inability to succeed on parole. For example, in *Hamilton v. New York State Division of Parole*, a New York court held it was “constrained to affirm” the parole board’s denial of parole to a prisoner whose achievements in prison were “extraordinary” because:

[T]he record establishes that the Board acknowledged petitioner’s extensive rehabilitative success along with the additional statutory factors, but placed greater emphasis on the seriousness of petitioner’s crime . . . as it is “entitled” to do.<sup>571</sup>

Because the parole board is allowed to deny an individual based on the severity of the original offense, these other factors and evidence of rehabilitation—so long as they are

“considered”—do not require that an individual be released for parole. If they are not considered at all, the remedy is another hearing before the parole board.<sup>572</sup>

**Stephen Smith**, a 43-year-old Black man incarcerated in New York, has been in prison serving a life sentence for murder since he was 17. It was his first offense. On September 20, 1990, Mr. Smith says he was hanging out with some younger teenage kids in his neighborhood when he noticed an older man harassing some of the kids. Mr. Smith says he had been bullied at school and, watching this, he had to intervene.<sup>573</sup> He had a knife and stabbed and killed the older man. Mr. Smith was convicted and sentenced to serve 20 years to life. As soon as he started serving his sentence, Mr. Smith says, he got his GED, enrolled in college courses, and took what programming was available. “I always felt that I am not going to leave this place an ignorant 40-year-old,” says Mr. Smith. “I was determined early on. I didn’t want to be like some of the older prisoners who couldn’t cope.”<sup>574</sup> While in prison, Mr. Smith has been very involved with the Alternatives to Violence program, participating in and facilitating nonviolent conflict resolution and related courses over the years.<sup>575</sup> One social worker wrote that he was “deeply inspired” and moved by Mr. Smith’s transformation in prison into a model prisoner, by his willingness to take responsibility for his actions, and by his “profound regret for his violent action.”<sup>576</sup> One correctional officer wrote to the parole board:

I am aware of the seriousness of Mr. Smith’s crime. In group, Mr. Smith frequently speaks candidly and compassionately about his concern for the victim’s family. That kind of honest self-expression is very telling of a man who is remorseful. It is my understanding that Mr. Smith has been incarcerated since he was a minor, and I believe

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**“I’m not doing [programs] to get released; I’m doing them because of who I want to be when I am released.”**

—Stephen Smith



the department's mission of "confinement and habilitation of offenders" has been realized with Mr. Smith.<sup>577</sup>

Despite his good institutional record, limited disciplinary history, and low projected risk of reoffending or violence,<sup>578</sup> Mr. Smith has been denied parole four times, each time due to the seriousness of the offense. In Mr. Smith's 2015 parole decision, the board pointed to the sentencing minutes from 1990 where the judge commented on Mr. Smith's apparent lack of remorse for the murder as part of its basis for denying Mr. Smith release on parole.<sup>579</sup> "They have never asked me if I'm remorseful *now*, and I am," says Mr. Smith. "They could look at my record in prison to know that I am and that I've matured. I'm not doing [programs] to get released; I'm doing them because of who I want to be when I am released."<sup>580</sup>

In some cases, it appeared that the parole board wanted evidence of the parole applicant's remorse, but evaluating something as subjective as remorse is difficult. Many prisoners said they felt trapped by the difficulty of reliving the offense, grappling with their own shame, and simultaneously communicating the sincerity of their remorse in a parole review. Says **Terrance Sampson**, who, at 12 years old, murdered a neighbor and is now serving a 30-year sentence, "It's like they're expecting the worst and won't believe the best."<sup>581</sup>

**Carol Thomas\*** (pseudonym, full summary in Section X) is a 52-year-old Black woman incarcerated in Michigan. In 1986, when she was 22, Ms. Thomas murdered two people, for which she pled guilty and was sentenced to two concurrent life sentences plus two years for felony use of a firearm. This was her first and only offense. Ms. Thomas grew up in Detroit, Michigan, with her mother, who was often hospitalized during Ms. Thomas' childhood due to significant substance abuse and mental health difficulties.<sup>582</sup> Growing up, Ms. Thomas says, she was sexually abused by several of her mother's boyfriends.<sup>583</sup> She left high school at the age of 16 and became pregnant with her first child at the age of 18.<sup>584</sup> At the time of her offense, Ms. Thomas and her boyfriend (now deceased) had two young children, aged four years and 18 months. Ms. Thomas says that her victims were a couple she knew, and the woman had been babysitting Ms. Thomas' two children. "Then I found out her partner was abusing my child," says Ms. Thomas.<sup>585</sup> On November 25, 1986, Ms. Thomas went to the couple's home. She recalls,

When my daughter told me about the abuse, it triggered the memories of what happened to me, what I went through. The sounds and smells of abuse. I let my emotions lead me. I went to confront them about my child being molested by one of the victims and the fight escalated. When I was arrested and I told the officer what happened and why, he said [the sexual abuse] was my fault. So I didn't mention it [to the parole board]. I thought I wouldn't be able to see my kids or they would be taken from me if I gave the reason for the argument.<sup>586</sup>

While in prison, she has worked numerous jobs, including as a cook, produce worker, and unit porter; with a few exceptions, since 1987 she has received perfect or above-average work and program evaluations with multiple bonuses and numerous notes from her supervisor commending her as an "excellent worker."<sup>587</sup> A former therapist in the Residential Substance Abuse Treatment program (RSAT), who counseled Ms. Thomas, wrote to the parole board that Ms. Thomas had grown and matured through the program, "expressed enormous remorse over a period of time" for her crime, and became "a true role model and example to the community."<sup>588</sup> To date, Ms. Thomas has been reviewed by the parole board five times (1997, 2001, 2006, 2009, and 2011) and interviewed on two occasions by a parole board member. Each time she received a "no interest" (denial) from the parole board. Her 2009 "no interest" notification (the only one with more text than "no interest" to explain the decision) focused primarily on the brutal nature of the murders.<sup>589</sup> Ms. Thomas was scheduled for an interview in 2016, but that interview was cancelled without explanation.<sup>590</sup>

**Kevin Davis** (full summary in Section X) is a 47-year-old Black man serving a life sentence in Michigan for second-degree murder. He has been in prison since he was 19 years old. He was not the triggerman but says he accepts his punishment: "I understand that driving him there and back, I had a role and I have to accept responsibility for what I've done."<sup>591</sup> At the time of the offense, Mr. Davis says he had just lost his job at a supermarket and, with a child on the way, he started selling cocaine in Grand Rapids, Michigan, to make money.<sup>592</sup> On December 8, 1988, Mr. Davis' drug boss ordered him to drive him to a house to confront two men who had stolen drugs. Mr. Davis recalls that he was terrified



**Kevin Davis, now 47, has been in prison in Michigan since he was 19.**

of his drug boss and stayed outside while his drug boss entered the apartment and shot two people.<sup>593</sup> Mr. Davis came to prison with a ninth-grade education, but in prison he earned his GED and an associate degree. He had been working on a bachelor's degree before the Pell grants were removed. He has also participating in group counseling and substance abuse treatment.<sup>594</sup> His facility reports demonstrate that he has numerous

above-average work assessments and been commended for his good work.<sup>595</sup> Mr. Davis first became eligible for parole in December 2000, and he received “no interest” notifications from the board in 2000, 2005, and 2015. In 2012, Mr. Davis was denied parole after a hearing. In the hearing, Mr. Davis told the board that he did not know his drug boss planned to commit the murders.<sup>596</sup> The parole board found this version of events illustrated that “he does not accept responsibility for the murders, has no remorse for his contributions to this crime, or empathy for damage caused to the [victims’] families.”<sup>597</sup>

Individuals seeking parole also noted how stressful and demoralizing it was to be denied parole for the original offense and without a recommendation of what else they can address and do to eventually be released.

**Hector Santiago** has been incarcerated for second-degree murder for over 20 years and has been denied parole twice, predominately for the seriousness of his offense. At 18, Mr. Santiago lost his temper while caring for his girlfriend’s four-month-old son and hit him on the head and killed him. Coming into prison at age 18, given that his crime involved the death of an infant, Mr. Santiago says he was repeatedly assaulted and knew he might die in prison.<sup>598</sup> Despite the difficulties he initially faced, he focused on his education, first earning his GED and then a Bachelor of Liberal Arts degree from Boston University.<sup>599</sup> In prison, Mr. Santiago has had four disciplinary tickets—and none for violence.<sup>600</sup> For Mr. Santiago, the hostility of the hearing, and then the

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**“All I want is for the board to see me for who I am now, and not just what I did.”**

—Hector Santiago

denial and five-year setoff before the next review, has felt devastating: “When you prepare for parole and you’ve taken these programs, it builds up your self-esteem, but then you go to the hearing and they tear you down. The DA talks about me like he knows who I am *now*,” Mr. Santiago says. “I don’t deserve anything from the board for what I did, but I want a fair opportunity to show I’m not the person who committed that crime anymore. . . . All I want is for the members of the board to see me for who I am now, and not just what I did.”<sup>601</sup>

**Jose Velez** is a 53-year-old Latino prisoner serving a life sentence in New York for the second-degree murder of a man Mr. Velez says was attempting to rob him. At the time, Mr. Velez was 17 years old and had previously been severely beaten when mugged in the subway. Mr. Velez, who has facilitated the facility’s Alternatives to Violence Program for many years, said: “I’ve had five boards.



**Jose Velez has been serving a life sentence in New York for 36 years.**

I walk out of every one of them thinking I did okay and then they come back with nature of the crime. It’s the same boilerplate language. During the hearing, if they would tell you, at least there would be an opportunity to respond to their concerns.”<sup>602</sup> (In November 2016, Mr. Velez was granted parole.)

The facts of the offense, in particular the violence involved and the identity of the victim, can play a significant role in whether an individual will be approved; however, lawyer Laura Cohen says that parole boards are less willing to look at the

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## “The overwhelming majority of youth who offend grow out of criminal behavior, but parole boards don’t take that into account.”

—Professor Laura Cohen

general circumstances and context in which the crime took place, issues that may not have been explored or addressed if the youth pled guilty: “When youth are pushed through this system and plead out, as so many do, sentencing courts generally do not evaluate their psychological state at the time of their plea or sentence,” says Cohen.<sup>603</sup> If parole boards are to continue to look at the severity of the crime, Cohen notes, they should also recognize “the role that developmental status plays in young people’s decision-making at the time they commit their offenses and that most of these individuals would not make the same decisions after reaching maturity. The overwhelming majority of youth who offend grow out of criminal behavior with no interventions, but parole boards don’t take that into account.”<sup>604</sup>

Prisoners interviewed by the ACLU said they understood the board members’ reaction to their crimes but wished the focus of the review was more centrally on who they are today. For prisoners who came in as teenagers and have now been incarcerated for many years, the person they were at the time of the offense no longer exists. **Marlon Branch,**

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## “The person I was back then brought me in here. But I am a different person, a different woman.”

—Lisa McNeil

who at 15 committed a murder and is now 51 years old, wrote, “The child who committed the offense no longer exists.”<sup>605</sup> **Broderick Davis,** a 33-year-old Black man who has been in prison since he was 16 for aggravated robbery, said, “I was a child when I made this bad choice . . . I’m not that child anymore. I’m a man who will continue to grow. . . . I just want one chance to work and be an adult in society.”<sup>606</sup> **Anthony Coon,** who was 14 at the time he committed a murder, observes of who he was and what he did at 14, “Looking back at it as an adult, there were a lot of things I didn’t understand. I had a child’s emotional capacity and thoughts. I was self-destructive. But now I’m 36, I’m mature, I’m empathetic, I understand where I went wrong. I think that was mostly a natural process of getting older.”<sup>607</sup>



**James Dyson is serving a 50-year sentence in Texas stemming from a non-fatal shooting.**

**James Dyson,** a 36-year-old white man serving a 50-year sentence in Texas, has been incarcerated since he was 17. Mr. Dyson shot and injured another young man in retaliation for murdering his best friend. Looking at his growth and change since coming to prison, Mr. Dyson says, “What it comes down to is who you are now and what you do after the mistake, because everyone makes mistakes. I deserved to come to prison—I shot someone.

But I was a young, ignorant kid. I did wrong, and I’ve given up over half of my life already.”<sup>608</sup>

**Lisa McNeil** is a 49-year-old Black woman serving a life sentence in Texas for the murder of her former husband’s girlfriend; she was 21 at the time of her offense. She says it took her years when she came into prison to get over the shock and grief of what she did, and even now the murder she participated in horrifies her: “When I first came in, I was ashamed. I was broken. I was bitter. I couldn’t believe I had done what I did. That I took a life,” says Ms. McNeil. “I make myself sick thinking about what I did. She didn’t deserve that. I didn’t mind being in prison because I had done this, but they are holding someone who would never do this again. . . . The person I was back then brought me in here. But I am a different person, a different woman.”<sup>609</sup>

## C. CHALLENGES FOR INNOCENT PRISONERS

In recent years, the number of exonerations for individuals convicted of serious offenses has multiplied. A 2016 report of exonerations released by the National Registry of Exonerations found that 2015 was a record year for exonerations in the United States, with at least 149 known exonerations in 2015 and 1,733 since 1989.<sup>610</sup> Of those exonerated, the study found, 58 (39 percent) were individuals convicted of homicide, of whom five had been sentenced to death, 19 to life or life without parole, and the rest to decades in prison.<sup>611</sup> In many cases, wrongful convictions came, in part, from a false confession.

Studies demonstrate that many of these false confessions or guilty pleas come from individuals arrested, charged, and convicted when they were young. A 2012 study from the National Registry of Exonerations demonstrated that young people in particular are vulnerable to an erroneous arrest, conviction, and imprisonment—often because of false confessions.<sup>612</sup> According to this study, over the last 25 years, 38 percent of exonerations for crimes allegedly committed by youth who were under 18 years old involved false confessions—compared with 11 percent for adults.<sup>613</sup>

For innocent prisoners, a parole board's resolute focus on the original offense and its need for remorse presents unique challenges. As law professor Daniel Medwed observed in his article "The Innocent Prisoner's Dilemma," prisoners who maintain their innocence in parole hearings may be denied parole for their failure to demonstrate remorse or to take responsibility for their offense—but if they later "succumb and 'admit' guilt . . . the confession now belongs in the inmate's official parole file and is accessible by prosecutors. Should the defendant subsequently seek to prove innocence through a post-conviction remedy, prosecutors may rely on the inculpatory statement in formulating their response, potentially spoiling any attempt at exoneration."<sup>614</sup>

Exonerated prisoners interviewed by the ACLU spoke of the emotional anguish they faced in these hearings, knowing that to protest their innocence could not help and might hurt them. Moreover, the exonerated spoke of being pressed

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## 38% of those arrested as juveniles and since exonerated gave false confessions— compared with 11% of those arrested as adults.

by the parole board to take programming such as sex offender treatment where participation and successful completion required an admission of guilt.

**David McCallum**, a 47-year-old Black man, was 16 when he was arrested and then wrongfully convicted of murder in the second degree in New York. On the evening of October 28, 1985, Mr. McCallum recalls, a police car pulled up at his house with his photo, and he was asked to come in for questioning; he was handcuffed and taken to the precinct:



**David McCallum was 16 when he was wrongly arrested and then convicted of murder.**

They asked if I knew anything about someone being murdered the week before. I said no and the officer slapped me. My lip was bleeding. He picked up a chair and said, "If you don't tell me what I want to know, I'm going to hit you with this chair." I was 16; I was scared. So I falsely confessed. . . . Most people think you are detained for a really long time before you

confess. But false confessions can happen within 5-10 minutes. It was relatively quick for me because I was really scared. The arresting officer said, "If you tell us what we need to hear, we are going to let you go home." I was naïve. As a 16-year-old kid,

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## “I have survivors’ guilt because my friend and co-accused passed away in prison.”

—David McCallum

believing what this officer said, I really thought I was going to go home.<sup>615</sup>

His mother was called at 1 a.m., says Mr. McCallum; when she finally saw him, she asked if he had committed the murder: “I said no. She never asked me again. I’ll never forget the fact that she believed in me,” says Mr. McCallum.<sup>616</sup> The police’s version of events was that Mr. McCallum picked up the victim and drove him to Brooklyn, where he killed him; Mr. McCallum says he didn’t even know how to drive.<sup>617</sup>

Mr. McCallum spent a year at Rikers Island, New York, awaiting trial. The trial, Mr. McCallum says, was confusing. “I was lost, I had no idea what they were talking about, I didn’t understand what they were saying,” says Mr. McCallum.<sup>618</sup> He was convicted and sentenced to serve 25 years to life in prison. Mr. McCallum’s co-defendant, who first gave Mr. McCallum’s name to the police, was also prosecuted and given a 25-to-life sentence. By 1993, all of Mr. McCallum’s appeals had been exhausted, and he began to write to advocates for assistance in proving his innocence.

Meanwhile, in prison, Mr. McCallum earned his GED and started taking pre-college courses until the Pell grants were removed, he says.<sup>619</sup> He used his experiences to become a course facilitator and peer educator for other prisoners. “I came to prison at a young age and grew up in a very violent neighborhood, so I could share my story with younger kids coming into prison,” said Mr. McCallum. “I think I was able to help them—talking to these young men, I told them that the sooner you start talking to people about what you’re going through, the better.”<sup>620</sup>

In 2010, Mr. McCallum had his first parole hearing; he had four hearings and was denied each time based on the seriousness of the offense and his refusal to accept responsibility for it.<sup>621</sup> Before his first hearing, Mr. McCallum was already being represented by Laura Cohen, an attorney and clinical professor of law at Rutgers University. She and her students helped Mr. McCallum prepare for the hearings. Recalls Mr. McCallum, “Some of these hearings last minutes or seconds, and at the end you are allowed to give a presentation. I told them what I was doing in prison, but you have to reiterate that and what I would do when I was released. You lay out all these things and hope they listen.”<sup>622</sup> The one thing that Mr. McCallum was not willing to do, he says, was to say he was responsible for the crime in order to get release:

I told Laura I can’t do that [claim guilt]. I will definitely show compassion, but I was not going to say I committed the crime and she respected that. At one time, they said you need to think about this; if you don’t admit guilt you aren’t going to get out. I said I was willing to die in prison for that right.<sup>623</sup>

Still, the issue of his guilt or innocence continued to haunt his review. Recalls Mr. McCallum, “One particular commissioner wanted me to take responsibility and admit guilt. I’m a human being first, so I can imagine what it must feel like to lose a family member. If something like that happened to my mom, I know how I would feel. This commissioner just wanted to retry the case. Rather than talk about what happened in prison that would make me a candidate for parole, we talked about my confession.”<sup>624</sup> The denials hurt, says Mr. McCallum, and they especially affected his family. Moreover, he appealed every denial but was never granted parole:

I got tired of going through that—I had to brace myself before I called my mom to assure her that I was okay [when I got denied]. My only concern was for my family. I thought about not going to the hearings, but I didn’t want to give the system that satisfaction.<sup>625</sup>

Despite Mr. McCallum’s strong institutional record, the parole system never approved him for release. Fortunately, in October 2014, the judicial system did. The Brooklyn District Attorney’s Office, in reviewing old cases, investigated Mr. McCallum’s confession and found significant



inconsistencies. The review also uncovered new witnesses supporting Mr. McCallum's innocence. With support from the DA's office, Mr. McCallum's legal team won his release and Mr. McCallum was freed. "I had a network of people helping me out, so reentry wasn't a real struggle for me. But I have survivor's guilt because my friend and co-accused passed away in prison," says Mr. McCallum.<sup>626</sup>

In November 1979, **Cornelius Dupree**, a 19-year-old Black man living in Texas, and his friend Anthony Massingill were stopped by police and arrested for the rape and robbery of a woman that had occurred one week previously. Neither man



**Cornelius Dupree spent over 30 years in prison for a crime he did not commit. Image: NBC News, "Texan Declared Innocent After 30 Years in Prison," (Jan. 4, 2011).**

The Innocence Project

was involved in the crime, but, nevertheless, both were incorrectly identified by the victim in a photo array.<sup>627</sup> At the time, Mr. Dupree said, he thought he was being arrested for possession of marijuana. He recalls, "I was under the impression we would go to jail maybe for the night. The night turned into a few days. Days turned into weeks, weeks turned into months. They did not tell me why I was being held. . . . It was maybe the 119th day of being in jail that they finally showed me the indictment for rape and

aggravated robbery."<sup>628</sup> On April 3, 1980, after a trial, the jury found him guilty of aggravated robbery; he was sentenced to 75 years in prison (the prosecutor did not pursue the rape charges because a rape conviction would not have increased the sentence, according to the State).<sup>629</sup>

Mr. Dupree served 20 years before he first came up for parole. He was reviewed four times, denied three times for the seriousness of his offense, and finally released after spending over 30 years in prison. In 2004, Mr. Dupree says, the parole board decided he should do a sex offender course before he could be considered for release because his crime was a sex offense: "I wrote to my (now) wife and said, 'I don't think I can take this class,'" recalls Mr. Dupree. "But finally I went so I could go home. In the class they said you need

to admit your guilt. When we got to my turn, I refused to speak. So I had to go to a committee because I had refused to participate."<sup>630</sup> Mr. Dupree was finally released on parole, married his longtime girlfriend the next day, and was under parole supervision when he and the Innocence Project began to pursue exoneration through DNA evidence. In 2010, Mr. Dupree and Mr. Massingill were both exonerated. Mr. Dupree now speaks to youth and prosecutors about his experience in the criminal justice system: "It's important that they have the chance to meet people who have been on the inside of the system. There is no perfect system. The system does make mistakes and people suffer at great expense. . . . Because there is no guarantee that you will make it out of prison."<sup>631</sup>

**Benjamin J. Spencer III**, a 51-year-old Black man incarcerated in Texas, has served 29 years of his life sentence for aggravated robbery. In 1987, Mr. Spencer was arrested for the murder of a man during the commission of a robbery in Dallas, Texas, and was subsequently sentenced to 35 years in prison. The conviction was later thrown out when it was discovered that the primary witness had received but failed to disclose a reward for reporting Mr. Spencer.<sup>632</sup> Mr. Spencer's attorney filed a motion for a new trial, which was granted by the judge, but this time, the State changed the charge against Mr. Spencer and another co-defendant to aggravated robbery.<sup>633</sup> The week before Mr. Spencer's second trial was to begin, Mr. Spencer says, the State offered him a plea of 20 years for non-aggravated robbery, but he refused; "I wouldn't take a day for an offense that I did not commit,"



Callie Richmond

**Benjamin Spencer maintains his innocence in the robbery for which he has served almost 30 years. Image: The Texas Tribune, "Years After Innocence Finding, Inmate Remains in Prison," (March 10, 2013).**

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## “The truth hasn’t worked in my favor.”

—Benjamin J. Spencer III

says Mr. Spencer.<sup>634</sup> After trial, Mr. Spencer was once again convicted and this time sentenced to life imprisonment. “They said they would offer 20 years, but I just couldn’t plea to something I didn’t do,” recalls Mr. Spencer.<sup>635</sup>

Prior to this offense, Mr. Spencer had one conviction for unauthorized use of a motor vehicle (for which he received six years on probation), his first and only other experience with the criminal justice system:

I had got caught up running with a friend who had started stealing cars, but after that experience I knew I was headed down a road that was definitely not for me. I quickly realized I wanted to return to the life that I was raised to live, working for what I wanted . . . . Prison was a place I never wanted to come to. In this case, I always believed the truth would eventually prevail. I never imagined that I would be in prison for this long, doing time for a crime that I did not commit. I had only been married a little over two months when I was arrested for this offense, and my wife was seven months pregnant. There is no way I would have done this to them, and the hardest part of all of this has been thinking of what they had to go through because of my absence.<sup>636</sup>

Since 2000, Mr. Spencer has been represented by attorney Cheryl Wattlely, who continues to pursue his post-conviction relief based on actual innocence. In 2003, he passed a polygraph examination administered to him by an examiner used by the Dallas County District Attorney’s office, which found him to be truthful.<sup>637</sup> In 2008, state district Judge Rick Magnis heard and examined the evidence, ruled that he was innocent, and recommended a new trial. Three years after the appeal was filed, however, the Court of Criminal Appeals rejected the finding.<sup>638</sup> Since then, even the district attorney

who opposed Mr. Spencer’s release in 2007, Craig Watkins, has written to the parole board in support of him.<sup>639</sup>

Mr. Spencer and his attorneys continue to work to see him exonerated; in the meantime, Mr. Spencer is no closer to seeing release from the one remaining agency that can set him free: the Board of Pardons and Paroles. To date, Mr. Spencer has been reviewed five times for parole and met twice with a parole board commissioner; those interviews, Mr. Spencer said, lasted approximately 10 minutes.<sup>640</sup> Despite his exemplary work and disciplinary record in prison,<sup>641</sup> Mr. Spencer’s parole denials indicate that he is being denied parole based on the nature of his original offense and because of his prior criminal history.<sup>642</sup> He has also been considered for a pardon, but every review has resulted in a denial. “My attorney has spoken to every commissioner in this region,” said Mr. Spencer. “They’ve said it’s not their position to decide guilt or innocence, and I understand that. But I think they want to see some showing of remorse and that does get into my guilt. . . . The truth hasn’t worked in my favor.”<sup>643</sup>

Mr. Spencer maintains a close relationship with his family, including his former wife. In 2011, one of the jurors from Mr. Spencer’s trial wrote to the parole board in support of Mr. Spencer, based not only on his belief in Mr. Spencer’s innocence, but also his observations of Mr. Spencer’s continued strong community support from family and community leaders. A 2011 evaluation of Mr. Spencer by a forensic psychiatrist observed that he has been a “virtual model inmate,” did not pose a danger to commit violent or criminal acts if released, and “will be able to be successful and be able to follow all stipulations of parole.”<sup>644</sup> In October 2015, after considering Mr. Spencer’s pardon application, the Texas board declined to recommend him to the governor for a pardon.<sup>645</sup> Like many other Texas prisoners in this report, Mr. Spencer was convicted at a time when prisoners serving life would be released to mandatory (parole) supervision after 20 years in prison; Mr. Spencer has served 29 years and, despite having a job offer and community and family support, is concerned about his reentry prospects.<sup>646</sup> Setting aside even his innocence, says Mr. Spencer, “The thing that bothers me the most about parole is they don’t take into consideration all you’ve done. Once a person has done 10 years or more, they just want to move on with their lives. I’m getting older and the older you get, the less valuable you are in the workplace. It’s like they are setting you up for failure by holding you forever.”<sup>647</sup>

## VI. EXTERNAL IMPEDIMENTS TO PAROLE

While the parole board has expansive discretion in making its decisions to approve or deny parole, in some states, the power to release is curtailed by other actors—in Michigan, through judicial intervention, and in California, Maryland, and Oklahoma, by the governor. These additional actors operate not to increase public accountability or as a check on parole board discretion but rather to further limit the number of people serving long sentences who can be released. In each of these states, few individuals serving life sentences and/or sentences for a violent offense are approved by the parole board. Even fewer are actually released when other actors can object and halt the parole process from moving forward.

### A. JUDICIAL VETO IN MICHIGAN

A rule unique to Michigan allows the sentencing or a designated successor judge to prevent a lifer's release on parole. Under Michigan law, for a prisoner serving a life sentence to be granted parole, they must be reviewed by the entire parole board at a public hearing. The parole board can determine, indefinitely and without providing a written explanation, that it will not conduct a public hearing, in which case it can state “no interest” (declining to do a further review) in a

particular prisoner and deny them a hearing and opportunity for release. If the parole board does decide to schedule a person for a public hearing, the board must notify the sentencing judge or, if that judge retired, a designated successor judge.<sup>648</sup> If the judge objects within 30 days of the notice, the hearing is cancelled, and the parole board cannot approve parole for the individual.

In Michigan, judges are elected officials, so their role in obstructing not just release but the opportunity for a hearing is problematic. The successor judge may have no information or familiarity with the individual prisoner's case, and while many judges do allow the hearing to go forward, others object and cancel a hearing that, for lifers, is already incredibly difficult to get.

According to the Michigan advocacy organization Citizens Alliance on Prisons & Public Spending, since 2007, there have been 57 judicial vetoes, only five of which came from the original sentencing judge.<sup>649</sup> Between 2007 and 2011, 156 public hearings were scheduled for prisoners serving life sentences for non-drug offenses. Of those, 39 were cancelled because of a judicial veto—14 were based solely on the offense or its effect on the victim; only 13 were based, even in part, on current information about the prisoner; and 12 objections came with no explanation at all.<sup>650</sup> Five of those lifers whose hearings were cancelled were medical parole cases, where the individual was applying for earlier release based on their medical condition.<sup>651</sup>

**Anthony Johnson** (full summary in Section X), a Black man incarcerated in Michigan, is serving a life sentence for second-degree murder committed when he was 19 years old. He is now 63. Despite having served four decades in prison, his exemplary disciplinary record, and his numerous and consistent letters of praise from correctional staff, Mr. Johnson has been unable to get release on parole. According to his pre-sentence investigation report, Mr. Johnson was in and out of court from the age of 11.<sup>652</sup> At the time of his offense, Mr. Johnson was married with one child and another

IN MICHIGAN  
THERE HAVE BEEN  
**57** JUDICIAL  
VETOES  
SINCE 2007





**Anthony Johnson has been incarcerated for over 40 years. Judicial vetoes have twice prevented his release.**

on the way. On the night of April 23, 1973, Mr. Johnson, his brother, and his cousin were experimenting with heroin and driving around Benton Harbor, Michigan, when, according to Mr. Johnson, they ran out of money and decided to pawn a shotgun.<sup>653</sup> They went to a store owned by a 55-year-old man Mr. Johnson says he knew and liked and who had previously pawned other items for them. According to Mr. Johnson, the gun discharged by accident

while the owner was inspecting it: “We panicked—we ran and we sped off, but we never called for an ambulance or the police. We never did anything but hide our guilt. For that I am so sorry,” he said.<sup>654</sup> Mr. Johnson’s pre-sentence investigation report indicates that there was no robbery involved and identifies no other motive.<sup>655</sup> The charges against Mr. Johnson and his co-defendants were initially dismissed for lack of evidence, but they were rearrested and convicted four years later.

After going to prison, however, Mr. Johnson quickly turned his life around and has a stellar institutional record with numerous letters of commendation from facility staff. He has spent most of his time while incarcerated focusing on dietary services and education. In 1988, he received a commendation for his educational achievements in the

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**“This judge has vowed never to change. How do I prepare for another review? I don’t. I’m prepared to die here.”**

—Anthony Johnson

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**“I personally feel that keeping *anyone* such as Mr. Johnson in prison serves no purpose at all.”**

—MDOC Unit Officer

area of nutrition and diabetics during his several years at Marquette Branch Prison; as his professor observed: “I was stunned by his perseverance in pursuing that goal. But what impressed me even more, however, was his personal growth. He developed patience and endurance in the face of the institutional obstacles he faced. In fact, I have seen few people handle frustration and adversity as maturely.”<sup>656</sup> A unit officer wrote of his excellent work ethic and conduct, “I personally feel that keeping *anyone* such as Mr. Johnson in prison serves no purpose at all and that he is taking up space for someone that really needs to be housed in a correctional facility.”<sup>657</sup> Another staff member of the Correctional Facilities Administration, who has known Mr. Johnson since the 1980s, wrote in 2004 to commend him on his continued skill in the culinary arts: “I believed then as I believe now that you are a person with great talent, and that it is a terrible waste for such a talent to be locked in prison.”<sup>658</sup>

Mr. Johnson has been in prison for 40 years and has been eligible for parole for 30. His institutional grid, projecting the number of years he would spend in prison as a lifer, estimated 22 years in prison—although in 1986 the legislative corrections ombudsman suggested that even that may be excessive in his case, given Mr. Johnson’s stellar record.<sup>659</sup> Nevertheless, he has repeatedly been denied parole with a “no interest” notice from the parole board. In 2007, when the board did recommend him for a public hearing, the successor judge exercised his veto power to prevent the hearing, canceling the hearing.<sup>660</sup> “I have a 1992 letter from the first successor judge in support, but the subsequent successor judge talked to the victim’s family and the prosecutor, although he never spoke to me or my family or requested my prison files before he decided to veto me,” said Mr. Johnson. “I was ready to give up but the warden



talked to me and said, ‘Don’t give up,’” recalls Mr. Johnson. “I filed for commutation [in 2009] but the judge vetoed me again. That doesn’t have an effect like in the parole process, so we went ahead with the commutation, but the governor rejected it.”<sup>661</sup>

At his 2013 review, the parole board once again recommended that he move forward with a public hearing, but once again, the successor judge objected. Mr. Johnson attempted to challenge the denial in court, but the state appellate court declined to hear his claims.<sup>662</sup> “I hear people all the time say don’t give up. But what can I do?” asks Mr. Johnson. “This judge has vowed never to change. How do I prepare for another review? I don’t. I’m prepared to die here. I don’t know what else to say.”<sup>663</sup>

**Maurice Reynolds** (full summary in Section X) is a 47-year-old Black man incarcerated in Michigan; at the time of his offense, he was 15 years old. He has now been in prison for two counts of murder and armed robbery for over 30 years. On September 25, 1984, Mr. Reynolds and two other boys robbed and killed two men in a park. After trial, Mr. Reynolds was sentenced to life in prison. This was his first offense.<sup>664</sup> Mr. Reynolds earned his GED and went on to participate in numerous courses—first as a student and later as a tutor. Of his numerous work evaluations from 1989 through 2016, only one had (slightly) less than a perfect score, and his supervisors in his numerous work and trade assignments note that he is an excellent worker who gets on well with staff and other prisoners.<sup>665</sup> Even early on in his incarceration, his supervisor when he worked as an academic tutor noted that Mr. Reynolds was an “asset to [the] program” and that his “maturity and performance has made him a positive role model for my students.”<sup>666</sup> Mr. Reynolds has no disciplinary infractions for violent conduct or fights while incarcerated and has been at the lowest confinement level (II) and management level throughout almost his entire three decades in prison.<sup>667</sup> By 2009, he had accrued 560 days of good time<sup>668</sup> (which, given his sentence, he cannot use), and he went on to lead and teach different chapel programs and to participate voluntarily in a substance abuse class.

Despite his strong and positive institutional record, Mr. Reynolds has been repeatedly set off with “no interest” votes (effectively denying both release and review) by the parole board. For several years, Mr. Reynolds says, it seemed to be

a matter of policy not to release individuals serving life sentences: “Once I asked the parole board chairman what to do [to be approved], and he said I would have to be resentenced because he wasn’t letting any lifers out.”<sup>669</sup> In 2010, Mr. Reynolds was scheduled for a public hearing by the parole board, but the successor judge, James R. Chylinski, objected to his release and so the public hearing was cancelled. While his family remains supportive and involved in his life, Mr. Reynolds says he fears that if he ever is released, the skills and training he has accrued will no longer be useful:

All I know is this: I will never be back here. I will never commit a crime. I have so many things that I want to do. I’ve been living vicariously through other people. As the years go by, the training is outdated. I don’t even know how to work a cell phone. I’ve been here so long and the prison programming doesn’t train you for return. It’s like they don’t think I’m ever going to get out.<sup>670</sup>

**T.J. Smith\*** (pseudonym) is a 56-year-old white man who spent 40 years in prison. At 15 years old, Mr. Smith committed a burglary with a co-defendant who killed a woman in the course of the crime. Mr. Smith was convicted and sentenced to life without parole (he was subsequently resentenced to a parole-eligible life sentence in 1983). At 15, Mr. Smith says, he was living with his mother and stepfather and had been sexually abused by two older women in his stepfamily: “It was not a healthy environment, and I was running away from home and not dealing with the underlying issues and the trauma of these situations.”<sup>671</sup> Mr. Smith was charged with two larceny offenses when he was 13 and 14 and received probation for them, but at the time of the murder, he was planning to run away.<sup>672</sup> On December 16,

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“After the judge objected, I was in deep despair. I thought I was going to die in prison.”

—T.J. Smith



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## “Why not take the judge’s perspective when he continues to say I should be released?”

—John Alexander

1974, Mr. Smith and his co-defendant and classmate were suspended from school for showing up high on drugs. At home alone at Mr. Smith’s house, they decided to rob the house next door but were surprised by the arrival of their neighbor, whom Mr. Smith’s co-defendant sexually assaulted and murdered.<sup>673</sup> Said Mr. Smith, “I tried to stop him but I was afraid of him. As a 15-year-old kid, you don’t have a good idea about options of what you can do. I carry that on my shoulders and I will carry that the rest of my life.”<sup>674</sup> The two boys stole the victim’s car, but as Mr. Smith had never driven before, he quickly crashed the car, and they were arrested by the police.<sup>675</sup> Represented by his mother’s divorce attorney at trial, Mr. Smith says, he was transferred into adult court, convicted of first-degree murder, and sent to prison to serve life without parole. (Due to a change in the law, he was subsequently resentenced to life with parole in 1983.<sup>676</sup>)

Mr. Smith was then reviewed by the parole board in 1984, 1987, 1993, 1998, 2003, 2008, and 2013. As Michigan’s parole system allows the parole board to perform a file review and decline to interview a person serving a life sentence, he was interviewed by the board only in 1998, 10 years later in 2008, and finally in 2013. The board member who interviewed Mr. Smith for parole in 2008, Enid Livingston, wanted to move forward with a public (parole) hearing for Mr. Smith. Although Mr. Smith’s sentencing judge had retired, the designated successor judge, James M. Graves, vetoed Mr. Smith’s parole based on the “heinous nature of the crime.”<sup>677</sup> “After the judge objected, I was in deep despair,” recalled Mr. Smith. “I thought I was going to die in prison. My siblings and my partner were involved in my life and trying to make sure I didn’t give up hope.”<sup>678</sup> When Mr. Smith came up for review again in 2013, the board gave him a “no interest”

notification. Mr. Smith suspected the board’s lack of interest compared with the last hearing was because it assumed Judge Graves intended to veto him again.<sup>679</sup> Mr. Smith’s new successor judge, Timothy G. Hicks, instead considered the factors in *Miller*, as well as Mr. Smith’s plans for reentry, and decided not to object to Mr. Smith’s parole. Mr. Smith was then scheduled for a public hearing, where he was approved for parole. He was released in July 2014. Within weeks of his reentry, he began to work at American Friends Service Committee (AFSC) and enrolled in college. He is working on a pre-law degree at Eastern Michigan University and has worked with AFSC to assist other prisoners serving long sentences.

The involvement of a successor judge or even the original judge, if they have not examined the individual’s post-conviction record, adds an unjust and unnecessary barrier to release for prisoners in Michigan who are recommended for a public hearing. As **John Alexander** (full summary in Section X), a 54-year-old Black man who has been in prison since he was 18 for killing another young man during a fight, points out, there is also a double standard in this judicial veto. His sentencing judge, Judge Michael Sapala, has continued to say publically that Mr. Alexander’s continued incarceration and the actions of the board are nonsensical, but his support has not resulted in Mr. Alexander’s release even though his veto could prevent it.<sup>680</sup> Observes Mr. Alexander, “When they take the judge’s position into account in the judicial veto, why not take the judge’s perspective when he was the sentencing judge and continues to say I should be released?”<sup>681</sup>

Fortunately, a recent proposal, HB 5273, introduced by Rep. Dave Pagel and cosponsored by Rep. Martin Howrylak to limit the role of a successor judge has already moved through the Senate Judiciary Committee and is awaiting a vote on the Michigan Senate floor this year.<sup>682</sup> This bill would not completely eliminate the judicial veto, but would limit the role of a successor judge to expressing an opinion as to whether parole is appropriate; only a sentencing judge still sitting in the court where the prisoner was convicted would retain the authority to prevent parole through a veto. This bill, which has strong bipartisan support and the support of the Michigan Judges Association among others, would significantly reduce judicial vetoes and improve the efficacy and fairness of the parole system.

## B. GOVERNOR VETO POWER IN MARYLAND, CALIFORNIA, AND OKLAHOMA

Parole boards are “political” bodies in that their members are generally appointed by the governor for set terms. Even if they are not directly affected by public opinion and press attention to their activities, the governor they serve is. For governors, the political cost when a person released on parole commits a violent crime—however rare that may be—is more than speculative. As noted in a recent article about Willy Horton (the prisoner who, while serving a life sentence, escaped and committed a brutal rape and murder while on furlough), “Ever since 1988, when the George H. W. Bush presidential campaign machine wielded the Horton horror story against his Democratic rival, the threat of being ‘Willie Horton’ed’ has shaped the politics of crime and punishment.”<sup>683</sup> More recently in Massachusetts, after an individual released by the parole board on parole murdered a police officer in December 2010, Deval Patrick, then governor, announced a thorough review of the parole board’s practices and its composition, leading to the (apparently forced) resignation of five parole board members. “The public has lost confidence in parole, and I have lost confidence in parole,” said Governor Patrick.<sup>684</sup>

Governors around the country have authority to commute sentences and issue pardons, but in three states, they also have a direct role in parole. In Maryland, California, and Oklahoma, the governor not only selects the parole board but also has final say over whether a prisoner serving a life sentence and recommended for release by the parole board can be released.

In Maryland, prisoners with life sentences must receive final approval from the governor after the parole board has recommended parole. As documented in a 2015 report from the ACLU of Maryland, few lifers are recommended for release by the parole board—between 2006 and January 2015, only 71 of the more than 2,100 parole-eligible lifers had been recommended for release on parole or commutation<sup>685</sup>—but even those who *are* recommended can still be barred from release if the governor either denies their release or refuses to act on the board’s recommendation. Parris

Glendening, a former governor of Maryland, rejected every parole request made while he was in office (1995-2003); his successor, Robert Ehrlich, commuted five prisoner sentences but did not approve parole for any lifer during his term (2003-07). When former Governor Martin O’Malley took office in 2007, he did not act on any of the parole commission’s recommendations regarding 50 prisoners serving life sentences.<sup>686</sup> In response, and recognizing both that no lifers were being paroled and also that pending parole requests were left in limbo for years, in 2011 the Maryland General Assembly acted to require that the governor act upon a parole commission recommendation within 180 days. Former Governor O’Malley subsequently denied dozens of pending parole recommendations, commuting three prisoners.<sup>687</sup>

Like in Maryland, few lifers in California have historically been approved for release on parole. Between 1991 and 2010, the likelihood of release for lifers never exceeded seven percent;<sup>688</sup> in recent years, the release rate has increased to 15 percent.<sup>689</sup> This low release rate persists even as California Penal Code “explicitly states that parole release for prisoners sentenced to life in prison, which includes those convicted for murder, is the norm, not the exception.”<sup>690</sup> In the past, this low parole rate has been compounded by governors’ decisions to block the release of individuals who have been granted parole by the parole board. Law professor Megan Anitto found that “Between 1999 and 2002 the parole board held 12,000 release or ‘suitability’ hearings; out of those 12,000, the board found only 140 applicants suitable

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**“ If [prisoners’] crime alone could keep them from being paroled forever then that was really not life *with* the possibility of parole.”**

—Jennifer Shaffer, Executive Director, State Board of Parole Hearings

for release. Of those 140 applicants, then-Governor Gray Davis allowed two to be released on parole.<sup>691</sup>

Unlike in Maryland, where governors have consistently obstructed release on parole, in California, the number of individuals released on parole has fluctuated dramatically depending on who is governor. In California, the four governors in office from 1991 to 2010 reversed parole grants at rates ranging from 17 to 98 percent.<sup>692</sup> In a sharp change of direction from his predecessors, Governor Jerry Brown has allowed 80 percent of parole grants from the Board of Parole Hearings to go forward.<sup>693</sup> While former Governor Arnold Schwarzenegger was in office, the California Supreme Court reviewed the case of Sandra Davis-Lawrence, whom the parole board had recommended four times for release but whose approval had been reversed each time by (three different) governors. The California Supreme Court held that both the Board of Parole Hearings and the governor were required to look at the individual's *current* dangerousness; they cannot just point to the severity of the original offense as sufficient evidence that the individual remains a threat to public safety.<sup>694</sup> As Jennifer Shaffer, executive director of the State Board of Parole Hearings, observed, this decision was a significant change for the board: "As you can imagine, if [prisoners'] crime alone could keep them from being paroled forever then that was really not life *with* the possibility of parole. So there had to be something else."<sup>695</sup> However, even after *In re Lawrence*, former Governor Schwarzenegger continued to reverse parole grants at about the same rate (60 percent).<sup>696</sup>

The third state where governors play a direct role in parole, Oklahoma, also has a low parole rate. In January 2015, the board considered 322 cases and recommended only nine percent for parole—80 percent of which were for a drug-related offense.<sup>697</sup> Under Oklahoma law, the governor has the power to grant parole once recommendations have been made to them by the board. Oklahoma requires the governor to make a decision about a parole recommendation within 30 days of receiving the recommendation. If no action is taken, the recommendation for parole is deemed granted.<sup>698</sup> In the first three years of her time in office, Governor Mary Fallin denied 53 percent of the parole cases she reviewed; by contrast, her predecessor approved more than 80 percent of the cases he reviewed in his first year alone.<sup>699</sup> In 2012, Oklahoma voters approved a ballot measure that limited the

authority of the governor to deny parole. Now, the governor does not review parole recommendations for individuals convicted of a nonviolent crime. In those cases, when the Pardon and Parole Board finds in favor of releasing an individual on parole, that recommendation becomes final without the governor's approval. However, the governor still has final approval when the board recommends parole for a person convicted of a "violent"<sup>700</sup> crime.<sup>701</sup>

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## VII. REHABILITATION: THE THWARTED PATH TO PAROLE

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In deciding whether a prisoner can be released on parole, one of the primary factors parole boards can and should look at is conduct and growth while in prison. Boards should look not only at institutional conduct (i.e., disciplinary reports) but also at an individual's participation in rehabilitative programming, educational opportunities, and vocational programs. Rehabilitative and reentry programming, and restorative justice programs in particular, are important both for the individuals who will one day be released and for the communities and families to which they return, as prisoners themselves expressed to the ACLU.<sup>702</sup>

However, what programming exists varies dramatically based on the state and specific facility in which a prisoner is incarcerated, and most prisoners serving long sentences—life or other long indeterminate sentences—are excluded

from the (increasingly limited) prison programming because of their distant or non-existent release date. In many states, prisoners cannot participate in rehabilitative and reentry programming until their release date is approaching; but for

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**Prisoners are often excluded from rehabilitative programming absent a definite and approaching release date.**



Reuters/Robert Galbraith

prisoners with no clear release date or where the release date is distant, they will always be at the end of the waiting list.

Advocates argue that the *Miller* mandate and its focus on a meaningful possibility of release requires states to ensure that rehabilitative programming actually exists and is accessible so that youth sentenced as adults “have the opportunity to reform and make their case for reentering society.”<sup>703</sup> Many parole boards, however, do not appear to recognize the limited availability of programming for these prisoners and hold it against the individual that they did not complete programming prior to their parole eligibility date. In some states, prisoners cannot access programming until they’ve already seen the parole board; in others, it remains unclear whether a parole board’s recommendation that the individual complete programming will ensure placement therein by the Department of Corrections. To the contrary, in many cases, parole applicants are denied release because they have not participated in programming they have no way to access.

But a more central problem for individuals incarcerated since they were young is the fact that prisons are not designed to rehabilitate. They are often violent environments where young prisoners spend more time in the first few years focused on their personal safety than personal growth. Moreover, most young prisoners come into the criminal justice system because they need assistance, including mental health treatment, counseling, and support. Adult prisons are the worst response to those needs, exacerbating rather than addressing aggressive conduct and taking children far from their families and communities.

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**“There should be programs for youth to give them another chance. Otherwise, you think this is all there is.”**

—Jacob Blackmon

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## As of 2012, 61.9% of juvenile lifers were not involved in prison programming.

The U.S. Supreme Court’s focus on rehabilitation, a child’s potential for growth and development, and the importance of giving young offenders a “meaningful opportunity to obtain release” suggests that states have an additional responsibility now to provide young offenders with meaningful rehabilitative opportunities before they come up for parole review.<sup>704</sup> Beyond the requirements of *Miller* and *Graham*, states should see rehabilitation as a core part of their correctional policy as well as a matter of public safety and community health. As a report from the National Institute of Justice and the Harvard Kennedy School suggests, “Institutions that treat the apprehension of a young person involved in crime as an opportunity for intervention and assistance can promote socially integrated public safety that also alleviates the social costs of punitive criminal justice in our poorest communities.”<sup>705</sup>

Unfortunately, most young offenders serving long sentences are excluded from the very programming they need, both as children and as prisoners who will be released someday.

## A. ACCESS TO PROGRAMMING FOR YOUTH SERVING LONG SENTENCES

For youth sentenced as adults and incarcerated in adult prisons, access to psychological and educational help—as early as possible—is necessary but rare. Many individuals interviewed by the ACLU said there was little available to them when they first came into the system, which only prolonged their rehabilitation.

**T.J. Smith\*** (full summary in Section X), who went to prison at 15 for a murder committed by his co-defendant in



the course of a burglary, said the adjustment was terrifying and the lack of programming and counseling made his struggle more difficult: “They had no psychological services available. At the time, the policy was you need to serve 10 calendar years before you get programming, but it would have been more effective for me to have it immediately.”<sup>706</sup>

**Jacob Blackmon**, a 38-year-old white man serving a life sentence for the murder of a college student in Texas (for which Mr. Blackmon maintains his innocence), says that in his more than 22 years in prison, he has participated in what classes are available—earning his GED and taking vocational and substance abuse courses—but adds that most programming is not available to him because of the length of his sentence and his distant projected release.<sup>707</sup> Young prisoners, says Mr. Blackmon, need programming and assistance, particularly when facing a long prison sentence and prison is their only school and community: “When I came to prison, I grew up. I had to become one with this place to survive. You have men twice your size breaking you every day . . . There should be programs for youth to give them another chance. Otherwise, when you come in, you think this is all there is.”<sup>708</sup>

In some states, programming is available for young offenders as soon as they’ve entered. But in most, prisoners serving long sentences, and life sentences in particular, are at the very bottom of the waiting list for any programs that do exist. In Michigan, a former DOC official observed, lifers are at the bottom of the waiting list for programming.<sup>709</sup>

The exclusion of lifers from many programs—including anger management and violence prevention programs that could improve their own and facility safety—means that if and when these individuals do come before the parole board, they may not be prepared for the review or have much documented evidence of their rehabilitation. Attorney and law professor Laura Cohen observes that the problem is particularly acute for young offenders who don’t have the same community connections and demonstrated history of independent living as an adult to point to:

When they finally near their first parole hearings, many have few contacts in the outside world, no job prospects, and no previously forged relationships; in other words, they are even less prepared for reentry than their adult counterparts.

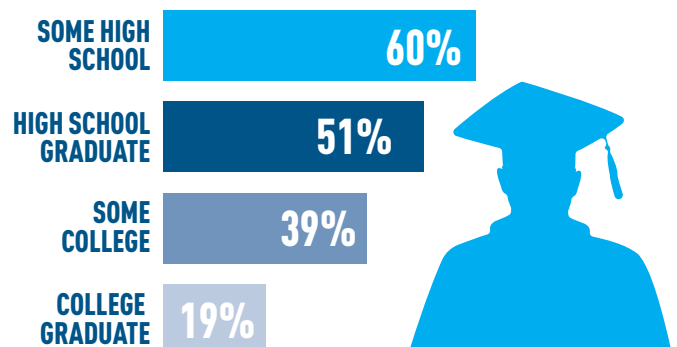
## In Michigan, a former DOC official observed, lifers are at the bottom of the waiting list for programming.

They thus come before the Board in a high “risk state,” unlikely candidates for release unless their circumstances are considered from an appropriate developmental perspective.<sup>710</sup>

According to a study by the Sentencing Project, “[m]ost (61.9%) juvenile lifers are not engaged in programming in prison . . . Among the juvenile lifers who were not participating in programming, 32.7% had been prohibited because they will never be released from prison; an additional 28.9% were in prisons without sufficient programming or had completed all available programming.”<sup>711</sup> Similarly, Human Rights Watch found that many individuals serving life without parole were at the very bottom of any waiting lists for programming, and their classification and placement in prisons further excluded them from programs that were available.<sup>712</sup>

Nevertheless, Levick and Schwartz note that across many states—including those with large juvenile lifer populations, like Louisiana and Florida—numerous restrictions to access

## RECIDIVISM RATES BY EDUCATION LEVEL



to rehabilitative programming, work release, “good time” credits, and other programming continue to be applied to youthful offenders, whether or not they are now or were anyway eligible for parole.<sup>713</sup> The limitations are not confined to state law; as Levick and Schwartz illustrate, “Juvenile offenders convicted of murder, or certain crimes against children, are also categorically excluded from participating in prisoner education programs funded by federal grants. Federal law thus raises barriers to rehabilitation of juvenile offenders whom the Supreme Court has deemed capable of rehabilitation.”<sup>714</sup> These restrictions not only continue to harm prisoners who are excluded from necessary programming but also significantly hamper their ability to get release on parole. As Levick and Schwartz observe, “even in states where juvenile lifers have their life without parole sentences commuted to life with parole sentences following Miller, they will still be unable to prove their rehabilitation through participation in educational, vocational, and rehabilitative programs.”<sup>715</sup>

It is clear that education is an essential tool, not only for helping prisoners grow and develop skills, confidence, and perspective while incarcerated but also for ensuring that when they are released from prison, they do not return. The U.S. Sentencing Commission’s 2016 report on recidivism found a significant inverse relationship between recidivism (meaning return to criminal conduct<sup>716</sup>) and educational level: “Offenders with less than a high school diploma had the highest recidivism rates (60.4%), followed by high school graduates (50.7%) and those with some college (39.3%). College graduates had the lowest rates (19.1%).”<sup>717</sup> Providing prisoners with education is thus important to reforming the criminal justice system and addressing mass incarceration.

Several prisoners interviewed by the ACLU—and particularly those who were sentenced in the 1970s—had completed significant programming, including college and advanced degrees, and had had numerous jobs and vocational training over the years. Many other prisoners, however, had no access to these programs. In 1994, Congress eliminated state and federal prisoners’ eligibility for Pell grants, which provide funding for tuition, fees, and related books and supplies for higher education.<sup>718</sup> The U.S. Department of Education recently announced a new pilot project to return Pell grant eligibility to prisoners, given the evidence that education reduces recidivism.<sup>719</sup> However, in the past 20 years, most

prisoners have had very limited ability to participate in higher education given their indigence.



**Anthony Coon, 14 at the time of his offense, is serving a 30-year sentence in Texas.**

At 14, **Anthony Coon** pled guilty to capital murder for a murder that occurred in the course of a robbery. Involved in drugs and alcohol and living on the streets after his mother left, Mr. Coon said he had also experienced physical and sexual abuse in his childhood. He described himself at the time of the offense as “self-destructive, miserable, borderline suicidal.”<sup>720</sup> Mr. Coon, now 37 years old, received a 30-year sentence and spent the first three

years in juvenile custody with the Texas Youth Commission (TYC). Those years at TYC, recalls Mr. Coon, “were the single most rehabilitative experience I’ve ever had. In TYC, I learned a lot. It really did straighten me out. Every day we had a group session. They broke your crime apart and put you back together.”<sup>721</sup> Despite a recommendation from TYC to the court that Mr. Coon remain with TYC for continued rehabilitative treatment and assistance, when Mr. Coon was 17, the court transferred him to adult prison, where programming is scarce, to serve out the remainder of his 30-year sentence.<sup>722</sup>

**Hector Santiago**, a 39-year-old Latino man, is serving a life sentence in Massachusetts. He has been incarcerated for over 20 years. At 18, Mr. Santiago lost his temper while caring for his girlfriend’s four-month-old son and hit him on the head and killed him.

Mr. Santiago himself had been the victim of years of physical and sexual abuse. According to his parole pleadings, at five years old, Mr. Santiago was routinely beat by his mother’s boyfriend and watched him throw his mother out of a four-story building and, when she was able to grab a ledge, hit her fingers with a hammer.<sup>723</sup> Mr. Santiago also witnessed his mother’s new boyfriend stab her repeatedly.<sup>724</sup> Growing up, there was not enough food and basic necessities. Mr. Santiago was routinely exposed to drugs; by 15, he had

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## “I felt shame for what I did but also what I experienced. I didn’t know how to talk about that.”

—Hector Santiago

developed an addiction to crack cocaine.<sup>725</sup> By this time, Mr. Santiago had moved out of the home and was living with his then-girlfriend and her two young sons. He was working 50 hours a week and helping her care for her children.<sup>726</sup>

Early on the morning of November 27, 1995, Mr. Santiago’s girlfriend went to work, leaving her children in Mr. Santiago’s care. According to Mr. Santiago, he was angry and increasingly frustrated because the child would not stop crying.<sup>727</sup> He admits to shaking and hitting the child forcefully; he states he accidentally hit the child’s head against the bed’s floorboard; a doctor’s report stated that the injuries were too severe to have been accidental.<sup>728</sup> When Mr. Santiago returned from heating up the child’s bottle and found him non-responsive, he attempted CPR.<sup>729</sup> Unable to revive the child, he called 911.<sup>730</sup> Mr. Santiago was arrested that day and has been incarcerated ever since.<sup>731</sup> He pled guilty to second-degree murder and received a life sentence, making

him eligible for parole after he had served a minimum of 15 years.

In prison, Mr. Santiago has had only four disciplinary tickets—and none for violence.<sup>732</sup> He took several substance abuse classes and has not used drugs or alcohol in over 18 years.<sup>733</sup> In addition to his numerous vocational courses, including culinary arts and welding, Mr. Santiago has been very involved in the prison dog training program, training therapy dogs. However, for Mr. Santiago, one frustration has been the lack of programming and treatment for prisoners who came in as victims of sexual abuse and other trauma, and who may need programming to assist their rehabilitation. “I sought out mental health treatment for years—I knew I needed help after what I’d been through and what I’d done—but I was told I didn’t need anything,” says Mr. Santiago. “I’ve been asking since 2005, but they said their caseload is overloaded and I’m doing well, I’m stable, I’m not a risk to myself or others.” Mr. Santiago says that at one parole board hearing, he was asked about his history of abuse but found it difficult to respond: “I felt shame for what I did but also what I experienced. I didn’t know how to talk about that.”<sup>734</sup>

Despite Mr. Santiago’s extensive participation in programming, his family support and release plan, and his very limited disciplinary record, he was denied parole again in 2013 and set off for five years, an even longer setoff (period of years before subsequent review) than after his first hearing. He appealed the decision but was denied and told to “pursue

counseling to develop greater insight into the crime, and to learn and be honest and forthright in addressing issues.”<sup>735</sup> Mr. Santiago has repeatedly tried to enroll in counseling but has been denied entrance by the Department of Corrections—even after this recommendation from the board—because he “does not appear to be a risk to himself or others at this time.”<sup>736</sup> He also cannot be moved to a minimum security facility, where there are more rehabilitative and reentry programs, due to his sentence without a favorable vote from the parole board approving him for parole.<sup>737</sup>



Hector Santiago and the black lab he trained in prison and, at right, pictured with his daughter.

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**“We have people who have served 40 years, and the challenges they face on reentry are enormous.”**

—Ronald Day, Fortune Society

Some prisoners may also be excluded from programming for long periods of time if held in solitary confinement or other, less restrictive forms of segregated housing, for example, due to a mental disability, misconduct, or gang affiliation.<sup>738</sup> The American College of Correctional Physicians observes that prisoners with serious mental illness often find themselves in restricted housing because of their conduct in prison: “Inmates with serious mental illness have more difficulty adapting to prison life than do inmates without a serious mental illness. They are less able to negotiate the complexity of the prison environment, resulting in more prison rule infractions and more time both in ‘lock-up’ and in prison. Prisoners with serious mental illnesses committed infractions at three times the rate of non-seriously mentally ill counterparts.” Once in restricted housing, however, “programming targeted to the behaviors that led to confinement is commonly unavailable in restricted housing.”<sup>739</sup>

**Domingo Moreno**, a 36-year-old Latino man serving a 50-year sentence for aggravated robbery in Texas, was 17 at the time of his offense. Mr. Moreno says he spent almost 11 years in segregation because he was registered by the Department of Corrections as a confirmed gang member.<sup>740</sup> (State records indicate that his gang renunciation was recognized in January 2014.<sup>741</sup>) He will not be eligible for parole until 2023. Mr. Moreno was adopted at age four because his birth mother was incarcerated at the time and his birth father was absent. Prior to his adoption, he lived with a grandparent who used to lock him in a dark closet. Mr. Moreno’s adoptive parents divorced when he was nine, and he developed substance abuse problems while spending time with his birth father, who was an alcoholic. By the time he was sentenced, Mr. Moreno had twice attempted suicide.<sup>742</sup> All of these factors and Mr. Moreno’s need for treatment,

as well as his prior teenage record for theft, unauthorized use of a motor vehicle, and robbery, were discussed at sentencing but pointed to, by the prosecution, as aggravating factors meriting a long sentence.<sup>743</sup> Despite his need for substance abuse treatment and mental health counseling, when he first came to prison nothing was available to him.<sup>744</sup> In the close custody/segregated housing unit where he spent 11 years, says Mr. Moreno, there were no programs at all. Since being removed from segregation, however, he has been able to complete substance abuse and anger management programs.<sup>745</sup>

## **B. REENTRY PLANNING AND ASSISTANCE**

Attorneys and prisoners both stated that developing a release plan, particularly for prisoners who went to prison at a young age and have limited community support at the moment, is one of the most time-consuming and difficult projects. Without assistance in preparing for the parole review and in finding placements for a release plan, many prisoners languish in prison because they cannot develop this plan on their own. Ronald Day of the Fortune Society in New York, which provides reentry assistance to thousands of individuals returning home from prison, observes that reentry planning is particularly difficult for individuals who have spent a long time away from the community. “We have people who have served 40 years, 30 years, and the challenges they face on reentry are enormous,” says Day:

Most of the individuals who have served an extensive amount of time are a lot more vulnerable [when released] given the long time they have served. Someone coming home after a couple of years is more connected to the services from before they went in; they are more likely to be able to find work and have family and help. For people who serve a long time, a lot of them don’t have the support or the work skills they need. Many no longer have extensive family connections or family alive since they’ve been in prison. And when they get released, they need to first rest their heads somewhere safely; the shelters don’t provide that.



People who've been in a long time at least felt stable in the facilities and to come out and not have a place to go is really stressful. You can imagine how challenging it is for people who've been away for decades, might not have relevant job training, and now must take care of themselves.<sup>746</sup>

For young offenders in particular, the longer they stay in prison, the less likely they are to have relatives who are able to assist them with reentry. Doug Tjapkes from Humanity for Prisoners in Michigan, which helps prisoners navigate the parole process, said, "Only 12 percent of prisoners get a visit. By the time they are up for parole, many have no one to help them prepare."<sup>747</sup>



**Mr. Knighten, pictured with his fiancée, has been incarcerated since he was 16.**

**Greg Knighten**, a 45-year-old white man serving a 45-year sentence in Texas for murder, has been incarcerated since he was 16 years old. In his almost 29 years in prison, Mr. Knighten has been reviewed by the parole board 13 times, denied for the seriousness of his offense alone on nine occasions, denied based on not enough time served on three occasions, and denied once for the seriousness of his offense and gang affiliation.<sup>748</sup> He observes:

People who come to prison as adults have a lifetime of friends, family, contacts, and other relationships to support them during their incarceration, and to assist them upon release. Children who are incarcerated often have nothing but parents, if that, and the longer we are kept in here, the greater the chances are of us losing [our] sole supporters. My own parents were my age now when I came to prison and both are now in their 70s and retired, becoming more limited each year in how they can help me upon my release.<sup>749</sup>

**Larry Roberts** (full summary in Section X) is a 48-year-old Black man serving life in prison for aggravated robbery and capital murder for murder in the commission of a burglary. Mr. Roberts says he had broken into a home when the owner returned. He panicked, shot the man, and then stole his car. At the time of his offenses, in 1983, Mr. Roberts was 15 years old. When he was told he would spend at least 20 years in prison, he recalls, "I remember thinking I'm not going to be able to do that long. I saw individuals around me, people who had been incarcerated for 20 years when I came in, trying and unable to make parole."<sup>750</sup> Initially, Mr. Roberts says, the facility didn't recommend any treatment or programming for him: "They gave me nothing to do and I was concerned that that has made it harder for me to get into programs, especially as a lifer. They don't let you into programs until you are within five years of discharging your sentence. I did get into trade school because my family paid."<sup>751</sup>

Mr. Roberts has been reviewed and denied four times for parole, most recently in 2014. At his first review in 2004, he was denied for 1D ("The record indicates that the offender has repeatedly committed criminal episodes that indicate a predisposition to commit criminal acts upon release."); 2D (regarding the nature of the original offense); and 4D ("The record indicates that the offender has an unsatisfactory institutional adjustment.").<sup>752</sup> He says that his last disciplinary ticket for a fight had been in 1990 or 1991. In 2008, 2011, and 2014, the only listed reason for denying parole was the seriousness of the offense.<sup>753</sup> Being separated from family for so many years, writes Mr. Roberts, "For me, it's beyond description because I've lost so many family members."<sup>754</sup> Given the age of his support network, moreover, he worries

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**“Time doesn't stop. [My family is] never *not* going to support me, but what happens when they are gone?”**

—Larry Roberts





about what will happen if he is not released while they are still able to help with his reentry. “My mom always tells me that as long as you are alive there is hope,” says Mr. Roberts. “My family has been supportive, but I’m 47 and my mom is in her 70s, as is my dad. Time doesn’t stop. I’m the baby of my family and they are never *not* going to support me, but what happens when they are gone?”<sup>755</sup>

**Christine Lockheart** (full summary in Section X), a 49-year-old white woman incarcerated for over 30 years in Michigan for felony murder of a family friend when she was 17, observes that while her father and sister have been supportive throughout her incarceration, the longer it takes for her to be paroled, the harder it will be when she is released: “I think they are looking for any opportunity to prolong our release,” says Ms. Lockheart. “I don’t understand it. The longer we are here, the older we get, and our ability to build a life for ourselves, have a career, have support, goes away. What are they waiting for?”<sup>756</sup>

According to a 2015 report by the ACLU of Nevada, many parole-eligible prisoners are denied parole—and some forgo parole review altogether—because of the lack of reentry planning resources and their inability to provide a parole release plan on their own.<sup>757</sup> Through a survey of 75 prisoners, the report found that over 68 percent of those surveyed received little to no assistance from the Nevada Department of Corrections or Department of Parole and Probation in preparing either for release or for the parole hearing.<sup>758</sup> Moreover, “approximately 20% of the inmates surveyed stated they refused parole; all of these inmates cited the difficulty in creating an appropriate parole plan as a reason.”<sup>759</sup>

An additional problem in the provision of reentry services, says Ronald Day, is the failure to provide services specific to the community to which the prisoner is returning:

A lot of the information given is theoretical—sometimes you may have a civilian involved but often not someone from the community the person is returning to. People need individualized assessments and contact with someone who can talk to them about what is possible for *them*. . . . You have to allow for organizations in the community to have a larger imprint inside.<sup>760</sup>

While individuals who came into prison when they were young may need more assistance in planning for reentry than others, even within this population two groups need particular assistance in preparing for release and organizing a reentry plan: individuals with mental disabilities and individuals convicted of sex-related offenses. For these individuals, identifying housing and creating a parole plan that the parole board will accept is already difficult; doing so without any assistance may be close to impossible.

For example, **Thomas McRoy**, a 50-year-old white man from New York, has been in prison for 32 years. At 17, Mr. McRoy was arrested and convicted of murder in the second degree and attempted sodomy and sentenced to 25 years to life imprisonment in New York State. Despite his educational achievements and good institutional record as a prisoner, Mr. McRoy has been denied parole five times—four times exclusively based on the facts of his offense. Mr. McRoy says that he was high during the murder and his arrest, and at the time, his life was a mess; friends and family note that while Mr. McRoy was a troubled youth, he had no prior violent

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**Parole applicants with mental disabilities need post-release treatment and housing plans to be approved for release.**

conduct—and since his imprisonment, with the exception of one fistfight in 1988, he had not engaged in any other violent conduct.<sup>761</sup> Although Mr. McRoy still maintains that the murder was not intentional, he says he takes responsibility for his crime: “I feel tremendous remorse, not only for my friend, whose death I am responsible for, but also for his family, who I put through hell in the process.”<sup>762</sup> Mr. McRoy says that from the time he entered prison, he was eager to participate in educational and other programming; while in prison he acquired his GED and then a bachelor’s degree, completed several vocational certifications, and participates in the honor dorm.<sup>763</sup> In his most recent parole review in January 2016, the parole board denied him release and stated, “Despite your achievements throughout this bid, this panel however finds it more compelling the seriousness of your crime.”<sup>764</sup> A significant problem for prisoners like Mr. McRoy is how to secure work and support for release without a clear release date. Mr. McRoy is aware that he has the further challenge of finding housing given that he must register as a sex offender:

There was a point where I used to plan everything out and it was driving me crazy. I was focused on getting residency and wrote to social services and shelters. But I really couldn’t do anything without a release decision. Every two years you had to do it again and it was too much.<sup>765</sup>

Prisoners with mental disabilities also need post-release treatment and housing options in order to be approved for release on parole. Community mental health treatment options are already very limited, so identifying these options may require assistance for individuals with significant disabilities.

**Christopher Douglas** (full summary in Section X), a 36-year-old white man with a traumatic brain injury and other mental disabilities, has been incarcerated in Michigan for over 19 years. He has been eligible for parole since 2004. At 16, Mr. Douglas was involved in an armed robbery in 1996 and was subsequently sentenced to 6 to 30 years for armed robbery, 5 to 20 for home invasion, and two years for felony firearms (for the same event).

In the years leading up to this offense, Mr. Douglas had a documented history of mental disabilities, behavioral problems, and juvenile court intervention. Court records

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“My life got wasted. They didn’t try to help me here.”

—Christopher Douglas

document that as an infant, Mr. Douglas was left with his aunt while his mother moved from Michigan to North Carolina.<sup>766</sup> At age 11, he was hit by a car and received a significant head injury; the accident left him in a coma for several days, left him with significantly impaired cognitive functioning, and damaged his memory, impulse control, and problem-solving abilities.<sup>767</sup> “I was 12 when I got out of the hospital and was put in special schooling—it was just a resources room,” recalls Mr. Douglas. “I was in that special room all by myself because I would have outbursts.”<sup>768</sup>

In 1995, Mr. Douglas was diagnosed with ADHD, conduct disorder, a developing anti-social personality disorder, and learning disabilities, in addition to continuing difficulties due to his head injury.<sup>769</sup> That year, he also spent several days in a hospital due to suicidal behavior.<sup>770</sup> At this point, he already had an extensive juvenile record but, for most of these offenses, had received counseling, probation, and restitution.<sup>771</sup> Douglas also suffers from seizures,<sup>772</sup> and he says he came into prison unable to read or write.<sup>773</sup>

Mr. Douglas’ disciplinary record while incarcerated has been extensive, ranging from more numerous “out of place” and “disobeying a direct order” to hitting a staff member and possession of a razor blade.<sup>774</sup> He has also been the victim of serious assaults while in prison.<sup>775</sup> Given his prior record, as well as his institutional disciplinary history and inability to secure reentry services, he has been denied release on parole at least eight times.<sup>776</sup> However, these denials have not been accompanied with assistance; Mr. Douglas has not been placed in further programming designed to help him with his disabilities and conduct, nor does he have assistance in identifying release opportunities. “My life got wasted,” he says. “They didn’t try to help me here.”<sup>777</sup> While his consistently difficult institutional record does not recommend him to the parole board, it does signal the need for more assistance and positive interventions, as continued incarceration and time in administrative segregation have not ameliorated—and

may be exacerbating—his conduct. Without mental health treatment and support, Mr. Douglas is unlikely to improve his track record in prison, find community placement for release, or develop and demonstrate capacity for release. He is not serving a life sentence and at some point will be released. Yet in his many years of incarceration, he has not received any assistance so that he can return to the community and live a safe and independent life. Not only is this harmful to Mr. Douglas during and beyond his time in prison, but it does a disservice to the community by failing to provide him with the tools to adapt to life in the community.

Providing rehabilitative and reentry services to people in prison is certainly a matter of respecting human rights and promoting a more humane criminal justice system. It is also in the interest of states to ensure that the individuals returning to their communities have the skills and assistance to reintegrate and support themselves—things they often do not receive while incarcerated. As Ronald Day observes, “We know that the vast majority of people are still going to come home and the question is, when they do, do we

want them to be released from solitary without education and viable employment? When people come out, if they aren’t prepared for work, we can ban the box all we want but this won’t translate into real opportunities.”<sup>778</sup> Preparing to return to the community is a process, and states can begin that process by providing prisoners with meaningful work and educational opportunities before they become eligible for parole.

**Ladji Ruffin** went to prison in Georgia at 19 years old; he is now 41 and was recently released. In 1994, Mr. Ruffin shot and killed his mother after an argument. Mr. Ruffin says he looks back at that time and his crime with abhorrence and confusion and tries now to live in a way that can honor his mother’s life. At the time of the murder, Mr. Ruffin was a college student studying engineering and had a one-year-old daughter. While in prison, Mr. Ruffin was one of the few prisoners accepted into the Braille program, where he created Braille materials for blind individuals, and, prior to his release, was housed at a transitional center that allowed him to work during the day outside the facility.<sup>779</sup> For Mr. Ruffin,



Jenn Ackerman

Many prisoners are released only after decades in prison and as old men and women with little help for their reentry.

participating in programs like Braille and working at the Governor’s Mansion helped him return to the community, find work, and build professional and personal skills:

You can’t just dump someone on the street after 20 years and expect them to be fine—there has to be more focus on reentry. It’s like they’ve made prisoners the next generation’s problem. . . . It was scary to go from prison and rehabilitate into society because I didn’t know how institutionalized I was; but now I can truly say that I’m not afraid. I got incarcerated as a teen and my fear was that I couldn’t make it alone once released. But now there is no doubt in my mind that I can do it.<sup>780</sup>

## C. DENIED REHABILITATION AND NOW, DENIED PAROLE

The lack of rehabilitative and reentry programming—and the exclusion of prisoners serving long sentences from that programming when it *does* exist—becomes more pernicious when used by parole boards as the reason for denying parole. Many prisoners told the ACLU that the parole board had either ordered them to participate in programming they were excluded from or told them they needed to be moved to a lower security facility before they could be granted parole—in many cases, neither of these requirements could be fulfilled solely at the prisoner’s initiative.

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**In Hawaii, the parole rate dropped from 40% in FY '06 to 34% in FY '10, with 65% of denials due to delays in completing pre-release programs.**

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## A Massachusetts commission found that excluding parole-eligible prisoners from minimum security facilities unnecessarily extended their stay by years.

Many states have long waiting lists to participate in required pre-release programming. For example, a 2014 review of parole in Hawaii, conducted by the Council of State Governments, found that parole approval rates declined from 40 percent to 34 percent between FY 2006 and FY 2010, with 65 percent of the denials attributed to delays in completing mandatory pre-release programming.<sup>781</sup>

In Georgia, board members are statutorily prohibited from granting parole to individuals who pose a threat to their own safety or the safety of others, and to individuals who upon release would be unemployed or become a “public charge.”<sup>782</sup> The board is also prohibited from granting parole to individuals with drug offenses or a history of substance abuse prior to their completion of a substance abuse program; similarly, individuals convicted of offenses involving violence against a family member are required to complete a family violence program before being released on parole.<sup>783</sup> However, in many cases, there is little programming available.

Most prisoners said they were not able to access pre-release or reentry programming until they had already seen the parole board—but without those programs, they would be denied release and perhaps denied the next time as well, as the parole board does not always have the authority to require that the Department of Corrections place a prisoner in particular programming.

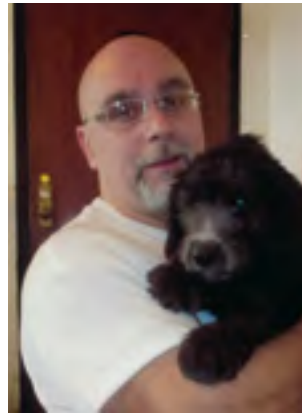
In some cases, parole boards have told prisoners that they need to be placed in a minimum security facility before the board will agree to their release to the community. However, it is generally up to the Department of Corrections to



reassign a prisoner to a minimum security facility, and many prisoners said that when they requested a transfer, they were told there was insufficient bed space in the minimum security facilities. In Massachusetts, the Special Commission to Study the Criminal Justice System found that minimum security placements were underutilized, while the five facilities designated as pre-release facilities are over-capacity.<sup>784</sup> The commission suggested that the Department of Corrections was over-classifying prisoners as prisoners needing to be housed in medium or maximum security facilities. Over-classification is problematic, first because “prisoners in lower security have greater access to rehabilitative programming and are more likely to reintegrate successfully into the community,” and second because higher security facilities are considerably more expensive to run.<sup>785</sup>

In some states, prisoners convicted of certain offenses and/or serving life sentences cannot be placed in minimum security facilities, even if they have served decades in prison without a violent infraction. In Michigan, for example, prisoners serving a life sentence can never be placed below level II facilities (medium security), which house over 90 percent of lifers.<sup>786</sup>

In Massachusetts, the Department of Corrections’ classification system prohibits prisoners convicted of first-degree murder or another crime involving loss of life from living in minimum security facilities, absent a positive vote by the parole board—meaning, the individual must have been granted parole *before* they can be moved down to these facilities. As the Special Commission observed, “Barring [parole-eligible prisoners] from stepping down to minimum security when their classification numbers rate them as appropriate for minimum unnecessarily extends their stays in prison for years.”<sup>787</sup> In 2014, the Massachusetts legislature amended the law to explicitly allow the Department of Corrections to house a youthful offender in a minimum security facility if qualified and to encourage the Department not to deny youthful offenders access to rehabilitative programming and treatment “solely because of their crimes or the duration of their incarcerations.”<sup>788</sup> Still, Massachusetts prisoners told us that they continue to face challenges in getting rehabilitative programming despite the fact that they can now override the bars to participation for lifers.



**Edward Palmariello, previously sentenced to JLWOP, is now eligible for parole. He has been incarcerated for 35 years.**

**Edward Palmariello** is a 52-year-old white man serving a life sentence in Massachusetts. Originally sentenced to life without parole at 17 for his role in the murder of his mother, who had abused him growing up, Mr. Palmariello is now eligible for parole due to the changes in Massachusetts law post-*Miller* and a decision by the Massachusetts Supreme Judicial Court in 2013.<sup>789</sup> He has been incarcerated for almost 35 years. Growing up, Mr. Palmariello

was subjected to significant physical and emotional abuse by his mother. He recalls being taken out of his home by child protective services in Massachusetts on numerous occasions. As a child, he says, he was diagnosed with mental health conditions and he began to accrue a juvenile record. “I couldn’t be sent to some of the reformatories because I had psychological problems, so they sent me to maybe 30 homes,” recalls Mr. Palmariello. “I had a juvenile record and was diagnosed with manic depressive and impulse control disorder. I had no counseling or treatment because I refused it. My mom was against [those services].”<sup>790</sup> On October 18, 1981, Mr. Palmariello and his friend were repairing plaster and painting the Palmariello home when Mr. Palmariello and his mother started arguing. Mr. Palmariello’s co-defendant took a cord he was using and put it around the victim’s neck, strangling her. Mr. Palmariello helped his friend move the body in an attempt to cover up the murder. Both boys were arrested and charged with murder. On October 15, 1982, Mr. Palmariello was convicted of first-degree murder and sentenced to life in prison without the possibility of parole. After *Miller* and Massachusetts’ companion case, *Diatchenko*, Mr. Palmariello became eligible for parole and had a hearing in 2014. In denying Mr. Palmariello parole many months later, the board cited what they saw as inadequate remorse and lack of adequate rehabilitation.<sup>791</sup> The parole board, says Mr. Palmariello, wanted him to have already taken more rehabilitative courses before his first review and delayed his first review, in part, to accrue more programs. However, even now that Mr. Palmariello is eligible for parole, getting access to programming as a lifer is





**Sean Rhomberg at 15 at the time of his offense (left) and today (right). Mr. Rhomberg has spent over 24 years in prison.**

a challenge. He would like to see coordination between the parole board and Department of Corrections (DOC) that would allow him access to the desired programs.

A federal court in Iowa recognized that **Blair Greiman**, a white man originally sentenced to life without parole at age 16 but now resentenced to life *with* the possibility of parole, was denied a meaningful opportunity for parole within the meaning of *Miller* when the parole board required him to participate in sex offender treatment—treatment the DOC denied him access to—as a pre-condition of parole eligibility. The court found that while the board and the DOC “require sex offender treatment as a condition of parole eligibility, Plaintiff is, in effect, denied not just of a meaningful opportunity for parole; he is denied *any* opportunity for parole.”<sup>792</sup>

Other individuals in Iowa, previously serving juvenile life without parole (JLWOP) and now eligible for parole, reported being given similar requirements to participate in programming and to move to a lower-level facility, but prisoners said they could not find out who needed to initiate that transfer. Moreover, given the few minimum security facility bed spaces available in Iowa and in many other states, prisoners were concerned both that they would have to wait a long time for a space to become available and that they would continue to be denied parole in the interim.

**Sean Rhomberg** (full summary in Section X) is a 40-year-old white man serving a life sentence in Iowa; he has been in prison for over 24 years. At 15, Mr. Rhomberg broke into his neighbor’s home and, in the course of the

robbery, murdered her. He was sentenced to life without parole in 1992. Growing up, Mr. Rhomberg says, he struggled with his learning disabilities, in particular his inability to read, and had been hospitalized for his psychiatric disabilities.<sup>793</sup> He had also been severely beaten by his father while growing up and, at the time of the offense, was addicted to drugs. At his resentencing, his mother and sister testified that he was teased a lot by other children for his disabilities; during one incident at school, he says, other children teased him so much about his ears that he glued them to his head.<sup>794</sup> Recalls Mr. Rhomberg,

“When I first came to prison, I could not read. At school I was embarrassed and would throw things when they wanted me to read aloud. I know it was wrong, but as a kid I was so embarrassed.”<sup>795</sup> On one occasion, when Mr. Rhomberg was 12 years old, he was placed in a psychiatric unit when he was acting out and the school could not get in contact with his parents.<sup>796</sup> His mother testified at his resentencing hearing that after the school called the police, he was taken to two facilities; at the second, he was placed in the adult ward for suicide watch: “[Y]ou would never understand the trauma that he got because when he called me that night, he couldn’t even talk. He was that petrified.”<sup>797</sup>

In 2014, as part of Iowa’s post-*Miller* reforms, Mr. Rhomberg was resentenced to life in pris-



**Thomas Bennett has been serving a life sentence in Iowa since he was 17.**

on with the possibility of parole.<sup>798</sup> The court did not set a specific minimum number of years to be served, instead leaving that to the parole board, which reviewed his case several weeks later.<sup>799</sup> At his resentencing, his correctional counselor noted that Mr. Rhomberg is a low risk of institutional misconduct and so could be a candidate for a minimum security facility.<sup>800</sup> Mr. Rhomberg received a file review for

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## “Community support is extremely important. The longer you are in, the less you have.”

—Thomas Bennett

parole on December 17, 2014. The board commended him for his conduct and efforts while in prison, noting “Positive efforts and behavior indicate you may be able and willing to fulfill the obligations of a law-abiding citizen.”<sup>801</sup> However, the board decision also stated that Mr. Rhomberg needed to complete recommended interventions and that he should move to a lower security facility, something Mr. Rhomberg cannot unilaterally do.<sup>802</sup> Mr. Rhomberg says that he has been unable to get an answer as to whether the parole board or the facility can dictate what more programming he needs and when he can be moved to a lower security level.<sup>803</sup>

**Thomas Bennett**, a 35-year-old white man incarcerated in Iowa, has been in prison for 18 years, since he was 17 years old. In 1999, Mr. Bennett was convicted and sentenced to life without parole for his participation in a murder that occurred during a drug deal. Mr. Bennett’s co-defendant shot and killed their neighbor. Mr. Bennett maintains that he had no prior knowledge of the plan to kill the victim, whom he says was a friend.<sup>804</sup> When Mr. Bennett started serving his sentence, he says there was very little programming available for a lifer. After a few years, he says, he unsuccessfully sought out anger management treatment. “I was angry all the time and I hated being angry,” says Mr. Bennett. “I came to terms with the fact that I would probably die in prison, but I started to think about what I could do to improve my time in prison and to improve the lives of others around me.”<sup>805</sup> He says his disciplinary record improved as he started to focus on short-term goals. At Mr. Bennett’s 2014 resentencing, the judge noted that Mr. Bennett has not had any violence-related disciplinary reports and that his minor infractions leveled off significantly as he grew up.<sup>806</sup> While in prison, Mr. Bennett has worked as a tutor for math, reading, and computer skills; has volunteered to participate in the

prison hospice; and has been employed seven days a week in the laundry unit.<sup>807</sup> He became eligible for parole after Iowa’s *Miller* reforms and was resentenced in 2012. Several months after his hearing, Mr. Bennett was reviewed (on paper) by the parole board. He says he found out about the review two weeks before it took place; a month later, he was denied parole. At his first review, he was denied because he had not served enough time. For his second review, in 2015, he submitted additional certificates of completed programs and a reentry plan. Says Mr. Bennett, “I had never requested straight parole, but a graduated release where I take more programs and go to a halfway house, because I want to take advantage of every opportunity to do this right.”<sup>808</sup> Denying him parole again, the parole board wrote that Mr. Bennett had not completed enough programming and needed to work toward a lower-level facility. These are both steps that, Mr. Bennett says, are not in his control:

[T]he staff says I’m a lifer and they aren’t wasting resources on me. On paper they will just say that the list is too long—there’s no space. But staff will tell you that you have to be within two years of a release date to get into treatment. But [e]ven if I had come in with life *with* parole there would have been nothing to do here. Every year they take away more and more programming and I don’t know where it goes. It took me months to get into programming and I only got in because my counselor fought for me to be included. . . . I think a lot of [the problem] was that they didn’t update the parole board protocols, so facility counselors don’t know what to do.<sup>809</sup>

Mr. Bennett says he continues to try to get into whatever programming he can. While he still has support from his older sister and family friends, Mr. Bennett says the longer he remains incarcerated, the harder it will be to return to the community and build his life. “When I first came in, I had visits all the time. Now, none of my high school friends write or call. . . . Community support is extremely important, and I mean emotional support. The longer you are in, the less you have.”<sup>810</sup>

## VIII. COSTS OF DELAY

Parole provides an administrative release valve to overburdened correctional systems at the back end of the sentencing process. For much of the 20th century, early release was a central component of penal policy.<sup>811</sup> As legal scholar Cecelia Klingele observes, it wasn't just that release was expected but that "failure to secure parole before the termination of the sentence was a sign that the system had failed to achieve its rehabilitative ends."<sup>812</sup> Around the world, conditional or even automatic release after a proportion of the sentence has been served is the norm; holding prisoners until their maximum release date is abnormal.<sup>813</sup>

By contrast, in the United States, Klingele's research demonstrates that the few states that have introduced early release laws in recent years have underutilized or even repealed them due to real or expected political backlash.<sup>814</sup> Meanwhile, in some states that do have early release mechanisms, such as Michigan and Texas, many prisoners—often those serving the longest sentences—are not eligible for these programs, regardless of their institutional and work records, because of their crime or sentence.<sup>815</sup> For prisoners in these states and many others, parole really is the most important release mechanism, however limited it may be.

Releasing eligible prisoners clearly has financial benefits to the state, given the enormous cost of incarceration, particularly as prisoners get older. However, early release

**\$34,135**

**PER YEAR TO HOUSE AN AVERAGE PRISONER**

**\$68,270**

**PER YEAR TO HOUSE A PRISONER AGE 50 OR OLDER**



### In 33 states, the parole board makes the ultimate decision to grant or deny medical release.

mechanisms, including medical parole, have not been effective in reducing the size and costs of the prison system, mainly because these tools—where available—are severely underutilized. This is mainly due to unwieldy bureaucratic procedures and a lack of political will. As legal scholar W. David Ball observes, an offense committed by a parolee is not the only "failure" to be considered: "Overpopulated prisons are also a failure, but because the effects of not releasing relatively safe prisoners are more complicated and harder to grasp, people are less likely to see retention as a problem, even if the harms to the state are ultimately greater than those posed by parolees."<sup>816</sup>

### A. MEDICAL PAROLE: A SQUANDERED OPPORTUNITY

As the prison population increases and ages, the costs of incarceration are multiplying for states. The ACLU's 2012 report on aging prisoners estimated that it costs \$34,135 per year to house an average prisoner but \$68,270 per year to house a prisoner age 50 or older.<sup>817</sup> By comparison, the average daily cost of parole supervision ranges from \$3.50 to \$13.50 per day.<sup>818</sup> In Louisiana, the state spends \$19,888 a year to house an average prisoner, but spends about \$80,000 a year to house and care for an ailing prisoner.<sup>819</sup>

These costs become an increasingly significant part of a state's budget as the prison population ages. In Texas, prisoners age 50 or older constitute approximately 18 percent of the population;<sup>820</sup> in Michigan, as of 2013, prisoners 50 and older comprise 19 percent of the population.<sup>821</sup>

One reason for which states are facing an increasingly older and more expensive prison population is the failure to use early release and medical parole procedures—even when they exist—to release prisoners who are old or very ill. A 2010 report from the Vera Institute of Justice observed that despite the ostensible and expressed interest of state lawmakers in expanding geriatric and medical release programs, the existing policies have had limited impact and few people have actually been released.<sup>822</sup> As a result, in many states, prisoners who are chronically or terminally ill, require regular and intensive treatments, have family and assistance waiting in the community, and are not at a risk of reoffending if released to their families are instead staying in prison where they may be unable to receive adequate care.

The vast majority of states, as well as the federal prison system, currently have some form of prison release program for prisoners who are ill (“medical parole” or “compassionate release”) or very old (“geriatric release”).<sup>823</sup> While the Department of Corrections in those states, and the Federal Bureau of Prisons for the federal system and the District of Columbia, is generally involved in initiating or approving the process, in more than 30 states, the ultimate decision to grant medical parole rests with the parole board.<sup>824</sup> In such cases, an individual who has met the stringent, statutory medical requirements to be released under medical parole may still be denied at the parole board's discretion based on the seriousness of the original offense.

In Georgia, the state constitution gives the parole board authority to grant medical parole to anyone over the age of 62 or to “an entirely incapacitated person suffering a progressively debilitating terminal illness” no matter the crime or conviction.<sup>825</sup> In deciding whether to grant medical reprieve, the board utilizes a balancing test considering the costs of in-custody treatment, adequacy of punishment at the time the request is made, and the “humanity” of allowing the individual to die outside of prison.<sup>826</sup> Nevertheless, in FY 2015, only 34 individuals were granted medical reprieve.<sup>827</sup>

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## IN NEW YORK, NEARLY 25% OF PRISONERS SEEKING MEDICAL PAROLE DIE BEFORE THEY CAN BE INTERVIEWED



In Florida, the Department of Corrections refers “terminally ill or permanently incapacitated” prisoners to the parole board for conditional medical release. In FY 2013–2014, only 19 “terminally ill or incapacitated” prisoners were recommended to the board, which approved eight for medical release.<sup>828</sup>

In other states, the law limits who can be released on medical parole to certain offenses or requires a high showing of debilitation for individuals convicted of more serious crimes—and even then, the parole board can still deny a medical release based on non-medical factors such as the seriousness of the offense.

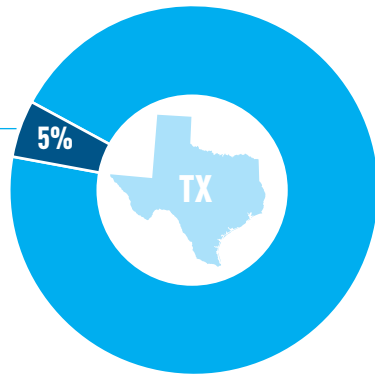
In New York, for example, prisoners serving a sentence for first-degree murder or conspiracy to commit murder in the first degree are ineligible for medical parole; prisoners serving a sentence of murder in the second degree or another statutorily listed offense must serve at least one-half of their minimum sentence before becoming eligible for parole.<sup>829</sup> Once those preliminary requirements have been met, staff from the Department of Corrections and Community Supervision (DOCCS) review and assess medical parole cases and certify qualifying cases to the parole board for its review and determination.<sup>830</sup> To be eligible for medical parole, an individual must have been designated as “suffering from either a terminal medical condition or a permanent non-terminal medical condition that renders him or her so debilitated or incapacitated, mentally or physically, as to be severely restricted in his or her ability to self-ambulate or to perform significant normal activities of daily living.”<sup>831</sup>



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## IN TEXAS, 1,362 PRISONERS WERE SCREENED FOR MEDICAL RELEASE (FY 2013)

**69 WERE GRANTED PAROLE**



Even if all these strict conditions are met, however, few individuals are recommended and released. New York State’s Standing Committee on Correction report for 2014 stated, “[T]he process has been so slow that nearly a quarter of the inmates who have sought medical parole die before they can be interviewed by the Board. Additionally, eligibility for medical parole may be too restrictive and in need of expansion.”<sup>832</sup> The Department of Corrections and Community Supervision’s 2014 report on medical parole in New York found that between 2010 and 2014, an average of 17 applications for medical parole were made per year with a high of 30 in 2014. Between June 1992 and December 2014, the parole board received 525 certified applications for medical parole and approved 371; however, a further 108 applicants died prior to their medical parole interview, three applicants were discharged by court order or had reached their parole eligibility date prior to the interview, and another seven individuals had their interviews postponed and died prior to their next board appearance.<sup>833</sup>

One physician, writing in *The New York Times* about her efforts to help an older patient and prisoner with liver cancer, observed:

There are medical reasons, not just compassionate ones, for early release. Providing care to a patient with an illness this serious is complex and prone to error in the best of circumstances. . . . It shouldn’t be acceptable that my patient, who posed no danger to the community and who had a family who loved him, should have died incarcerated.

He deserved the chance to make peace at the end of his life, to be with family. If we value sparing other people this kind of death, we need a fairer, more functional and quicker system that makes compassionate release a real possibility.<sup>834</sup>

Due mainly to delays in the bureaucratic processing of his case, her patient died four weeks before his case was even reviewed.

In Texas, prisoners must meet a very stringent legal as well as medical standard to even be referred to the board for medical parole. Texas’ medical parole program, Medically Recommended Intensive Supervision program (MRIS), is a collaborative effort between the Texas Board of Pardons and Paroles, the Texas Department on Criminal Justice Parole Division, and the Texas Correctional Office for Offenders with Medical or Mental Impairments (TCOOMMI). Physicians from the TCOOMMI identify prisoners with severe medical or mental health conditions who are either terminally ill (six months or less to live) or require intensive long-term care; sex offenders must be in a “vegetative state” to be considered.<sup>835</sup> In FY 2013, 1,362 prisoners were screened for MRIS eligibility and, of those, only 359 were presented to the Board of Pardons and Paroles as meeting the medical and legal requirements for parole consideration. The board approved parole for 69 of the 359 cases it considered—19 percent.<sup>836</sup>

The Texas Criminal Justice Coalition found that of the 1,857 prisoners referred for MRIS in FY 2012, 187—over 10 percent—died in prison.<sup>837</sup> Similarly, TCOOMMI reported in FY 2011 that of the 423 offender deaths in prison that year, 192 had been referred at least once for MRIS while in prison

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## In FY 2011, 35 percent of those who died in Texas prisons had previously been referred for medical release.



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## Releasing prisoners only to die, but barely live, is cruel, unnecessary, and irresponsible.

and 147 of those individuals had been referred for release in FY 2011.<sup>838</sup>

For example, one Texas prisoner serving a vehicular manslaughter sentence died of throat cancer on January 12, 2016, having applied for and been denied medical parole at least seven times, including two months before his death, according to his wife.<sup>839</sup> Early in his incarceration, he had been diagnosed with stage IV cancer; he first applied for medical parole in 2011 but was denied each time, despite support from medical staff.

Another Texas prisoner, a veteran who died of leukemia within days of his release on regular parole, had been denied medical parole three times.<sup>840</sup> According to his wife, the parole board said he was not sick enough to be released, despite the recommendations from the correctional medical staff.<sup>841</sup>

## B. FIRST IN, LAST OUT: YOUNG PRISONERS WAITING FOR GERIATRIC RELEASE

The need to release older prisoners as a matter of fiscal and humanitarian policy is further justified by the very low risk older and very ill prisoners present to public safety upon release. The U.S. Sentencing Commission's 2016 report indicates that "the older the age group, the lower the rearrest rate. The same pattern holds for reconviction and reincarceration."<sup>842</sup> However, numerous studies also demonstrate that individuals generally age out of crime in their 20s and

30s; it is not necessary to wait until prisoners are old for them to be safely released.

The harm and expense—to the individual, their family, and the community—from the continued incarceration of an individual imprisoned long after they have been rehabilitated are also costs that should be considered. There are costs to families and communities from the absence of these individuals in their youth and middle age. Returning prisoners to die, but barely live, in their communities is not only cruel but a waste. As many prisoners interviewed for this report said, reentry becomes increasingly difficult as these individuals get older, lose their ability to work and support themselves, decline in health, and return home to find their support networks no longer there or able to help.

It may be politically easier for parole boards to delay release of a person convicted of a serious offense until they are demonstrably too old to commit another crime, but, at that stage, they may also be too old to work to support themselves and face significant challenges both in developing necessary workplace skills and in getting hired.

**Kenneth Foster-Bey**, a 63-year-old Black man, spent over 40 years in prison for second-degree murder. Mr. Foster-Bey says he dropped out of school in the 10th grade and started working to support his mother, who was unable to work. At 20 years old, while working in Detroit as a house painter, Mr. Foster-Bey says he was approached by some men who had recently returned from the Vietnam War and had developed drug addictions. They persuaded him to help them set up robberies at the houses where he was working. Recalls Mr. Foster-Bey, "I really believe looking back over my misdirected life and mentality that I was impressed by older guys, especially these guys who were just coming home from Vietnam."<sup>843</sup> During one of the robberies, Mr. Foster-Bey says, one of his accomplices shot and killed two people. "Those people will be on my mind every day and every night of my life," he says. His accomplices were never arrested or convicted, and Mr. Foster-Bey says he never provided their names to the police, "Not only did I not want to be viewed as a snitch but I was afraid of these guys as well," says Mr. Foster-Bey. "At the end of the day, I was afraid and knowing that they knew my whole family—my mom and my sister and my baby—I feared for their lives too. I didn't know what



Tim Gruber

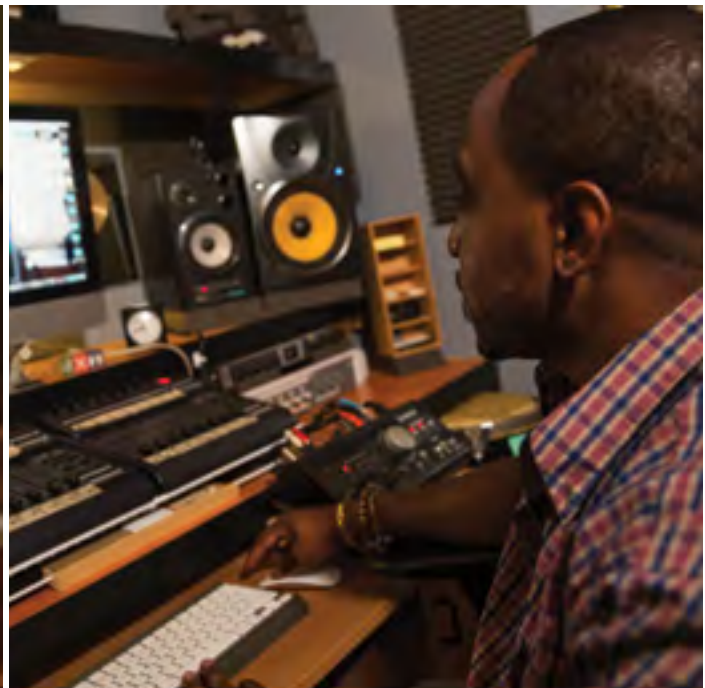
**Even in states where they exist, medical parole programs are underutilized.**

they would do if I was getting ready to submit information against them.”<sup>844</sup>

Mr. Foster-Bey says the prosecutor offered him 7.5 to 15 years, but he rejected the offer because he was not the triggerman: “I didn’t want to take seven years; I didn’t want to be locked up even seven more minutes let alone seven years.”<sup>845</sup> After trial, he was sentenced to life in prison and was eligible for parole after serving 10 years. He quickly got his GED while in prison and later got his bachelor’s degree. “Once I got the [GED] diploma, I felt better about myself and I started to make a transition. No more drugs, prison liquor, profanity. I started to feel better about myself,” says Mr. Foster-Bey.<sup>846</sup> He went on to work in the dental clinic and as a tutor in several prison programs. However, he was consistently denied parole. He says that in 2000, he wrote to his judge, who expressed surprise that he was still in prison, as he had expected him to serve around 10 years.<sup>847</sup> Finally, in January 2014, Mr. Foster-Bey was given a public hearing; he was approved for parole and released in June 2014. Coming home to Detroit, despite the support of his sister, has been a difficult transition because finding a job in Detroit and at his age is challenging:

I did a lot of walking, walking to every store for an interview for a job. No one ever called me back. Some interviews were going okay until they notice the long time I’ve been gone from the employment system. After I mentioned I’m an ex-offender, the interviews slowed down. I was 61 starting this search for employment . . . I’m looking at the employees in those places and they seemed to be 16 to 45. They’re young people.<sup>848</sup>

Parole board members may always think of the individual whose release jeopardizes public safety, however rare that risk, but they are not encouraged to think of the public good that comes from releasing someone who has been rehabilitated, and from giving that individual—and their family—another chance. But many individuals who have been released at a young age, even for serious crimes, have gone on to build productive lives for themselves and their families, once given the chance, and are also able to support themselves as well as contribute to their communities. Waiting until individuals are too old to find work or start families of their own is not only unnecessary for public safety but harmful and costly to society.



**Eric Campbell, who went to prison at 15, served 13 years in New York. He now has a family and works as a music producer with at-risk youth.**

**Eric Campbell** is a 37-year-old Black man who grew up in the New York prison system. Mr. Campbell grew up in Brooklyn with his family; he was a good student and had strong family support. When he was 15 years old, his mother died, which led to a chaotic time in his life. In November 1994, Mr. Campbell (then 15) and his friend were approached by an older man, who convinced them to rob a convenience store. “[The older man] stayed outside and they both told me to stay outside,” he recalls. “I was waiting for a long while and finally I decided I was cold, I’m going in. When I entered, the store owner grabbed the gun and they struggled. Then the gun went off.”<sup>849</sup> During a struggle between the store owner and Mr. Campbell’s co-defendant, the store owner was shot and killed. At court the first time, Mr. Campbell says, his public defender urged him to plea to the charge of murder in the second degree—and to plea early. “His first words were, ‘The longer you wait to plea, the worse it is. Maybe I could get you five to life.’ I didn’t even pay attention to ‘life’—I couldn’t imagine five years. I wasn’t the shooter; I didn’t understand how this could happen,” recalls Mr. Campbell.<sup>850</sup> He pled to seven years to life. Still, he says, he didn’t fully understand his sentence and thought he could get good time and be out within a few years. He was wrong. “In my sentencing, it was so confusing—they are

speaking in terms that I’ve never heard. . . . When I finally saw my counselor [in prison], she said, ‘You don’t get good time. You got sentenced to seven with a possibility of life.’ When she said that, a whole new level of fear, defeat, came over me. I couldn’t even communicate it.”<sup>851</sup>

Sentenced as a juvenile offender, Mr. Campbell was in a juvenile facility (MacCormick) until he turned 20. Although it wasn’t an adult facility, he recalls, the violence inside was a shock.<sup>852</sup> School helped Mr. Campbell, and he quickly got his GED and enrolled in Ithaca Community College. He went on to facilitate many prison programs and started focusing on his love of music. Being in this violent environment, he says, made him angrier toward his younger co-defendant. But after several years, with age, reflection, and more programming, says Mr. Campbell, he came to a realization that he was culpable for the offense too:

My actions affected a lot of people—the man who died, his family, my family, his kids’ kids—now they have someone in their family who was killed...it goes beyond what I can think. There is a lifetime effect. I have an understanding and it was my co-defendant’s genuine apology that changed

me. And I realized, he didn't ruin my life, I did. That was something we both needed.<sup>853</sup>

Mr. Campbell was released by the parole board after 13 years in prison. Despite initial difficulties in finding employment, he has gone on to work both in packaging and handling fine art (including for auction houses and galleries) and has returned to his main passion, music. He is working as a music producer and working to find ways to reach out to at-risk young people through music.

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The failure to release individuals on parole, despite their rehabilitation, is also harmful—both at the financial and human level. Families and communities bear significant costs when relatives are incarcerated, from the expense of keeping in touch through phone calls and visits to the added financial burden when a wage provider and family caretaker is absent.<sup>854</sup> Most importantly, there is a human cost to the individual incarcerated and the family and community they've left behind. Former New York parole commissioner Thomas Grant observes that in his conversations with parole applicants, he saw many individuals who came to prison young and stopped having significant disciplinary problems after, on average, seven years: "Think about that—someone who has a 25-year sentence and they turned it around 18 years ago?"<sup>855</sup> Not only is this a waste from a resources perspective but, as Grant points out, it's harmful to families and does not serve the deterrence goals of incarceration:

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**“I don't want to see someone locked up for longer once they've turned themselves around. Families are already broken up by this.”**

—Thomas Grant, former New York parole commissioner

What do you do with the young person who commits a horrible crime, gets incarcerated and doesn't see the board until much later? . . . If you've changed, go back to the community and send a message to people—I committed a crime as a child and came back as a middle-aged man, worn out. That sends a message to people. I don't want to see someone locked up for longer once they've turned themselves around. Families are already broken up by this.<sup>856</sup>

As law professor W. David Ball observes, parole boards are charged with protecting public safety and considering risk, but this doesn't encourage them to consider the harm from *not* releasing an individual:

Officials are also not directed to look at the costs and benefits of continued incarceration; they are only directed to evaluate the risks of release. . . . Without considering the benefits of granting parole, there is no incentive for parole boards to vote in favor of release.<sup>857</sup>

Currently, however, parole boards are not rewarded for successful decisions where released individuals go on to live productive lives in their communities. They may never know about the successful reentry stories, which further skews their own subjective assessments of risk. In the meantime, people are getting older in prisons that are not equipped to care for them and returning to communities, if at all, as old men and women with too few tools to survive and without real opportunities to live.



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# IX. INTERNATIONAL HUMAN RIGHTS LAW PERSPECTIVE

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The United States' punishment practices not only diverge significantly from policies and practices in many countries around the world—in both severity and application to children—but also violate international human rights law. Subjecting children to sentences considered disproportionate for adults under international law, and denying these individuals and all incarcerated individuals appropriate rehabilitative opportunities, puts the United States in stark contrast to the requirements, principles, and best practices of human rights law.

## A. HUMAN RIGHTS LAW, PROPORTIONALITY, AND EXTREME SENTENCES

International law, which forms part of the common law of the United States,<sup>858</sup> has long recognized that punishment should fit the crime and that disproportionately severe sentences are a form of cruel, inhuman, or degrading punishment.<sup>859</sup> The requirement of proportionality in sentencing is reflected in treaties, other international instruments, and the decisions of international human rights bodies and regional

courts.<sup>860</sup> Accordingly, the principle of proportionality has attained the status of a rule of customary international law.<sup>861</sup> Proportionality between the seriousness of the offense and the severity of the sentence is required by three interrelated human rights principles: the inherent dignity of the individual; the prohibition of cruel, inhuman, or degrading punishment; and the right to liberty.<sup>862</sup> Treaties, including those ratified by the United States, and other international instruments all recognize these three fundamental principles. Both the International Covenant on Civil and Political Rights (ICCPR)<sup>863</sup> and the Convention against Torture and Other, Cruel, Inhuman or Degrading Treatment or Punishment (CAT)<sup>864</sup> prohibit cruel, inhuman, or degrading treatment or punishment. The Universal Declaration of Human Rights recognizes the “inherent dignity” of humans and prohibits cruel, inhuman, or degrading treatment or punishment.<sup>865</sup>

The range of punishments used in the United States—including life without parole, life *with* parole, de facto life without parole, and other lengthy sentences—are problematic given their frequent use for both violent and nonviolent offenses and the lack of individualization in their application to adults and youth. The European Court of Human Rights (ECHR), the judicial body that adjudicates compliance with the European Convention for the Protection of Human

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**“The severity of penalties must not be disproportionate to the criminal offence.”**

—Article 49 (3) of the Charter of Fundamental Rights of the European Union





## MAXIMUM PRISON SENTENCES FOR ADULTS IN SELECTED COUNTRIES

### CROATIA



**20–40**  
YEARS

### NORWAY



**21**  
YEARS

### PORTUGAL



**25–30**  
YEARS

### SLOVENIA



**30**  
YEARS

### SPAIN



**30**  
YEARS

Rights and Fundamental Freedoms, has found that prison sentences must bear “reasonable relationship of proportionality with what actually happened.”<sup>866</sup> In July 2013, the Grand Chamber of the ECHR concluded by a vote of 16 to 1 in *Vinter and Others v. the United Kingdom* that “whole life orders” (the U.K. equivalent of life without parole sentences) violate the European Convention.<sup>867</sup> The court ruled that life sentences with extremely limited or no possibilities for review and release violate Article 3 of the European Convention, which prohibits inhuman or degrading treatment.<sup>868</sup> According to the court, Article 3 requires that life sentences incorporate an opportunity for review in which authorities can consider progress toward rehabilitation and other changes in the life of the prisoner that indicate an individual’s imprisonment no longer serves a legitimate purpose and that they are entitled to conditional release.<sup>869</sup> The individuals serving life without parole who brought the case were convicted of serious and violent crimes;<sup>870</sup> nevertheless, and taking into account the seriousness of these crimes, the court ruled that there must be an opportunity for review of these life sentences. The court explained,

[I]f... a prisoner is incarcerated without any prospect of release and without the possibility of having his life sentence reviewed, there is the risk that he can never atone for his offence: whatever the prisoner does in prison, however exceptional his progress towards rehabilitation, his punishment remains fixed and unreviewable. If anything, the punishment becomes greater with time: the longer the prisoner lives, the longer his sentence. Thus, [a life sentence without the possibility of parole is] a poor guarantee of just and proportionate punishment.<sup>871</sup>

More recently, in *Gurban v. Turkey*, the ECHR found that an individual’s Article 3 right not to be “subjected to torture or inhuman or degrading treatment or punishment”<sup>872</sup> was violated by the imposition of an irreducible life sentence without any prospects of review and release under Turkey’s aggravated life imprisonment regime. The ECHR here found that “the legislation governing the execution of aggravated life sentences, which was characterized by the absence of any mechanism that would allow the review of a life sentence after a certain minimum term, as well as the absence of the possibility of the release of the life prisoner,” was in breach of Article 3 of the European Convention.<sup>873</sup> The court explained that this finding requires Turkish authorities to implement a review mechanism satisfying standards allowing authorities “to consider whether any changes in the life [of the] prisoner were so significant, and such progress towards rehabilitation was made in the course of the sentence, as to mean that continuous detention could no longer be justified on legitimate penological grounds[.]”<sup>874</sup>

As the ECHR here recognized, having a review mechanism is not enough; it matters what factors are considered and that continued incarceration is justified based on an ongoing necessity. This back-end review plays a significant role in monitoring and maintaining the proportionality of a sentence in the United States, where thousands of prisoners serving some of the most severe sentences (life in prison and other long sentences) rely on the parole board, which is not a court, for review and release. However, in the United States, many states allow or require parole boards to consider the severity of the offense; the same attention to the person’s rehabilitation to date and risk of committing a new severe offense is generally not required or promoted in the parole system.

Preserving proportionality between the seriousness of the offense and the severity of the sentence is also recognized at the intergovernmental level in Europe and forms an integral component of all Western legal systems.<sup>875</sup> In its Recommendations on Consistency in Sentencing, the 47-member Council of Europe provides that sentences “be kept in proportion to the seriousness of the [...] offense(s)” and that member states avoid “disproportionality between the seriousness of the offense and the sentence.”<sup>876</sup> Article 49 (3) of The Charter of Fundamental Rights of the European Union, which sets forth the whole range of civil, political, economic, and social rights of European citizens and all persons residing in the European Union, also gives express recognition to the proportionality principle: “The severity of penalties must not be disproportionate to the criminal offence.”<sup>877</sup> The European Court of Justice, responsible for the enforcement of European Union law, has noted that while member states can choose the penalties they feel appropriate, state must nevertheless “exercise that power in accordance ... with the principle of proportionality.”<sup>878</sup>

Comparative country practice demonstrates a widespread acceptance of the prohibition on grossly disproportionate sentences. The principle of proportionality is found in all Western legal systems,<sup>879</sup> and freedom from torture and cruel or degrading punishment is explicitly provided for in more than 81 constitutions.<sup>880</sup> The international consensus on the principle of proportionality continues to grow, having constituted an important element of all sentencing reforms in the late 20th century.<sup>881</sup> This consensus was demonstrated most recently in the Rome Statute of the International Criminal Court, which was established in 2002 to prosecute the most egregious international crimes, including genocide, crimes against humanity, and war crimes. Article 81(2)(a) of the statute grants the defense and prosecution rights to appeal a sentence on grounds that it is disproportionate to the crime.<sup>882</sup> Furthermore, Article 110(3) requires all life sentences be reviewed after 25 years to determine whether they should be reduced.<sup>883</sup> If review is not granted at that time, the court will continue to review the offender’s sentence at intervals.<sup>884</sup>

Proportionality in sentencing is considered a cornerstone of the criminal justice systems of many nations around the world, including, significantly, those that share a common law tradition with the United States, such as the United

Kingdom and Canada.<sup>885</sup> Legal norms in Finland and Sweden emphasize proportionality, as do sentencing guidelines in Canada, England, New Zealand, and South Africa.<sup>886</sup> The ECHR recently ruled that life without parole sentences violate human rights and that the 49 prisoners serving life without parole in the United Kingdom, all of whom were convicted of murder, must have an opportunity for review of their sentences to take into consideration the seriousness and specific circumstances of the offense.<sup>887</sup>

In *Forrester Bowe and another v. The Queen*, the Judicial Committee of the Privy Council, the court of final appeal for the U.K. overseas territories and Crown dependencies as well as certain Commonwealth countries, struck down a Bermudan statute that imposed a mandatory sentence of death for certain offenses, noting that “[t]he principle that criminal penalties should be proportionate to the gravity of the offence can be traced back to Magna Carta ...” and that a court had the power “to quash a penalty which was excessive and out of proportion.”<sup>888</sup>

In *R. v. Offen (No. 2)*, the Court of Appeal of England and Wales applied this proportionality principle in its assessment of a statute that required the English courts to impose an automatic life sentence for a second “serious offense.”<sup>889</sup> In setting aside a life sentence imposed by the trial court on Offen after a second robbery conviction, the Court of Appeal held that absent a showing of significant risk to the public or other objective justification for such a sentence, a mandatory life sentence “can be categorized as being arbitrary and not proportionate.”<sup>890</sup> The court also considered that such a sentence could amount to a form of “inhuman or degrading ... punishment.”<sup>891</sup>

## B. PAROLE AND THE MEANINGFUL OPPORTUNITY FOR RELEASE

International and comparative law both strongly emphasize the centrality of proportionality in sentencing, as earlier discussed. When individuals receive long sentences with eligibility for review and release through the parole system, whether that opportunity for release is a meaningful protection under human rights law depends on whether the parole

system actually provides a feasible prospect for release in its procedures and actions. A life sentence without an accessible or meaningful prospect for release leaves the individual with an essentially “fixed and unreviewable” sentence,<sup>892</sup> failing to take into account any rehabilitative progress the offender has made. As such, a long sentence that evolves into a life sentence, either due to failure of the parole system or lack of access to a parole review, is a disproportionate sentence. Where children under the age of 18 are considered, a life sentence without a meaningful prospect for review or release is a particularly egregious violation of sentencing rights and implicates other special rights of the child.

One issue discussed in this report is the long minimum prison terms that even young offenders must first serve before they are eligible for review for release. At the International Criminal Court, life sentences must receive review after 25 years of the sentence have been served.<sup>893</sup> According to the Rome Statute, the court looks at three factors in determining sentence reduction: (1) cooperation of the offender with the court; (2) assistance the offender provides to the court; and (3) “[o]ther factors establishing a clear and significant change of circumstances sufficient to justify the reduction of sentence.”<sup>894</sup> Notably, the court does not look to the nature of the original offense in determining sentence reduction. According to the U.N. Standard Minimum Rules for the Administration of Juvenile Justice, also known as the Beijing Rules, “Conditional release from an institution shall be used by the appropriate authority to the greatest possible extent, and shall be granted at the earliest possible time” and is “preferred to serving a full sentence.”<sup>895</sup>

Parole proceedings in the United States, despite their enormous consequential power, provide few procedural rights to the individuals seeking release. Given the rights at stake in a parole review, the procedures and rights therein should meet standards for access to justice and procedural fairness under international law. For example, human rights law requires that all persons appearing before a judicial proceeding receive “a fair and public hearing by a competent, independent, and impartial tribunal.”<sup>896</sup> Article 8(1) of the American Convention on Human Rights, signed by the United States in 1977, provides each person with “the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law” in the determination of their

rights.<sup>897</sup> Article 10 of the Universal Declaration of Human Rights requires that every person be given a “fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.”<sup>898</sup>

## C. RIGHTS OF THE CHILD IN THE CRIMINAL JUSTICE SYSTEM

U.S. courts, including the Supreme Court, have repeatedly relied on international law and practice on children’s rights to affirm their reasoning that certain domestic practices violate the U.S. Constitution.<sup>899</sup> In November 1959, the U.N. General Assembly adopted the Declaration on the Rights of the Child, which recognized that “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.”<sup>900</sup> The United States was one of the 78 members of the U.N. General Assembly that voted unanimously to adopt the declaration. While the declaration is not binding law, since that time, the world’s governments—including that of the United States—have further elaborated in treaties and other declarations the rights of children accused of crimes. The International Covenant on Civil and Political Rights (ICCPR), a treaty ratified by the United States, acknowledges the need for special treatment of children in the criminal justice system and emphasizes the importance of their rehabilitation.<sup>901</sup> The Convention on the Rights of the Child (CRC), a treaty signed by the United States, also addresses the particular rights and needs of children (defined as a human being below age 18 years) who come into conflict with the law.<sup>902</sup>

And yet, in spite of these international laws and norms mandating different and age-appropriate treatment of youth in the criminal justice system and the U.S. Supreme Court’s reference to international human rights law, the United States subjects children under age 18 to prosecution and punishment through the adult system, applying to them some of the most severe prison sentences and detaining them with adults in an environment that is the opposite of rehabilitative.

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## THE U.S. SUBJECTS CHILDREN UNDER AGE 18 TO PROSECUTION AND PUNISHMENT THROUGH THE ADULT SYSTEM



### D. CHILDREN, COURTS, AND PUNISHMENT

The ICCPR, to which the United States became a party in 1992, specifically acknowledges the need for special treatment of children in the criminal justice system and emphasizes the importance of their rehabilitation.<sup>903</sup> Article 14(4), which was co-sponsored by the United States, requires that criminal procedures for children charged with crimes “take account of the age and the desirability of promoting their rehabilitation.”<sup>904</sup> The ICCPR emphasizes age-differentiated, positive measures for child offenders and education, rehabilitation, and reintegration over punishment.<sup>905</sup> Sentencing of children should be in proportion “not only to the circumstances and the gravity of the offence but also to the circumstances and the needs of the juvenile as well as to the needs of the society.”<sup>906</sup>

The ICCPR and the Convention against Torture and Other, Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and the U.N. Standard Minimum Rules for the Treatment of Prisoners, prohibit “cruel, inhuman or degrading treatment or punishment.”<sup>907</sup> For treatment to be humane, it must be appropriate to age and legal status.<sup>908</sup> The vulnerability and immaturity of juvenile offenders renders a wider range of treatment potentially cruel, inhuman, or degrading, and such treatment, in turn, can have a much more profound effect on the body and mind of a developing child than on an adult.

It is precisely because imprisonment is such an inherently severe sanction that governmental decisions to impose it are subject to human rights constraints. The ICCPR recognizes that all persons (including young people) deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.<sup>909</sup> When

the United States ratified the ICCPR, it attached a limiting reservation providing that:

The policy and practice of the United States are generally in compliance with and supportive of the Covenant’s provisions regarding treatment of juveniles in the criminal justice system. Nevertheless, the United States reserves the right, in exceptional circumstances, to treat juveniles as adults, notwithstanding paragraphs 2 (b) and 3 of article 10 and paragraph 4 of article 14.<sup>910</sup>

The drafting history of this reservation indicates that it should be interpreted narrowly. The reservation was intended to permit—on an “exceptional” basis—the trial of children as adults and the incarceration of children and adults in the same prison facilities.

The United States, as a co-sponsor of Article 14, was certainly aware of the breadth and scope of its language. There is nothing in its reservation to suggest that the United States sought to reserve the right to treat children as harshly as adults on a regular or frequent basis, or to disregard the special needs and vulnerabilities of children. To the extent the reservation is interpreted broadly, it risks creating a loophole for violations of children’s basic rights. To be fully consistent with what it has agreed to elsewhere regarding children’s rights, the United States should withdraw the reservation and refuse to use it to justify actions that otherwise would violate the ICCPR.

The Convention on the Rights of the Child (CRC), which the United States has signed but not yet ratified, explicitly

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## In ratifying the ICCPR, the United States reserved the right to treat juveniles as adults in the criminal justice system.

addresses the particular rights and needs of children.<sup>911</sup> Underpinning several of the treaty's provisions is the fundamental recognition of the child's potential for rehabilitation. The CRC requires that a child who has committed a crime be treated in a manner that takes into account "the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society."<sup>912</sup> In judicial proceedings, children must have the right to be informed of charges against them, to have legal or other assistance in the preparation and/or presentation of their side, for their situation as a child to be taken into account, for the matter to be determined without delay, and for the authority making a determination to be competent, independent, and impartial, amongst other rights.<sup>913</sup> Importantly, in these proceedings, the CRC requires that a variety of "alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence."<sup>914</sup> States are to use a variety of measures to address the situation of children in conflict with the law, including "care, guidance and supervision orders; counseling; probation; foster care; education and vocational training programmes and other alternatives to institutional care."<sup>915</sup> The treaty also anticipates the need for regular and accessible procedures in which a child can "challenge the legality of the deprivation of his or her liberty."<sup>916</sup>

## E. CHILDREN IN PRISON

Not only are children prosecuted and punished as adults in the United States and in violation of international human rights law, but during their incarceration, juveniles and young adults are detained in adult facilities that do not offer the range of services or treatment appropriate to their age and rehabilitative needs. Article 10 of the ICCPR requires the separation of child offenders from adults and the provision of treatment appropriate to their age and legal status. The CRC requires that "arrest, detention or imprisonment of a child . . . be used only as a measure of last resort and for the shortest appropriate period of time."<sup>917</sup> The Beijing Rules specify that "The juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the

circumstances of both the offenders and the offence."<sup>918</sup> The Beijing Rules go on to state that "[r]estrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum."<sup>919</sup> According to the CRC, where states provide children with institutions responsible for their care, they are required to appropriately tailor the institution to children's needs; this includes considerations of safety, health, competent supervision, staff number, and staff suitability.<sup>920</sup> According to the Beijing Rules, children should be held in "correctional or educational" facilities rather than prisons.<sup>921</sup>

Holding children for disproportionately long sentences increases the chances of children enduring other harmful treatment that further violates their rights. Under such circumstances, the effects of harmful treatment are amplified due to the nature of a child's developing mind and body. For example, under these circumstances children are more likely to be subjected to body cavity searches<sup>922</sup> or held in solitary confinement. Solitary confinement violates the obligation to treat young people deprived of their liberty with humanity and respect for their inherent human dignity and status as children under the ICCPR and the CRC, and it can amount to torture or cruel, inhuman, or degrading treatment under the ICCPR, CAT, and CRC. Most recently, the special rapporteur on torture, in his report to the General Assembly, called for an absolute ban on solitary confinement for young people under age 18:

The Special Rapporteur holds the view that the imposition of solitary confinement, of any duration, on juveniles is cruel, inhuman or degrading treatment and violates article 7 of the International Covenant on Civil and Political Rights and article 16 of the Convention against Torture.<sup>923</sup>

This proposed absolute ban reflects an agreement that solitary confinement is an affront to the humanity and vulnerability of any child. The special rapporteur also called for an absolute ban on solitary confinement of those with mental disabilities because the adverse effects are especially significant for persons with serious mental health problems.<sup>924</sup> Young people under age 18 with mental disabilities are therefore doubly vulnerable, given both their age and developmental needs and their disability. International human rights law, which identifies anyone below the age of



18 years as a child, requires that all children with disabilities be provided the special treatment and education necessary to their unique condition.<sup>925</sup> This is often not the case in detention and other facilities where youth sentenced to life with parole are held, in spite of the fact that many suffer from mental, physical, and/or social disabilities.

Furthermore, many state policies relegate children with life sentences to detention in higher security facilities than necessary, often excluding them from appropriate programming. This violates the obligation of states to provide for the development of children to the maximum extent possible.<sup>926</sup> Simply put, the level of security should vary depending on the individual's need for security.<sup>927</sup> The Human Rights Committee has stated that maximum security detention is incompatible with the ICCPR's Article 10, which requires that states treat detainees with "humanity and with respect for the inherent dignity of the human person," elaborating that the practice by such facilities of holding offenders in "prolonged cellular confinement" and under "conditions of strict regimentation in a depersonalized environment" are at odds with Article 10's rehabilitation and reformation requirements.<sup>928</sup>

Allowing children to be incarcerated with adults in adult facilities explicitly violates the Standard Minimum Rules for the Treatment of Prisoners,<sup>929</sup> the Mandela Rules,<sup>930</sup> and Article 10 of the ICCPR, which states that "[j]uvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status."<sup>931</sup> The CRC further stipulates that all children held in detention facilities be separated from adults "unless it is considered in the child's best interest not to do so."<sup>932</sup> Domestic professional standards suggest that adult facilities should not house young people under age 18.<sup>933</sup>

These standards also echo international standards with regard to access to physical and mental health care, with the American Correctional Association (ACA) recommending that in jails, "[all] inmates have unimpeded access to a continuum of health care services," including preventative care, and that prisoners should "have access to twenty-four-hour emergency medical, dental, and mental health services."<sup>934</sup> The ACA also recommends that adult facility classification systems and programming should "meet the physical, social, and emotional needs" of young people and explicitly highlights the importance of training and specialization

in the areas of "educational programming," "adolescent development," "crisis prevention and intervention," "cognitive-behavioral interventions," and "social-skills training."<sup>935</sup> Under the Standard Minimum Rules for the Treatment of Prisoners, incarcerated youth must be provided with exercise programs, vocational training, and education.<sup>936</sup> These programs are often unavailable in adult prisons in the United States.

## F. THE RIGHT TO REHABILITATION

International law, including both explicit treaty provisions and customary international law, guarantees that offenders have a right to be rehabilitated and requires that rehabilitation efforts be made. Indeed, rehabilitation is recognized as a central goal of and justification for imprisonment under human rights law. The first major international human rights treaty ratified by the United States, the ICCPR, incorporates an explicit provision guaranteeing an individual's right to "social rehabilitation" following a term of incarceration and also recognizing that such treatment arises out of the need to respect individual "dignity."<sup>937</sup> Where incarcerated individuals are denied rehabilitative services, as they so often are when serving long sentences in U.S. prisons, this practice contradicts the ICCPR's requirement that imprisonment should promote rehabilitation and denies the individual an opportunity to prepare for release and reentry to the community.<sup>938</sup>

Article 10(3) of the ICCPR provides: "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person . . . The

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**Human rights law requires that prisoners be given rehabilitative services and preparation for reentry.**

penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.”<sup>939</sup> Rule 4 of the Mandela Rules further explains that the purpose of imprisonment is not retributive but rather serves “primarily to protect society against crime and to reduce recidivism. Those purposes can be achieved only if the period of imprisonment is used to ensure, to the extent possible, the reintegration of such persons into society upon release so that they can lead a law-abiding and self-supporting life.”<sup>940</sup>

The Human Rights Committee, charged with interpreting the ICCPR, stated in its General Comment 21 that “No penitentiary system should be only retributory; it should essentially seek the reformation and social rehabilitation of the prisoner.”<sup>941</sup> Detaining individuals in conditions that prevent access to programming denies them critical opportunities for rehabilitation. Further interpreting Article 10(3) of the ICCPR, the Human Rights Council found in *Yong-Joo Kang v. Republic of Korea* that detention in solitary confinement for 13 years constituted a violation of Article 10(3)’s requirement that the essential aim of detention be reformation and social rehabilitation.<sup>942</sup> Rule 88 of the Mandela Rules further emphasizes integration of offenders in community, stating that “[c]ommunity agencies should, therefore, be enlisted wherever possible to assist the prison staff in the task of social rehabilitation of the prisoners” and that social workers should be assigned to promote the prisoner’s ongoing relationship with family and social agencies.<sup>943</sup>

The U.N. Basic Rules for the Treatment of Prisoners (Basic Rules)<sup>944</sup> and the U.N. Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules)<sup>945</sup> also underscore the rehabilitative function of incarceration and the focus of rehabilitation on facilitating an individual’s reentry to the community. The Basic Rules require states to provide every prisoner with “favorable conditions” for their “reintegration ... into society under the best possible conditions.”<sup>946</sup> In addition, four provisions of the Standard Minimum Rules establish the appropriate restrictions on the rights of prisoners to participate in civil society and political life. Standard Minimum Rule 57 declares that imprisonment should not hinder reintegration into society after prison and should not inflict punishment beyond the deprivation of liberty. Standard Minimum Rule 60 requires

the minimization of those differences between prison life and life outside prison that fail to respect prisoners’ dignity as human beings, and Standard Minimum Rule 61 elaborates:

The treatment of prisoners should emphasize not their exclusion from the community, but their continuing part in it. Community agencies should, therefore, be enlisted wherever possible to assist the staff of the institution in the task of social rehabilitation of the prisoners.... Steps should be taken to safeguard, to the maximum extent compatible with the law and the sentence, the rights relating to civil interests, social security rights, and other social benefits of prisoners.<sup>947</sup>

Standard Minimum Rule 65 provides:

The treatment of persons sentenced to imprisonment...shall have as its purpose...to establish in them the will to lead law-abiding and self-supporting lives after their release and to fit them to do so. The treatment shall be such as will encourage their self-respect and develop their sense of responsibility.<sup>948</sup>

Regional human rights laws and policies also recognize that offenders have a right to rehabilitation and hold that beyond a punitive period (usually corresponding to the probationary period or the minimum term in domestic European law), the continued detention of a life prisoner has to be justified by considerations of dangerousness and public safety. For example, the European Convention for the Protection of Human Rights and Fundamental Freedoms contains a provision on the right to liberty in Article 5(1)(a) that “Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: the lawful detention of a person after conviction by a competent court.”<sup>949</sup> While this provision is interpreted to mean that the length of the sentence is a matter for the national authorities as long as the detention follows and has a sufficient causal connection with a lawful conviction, a number of European Court of Human Rights (ECHR) judgments have reviewed national courts’ refusal to release on license or parole those sentenced to life imprisonment.<sup>950</sup>

The ECHR held with respect to a life sentence, “[o]nce the punishment element of the sentence...has been satisfied, the grounds for the continued detention...must be considerations of risk and dangerousness,” and such considerations must be “associated with the objectives of the original sentence....”<sup>951</sup> In addition, the ECHR has noted that the element of dangerousness “is susceptible by its very nature to change with the passage of time,”<sup>952</sup> such that individuals convicted of serious and violent offenses can grow and change and may deserve the chance to be released. The ECHR has relatedly recognized “the merit of measures . . . permitting the social reintegration of prisoners even where they have been convicted of violent crimes.”<sup>953</sup>

Furthermore, in a recent case considering a life prisoner with mental disabilities who died prior to his release and was denied adequate mental health care while incarcerated, the ECHR observed,

However heinous the crime committed, no prisoner deserves to be treated like forgotten “human waste” . . . That is what happened to the applicant James Murray. The lack of psychiatric treatment rendered his life sentence *de facto* irreducible. The Article 3 violation was aggravated by the existence of a discretionary and opaque pardons system, at the time the sentence was imposed, which did not meet the Convention requirements and was of no help to the applicant. The newly introduced periodic review mechanism . . . which did not provide him relief either, is also problematic with regard to the lack of foreseeability of the grounds for review of the sentence and the predominant role that it attributes to a purely retributive, revenge-oriented penal policy.<sup>954</sup>

For states to meet their human rights obligations, the ECHR held that they must conduct an assessment “of those prisoners’ needs as regards treatment with a view to facilitating their rehabilitation and reducing the risk of their reoffending.”<sup>955</sup> Where the assessment identifies a particular treatment necessary for the individual, the state should provide it, the court continued, noting, “This is of particular importance where treatment in effect constitutes a precondition for the life prisoner’s possible, future eligibility for

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**“However heinous the crime committed, no prisoner deserves to be treated like forgotten ‘human waste.’”**

—*Murray v. The Netherlands*, European Court of Human Rights (2016)

release and is thus a crucial aspect of *de facto* reducibility of the life sentence.”<sup>956</sup>

Similarly, Article 5(6) of the American Convention on Human Rights specifically requires re-adaptation to be a goal of prison: “Punishments consisting of deprivation of liberty shall have as an essential aim the reform and social re-adaptation of the prisoners.”<sup>957</sup> Because the United States signed the American Convention on Human Rights in 1997 but did not ratify the treaty, it is bound as a signatory not to act in a manner that would defeat the purpose of the treaty.<sup>958</sup> In interpreting this provision, the Inter-American Commission on Human Rights has repeatedly emphasized the rehabilitative function of a prison sentence and the importance of rehabilitation to the individual’s harmonious reintegration back into society.<sup>959</sup> For example, the commission has noted that “[t]he prison system is intended to serve several principal objectives... [t]he ultimate objective” being “the rehabilitation of the offender and his or her reincorporation into society,” and that, “[t]he exercise of custodial authority carries with it special responsibility for ensuring that the deprivation of liberty serves its intended purpose, and does not result in the infringement of other basic rights.”<sup>960</sup>

The Mandela Rules discuss in-prison treatment with an eye toward effective rehabilitation, stating that prisoners should be permitted to participate actively in their own rehabilitation where determined suitably fit.<sup>961</sup> Beyond discussing the treatment of imprisoned persons, the Mandela Rules discuss treatment of prisoners following release, citing society’s duty to provide appropriate aftercare to offenders reintegrating into society, in order to encourage and

facilitate actual rehabilitation and decrease the incidence of prejudice against them.<sup>962</sup> The Mandela Rules discuss the provision by relevant agencies, as far as is possible, of those things necessary to effectuate rehabilitation into society, including residence, suitable clothes, work, transportation to and from work, necessary documents and identification, and psychiatric treatment and aftercare, where necessary.<sup>963</sup> The Mandela Rules also note the importance of approved access of such agencies to prisoners, whose representatives' views shall be "taken into consultation as to the future of a prisoner from the beginning of his or her sentence."<sup>964</sup>

Instead, for too many people incarcerated in the United States, rehabilitative services and assistance geared toward reentry may be the exception, rather than the rule, and are too rarely provided for prisoners who may need those services and assistance the most—those serving lengthy sentences, often for serious crimes.

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# X. SELECTED STORIES OF INDIVIDUALS SERVING EXTREME SENTENCES SINCE THEIR YOUTH, WAITING FOR RELEASE ON PAROLE

(IN ALPHABETICAL ORDER BY LAST NAME)

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**John Alexander, with his wife and niece, has been incarcerated for 36 years.**

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**John Alexander** is a 54-year-old Black man who has been in prison since he was 18. In 1981, Mr. Alexander was convicted of second-degree murder for shooting another young man in a fight and sentenced to life in prison, with an additional two-year sentence for a related felony firearms offense.

Mr. Alexander grew up in Detroit with his mother and six sisters; his father died when he was seven years old. Growing up, Mr. Alexander says he was a good student and athlete, but in his teenage years, without guidance and support, he became rebellious: “My mother did the best she could. We didn’t have big family support to help us out. My family wasn’t financially set and my mother was surviving on Social Security.”<sup>965</sup> Mr. Alexander dropped out of school and started working in his grandfather’s auto shop to help support his family. But he also started selling drugs for money for him and his family. Between the ages of 16 and 18, Mr. Alexander was arrested and convicted of drug possession, possession of a firearm,<sup>966</sup> and failure to show up at an appointment with his probation officer.<sup>967</sup>

On August 8, 1980, during a night of gambling, a fight broke out between Mr. Alexander and several other men; during the fight, Mr. Alexander shot and killed one of the men. After several months in jail, Mr. Alexander went to trial and was convicted of second-degree murder. According to Mr. Alexander:

I knew in my heart that it shouldn’t have happened. I was heavy on myself for a long period, thinking about him and his family and mine. My sisters and mother were shocked. They couldn’t believe I would get into trouble and with such a serious case. With my sentence—I felt it was just for what I had done. But I did feel I was redeemable and, even if I didn’t get out, I still wanted to be right and to be right with God. Even if I die in prison, I want to be right with God. After I took that position, I continued to do better.<sup>968</sup>



The court recommended that Mr. Alexander receive two years for the firearms charge and serve 10-20 years in prison;<sup>969</sup> Mr. Alexander, who received a life sentence, has now been incarcerated for 36 years.

At first, said Mr. Alexander, it took him a while to seek out programming in prison, and in his first few years, he incurred several disciplinary reports.<sup>970</sup> But, he said, “I realized I didn’t just want to be waiting in prison. I’ve taken every course here and I work in horticulture. I study and I teach.”<sup>971</sup> Mr. Alexander’s work progress reports (including work in horticulture as a tutor and work in food service) comprise near-perfect work performance results, and staff comments on his work and program participation note that he gets along well with staff and other prisoners, and that he has acted as a role model for prisoners over the past 25 years in particular.<sup>972</sup> In 1985, Mr. Alexander married his girlfriend of several years, Deborah, with whom he has two children. His wife has continued to visit and speak with him regularly throughout his incarceration, says Mr. Alexander: “My desire to get out of prison [is] more for her than for me.”<sup>973</sup>

Mr. Alexander first came up for parole review in 1992. Since then, he has been reviewed for and denied parole six times. His 2009 risk assessment indicates that he had a job offer lined up, that he does not need any additional programming, and that he is a low risk of recidivism and violence.<sup>974</sup> His daughter and her family offered him a place to live as well as employment in an entry-level position at a construction company in Louisiana.<sup>975</sup> He has one fighting misconduct report from 1994 (which he says was for a fight during a basketball game; no weapon was used)<sup>976</sup> and one other major misconduct report from inappropriate contact with his wife during a supervised visit, when Mr. Alexander says he brushed crumbs off her lap during visitation.<sup>977</sup> His most recent disciplinary reports were for violations of the facility’s mail policies, in 2011.<sup>978</sup> Mr. Alexander was a plaintiff in the *Foster-Bey* litigation, brought to reform the Michigan parole process. In support of his commutation request (denied by the governor in 2014), the lead counsel in that case, Paul Reingold, wrote that Mr. Alexander, in addition to having an excellent institutional record, took full responsibility for his crime and “honored the trust we placed in him to serve as a lead plaintiff . . .”<sup>979</sup>

But despite his positive institutional record and continued support from family and friends, Mr. Alexander continues to be denied parole, to the consternation of Mr. Alexander and his entire family. In 2008, he was interviewed via videoconference and said he felt some hope because the interviewer indicated she would recommend he get a hearing and complimented him on pursuing his education, even when the facility no longer provided it: “But then I got a no interest vote 16 months later,” Mr. Alexander recalled.

In Mr. Alexander’s last review in 2011, the board did not even interview him but deferred his next review, setting it off for five years with a “no interest” notice (the next review is scheduled for February 2017). “I have a network of people waiting to assist me if I get out. It takes so much out of my wife to go through

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**“It takes so much out of my wife to go through these reviews—to see the pain in her eyes, it destroys me.”**


—John Alexander

these reviews—to see the pain in her eyes, it destroys me,” says Mr. Alexander. “Sometimes I do think there is nothing else for me to do here. I’ve worked and taken every class. . . . I live for the possibility of getting out. But if I don’t get out, I’m prepared for that. Getting my hope up, that bothers me more than anything.”<sup>980</sup> Mr. Alexander notes that because of the continued denials, which do not appear to correspond with performance or effort within the facility, some prisoners have decided to forgo the process entirely: “It’s discouraging; some guys don’t even come up for review. Guys started taking the board’s ‘life means life’ statement to mean there is nothing you can do. I started pushing my wife away at that time when I thought there wasn’t even a possibility of getting out; it takes a lot out of you.”<sup>981</sup>

In 2002, Mr. Alexander’s judge, Michael Sapala, granted Mr. Alexander’s motion that the parole board had violated his constitutional rights by insisting, on a parole-eligible sentence, that “life means life” and granted him a resentencing hearing. In so doing, Judge Sapala admonished the parole board for holding Mr. Alexander beyond the time foreseen by the court without a real opportunity for release:

Obviously, in 1981, no Judge, in imposing a life sentence could see down the road . . . that the Parole Board would change to the extent that it wouldn’t simply change policies, but, in fact, would ignore the law. The law that initially afforded eligibility after 10 years, subsequently after 15 years, and it is my view that, for whatever reason, political or otherwise, this Parole Board has refused to recognize that authority . . . [I]f I wanted to make sure [Mr. Alexander] stayed in prison the rest of his life, I would have imposed those kinds of sentences you heard prior to sentence guidelines, like 80 to 150 years, but I did not do that.<sup>982</sup>

On appeal, the appellate court ruled that Judge Sapala’s court no longer had jurisdiction.<sup>983</sup> Judge Sapala has continued to say publically that Mr. Alexander’s continued incarceration, and the actions of the board, are unjust, but his support has not resulted in Mr. Alexander’s release.<sup>984</sup> Observes Mr. Alexander, “When they take the judge’s position into account in the judicial veto, why not take the judge’s perspective when he was the sentencing judge and continues to say I should be released?”<sup>985</sup>

 **Marlon Branch** is a 51-year-old Black man who has been incarcerated for murder since 1981. At the time of his offense, Mr. Branch was 15 years old. Mr. Branch grew up in Harris County, Texas, and was raised by his great-grandparents. His family, Mr. Branch recalls, “lived in great poverty—we had no running water. We would walk 50 yards to a faucet in the ground for water and had an outhouse.”<sup>986</sup> At the time of his offense, Mr. Branch says that he was looking for guidance and support: “At the time of the offense, my great-grandmother who

raised me had just passed. I was looking for acceptance. I just wanted to fit in with the older guys. It wasn't hate that got me here. It was fear."<sup>987</sup> When he was 15 years old, Mr. Branch says that he and two older teenagers broke into a house and, in the course of the burglary, killed a young girl—"An act," Mr. Branch says, "I am truly remorseful for. One of my greatest regrets is that I never had a chance to apologize to her family."<sup>988</sup> Mr. Branch confessed to his mother, who called the police. "I went alone to the station," recalls Mr. Branch. "The police bombarded me with questions in different stations from 12:30 a.m. until 3 p.m. They kept making me change my statement. I had no idea what was going to happen. I was a kid. I had no idea [of] the severity of what I was facing."<sup>989</sup> After trial, Mr. Branch was convicted of capital murder and sentenced to life in prison.

Coming into prison, recalls Mr. Branch, there was no protection from the facility violence, and over the first several months he was involved in some fights to protect himself.<sup>990</sup> Nevertheless he applied himself to earning his GED and working in the culinary arts. Most programming, says Mr. Branch, has not been available to him because he is not within five years of a discharge date.

Mr. Branch has been reviewed six times for parole, starting at his eligibility date in 2001. Each time, he has been denied parole based solely on "2D"—the nature of the offense.<sup>991</sup> No other factors have been listed or programs recommended to him, says Mr. Branch, either by the parole board or the facility.

"Generally, the questions they ask are standard—what you've done, etc. It's not an opportunity to express myself or my remorse for my crime," says Mr. Branch. When he did, for the first and only time, see a parole commissioner in 2011, he says, he did not feel that interview was a more substantive opportunity to demonstrate his progress. "The commissioner just said, 'Give me a good reason to let you out of this motel,'" recalls Mr. Branch.

I don't feel like I've ever had a meaningful opportunity for parole. It's so fast. It's just a system that's all tied up together. . . . I wish the commissioner would ask me how I can show I deserve release and that I won't come back. I would tell him the 15-year-old is gone. I'm a different man and there is no way I would be led astray again. I'm in a violent environment and I'm not in trouble. The thing I'm the most proud of is that I didn't become an animal in here. I still have my feelings and I haven't hurt anyone in here. But that's also part of becoming a man. I've helped people in here. I see with youth coming inside [prison] for the first time, it's hard to counsel them because they are still in that mentality. What has helped keep me sane is that you have to be there for them.<sup>992</sup>



**Marlon Branch, who has been serving a life sentence in Texas for 35 years, at age 15 at the time of his offense.**

**I wish the [parole] commissioner would ask me how I can show I deserve release...I would tell him, the 15-year-old is gone."**

—Marlon Branch



**Eric Campbell, arrested at 15 for felony murder, was released after 13 years in prison.**

**Eric Campbell** is a 37-year-old Black man who grew up in the New York prison system. Mr. Campbell grew up in Brooklyn with his family; he was a good student and had strong family support. When he was 15 years old, his mother died, which led to a chaotic time in his life. In November 1994, Mr. Campbell and his friend were approached by an older man, who convinced them to rob a convenience store. “[The older man] stayed outside and they both told me to stay outside,” recalls Mr. Campbell. “I was waiting for a long while and finally I decided I was cold, I’m going in. When I entered, the store owner grabbed the gun and they struggled. Then the gun went off.”<sup>993</sup> During a struggle between the store owner and Mr. Campbell’s co-defendant, the store owner was shot and killed. Two months later, says Mr. Campbell, police officers arrested him at school:

I was in class; they drew a gun in school and pulled me into the hallway. They kept saying, “We got the shooter, we just need you to come with us. You were there, right?” They took me to the principal’s office, because apparently they couldn’t question me without his permission. He gave his permission and they took me to [the] 82nd precinct. They put [the older man’s] statement in front of me and they said, “You weren’t the shooter, so just tell them that you agree and sign the statement.” After I agreed, they called my father and he came down to the station. . . . I was terrified. I didn’t know what to expect. I felt like I was going to be sent to death right now. They didn’t explain anything to me.<sup>994</sup>

Mr. Campbell was taken to Central Booking; he only realized he was arrested, he said, when they put him in a cell with adults: “Every assumption from every movie I ever saw about prison hit me. After a while they realized I shouldn’t be in there with the adults. They put me in a cell by myself and I think that was worse. . . . Later the next day they took me upstate. I heard them talking about if they had the right hardware to cuff me because I was so small. They chained me to another guy and put us on a bus with a lot of other men. I thought we were going home.”<sup>995</sup>

At court the first time, Mr. Campbell says, his public defender urged him to plea to the charge of murder in the second degree—and to plea early. “His first words were, ‘The longer you wait to plea, the worse it is. Maybe I could get you five to life.’ I didn’t even pay attention to ‘life’—I couldn’t imagine five years. I wasn’t the shooter; I didn’t understand how this could happen,” recalls Mr. Campbell.<sup>996</sup> He pled to seven years to life. Still, he says, he didn’t fully understand his sentence, and thought he could get good time and be out within a few years, until he started serving his prison time. In court, “in my sentencing, it was so confusing—they are speaking in terms that I’ve never heard. . . . When I finally saw my counselor, she said, ‘You don’t get good time. You got sentenced to seven with a possibility of life.’ When she said that, a whole new level of fear, defeat, came over me. I couldn’t even communicate it.”<sup>997</sup>

Sentenced as a juvenile offender, Mr. Campbell was in a juvenile facility (MacCormick) until he turned 20. Although it wasn’t an adult facility, Mr.

Campbell recalls, the violence was a shock: “They called it ‘gladiator school.’ You have 15- to 20-year-olds in one facility, no library, nothing to entertain you, and the violence—we fought for everything. The officers didn’t make it any better. Growing up, I never got into a fight, but I learned to fight very well [in prison]. The first time you get hit, you decide you never want that to happen again. You never want to wake up with a black eye. And you become aggressive. It becomes exhausting.”<sup>998</sup> School helped, says Mr. Campbell, and he quickly got his GED and enrolled in Ithaca Community College. “But after school it was back to war. Back to a fighting zone,” says Mr. Campbell. “A lot of friends never made it out mentally from that experience.”<sup>999</sup> Being in this violent environment, Mr. Campbell says, made him angrier toward his younger co-defendant. But after several years, with age, reflection, and more programming, says Mr. Campbell, he realized he was equally culpable:

In 2005, in adult prison, I ended up in the cell next to him. We went to the yard together—I was going to fight him. He said, “Do what you got to do to me. I ruined your life.” To see him grow as a person, it opened me. My approach was the prison approach, but to see that he hadn’t conformed, that gave me something I needed. We spoke about life, about the crime, about both of our errors. It was a milestone I appreciate forever. My actions affected a lot of people—the man who died, his family, my family, his kids’ kids—now they have someone in their family who was killed...it goes beyond what I can think. There is a lifetime effect. I have an understanding and it was my co-defendant’s genuine apology that changed me. And I realized, he didn’t ruin my life, I did. That was something we both needed.<sup>1000</sup>

When Mr. Campbell first came up for parole in 2001, he says, he already had every certificate he could get in the facility. The hearing was stressful, he says—“I compare it to psychological warfare”—but he thought he was going to be released; when he got the denial, based on the seriousness of the offense, he said, “It felt like I was being sentenced again. I cried for two days. I was planning to go home, picking out clothes.”<sup>1001</sup>

Mr. Campbell’s second hearing was two years later via videoconference. He recalls, “They would ask me a question and the delay was so bad we couldn’t hear anything. It would just cut out. Finally they just said, ‘We will send the response in the mail.’ It was short, only a four-minute hearing.”<sup>1002</sup> Mr. Campbell was again denied based on the seriousness of the offense. At that point, he says, he decided to get a lawyer: “I started to fear that because I was sentenced to life, they could use that forever. I couldn’t change the events. So that’s when I decided to appeal.”<sup>1003</sup> Mr. Campbell had already completed every program in prison, he says, so he continued to work and get involved in programs to help other prisoners:

I was facilitating anger management, I had every class, I was an AA counselor even though I had never done drugs. I taught a parenting class

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**“My actions affected a lot of people. . . . There is a lifetime effect.”**

—Eric Campbell



even though I had never had kids. I started designing my own programs. I played music—if I didn't have music, I wouldn't be here.<sup>1004</sup>

Mr. Campbell had a third hearing, was denied again for the seriousness of the offense, and then two years later had a fourth. At that hearing, he said, they finally asked about his college and accomplishments, and two days later, Mr. Campbell learned that he had been granted parole.<sup>1005</sup>

On December 27, 2009, after 13 years in prison, Mr. Campbell was released. His family had moved to Florida while he was incarcerated, and the parole board would not let him join them, so he was paroled to his fourth-grade teacher.<sup>1006</sup> “The hardest transition was people getting used to me—family and the community. I had 20 letters of employment and no one wanted to help. I didn't know what to put on my resume. I had to pay to go to all this programming and I had to be home by 7 p.m. for curfew. When am I supposed to find a job?” he said.<sup>1007</sup>

Despite these difficulties upon his immediate return, Mr. Campbell was able to find jobs to support himself. He now works both in packaging and handling fine art (including for auction houses and galleries) and has returned to his main passion, music. He is working as a music producer and working to find ways to reach out to at-risk young people through music.



**Hector Custodio, now 43, has been incarcerated in Massachusetts for over 21 years.**

**Hector Custodio** is a 43-year-old Latino man serving a life sentence in Massachusetts. As a 21-year-old gang member, Mr. Custodio shot and killed a young man, erroneously believing him to be a member of a rival gang. He has now served over 20 years in prison and been reviewed for (and denied) parole twice.

Mr. Custodio grew up in New York, the only child of a single mother. “It was a bad life. My mom did the best she could, but she died of cancer when I was 11,” recalls Mr. Custodio. “My father was never really around—he was on drugs and alcohol and would come by once in a while.”<sup>1008</sup> After his mother's death, Mr. Custodio moved to Puerto Rico with his grandmother but, he says, was rebellious and didn't want to accept his grandmother's support. Mr. Custodio says he returned to the United States and began working at a McDonald's when he was 16. He then participated in Job Corps and worked in general maintenance, but neither job provided him with much to live on, so he tried, unsuccessfully, to reach out to his father. Mr. Custodio says he was homeless and started to sell drugs, which introduced him to the Latin Kings. “I had been homeless for a while and that's when I joined the gang. It was for acceptance,” says Mr. Custodio. “I needed that, having grown up without a father and now having no one, and at the time I thought I was getting that from them, but getting involved with the gang was the worst mistake of my life.”<sup>1009</sup> In the two years leading up to the offense for which he is now in prison, Mr. Custodio had convictions for larceny, possession of marijuana and

other controlled substances, destruction of property, shoplifting, and possession of ammunition.

On February 27, 1995, Mr. Custodio had requested and received the gang’s authorization to carry out a shooting in revenge for the stabbing of a Latin Kings gang member. Mr. Custodio mistakenly identified a 15-year-old, who was not involved in any gang, as the individual he was seeking and shot him. Mr. Custodio pled guilty to second-degree murder and was sentenced to life in prison, with the possibility of parole after 15 years. Recalls Mr. Custodio, “At first, when I came in, I didn’t care. When I heard 15 to life, I thought, it’s over, I’m never getting out. But others—older prisoners—sat me down and said you [have] to make the best of things here.”<sup>1010</sup> Around 1999, Mr. Custodio says he terminated his relationship with the gang, a process that he says amounted to “being beaten down a lot.” At the Plymouth facility in Massachusetts, Mr. Custodio went through formal disassociation, which was accepted by the Department of Corrections in 2001.<sup>1011</sup> When Mr. Custodio first came up for parole in 2010, he says he didn’t expect to make parole, as he didn’t have a formalized release plan and was still working on his GED. But by 2015, he had completed his GED and other programming. He also had been accepted into the well-regarded Delancey Street Program for reentry and was asking for a graduated release.

Once again, Mr. Custodio was denied parole. His parole decision, while commenting on Mr. Custodio’s positive institutional adjustment and participation in prison programming, focused on his credibility surrounding his explanation of the offense.<sup>1012</sup> In particular, the parole board found Mr. Custodio’s refusal to name the other individual in the car during the shooting and to acknowledge him as a gang member suggested he had not “truly benefited from his extensive rehabilitative programming.”<sup>1013</sup> That the board and also the victim’s family focused so heavily on his failure to identify a separate individual was not something Mr. Custodio was prepared for, he explains:

From day one, I’ve taken responsibility. I didn’t have a co-defendant, but they wanted me to talk about the other guy in the car. I want to talk about my role and my responsibility; I can’t talk about anyone else’s responsibility but my own.<sup>1014</sup>

Mr. Custodio says he wishes the hearing focused more on his conduct while in prison and how he had developed and matured: “They brought up things from over 21 years ago—that I drank and did drugs in the streets. But not in prison. I wish they had seen the change in me and asked me about taking responsibility for my actions. . . . I’m proud of turning my life around.”<sup>1015</sup> The board has scheduled him for another hearing two years later and told him to continue his “positive behavior, and prepare to be more forthright and truthful in addressing his crime.”<sup>1016</sup> Mr. Custodio says he doesn’t know quite how to prepare now after the last experience: “I ask myself now if it’s worth going to the parole board. I’m still trying to put the pieces back together [after that hearing].”<sup>1017</sup>

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**“When I heard 15 to life, I thought, it’s over. But others—older prisoners—sat me down and said you [have] to make the best of things here.”**

—Hector Custodio



**Broderick Davis, 16 at the time of his offense, is serving 35 years for aggravated robbery.**

**Broderick Davis**, a 33-year-old Black man, has been in prison for half his life—since he was 16—for two counts of aggravated robbery. He is not yet eligible for parole, as he must serve 17.5 years of his concurrent 35-year sentences before even being reviewed for parole. Growing up, Mr. Davis says, he experienced significant mental health problems and attempted suicide on multiple occasions:

I had anger problems and I didn't know how to have any relationships. I had tried to commit suicide twice—once after my mom was robbed because I thought it was my fault. My dad was there on and off but when she was hurt, I thought it was my fault. The second time I was in jail and tried to hang myself. I thought I should just remove myself from the situation.<sup>1018</sup>

Mr. Davis says he was treated in an inpatient psychiatric facility in Houston for several months but upon release, struggled to continue with treatment: “I went to counseling once a month, but my parents didn't have a car and so they would have to pay to have me picked up.”<sup>1019</sup>

At the time of the offense, Mr. Davis had recently turned 16 and, he says, was “totally dependent on marijuana. I didn't understand school or get how it would benefit me. I was looking for a way out and someone to help me because I didn't have a male role model. I felt like I just kept making things harder for my family. I never had the structure I needed.”<sup>1020</sup> On September 27, 1999, Mr. Davis says that he and two other young teenagers broke into a home, tied the couple and their young child up, and burgled the home. At the time, Mr. Davis says he was on probation for smoking marijuana but that this was his first experience with prison.<sup>1021</sup> “The police interrogated me for seven hours; they couldn't figure out what happened,” recalled Mr. Davis. “I didn't want to tell the names of the co-defendants because I was afraid of what they might do to my mother. So I just denied everything.”<sup>1022</sup>

Mr. Davis was certified as an adult and pled guilty to two charges of armed robbery, for which he received two concurrent 35-year sentences.<sup>1023</sup> Once certified as an adult and sent to prison, recalls Mr. Davis, he did not seek out mental health assistance because he was afraid of being over-medicated and made even more vulnerable in prison.<sup>1024</sup> While incarcerated, he has had some serious disciplinary infractions, including one fight, one assault on an officer (kicking with no injury), and one for starting a fire (none of which occurred within the last five years).<sup>1025</sup> However, he says he has also been able to attend school and even college. Having grown up in prison, Mr. Davis says he is eager to finally start his life as an adult:

I was a child when I made this bad choice to be with my co-defendants. I'm not that child anymore. I'm a man who will continue to grow. There is nothing I can do to take back what I did. But I want to contribute to society and to give back. I will value my freedom and I value society's opinion. I want to be a citizen and a person who *was* a felon. I want to be a father and a friend. I want to have kids and teach them the value of

doing things the right way. I have learned from my mistakes and my bad choices. I just want one chance to work and be an adult in society.<sup>1026</sup>

**Kevin Davis** is a 47-year-old Black man serving a life sentence in Michigan for second-degree murder. He has been in prison since he was 19 years old; he was not the triggerman in his case but says he accepts his punishment: “I understand that driving him there and back, I had a role and I have to accept responsibility for what I’ve done.”<sup>1027</sup> At the time of the offense, Mr. Davis says he had just lost his job at a supermarket and, with a child on the way, he started selling cocaine in Grand Rapids, Michigan, to make money.<sup>1028</sup> On December 8, 1988, Mr. Davis’ drug boss, a 40-year-old man, ordered him to drive him to a house to confront two men who had stolen drugs. Mr. Davis, who was 19, recalls that he was terrified of his drug boss and stayed outside while the older man entered the apartment and shot two people.<sup>1029</sup> Mr. Davis had one prior conviction for theft of Kool-Aid from Walmart when he was 14, for which he received probation.<sup>1030</sup> Prior to this offense, he had never been in serious trouble or involved in violent activity, he says.<sup>1031</sup> His friends suggested he leave town after the murders, but he did not. Recalls Mr. Davis, “One of the victims was my friend. He was only 17. All I could think about is that, if that was me, I would want someone to tell my mother what happened to me.”<sup>1032</sup>

On August 28, 1989, Mr. Davis was sentenced to life in prison with an additional two years for the related felony firearms offense; his co-defendant received life without parole. He describes himself upon entering prison as extremely depressed: “I felt I had let down my family. I recently had a public hearing and the psychological report said at the time of my arrest I was hysterical. I was depressed and had to take anti-depressants.”<sup>1033</sup> Mr. Davis came to prison with a ninth-grade education, but in prison he earned his GED and an associate degree, and he was working on a bachelor’s degree before the Pell grants were removed. He has also participated in group counseling and substance abuse treatment.<sup>1034</sup> His facility reports demonstrate that he has numerous above-average work assessments in food service, as a wheelchair attendant, as a janitor, and as a housing porter, and that he has been commended for his good work.<sup>1035</sup>

In his 27 years in prison, Mr. Davis has received several disciplinary tickets for sexual misconduct in the 1990s and one fighting ticket from 1990 for hitting another prisoner in a fight. He has had no other fighting or violence-related disciplinary tickets while in prison for the past 17 years.<sup>1036</sup>

Mr. Davis first became eligible for parole in December 2000 and received “no interest” notifications from the board in 2000, 2005, and 2015. In 2012, Mr. Davis was denied parole after a hearing. The reasons provided by the parole board were Mr. Davis’ insufficient remorse and failure to take full responsibility for the crime, as demonstrated by his refusal to admit that he knew his drug boss would kill the two men.<sup>1037</sup> Mr. Davis maintains that, upon instruction from the police, he previously admitted to having advance knowledge of the planned murders in his



Kevin Davis has been serving a life sentence in Michigan for over 30 years.

“I owe it to the victims to stay out of crime if given a second chance.”

—Kevin Davis

testimony against his drug boss because Mr. Davis did not actually witness the murders.<sup>1038</sup> The parole board found this version of events illustrated that “he does not accept responsibility for the murders, has no remorse for his contributions to this crime, or empathy for damage caused to the [victims’] families.”<sup>1039</sup> To Mr. Davis, one of the most unfair aspects of the hearing was that the state is represented by an attorney to oppose his release, but he is not provided with an attorney to present and support his claims.<sup>1040</sup>

Mr. Davis’ family (his parents until their death, and now his sister) continues to be supportive and involved in his life, and he hopes to one day be released and work in health care: “I want to be a nurse and care for people,” says Mr. Davis. “Whatever I’ve done, I owe it to the victims to stay out of crime if given a second chance.”<sup>1041</sup>



**Michael Jackson, pictured with his mother, has been in prison in Michigan since he was 17.**

**Michael Jackson** is a 43-year-old Black man who has been in prison in Michigan since he was 17 years old. In 1990, he pled guilty to murder in the second degree and received a sentence of life in prison with the possibility of parole.

Leading up to his offense, Mr. Jackson was going through a tumultuous several years; he had dropped out of school in seventh grade and, at the age of 15, had some juvenile convictions (for assault, receipt of stolen property, destruction of property, and driving unlawfully).<sup>1042</sup> He was on probation and had been sent to community mental health treatment for several months; by then, Mr. Jackson says, he felt that he was getting back on track: “I had already pulled away from the streets and was going to school [Project Restore for his GED]. But I still had one foot in that life because I was intermingling with people from that world. It was rough in Detroit and I was looking up to those guys.”<sup>1043</sup> Mr. Jackson was working as a busboy and living with his grandmother at the time; his father had long relocated to Missouri and his mother was in a treatment center addressing her substance abuse issues.<sup>1044</sup>

According to Mr. Jackson, on February 3, 1990, he approached another teenager to confront him about harassing his friend Eddie and Eddie’s mother.<sup>1045</sup> Mr. Jackson says he believed he heard the other youth say he was going to shoot him; Mr. Jackson pulled out a gun and shot him.<sup>1046</sup> This offense was his first contact with the adult criminal justice system and came as an enormous shock for Mr. Jackson and his family.<sup>1047</sup> Once in prison, Mr. Jackson said, he was soon ready to seek out programming and quickly got his GED, enrolled in vocational and group counseling activities, and completed substance abuse treatment.<sup>1048</sup> He has no disciplinary reports for fighting, violence, or dangerous contraband in his 26 years in prison; his last misconduct report (in 2010) was for insolence.<sup>1049</sup> Mr. Jackson has successfully completed numerous programs and had several work positions, including for Michigan State Industries as the lead in the upholstery department;




in the kitchen as lead baker; as a unit porter; and as a shift assistant for prisoners with disabilities.<sup>1050</sup> His job reports over the past two decades give increasingly strong ratings to his commitment and attitude, as do his reports from the housing units, which have described him as a “role model for other prisoners.”<sup>1051</sup>

Mr. Jackson’s family has also been a critical source of support. After the death of his grandmother, who had custody of him before his arrest and had remained in close contact throughout his incarceration, his mother and brother reemerged in his life.<sup>1052</sup> He hopes to join them if and when released, although most of his immediate family is no longer in Michigan.<sup>1053</sup> His mother says that wherever he is, she will come and support him. “He’s changed and matured,” says Mrs. Ruby Jackson. “You can’t change the past but you can move forward. He got life *with* parole but the system isn’t letting him go.”<sup>1054</sup>

Writes Mr. Jackson of his crime and its harm, “[T]here was and is absolutely no justification for taking someone’s life, then or ever. I have spent many years agonizing over the pain and suffering my actions caused not only to the victim’s family but mine as well.”<sup>1055</sup> Programs and his own work on himself in prison, he says, have helped him to understand “how selfishness, insecurity, lack of empathy and my irrational thinking played a major role in my criminal behavior and I can also explain the changes that I made to address those issues.”<sup>1056</sup>

To date, Mr. Jackson has been reviewed by the parole board on four occasions but interviewed only once, 16 years ago; in other reviews, the board has given him a notice of “no interest.”<sup>1057</sup> To Mr. Jackson, this is the most frustrating element of the process: “I think the board needs to speak to people and find out who they are today to give an explanation for why they aren’t interested and to give direction for what a person should work on.”<sup>1058</sup> That he has gone 16 years without being interviewed by a parole board member, Mr. Jackson notes, limits their ability to appreciate how he has matured: “People do change. There are a lot of people who have changed their way of thinking and have maintained a model lifestyle in here. And it’s because they’ve maintained a sense of hope. There are a lot of people here who, if you let them out, you wouldn’t see them back in prison ever again.”<sup>1059</sup>

Mr. Jackson says he has had assistance and guidance from older prisoners in every facility he has been housed in, and he hopes to be a youth counselor and help others when he is released. One thing he looks forward to when released, he says, is just living a normal life with normal responsibilities: “I’ve been in here since I was a teen and I haven’t really had the chance to function as an adult.”<sup>1060</sup>

 **Anthony Johnson**, a Black man incarcerated in Michigan, is serving a life sentence for second-degree murder committed when he was 19 years old. He is now 63. Despite having served four decades in prison, his exemplary disciplinary record, and his numerous and consistent letters of praise from correctional staff, Mr. Johnson has been unable to get release on parole. While his prison record

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**“I have spent many years agonizing over the pain and suffering my actions caused not only to the victim’s family but mine as well.”**

—Michael Jackson



**Anthony Johnson, now 63, is serving a life sentence in Michigan for a murder he committed at age 19.**

demonstrates that he has been living a safe, healthy, and productive life almost since his arrival in prison, his early life was chaotic. “My whole life I had been in trouble,” recalls Mr. Johnson. “My biggest problem was that I listened to the wrong people and I made bad decisions.”<sup>1061</sup> According to his pre-sentence investigation report, he was in and out of court from the age of 11.<sup>1062</sup> At the time of his offense, he was married with one child and another on the way. On the night of April 23, 1973, Mr. Johnson, his brother, and his cousin were experimenting with heroin and driving around Benton Harbor, Michigan, when, according to Mr. Johnson, they ran out of money and decided to pawn a shotgun.<sup>1063</sup> They went to a store owned by a 55-year-old man Mr. Johnson says he knew and liked and who had previously pawned other items for them. According to Mr. Johnson, the gun discharged by accident while the owner was inspecting it: “We panicked—we ran and we sped off, but we never called for an ambulance or the police. We never did anything but hide our guilt. For that I am so sorry,” Mr. Johnson said.<sup>1064</sup> His pre-sentence investigation report indicates that there was no robbery involved and identifies no other motive.<sup>1065</sup> The charges against Mr. Johnson and his co-defendants were initially dismissed for lack of evidence, but they were rearrested and convicted four years later. While Mr. Johnson maintains that he did not deliberately kill the victim, he states that at the time of his conviction, he was not a man in search of rehabilitation:

When I first came to prison, I was an ugly person. I did drugs and was involved in gangs. I met a prisoner one day, Mr. Kelly, who told me if I ever planned on getting out, I needed a skill and a job. He was a kid when he got to prison and was 70 when I came in. . . . He told me that without a skill, I would be back in prison. And I knew I needed to make a change in my life. I knew I lost a woman I loved dearly. I lost kids I loved dearly. I took those words from Mr. Kelly about getting a profession and I followed them.<sup>1066</sup>

Mr. Johnson’s institutional record indicates that he did take that lesson to heart, and his conduct, educational achievements, and work progress while incarcerated have been recognized and applauded by facility staff over the past several decades. In 1988, he received a commendation for his educational achievements in the area of nutrition and diabetics from a professor who worked with him in his years at Marquette Branch Prison: “I was stunned by his perseverance in pursuing that goal. But what impressed me even more, however, was his personal growth. He developed patience and endurance in the face of the institutional obstacles he faced. In fact, I have seen few people handle frustration and adversity as maturely.”<sup>1067</sup> That same year, his unit officer wrote of his excellent work ethic and conduct, “I personally feel that keeping anyone such as Mr. Johnson in prison serves no purpose at all and that he is taking up space for someone that really needs to be housed in a correctional facility.”<sup>1068</sup>

Since 1980, Mr. Johnson has been employed in dietary services in the correctional facility. His file is filled with letters of commendation from wardens and other prison

staff for his work in the food industry. His food service supervisor in 1988 wrote of Mr. Johnson's accomplishments, "If rehabilitation is suppose [sic] to be such an integral part of incarceration, I think it only fair to say that Mr. Johnson certainly has experienced it."<sup>1069</sup> A 1991 letter from a food technology instructor praised his work in developing a nutrition curriculum at the Michigan Dunes Correctional Facility; the instructor said that after 13 years working in prison, "I have not until now met a prisoner with so much honesty and regret. This man has worked very hard to prove to himself and to the world that he is ready to face society."<sup>1070</sup> In 2004, a staff member of the Correctional Facilities Administration who had known Mr. Johnson since the 1980s wrote to commend him on his continued skill in the culinary arts: "I believed then as I believe now that you are a person with great talent, and that it is a terrible waste for such a talent to be locked in prison."<sup>1071</sup>

The 2003 institutional review conducted every five years for lifers before their parole review notes that Mr. Johnson causes no problems in the unit and that his performance as a diet clerk was "exceptional."<sup>1072</sup> The 2008 file review refers to Mr. Johnson as a "model inmate,"<sup>1073</sup> and his 2012 lifer review, listing his additional accomplishments since his last review, notes that he has a very good prison record, is "respectful" and has a "positive attitude," and has "excellent scores and comments" from his work and educational programming.<sup>1074</sup> Mr. Johnson has maintained "above average" performance scores and the lowest security classification status afforded a lifer since the 1980s (the last time he was evaluated at a higher security level—1983—was due not to his conduct but the number of years he had then spent in prison).<sup>1075</sup>

Despite his exceptional record, Mr. Johnson, incarcerated in Michigan where lifers can receive a "no interest" notice (whereby the parole board does not even need to conduct a review of the individual's case and evaluate it for parole) and no interview, has been interviewed by the parole board six times and referred for a public hearing on two occasions (2007 and 2013; in 2007, he was also given a public hearing for a commutation). He has been in prison for 40 years and eligible for parole for 30. His institutional grid (projecting the number of years he would spend in prison as a lifer) estimated 22 years in prison—although in 1986 the legislative corrections ombudsman suggested that even that may be excessive in his case, given Mr. Johnson's well-documented record of exemplary behavior.<sup>1076</sup>

In each of his interviews with the parole board, he says, they have asked him about the robbery even though the Pre-Sentence Investigation Report (PSI) (created for the court outlining the facts of the case for purposes of sentencing) states there was no robbery. Mr. Johnson believes that his failure to "admit" to the robbery is one reason he has been in prison for so long.

In 2007, the parole board did recommend Mr. Johnson for a public hearing before the parole board. However, the successor judge (appointed to have veto power if the original judge is no longer on the bench) exercised his veto power to prevent the hearing, thus canceling the hearing.<sup>1077</sup> "I have a 1992 letter from the

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**“I hear people all the time say, ‘Don’t give up.’ But what can I do? I’m prepared to die here.”**


—Anthony Johnson

first successor judge in support, but the subsequent successor judge talked to the victim's family and the prosecutor, although he never spoke to me or my family or requested my prison files before he decided to veto me," said Mr. Johnson. "I was ready to give up but the warden talked to me and said, 'Don't give up,'" recalls Mr. Johnson. "I filed for commutation [in 2009], but the judge vetoed me again. That doesn't have an effect like in the parole process, so we went ahead with the commutation, but the governor rejected it."<sup>1078</sup>

At Mr. Johnson's 2013 hearing, the parole board once again recommended that he move forward with a public hearing, but, once again, the successor judge objected. Mr. Johnson attempted to challenge the denial of a fair proceeding in court, but the state appellate court declined to hear his claims. Dissenting from this decision, Judge Douglas B. Shapiro wrote:

Thirty-seven years ago, defendant was acquitted of first-degree murder but found guilty of second-degree murder. He was sentenced to life in prison with the possibility of parole. The record before us suggests that defendant has been a model prisoner. The sentencing judge has retired. His successor judge has objected to parole, thereby denying the prisoner consideration by the parole board. The basis for the judge's objection, as stated in his opinion, is his policy view that no one convicted of second-degree murder should be granted parole. While a sentencing or successor judge is empowered to object to the granting of parole, such a determination must be made on an individualized basis and not a particular judge's policy view concerning the general availability of parole. Indeed, failing to consider the individual circumstances of the prisoner is inconsistent with two policy determinations made by the Legislature. First, that a life sentence for second-degree murder is subject to parole consideration. Second, that, in addition to the offense, the following factors are relevant to a parole determination: the prisoner's institutional program performance; the prisoner's institutional conduct; the prisoner's prior criminal record; the prisoner's statistical risk screening; and the prisoner's age. [internal citations omitted.]<sup>1079</sup>

"I hear people all the time say, 'Don't give up.' But what can I do?" asks Mr. Johnson. "This judge has vowed never to change. How do I prepare for another review? I don't. I'm prepared to die here. I don't know what else to say."<sup>1080</sup>

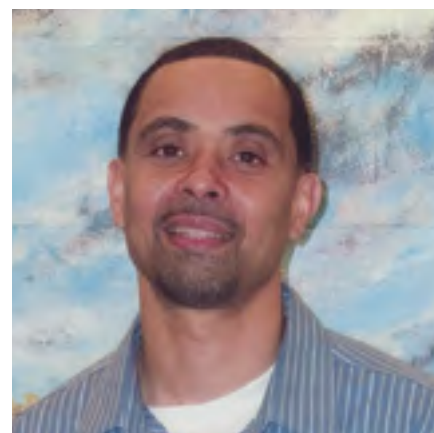
 **Aron Knall** is a 44-year-old Black man who has been incarcerated in Michigan for almost 30 years. Sentenced to a 40- to 60-year sentence for second-degree murder, Mr. Knall is not eligible for parole until 2022. At 15, Mr. Knall was arrested for a murder, which he describes as a shootout between himself and the victim, another young man, stemming from a botched robbery.<sup>1081</sup> When Mr. Knall, who had run away from home and been shot on the streets but never

arrested prior to this offense,<sup>1082</sup> first came to prison, he says it took him years to adjust to the violent prison environment, where older prisoners preyed on him.<sup>1083</sup> Recalls Mr. Knall, “The first time I got stabbed was in my arm. I couldn’t report any of this to any of the officers because the snitch was the worst thing you could be in prison. I went through a process of having to prove myself.”<sup>1084</sup> After several years of disciplinary problems while incarcerated, Mr. Knall says he realized he needed to move on and start preparing himself for a life beyond prison: “I was thinking, ‘Wow, I’m doing the same things that got me in trouble in the first place. I need to change for myself and if not for me then for the victim.’ I started going back to some of the values and rules that my family had placed in me.”<sup>1085</sup> His last major fight and infraction while in prison was in 1992, over 20 years ago.<sup>1086</sup> Since then, he has had several jobs with excellent recommendations from his supervisors commenting on his good relationships with staff and other prisoners, his professionalism, his positive attitude. He says the two activities he has enjoyed the most are counseling youth and working as a barber. Says Mr. Knall, “When I started to cut hair, I found I liked it because it made people feel good about themselves. Prison is a hateful place, but when you can do something for another and see their attitude change, it makes me feel a lot better about myself.”<sup>1087</sup> While working with at-risk youth in the community as well as incarcerated youth, facility staff say, Mr. Knall has expressed his “remorse, regret, hurt and agony his poor decisions caused his victim and victim’s family”<sup>1088</sup> and has provided guidance and support to young prisoners adjusting to their new environment.<sup>1089</sup>

In 2010 and 2014, Mr. Knall applied for a commutation through the parole board but was denied both times with a “no interest” finding from the board. For both commutations, Mr. Knall had numerous letters of support not only from his family, who have continued to be supportive throughout his decades of incarceration, but from prison staff who have supervised and known him over the years. As one staff member wrote of Mr. Knall:

His life changed for the better and it shows when he mentors the youth population here. . . He committed his crime when he was younger than the youth he is currently mentoring and has a positive influence on their lives here. He truly makes a difference and we thank him.<sup>1090</sup>

The Michigan risk assessment tool, COMPAS, evaluated Mr. Knall as having a low risk of recidivism or violence and noted he had a trade, family support, education, and housing to help him adjust to the community.<sup>1091</sup> His parole guidelines scoresheet rated him as a high probability of parole.<sup>1092</sup> His commutation package also contained a letter of support from a retired sheriff’s deputy, letters from his extended family, and a positive mental health evaluation, and it listed his numerous completed programs.<sup>1093</sup> Nevertheless, the parole board denied his commutation application without providing an explanation. Waiting for 2022 to have the chance at release, says Mr. Knall, is disheartening given the number of years he has already spent in prison: “I’m just trying to be the best man that I can be,” he says. However, he notes,



Aron Knall is serving a 40- to 60-year sentence in Michigan. He will not be eligible for parole for another six years.

“At the age I’m scheduled to get out of prison, most people would be retiring. I’m looking to just start life.”

—Aron Knall



At the age I'm scheduled to get out of prison, most people would be retiring. I'm looking to just start life. . . . I'll be 45 this year. I want to live a normal, simple life and go to work and open the fridge and sit on a porch. These small things that many people take for granted would just make my day. One of the things that I want to do more than anything is to have a driver's license. I want to cash a check. These are things I've never done in my life.<sup>1094</sup>

Mr. Knall hopes his next commutation application will be successful and provide him with the chance to work and spend time with his family soon, rather than waiting for a first parole review in six years' time. Despite the significant support he has from facility staff, who have seen him mature and grow from a child looking for acceptance into an adult providing guidance to incarcerated youth, Mr. Knall says he worries that his crime, committed when he was 15, will continue to determine his fate: "I don't even know the person who committed this crime. He has long been gone. I wish people could see me today and not just the person who committed this crime."<sup>1095</sup>



**Christine Lockheart, 49, has been serving a life sentence in Iowa since she was 17.**

**Christine Lockheart** is a 49-year-old white woman who has been incarcerated in Iowa since 1985. At 17, she was convicted of felony murder and sentenced to life without parole for her participation in the robbery and murder of a family friend. Ms. Lockheart's then-boyfriend, who was 25 years old at the time, stabbed and killed the victim while Ms. Lockheart was outside the house.<sup>1096</sup> Ms. Lockheart's co-defendant died of stomach cancer while incarcerated in 2012.<sup>1097</sup>

Growing up, Ms. Lockheart says, her family moved frequently and she had a contentious relationship with her mother. Ms. Lockheart's parents divorced before she was born; her father moved to Florida when she was 13 years old. At 12, Ms. Lockheart was first treated for mental health difficulties (she was subsequently treated at inpatient facilities on multiple occasions and diagnosed as manic depressive<sup>1098</sup>) and, at that time, Ms. Lockheart says, she started to get in trouble. "My mother was never there; she worked two jobs and she was depressed all the time," says Ms. Lockheart. "The house was out of control."<sup>1099</sup> Ms. Lockheart says she ran away from home multiple times and accrued charges for joy riding in a stolen car and theft. When she was 17, she had a seven-month-old baby boy but was still being sent to juvenile facilities for running away from her mother. When she was released, she went straight to the home of her boyfriend.

Early in the morning of February 17, 1985, Ms. Lockheart and her boyfriend went to the victim's house, which Ms. Lockheart occasionally cleaned, to ask for money so they could leave town. Ms. Lockheart says that her boyfriend, who was apparently wanted by the police, had decided they needed to leave town and needed money. When the victim, a family friend, refused, Ms. Lockheart says she went out

to the car and waited for her boyfriend, who, Ms. Lockheart recalls, subsequently came out screaming, “I killed him, I killed him.”<sup>1100</sup> Although she did not personally kill the victim, Ms. Lockheart says she feels her responsibility and continues to feel deep sadness for the murder of a person who had helped and supported her. “That family was like my family; they took me in,” says Ms. Lockheart, “I understand as much as I can and I do feel for the victims.”<sup>1101</sup>

Ms. Lockheart and her boyfriend were both tried (separately) and convicted of felony murder. “Everything I ever knew in my life was gone,” says Ms. Lockheart. And the facility, she says, was not designed for a woman with a serious and long-term sentence:

I was the first female juvenile to get life in Iowa, so I was in a secure unit with dysfunctional adults—people who couldn’t get along in general population. We had exercise three times a week and I worked in the kitchen. I already had my GED, so there wasn’t anything for me to do. I don’t think the facility was prepared for me. There was no visiting room for me. To go to the law library, I had to wear shackles and they had to close the whole place down.<sup>1102</sup>

Ms. Lockheart served 28 years in prison before she was resentenced in 2014, following Iowa’s post-*Miller* reforms. After a hearing, Ms. Lockheart was resentenced to life with the possibility of parole and had her first review by the parole board in April 2014. At the time of her first parole review (a file review in which she did not meet with the parole board members), Ms. Lockheart was working on her college degree, was working full time in the facility as a clerk, and had had numerous work assignments throughout her incarceration.<sup>1103</sup> According to the Board of Parole’s own risk assessment, she scored low/moderate for risk of violence and victimization with the only risk factor checked being the nature of the crime for which she is incarcerated.<sup>1104</sup>

Ms. Lockheart was nevertheless denied parole based on the seriousness of the offense.<sup>1105</sup> She has now had five paper reviews by the parole board and been denied every time. Initially, she says, she was denied because of the seriousness of the offense; now the board is pointing to “generic notes,” staff notes in her file for conduct not serious enough for a disciplinary report, to deny her release. In particular, the board has cited her inability to get along with her roommates as part of its justification for denying her release.<sup>1106</sup> Says Ms. Lockheart, “I have a generic note for some ‘interpersonal’ relations with my roommate—but not because of fights or swearing. My last roommate decided I wouldn’t put things where she wanted to.”<sup>1107</sup>

At one of her most recent reviews in early 2015, Ms. Lockheart was denied release again and informed in the parole decision that this denial was based on her “need to complete recommended interventions” not listed in the decision; her “general attitude and behavior while incarcerated”; because release at this time “would not

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**“The older we get, our ability to build a life for ourselves, have a career, have support, goes away.”**

—Christine Lockheart

be in the best interest of society”; and because the board wanted her to “continue to progress and/or maintain lower levels of security and higher levels of privilege.”<sup>1108</sup> Ms. Lockheart is in the lowest security level available to her in light of her crime and has applied for (and been denied) work release. The fact that she was a juvenile is noted in the decision but with no further discussion as to how her youth at the time of the offense relates to her relative rehabilitation now or culpability then. When Ms. Lockheart subsequently challenged her parole denial in court, the parole board responded that the *Miller* mitigation factors “are not necessarily relevant in the same way during a parole release review” and while they “may diminish a juvenile’s culpability,” they may also “raise legitimate public safety concerns should they remain unremedied at the time of release.”<sup>1109</sup> Ms. Lockheart’s subsequent parole review and denial, six months later, restated the same reasons for denying her parole with the exception of the need for her to complete interventions.<sup>1110</sup>

For Ms. Lockheart, one of the most frustrating aspects of the process is the lack of transparency:

I don’t know what the parole board criteria is; or maybe they just think we are so derelict, like we are aliens and we just can’t come back to the community. But if you have lived healthy here, and I’m sure there is an adjustment, but we should be okay when we get out.<sup>1111</sup>

Ms. Lockheart’s father and sister have been supportive throughout her incarceration, although none of her immediate family is in Iowa anymore, and she hopes she will be released soon to work release and then back to the community. But the longer it takes, Ms. Lockheart worries, the harder it will be when she is released. “I think they are looking for any opportunity to prolong our release,” says Ms. Lockheart. “I don’t understand it. The longer we are here, the older we get, and our ability to build a life for ourselves, have a career, have support, goes away. What are they waiting for?”<sup>1112</sup>



**Earl McBride has been in prison in Texas for over 35 years.**

**Earl McBride**, a 59-year-old Black man, has been in prison in Texas for over 35 years. In 1980, at the age of 21, Mr. McBride was arrested and later convicted of capital murder for participation in the murder and robbery of a man in Houston. Mr. McBride maintains his innocence in the crime. After trial, Mr. McBride received a sentence of life imprisonment; it was his first experience with prison, and at the time, his wife was eight months pregnant with their fifth child.<sup>1113</sup> He is now a grandfather.

By the time Mr. McBride first came up for parole in 2000, after serving 20 years in prison, he had already received his GED and junior college degrees.<sup>1114</sup> “When I first came into prison,” recalls Mr. McBride, “I was looking for anything that I thought would benefit me and help me to grow and change.” His record as of May

2015 indicates that he has had only six disciplinary reports or tickets in prison, the last in 2000 (and only one for fighting, in 1985, without the use of a weapon and resulting in no or only minor injuries.)<sup>1115</sup> Nonetheless, in four parole reviews over the span of 14 years, Mr. McBride has been repeatedly denied parole based on the seriousness of the offense for which he was convicted.<sup>1116</sup> He has submitted letters of support from former wardens and other prison staff as well as letters offering employment upon release.<sup>1117</sup> While in prison, he has worked as a peer educator for other prisoners and says he also works to educate prisoners about the parole process: “When you come into a situation like this, I’ve just tried to help other people. I feel like a gatekeeper because [of] so many people here who have no information about the system. . . . I am just trying to keep myself morally grounded. They already took my life.”<sup>1118</sup>

In May 2014, Mr. McBride was notified that the Texas Board of Pardons and Paroles had voted to grant him parole.<sup>1119</sup> The board contacted Mr. McBride’s wife to inform her that he would be home soon and invited her to participate in an orientation program for individuals sponsoring parolees.<sup>1120</sup> Two months later, however, the decision to grant parole was revoked. This time, the board informed Mr. McBride that he was denied parole based both on the seriousness of the offense and also because of “new information.” However, the contents of the new information, and its source, are considered “confidential” records and cannot be disclosed to either Mr. McBride or his attorney.<sup>1121</sup>

Without knowing what the new information consists of, says Mr. McBride, it is impossible to prepare a response or even assess its veracity; he fears he may be denied parole at his next hearing in 2017 and for the rest of his life based on this information and without a chance to address it. “You’re fighting a ghost,” says Mr. McBride.<sup>1122</sup> Looking ahead to his next parole hearing in 2017, without knowing what more he can do in prison or what information is being held against him, he says he can only continue his work and maintain hope: “You go to the bottom of the barrel and you lose everything and you never know when you are coming back up.”<sup>1123</sup>

**David McCallum** is a 47-year-old Black man. When he was 16, he was wrongfully arrested and convicted of murder in the second degree. At the time, he was living with his parents, two sisters, and two brothers in New York. On the evening of October 28, 1985, Mr. McCallum recalls, a police car pulled up at his house with his photo, and he was asked to come in for questioning; he was handcuffed and taken to the precinct:

They asked if I knew anything about someone being murdered the week before. I said no and the officer slapped me. My lip was bleeding. He picked up a chair and said, “If you don’t tell me what I want to know, I’m going to hit you with this chair.” I was 16; I was scared. So I falsely confessed. . . . Most people think you are detained for a really long



**David McCallum, arrested at 16, spent 30 years in prison for a murder he did not commit.**

REUTERS/Brendan McDermid

time before you confess. But false confessions can happen within 5-10 minutes. It was relatively quick for me because I was really scared. The arresting officer said, “If you tell us what we need to hear, we are going to let you go home.” I was naïve. As a 16-year-old kid, believing what this officer said, I really thought I was going to go home.<sup>1124</sup>

His mother was called at 1 a.m., says Mr. McCallum; when she finally saw him, she asked if he had committed the murder. “I said no. She never asked me again. I’ll never forget the fact that she believed in me,” says Mr. McCallum.<sup>1125</sup> The police version of events was that Mr. McCallum picked up the victim and drove him to Brooklyn, where he killed him; Mr. McCallum says he didn’t even know how to drive.<sup>1126</sup>

Mr. McCallum spent a year at Rikers Island, New York, awaiting trial. The trial, Mr. McCallum says, was confusing. “I was lost, I had no idea what they were talking about, I didn’t understand what they were saying,” says Mr. McCallum.<sup>1127</sup> He was convicted and sentenced to serve 25 years to life in prison. Mr. McCallum’s co-defendant, who first gave Mr. McCallum’s name to the police, was also prosecuted and given a 25-to-life sentence. By 1993, all of Mr. McCallum’s appeals had been exhausted, and he began to write to advocates for assistance in proving his innocence.

Meanwhile, in prison, Mr. McCallum earned his GED and started taking pre-college courses until the Pell grants were removed, he says.<sup>1128</sup> He used his experiences to become a course facilitator and peer educator for other prisoners. “I came to prison at a young age and grew up in a very violent neighborhood, so I could share my story with younger kids coming into prison,” said Mr. McCallum. “I think I was able to help them—talking to these young men, I told them that the sooner you start talking to people about what you’re going through, the better.”<sup>1129</sup>

In 2010, Mr. McCallum had his first parole hearing; he had four hearings and was denied each time based on the seriousness of the offense and his refusal to accept responsibility for the underlying crime.<sup>1130</sup> Before his first hearing, Mr. McCallum was already being represented by Laura Cohen, an attorney and clinical professor of law at Rutgers University. She and her students helped Mr. McCallum prepare for the hearings. Recalls Mr. McCallum, “Some of these hearings last minutes or seconds, and at the end you are allowed to give a presentation. I told them what I was doing in prison, but you have to reiterate that and what I would do when I was released. You lay out all these things and hope they listen.”<sup>1131</sup> The one thing that Mr. McCallum was not willing to do, he says, was to say he was responsible for the crime in order to get release:

I told Laura I can’t do that [claim guilt]. I will definitely show compassion, but I was not going to say I committed the crime and she respected that. At one time, they said you need to think about this; if you don’t

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**“They said, if you don’t admit guilt, you aren’t going to get out. I said I was willing to die in prison for that right.”**

—David McCallum



admit guilt you aren't going to get out. I said I was willing to die in prison for that right.<sup>1132</sup>

Still, the issue of his guilt or innocence continued to haunt his review. Recalls Mr. McCallum,

One particular commissioner wanted me to take responsibility and admit guilt. I'm a human being first, so I can imagine what it must feel like to lose a family member. If something like that happened to my mom, I know how I would feel. This commissioner just wanted to retry the case. Rather than talk about what happened in prison that would make me a candidate for parole, we talked about my confession.<sup>1133</sup>

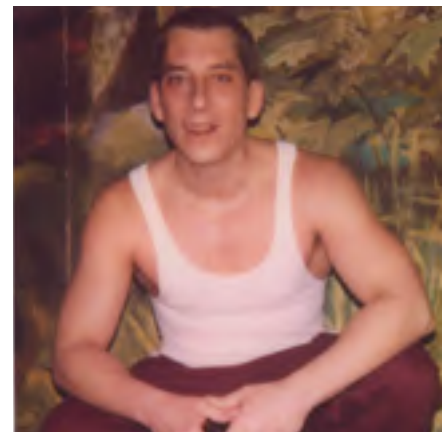
The denials hurt, says Mr. McCallum, and they especially affected his family. Moreover, he appealed every denial but was never granted parole:

I got tired of going through that—I had to brace myself before I called my mom to assure her that I was okay [when I got denied]. My only concern was for my family. I thought about not going to the hearings, but I didn't want to give the system that satisfaction.<sup>1134</sup>

Even as Mr. McCallum was doing well as a prisoner, the parole system never gave him relief. Fortunately, in October 2014, the judicial system did. The Brooklyn District Attorney's Office, in reviewing old cases, investigated Mr. McCallum's confession and found significant inconsistencies; the review also uncovered new witnesses supporting Mr. McCallum's innocence. With support from the DA's office, Mr. McCallum's legal team won his release and Mr. McCallum was freed. "I had a network of people helping me out, so reentry wasn't a real struggle for me. But I have survivor's guilt because my friend and co-accused passed away in prison," says Mr. McCallum.<sup>1135</sup>

**Thomas McRoy**, a 50-year-old white man from New York, has been in prison for 32 years. At 17, Mr. McRoy was arrested and convicted of murder in the second degree and attempted sodomy and sentenced to 25 years to life imprisonment in New York State. Despite his educational achievements and good institutional record as a prisoner, Mr. McRoy has been denied parole five times—four times exclusively based on the facts of his offense. Starting when he was 14 years old, Mr. McRoy says, he began to abuse drugs; in 10th grade, he dropped out of school, became isolated from his peers, and started working at a Burger King but used his earnings to buy more drugs.<sup>1136</sup> At the same time, Mr. McRoy recalls, his relationship with his family—and particularly with his father, who had been physically abusive—disintegrated.

On December 29, 1983, Mr. McRoy killed his teenage friend after an argument. Mr. McRoy says that the two boys were hanging out and began experimenting



**Thomas McRoy, 17 at the time of his offense, is serving a life sentence in New York.**

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**“It feels like parole hearings are another trial.”**

—Thomas McRoy

sexually. When his friend became uncomfortable, the two argued, then fought, and Mr. McRoy killed his friend.<sup>1137</sup> The prosecution maintained that the murder was intentional and requested—and received—the highest sentence for Mr. McRoy.<sup>1138</sup> He was convicted of two counts of intentional and felony murder with an additional five- to 15-year sentence for attempted sodomy (all from the same event).<sup>1139</sup> Mr. McRoy says that he was high during the murder and his arrest and, at the time, his life was a mess. Friends and family note that while Mr. McRoy was a troubled youth, he had no prior violent conduct—and since his imprisonment, with the exception of one fistfight in 1988, Mr. McRoy had not engaged in any other violent conduct.<sup>1140</sup> Although Mr. McRoy still maintains that the victim’s death was not intentional, he says he takes responsibility for his crime and feels deeply remorseful for the consequences of his actions: “I feel tremendous remorse, not only for my friend, whose death I am responsible for, but also for his family, who I put through hell in the process.”<sup>1141</sup>

Although he had prior arrests, including for theft and marijuana possession, this was Mr. McRoy’s first experience with incarceration.<sup>1142</sup> He says that from the time he entered prison, he was eager to participate in educational and other programming; while in prison, he acquired his GED and then a bachelor’s degree, completed several vocational certifications, and participates in the honor dorm.<sup>1143</sup> Although both of Mr. McRoy’s parents died many years ago, he maintains a close relationship with his siblings and has had offers of employment and residence for his release in the past.

As Mr. McRoy’s parole hearing transcripts suggest, most of the concern and focus in his parole review is not on his conduct in prison or his release plans but the crime. Says Mr. McRoy,

It feels like parole hearings are another trial. . . . They just have me talk about the crime over and over and over again. At this point it seems like they ask me these questions to give a reason for them to deny me again based on my crime. You would think they would be focusing on whether you are still a threat, whether you’ve rehabilitated yourself. They ask those questions like they are just checking boxes.<sup>1144</sup>

Mr. McRoy’s risk assessments indicate he has a low risk of reoffending, of violence, and of rearrest, and yet, even after the New York legislative changes requiring parole boards to consider the risk assessment, he continues to be denied release.<sup>1145</sup>

The parole denials cite the nature and facts of Mr. McRoy’s crime and, on two occasions, cite his disciplinary record, which consists of one fistfight in 1988 and seven “major” misconducts for marijuana use; six of those tickets were pre-2000 and one was in 2007.<sup>1146</sup> Mr. McRoy has letters of support and commendation from correctional staff.<sup>1147</sup> Maurice Nadjari, a well-known former prosecutor who acted as Mr. McRoy’s defense attorney, wrote that while he had never written on

behalf of a prisoner for parole before, he was writing on behalf of Mr. McRoy because:

[i]t appears to me that he has risen above the worst of what prison may have to offer. Rather than learning the ways of criminality, he learned about the law and prepared himself for a productive life, should he earn the privilege of parole. . . . Indeed he is an inmate who has matured, accomplished so much, and demonstrated that he is not a violent man.<sup>1148</sup>

In Mr. McRoy's most recent parole review in January 2016, the parole board denied him release and stated, "Despite your achievements throughout this bid, this panel however finds it more compelling the seriousness of your crime."<sup>1149</sup> Although the commissioners did mention his accomplishments in the parole decisions, Mr. McRoy says he is concerned that the commissioners have not had a chance to read through his supporting documents and weigh them appropriately:

When you go into the hearing, the commissioners aren't familiar with each person's file. And for each person who has been in prison for 30 years, that is a lot of material. There are hundreds and hundreds of people who they are reviewing each month and they are completely unprepared to see us. When they get a pile of material and are given five minutes to review, how can they make an informed decision about someone's life?<sup>1150</sup>

A significant problem for prisoners like Mr. McRoy is how to secure work and support for release without a clear release date. Mr. McRoy is aware that he has the further challenge of finding housing given that he must register as a sex offender:

There was a point where I used to plan everything out and it was driving me crazy. I was focused on getting residency and wrote to social services and shelters. But I really couldn't do anything without a release decision. Every two years you had to do it again and it was too much.<sup>1151</sup>

**Steven Parkhurst**, a 41-year-old white man incarcerated in Rhode Island, has been in prison since 1992. He is serving a life sentence for first-degree murder with related 10-year sentences for breaking and entering a dwelling, conspiracy and theft, and carrying a firearm during the commission of a felony (all connected to the same events for which Mr. Parkhurst is currently incarcerated). At the time of the offense, Mr. Parkhurst was 17 years old.

Mr. Parkhurst grew up in Rhode Island, witnessing the extreme abuse his father subjected his mother to. "I grew up in a house with a lot of violence," recalled Mr. Parkhurst. "My father was an alcoholic. Maybe that is why I ended up choosing violence and alcohol. I did a lot of things to fit in. Back then my reputation meant everything to me."<sup>1152</sup> After his parents separated, Mr. Parkhurst initially joined his



**Steven Parkhurst, pictured with a dog he trained through the prison NEADS/Dogs for Deaf and Disabled Americans' Prison Pup program.**

sister and father in California but soon returned to Rhode Island. Mr. Parkhurst describes his life at 17 as reckless; he had already been sent to a training school and, having fallen out with his mother, he was living on the streets but breaking into his mother's home to shower, using alcohol, and felt his life was spiraling out of control. "I thought, 'My life is over,'" said Mr. Parkhurst. "It wasn't going good and I didn't know how to figure things out. Back then it was on me. But what can you figure out at 17."<sup>1153</sup>

On the night of November 27, 1992, Mr. Parkhurst was at the home of a 20-year-old acquaintance, who, over the course of several days, was hosting parties at his parents' home while they were on vacation. After many hours of drinking, Mr. Parkhurst says he and a friend decided to steal one of their host's guns and leave; when the 20-year-old ran after them, Mr. Parkhurst says, he shot him and his co-defendant beat the victim with the butt of the rifle.<sup>1154</sup> The two boys then stole a car and fled Rhode Island, driving for two days and committing two armed robberies before they were apprehended in Indiana and sent back to Rhode Island.<sup>1155</sup>

Mr. Parkhurst was convicted of first-degree murder after trial and given a mandatory sentence of life in prison. At sentencing, Mr. Parkhurst recalls, the judge commented that Mr. Parkhurst had "graduated" to state prison and was beyond rehabilitation; his youth was a cause for concern, not mitigation. "The judge talked about how dangerous I was because look at what I did when I was this young," recalls Mr. Parkhurst.<sup>1156</sup>

Although Mr. Parkhurst came into prison after a chaotic several years and, by his own description, did not immediately understand the gravity of his action, by age 23 or 24, he began to seek out programs, counseling, and any opportunity to rebuild his relationship with his family.<sup>1157</sup> Mr. Parkhurst has now developed a relationship with both his parents, who wrote the parole board in support of his release, and with his sister, who has offered her home to him when he is finally released.<sup>1158</sup> Mr. Parkhurst turned to education, completing his GED, associate degree, and bachelor's degree through Adams State University (he is now working on his master's degree at private expense) as well as additional courses through a Brown University program.<sup>1159</sup> Not only has Mr. Parkhurst pursued education for himself, but his parole packet is filled with letters of support from college and community programs discussing his commitment to supporting other prisoners in achieving education. Mr. Parkhurst's college advisor wrote to the parole board that "When I first began corresponding with Mr. Parkhurst in 2011 I found him one of the most amazingly dedicated and caring people I've ever met . . . but what really struck a chord with me was how he advocated for others around him."<sup>1160</sup> Having visited Mr. Parkhurst in person to give him his degree and meet with other prisoners at the facility, Jim Bullington noted that, in his more than 10 years running prison college courses, "this is the first and only time I have ever had a group of people tell me how amazing another incarcerated individual is. It just doesn't happen."<sup>1161</sup>

Much of Mr. Parkhurst's time in prison has been spent training service dogs for people with disabilities through the facility's dog training program. (One of the dogs he trained, Rescue, was placed with a survivor of the Boston Marathon bombing.<sup>1162</sup>) Mr. Parkhurst is also an avid artist and has developed art and related materials for Rhode Island reentry programs, domestic violence groups, and other trainings and programs for at-risk youth.<sup>1163</sup>

Although there is limited programming for juvenile offenders in prison, Mr. Parkhurst says, he sought out rehabilitation on his own. A clinical psychologist at the facility wrote to the parole board that when Mr. Parkhurst first reached out to her for assistance,

[I]t was apparent that he had long contemplated his violent crimes and decided to work on making significant changes in his life. Steven does understand the contributing factors of his crimes. One of those factors was immaturity. I mention this, not to excuse this violent behavior, but it clearly is a factor in his crimes, in terms of age and development. . . . I have been impressed with his unwavering commitment to personal accountability and personal growth.<sup>1164</sup>

Mr. Parkhurst served 21 years before he first came up for parole in 2014, and at that point, his parole packet was already filled with numerous letters of support from within and beyond the prison walls and an extensive list of programming and accomplishments over the course of his more than 21 years in prison. Nevertheless, the parole board not only denied him parole but also set his next hearing for 2023, a full *nine years* later.

The board commended Mr. Parkhurst on his program participation and did not recommend further programming; instead, he was denied "due to the seriousness of the offense."<sup>1165</sup> Having now spent 23 years in prison and completed all available programming, it is unclear what more Mr. Parkhurst is expected to do to demonstrate his suitability for release in 2023, his next review date. "I have the most support I've ever had," observes Mr. Parkhurst. "The main witnesses in the case have completed victim/offender reconciliation with me. My remorse and regret are genuine; my mind and spirit are still positive and intact. . . . At some point, if not already, prison will do more harm than good for me."<sup>1166</sup>

**Chester Patterson**, a 63-year-old Black man serving a life sentence in Michigan, has been in prison for over 45 years. At 17, in the course of a robbery where he stole \$55.00, Mr. Patterson murdered the shop clerk. Mr. Patterson and his co-defendant were both convicted. Mr. Patterson pled guilty and received a life sentence for the murder and a life sentence for armed robbery. Mr. Patterson was the youngest of four children and his mother visited him regularly until her death in 2006. "My being in here really broke her.... Two mothers lost their sons because of what I did," he said.<sup>1167</sup>




**Chester Patterson, now 63, has been serving a life sentence in Michigan since he was 17.**



As soon as he started serving his sentence, he began working on his education: “I came right in and got my GED and started college in prison. The school principal [at the Michigan Reformatory facility] said he would sign me up for GED before I got lost in the system. Once I started going to college, each time I got a diploma it made me want another one.”<sup>1168</sup> Mr. Patterson says he has not had a major disciplinary ticket (i.e., one pertaining to violence, use of a cell phone, or any other serious prison disciplinary infraction that would result in solitary confinement or another significant punishment) since 1999 and his file contains numerous certificates from programs completed, including his bachelor’s degree (cum laude) from Spring Arbor College, substance abuse treatment, food sanitation, and paralegal studies.<sup>1169</sup> He also works as a library clerk.

Unlike many other lifers in Michigan, Mr. Patterson has always been reviewed in person by the parole board and has had two public hearings in 2010 and 2013; nevertheless, he continues to be denied parole. A psychological evaluation of Mr. Patterson, performed at the parole board’s request in preparation for his public hearing in 2013, noted that he has had only a handful of disciplinary tickets during his over 40 years in prison; was evaluated as having a low risk of violence and recidivism; and displayed “genuine regret” and “genuine empathy” for the victim.<sup>1170</sup> While Mr. Patterson hopes, after so many years in prison, that he can finally be released, he says he understands the objections from the victim’s family, to whom he apologized during his 2013 public hearing: “I ask myself what if someone killed my brother. I can’t keep that bitterness in me for the rest of my life. . . . If the victim’s family objects, it is still up to the parole board. They have to expect that there are going to be objections.”<sup>1171</sup>

According to Mr. Patterson, the board believes he still has not demonstrated remorse for his crime, as evidenced by the fact that he did not describe in detail the way he shot the victim.<sup>1172</sup> Mr. Patterson is hoping he can be released to help support his older brother, who had a stroke and continues to be in frail health.<sup>1173</sup> Says Mr. Patterson, “I’m not the same 17-year-old. I wouldn’t be a threat if released. I’m an old man. I want to get out and get a job and live out the rest of my years. I don’t know what more the board wants me to do.”<sup>1174</sup> Mr. Patterson’s next review will be in October 2017.

 **Maurice Reynolds** is a 47-year-old Black man incarcerated in Michigan. He has now been in prison for over 30 years for two counts of murder and armed robbery. On September 25, 1984, at age 15, Mr. Reynolds and two other boys killed two men in a botched robbery. Mr. Reynolds says they didn’t plan to kill anyone but did plan to rob someone to prove themselves as “tough” in their neighborhood. After trial, Mr. Reynolds was sentenced to life in prison. This was his first offense.<sup>1175</sup>

When Mr. Reynolds was first arrested, he says, he was questioned for several hours before his mother was called. “Seeing her eyes,” recalls Mr. Reynolds, “that made me confess. The person I was on the streets wasn’t the person I was at home. It hurt me for her to see me like that.”<sup>1176</sup> Having never been in trouble or involved in a serious violent activity like this before, Mr. Reynolds says, he was shaken and horrified by what he had done. “When they arrested me, I slept better,” says Mr. Reynolds. “People don’t tell you that when you take a life, a part of you dies. And you can go either way. I remember when the officer told me the man had died. I knew my life was in the balance.”<sup>1177</sup> Going into prison for the first time, Mr. Reynolds says that he knew it was going to be a violent environment but managed to avoid violence, in part due to his religious faith: “I couldn’t trust myself or others. So I had to trust someone greater than me. The reality hit me that I didn’t know who I was or where I was going. I woke up every day expecting to be released. You need that hope or you’d be a dead man walking.”<sup>1178</sup>

Mr. Reynolds earned his GED and went on to participate in numerous courses—first as a student and later as a tutor. Of his numerous work evaluations from 1989 through 2016, only one had (slightly) less than a perfect score, and his supervisors in his numerous work and trade assignments, from yard crew to the barber shop to the recreation department, note that he is an excellent worker who gets on well with staff and other prisoners.<sup>1179</sup> Even early on in his incarceration, his supervisor when he worked as an academic tutor noted that Mr. Reynolds was an “asset to [the] program” and that his “maturity and performance has made him a positive role model for my students.”<sup>1180</sup> Mr. Reynolds has no disciplinary infractions for violent conduct and no fights while incarcerated, and has been at the lowest confinement level (II) and management level throughout almost his entire three decades in prison.<sup>1181</sup> He successfully completed substance abuse programming in 2010, although he has since had two institutional violations for marijuana use. By 2009, he had accrued 560 days of good time (which, given his sentence, he cannot use<sup>1182</sup>), and he went on to lead and teach different chapel programs and participate voluntarily in a substance abuse class.

Despite his strong and positive institutional record, Mr. Reynolds has been repeatedly set off (denied parole and had his subsequent review scheduled five years later) with “no interest” votes (effectively denying both release and review) by the parole board. He received a “no interest” notification in 1990, 1994, 1999, 2004, 2009, and 2014. For several years, Mr. Reynolds says, it seemed to be a matter of policy not to release individuals serving life sentences: “Once I asked the parole board chairman what to do [to be approved], and he said I would have be resentenced because he wasn’t letting any lifers out.”<sup>1183</sup> In 2010, Mr. Reynolds was scheduled for a public hearing by the parole board, but the successor judge, James R. Chylinski, objected to his release and the public hearing was cancelled. Otherwise, Mr. Reynolds says, he has not been told why he is being denied or what more he can do to be released. “They don’t tell you anything. They just leave you,” said Mr. Reynolds. “I think they take the right things into consideration, but only one person talks to you and then they have to go and convince several

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**“I woke up every day expecting to be released. You need that hope or you’d be a dead man walking.”**

—Maurice Reynolds

other people to vote for you. They don't do anything wrong expect put the politics before the person."<sup>1184</sup> Mr. Reynolds' Release Guidelines score, from the Michigan Department of Corrections Commutation and Long Term Release Guidelines, suggested based on his history and his offense score that he should serve 18 years. He has now been in prison for 31 years. While his family remains supportive and involved in his life, Mr. Reynolds says he fears that if he ever is released, the skills and training he has accrued will no longer be useful:

All I know is this: I will never be back here. I will never commit a crime. I have so many things that I want to do. I've been living vicariously through other people. As the years go by, the training is outdated. I don't even know how to work a cell phone. I've been here so long and the prison programming doesn't train you for return. It's like they don't think I'm ever going to get out.<sup>1185</sup>



**Sean Rhomberg, 40, has been serving a life sentence in Iowa since he was 15.**

**Sean Rhomberg** is a 40-year-old white man serving a parolable life sentence in Iowa. He has been in prison for over 24 years. At 15, Mr. Rhomberg broke into the home of an elderly neighbor and, in the course of the robbery, murdered her. He was sentenced to life without parole in 1992.

Growing up, Mr. Rhomberg says, he struggled with his learning disabilities, in particular his inability to read. At his resentencing, his mother and sister testified that he was teased a lot by other children for his disabilities; during one incident at school, he says, other children teased him so much about his ears that he glued them to his head.<sup>1186</sup> His sister Angie Rhomberg testified, "He was a good kid, but he was a follower. He followed the bad people, like the bad kids."<sup>1187</sup> Their father was abusive but particularly toward Sean, his sister stated, whom her father kicked with steel-toed boots and would spank forcefully: "Seemed like Sean always got the worst of all of [us]."<sup>1188</sup> Mr. Rhomberg's mother testified that when she asked her husband to help their son, who was having difficulty in school, he would spank Sean.<sup>1189</sup>

Although Mr. Rhomberg says he has had a consistently close relationship with his family and was in special education classes, he spent some time in juvenile detention and then in inpatient treatment when he became out of control in class. Recalls Mr. Rhomberg, "When I first came to prison, I could not read. At school I was embarrassed and would throw things when they wanted me to read aloud. I know it was wrong, but as a kid I was so embarrassed."<sup>1190</sup>

On one occasion, when Mr. Rhomberg was 12 years old, he was placed in a psychiatric unit when he was acting out and the school could not get in contact with his parents.<sup>1191</sup> His mother testified at his resentencing hearing that after the school called the police, he was taken to two facilities; at the second, he was placed in the adult ward for suicide watch: "[Y]ou would never understand the trauma that

he got because when he called me that night, he couldn't even talk. He was that petrified."<sup>1192</sup>

On November 24, 1991, Mr. Rhomberg broke into his neighbor's home. He says he believed she was out of town, and when she found him, he panicked and killed her. The police arrested him at home, Mr. Rhomberg says, but did not tell him or his family that the victim had died. He was taken to the police station alone. "I asked for a lawyer but they started questioning me anyway after my parents left," Mr. Rhomberg remembers. "I was questioned for 10-12 hours and I told them what happened but they didn't believe me. They thought I planned to murder her."<sup>1193</sup> Mr. Rhomberg says that in his nine months of pre-trial detention, his lawyers had doctors examine him and believed he had brain damage from a car accident and physical abuse from his father. In jail, Mr. Rhomberg remembers, he was held in the female wing of an adult prison: "Every time a woman came in, they would put me in a single cell for three to four months. It just had a toilet and a mattress on the floor. I was never around anyone, but I was scared."<sup>1194</sup>

After a trial, Mr. Rhomberg was convicted of first-degree murder and sentenced to (mandatory) life without parole in 1992.<sup>1195</sup> Throughout the trial, Mr. Rhomberg says, he didn't understand that he was facing life in prison, but once he came in, he started working on his education. At first, he says, unable to read, it was difficult to communicate with his family. His sister Angie stated that when he first went to prison and attempted to write to their family, "If he wanted to say house, he would draw a house because he didn't know how to spell it."<sup>1196</sup> However, he says he has worked to get to a lower to middle school-level education.<sup>1197</sup> In prison, Mr. Rhomberg says, he has stayed out of trouble thanks both to the guidance of older prisoners who came in as juveniles and the support of his family:

You grow up and you have your family out there saying please do good and you've already hurt them enough. . . . I don't cause problems in prison. I'm not the kid I was. I don't do drugs—that's what screwed my life up. I don't get embarrassed anymore about my reading.<sup>1198</sup>

While in prison, even before he was resentenced to a parole-eligible sentence, Mr. Rhomberg says he participated in whatever program he could get into. "I've done AA, drug treatment, and victims' impact," says Mr. Rhomberg. He has also participated in the dog training program, which he says has been the most valuable thing he has participated in: "I've loved working in the dog program—I'm most proud of helping people on the streets and giving back."<sup>1199</sup> While serving a life without parole sentence, however, there were limited programs available to him,<sup>1200</sup> and many programs, including certain jobs and further education, were not available because he has been unable to get his GED given his disabilities.<sup>1201</sup>

In 2014, as part of Iowa's post-*Miller* reforms, Mr. Rhomberg was resentenced to life in prison with the possibility of parole.<sup>1202</sup> The court did not set a specific

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**“The judge gave me a second chance. He must think I can be rehabilitated.”**


—Sean Rhomberg

minimum number of years to be served, instead leaving that to the parole board, which reviewed his case several weeks later.<sup>1203</sup>

His parole denial began, “In view of the seriousness of the crime for which you have been convicted, the Board does not believe a parole is in the interests of society at this time.”<sup>1204</sup> The board commended him for his conduct and efforts while in prison, noting “Positive efforts and behavior indicate you may be able and willing to fulfill the obligations of a law-abiding citizen.” The decision “acknowledge[d] that [Mr. Rhomberg] was a juvenile at the time of the offense” and stated the factors that courts recognize are associated with youth and criminal conduct, although it did not comment on how or whether those factors applied to Mr. Rhomberg.<sup>1205</sup> However, the board decision also stated that Mr. Rhomberg needed to complete recommended interventions and that he should move to a lower security facility, something Mr. Rhomberg cannot unilaterally do.<sup>1206</sup>

Mr. Rhomberg says that he has been unable to get an answer as to whether it is the parole board or the facility that is deciding what more programming he needs and when he can be moved to a lower security level.<sup>1207</sup> At his resentencing, it was noted that he is a low risk of institutional misconduct and so could be a candidate for a minimum security facility.<sup>1208</sup> (Mr. Rhomberg has had two serious disciplinary infractions from his earlier years in prison—one in 1995 for throwing hot water on his cellmate prisoner, who he says was harassing and stealing from him, and a second in 1999 for assisting other prisoners who attempted to escape, although not for trying to escape himself.<sup>1209</sup> Both incidents were discussed in his resentencing, as was the subsequent improvement in his institutional record, which the parole board also recognizes.)

Mr. Rhomberg says his immediate hope is to get work release and then, once completely released, to be employed in a lumberyard to save enough money for his own apartment. Mr. Rhomberg says he feels horrible for his crime and that he is no longer the child who committed this terrible act. “I just want one chance,” says Mr. Rhomberg. “The judge gave me a second chance. He must think I can be rehabilitated.”<sup>1210</sup>

 **Richard Rivera**, a 52-year-old Latino man from New York, has been in prison for over 35 years. At 16, Mr. Rivera and three other boys attempted to rob a bar and restaurant; an off-duty New York City police officer intervened to stop the robbery, and Mr. Rivera shot and killed him. Mr. Rivera was sentenced to 30 years to life for murder in the second degree and was convicted (for the same incident) of attempted robbery, criminal use of a firearm, and criminal possession of a firearm.<sup>1211</sup>

Mr. Rivera was born in Massachusetts and raised in the Bronx, New York. When Mr. Rivera was still a baby, he says, his mother left his father. He grew up one



of nine children supported by his mother, who had a long history of psychiatric hospitalizations throughout his childhood.<sup>1212</sup> Recalls Mr. Rivera,

My mother suffered from severe mental illnesses, was severely abusive, attempted suicide on several occasions, and [was] institutionalized for several years that I can recall. ... Ironically, I began pan-handling with the best of intentions. Tired of never having enough to eat and watching my siblings go hungry and always being in dirty, ill-fitting clothes, I grow [sic] desperate and began panhandling to earn enough money to support my family. ... Soon, I was returning home with small bags of groceries and new clothes for me and my siblings.<sup>1213</sup>

Mr. Rivera had learning difficulties and, as he grew older, developed substance abuse problems.<sup>1214</sup> By the night of the murder in 1981, Mr. Rivera writes, his life had “ratcheted out of control”; he was addicted to cocaine, could neither read nor write, and was increasingly involved in robberies. “The tragedy of January 12, 1981 [,] did not happen in a vacuum,” wrote Mr. Rivera. “I was not standing there with a gun in each hand by accident. I was there for the same reasons that I am here now: my past. But my past is no excuse.”<sup>1215</sup>

On January 12, 1981, Mr. Rivera and three others, ranging in age from 15 to 24 years old, attempted to rob B.V.D. Bar & Grill.<sup>1216</sup> During the robbery, an off-duty New York City police officer pulled out his gun, identified himself as an officer, and attempted to stop the robbery.<sup>1217</sup> Mr. Rivera shot him; he says it was his first time ever firing a weapon.<sup>1218</sup>

When Mr. Rivera initially came to prison, he recalls, it took him a while to adjust and seek out programming, particularly given the violence he encountered in prison: “In the facility—it was abusive—from staff and from prisoners. You had to strive for survival. I just had to forget about everything and focus on survival. I wasn’t interested in getting my GED [when I got in], but the group of guys around me motivated me to learn to read and write and get my GED.”<sup>1219</sup>

In his more than three decades in prison, Mr. Rivera has earned a Bachelor of Arts from Syracuse University, a master’s degree from New York Theological Seminary, and a second bachelor’s degree from Bard College. He works as an Inmate Peer Assistant, a facilitator for the Alternatives to Violence Project, and a certified HIV/AIDS peer counselor, and also has certificates in law library management and masonry.<sup>1220</sup> In 1984, Mr. Rivera says he first started volunteering to care for prisoners with HIV/AIDS and terminal illnesses at Green Haven Correctional Facility, where, he says, “I learned the true meaning of care and compassion and bravery.”<sup>1221</sup>

Mr. Rivera has been reviewed four times by the parole board; each time, he has been denied for the nature of the offense. In September 2016, Mr. Rivera was again denied parole, this time for his prior disciplinary history (Mr. Rivera’s last ticket,



Richard Rivera has been incarcerated in New York for over 35 years.

**“You hear guys on the phone trying to console their relatives before they’ve processed the [parole] denial themselves.”**


—Richard Rivera

over two years ago, was for failure to report an injury). He believes his youth at the time of the offense should at least be taken into account in the evaluation:

I don't want to diminish my crime, but I think my age should be considered as mitigation. People like me who were juveniles but adjudicated as an adult are in a grey area. They don't have to consider age despite all the evidence that is coming out now about cognitive functioning. They have to consider it for juveniles adjudicated as juveniles but not for those convicted as adults.<sup>1222</sup>

Mr. Rivera has a job offer to work at the library at Cornell University and friends willing to support him upon his release, but he worries that the continued focus on his offense means he won't be released until those sources of support have dissipated:

You have to remain hopeful. So you basically have to live in denial. You hope the dice are going to roll your way. It's like being a gambler in a terrible game. You have to remain hopeful for your families. But you see people getting hit [set off] eight, 12 times. That's the tragedy in here. When the system is arbitrary and capricious, there are victims on the other end of that. This is traumatic for our families. What happens from hit to the next hit is so difficult. You hear guys on the phone trying to console their relatives before they've even processed the denial themselves. You see people lose family support. A job offer doesn't have that shelf life. The board wants a release plan but it's a plan built on sand. These plans are tentative.<sup>1223</sup>

 **Larry Roberts** is a 48-year-old Black man serving life in prison for aggravated robbery and capital murder, for murder in the commission of a burglary. At the time of his offenses, in 1983, Mr. Roberts was 15 years old. He says that, despite having a strict but loving family and doing well in school, he started to get into trouble when his family moved to Houston. He was 14 at the time of the move. "I always wanted to run with older guys," Mr. Roberts recalls. "I don't know where I got the idea to start stealing cars and purses, to participate in burglaries. It baffles me even now."<sup>1224</sup> Mr. Roberts had one prior charge, at age 14, for possession of an illegal firearm, for which he received probation. He describes himself at the time as wild and out of control; nevertheless, he says, everyone who knew him was shocked when he committed a murder.

On June 8, 1983, at age 15, Mr. Roberts committed a robbery; two weeks later, on June 23, 1983, he broke into a home.<sup>1225</sup> He says he was surprised by the victim's return home, panicked, grabbed the victim's gun, and shot and killed him.<sup>1226</sup> Mr. Roberts was arrested and charged with both offenses on the same day. He has been in prison ever since.

After trial, Mr. Roberts was sentenced to life in prison on both charges (aggravated robbery and capital murder), which required him to spend a minimum of 20 years in prison before he was first reviewed by the parole board. When he was told he would spend at least 20 years in prison, recalls Mr. Roberts, “I remember thinking, I’m not going to be able to do that long. I saw individuals around me, people who had been incarcerated for 20 years when I came in, trying and unable to make parole.”<sup>1227</sup> In his first several years in prison, Mr. Roberts says, his disciplinary record was not good and he wasn’t interested in programming. “I was out of control,” recalls Mr. Roberts. “What changed? Maturity, age, getting in trouble enough times, and being in the box. I thought to myself, this cannot possibly be all there is to being an adult. It was a conclusion I came to by myself.”<sup>1228</sup> Mr. Roberts says he has participated in several classes, such as Bridges to Life (for victim awareness) and Voyager (on perspective change), and is passionate about his vocational studies and work in culinary arts.<sup>1229</sup>

Initially, Mr. Roberts says, the facility didn’t recommend any treatment or programming for him: “They gave me nothing to do and I was concerned that that has made it harder for me to get into programs, especially as a lifer. They don’t let you into programs until you are within five years of discharging your sentence. I did get into trade school because my family paid.” When he finally saw a parole board member in 2011, he says he was told that he needs to take more courses. “But,” says Mr. Roberts, “it’s parole that puts you into the programs.”<sup>1230</sup>

Mr. Roberts has been reviewed and denied four times for parole, most recently in 2014. At his first review in 2004, he was denied for 1D (“The record indicates that the offender has repeatedly committed criminal episodes that indicate a predisposition to commit criminal acts upon release.”); 2D (regarding the nature of the original offense); and 4D (“The record indicates that the offender has an unsatisfactory institutional adjustment.”).<sup>1231</sup> He says that at that point, his last ticket for a fight had been in 1990 or 1991. In 2008, 2011, and 2014, the only listed reason for denying parole was 2D (seriousness of the offense).<sup>1232</sup>

His only interview with a board member was in 2011. Mr. Roberts thought the interview was promising: “He had my whole file and he listened to me and we spoke for an hour. He said, ‘I can’t understand why you haven’t been seriously considered before for parole.’ But then I was denied again.”<sup>1233</sup> For Mr. Roberts, one of the greatest problems in the parole system is the lack of individualized review and attention, which hasn’t given him the opportunity to demonstrate his remorse or his growth. He says now, he doesn’t even recognize the child who committed this horrible crime:

You see me now, but I can see me 32 years ago. I see the kid that didn’t care about you. But now I see a man who is considerate, who will give you a hand. I understand why they don’t parole some people like me—they have a picture of me from who I was then. There is no personalization in the parole process in Texas. There is no consideration of the change

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**“There is no personalization in the parole process in Texas. They can’t hear my voice.”**

—Larry Roberts

in my disciplinary record. They don't see that I care. They can't hear my voice.<sup>1234</sup>

Being separated from family for so many years, writes Mr. Roberts, "For me, it's beyond description because I've lost so many family members."<sup>1235</sup> Given the age of his support network, moreover, Mr. Roberts worries about what will happen if he is not released while they are still able to help with his reentry. "My mom always tells me that as long as you are alive there is hope," says Mr. Roberts. "My family has been supportive, but I'm 47 and my mom is in her 70s, as is my dad. Time doesn't stop. I'm the baby of my family and they are never *not* going to support me, but what happens when they are gone?"<sup>1236</sup>



**Stephen Smith, now 43, has been serving a life sentence in New York since he was 17 years old.**

**Stephen Smith**, a 43-year-old Black man incarcerated in New York, has been in prison for more than 25 years. Mr. Smith was 17 years old when he committed a murder; this was his first offense.

Mr. Smith says that, as a child who wasn't in trouble prior to this, his arrest "was a complete shock. I wasn't a crazed kid. But my father wasn't around then, and I wasn't talking too much about what was going on in my head. I was afraid and angry and repressing it."<sup>1237</sup> On September 20, 1990, Mr. Smith says he was hanging out with some younger teenage kids in his neighborhood when he noticed a man harassing some of the kids. Mr. Smith says he had been bullied at school and, watching this, he felt he had to intervene and stabbed and killed the older man.<sup>1238</sup> He went to trial and was convicted and sentenced to serve 20 years to life.

Having never been in jail before, Mr. Smith described his arrest and introduction to incarceration as a shock: "It was scary; the uncertainty was numbing. At Rikers, I was in protective custody. Being in a cell was unbelievable and the consciousness of my guilt was overwhelming."<sup>1239</sup> As soon as he started serving his sentence, Mr. Smith says, he got his GED, enrolled in college courses, and took what programming was available. "I always felt that I am not going to leave this place an ignorant 40-year-old," says Mr. Smith. "I was determined early on. I didn't want to be like some of the older prisoners who couldn't cope. When I came upstate, I knew this was my fate and I would be here for a while. My aunt said you messed up, but you don't have to stay in that space. Make sure you use your time productively."<sup>1240</sup>

Since coming to prison, Mr. Smith has also rebuilt his relationship with his father. Mr. Smith observes, "He feels guilty that he wasn't around, but I told him we can put all that behind us."<sup>1241</sup> His father has written in support of his parole and has offered him a job at his business manufacturing uniforms. His family's church in Brooklyn has also written to offer its support in reentry.<sup>1242</sup>

While in prison, Mr. Smith has been very involved with the Alternatives to Violence program, participating in and facilitating nonviolent conflict resolution

and related courses over the years.<sup>1243</sup> Mr. Smith's package of support letters and achievements, submitted in support of his release on parole, includes several letters from correctional officers commending him on his conduct, leadership among other prisoners, and remorse. Initially, Mr. Smith says, reaching out to officers for guidance and mentorship was counterintuitive. "I realized I needed to be more vocal and reach out to the officers. That is contrary to the culture in here where you don't talk to people about this or about your crime," he said.<sup>1244</sup> One social worker wrote that he was "deeply inspired" and moved by Mr. Smith's transformation in prison into a model prisoner, by his willingness to take responsibility for his actions, and by his "profound regret for his violent action."<sup>1245</sup> One correctional officer wrote to the parole board of Mr. Smith:

I am aware of the seriousness of Mr. Smith's crime. In group, Mr. Smith frequently speaks candidly and compassionately about his concern for the victim's family. That kind of honest self-expression is very telling of a man who is remorseful. It is my understanding that Mr. Smith has been incarcerated since he was a minor, and I believe the department's mission of "confinement and habilitation of offenders" has been realized with Mr. Smith.<sup>1246</sup>

Despite his good institutional record and limited disciplinary history, Mr. Smith has been denied parole four times, each time due to the seriousness of the offense. Says Mr. Smith, "Each time I think there is a possibility for me to make a difference. Each time I add more and reveal more things in the hearing. . . . But after the 3rd or 4th interview with the same questions, it's like what else do they want? Each time [the denial has] been the seriousness of the offense."<sup>1247</sup> In Mr. Smith's 2015 parole decision, the board pointed to the sentencing minutes from 1990, where the judge commented on Mr. Smith's apparent lack of remorse for the murder as part of their basis for denying Mr. Smith release on parole.<sup>1248</sup> "They have never asked me if I'm remorseful *now*, and I am," says Mr. Smith. "They could look at my record in prison to know that I am and that I've matured. I'm not doing those things to get released. I'm doing them because of who I want to be when I am released."<sup>1249</sup>

Despite the repeated denials, Mr. Smith maintains hope that he will be released to spend time with his family and catch up on the decades he has lost as an adult. He says he is not the child who came to prison but hopes he can help young men avoid the mistakes and decisions he made that led him to prison:

Obviously I'm not the kid who committed this crime anymore. As a kid, I wasn't invested in the community and now I am. You see that with guys coming in; there's no connectedness, no empathy. But all I've done in here shows that I've grown. There is nothing I can do for the victim's family, but if they could know that I didn't spend my time in here getting in trouble, maybe that could be a start. I'm looking forward to finally



pulling my life together as an adult. I see life as an opportunity and I can make the life that I want.<sup>1250</sup>

**T.J. Smith\*** (pseudonym) is a 56-year-old white man who spent 40 years in prison. At 15 years old, Mr. Smith and a co-defendant committed a murder during a burglary, for which Mr. Smith was sentenced to life without parole. He was subsequently resentenced to a parole-eligible life sentence in 1983. At 15, Mr. Smith says, he was living with his mother and stepfather, and had been sexually abused by two older women in his stepfamily: “It was not a healthy environment, and I was running away from home and not dealing with the underlying issues and the trauma of these situations.”<sup>1251</sup> At the time of the murder, he was planning to run away.<sup>1252</sup> On December 16, 1974, Mr. Smith and his co-defendant and classmate were suspended from school for showing up high on drugs. At home alone at Mr. Smith’s house, they decided to rob the house next door but were surprised by the arrival of their neighbor.<sup>1253</sup> Mr. Smith’s co-defendant then raped and murdered Mr. Smith’s neighbor. “I tried to stop him but I was afraid of him. As a 15-year-old kid, you don’t have a good idea about options of what you can do. I carry that on my shoulders and I will carry that the rest of my life,” said Mr. Smith. The two boys stole the victim’s car, but as Mr. Smith had never driven before, he quickly crashed it, and they were arrested by the police.<sup>1254</sup> Represented by his mother’s divorce attorney at trial, Mr. Smith says, he was waived into adult court, convicted of first-degree murder, and sent to prison to serve life without parole.

The adjustment to prison was terrifying, recalls Mr. Smith: “They had no psychological services available. At the time, the policy was you need to serve 10 calendar years before you get programming, but it would have been more effective for me to have it immediately. I had no way to deal with the trauma [of what I’d done].”<sup>1255</sup>

The greatest source of support in those years, Mr. Smith says, came from his mother and grandmother: “Every time they saw me, they told me to keep my chin up, that there was hope. I called them every week. Much later, when my mother was diagnosed with breast cancer, my job was to recall all the positive things that she had said to me over the years and send them back to her.”<sup>1256</sup> For the first several years, without treatment or therapy and in a violent environment, Mr. Smith says he got in fights and received numerous disciplinary tickets; in 1988, 13 years after his conviction, he was finally enrolled in therapy.<sup>1257</sup> Shortly thereafter, recalls Mr. Smith, he was stabbed with an ice pick: “After being stabbed, I had a lot of paranoia, but the therapy helped me realize that the guy who stabbed me must have been a victim of violence at some point too. It’s a cycle. If I don’t forgive him, I can’t move on. So I did.”<sup>1258</sup>

In 1980, a change in Michigan’s felony murder law vacated Mr. Smith’s first-degree murder sentence and gave him the chance to be resentenced.<sup>1259</sup> A psychologist provided an updated report on Mr. Smith, commending his progress and stating that he would like to see Mr. Smith in a more therapeutic environment for a year

with the opportunity to reevaluate his progress then.<sup>1260</sup> On June 29, 1983, the judge resented Mr. Smith to life.<sup>1261</sup>

Mr. Smith was then reviewed by the parole board in 1984, 1987, 1993, 1998, 2003, 2008, and 2013. As Michigan's parole system allows the parole board to perform a file review and decline to interview a person serving a life sentence, he was only interviewed by the board in 1998, 10 years later in 2008, and finally in 2013. The board member who interviewed Mr. Smith for parole in 2008, Enid Livingston, wanted to move forward with a public (parole) hearing for Mr. Smith. However, under Michigan law, the sentencing or successor judge has the right to intervene and object to the release of a lifer, thus halting the process. Although Mr. Smith's sentencing judge had retired, the designated successor judge, James M. Graves, vetoed Mr. Smith's parole based on the heinous nature of the crime.<sup>1262</sup> "After the judge objected, I was in deep despair," recalled Mr. Smith. "I thought I was going to die in prison. My siblings and my partner were involved in my life and trying to make sure I didn't give up hope."<sup>1263</sup>

When Mr. Smith's next opportunity for review came (five years later), the board gave him a "no interest" notification. Mr. Smith suspected the board's lack of interest was because it assumed Judge Graves intended to veto him again.<sup>1264</sup> In the interim, however, Judge Graves had retired. The new successor judge, Timothy G. Hicks, interviewed the victim's children and reviewed the crime scene photographs and noted in his decision that, "If the circumstances of the crime provide the only basis for considering this request, then the answer is clear—veto it. But a judge is obligated to consider other circumstances."<sup>1265</sup> Those circumstances, Judge Hicks continued, include the post-*Miller v. Alabama* legal landscape, Mr. Smith's own plans for reentry, and the expansion in years actually served by those given life sentences.<sup>1266</sup>

Without the impediment of a veto, Mr. Smith proceeded to a public hearing, which lasted several hours. One of the challenges in the hearing, Mr. Smith says, was preparing to talk about a shameful subject in an environment where such openness is not encouraged or rewarded:

When people go to prison, you're told not to tell anyone anything about your case, and you're in a macho environment where any sign of weakness is going to hurt you. This is the system you are in for 10-15 years, and when you *do* see the parole board, you are unable to articulate your feelings of remorse. We know why that is.<sup>1267</sup>

In June 2014, the board mailed Mr. Smith its notice approving parole; he was released a month later.<sup>1268</sup> Within weeks of his reentry, he began to work at American Friends Service Committee (AFSC) and enrolled in college. He is working on a pre-law degree at Eastern Michigan University and has worked with AFSC to assist other prisoners serving long sentences.

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**“Therapy helped me realize that the guy who stabbed me must have been a victim of violence at some point too. If I don't forgive him, I can't move on.”**

—T.J. Smith

**Carol Thomas\*** (pseudonym) is a 52-year-old Black woman incarcerated in Michigan. In 1986, when she was 22, Ms. Thomas murdered two people, for which she pled guilty and was sentenced to two concurrent life sentences plus two years for felony use of a firearm. This was her first and only offense.

Ms. Thomas grew up in Detroit, Michigan, with her mother, who had significant substance abuse and mental health difficulties and was often hospitalized during Ms. Thomas' childhood.<sup>1269</sup> Growing up, Ms. Thomas says, she was sexually abused by several of her mother's boyfriends.<sup>1270</sup> She left high school at the age of 16 and became pregnant with her first child at the age of 18.<sup>1271</sup> At the time of the offense, Ms. Thomas and her boyfriend (now deceased) had two young children, aged four years and 18 months. Ms. Thomas says that her victims were a couple she knew and had previously lived with, and the woman had been babysitting Ms. Thomas' two children. "Then I found out her partner was abusing my child," says Ms. Thomas.<sup>1272</sup>

Given her own experience of sexual abuse and the trust she had placed in this couple, Ms. Thomas states she was "beside myself with shock and anger" when her daughter told her that she was being molested by the man in the couple she had trusted to babysit her children. "Hearing that my daughter had been sexually abused immediately brought back the feelings of shame and helplessness that I myself had experienced as a result of repeated abuse as a child," said Ms. Thomas.<sup>1273</sup> On November 25, 1986, she went to the couple's home. She recalls,

When my daughter told me about the abuse, it triggered the memories of what happened to me, what I went through. The sounds and smells of abuse. I let my emotions lead me. I went to confront them about my child being molested by one of the victims and the fight escalated. When I was arrested and I told the officer what happened and why, he said [the sexual abuse] was my fault. So I didn't mention it again. I thought I wouldn't be able to see my kids or they would be taken from me if I gave the reason for the argument.<sup>1274</sup>

Ms. Thomas stabbed the couple; the manner and brutality of the murders not only impacted her sentence recommendation<sup>1275</sup> but continues to drive her parole denials.

According to her pre-sentence investigation report, Ms. Thomas had been using crack cocaine in 1986 and, by her own reports, was using cocaine at the time of the offense.<sup>1276</sup> Since she came into prison, however, she has had no substance abuse infractions and, in fact, has been a tutor and mentor in the Residential Substance Abuse Treatment (RSAT) program for several years.<sup>1277</sup> One supervisor described Ms. Thomas' "exemplary work ethics and behavior" as a mentor in this program and observed that she "goes out of her way to assist others and therapists."<sup>1278</sup> Ms. Thomas credits the program with helping her develop interpersonal skills and interrupt negative thinking; because of the program, she wrote, "I can live a life

with integrity.”<sup>1279</sup> While in prison, she has worked numerous jobs but mainly as a cook, produce worker, and unit porter; with a few exceptions, since 1987 she has received perfect or above-average work and program evaluations with multiple bonuses and numerous notes from her supervisor commending her as an “excellent worker.”<sup>1280</sup> She has participated in numerous programs, including peer counseling and anger management; has worked as a prisoner observation aide (to monitor prisoners at risk of becoming suicidal); and served as a program coordinator for the children visitation program. Though she dropped out of high school at 16, while incarcerated she has received her GED, associate degree, and then her bachelor’s degree. Since 1987, she has had approximately 13 disciplinary tickets (less than one every other year), the most serious of which are one in 1996 for pushing another prisoner during a disagreement and one in 2007 for “threatening behavior” in another disagreement with another prisoner; neither of these involved weapons or injuries.<sup>1281</sup>

To date, Ms. Thomas has been reviewed by the parole board five times (1997, 2001, 2006, 2009, and 2011) and interviewed on two occasions by a parole board member. Each time she received a “no interest” (denial) from the parole board. Her 2009 “no interest” notification (the only one with more text than “no interest” to explain the decision) remarked on the brutal nature of the murders and stated that her remorse seemed “centered more on the time she has spent in prison than on what she did to the victims.”<sup>1282</sup> Ms. Thomas says that although her daughter sat in on her parole interview, the parole board commissioner who conducted the interview did not ask her daughter anything about the abuse and her daughter did not raise the issue either. “My daughter hasn’t ever had any therapy for the abuse,” says Ms. Thomas. “It’s difficult for her to talk about. I didn’t want her to try and justify what I did by talking about the abuse.”<sup>1283</sup>

Ms. Thomas acknowledges that in her first several years in prison, she did still blame the couple she killed for the abuse to her daughter, rather than taking full responsibility for her actions. But over the years, she has taken extensive therapy and self-help classes that she says have helped her develop and express remorse. The couple she killed, she says, “did not deserve to be the recipients of all the pain I held inside me, nor did they deserve what I did to them as human beings.”<sup>1284</sup> Ms. Thomas continues:

I had no right whatsoever to take the breath from their bodies no matter the circumstances or situation at that moment (or any) in time. God knows I have lived with what I’ve done with every beat of my heart, haunted daily by the wrong choices made and the actions I took. What I’ve done to earn this conviction is at the forefront of my mind. Every day that passes I have reflected upon those decisions and what I would have done differently in hindsight.<sup>1285</sup>

A former therapist in the RSAT program, who counseled Ms. Thomas, wrote to the parole board that Ms. Thomas had blossomed through the program, “expressed

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**“God knows I have lived with what I’ve done with every beat of my heart, haunted daily by the wrong choices made and the actions I took.”**

—Carol Thomas

enormous remorse over a period of time” for her crime, and became “a true role model and example to the community.”<sup>1286</sup>

Despite her decades in prison, Ms. Thomas has maintained her relationship with her children and other relatives. She has letters of support and offers of housing and employment from family, friends, and community organizations.<sup>1287</sup> Nevertheless, she has never been recommended for a public hearing and has not had an in-person interview since 2009.<sup>1288</sup> Without an in-person review and more attention on who she is now, Ms. Thomas fears she won’t be approved for release: “A file can’t speak for me. To just read my case—it’s gruesome. I need to be able to talk about what I’ve learned in [prison.]”<sup>1289</sup>



**Deon Williams was 16 when he came to prison in Texas. Now 38, he must serve another eight years before he is reviewed for parole.**

**Deon Williams**, a Black man serving a life sentence in Texas, was 16 at the time he was arrested and then convicted of murder. Mr. Williams, who was not the triggerman, has served 22 years of a 60-year sentence. He will not be considered for parole until late 2024.

Mr. Williams was raised in Dallas, Texas, one of five children living, at one point, in a three-bedroom apartment with his mother, aunt, and six cousins. “We often went without food. Sometimes I stole to provide for us,” recalls Mr. Williams.<sup>1290</sup> He says he was made fun of at school because his family didn’t have money for nice clothes and longed to be respected by his peers. At 15, Mr. Williams was arrested for aggravated robbery and sent to the Texas Youth Commission, which he thought was a turning point for the better:

We ate well, and I could work and make money. There were a lot of good programs. When I got out, I moved in with my grandmother in Pagoda [Texas]. I was the only black kid in my class, and it was a shock, but I did well there. I started playing football. I didn’t get into any trouble at school, and I worked hauling hay. When I went back to my mother’s, I didn’t last two months.<sup>1291</sup>

Back in Dallas, and without the support and structure he had had at school in Pagoda, Mr. Williams said he felt his old lifestyle was absorbing him.<sup>1292</sup>

Mr. Williams says he wanted to leave Texas and start over somewhere else, and the opportunity for immediate money drew him to several older teenage boys who planned to burgle the home of an elderly woman.<sup>1293</sup> During the burglary, the woman was shot and killed by one of Mr. Williams’ co-defendants before they all fled the scene and drove toward Dallas. Mr. Williams, who was the youngest of the boys involved, said he believed the plan was only ever to steal from the house and not to cause any harm. Says Mr. Williams, “We were all under the influence of alcohol, but this was not the plan. . . . [Police] arrested me and took me to juvenile [detention]. Two or three days later, they told me I would be charged with capital



murder. I hadn't yet spoken to my mother. I was certified as an adult after two weeks and taken to county jail.<sup>1294</sup> Mr. Williams, who says he was shocked, terrified, and remorseful for his participation in the murder, pled guilty to murder; he says that, in exchange for his testimony, the district attorney offered a plea of 60 years, which made him eligible for parole after 30 years as opposed to after 35 years, had he received a life sentence.<sup>1295</sup>

At first, when Mr. Williams came to prison, he recalls, he wasn't interested in programming; he was interested only in staying safe:

When I arrived, I was not interested in going into school. I thought, "I have 30 years to do; what am I going to get from school?" Another inmate convinced me to get my GED as a better thing to do with my time. And officers and people on the outside told me, "You have to educate yourself if you ever want anything in life." And that motivated me. . . . It was hard for me the first three years, but older guys told me this isn't the right route; you want to be in general population so you can take classes.<sup>1296</sup>

Mr. Williams says he has not had a fighting ticket in 10 years, and his disciplinary files indicate that his most recent "major" disciplinary case was for improper storage of food and books in his cubicle.<sup>1297</sup> He has worked in food service as a stock clerk and in the craft shop (prior to its closure) and has several certificates from vocational, correctional health, and other rehabilitative programming.<sup>1298</sup> Mr. Williams says that, if he had the funds, he would participate in college and vocational programming, but for now he is on the waiting list for vocational courses. Edward Williams, Deon's brother, says that he sees the change in his brother: "He does understand that he made a big mistake while he was young, and he acknowledges that," says Edward Williams. "But he has progressed over the years and he has shown me that he has grown and gained more knowledge about life. I tell him that whenever he is granted release, I want him to come and live with me."<sup>1299</sup> Deon Williams says that in addition to his family support, he has hope and plans for a future with his fiancée and her children:

I'm looking forward to being with my fiancée and her two boys and just having the chance to live and work—I want to be a positive role model in their lives. I don't want them or my nephews to go down my route. Who better than me to tell you about the danger of getting in trouble and locked up.<sup>1300</sup>

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# APPENDIX A

## FOR PRISONERS SERVING A LIFE SENTENCE, WHEN IS THE FIRST PAROLE REVIEW?

<b>Alabama</b>	<ul style="list-style-type: none"> <li>10 years (or less, with unanimous parole board consent)<sup>1</sup></li> </ul>	<b>Kentucky</b>	<ul style="list-style-type: none"> <li>20 years (for Class A felony)<sup>27</sup></li> </ul>
<b>Alaska</b>	<ul style="list-style-type: none"> <li>In general, n/a (no parole-eligible life sentences)<sup>2</sup></li> </ul>	<b>Louisiana</b>	<ul style="list-style-type: none"> <li>10–35 years, depending on individual’s age at sentencing and post-conviction factors<sup>28</sup></li> </ul>
<b>Arizona</b>	<ul style="list-style-type: none"> <li>25–35 years (first-degree murder, varies depending on age of victim)<sup>3</sup></li> <li>35 years (certain dangerous crimes against children)<sup>4</sup></li> </ul>	<b>Maine</b>	<ul style="list-style-type: none"> <li>15 years, less deduction for good behavior<sup>29</sup></li> </ul>
<b>Arkansas</b>	<ul style="list-style-type: none"> <li>In general, n/a (no parole-eligible life sentences)<sup>5</sup></li> <li>For individuals who committed capital murder as a juvenile: review after 28 years<sup>6</sup></li> </ul>	<b>Maryland</b>	<ul style="list-style-type: none"> <li>15–25 years, depending on the crime<sup>30</sup></li> <li>In general, 15–25 years for those sentenced to life imprisonment with the possibility of parole<sup>31</sup></li> <li>For those convicted of first-degree murder who were under age 18 at the time of the offense: 15–30 years<sup>32</sup></li> </ul>
<b>California</b>	<ul style="list-style-type: none"> <li>Seven years or the mandatory minimum by another law, whichever is greater<sup>7</sup></li> </ul>	<b>Massachusetts</b>	<ul style="list-style-type: none"> <li>10 or 15 years, depending on when convicted.<sup>33</sup></li> </ul>
<b>Colorado</b>	<ul style="list-style-type: none"> <li>10, 20, or 40 years (depending on when the crime was committed)<sup>8</sup></li> </ul>	<b>Michigan</b>	<ul style="list-style-type: none"> <li>10 or 15 years, depending on when convicted.<sup>33</sup></li> </ul>
<b>Connecticut</b>	<ul style="list-style-type: none"> <li>10–25 years for a class A felony (depending on when crime was committed)<sup>9</sup></li> </ul>	<b>Minnesota</b>	<ul style="list-style-type: none"> <li>20–25 years<sup>34</sup></li> </ul>
<b>Delaware</b>	<ul style="list-style-type: none"> <li>45 years, less good time reductions<sup>10</sup></li> <li>For those who committed crimes before age 18: 25–35 years<sup>11</sup></li> </ul>	<b>Mississippi</b>	<ul style="list-style-type: none"> <li>20–25 years, less allowable good time, depending on the year of the offense<sup>35</sup></li> </ul>
<b>District of Columbia</b>	<ul style="list-style-type: none"> <li>15 years<sup>12</sup></li> </ul>	<b>Missouri</b>	<ul style="list-style-type: none"> <li>15 years (although board may review and grant parole earlier)<sup>36</sup></li> </ul>
<b>Florida</b>	<ul style="list-style-type: none"> <li>In general, n/a (no parole-eligible life sentences)</li> <li>For <i>non</i>-juvenile offenders sentenced to life for capital murder prior to October 1, 1983: 25 years<sup>13</sup></li> </ul>	<b>Montana</b>	<ul style="list-style-type: none"> <li>30 years<sup>37</sup></li> <li>In general, n/a (no parole-eligible life sentences)</li> <li>For juveniles sentenced to life with parole: 40 years<sup>38</sup></li> </ul>
<b>Georgia</b>	<ul style="list-style-type: none"> <li>25–30 years (serious violent felony)<sup>14</sup></li> <li>30–60 years (if individual has prior murder convictions)<sup>15</sup></li> </ul>	<b>Nebraska</b>	<ul style="list-style-type: none"> <li>10–20 years, depending on the crime<sup>39</sup></li> <li>For individuals who were juveniles at the time of their crime: 15 years if offense did not result in death of victim; 20 years if offense resulted in the death of one victim<sup>40</sup></li> </ul>
<b>Hawaii</b>	<ul style="list-style-type: none"> <li>Minimum number of years set by the parole board<sup>16</sup></li> </ul>	<b>New Hampshire</b>	<ul style="list-style-type: none"> <li>18 years<sup>41</sup></li> </ul>
<b>Idaho</b>	<ul style="list-style-type: none"> <li>Depending on the crime, after 1 year (rape),<sup>17</sup> 5 years (robbery,<sup>18</sup> certain drug offenses<sup>19</sup>), or 10 years (certain drug trafficking offenses<sup>20</sup> and murder<sup>21</sup>)</li> </ul>	<b>New Jersey</b>	<ul style="list-style-type: none"> <li>25 years (or the judicial/statutory mandatory minimum required), less commutation time for good behavior<sup>42</sup></li> </ul>
<b>Illinois</b>	<ul style="list-style-type: none"> <li>20 years, less time credit for good behavior<sup>22</sup></li> </ul>	<b>New Mexico</b>	<ul style="list-style-type: none"> <li>30 years<sup>43</sup></li> </ul>
<b>Indiana</b>	<ul style="list-style-type: none"> <li>15–20 years<sup>23</sup></li> </ul>	<b>New York</b>	<ul style="list-style-type: none"> <li>3–40 years, depending on the offense (Class A-I felony: 15–40 years; Class A-II felony: 3–8 years)<sup>44</sup></li> <li>After required minimum or one fifth of the maximum penalty, whichever is less<sup>45</sup></li> <li>20 years for certain felonies, less any permitted time credit<sup>46</sup></li> <li>For individuals under 18 at the time of their offense of first-degree murder: 25 years<sup>47</sup></li> </ul>
<b>Iowa</b>	<ul style="list-style-type: none"> <li>In general, n/a (no parole-eligible life sentences)</li> <li>For juveniles serving life with parole: minimum term of years determined by court<sup>24</sup></li> </ul>	<b>North Carolina</b>	<ul style="list-style-type: none"> <li>After required minimum or one fifth of the maximum penalty, whichever is less<sup>45</sup></li> <li>20 years for certain felonies, less any permitted time credit<sup>46</sup></li> <li>For individuals under 18 at the time of their offense of first-degree murder: 25 years<sup>47</sup></li> </ul>
<b>Kansas</b>	<ul style="list-style-type: none"> <li>25 years<sup>25</sup></li> <li>40–50 years<sup>26</sup></li> </ul>	<b>North Dakota</b>	<ul style="list-style-type: none"> <li>30 years, less time off earned for good conduct<sup>48</sup></li> </ul>

<b>Ohio</b>	<ul style="list-style-type: none"> <li>10–30 years, or a mandatory minimum term (depending on the crime)<sup>49</sup></li> </ul>	<b>Texas</b>	<ul style="list-style-type: none"> <li>30–40 years, depending on the crime<sup>58</sup></li> </ul>
<b>Oklahoma</b>	<ul style="list-style-type: none"> <li>Depends on the offense; for example, approximately 38 years for violent offense (calculated as 85% of a 45-year sentence)<sup>50</sup></li> </ul>	<b>Utah</b>	<ul style="list-style-type: none"> <li>3–25 years, depending on the crime<sup>59</sup></li> <li>1 year (if no minimum specified)<sup>60</sup></li> <li>10 years for aggravated sexual assault;<sup>61</sup> 20 years for second-degree and 35 years for first-degree murder<sup>62</sup></li> </ul>
<b>Oregon</b>	<ul style="list-style-type: none"> <li>25–30 years, depending on the crime<sup>51</sup></li> </ul>	<b>Vermont</b>	
<b>Pennsylvania</b>	<ul style="list-style-type: none"> <li>In general, n/a (no parole-eligible life sentences)<sup>52</sup></li> <li>For individuals who were under at 18 at time of the offense: 20–35 years, depending on age and degree of crime<sup>53</sup></li> </ul>	<b>Virginia</b>	<ul style="list-style-type: none"> <li>15–30 years, depending on the crime<sup>63</sup></li> </ul>
<b>Rhode Island</b>	<ul style="list-style-type: none"> <li>10–35 years, depending on crime and year it was committed<sup>54</sup></li> </ul>	<b>Washington</b>	<ul style="list-style-type: none"> <li>20 years, less earned good time (crimes committed before 1984)<sup>64</sup></li> </ul>
<b>South Carolina</b>	<ul style="list-style-type: none"> <li>10 years<sup>55</sup></li> </ul>	<b>West Virginia</b>	<ul style="list-style-type: none"> <li>10 or 15 years, depending on whether individual was previously convicted of a felony<sup>65</sup></li> </ul>
<b>South Dakota</b>	<ul style="list-style-type: none"> <li>In general, n/a (no parole-eligible life sentences)<sup>56</sup></li> </ul>	<b>Wisconsin</b>	<ul style="list-style-type: none"> <li>20 years, possibly less good time<sup>66</sup></li> </ul>
<b>Tennessee</b>	<ul style="list-style-type: none"> <li>60 years*<sup>57</sup></li> </ul>	<b>Wyoming</b>	<ul style="list-style-type: none"> <li>In general, n/a (no parole-eligible life sentences)</li> <li>For individuals who were under 18 at offense and are serving life imprisonment: 25 years<sup>67</sup></li> </ul>

1 Ala.Code 1975 § 15-22-28(e).

2 Alaska’s highest sentence is 99 years. *See, e.g.*, AS § 12.55.125(a) (a defendant convicted of first-degree murder “shall be sentenced to a definite term of imprisonment of at least 20 years but no more than 99 years”).

3 A.R.S. § 13-751(a)(2)-(3) (“If the defendant is sentenced to life, the defendant shall not be released on any basis until the completion of the service of twenty-five calendar years if the murdered person was fifteen or more years of age and thirty-five years if the murdered person was under fifteen years of age or was an unborn child”).

4 A.R.S. § 13-705(A)-(B),(D).

5 A.C.A. § 16-93-614(c)(1)(B) (this applies to a person who commits a felony on or after January 1, 1994).

6 A.C.A. § 5-10-101(c)(1)(B)(ii).

7 West’s Ann.Cal.Penal Code § 3046(a).

8 C.R.S.A. § 17-22.5-104.

9 C.G.S.A. § 53a-35a(2) (for crimes committed on or after July 1, 1981, “[f]or the class A felony of murder, a term not less than twenty-five years nor more than life”); C.G.S.A. § 53a-35(a)-(c) (for crimes committed prior to July 1, 1981, “[f]or a class A felony, the minimum term shall not be less than ten nor more than twenty-five years”).

10 11 Del.C. § 4346(c).

11 Senate Bill # 9 w/SA 2 + HA 2, available at [http://legis.delaware.gov/LIS/lis147.nsf/vwLegislation/SB+9/\\$file/legis.html?open](http://legis.delaware.gov/LIS/lis147.nsf/vwLegislation/SB+9/$file/legis.html?open).

12 DC ST § 24-403(a) (“Where the maximum sentence imposed is life imprisonment, a minimum sentence shall be imposed which shall not exceed 15 years imprisonment”).

13 Fla. Stat. Ann. § 775.082 (West), amended by 2016 Fla. Sess. Law Serv. Ch. 2016-24 (C.S.C.S.H.B. 545) (West); Florida Department of Corrections, “Doing Time,” January 2014, available at <http://www.dc.state.fl.us/pub/timeserv/doing/>.

14 Ga. Code Ann. § 17-10-6.1.

15 Ga. Code Ann. § 42-9-39(b)-(c).

16 HRS § 706-656 (has not been amended since Miller); HRS § 706-669.

17 I.C. § 18-6104 (“Rape is punishable by imprisonment in the state prison not less than one (1) year, and the imprisonment may be extended to life in the discretion of the District Judge, who shall pass sentence”).

18 I.C. § 18-6503 (“Robbery is punishable by imprisonment in the state prison not less than five (5) years, and the imprisonment may be extended to life.”).

19 I.C. § 37-2732B(a)(3), (a)(5); I.C. § 37-2739B(b).

20 I.C. § 37-2732B (a)(5).

21 I.C. § 18-4004; I.C. § 19-2513.

22 730 ILCS 5/3-3-3(a)(2).

23 IC 11-13-3-2(b)(3).

24 I.C.A. § 902.1(2)(a).

25 K.S.A. 21-6620; K.S.A. 21-6627.

26 K.S.A. 21-6623.

27 KRS § 532.020(d); KRS § 532.060(2)(a).

28 LSA-R.S. 15:574.4.

29 34-A M.R.S.A. § 5803(3).

30 MD Code, Correctional Services, § 7-301(d)(1)-(2).

31 M.G.L.A. 279 § 24; M.G.L.A. 127 § 133A.

32 *Com. v. Brown*, 466 Mass. 676, 690, 1 N.E.3d 259, 269 (2013) (recognizing parole eligibility for juvenile offenders at 15 to 25 years); M.G.L.A. 279 § 24 (post-2014 legislation, setting minimum for juveniles serving life imprisonment at 20, 25, or 30 years, depending on the nature of the crime).

33 M.C.L.A. 791.234 (7)(a).

34 M.S.A. § 243.05(a)(1)-(2).

35 Miss. Code Ann. § 47-7-3.

36 V.A.M.S. 217.692.

37 MCA 46-23-201(4).

38 Neb.Rev.St. § 28-105.02(1).

39 N.R.S. 200.030; NRS 213.1099(4).

40 N.R.S. 213.12135.

41 N.H. Rev. Stat. § 651-A:7.

42 N.J.S.A. 30:4-123.51(b).

43 N. M. S. A. 1978, § 31-21-10(A).

44 McKinney’s Penal Law § 70.00(3).

45 N.C.G.S.A. § 15A-1371.

46 *Id.*

47 N.C.G.S.A. § 15A-1340.19A.

48 NDCC, 12.1-32-01(1).

49 R.C. § 2967.13.

50 21 Okl.St. Ann. § 13.1; *Anderson v. State*, 2006 OK CR 6, ¶ 24, 130 P.3d 273, 282-83 (“The Oklahoma Pardon and Parole Board currently, and for the past several years, has provided that parole for any sentence over 45

years, including a life sentence, is calculated based upon a sentence of 45 years... In determining the application of the 85% Rule to a life sentence, we take into account the Oklahoma Pardon and Parole Board provision that parole for any sentence over 45 years, including a life sentence, is calculated based upon a sentence of 45 years”).

51 O.R.S. § 163.105; O.R.S. § 163.115.

52 61 Pa.C.S.A. § 6137(a)(1).

53 18 Pa.C.S.A. § 1102.1; 61 Pa.C.S.A. § 6137.

54 Gen.Laws 1956, § 13-8-13.

55 Code 1976 § 24-21-610.

56 SDCL § 22-7-8.1; SDCL § 22-6-1 (amended by 2016 South Dakota Laws Ch. 121 (SB 140)).

57 Tenn. Code Ann. Section 40-35-501(i)(1) is currently under legal scrutiny for its confusion with Section 40-35-501, as one suggests a minimum of 60 years is required and the other suggests a minimum of 25 years is required. As of late 2016, the case *Davis v. Tennessee Department of Correction* was pending before the Chancery Court for Davidson County and seeks a resolution to these competing sentences.

58 Tex. Gov’t Code Ann. § 508.145.

59 *See, e.g.*, U.C.A. 1953 § 76-3-203(1) (for first degree felonies, in general “for a term of not less than five years and which may be for life.”); U.C.A. 1953 § 76-5-203(3)(b) (15-year minimum for murder); U.C.A. 1953 § 77-27-9(2)(a); U.C.A. 1953 § 76-5-405 (5)(a) (3 years for attempted forcible sexual abuse); U.C.A. 1953 § 76-5-302 (4)(b)(ii) (6 years for aggravated kidnapping, sexual abuse of a child).

60 28 V.S.A. § 501 (“If the inmate’s sentence has no minimum term or a zero minimum term, the inmate shall be eligible for parole consideration within 12 months after commitment to a correctional facility”). The following crimes are subject to indeterminate sentences: lewd and lascivious conduct with a child, sexual assault, aggravated sexual assault, violation of sex offender registry. 13 V.S.A. § 3271.

61 13 V.S.A. § 3253.

62 13 V.S.A. § 2303.

63 VA Code Ann. § 53.1-151(C)-(D).

64 West’s RCWA 9.95.115.

65 W. Va. Code, § 62-12-13(c).

66 W.S.A. 973.014 (1g)(a)(1); W.S.A. 304.06 (1)(b).

67 W.S.1977 § 6-10-301(c).



# APPENDIX B

## IF A PERSON IS DENIED PAROLE (DISCRETIONARY RELEASE), WHEN WILL THEY BE REVIEWED AGAIN?

(see pages 28–30 of the report)

<b>Alabama</b>	■ After a minimum 18 months <sup>1</sup>
<b>Alaska</b>	■ After two years (if the applicant meets certain conditions) <sup>2</sup>
<b>Arizona</b>	■ Within one year <sup>3</sup>
<b>Arkansas</b>	■ Within two years <sup>4</sup>
<b>California</b>	■ 3, 5, 7, 10, or 15 years later, at the board's discretion <sup>5</sup>
<b>Colorado</b>	■ Within one to five years, depending on the crime <sup>6</sup>
<b>Connecticut</b>	■ No set statutory timeframe <sup>7</sup> ■ For juvenile offenders: at least two years later <sup>8</sup>
<b>Delaware</b>	■ Six months to one year later (depending on the applicant's good time release date) <sup>9</sup>
<b>District of Columbia</b>	■ 18 or 24 months later, depending on the length of the sentence <sup>10</sup>
<b>Florida</b>	■ Two or seven years later, depending on the crime <sup>11</sup>
<b>Georgia</b>	■ Within five years <sup>12</sup> ■ Individuals serving life sentences: up to eight years <sup>13</sup>
<b>Hawaii</b>	■ Within one year <sup>14</sup>
<b>Idaho</b>	■ No set statutory timeframe <sup>15</sup>
<b>Illinois</b>	■ One to five years later <sup>16</sup>
<b>Indiana</b>	■ One year later <sup>17</sup>
<b>Iowa</b>	■ In general, at least once a year <sup>18</sup>
<b>Kansas</b>	■ One to three years later, for most offenses ■ For class A or B felonies or off-grid felonies, three to 10 years later <sup>19</sup>
<b>Kentucky</b>	■ Two to 10 years later, depending on the crime <sup>20</sup> ■ For individuals serving life sentences: over 10 years <sup>21</sup>
<b>Louisiana</b>	■ Six months, one year, or two years later, depending on the crime <sup>22</sup>
<b>Maine</b>	■ Up to five years later (note this does not guarantee a rehearing) <sup>23</sup>
<b>Maryland</b>	■ No set statutory setoff (up to the board's discretion) <sup>24</sup> ■ A person who has committed a crime of violence, is over 65 years old, and has served at least 15 years of the sentence may petition for parole and reapply every two years after denial <sup>25</sup>
<b>Massachusetts</b>	■ One, two, or three years later, depending on the crime <sup>26</sup> ■ For individuals serving life sentences: up to five years later <sup>27</sup>
<b>Michigan</b>	■ No set statutory timeframe but generally every 24 months or, under some circumstances, every 60 months <sup>28</sup> ■ For individuals serving a life sentence: every five years <sup>29</sup>
<b>Minnesota</b>	■ No statutory setoff period (up to the board's discretion) <sup>30</sup>
<b>Mississippi</b>	■ No statutory setoff period (up to the board's discretion) <sup>31</sup>
<b>Missouri</b>	■ Generally, one to five years later <sup>32</sup>
<b>Montana</b>	■ Up to six years later, depending on the individual's discharge date <sup>33</sup>
<b>Nebraska</b>	■ One, five, or 10 years later, depending on the prisoner's parole eligibility date <sup>34</sup>
<b>Nevada</b>	■ Up to three or five years later, depending on the individual's sentence <sup>35</sup>
<b>New Hampshire</b>	■ No set statutory setoff (up to board's discretion) <sup>36</sup>
<b>New Jersey</b>	■ Eight to 27 months later, depending on the crime and individual's age <sup>37</sup>
<b>New Mexico</b>	■ Every two years after denial <sup>38</sup>
<b>New York</b>	■ Up to two years later <sup>39</sup>
<b>North Carolina</b>	■ One to three years later, depending on the crime <sup>40</sup>
<b>North Dakota</b>	■ No statutory timeframe (at the board's discretion) <sup>41</sup>
<b>Ohio</b>	■ Up to 10 years later <sup>42</sup>

<b>Oklahoma</b>	■ Generally, three years later <sup>43</sup>	<b>Virginia</b>	■ Up to three years later (for those serving life imprisonment, or if there are 10 years or more remaining on the sentence) <sup>53</sup>
<b>Oregon</b>	■ Two or 10 years later <sup>44</sup>	<b>Washington</b>	■ Up to 60 months later <sup>54</sup> ■ For juvenile offenders seeking early release: five years later <sup>55</sup>
<b>Pennsylvania</b>	■ One to five years <sup>45</sup>	<b>West Virginia</b>	■ Every year ■ For individuals serving life sentences: up to three years later <sup>56</sup>
<b>Rhode Island</b>	■ Up to six years later <sup>46</sup>	<b>Wisconsin</b>	■ No statutory timeframe (up to board's discretion) <sup>57</sup>
<b>South Carolina</b>	■ One year later or two years later, depending on the crime type <sup>47</sup>	<b>Wyoming</b>	■ Every year <sup>58</sup>
<b>South Dakota</b>	■ Eight months later <sup>48</sup>		
<b>Tennessee</b>	■ Up to 10 years later <sup>49</sup>		
<b>Texas</b>	■ One to 10 years later, depending on the crime <sup>50</sup>		
<b>Utah</b>	■ No set statutory timeframe (up to the board's discretion) ■ Limited "reconsideration" available if the board orders individual to serve entire sentence (if a life sentence, person can seek reconsideration 10 years after parole denial; for others, reconsideration available five years after denial) <sup>51</sup>		
<b>Vermont</b>	■ Every one to two years, depending on the sentence length <sup>52</sup>		

1 Alabama Board of Pardons and Paroles, Rules, Regulations, and Procedures, Art. 2(7), available at <http://www.pardons.state.al.us/Rules.aspx> ("If the Board has denied or revoked parole, the Committee may consider earlier scheduling, but such review shall not begin earlier than eighteen (18) months after the Board has denied or revoked parole. However, those cases previously denied or revoked by the Board and requiring victim notification must have a referral by the Executive Director, Chief Legal Counsel or his/her designee, pursuant to Section 5 of this Article.").

2 22 AAC 20.185(b)(3), (6). Note that a prisoner sentenced to a mandatory 99-year term is not eligible for discretionary parole. See AS § 33.16.090 (a)(1).

3 A.R.S. § 41-1604.09(G).

4 Ark. Admin. Code 158.00.1-2; Arkansas Parole Board Policy Manual, at 6 (Nov. 23, 2015), available at <http://www.pardons.state.al.us/Rules.aspx>.

5 California Penal Code 3041.5(b)(3).

6 State Board of Parole, Rules Governing the State Board of Parole and Parole Proceedings, 8 CCR 1511-1, 5.04(A)(2), available at <https://www.colorado.gov/pacific/paroleboard/node/8071>. Generally inmates must wait one year, but three years for sexual offenses and habitual criminal offense; five years for class 1 or 2 felonies classified as crimes of violence.

7 Connecticut Board of Pardons & Paroles, Parole FAQ's, <http://www.ct.gov/bopp/cwp/view.asp?a=4330&q=508202> (last visited May 25, 2016).

8 C.G.S.A. § 54-125a(f)(5).

9 11 Del.C. § 4347(a) ("If the hearing is denied or if the hearing is held and the parole denied the applicant and the Department shall be advised in writing by the Board of the earliest date, not sooner than six months for an applicant with a good-time release date of three years or less and not sooner than one year for an

applicant with a good-time release date of more than three years, upon which the applicant shall be eligible to again apply for a parole hearing in accordance within this section").

10 U.S. Code Prisoners and Parolees, §2.53-06, available at <https://www.justice.gov/sites/default/files/uspcc/legacy/2011/12/30/uspcc-manual111507.pdf> ("If the denial of mandatory parole results in a continuance for the prisoner that exceeds the applicable time period for an interim hearing (either every 18 or 24 months), the prisoner must be scheduled for a subsequent interim hearing.") See also U.S. Dep't of Justice, Frequently Asked Questions, <https://www.justice.gov/uspcc/frequently-asked-questions#q20> (last visited June 8, 2016).

11 West's F.S.A. § 947.174(1)(a)-(b).

12 Ga Comp. R. & Regs. 475-3-.05(6).

13 Ga Comp. R. & Regs. 475-3-.05(2).

14 Haw. Admin. Rules (HAR) § 23-700-31(b).

15 Idaho Admin. Code r. 50.01.01.250 ("The commission may release an offender to parole on or after the date of parole eligibility, or not at all.").

16 730 ILCS 5/3-3-5(f) ("If it denies parole or aftercare release it shall provide for a rehearing not less frequently than once every year, except that the Board may, after denying parole, schedule a rehearing no later than five years from the date of the parole denial, if the Board finds that it is not reasonable to expect that parole would be granted at a hearing prior to the scheduled rehearing date.").

17 220 IAC 1.1-2-3(j).

18 I.C.A. § 906.5. (except for individuals sentenced as adults with Class B felonies serving more than 25 years).

19 K.S.A 22-3717 (j)(1)(West), amended by Kansas Laws Ch. 100 (S.B. 325) ("If parole is denied for an inmate sentenced for a crime other than a class A or

class B felony or an off-grid felony, the board shall hold another parole hearing for the inmate not later than one year after the denial unless the board finds that it is not reasonable to expect that parole would be granted at a hearing if held in the next three years or during the interim period of a deferral. In such case, the board may defer subsequent parole hearings for up to three years but any such deferral by the board shall require the board to state the basis for its findings. If parole is denied for an inmate sentenced for a class A or class B felony or an off-grid felony, the board shall hold another parole hearing for the inmate not later than three years after the denial unless the board finds that it is not reasonable to expect that parole would be granted at a hearing if held in the next 10 years or during the interim period of a deferral. In such case, the board may defer subsequent parole hearings for up to 10 years, but any such deferral shall require the board to state the basis for its findings.").

20 KRS § 439.340 (14).

21 *Id.*

22 La. Admin Code. tit. 22, pt. XI, § 705(A)(3). For nonviolent crimes, the request for rehearing may be submitted every six months. For enumerated "crimes of violence" and "crimes against person," the initial request for rehearing can be made after one year, and then every two years after that. For enumerated sex offenses, murder in the first or second degree, and manslaughter, the rehearing request may only be submitted every two years.

23 03-208 CMR Ch. 1, § V ("In cases where the denial period imposed by the Board exceeds five years, the inmate may after five years, petition the Board for a case review to determine if a new eligibility hearing is warranted. In the petition, the inmate will set forth the original reasons for parole denial and an explanation of his present circumstances to show why the original reasons for denial are no

longer valid”).

24 COMAR 12.08.01.23. There is no right to another hearing if parole is denied. See Department of Public Safety & Correctional Services, Frequently Asked Questions, <http://www.dpscs.state.md.us/about/FAQmpc.shtml> (last visited May 25, 2016).

25 COMAR 12.08.01.23.

26 120 CMR 301.01. Generally, parole hearings occur every year. However, they occur every two years for “habitual criminals”; every three years for certain “sexually dangerous persons”; and five years for lifers.

27 *Id.*

28 Michigan Department of Corrections, Policy Directive 06.05.104, Parole Process, para. X (March 1, 2013), available at [http://www.michigan.gov/documents/corrections/06\\_05\\_104\\_417274\\_7.pdf](http://www.michigan.gov/documents/corrections/06_05_104_417274_7.pdf); see also *In re Parole of Roberts*, 232 Mich. App. 253, 257, 591 N.W.2d 259, 260 (1998) (“[U]nder the most current rule, the scheduling of subsequent parole hearings is discretionary.”).

29 Mich. Comp. Laws Ann. § 791.234 (8)(a)-(b).

30 See generally Minn. R. 2940.1800 (“The commissioner shall establish a projected release date for each inmate or continue the case to a future review date.”); see also *Wayne v. Fabian*, 2006 WL 1738247, \*3 (2006).

31 See generally Miss. Admin. Code 29-201:2.4.

32 14 Mo. Code of State Regulations 80-2.010 (6) (C), (E) (“the board may take any other action it deems appropriate.”).

33 Mont. Admin. R. 20.25.501(2)(d). See also Mont. Admin. R. 20.25.402(2)-(3) (If the prison discharge date is less than five years away, the offender’s case will be reviewed no less than annually. If the prison discharge date is between five and ten years away, the offender’s case will be reviewed no less than every three years. If the discharge date is ten or more years away, the offender will be scheduled for a hearing no less than every six years.).

34 Neb. Admin. R. & Regs. Tit. 270, Ch. 3, § 005.06. If the parole eligibility date (PED) is within five years, the record will be reviewed annually. If the PED is five to 10 years away, the record will be reviewed during the first year, and then annually for the last three years before PED. If the PED is 10 to 30 years away, the record will be reviewed every five years and annually for the last five years before PED. If the PED is more than 30 years away, the record will be reviewed at the 10- and 20-year marks, and then annually for the last five years before PED. Those with life sentences receive review every 10 years; then, if their sentences are commuted to be parole-eligible, they will be reviewed annually for the last five years before PED.

35 N.R.S. 213.142.

36 N.H. Code Admin. R. Par 203.02 (“All inmates shall receive a parole hearing within the 60-day period prior to their minimum parole date. If parole is denied at the initial hearing, the board shall advise the inmate, in writing via a copy of the minutes of the hearing, what the inmate shall be required to do to be granted another hearing.”).

37 N.J.A.C. 10A:71-3.21. However, the board may increase the statutory setoff period.

38 N. M. S. A. 1978, § 31-21-10(A). Discretionary parole does not apply to all inmates. See New Mexico Corrections Department Parole Board, <http://cd.nm>

[.gov/parole\\_board/parole.html](http://www.cd.nm.gov/parole_board/parole.html) (last visited May 26, 2016) (“Since 1979, the law requires that once the sentence has been served, an inmate must be placed on parole. Exceptions are inmates whose sentences were handed down prior to 1979, and inmates who have been convicted since 1980 of Murder in the First Degree; in those cases the parole board has discretion to grant or deny parole.”).

39 N.Y. Executive Law 259-I(2)(a)(i) – Procedures for the Conduct of the Work of the State Board of Parole.

40 Session Law 2015-228, Senate Bill 675 (August 25, 2015), available at <http://www.ncleg.net/Sessions/2015/Bills/Senate/PDF/S675v3.pdf>.

41 Inmate Handbook, at 68 (Feb. 2015), available at [http://www.nd.gov/docr/adult/docs/INMATE\\_HANDBOOK.pdf](http://www.nd.gov/docr/adult/docs/INMATE_HANDBOOK.pdf) (“Inmates denied parole will receive an Order Denying Parole. The order will reflect whether you will serve the remainder of your sentence without further parole consideration, deferral to another parole review date (month and year) or condition you must satisfy in order to receive another parole review.”).

42 OAC 5120:1-1-10(B)(2).

43 57 Okl. St. Ann. § 332.7(D). Note, however, that the parole website indicates 3-5 years for individuals convicted of violent crimes. See Oklahoma Pardon and Parole Board, Board Hearing Process, [https://www.ok.gov/ppb/Paroles\\_and\\_Revocations/Board\\_Hearing\\_Process/index.html](https://www.ok.gov/ppb/Paroles_and_Revocations/Board_Hearing_Process/index.html).

44 OAR 255-062-0006.

45 61 Pa.C.S.A. § 6139(a)(3)-(3.1). Five years for sentence of persons under age of 18 for murder, murder of an unborn child, and murder of a law enforcement officer.

46 Rhode Island Parole Board 2015 Guidelines, § 1.03, available at [http://www.pparoleboard.ri.gov/documents/Accepted%20changes\\_%202015%20Proposed%20PB%20Guidelines.pdf](http://www.pparoleboard.ri.gov/documents/Accepted%20changes_%202015%20Proposed%20PB%20Guidelines.pdf).

47 Code 1976 § 24-21-620; Code 1976 § 24-21-645 (D); see also South Carolina Board of Pardons and Paroles, Parole Manual, at 33 (Mar. 2016), available at <http://www.dppps.sc.gov/Parole-Pardon-Hearings/Parole-Board>.

48 SDCL § 24-15-10.

49 T. C. A. § 40-28-115, amended by 2016 Tennessee Laws Pub. Ch. 870 (H.B. 464).

50 Tex. Gov’t Code Ann. § 508.141(g)-(g-1) (West). For most crimes, the date will be one year after denial. For certain enumerated crimes, the date must be set for one to five years after denial. For life sentences for a capital felony, the date must be set between one and 10 years after denial.

51 U.A.C. R671-316(3).

52 28 V.S.A § 502(c); The Vermont Parole Board Manual, 8-9 (Oct. 5, 2015), available at <http://www.doc.state.vt.us/about/parole-board/pb-manual/view>. Annually for sentences with a maximum of 15 years, but every two years for sentences with a maximum greater than 15 years.

53 VA Code Ann. § 53.1-154.

54 WAC 381-90-050.

55 West’s RCWA 9.94A.730 (6).

56 W. Va. Code, § 62-12-13 (e).

57 Wis. Adm. Code s PAC 1.06(3) (“After initial consideration, the commission may schedule a subsequent review to determine if the inmate meets

the criteria for release.”).

58 Wyoming Board of Parole, Policy and Procedure Manual, February 2016, available at <https://drive.google.com/file/d/0B40JcCUHCGYGSU16M1hIZDNEdGM/view?pref=2&pli=1> (“Inmates will be scheduled annually after their first appearance unless they submit a written waiver, refuse to appear or be interviewed by telephone or by video conference or are serving a life sentence (see procedure J).”).

# APPENDIX C

## SAMPLE FOIA REQUEST



June 3, 2015

*SENT VIA FIRST CLASS MAIL*

Office of the Commissioner  
Attention: Public Information Officer  
550 West 7th Avenue, Suite 1800  
Anchorage, Alaska 99501-3570

**Re: ACLU Request for Public Records on Young Offenders and Parole**

To the Public Information Officer:

The national office of the American Civil Liberties Union (ACLU) is conducting nationwide research regarding individuals sentenced to prison in their youth, including their length of imprisonment, and their parole grant rate. This information is requested for a national report with a multi-state analysis regarding parole practices and prison demographics that can inform stakeholders and state legislators on criminal justice policy considerations. To that end, the ACLU is requesting information from every state regarding parole and individuals who were 25 years of age or younger at the time of their offense. We would appreciate your assistance in providing the information requested below.

Pursuant to the Alaska Public Records Act Stat. 40.25.110 *et seq.*, I request the following records from the Alaska Department of Corrections for the years 2010 to 2015, broken down by year and in electronic format unless only available in paper.

**To the Parole Board**

**A. Statistical Information:** We request records sufficient to demonstrate:

1. The number and percentage of prisoners receiving discretionary parole hearings who were:
  - a. White or Caucasian
  - b. Native American
  - c. Black or African-American

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- d. Hispanic or Latino
  - e. Asian
  - f. Other.
2. The number and percentage of prisoners granted parole who were:
    - a. White or Caucasian
    - b. Native American
    - c. Black or African-American
    - d. Hispanic or Latino
    - e. Asian
    - f. Other.
  3. The number and percentage of prisoners receiving discretionary parole hearings who are:
    - a. Male
    - b. Female
  4. The number and percentage of prisoners granted parole who are:
    - a. Male
    - b. Female
  5. The number of parole decisions for prisoners sentenced to "life imprisonment," and of those hearings:
    - a. The number of prisoners who were under 18 years of age at the time of their offense;
    - b. The number of prisoners who were 18-25 years of age at the time of their offense;
  6. For each of the categories in request #5 (a)-(b), the number of prisoners who were granted parole;
  7. The number of parole decisions and the grant rate for prisoners serving sentences of:
    - a. 50 years or longer
    - b. 40-50 years
    - c. 30-40 years
    - d. 20-30 years
  8. For request #7, the number and percentage of prisoners in each category per year who were, at the time of their offense,
    - a. under 18 years of age
    - b. 18-25 years of age





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9. The number and percentage of discretionary parole hearings that were initial parole consideration disposition, and
    - a. The number and percentage of these initial dispositions where parole was granted.
  10. Before becoming eligible for parole, the number and percentage of prisoners receiving initial parole dispositions who had served at least:
    - a. 20 years in prison;
    - b. 30 years in prison;
    - c. 40 years in prison.
  11. In cases where parole was granted, the number and percentage of prisoners represented by an attorney in the parole hearing;
  12. In cases where parole was denied, the number and percentage of prisoners represented by an attorney in the parole hearing;
  13. The number and percentage of parole decisions where the prisoner requested reconsideration or review;
  14. The number and percentage of cases where a parole board reviewed or reconsidered its parole determination and granted parole;
  15. The number and percentage of parole decisions where parole was denied in which the victim or victim's family submitted input against release;
  16. The number and percentage of parole decisions where parole was denied in which the victim or victim's family submitted input in favor of release;
  17. Regarding the length of time each parole hearing and the average, mode, and range of minutes per prisoner;
  18. The number and percentage of prisoners for whom parole was denied whose parole applications were subsequently set for review in:
    - a. One to two years;
    - b. Three to five years;
    - c. Six to Eight years;
    - d. More than eight years.
- B. Guidance and Policies:** We request any guidance, policies, memoranda or other documents provided to parole board staff regarding:
19. The prisoner's youth at the time of the offense, in particular how youth is considering in any risk assessment protocol;



- 20. Assistance for a prisoner with a disability during the parole hearing;
- 21. How to assess a prisoner's rehabilitation;
- 22. How to weigh different disciplinary infractions in prison.

**To the Department of Corrections regarding prison population:** We request records sufficient to demonstrate:

- 23. The number and percentage of prisoners serving parole-eligible sentences;
- 24. The number of prisoners serving life sentences in your state, and the number of those prisoners who were
  - a. Under 18 years of age at the time of their offense
  - b. 18-25 years of age at the time of their offense.
- 25. The number of prisoners currently serving sentences of
  - a. 50 years or longer;
  - b. 40-50 years;
  - c. 30-40 years;
  - d. 20-30 years;
- 26. For each subsection in request #25, the number of prisoners who were:
  - a. Under 18 years of age at the time of their offense;
  - b. 18-25 years of age at the time of their offense.
- 27. For requests # 24-26, the number and percentage of prisoners in each section who are:
  - a. White or Caucasian;
  - b. Native American;
  - c. Black or African-American;
  - d. Hispanic or Latino;
  - e. Asian;
  - f. Other.
- 28. The number and percentage of prisoners participating in:
  - a. Vocational training;
  - b. Academic education programming;
    - i. GED
    - ii. Other educational programming
  - c. Prison work assignment (institutional and/or prison industry jobs);
  - d. Substance abuse treatment;

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- i. Inpatient/residential treatment
  - ii. Substance abuse education program
  - e. Pre-release programs;
  - f. Sex offender programs.
29. The number and percentage of prisoners on a waiting list to participate in the programs listed in request 28 (a) – (f);
30. The average wait time for participation in the programs listed in request 28 (a) – (f).

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1-212-549-7500  
1-212-549-2601  
WWW.ACLU.ORG

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PRESIDENT

ANTHONY D. ROMERO  
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If this request could be restructured to minimize the demands on your department's resources, I would be happy to discuss alternatives with you. Similarly, should you have any questions regarding the information sought in this request, please call me directly at 212-519-7826.

The ACLU is a nationwide, nonprofit, and nonpartisan organization dedicated to protecting civil rights and civil liberties in the United States. It is the largest civil liberties organization in the country, with offices in the fifty states and over 500,000 members. The ACLU publishes newsletters, news briefings, right-to-know handbooks, and other materials that are widely disseminated to the public. These materials are made available to everyone—including tax-exempt organizations, non-profit groups, and law students and law faculty—for either no cost or for a nominal fee through its public education department. The ACLU also disseminates information through its high-traffic website, <http://www.aclu.org>, which specifically features information obtained through public records requests. See, e.g., <http://www.aclu.org/safefree/torture/torturefoia.html>; [http://www.aclu.org/patriot\\_foia/index.html](http://www.aclu.org/patriot_foia/index.html).

The information sought in this record request will be compiled in an ACLU research document on prisoners and parole and will be made available to the public through our website. Thus, because this request is on a matter of public concern and it is made on behalf of a non-profit organization, we request a fee waiver. If, however, such a waiver is denied, we will reimburse you for the reasonable cost of research. Please inform us in advance if a cost will be assessed.

Please furnish all applicable records to [gmehta@aclu.org](mailto:gmehta@aclu.org) and please do contact me should you have any questions regarding this request. We look forward to your response within ten (10) working days. Thank you for your prompt attention to this matter. Please furnish all documents to the address below.



Sincerely yours,

Sarah Mehta  
Human Rights Researcher  
American Civil Liberties Union  
125 Broad Street, 18<sup>th</sup> Floor  
New York, NY 10004  
[smehta@aclu.org](mailto:smehta@aclu.org)  
212.519.7826

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION  
NATIONAL OFFICE  
125 BROAD STREET  
18TH FL.  
NEW YORK, NY 10004-2440  
T/212.549.2500  
F/212.549.2451  
WWW.ACLU.ORG

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ANTHONY D. SOMERO  
EXECUTIVE DIRECTOR

# ENDNOTES

1. Interview with John Alexander, Lakeland Correctional Facility, Michigan, October 21, 2015.
2. Mr. Alexander's work progress and program participation reports, as well as lifer review reports, disciplinary records, and transfer orders, are all in the ACLU's possession.
3. COMPAS Narrative Risk Assessment Summary, John Alexander, January 12, 2009 (on file with the ACLU).
4. Interview with John Alexander, Lakeland Correctional Facility, Michigan, October 21, 2015.
5. Data analyzed and provided to the ACLU by Mishi Faruqee, Youth First Initiative, based on U.S. DEPARTMENT OF JUSTICE, BUREAU OF JUSTICE ASSISTANCE, JUVENILES IN ADULT PRISONS AND JAILS: A NATIONAL ASSESSMENT, at 38 (2000), available at <https://www.ncjrs.gov/pdffiles1/bja/182503.pdf> and U.S. DEPARTMENT OF JUSTICE, BUREAU OF JUSTICE STATISTICS, PRISONERS IN 2013, Appendix Table 18, at 20 (2014), available at <http://www.bjs.gov/content/pub/pdf/p13.pdf>.
6. Ashley Nellis, THE SENTENCING PROJECT, LIFE GOES ON: THE HISTORIC RISE IN LIFE SENTENCES IN AMERICA, 11-12 (2013), available at [http://sentencingproject.org/doc/publications/inc\\_Life%20Goes%20On%202013.pdf](http://sentencingproject.org/doc/publications/inc_Life%20Goes%20On%202013.pdf).
7. Arkansas Department of Corrections, Response to ACLU Request for Public Records, February 8, 2016 (data for 2015); California Department of Corrections and Rehabilitation, Response to ACLU Request for Public Records, June 30, 2016 (data for 2015); Connecticut Department of Corrections, Response to American Civil Liberties Union Public Records Request, July 2015 (data from 2015); Florida Commission on Offender Review, Response to Public Records Request from the American Civil Liberties Union, August 28, 2015 (data from 2015); Georgia Department of Corrections, Response to ACLU Request for Public Records, August 28, 2015 (data from 2015); Illinois Department of Corrections, Response to ACLU Public Records Request, August 10, 2015 (data from 2015); Indiana Department of Corrections, Response to ACLU Request for Public Records, November 13, 2015 (data from 2015); Michigan Department of Corrections, Response to ACLU Request for Public Records, June 3, 2016 (data from 2014); New York Department of Corrections and Community Supervision, FOIL Response to American Civil Liberties Union, May 16, 2016 (data as of January 2016); Pennsylvania Department of Corrections, Response to ACLU Request for Public Records, June 29, 2015 (data from 2015); South Carolina, South Carolina Department of Corrections, Response to Public Records Request from the American Civil Liberties Union, June 25, 2015 (data from FY 2015); Texas Department of Criminal Justice High Value Dataset, Analyzed by the ACLU (data as of July 2016).
8. Report prepared by Laurence Steinberg, re: *State of Hill v. Snyder*, 5:10-cv-14568-JCO-RSW; Blakemore, S-J. (2012). Imaging brain development: The adolescent brain. *Neuroimage*, 61, 397-406; Casey, B. J., Getz, S., & Galvan, A. (2008). The adolescent brain. *Developmental Review*, 28, 62-77; Luciana, M. (Ed.) (2010). Adolescent brain development: Current themes and future directions. *Brain and Cognition*, 72 (2), (whole issue).
9. *Miller v. Alabama*, 132 S.Ct. 2455, 2464 (2012).
10. *Montgomery v. Louisiana*, 136 S.Ct. 718, 726 (2016).
11. *Id.* at 736.
12. OHIO DEPARTMENT OF REHABILITATION AND CORRECTION, CALENDAR YEAR 2015 REPORT, <http://www.drc.ohio.gov/web/Reports/ParoleBoard/Calendar%20Year%202015%20Report.pdf>.
13. OHIO DEPARTMENT OF REHABILITATION AND CORRECTION, CALENDAR YEAR 2014 REPORT, <http://www.drc.ohio.gov/web/Reports/ParoleBoard/Calendar%20Year%202014%20Report.pdf>.
14. OHIO DEPARTMENT OF REHABILITATION AND CORRECTION, CALENDAR YEAR 2013 REPORT, available at <http://www.drc.ohio.gov/web/Reports/ParoleBoard/Calendar%20Year%202013%20Report.pdf>.
15. Florida Commission on Offender Review, Response to Public Records Request from the American Civil Liberties Union, August 28, 2015 (on file with the ACLU).
16. *Id.*
17. Sarah French Russell, *Review for Release: Juvenile Offenders, State Parole Practices, and the Eighth Amendment*, 89 INDIANA L. J. 373, 414 (2014).
18. Edward E. Rhine, Joan Petersilia, & Kevin R. Reitz, *Improving Parole Release in America*, 28 Fed. Sent'g Rep. 96 (2015); Jonathan Simon, *How Should We Punish Murder?* 94 MARQ. L. REV. 1241, 1283 (2011); Carolyn Turpin-Petrosino, *Are Limiting Enactments Effective? An Experimental Test of Decision Making In a Presumptive Parole State*, 27 J. CRIM. JUST. 321, 329 (1999).
19. See, e.g., **Alabama**, Ala. Code § 15-22-26(a)(6) ("The guidelines shall ... include, but not be limited to ... Severity of the underlying offense for which the prisoner was sentenced to incarceration."); **Alaska**, 22 AAC 20.165(c)(2) (board will consider "whether the applicant's release at this time is compatible with the welfare of society and whether it would depreciate the seriousness of the offense;"); **Idaho**, Idaho Admin. Code r. 50.01.01.250 (Factors include "Seriousness and aggravation and/or mitigation involved in the crime"); **Indiana**, Ind. Code Ann. § 11-13-3-3 (West) (parole criteria "must include the nature and circumstances of the crime"); **Iowa**, Iowa Code Ann. § 906.5 (West) ("board shall consider . . . the circumstances of the person's offense"); **Kansas**, Kan. Stat. Ann. § 22-3717(h), amended by 2016 Kansas Laws Ch. 100 (S.B. 325) (board shall consider "the circumstances of the offense of the inmate;"); **Kentucky**, Kentucky Parole Board, Policies and Procedures, KYPB10-01 (L), available at <http://justice.ky.gov/Documents/Parole%20Board/KYPB1001ParoleReleaseHearingseff2312.pdf> (Before recommending or denying parole, the Board shall apply one (1) or more of the following factors to an inmate: (1) Current offense - seriousness, violence involved, firearm used, life taken or death occurred during commission;); **Louisiana**, La. Admin Code. tit. 22, pt. XI, § 701 ("Nature and Circumstances of



the Crime”); **Maryland**, Md. Code Ann., Corr. Servs. § 7-305 (West), *amended by 2016 Maryland Laws Ch. 515 (S.B. 1005)* (Commission must consider “the circumstances surrounding the crime”); **Massachusetts**, Parole Decision Making: The Policy of the Massachusetts Parole Board (2006) at 18, *available at* <http://www.mass.gov/eopss/docs/pb/paroledecision.pdf> (“presence of particular factors in the governing offense” and “severity of governing offense” as two “significant factors” the Board considers); **Michigan**, Mich. Comp. Laws Ann. § 791.233e (“the department shall consider factors including, but not limited to, . . . The offense for which the prisoner is incarcerated at the time of parole consideration”); **Mississippi**, Mississippi Department of Corrections website, <http://www.mdoc.ms.gov/Community-Corrections/Pages/Parole.aspx> (“When considering whether to grant or deny parole the Board considers . . . Severity of offense”); **Montana**, Mont. Code Ann. § 46-23-208 (4) (West) (“In making its determination regarding nonmedical parole release, a hearing panel shall consider . . . the circumstances of the offense.”); **Nebraska** Neb. Rev.St. § 83-192 (Board review “shall include the circumstances of the offense”); **Nevada**, Nev. Rev. Stat. Ann. § 213.1099 (2)(c) (West) (“the Board shall consider . . . the seriousness of the offense”); **New Hampshire**, NH ADC PAR 301.03 (“the board shall consider. . . seriousness of the confining offense or other committed offenses, including the degree of violence or lack of concern for victims involved”); **New Jersey**, Parole Handbook at 47, *available at* <http://www.nj.gov/parole/docs/AdultParoleHandbook.pdf> (board will consider “facts and circumstances of the current offense”); **New Mexico**, N.M. Stat. Ann. § 31-21-10 (The board shall consider all pertinent information including “(a) the circumstances of the offense; (b) mitigating and aggravating circumstances; (c) whether a deadly weapon was used in the commission of the offense.”); **New York**, N.Y. Exec. Law § 259-i (McKinney) (“the seriousness of the offense” shall be considered); **North Carolina**, N.C.G.S.A. § 15A-1371(d) (The Board can refuse to grant parole if “release at that time would unduly depreciate the seriousness of his crime”); **North Dakota**, N.D.C.C. §12-59-05 (requiring the board to “consider all pertinent information . . . including the circumstances of the offense”); **Pennsylvania**, 61 PA.C.S.A. § 6135 (the board “shall consider . . . nature and circumstances of the offense committed.”); **Rhode Island**, 13 R.I. Gen. Laws Ann. § 13-8-14.1 (West) (The board considers “individualized factors, such as . . . the nature and circumstances of the offense or offenses for which the applicant was sentenced.”); **South Carolina**, South Carolina Board of Pardons and Paroles, Policy and Procedure, pp. 28, 33 *available at* <http://www.dppps.sc.gov/content/download/68278/1576111/file/Parole+Board+Manual+April+2015.pdf> (parole criteria include “the nature and seriousness of the offender’s offense, the circumstances surrounding that offense, and at the prisoner’s attitude toward it”); **Tennessee**, Tenn. Code Ann. § 40-35-503 (West) (parole will not be granted “if the board finds that . . . the release from custody at the time would depreciate the seriousness of the crime of which the defendant stands convicted or promote disrespect for the law.”); **Texas**, Tex. Gov’t Code Ann. § 508.144 (West) (“The board shall . . . base the guidelines on the seriousness of the offense and the likelihood of a favorable parole outcome”); **Vermont**, Vermont Parole Board Manual, at 18 *available at* <http://www.doc.state.vt.us/about/parole-board/pb-manual/view> (the Board “shall consider . . . seriousness of the crime committed”); **Virginia**, Virginia Parole Board Policy Manual at 3 <http://vpb.virginia.gov/files/1107/vpb-policy-manual.pdf> (Board considers the “facts and circumstances” of the present offense); **Washington**, Washington State, Department of Corrections Indeterminate

Sentence Review Board, “Frequently Asked Questions,” *available at* <http://www.doc.wa.gov/isrb/faq.asp#14> (“Any aggravating or mitigating factors or circumstances relative to the crime of conviction.”) (last accessed June 17, 2016); **West Virginia**, W. Va. Code St. R. §92-1-6 (“the Panel shall consider . . . evidence based factors such as offense severity”); and **Wisconsin**, Wis. Adm. Code s PAC 1.06 (WI ADC s PAC 1.06) (parole criteria includes whether “The inmate has served sufficient time so that release would not depreciate the seriousness of the offense.”). In Missouri, the statute and regulations do not specifically mandate the offense as a factor in decision making but do state that the parole hearing is an opportunity for the prisoner to explain the offense and pertinent circumstances. 14 Mo. Code Regs. Ann. tit. 14, § 80-2.010. While the Missouri board has guidelines for the number of years a person should generally spend based on their offense, its own guidelines permit it to go beyond those guidelines by examining “total offense behavior as an aggravating factor.” State of Missouri, Board of Probation and Parole, PROCEDURES GOVERNING THE GRANTING OF PAROLES AND CONDITIONAL RELEASE, at 6 *available at* <http://doc.mo.gov/Documents/prob/Blue-Book.pdf>.

20. Susan C. Kinnevy & Joel Caplan, CENTER FOR RESEARCH ON YOUTH AND SOCIAL POLICY, FINDINGS FROM THE APAI INTERNATIONAL SURVEY OF RELEASING AUTHORITIES at 38 (2008).
21. Defendant’s Sentencing Memorandum, State of Iowa v. Christine Marie Lockheart, No. OTOC219148, 7 (on file with the ACLU); Interview with Christine Lockheart, Mitchelville, Iowa, February 9, 2016.
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23. New York City Department of Probation, Pre-Sentence Report, Richard Rivera (on file with the ACLU); Interview with Richard Rivera, Otisville Correctional Facility, New York, November 16, 2015.
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imprisonment to be served before the prisoner shall become eligible for parole.”).

30. *Williamson v. Hawai'i Paroling Authority*, 97 Hawai'i 183 (2001).

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32. *Greenholtz v. Inmates of Nebraska Penal and Correctional Complex*, 442 U.S. 1 (1979).

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35. TEXAS BOARD OF PARDONS AND PAROLES, ANNUAL STATISTICAL REPORT FY 2014, available at <http://www.tdcj.state.tx.us/bpp/publications/FY2014%20BPP%20StatisticalReport.pdf>

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37. *See In re Tucker*, 5 Cal. 3d 171, 177, 486 P.2d 657, 659 (Cal. 1971) (parole hearings are not in the nature of a judicial proceeding); *State, ex rel. Bd. of Parole Comm'rs v. Morrow*, 127 Nev. Adv. Op. 21, 255 P.3d 224, 230 (Nev. 2011) (declining to view discretionary parole proceedings as even quasi-judicial in nature). *But see Taggart v. State*, 118 Wash. 2d 195, 213, 822 P.2d 243, 252 (Wash. 1992) (“parole officers are entitled to quasi-judicial immunity only for those functions they perform that are an integral part of a judicial or quasi-judicial proceeding”).

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40. Ga. Code Ann. §42-9-53(b)(1).

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44. Mich. Comp. Laws Ann. § 791.235 (West) (“[I]f, after evaluating a prisoner according to the parole guidelines, the parole board determines that the prisoner has a low probability of being paroled and the parole board therefore does not intend to parole the prisoner, the parole board is not required to interview the prisoner before denying parole to the prisoner.”); Mich. Comp. Laws Ann. § 791.234 (8)(a)-(b).

45. Interview with Patrick Cole, Cotton Correctional Facility, Michigan, October 23, 2015.

46. Interview with John Alexander, Lakeland Correctional Facility, Michigan, October 21, 2015.

47. Cal. Penal Code 3041.5(b)(3).

48. **Kansas**, Kan. Stat. Ann. § 22-3717(j)(1) (West) (“If parole is denied for an inmate sentenced for a class A or class B felony or an off-grid felony, the board shall hold another parole hearing for the inmate not later than three years after the denial unless the board finds that it is not reasonable to expect that parole would be granted at a hearing if held in the next 10 years or during the interim period of a deferral. In such case, the board may defer subsequent parole hearings for up to 10 years, but any such deferral shall require the board to

state the basis for its findings.”); **Ohio**, Ohio Admin. Code 5120:1-1-10(B) (“In any case in which parole is denied at an inmate’s regularly constituted parole hearing, the parole board shall . . . Set the time for a subsequent hearing, which shall not be more than ten years after the date of the hearing.”); **Oregon**, OAR 255-062-0006(3) (“Upon finding that it is not reasonable to expect that the inmate would be granted a change in the terms of confinement, or not reasonable to expect that the inmate would be granted a firm release date, following two years, the Board will deliberate and select a deferral date of between two and 10 years from the date of the decision, or from the date of the inmate’s current projected parole release date or current parole consideration date.”); **Tennessee**, 2016 Tennessee Laws Pub. Ch. 870 (H.B. 464) (“When declining, revoking, or rescinding parole, the board is authorized to set the period of time before the prisoner receives another hearing on the same offense or offenses. However, no period set by the board shall exceed ten (10) years.”); **Texas**, Tex. Gov’t Code Ann. § 508.141(g) (West) (“The board shall adopt a policy establishing the date on which the board may reconsider for release an inmate who has previously been denied release. . . . The month designated under Subsection (g)(1) by the parole panel that denied release must begin after the first anniversary of the date of the denial and end before the fifth anniversary of the date of the denial, unless the inmate is serving a sentence for an offense under Section 22.021, Penal Code, or a life sentence for a capital felony, in which event the designated month must begin after the first anniversary of the date of the denial and end before the 10th anniversary of the date of the denial.”).

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51. Consideration of the Status of Brian Keith Stack, Before the Board of Pardons and Parole of the State of Utah, July 16, 2007 (on file with the ACLU).

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256. John Myers, *Los Angeles Times*, "Gov. Brown to seek November ballot initiative to relax mandatory prison sentences," Jan. 27, 2016, available at <http://www.latimes.com/politics/la-pol-sac-jerry-brown-sentencing-reform-ballot-20160127-story.html>; Huffington Post, "New Initiative From Governor Jerry Brown Could Reform Sentencing In California, Cut Prison Terms," Feb. 5, 2016, available at [http://www.huffingtonpost.com/the-conversation-us/new-initiative-from-gover\\_b\\_9169620.html](http://www.huffingtonpost.com/the-conversation-us/new-initiative-from-gover_b_9169620.html).

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258. USSC, *Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines* 15 (2004); Christopher Lowenkamp & Edward Latessa, *Understanding the Risk Principle: How and Why Correctional Interventions Can Harm Low-Risk Offenders*, TOPICS IN COMMUNITY CORRECTIONS 3 (2004).

259. Russell, *Review for Release* at 414.

260. Jonathan Simon, *How Should We Punish Murder?* 94 MARQUETTE L. REV. 1241, 1249 (2011).

261. In New York and Massachusetts, parole board salaries are over \$100,000. Beth Schwartzapfel, *Marshall Project & The Washington Post*, "How parole boards keep prisoners in the dark and behind bars," July 11, 2015, available at [https://www.washingtonpost.com/national/the-power-and-politics-of-parole-boards/2015/07/10/49c1844e-1f71-11e5-84d5-eb37ee8ea61\\_story.html](https://www.washingtonpost.com/national/the-power-and-politics-of-parole-boards/2015/07/10/49c1844e-1f71-11e5-84d5-eb37ee8ea61_story.html); Pew Charitable Trusts, "Massachusetts Killing Shines Light on State Parole Boards," Feb. 2, 2011, available at <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2011/02/02/massachusetts-killing-shines-light-on-state-parole-boards>. In Colorado, for example, parole board members are paid \$92,196. Colorado Department of Corrections, Parole Board Member, <https://www.colorado.gov/pacific/sites/default/files/Parole%20Board%20Member%20Job%20Description.pdf>.

262. Schwartzapfel, *supra* note 28.

263. Schwartzapfel, *supra* note 28; see generally Edward E. Rhine, Joan Petersilia, & Kevin R. Reitz, *Improving Parole Release in America*, 28 FED. SENT'G REP. 96 (2015) (recommending that parole members have either a law degree or a college degree in criminology, cor-

rections or a related field, as well as at least five years of experience in the criminal justice field).

264. Schwartzapfel, *supra* note 264.

265. NEW YORK STATE STANDING COMMITTEE ON CORRECTION, 2014 ANNUAL REPORT 4 (2014), available at <http://assembly.state.ny.us/comm/Correct/2014Annual/index.pdf>.

266. Alison Leigh Cowan, *The New York Times*, "Ex-Inmate on Connecticut Parole Board Brings an Insider's View to Hearings," Dec. 19, 2014, available at [http://www.nytimes.com/2014/12/20/nyregion/ex-inmate-on-connecticut-parole-board-brings-an-insiders-view-to-hearings.html?\\_r=0](http://www.nytimes.com/2014/12/20/nyregion/ex-inmate-on-connecticut-parole-board-brings-an-insiders-view-to-hearings.html?_r=0).

267. Interview with Stephen Smith, Otisville Correctional Facility, New York, November 16, 2015.

268. Interview with Huwe Burton, New York, New York, August 16, 2015.

269. *Greenholtz v. Inmates of Nebraska Penal and Correctional Complex*, 442 U.S. 1 (1979).

270. *Id.* at 7-8.

271. Russell, *supra* note 17, at 399; Cohen, *supra* note 28, at 1077; Mary West-Smith & Eric Poole, *Denial of Parole: An Inmate Perspective*, 64-DEC FED. PROBATION 3 (2000).

272. Susan C. Kinvey & Joel Caplan, CENTER FOR RESEARCH ON YOUTH AND SOCIAL POLICY, FINDINGS FROM THE APAI INTERNATIONAL SURVEY OF RELEASING AUTHORITIES, 37 (2008).

273. Russell, *supra* note 17, at 399; Cohen, *supra* note 28, at 1077; Mary West-Smith & Eric Poole, *Denial of Parole: An Inmate Perspective*, 64-DEC FED. PROBATION 3 (2000).

274. Ball, *supra* note 65, at 398.

275. *Inmates of Nebraska Penal & Corr. Complex v. Greenholtz*, 576 F.2d 1274, 1277 (8th Cir. 1978) *rev'd*, 442 U.S. 1, 99 S. Ct. 2100, 60 L. Ed. 2d 668 (1979).

276. *Greenholtz v. Inmates of Nebraska Penal and Correctional Complex*, 442 U.S. 1, 15 (1979).

277. See, e.g., *Ellis v. D.C.*, 84 F.3d 1413 (D.C. Cir. 1996); *Powell v. Weiss*, 757 F.3d 338, 345 (3d Cir. 2014); *Craft v. Texas Bd. of Pardons & Paroles*, 550 F.2d 1054, 1056 (5th Cir. 1977); *Sweeton v. Brown*, 27 F.3d 1162 (6th Cir. 1994) (en banc); *Sultenfuss v. Snow*, 35 F.3d 1494 (11th Cir. 1994). *But see Green v. McCall*, 822 F.2d 284, 289 (2d Cir. 1987) ("[B]oth the concreteness of the parole grantee's liberty expectation and the objective nature of the findings that must be made before that expectation may be eliminated are characteristics that, under *Greenholtz*, must be viewed as supporting the existence of a protectable liberty interest. We conclude, therefore, that *Greenholtz* does not undermine the liberty interest conclusions of *Drayton*.").

278. *Rummel v. Estelle*, 445 U.S. 263, 293 (1980) ("If petitioner attains sufficient good-time credits, he may be eligible for parole within 10 or 12 years after he begins serving his life sentence. But petitioner will have no right to early release; he will merely be eligible for parole. And parole is simply an act of executive grace."); *Hiatt v. Compagna*, 178 F.2d 42, 45 (5th Cir. 1949) *aff'd*, 340 U.S. 880 (1950) (parole "is a legislative grace"); *Lupo v. Norton*, 371 F. Supp. 156, 160 (D. Conn. 1974) ("parole has been considered a matter of grace"); *Mosley v. State*, 150 So. 3d 127, 136 (Miss. Ct. App. 2014) *cert. dismissed*, 158 So. 3d 1153 (Miss. 2015) ("parole is a matter of legislative grace"); *Layton City v. Stevenson*, 337 P.3d 242, 251-52 (Utah 2014) ("[p]arole and probation are essentially matters of grace"); *Biederman v. Com.*, 434 S.W.3d 40, 46 (Ky. 2014) ("parole is a matter of legislative grace or executive clemency."); *Stockmeier v. State, Bd. of Parole Comm'rs*, 127 Nev. Adv. Op. 19, 255 P.3d 209, 215 (2011) ("Parole is an act

- of grace”); *Com. v. Robinson*, 2010 PA Super 192, 7 A.3d 868, 873 (2010) (“parole is an act of grace”); *Knapp v. Nelson*, 30 Kan. App. 2d 905, 906, 50 P.3d 1063, 1064 (2002) (“parole is a privilege, a matter of grace exercised by the KPB”).
279. Bierschbach, *supra* note 39, at 1752.
280. HRS § 706-669(1) (“When a person has been sentenced to an indeterminate or an extended term of imprisonment, the Hawaii paroling authority shall . . . make an order fixing the minimum term of imprisonment to be served before the prisoner shall become eligible for parole.”).
281. See HRS § 706-660.
282. *Williamson v. Hawai’i Paroling Authority*, 97 Hawai’i 183 (2001).
283. Utah’s prison population has grown 18 percent since 2004, six times faster than the national average has, and the primary reason was the increased time that offenders remained behind bars. Moreover, the majority of Utah’s prison population is violent and sex offenders. See UTAH COMMISSION ON CRIMINAL AND JUVENILE JUSTICE, JUSTICE REINVESTMENT REPORT 4, 7, 10 (2015); THE PEW CHARITABLE TRUSTS, UTAH’S 2015 CRIMINAL JUSTICE REFORMS 4 (June, 2015).
284. Utah Courts, “Criminal Penalties,” available at <https://www.utcourts.gov/howto/criminallaw/penalties.asp> (a penalty can be enhanced upon finding one or more of the aggravating factors).
285. *Id.*
286. <http://bop.utah.gov/index.php/component/content/category/90-bop-about-the-board-category> (“Once a person is sentenced to prison for the commission of any felony or Class A misdemeanor, jurisdiction over the indeterminate prison sentence, custody status and possible release become the province of the Board of Pardons and Parole.”). See also Linda Thomson & Amy Joi Bryson, *Deseret Morning News, Prison Time Really Up To The Parole Board* (August 11, 2014), <http://www.deseretnews.com/article/595083324/Prison-time-really-up-to-parole-board.html?pg=all>.
287. Utah Board of Pardons and Parole, Jordan Vance Calliham, May 2, 2000 (on file with the ACLU).
288. American Law Institute, Model Penal Code Draft 2, Appendix B Reporters’ Study: *The Question of Parole-Release Authority* 125 (2011).
289. Justice Center, Council of State Governments, *Applying a Justice Reinvestment Approach to Improve Michigan’s Sentencing System: Summary Report of Analyses and Policy Options* at 12 (May 2014).
290. See *Foster v. Booker*, 595 F.3d 353, 360 (6th Cir. 2010); *Foster-Bey v. Rubitschun*, No. 05-71318, 2005 WL 2010181 (E.D. Mich. Aug. 18, 2005).
291. *Id.*
292. CITIZENS ALLIANCE ON PRISONS AND PUBLIC SPENDING (CAPPS), 10,000 FEWER MICHIGAN PRISONERS: STRATEGIES TO REACH THE GOAL, 8 (2015), available at: <http://2015capps.capps-mi.org/wp-content/uploads/2015/06/CAPPS-report-10000-fewer-prisoners.pdf>.
293. State Bar of Michigan, *What Should “Parolable Life” Mean? Judges Respond to the Controversy*, at 18 (2002), available at <http://www.capps-mi.org/wp-content/uploads/2013/03/5.9-What-should-parolable-life-mean-Judicial-Survey-2002.pdf>. In 2005, several Michigan prisoners who had been sentenced before the board’s “life means life” policy went into effect brought suit in federal court, arguing it violated their rights under the *ex post facto* clause of the U.S. Constitution. *Foster-Bey v. Rubitschun*, 2005 WL 2010181 (E.D. Mich. Aug. 18, 2005).
294. *Foster v. Booker*, 595 F.3d 353 (6th Cir. 2010).
295. Model Penal Code: sentencing (Tentative Draft No. 2, 2011) Section 6.11A cmt.
296. N.Y. Exec. Law § 259-i(2)(a) (McKinney).
297. Tex. Gov’t Code Ann. § 508.141 (West).
298. **Kansas**, Kan. Stat. Ann. § 22-3717(j)(1) (West) (“If parole is denied for an inmate sentenced for a class A or class B felony or an off-grid felony, the board shall hold another parole hearing for the inmate not later than three years after the denial unless the board finds that it is not reasonable to expect that parole would be granted at a hearing if held in the next 10 years or during the interim period of a deferral. In such case, the board may defer subsequent parole hearings for up to 10 years, but any such deferral shall require the board to state the basis for its findings.”); **Ohio**, Ohio Admin. Code 5120:1-1-10(B) (“In any case in which parole is denied at a[n] inmate’s regularly constituted parole hearing, the parole board shall . . . Set the time for a subsequent hearing, which shall not be more than ten years after the date of the hearing.”); **Oregon**, OAR 255-062-0006(3) (“Upon finding that it is not reasonable to expect that the inmate would be granted a change in the terms of confinement, or not reasonable to expect that the inmate would be granted a firm release date, following two years, the Board will deliberate and select a deferral date of between two and 10 years from the date of the decision, or from the date of the inmate’s current projected parole release date or current parole consideration date.”); **Tennessee**, 2016 Tennessee Laws Pub. Ch. 870 (H.B. 464) (“When declining, revoking, or rescinding parole, the board is authorized to set the period of time before the prisoner receives another hearing on the same offense or offenses. However, no period set by the board shall exceed ten (10) years.”); **Texas**, Tex. Gov’t Code Ann. § 508.141(g) (West) (“The board shall adopt a policy establishing the date on which the board may reconsider for release an inmate who has previously been denied release. . . . The month designated under Subsection (g)(1) by the parole panel that denied release must begin after the first anniversary of the date of the denial and end before the fifth anniversary of the date of the denial, unless the inmate is serving a sentence for an offense under Section 22.021, Penal Code, or a life sentence for a capital felony, in which event the designated month must begin after the first anniversary of the date of the denial and end before the 10th anniversary of the date of the denial.”).
299. O.C.G.A. § 42-9-43(d)(1).
300. Georgia Parole Board Website: [https://pap.georgia.gov/frequently-asked-questions-0#field\\_related\\_links-103-5](https://pap.georgia.gov/frequently-asked-questions-0#field_related_links-103-5).
301. Cal. Penal Code § 3041.5(b)(3).
302. STANFORD LAW SCHOOL, STANFORD CRIMINAL JUSTICE CENTER, LIFE IN LIMBO: AN EXAMINATION OF PAROLE RELEASE FOR PRISONERS SERVING LIFE SENTENCES WITH THE POSSIBILITY OF PAROLE IN CALIFORNIA, at 13 (2011).
303. *Id.*
304. *Williamson v. Hawai’i Paroling Authority*, 97 Hawai’i 183 (2001).
305. Parole Board and Sex Offender Community Notification Unit, “Parole Process for Victims” <http://www.pparoleboard.ri.gov/parole/> (last visited March 11, 2016).
306. <http://bop.utah.gov/index.php/component/content/category/90-bop-about-the-board-category> (“Once a person is sentenced to prison for the commission of any felony or Class A misdemeanor, jurisdiction over the indeterminate prison sentence, custody status and



possible release become the province of the Board of Pardons and Parole.”). See also Linda Thomson & Amy Joi Bryson, *Deseret Morning News*, *Prison Time Really Up To The Parole Board* (August 11, 2014), <http://www.deseretnews.com/article/595083324/Prison-time-really-up-to-parole-board.html?pg=all>.

307. Letter from Steven Parkhurst to ACLU, September 2015 (on file with the ACLU).

308. Interview with Steven Parkhurst, Medium John J. Moran Facility, Rhode Island, September 17, 2015.

309. Letter from Steven Parkhurst to ACLU, September 2015 (on file with the ACLU).

310. Letter to Parole Board from Jennifer Lebrun (on file with the ACLU); Letter to Parole Board from Carl Parkhurst, June 23, 2014 (on file with the ACLU); Letter to Parole Board from Deborah Gernt, June 24, 2014 (on file with the ACLU).

311. Certificates and transcripts on file with the ACLU.

312. Parkhurst Parole Packet: Letter from Jennifer Kensky to Steven Parkhurst (on file with the ACLU); Interview with Steven Parkhurst, ACI, Rhode Island, September 2015.

313. Parkhurst Parole Packet Certificates, Letter from Kathleen Carty, Vantage Point Domestic Violence Prevention Program, March 28, 2014; CON\* MIC City certificates and letter from Rhode Island Department of Corrections to Steven Parkhurst, April 25, 2008 (on file with the ACLU).

314. R.I. Department of Corrections, Parole Board Results, Parole Hearing Minutes, August 20, 2014.

315. Letter from Steven Parkhurst to ACLU, September 2015 (on file with the ACLU).

316. Letters and certificates on file with the ACLU.

317. Consideration of the Status of Brian Keith Stack, Before the Board of Pardons and Parole of the State of Utah, July 16, 2007 (on file with the ACLU).

318. Edward E. Rhine, Joan Petersilia, & Kevin R. Reitz, *Improving Parole Release in America*, 28 Fed. Sent’g Rep. 96, 97 (2015).

319. See, e.g., **Delaware**, Del. Admin. Code PAR 16; **Florida**, Fla. Stat. Ann. § 947.173 (West); **Idaho**, Idaho Admin. Code r. 50.01.01.500; **Kansas**, K.A.R. 45-200-2(b); **Massachusetts**, 120 Mass. Code Regs. 304.02; **Missouri**, Mo. Ann. Stat. § 217.670 (West); **Tennessee**, Tenn. Code Ann. § 40-28-105(11) (West); **Texas**, 37 Tex. Admin. Code § 145.17.

320. Texas Board of Pardons and Paroles, BPP-POL.145.206, Special Review—Release Denied, Jan. 29, 2009, available at [https://www.tdcj.state.tx.us/bpp/policies\\_directives/POL%20145.206%20Special%20Review.pdf](https://www.tdcj.state.tx.us/bpp/policies_directives/POL%20145.206%20Special%20Review.pdf).

321. See, e.g., **Mississippi**, *Mangum v. Mississippi Parole Bd.*, 76 So. 3d 762, 768-69 (Miss. Ct. App. 2011); **Ohio**, *Woodson v. Ohio Adult Parole Auth.*, 2002-Ohio-6630, ¶ 9, 2002 WL 31722278 (Ohio App. Dec. 5, 2002); **Vermont**, Vermont Parole Board Manual, “Review of Parole Board Decisions and Reconsideration of Previous Decisions, at 40, available at <http://www.doc.state.vt.us/about/parole-board/pb-manual>; **Virginia**, *Johnson v. Angelone*, 42 Va. Cir. 6 (March 7, 1996 Va. Cir.Ct.); and **West Virginia**, W. Va. Code R. 92-2-16.

322. See, e.g., *Holland v. Rizzo*, 872 N.E.2d 659, 663 (Ind. Ct.App.2007) (“The parole board has almost absolute discretion in carrying out its duties, and it is not subject to the supervision or control of the courts.”); *Mangum v. Mississippi Parole Bd.*, 76 So. 3d 762, 768 (Miss. Ct. App. 2011) (“In Mississippi, the Board is given absolute discretion to determine who is entitled to parole by statute.”)

(internal citations omitted); *Woodson v. Ohio Adult Parole Auth.*, 2002-Ohio-6630, ¶ 9, 2002 WL 31722278 (Ohio App. Dec. 5, 2002) (“Under R.C. 2967.03, the parole determination lies within the absolute discretion of the OAPA.”); *Johnson v. Angelone*, 42 Va. Cir. 6 (March 7, 1996 Va.Cir.Ct.) (citing *Jackson v. Shields*, 438 F.Supp. 183 (W.D.Va.1977)).

323. Bierschbach, *supra* note 39, at 1752.

324. Cohen, *supra* note 28, at 1077.

325. *Sultenfuss v. Snow*, 35 F.3d 1494 (11th Cir. 1994).

326. *Sultenfuss* at 1502.

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329. Florida Commission on Offender Review, Response to Public Records Request from the American Civil Liberties Union, August 28, 2015 (on file with the ACLU).

330. *Id.*

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333. OHIO DEPARTMENT OF REHABILITATION AND CORRECTION, CALENDAR YEAR 2015 REPORT, <http://www.drc.ohio.gov/web/Reports/ParoleBoard/Calendar%20Year%202015%20Report.pdf>.

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377. Annitto, *supra* note 365, at 162.
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448. *Id.*
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450. Interview with Andre Pea, Coffield Unit, Texas, December 21, 2015.
451. Interview with Ronmel Martinez, by telephone, February 19, 2016.
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461. **Alaska**, AS § 33.16.100 (Board can authorize release "if it determines a reasonable probability exists that (1) the prisoner will live and remain at liberty without violating any laws or conditions imposed by the board; (2) the prisoner's rehabilitation and reintegration into society will be furthered by release on parole; (3) the prisoner will not pose a threat of harm to the public if released on parole; and (4)

- release of the prisoner on parole would not diminish the seriousness of the crime.”); **Arizona**, A.R.S. § 31-412 (Board may authorize release on parole if “it appears to the board, in its sole discretion, that there is a substantial probability that the applicant will remain at liberty without violating the law and that the release is in the best interests of the state.”); **Connecticut**, Conn. Gen. Stat. Ann. § 54-125a (parole authorized where “there is reasonable probability that such person will live and remain at liberty without violating the law,” and “release is not incompatible with the welfare of society.”); **Illinois**, 730 Ill. Comp. Stat. Ann. 5/3-3-5 (c) (“The Board shall not parole or release a person eligible for parole or aftercare release if it determines that: (1) there is a substantial risk that he or she will not conform to reasonable conditions of parole or aftercare release; or (2) his or her release at that time would deprecate the seriousness of his or her offense or promote disrespect for the law; or (3) his or her release would have a substantially adverse effect on institutional discipline.”); **New Hampshire**, N.H. Rev. Stat. Ann. § 651-A:6 (prisoner may be released on parole where board finds a “reasonable probability that the prisoner will remain at liberty without violating the law and will conduct himself or herself as a good citizen.”); **Washington**, Wash. Rev. Code Ann. § 9.95.009 (West) (the Board, in making its decision, must give “public safety consideration the highest priority”).
462. *O’Kelley v. Snow*, 53 F.3d 319, 321-22 (11th Cir. 1995), *citing Slocum v. Georgia State Board of Pardons and Paroles*, 678 F.2d 940, 942 (11th Cir. 1982).
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465. Interview with Kenneth Barnett, Handlon Correctional Facility, Michigan, October 22, 2015.
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467. Texas Board of Pardons and Paroles, Frequently Asked Questions, Parole Review Results (updated 10/20/2015), *available at* <http://www.tdcj.state.tx.us/bpp/faq/ParoleReviewResults.html> (last visited March 30, 2016).
468. *Johnson v. Wells*, 566 F.2d 1016, 1017 (5th Cir. 1978).
469. Ga. Code Ann. §42-9-53(b)(1); Ga Comp. R. & Regs. 475-3-.09.
470. Southern Center for Human Rights, Parole Handbook, at 5 (2004), *available at* [https://www.schr.org/files/parole\\_handbook.pdf](https://www.schr.org/files/parole_handbook.pdf).
471. Ky. Rev. Stat. Ann. § 439.510 (West).
472. North Carolina, Department of Public Safety, Parole Process, *available at* <https://www.ncdps.gov/About-DPS/Boards-Commissions/Post-Release-Supervision-Parole-Commission/Parole-Process> (last accessed on June 17, 2016).
473. M.C.L.A. 15.231 (“It is the public policy of this state that all persons, except those persons incarcerated in state or local correctional facilities, are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees, consistent with this Act.”)
474. Summary Statement of Calendar Conference, *People v. John Alexander*, Judge Michael F. Sapala, September 26, 1980 (on file with the ACLU).
475. Mr. Alexander’s work progress and program participation reports, as well as lifer review reports, disciplinary records, and transfer orders, are all in the ACLU’s possession.
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478. Interview with Earl McBride, Ramsey Unit 1, Texas, December 17, 2015.
479. Interview with Earl McBride, Ramsey Unit 1, Texas, December 17, 2015 (certificates from colleges and other community educational programming on file with the ACLU).
480. Texas Department of Criminal Justice, Earl McBride Disciplinary Records (printed May 2015) (on file with the ACLU).
481. Parole decisions for Earl McBride received through ACLU FOIA (on file with the ACLU); Interview with Earl McBride, Ramsey Unit 1, Texas, December 17, 2015.
482. Letter from Terry Foster, Brazoria County Community Supervision and Corrections Department from Sgt. L. Gonzales Re: Prison for a Day Program, May 7, 2015 (on file with the ACLU); Inter-Department Communication, Texas Department of Criminal Justice (on file with the ACLU); Letter from Jerry Sealey, Nailor Industries, Re: Earl McBride, December 17, 2014 (on file with the ACLU); Interview with Earl McBride, Ramsey Unit 1, Texas, December 17, 2015.
483. Interview with Earl McBride, Ramsey Unit 1, Texas, December 17, 2015.
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485. Texas Department of Criminal Justice, Letter to Caroline McBride, May 22, 2014; Ex parte Earl McBride, Jr., Affidavit, Caroline McBride, June 3, 2015.
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488. Interview with Earl McBride, Ramsey Unit 1, Texas, December 17, 2015.
489. Interview with Gary Cohen, by telephone, January 7, 2016.
490. American Law Institute, Model Penal Code Draft 2, Appendix B *Reporters’ Study: The Question of Parole-Release Authority* 138 (2011).
491. *Edge v. Hammock*, 80 A.D.2d 953, 438 N.Y.S.2d 38 (N.Y. 1981); *Lewis v. Travis*, 9 A.D.3d 800, 801, 780 N.Y.S.2d 243, 245 (N.Y. 2004).
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The ACLU remains opposed to risk assessment tools at sentencing and has concerns with their use at pretrial release hearings.

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496. Alabama: STATE OF ALABAMA, BOARD OF PARDONS AND PAROLES, PAROLE GUIDELINES—Released for Public Comment 12-17-2015, available at [http://pardons.state.al.us/PDFs/PHASE\\_I\\_PAROLE\\_GUIDELINES\\_12-17-15\\_for\\_Public\\_Comment.pdf](http://pardons.state.al.us/PDFs/PHASE_I_PAROLE_GUIDELINES_12-17-15_for_Public_Comment.pdf); Illinois: 730 ILCS 190 (2009) (which mandated the creation of a risk assessment tool). In 2015, two years after this tool was supposed to take effect and in response to a class action lawsuit brought on behalf of long-term prisoners, a court ordered the Illinois parole board to implement a comprehensive risk assessment of state prisoners. See Northwestern Law, Bluhm Legal Clinic, “Court Asked to Order Illinois to Assess the Risk of Releasing Longest Serving Prisoners,” Jan. 28, 2015, available at <http://www.law.northwestern.edu/legal-clinic/macarthur/projects/treatment/documents/news%20release%20MacArthur%20Justice%20Risk%20Assessment%20Lawsuit%20012815.pdf>.

497. Nebraska, LB 598 (2015) (Section 25, Section 83-180 (4)); Connecticut law mandates that the Department of Corrections create a risk assessment tool and requires the Parole Board to be trained in using it. Conn. Gen. Stat. Ann. § 54-108b.

498. See, e.g., Kan. Stat. Ann. § 22-3717(h), amended by 2016 Kansas Laws Ch. 100 (S.B. 325) (requiring the board consider “risk factors revealed by any risk assessment of the inmate” but not state that such a risk assessment be performed.)

499. States that require parole board to use/consider risk assessment: Arkansas, A.C.A. §§ 16-93-211(c), 16-93-615(a)(1)(B) and 16-93-701(b)(1); Colorado, Colo. Rev. Stat. Ann. §§ 17-22.5-107, 17-22.5-404, amended by 2016 Colo. Legis. Serv. Ch. 112 (H.B. 16-1153) (West); Kentucky, Ky. Rev. Stat. Ann. § 439.331; Louisiana, LSA-R.S. 15:574.21; Nebraska, Neb. Rev. Stat. Ann. § 83-192; New York, N.Y. Exec. Law § 259-c(4) (McKinney); Ohio, R.C. §§ 5120.114, 2971.04; South Carolina, S.C. Code Ann. § 24-21-10; Idaho, I.C. § 20-223; Texas, Tex. Gov’t Code Ann. § 508.144.

500. Colo. Rev. Stat. Ann. § 17-22.5-404(6)(B).

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502. *Linares v. Evans*, 112 A.D.3d 1056, 1056, 975 N.Y.S.2d 930 (2013), aff’d, 26 N.Y.3d 1012, 42 N.E.3d 212 (NY 2015)

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504. Transcript of Oral Argument, *Linares v. Evans*, 26 N.Y.3d 1012, 27-30 (No. 124).

505. Eileen Sullivan & Ronnie Greene, *Associated Press*, “States predict inmates’ future crimes with secretive surveys,” Feb. 24, 2015.

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guideline scores were accordingly redacted in the parole decisions we received. Parole decisions provided directly to us from prisoners also had the guideline score redacted.

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508. Interview with Alan Rosenthal, Center for Community Alternatives, New York, by telephone, October 7, 2015.

509. James Austin, *The Proper and Improper Use of Risk Assessment in Corrections*, 16 FED. SENT’G REP. 1 (2004).

510. Susan C. Kinnevy & Joel Caplan, CENTER FOR RESEARCH ON YOUTH AND SOCIAL POLICY, FINDINGS FROM THE APAI INTERNATIONAL SURVEY OF RELEASING AUTHORITIES at 38 (2008).

511. Interview with Alan Rosenthal, Center for Community Alternatives, New York, by telephone, October 7, 2015.

512. *Montgomery v. Louisiana*, 136 S. Ct. 718, 736 (2016).

513. *Id.*

514. Jonathan Simon, *How Should We Punish Murder?* 94 MARQ. L. REV. 1241, 1267 (2011).

515. Edward E. Rhine, Joan Petersilia, & Kevin R. Reitz, *Improving Parole Release in America*, 28 Fed. Sent’g Rep. 96 (2015); Jonathan Simon, *How Should We Punish Murder?* 94 MARQ. L. REV. 1241, 1283 (2011); Carolyn Turpin-Petrosino, *Are Limiting Enactments Effective? An Experimental Test of Decision Making In a Presumptive Parole State*, 27 J. CRIM. JUST. 321, 329 (1999).

516. See, e.g., **Alabama**, Ala. Code § 15-22-26(a)(6) (“The guidelines shall ... include, but not be limited to ... Severity of the underlying offense for which the prisoner was sentenced to incarceration.”); **Alaska**, 22 AAC 20.165(c)(2) (board will consider “whether the applicant’s release at this time is compatible with the welfare of society and whether it would depreciate the seriousness of the offense;”); **Idaho**, Idaho Admin. Code r. 50.01.01.250 (Factors include “Seriousness and aggravation and/or mitigation involved in the crime”); **Indiana**, Ind. Code Ann. § 11-13-3-3 (West) (parole criteria “must include the nature and circumstances of the crime”); **Iowa**, Iowa Code Ann. § 906.5 (West) (“board shall consider... the circumstances of the person’s offense”); **Kansas**, Kan. Stat. Ann. § 22-3717(h), amended by 2016 Kansas Laws Ch. 100 (S.B. 325) (board shall consider “the circumstances of the offense of the inmate;”); **Kentucky**, Kentucky Parole Board, Policies and Procedures, KYPB10-01 (L), available at <http://justice.ky.gov/Documents/Parole%20Board/KYPB1001ParoleReleaseHearingseff2312.pdf> (“Before recommending or denying parole, the Board shall apply one (1) or more of the following factors to an inmate: (1) Current offense - seriousness, violence involved, firearm used, life taken or death occurred during commission;”); **Louisiana**, La. Admin Code. tit. 22, pt. XI, § 701 (“Nature and Circumstances of the Crime”); **Maryland**, Md. Code Ann., Corr. Servs. § 7-305 (West), amended by 2016 Maryland Laws Ch. 515 (S.B. 1005) (Commission must consider “the circumstances surrounding the crime”); **Massachusetts**, Parole Decision Making: The Policy of the Massachusetts Parole Board (2006) at 18, available at <http://www.mass.gov/eops/docs/pb/paroledecision.pdf> (“presence of particular factors in the governing offense” and “severity of governing offense” as two “significant factors” the Board considers); **Michigan**, Mich. Comp. Laws Ann. § 791.233e (“the department shall consider factors including, but not limited to, ... The offense for which the prisoner is incarcerated at the time of parole consideration”); **Mississippi**, Mississippi Department of Corrections website, <http://www.mdcc.ms.gov/Community-Corrections/Pages/Parole.aspx> (“When considering whether to grant or deny parole the Board considers ... Severity of offense”);

**Montana**, Mont. Code Ann. § 46-23-208 (4) (West) (“In making its determination regarding nonmedical parole release, a hearing panel shall consider . . . the circumstances of the offense;”); **Nebraska** Neb. Rev.St. § 83-192 (Board review “shall include the circumstances of the offense”); **Nevada**, Nev. Rev. Stat. Ann. § 213.1099 (2)(c) (West) (“the Board shall consider . . . the seriousness of the offense”); **New Hampshire**, NH ADC PAR 301.03 (“the board shall consider. . . seriousness of the confining offense or other committed offenses, including the degree of violence or lack of concern for victims involved”); **New Jersey**, Parole Handbook at 47, available at <http://www.nj.gov/parole/docs/AdultParoleHandbook.pdf> (board will consider “facts and circumstances of the current offense”); **New Mexico**, N.M. Stat. Ann. § 31-21-10 (The board shall consider all pertinent information including “(a) the circumstances of the offense; (b) mitigating and aggravating circumstances; (c) whether a deadly weapon was used in the commission of the offense.”); **New York**, N.Y. Exec. Law § 259-i (McKinney) (“the seriousness of the offense” shall be considered); **North Carolina**, N.C.G.S.A. § 15A-1371(d) (The Board can refuse to grant parole if “release at that time would unduly depreciate the seriousness of his crime”); **North Dakota**, N.D.C.C. § 12- 59-05 (requiring the board to “consider all pertinent information . . . including the circumstances of the offense”); **Pennsylvania**, 61 PA.C.S.A. § 6135 (the board “shall consider . . . nature and circumstances of the offense committed.”); **Rhode Island**, 13 R.I. Gen. Laws Ann. § 13-8-14.1 (West) (The board considers “individualized factors, such as . . . the nature and circumstances of the offense or offenses for which the applicant was sentenced.”); **South Carolina**, South Carolina Board of Pardons and Paroles, Policy and Procedure, pp. 28, 33 available at <http://www.dppps.sc.gov/content/download/68278/1576111/file/Parole+Board+Manual+April+2015.pdf> (parole criteria include “the nature and seriousness of the offender’s offense, the circumstances surrounding that offense, and at the prisoner’s attitude toward it”); **Tennessee**, Tenn. Code Ann. § 40-35-503 (West) (parole will not be granted “if the board finds that . . . the release from custody at the time would depreciate the seriousness of the crime of which the defendant stands convicted or promote disrespect for the law.”); **Texas**, Tex. Gov’t Code Ann. § 508.144 (West) (“The board shall . . . base the guidelines on the seriousness of the offense and the likelihood of a favorable parole outcome”); **Vermont**, Vermont Parole Board Manual, at 18 available at <http://www.doc.state.vt.us/about/parole-board/pb-manual/view> (the Board “shall consider . . . seriousness of the crime committed”); **Virginia**, Virginia Parole Board Policy Manual at 3 <http://vpb.virginia.gov/files/1107/vpb-policy-manual.pdf> (Board considers the “facts and circumstances” of the present offense); **Washington**, Washington State, Department of Corrections Indeterminate Sentence Review Board, “Frequently Asked Questions,” available at <http://www.doc.wa.gov/isrb/faq.asp#14> (“Any aggravating or mitigating factors or circumstances relative to the crime of conviction.”) (last accessed June 17, 2016); **West Virginia**, W. Va. Code St. R. §92-1-6 (“the Panel shall consider . . . evidence based factors such as offense severity”); and **Wisconsin**, Wis. Adm. Code s PAC 1.06 (WI ADC s PAC 1.06) (parole criteria includes whether “The inmate has served sufficient time so that release would not depreciate the seriousness of the offense.”). In Missouri, the statute and regulations do not specifically mandate the offense as a factor in decision making but do state that the parole hearing is an opportunity for the prisoner to explain the offense and pertinent circumstances. 14 Mo. Code Regs. Ann. tit. 14, § 80-2.010. While the Missouri board has guidelines for the number of years a person should generally spend based on their

offense, its own guidelines permit it to go beyond those guidelines by examining “total offense behavior as an aggravating factor.” State of Missouri, Board of Probation and Parole, PROCEDURES GOVERNING THE GRANTING OF PAROLES AND CONDITIONAL RELEASE, at 6 available at <http://doc.mo.gov/Documents/prob/Blue-Book.pdf>.

517. **Indiana**, Ind. Code Ann. § 11-13-3-3 (West) (parole criteria considered by the board “must include the nature and circumstances of the crime for which the offender is committed”); **Maryland**, Md. Code Ann., Corr. Servs. § 7-305 (West), amended by 2016 Maryland Laws Ch. 515 (S.B. 1005) (the commission “shall consider the circumstances surrounding the crime”); **Michigan**, M.C.L.A. § 791.233e (“In developing the parole guidelines, the department shall consider . . . [t]he offense for which the prisoner is incarcerated at the time of parole consideration;”); **New Hampshire**, NH ADC PAR 301.03 (“the board shall consider. . . the seriousness of the confining offense”); **New York**, N.Y. Exec. Law § 259-i (McKinney) (“procedures. . . shall require that the following be considered. . . the seriousness of the offense with due consideration to the type of sentence, length of sentence and recommendations of the sentencing court, the district attorney, the attorney for the inmate, the presentence probation report as well as consideration of any mitigating and aggravating factors, and activities following arrest prior to confinement”); **Pennsylvania**, 61 PA.C.S.A. § 6135 (“the board shall consider. . . nature and circumstances of the offense committed.”); **Texas**, Tex. Gov’t Code Ann. § 508.144 (West) (“The board shall. . . base the guidelines on the seriousness of the offense.”)

518. Susan C. Kinney & Joel Caplan, CENTER FOR RESEARCH ON YOUTH AND SOCIAL POLICY, FINDINGS FROM THE APAI INTERNATIONAL SURVEY OF RELEASING AUTHORITIES at 38 (2008).

519. Schwartzapfel, *supra* note 28.

520. USSC, *Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines* 15 (2004); Christopher Lowenkamp & Edward Latessa, *Understanding the Risk Principle: How and Why Correctional Interventions Can Harm Low-Risk Offenders*, TOPICS IN COMMUNITY CORRECTIONS 3 (2004).

521. See, e.g., Nathan James, CONGRESSIONAL RESEARCH SERVICE, OFFENDER REENTRY: CORRECTIONAL STATISTICS, REINTEGRATION INTO THE COMMUNITY, AND RECIDIVISM 5-6 (2015), available at <https://fas.org/sgp/crs/misc/RL34287.pdf>; Dana Goldstein, *The Marshall Project*, “The Misleading Math of ‘Recidivism,’” December 12, 2014; Ryan G. Fischer, UC Irvine Center for Evidence-Based Corrections, *Are California’s Recidivism Rates Really the Highest in the Nation? It Depends on What Measure of Recidivism You Use* (2005), available at [http://ucicorrections.seweb.uci.edu/files/2013/06/bulletin\\_2005\\_vol-1\\_is-1.pdf](http://ucicorrections.seweb.uci.edu/files/2013/06/bulletin_2005_vol-1_is-1.pdf).

522. Nathan James, CONGRESSIONAL RESEARCH SERVICE, OFFENDER REENTRY: CORRECTIONAL STATISTICS, REINTEGRATION INTO THE COMMUNITY, AND RECIDIVISM 21 (2015).

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- [search\\_branch/Research\\_Documents/FINAL\\_06\\_07\\_Lifer\\_Parolee\\_Recidivism\\_1\\_14\\_13.pdf](#); STATE OF WASHINGTON, SENTENCING GUIDELINES COMMISSION, RECIDIVISM OF ADULT FELONS 4 (2008), available at [http://www.cfc.wa.gov/PublicationSentencing/Recidivism/Adult\\_Recidivism\\_FY2007.pdf](http://www.cfc.wa.gov/PublicationSentencing/Recidivism/Adult_Recidivism_FY2007.pdf).
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532. FLORIDA DEPARTMENT OF CORRECTIONS, 2009 FLORIDA PRISON RECIDIVISM STUDY RELEASES FROM 2001 TO 2008, 9 (2010), available at <http://www.dc.state.fl.us/secretary/press/2010/recidivismstudy.pdf>.
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538. Schwartzapfel, *supra* note 28.
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541. Interview with Ronald Day, April 1, 2016.
542. Letter from Chester Patterson to ACLU, September 17, 2015 (on file with the ACLU).
543. Interview with Chester Patterson, Ionia Facility, Michigan, October 22, 2015.
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549. Interview with Marlon Branch, Wynne Correctional Facility, Texas, December 16, 2015.
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553. Interview with Richard Rivera, Otisville Correctional Facility, New York, November 16, 2015.
554. New York City Department of Probation, Pre-Sentence Report, Richard Rivera (on file with the ACLU).
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558. Parole Summary of Richard Rivera, Preliminary Statement, September 2014 (on file with the ACLU).
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561. State of Iowa v. Christine Marie Lockheart, Defendant's Sentencing Memorandum, No. OTOC219148, 7 (on file with the ACLU); Interview with Christine Lockheart, Mitchelville, Iowa, February 9, 2016.



562. Interview with Christine Lockheart, Mitchelville, Iowa, February 9, 2016.
563. Board of Parole Release Plan (March 26, 2014) (on file with the ACLU); Interview with Christine Lockheart, Mitchelville, Iowa, February 9, 2016.
564. Board of Parole Risk Assessment, Assessed Date August 16, 2013 (on file with the ACLU).
565. Board of Parole of the State of Iowa, In the Matter of the Review of Lockheart, Christine Marie, Jan. 29, 2015 (on file with the ACLU); Board of Parole of the State of Iowa, In the Matter of the Review of Lockheart, Christine Marie, June 2, 2015 (on file with the ACLU); Board of Parole of the State of Iowa, In the Matter of the Review of Lockheart, Christine Marie, July 9, 2015 (on file with the ACLU); Iowa Department of Corrections, Bureau of Prisons Release Plan Review, Christine Marie Lockheart, Dec. 10, 2014 (on file with the ACLU).
566. Carolyn Turpin-Petrosino, *Are Limiting Enactments Effective? An Experimental Test of Decision Making in a Presumptive Parole State*, 27 J. CRIM. JUST. 321, 329 (1999).
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571. *Hamilton v. New York State Div. of Parole*, 119 A.D.3d 1268, 1273-74 (N.Y. 2014).
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642. Texas Board of Pardons and Paroles, "Notice of Parole Panel Decision," August 4, 2013 (on file with the ACLU); Texas Board of Pardons and Paroles, "Notice of Parole Panel Decision," July 26, 2012 (2D only) (on file with the ACLU); Texas Board of Pardons and Paroles, "Notice of Parole Panel Decision," September 4, 2014 (on file with the ACLU); Interview with Benjamin Spencer, Coffield Unit, Texas, December 21, 2015.
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815. In Michigan, prisoners serving a life sentence are ineligible for “disciplinary credits,” which can be accrued based on good behavior (and forfeited if there is a major misconduct) and accelerate the parole eligibility date. Michigan Department of Corrections, Policy Directive, Disciplinary Credits, No. 03.01.101 (May 2009), available at [https://www.michigan.gov/documents/corrections/03\\_01\\_101\\_278460\\_7.pdf](https://www.michigan.gov/documents/corrections/03_01_101_278460_7.pdf). Michigan’s modest system of disciplinary credits replaced the more substantial good time credits policy, which was eliminated for all prisoners by a 1978 ballot initiative. See generally CAPPs, *supra* note 292. In Texas, while all prisoners can earn good time credits based on their conduct, prisoners serving a sentence for a “3g” offense, which includes capital murder and aggravated robbery, cannot have either their minimum or their maximum sentence reduced through good time credits. See Texas Board of Pardons and Paroles and Texas Department of Criminal Justice, Parole in Texas (2011), available at [http://www.tdcj.state.tx.us/documents/parole/PIT\\_English.pdf](http://www.tdcj.state.tx.us/documents/parole/PIT_English.pdf).
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821. CAPPs, *supra* note 292, at 7.
822. Tina Chiu, VERA INSTITUTE OF JUSTICE, IT’S ABOUT TIME: AGING PRISONERS, INCREASING COSTS, AND GERIATRIC RELEASE, April 2010.
823. **Alabama**, Ala. Code § 14-14-5; **Alaska**, AS § 33.16.085; **Arkansas**, A.C.A. § 12-29-404; **California**, Cal. Penal Code § 3550; **Colorado**, C.R.S.A. § 17-22.5-403.5 Colo. Rev. Stat. Ann. § 17-22.5-403.5 (West); **Connecticut**, C.G.S.A. § 54-131b (West); **Delaware**, 11 Del. C. § 4346(e); **District of Columbia**, D.C. St. § 24-464; **Florida**, F.S.A. § 947.149; **Georgia**, Ga. Const. Art. 4, § 2, ¶ II (e); **Hawaii**, Haw. Admin. Rules (HAR) § 23-700-26 (Weil); **Idaho**, I.C. § 20-223 (7) (West); **Indiana**, 220 IAC 1.1-4-1.5; **Kansas**, K.A.R. 45-700-2(c); **Kentucky**, KRS § 439.3405; **Louisiana**, LSA-R.S. § 15:574.20; **Maryland**, Md. Code, Correctional. Services. § 7-309, amended by 2016 Maryland Laws Ch. 515 (S.B. 1005) (West); **Michigan**, MCLA 791.235(10); **Minnesota**, Minn. Stat. Ann. § 244.05 (Subd. 8), amended by 2016 Minn. Sess. Law Serv. Ch. 158 (S.F. 3113) (West); **Mississippi**, Miss. Code Ann. § 47-7-4 (West); **Missouri**, 14 Mo. Code Regs. Ann. 80-2.010(2); **Montana**, MCA. § 46-23-210 (West); **Nebraska**, Neb. Rev. Stat. § 83-1,110.02; **New Hampshire**, N.H. Rev. Stat. Ann. § 651-A:10-a; **New Jersey**, N.J. S.A. § 30:4-123.51c (West); **New Mexico**, N.M. S.A. 1978. § 31-21-25.1 (West); **New York**, N.Y. Exec. Law § 259-s (McKinney); **North Carolina**, N.C. G.S.A. § 15A-1369.3; **Oregon**, O.R.S. § 144.126 (West); **Rhode Island**, RI ST § 13-8.1-4 (West); **South Carolina**, S.C. Code Ann. § 24-21-715; **Tennessee**, T.C.A. § 41-21-227 (West); **Texas**, Tex. Gov’t Code Ann. § 508.146 (West); **Utah**, U.A.C. R671-314; **Vermont**, 28 VSA § 502 a(d); **Virginia**, VA Code Ann. § 53.1-40.01 & Va. Code Ann. § 53.1-136 (West); **Washington**, Wash. Rev. Code Ann. § 9.94A.728(c) (West); **Wisconsin**, Wis. Adm. Code s PAC 1.08; **Wyoming**, WY Stat § 7-13-424.
824. See **Alaska**, AS § 33.16.085; **Arkansas**, A.C.A. § 12-29-404; **California**, Cal. Penal Code § 3550; **Colorado**, C.R.S.A. § 17-22.5-403.5; **Connecticut**, Conn. Gen. Stat. Ann. § 54-131b (West); **Delaware**, 11 Del. C. § 4346(e); **District of Columbia**, D.C. Code Ann. § 24-464 (West); **Florida**, F.S.A. § 947.149; **Georgia**, Ga. Const. Art. 4, § 2, ¶ II (e); **Hawaii**, Haw. Admin. Rules (HAR) § 23-700-26; **Idaho**, I.C. § 20-223 (7); **Indiana**, 220 IAC 1.1-4-1; **Kansas**, K.A.R.

- 45-700-2; **Kentucky**, Ky. Rev. Stat. Ann. § 439.3405; **Louisiana**, LA Rev Stat § 15:574.20; **Maryland**, MD Code, Correctional Services, § 7-309; **Michigan**, MCLA 791.235(10); **Missouri**, 14 Mo. Code Regs. Ann. 80-2.010; **Montana**, Mont. Code Ann. § 46-23-210 (West); **Nebraska**, Neb. Rev. Stat. § 83-1,110.02; **New Hampshire**, N.H. Rev. Stat. Ann. § 651-A:10-a; **New Jersey**, N.J. S.A. § 30:4-123.51c (West); **New Mexico**, N.M. S.A. 1978. § 31-21-25.1; **New York**, N.Y. Exec. Law §§ 259-r, 259-s; **North Carolina**, G.S. 15A-1369; **Oregon**, O.R.S. § 144.126 (West); **Rhode Island**, RI ST § 13-8.1-4; **South Carolina**, S.C. Code Ann. § 24-21-715; **Texas**, Tex. Gov't Code Ann. § 508.146 (West); **Utah**, U.A.C. R671-314; **Vermont**, 28 VSA §502 a(d); **Virginia**, VA Code Ann. § 53.1-40.01; and **Wyoming**, WY Stat § 7-13-424. In **Mississippi**, “The commissioner and the medical director of the department may place an offender who has served not less than one (1) year of his or her sentence, except an offender convicted of a sex crime, on conditional medical release.” Miss. Code. Ann. § 47-7-4 (West). In some states, the Commissioner of Corrections makes the ultimate decision to release an individual on medical parole. *See, e.g., Alabama*, Ala. Code § 14-14-5; *Minnesota*, Minn. Stat. Ann. § 244.05; *Tennessee*, T.C.A. § 41-21-227; *Washington*, Wash. Rev. Code Ann. § 9.94A.728 (West).
825. GA CONST Art. 4, § 2, ¶ II.
826. GEORGIA STATE BOARD OF PARDONS AND PAROLES, THE PAROLE PROCESS IN GEORGIA, REPRIEVES AND COMMUTATIONS, *available at* <http://pap.georgia.gov/reprieves-commutations> (last visited March 2, 2016).
827. GEORGE STATE BOARD OF PARDONS AND PAROLES, FISCAL YEAR 2015 ANNUAL REPORT, 22 (2015), *available at* <http://www.joomag.com/magazine/ga-parole-fy2015-annual-report/0499652001427221953?short>.
828. FLORIDA COMMISSION ON OFFENDER REVIEW, 2014 ANNUAL REVIEW, 7 (2014), *available at* <https://www.fcor.state.fl.us/docs/reports/FCORannualreport201314.pdf>.
829. State of New York, Department of Corrections and Community Supervision, Directive 4304: Medical Parole, April 8, 2014, *available at* <http://www.doccs.ny.gov/Directives/4304.pdf>.
830. N.Y. Exec. Law §§ 259-r, 259-s.
831. NEW YORK STATE CORRECTIONS AND COMMUNITY SUPERVISION, MEDICAL PAROLE 2014, 1 (2015), *available at* [http://www.doccs.ny.gov/Research/Reports/2015/Medical\\_Parole\\_Report\\_2014.pdf](http://www.doccs.ny.gov/Research/Reports/2015/Medical_Parole_Report_2014.pdf).
832. NEW YORK STATE STANDING COMMITTEE ON CORRECTION, ANNUAL REPORT FOR THE 2014 LEGISLATIVE SESSION, 14 (2014) *available at* <http://assembly.state.ny.us/comm/Correct/2014Annual/index.pdf>.
833. NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION, MEDICAL PAROLE 2014, at 3, *available at* [http://www.doccs.ny.gov/Research/Reports/2015/Medical\\_Parole\\_Report\\_2014.pdf](http://www.doccs.ny.gov/Research/Reports/2015/Medical_Parole_Report_2014.pdf).
834. Rachael Bedard, Opinion, *The New York Times*, “When Dying Alone in Prison Is Too Harsh a Sentence,” December 28, 2015, *available at* [http://www.nytimes.com/2015/12/28/opinion/when-dying-alone-in-prison-is-too-harsh-a-sentence.html?\\_r=0](http://www.nytimes.com/2015/12/28/opinion/when-dying-alone-in-prison-is-too-harsh-a-sentence.html?_r=0).
835. Tex. Gov't Code Ann. § 508.146 (West).
836. Texas Department of Criminal Justice, Reentry and Integration Division, Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI) & Medically Recommended Intensive Supervision (MRIS), FY13 Annual Report, *available at* <http://tdcj.state.tx.us/publications/index.html>.
837. Texas Criminal Justice Coalition, Fact Sheet 2013, “Improve Efficiency and Focus Resources More Effectively During the Medically Recommended Intensive Supervision (MRIS) Release Process By Tightening Current Statutory Language,” *available at* [http://www.texascjc.org/sites/default/files/uploads/HB%20512%20Fact%20Sheet%20\(MRIS%20Improvement\).pdf](http://www.texascjc.org/sites/default/files/uploads/HB%20512%20Fact%20Sheet%20(MRIS%20Improvement).pdf).
838. TEXAS CORRECTIONAL OFFICE ON OFFENDERS WITH MEDICAL OR MENTAL IMPAIRMENTS & MEDICALLY RECOMMENDED INTENSIVE SUPERVISION, STATISTICAL REPORT FY 11, at 11.
839. Interview with Linda Pugh, by telephone, March 18, 2016.
840. Interview with Helga Dill, by telephone, March 29, 2016.
841. *Id.*
842. UNITED STATES SENTENCING COMMISSION, RECIDIVISM AMONG FEDERAL OFFENDERS: A COMPREHENSIVE OVERVIEW 23 (2016), *available at* <http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2016/recidivism-overview.pdf>.
843. Interview with Kenneth Foster-Bey, by telephone, November 11, 2015.
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845. *Id.*
846. *Id.*
847. *Id.*
848. *Id.*
849. Interview with Eric Campbell, New York, New York, August 16, 2015.
850. *Id.*
851. *Id.*
852. *Id.*
853. *Id.*
854. ELLA BAKER CENTER FOR HUMAN RIGHTS, WHO PAYS? THE TRUE COST OF INCARCERATION ON FAMILIES (2015), *available at* <http://ellabakercenter.org/sites/default/files/downloads/who-pays.pdf>; URBAN INSTITUTE JUSTICE POLICY CENTER, FAMILIES LEFT BEHIND: THE HIDDEN COSTS OF INCARCERATION AND REENTRY (2005), *available at* <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/310882-Families-Left-Behind.PDF>.
855. Interview with Thomas Grant, former New York parole commissioner, by telephone, November 12, 2015.
856. *Id.*
857. Ball, *supra* note 65, at 398.
858. *The Paquete Habana*, 175 U.S. 677, 700 (1900); *The Nereide*, 13 U.S. (9 Cranch) 388, 423 (1815).
859. *See, e.g.,* REPORT ON THE 1960 SEMINAR ON THE ROLE OF SUBSTANTIVE CRIMINAL LAW IN THE PROTECTION OF HUMAN RIGHTS AND THE PURPOSE AND LEGITIMATE LIMITS OF PENAL SANCTIONS, organized by the United Nations in Tokyo, Japan, 1960 (noting that punishments “prescribed by law and applied in fact should be humane and proportionate to the gravity of the offence”). The Eighth Amendment’s prohibition of cruel and unusual punishment enshrines these same international legal principles. For the last hundred years, it has been widely accepted that the application of the clause extends to “all punishments which, by their excessive length or severity, are greatly disproportioned to the offences charged.” *Weems v. United States*, 217 U.S. 371, 349 (1909) (*citing O’Neil v. Vermont*, 144 U.S. 323 (1891)).
860. Dirk van Zyl Smit & Andrew Ashworth, *Disproportionate Sentences as Human Rights Violations*, 67 MOD LAW REV 541 (2004).



861. Customary international law, or the law of nations, forms part of U.S. law. *See, e.g.*, Restatement (Third) of Foreign Relations Law § 102(2) (1986); *see also Sosa v. Alvarez-Machain*, 542 U.S. 692, 715-716 (2004) (*citing The Paquete Habana*, 175 U.S. at 686).
862. *See generally* Leena Kurki, *International Standards for Sentencing Policy and Research in SENTENCING AND SANCTIONS IN WESTERN COUNTRIES*, (M. Tonry & R. Frase eds., Oxford University Press, 2001), at 331; *see also R v. Dodo*, CCT 1/01 [2001] ¶¶ 37-39.
863. International Covenant on Civil and Political Rights (ICCPR), opened for signature Dec. 16, 1966, 999 U.N.T.S. 171, entered into force on Mar. 23, 1976, ratified by the United States on June 8, 1992 (Preamble: “Recognizing that these [inalienable] rights derive from the inherent dignity of the human person”; Art. 7: “No one shall be subjected to cruel, inhuman or degrading treatment or punishment”; Art. 9: “Everyone has the right to liberty and security of a person.”).
864. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), Art. 16, adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, ratified by the United States on Oct. 21, 1994.
865. Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948) (Preamble: “Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”; Art. 5: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”; Art. 3: “Everyone has the right to life, liberty and security of person.”).
866. *Weeks v. United Kingdom*, 10 Eur. Ct. H.R. 293 ¶ 47 (1988). In *Weeks*, the petitioner argued the life imprisonment term to which he had been sentenced for armed robbery contravened Article 3 (prohibition of cruel, inhuman, or degrading treatment or punishment) of the European Convention. While the court ultimately rejected this argument, it did so because it considered the sentence to be preventative in nature, i.e., to protect society from a dangerous offender, and it analyzed it on that basis. However, the court noted that had the sentence been intended as punitive rather than preventative, “one could have serious doubts as to its compatibility with Article 3 of the Convention.” *See also* Leena Kurki, *International Standards for Sentencing Policy and Research in SENTENCING AND SANCTIONS IN WESTERN COUNTRIES*, (M. Tonry & R. Frase eds., Oxford University Press, 2001), at 361-363; *R v. Offen* (No. 2) (2001) 1 W.L.R. 253 (Eng.) (noting that a sentence that is completely disproportionate is liable to contravene Article 3); *Kafkaris v. Cyprus*, No. 21906/04, Eur. Ct. H.R. at 5 (Feb. 12, 2008) (dissenting opinion) (concluding in a dissenting opinion that because there was a possibility of release, the sentence did not violate Article 3 of the European Convention on Human Rights: “Once it is accepted that the legitimate requirements of the sentence entail reintegration, questions may be asked as to whether a term of imprisonment that jeopardizes that aim is not in itself capable of constituting inhuman or degrading treatment.”).
867. *Vinter and Others v. The United Kingdom*, Applications Nos. 66069/09, 130/10, and 3896/10, Eur. Ct. H.R. (July 9, 2013).
868. *Id.* at ¶ 107.
869. *Id.* at ¶ 119.
870. *Id.* at ¶ 15-32.
871. *Id.* at ¶ 112.
872. European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) Art. 3, (ETS No. 5), 213 U.N.T.S. 222 (entered into force Sept. 3, 1953).
873. *Gurban v. Turkey* (no. 2), no. 4947/04, Eur. Ct. H.R. ¶ 32 (2015).
874. *Id.* (*citing Vinter and Others v. the United Kingdom* ([GC], nos. 66069/09, 130/10 and 3896/10, §§ 107122, Eur. Ct. H.R. (2013) (extracts)); *Öcalan v. Turkey* (no. 2) nos. 24069/03, 197/04, 6201/06 and 10464/07, §§ 190207, Eur. Ct. H.R. (2014)).
875. *See generally* R.S. Frase, *Comparative Perspectives on Sentencing Policy and Research, in SENTENCING AND SANCTIONS IN WESTERN COUNTRIES*, (M. Tonry & R. Frase eds., Oxford University Press, 2001) at 259, 261.
876. Council of Europe, Consistency in Sentencing: Recommendations to Member States and Explanatory Memorandum, Rec. No. (92) 17, adopted Oct. 19, 1992.
877. European Charter of Fundamental Rights, Art. 49, came into force Dec. 1, 2009.
878. In Case C-213/99, *Jose Teodoro de Andrade v. Director da Alfandega de Leixões*, intervener: *Ministerio Publico*, 2000 E.C.R. 11104, para. 20.
879. Ruth Kannai, *Preserving Proportionality in Sentencing: Constitutional or Criminal Issue 2-3*.
880. M.C. Bassiouni, *Human Rights in the Context of Criminal Justice: Identifying International Procedural Protections and the Equivalent Protections in National Constitutions*, 3 DUKE J COMP & INTERNATL 263 (1993) in Dirk van Zyl Smit & Andrew Ashworth, *Disproportionate Sentences as Human Rights Violations*, 67 MOD LAW REV 541 (2004) at 543.
881. Ruth Kannai, *Preserving Proportionality in Sentencing: Constitutional or Criminal Issue 2-3*, at 3.
882. The Rome Statute of the International Criminal Court (“the Rome Statute”), Arts. 78(1) & 81(2)(a), July 17, 1998, U.N. Doc. A/CONF.183/9; (“[The trial court shall] take into account such factors as the gravity of the crime and the individual circumstances of the convicted person.”); *see also* The Statute of the International Criminal Tribunal for the Former Yugoslavia, arts. 24(2) and 23(2), U.N. SCOR, 48th Sess., 3217th mtg., U.N. Doc. S/RES/827 (1993); The Statute of the International Criminal Tribunal for Rwanda, arts. 24(2) and 23(2), U.N. SCOR, 49th Sess., 3453d mtg., U.N. Doc. S/RES/955 (requiring that the Trial Chamber “take into account such factors as the gravity of the offence and the individual circumstances of the convicted person”).
883. The Rome Statute, Art. 110(3).
884. *Id.*, Art. 110(5).
885. In interpreting the parameters of protections afforded by the U.S. Constitution and laws, the U.S. Supreme Court has often found it instructive to look to the laws and practices of other common law jurisdictions. *See, e.g., Washington v. Glucksberg*, 521 U.S. 702, 718 n.16 (1997) (Chief Justice William H. Rehnquist, joined by Justices Anthony Kennedy, Clarence Thomas, Antonin Scalia, and Sandra Day O’Connor, found it instructive that Canada, Great Britain, New Zealand, and Australia have rejected efforts to establish a fundamental right to assisted suicide, while Colombia has legalized voluntary euthanasia for terminally ill people.).
886. Andrew von Hirsch & Andrew Ashworth, *Proportionate Sentencing: Exploring the Principles*, OXFORD UNIV. PRESS, 1 (2005).
887. *See, e.g., Forrester Bowe and another v. The Queen* (2006) 1 W.L.R. 1623 (Eng.) (noting that “[t]he principle that criminal penalties should be proportionate to the gravity of the offence can be traced back to Magna Carta ....” and that a court had the power “to quash a penalty which was excessive and out of proportion.”); *R. v. Offen*

(No. 2) (2001) 1 W.L.R. 253 (Eng.) (holding that, that absent a showing of significant risk to the public or other objective justification for such a sentence, a mandatory life sentence “can be categorized as being arbitrary and not proportionate” and could amount to a form of “inhuman or degrading . . . punishment.”); *R. v. Smith* (1987) 1 S.C.R. 1045 (Can.) (holding that a mandatory seven-year-minimum sentence for importing narcotics constituted “cruel and unusual treatment or punishment” because “it is inevitable that, in some cases, a verdict of guilt will lead to the imposition of a term of imprisonment which will be grossly disproportionate” to what the offender deserves). In *Smith*, the Canadian Supreme Court also set forth the test for assessing whether a sentence is grossly disproportionate and thus cruel and unusual: “In assessing whether a sentence is grossly disproportionate, the court must first consider the gravity of the offence, the personal characteristics of the offender and the particular circumstances of the case in order to determine what range of sentences would have been appropriate to punish, rehabilitate or deter this particular offender or to protect the public from this particular offender.” *Id.*, ¶ 56.

888. Forrester Bowe and another v. The Queen, 1 W.L.R. 1623.

889. *R. v. Offen* (No. 2), 1 W.L.R. 253.

890. *Id.* at 277.

891. *Id.*

892. *Vinter and Others v. The United Kingdom*, Application Nos. 66069/09, 130/10, and 3896/10, Eur. Ct. H.R. para 112 (July 9, 2013).

893. The Rome Statute of the International Criminal Court, art. 110(3), July 17, 1998, U.N. Doc. A/CONF.183/9.

894. *Id.* at art. 110(4).

895. The Commentary on Rule 28 states that “Upon evidence of satisfactory progress toward rehabilitation, even offenders who had been deemed dangerous at the time of their institutionalization can be conditionally released whenever feasible.” U.N. Rules for the Protection of Juveniles Deprived of their Liberty (“The Beijing Rules”), G.A. Res. 40/33, Part One, ¶¶ 28.1, 28 Commentary, U.N. Doc. A/RES/40/33, (Nov. 29, 1985).

896. ICCPR, Art. 14(1). According to the Human Rights Committee, the requirement of a competent, independent, and impartial tribunal “is an absolute right that is not subject to any exception.” Human Rights Committee, Art. 14: Right to equality before courts and tribunals and to a fair trial, General Comment 32, (90th Sess., 2007), ¶ 19, U.N. Doc. CCPR/C/GC/32 (2007).

897. American Convention on Human Rights (“Pact of San José, Costa Rica”), adopted November 22, 1969, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force July 18, 1978, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992), available at [http://www.oas.org/dil/treaties\\_B-32\\_American\\_Convention\\_on\\_Human\\_Rights.htm](http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm).

898. Universal Declaration of Human Rights, Art. 10.

899. *Graham v. Florida*, 560 U.S. at 81; *Roper v. Simmons*, 543 U.S. at 575 (citing *Trop v. Dulles*, 356 U.S. 86, 102-103 (1958)). These cases start from the supposition that, whether a punishment is “cruel and unusual” is a determination informed by “evolving standards of decency that mark the progress of a maturing society.” *Trop v. Dulles*, 356 U.S. 86, 101 (1958) (plurality opinion).

900. United Nations Declaration on the Rights of the Child, adopted November 20, 1959, G.A. res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16) at 19, U.N. Doc. A/4354 (1959). Similarly, The American Convention on Human Rights (“Pact of San José, Costa Rica”), Article 19, states, “Every minor child has the right to the measures of pro-

tection required by his condition as a minor on the part of his family, society, and the state.”

901. ICCPR, Arts 10, 14(4). The Human Rights Committee has interpreted the ICCPR’s provisions on child offenders to apply to all persons under the age of 18. UN Human Rights Comm., General Comment 1 (44th Sess., 1994), U.N. Doc. HRI/GEN/1/Rev.1.

902. See Convention on the Rights of the Child (CRC), Arts. 37, 40, adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990. The United States signed the CRC in 1995 but has not ratified it.

903. ICCPR; UN Human Rights Committee, General Comment 1.

904. The United States co-sponsored this provision together with Great Britain and India, and it was adopted unanimously. See Marc Bossuyt, *Guide to the “Travaux Préparatoires” of the International Covenant on Civil and Political Rights* (The Netherlands: Martinus Nijhoff Publishers, 1987), p. 307. The ICCPR contains three additional provisions related to juvenile justice. Article 6(5) prohibits imposing the death penalty on persons who committed crimes while under the age of 18. Article 10(2), subparagraph b, mandates the separation of accused children from adults and the swift adjudication of their cases. Article 14(1) provides an exception for cases involving children to the general requirement that judgments be made public.

905. Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary* (Kehl: N.P. Engel, 1993), p. 266.

906. The Beijing Rules ¶ 17.1(a).

907. ICCPR, Art. 7; Convention against Torture, Art. 16; United Nations Standard Minimum Rules for the Treatment of Prisoners (“the Mandela Rules”), Rule 1, E/CN.15/2015/L.6/Rev.1.

908. See U.N. Human Rights Committee, General Comment 9, Article 10 (16th Sess., 1982), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.1 (1994).

909. ICCPR, Art. 10(1).

910. ICCPR, United States of America: Reservations, para. 5 (emphasis added). The United States also included a reservation to the general obligation of rehabilitation.

911. Convention on the Rights of the Child at 167.

912. Convention on the Rights of the Child Art. 40(1).

913. See Convention on the Rights of the Child, Art. 40(2). Many of these requirements are echoed in Article 14 of the ICCPR. ICCPR, Art. 14(3).

914. *Id.* at Art. 40(4).

915. *Id.*

916. *Id.* at Art. 37(d).

917. *Id.* at Art. 37(b).

918. Commentary on this rule describes Rule 5 as referring to “two of the most important objectives of juvenile justice,” these being the emphasis on well-being of the juvenile and the principle of proportionality for the purpose of curbing punitive sanctions. The Beijing Rules, Part One, ¶ 5.1.

919. *Id.* at 17.1(b).

920. Convention on the Rights of the Child, Art. 3(3).

921. The Beijing Rules, Part One, ¶ 19 Commentary.

922. Body cavity searches of children are prohibited under Rule 60 of the Mandela Rules. The Mandela Rules, Rule 60.1.

923. UN Human Rights Council, Interim Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan Mendez, U.N. G.A. Doc. A/66/268, August 5, 2011,

- para. 77, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N11/445/70/PDF/N1144570.pdf?OpenElement>.
924. *Id.* paras. 67-68, 78.
925. United Nations Declaration on the Rights of the Child, Principle 5.
926. Convention on the Rights of the Child, Art. 6(2).
927. The Mandela Rules, Rule 89(2).
928. Human Rights Committee, “Consideration of Reports Submitted by States Parties under Article 40 of the Covenant,” (87th Sess., 2006), ¶ 32, CCPR/C/USA/CO/3/Rev.1 (2006).
929. Standard Minimum Rules for the Treatment of Prisoners, Art. 8(d).
930. The Mandela Rules, Rule 11.
931. ICCPR, Art. 10(3).
932. Convention on the Rights of the Child, Art 37(d).
933. Standard 4-ALDF-2A-38, “Youthful Offenders,” in American Correctional Association, *Performance-Based Standards for Adult Local Detention Facilities*, 4th Ed. (ACA: June 2004); National Commission on Correctional Health Care, “Position Statement, Health Services to Adolescents in Adult Correctional Facilities,” May 17, 1998, available at <http://www.ncchc.org/resources/statements/adolescents.html>; American Bar Association (ABA), *Youth in the Criminal Justice System: Guidelines for Policy Makers and Practitioners*, 2001, available at <http://www.campaignforyouthjustice.org/documents/natlres/ABA%20-%20Youth%20in%20the%20Criminal%20Justice%20System%20Guidelines%20for%20Policymakers.pdf>.
934. American Correctional Association, *Core Jail Standards* (ACA: 2010).
935. American Correctional Association, *Standards for Adult Correctional Institutions*, 4th Ed (Virginia: American Correctional Association, 2003). ACA Policy prohibits the confinement of youthful offenders in an adult facility. Comment to Standard 4-4307 in American Correctional Association, *Standards for Adult Correctional Institutions*, 4th Ed.
936. Standard Minimum Rules for the Treatment of Prisoners, Art. 21(2), 71(5), 77(1); *see also* The Beijing Rules.
937. For example, Article 10(1) of the International Covenant on Civil and Political Rights (ICCPR) states that “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”
938. ICCPR, Art. 14(4).
939. ICCPR, Art. 10(3).
940. The Mandela Rules, Rule 4(1).
941. Human Rights Comm., 44th Sess., General Comment 21 (Article 10), ¶ 10, U.N. Doc. HRI/GEN/1/Rev.1 (1994).
942. Yong-Joo Kang v. Republic of Korea, Views of the Human Rights Comm., Communication No. 878/1999, ¶ 7.3, U.N. Doc. CCPR/C/78/D/878/1999 (2003).
943. The Mandela Rules, Rule 88(1).
944. U.N. General Assembly, Basic Principles for the Treatment of Prisoners, A/RES/45/111 (Dec. 14, 1990).
945. These rules state that, “[a]s a rule, [juveniles] should not be sentenced to imprisonment.” Standard Minimum Rules for the Treatment of Prisoners, Art. 5(2).
946. Basic Principles for the Treatment of Prisoners, Principle 5 at 200.
947. Standard Minimum Rules for the Treatment of Prisoners, Rule 61.
948. *Id.* Rule 65.
949. European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) art. 5(1)(a), (ETS No. 5), 213 U.N.T.S. 222 (entered into force Sept. 3, 1953).
950. *See* Stafford v. the United Kingdom [GC], Application No. 46295/99, 35 Eur. Ct. H.R. 32 (May 28, 2002); Weeks v. the United Kingdom, Application No. 9787/82, 114 Eur. Ct. H.R. (ser. A) (Mar. 2, 1987); Wynne v. the United Kingdom, Application No. 15484/89, 294-A Eur. Ct. H.R. (ser. A) (July 18, 1994); Vinter and Others v. The United Kingdom, Application Nos. 66069/09, 130/10, and 3896/10, Eur. Ct. H.R. (July 9, 2013).
951. Stafford v. the United Kingdom [GC], Application No. 46295/99, ¶¶ 80, 87, *cited in* Léger v. France, No. 19324/02, Eur. Ct. H.R. at 75 (2006). Most recently, in *Léger v. France* the ECHR did not find a violation of Article 5, as it did not consider unreasonable the national courts’ finding that it was unable to exclude with any certainty the possibility that the applicant—who had been released on parole by the time his case was heard—might represent a danger in view of his character traits and personality. But see the dissenting opinion of J. Costa ¶ 13: “In my opinion, there is unfortunately no such thing as zero risk, but if we take that approach, then we should never release prisoners on licence: life sentences would always be served for a whole-life term, and determinate sentences would always be served in full. Potential victims would perhaps be better protected (except where prisoners escaped)—but would transforming prisoners into wild beasts or human waste not mean creating further victims and substituting vengeance for justice? I am just asking.”
952. Weeks v. the United Kingdom, Application No. 9787/82, 4 E.H.R.R. 252 (1982). The ECHR held in that discretionary life sentences must include a mechanism to examine release from prison and that the release process must meet the requirements of Article 5(4), which requires that “Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.” *See also* Thynne, Wilson and Gunnell v. United Kingdom (1990) 13 E.H.R.R. 666.
953. Mastromatteo v. Italy [GC], Application No. 37703/99, ECHR 2002-VIII, ¶ 72 (Oct. 24, 2002).
954. Murray v. The Netherlands, Application No. 10511/10, ECHR 2016, ¶ 21 (April 26, 2016).
955. *Id.* at ¶ 108.
956. *Id.*
957. American Convention on Human Rights (“Pact of San José, Costa Rica”), Art. 5(6), adopted November 22, 1969, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force July 18, 1978, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992), available at [http://www.oas.org/dil/treaties\\_B-32\\_American\\_Convention\\_on\\_Human\\_Rights.htm](http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm).
958. Under Article 18 of the Vienna Convention of the Law of Treaties, which guides public international treaty law, a country is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty. U.N. Doc. A/ CONF. 39/27 (1969).
959. Report on the Situation of Human Rights in the Dominican Republic, Inter-Am. Ct. H.R., OEA/Ser.L/V/II.104, Doc. 49 rev. 1 Chapter VIII(I) para. 301 (1999) (citing United Nations Standard Minimum Rule 65 to support this contention).

960. Fifth Report on the Situation of Human Rights in Guatemala, Chapter VIII, para 1. InterAm. Ct. H.R., OEA/Ser.L/V/II.111, Doc. 21 rev. (2001).
961. The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), 70th Sess., Rule 91, 96(1), E/CN.15/2015/L.6/Rev.1.
962. *Id.*, Rule 90.
963. *Id.*, Rule 108(1).
964. *Id.*, Rule 108(2).
965. Interview with John Alexander, Lakeland Correctional Facility, Michigan, October 21, 2015.
966. Letter from Professor Paul Reingold to Michigan Parole Board in support of Mr. John Alexander's commutation, January 28, 2013 (on file with the ACLU).
967. Michigan Department of Corrections, Basic Information Report (Pre-Sentence Investigation Report), John Alexander (on file with the ACLU).
968. Interview with John Alexander, Lakeland Correctional Facility, Michigan, October 21, 2015.
969. Summary Statement of Calendar Conference, *People v. John Alexander*, Judge Michael F. Sapala, September 26, 1980 (on file with the ACLU).
970. Mr. Alexander's full disciplinary record through March 2016 is on file with the ACLU.
971. Interview with John Alexander, Lakeland Correctional Facility, Michigan, October 21, 2015.
972. Mr. Alexander's work progress and program participation reports, as well as lifer review reports, disciplinary records, and transfer orders, are all in the ACLU's possession.
973. Interview with John Alexander, Lakeland Correctional Facility, Michigan, October 21, 2015.
974. COMPAS Narrative Risk Assessment Summary, John Alexander, January 12, 2009 (on file with the ACLU).
975. Email from Arneisha Lafontaine and Steven Reich to Michigan Department of Corrections, August 11, 2015 (on file with the ACLU).
976. Michigan Department of Corrections, Major Misconduct Report, March 14, 1994 (on file with the ACLU); Interview with John Alexander, Lakeland Correctional Facility, Michigan, October 21, 2015.
977. Interview with John Alexander, Lakeland Correctional Facility, Michigan, October 21, 2015.
978. Mr. Alexander's full disciplinary record through March 2016 is on file with the ACLU.
979. Interview with John Alexander, Lakeland Correctional Facility, Michigan, October 21, 2015.
980. *Id.*
981. *Id.*
982. Cited by *Foster-Bey v. Rubitschun*, No. 05-71318, Class Action Complaint, para. 47 (E.D. Mich. April 5, 2005).
983. *Alexander v. Birkett*, No. 06-1662, 2007 WL 1063270, slip. op. at 2 (6th Cir. April 9, 2007).
984. Diane Bukowski, *Voice of Detroit*, "New Hope for Michigan's Parolable Lifers?," February 6, 2014, available at <http://voiceofdetroit.net/2014/02/16/new-hope-for-michigans-parolable-lifers-house-ctte-meeting-wed-feb-19/>; Diane Bukowski, *Michigan Citizen*, "Parolable lifers say struggle continues," September 9, 2003.
985. Interview with John Alexander, Lakeland Correctional Facility, Michigan, October 21, 2015.
986. Interview with Marlon Branch, Wynne Correctional Facility, Texas, December 16, 2015.
987. *Id.*
988. *Id.*
989. *Id.*
990. *Id.*
991. Texas Department of Criminal Justice, Clemency and Parole System, Minutes Detail Information, Marlon Anthony Branch, 2003-2016 (on file with the ACLU).
992. Interview with Marlon Branch, Wynne Correctional Facility, Texas, December 16, 2015.
993. Interview with Eric Campbell, New York, New York, August 16, 2015.
994. *Id.*
995. *Id.*
996. *Id.*
997. *Id.*
998. *Id.*
999. *Id.*
1000. *Id.*
1001. *Id.*
1002. *Id.*
1003. *Id.*
1004. *Id.*
1005. *Id.*
1006. *Id.*
1007. *Id.*
1008. Interview with Hector Custodio, Shirley Correctional Institution, Massachusetts, February 25, 2016.
1009. *Id.*
1010. *Id.*
1011. In the Matter of Hector Custodio, Massachusetts Parole Board, Decision May 3, 2010.
1012. In the Matter of Hector Custodio, Massachusetts Parole Board, Decision June 4, 2015.
1013. *Id.*
1014. Interview with Hector Custodio, Shirley Correctional Institution, Massachusetts, February 25, 2016.
1015. *Id.*
1016. In the Matter of Hector Custodio, Massachusetts Parole Board, Hearing June 4, 2015.
1017. Interview with Hector Custodio, Shirley Correctional Institution, Massachusetts, February 25, 2016.
1018. Interview with Broderick Davis, Wynne Unit, Texas, December 16, 2015.
1019. *Id.*
1020. *Id.*
1021. *Id.*
1022. *Id.*
1023. *State of Texas v. Broderick Earl Davis*, No. 00-DCR-032867A, Clerk's Record (Unofficial copy provided by court, on file with the ACLU); *State of Texas v. Broderick Earl Davis*, No. 32865A, Judgment on Plea of Guilty Before the Court, March 5, 2003 (on file with the ACLU).
1024. Interview with Broderick Davis, Wynne Unit, Texas, December 16, 2015.
1025. Texas Department of Justice Disciplinary Records for Broderick Davis (on file with the ACLU).

1026. Interview with Broderick Davis, Wynne Unit, Texas, December 16, 2015.
1027. Interview with Kevin Davis, Handlon Correctional Facility, Michigan, October 22, 2015.
1028. Interview with Kevin Davis, Handlon Correctional Facility, Michigan, October 22, 2015; Michigan Department of Corrections, Pre-Sentence Investigation Report, Kevin Davis, 1989 (on file with the ACLU).
1029. Michigan Department of Corrections, Pre-Sentence Investigation Report, Kevin Davis, 1989 (on file with the ACLU).
1030. Michigan Department of Corrections, Presentence Investigation Report, Kent County Circuit Court No. 88-46711-FC, Aug. 15, 1989 (on file with the ACLU); Interview with Kevin Davis, Handlon Correctional Facility, Michigan, October 22, 2015.
1031. Interview with Kevin Davis, Handlon Correctional Facility, Michigan, October 22, 2015.
1032. Interview with Kevin Davis, Handlon Correctional Facility, Michigan, October 22, 2015.
1033. Michigan Department of Corrections, Request for Protection/Investigation Report, December 14, 2011 (on file with the ACLU).
1034. Michigan Department of Corrections, Kevin Davis File, 1988 to Present (on file with the ACLU).
1035. Michigan Department of Corrections, Prisoner Program and Work Assignment, Kevin Davis (on file with the ACLU).
1036. Michigan Department of Corrections, Kevin Davis File, 1988 to Present (on file with the ACLU).
1037. Michigan Department of Corrections, Parole Board Notice of Decision, Kevin Davis, March 13, 2012 (on file with the ACLU).
1038. Interview with Kevin Davis, Handlon Correctional Facility, Michigan, October 22, 2015; Michigan Department of Corrections, Parole Board Notice of Decision, Kevin Davis, March 13, 2012 (on file with the ACLU); Michigan Department of Corrections, Clinician/Processor's Opinions, September 18, 1989.
1039. Michigan Department of Corrections, Parole Board Notice of Decision, Kevin Davis, March 13, 2012 (on file with the ACLU).
1040. Interview with Kevin Davis, Handlon Correctional Facility, Michigan, October 22, 2015.
1041. Interview with Kevin Davis, Handlon Correctional Facility, Michigan, October 22, 2015.
1042. Michigan Department of Corrections, Wayne County Adult Probation Services, Pre-Sentence Investigation Report, Michael Owen Jackson, May 8, 1990 (on file with the ACLU).
1043. Interview with Michael Jackson, Handlon Correctional Facility, Michigan, October 22, 2015.
1044. Michigan Department of Corrections, Wayne County Adult Probation Services, Pre-Sentence Investigation Report, Michael Owen Jackson, May 8, 1990 (on file with the ACLU); Interview with Michael Jackson, Handlon Correctional Facility, Michigan, October 22, 2015; Interview with Ruby Jackson, by telephone, March 18, 2016.
1045. Michael Jackson, Application for Pardon or Commutation of Sentence, September 3, 2010 (on file with the ACLU); Michigan Department of Corrections, Wayne County Adult Probation Services, Pre-Sentence Investigation Report, Michael Owen Jackson, May 8, 1990 (on file with the ACLU); Interview with Michael Jackson, Handlon Correctional Facility, Michigan, October 22, 2015.
1046. *Id.*
1047. Interview with Michael Jackson, Handlon Correctional Facility, Michigan, October 22, 2015.
1048. Michigan Department of Corrections, Substance Abuse Client Discharge, Michael Jackson, September 2007 (on file with the ACLU).
1049. Michigan Department of Corrections, Michael O. Jackson Misconduct reports, 1990-May 2016 (on file with the ACLU).
1050. Michigan Department of Corrections Prisoner Program and Work Assignment Evaluation: Michael Jackson, September 2014 to August 2015 and January 22, 2007 (on file with the ACLU); Certification of Achievement for Michael Jackson, Diabetes Self-Management Education Program, May 24, 2004 (on file with the ACLU). *See* Full commutation packet for Michael O. Jackson (on file with the ACLU).
1051. Michigan Department of Corrections, Block Report: Michael Jackson, 1990-to 2015 (on file with the ACLU); Michigan Department of Corrections Prisoner Program and Work Assignment Evaluation: Michael Jackson, 1992 to 2015 (on file with the ACLU).
1052. Interview with Michael Jackson, Handlon Correctional Facility, Michigan, October 22, 2015.
1053. *Id.*; Interview with Ruby Jackson, by telephone, March 18, 2016.
1054. Interview with Ruby Jackson, by telephone, March 18, 2016.
1055. Michael Jackson, Michigan Department of Corrections, Application for Pardon or Commutation of Sentence (on file with the ACLU).
1056. *Id.*
1057. Michigan Department of Corrections, Parole Board Notice of Decision, Michael Owen Jackson, April 21, 2000 (on file with the ACLU); Michigan Department of Corrections, Parole Board Notice of Decision, Michael Owen Jackson, January 12, 2005 (on file with the ACLU); Michigan Department of Corrections, Parole Board Notice of Decision, Michael Owen Jackson, October 13, 2009 (on file with the ACLU); Michigan Department of Corrections, Parole Board Notice of Decision, Michael Owen Jackson, August 22, 2014 (on file with the ACLU).
1058. Interview with Michael Jackson, Handlon Correctional Facility, Michigan, October 22, 2015.
1059. *Id.*
1060. *Id.*
1061. Interview with Anthony Johnson, Lakeland Correctional Facility, Michigan, October 21, 2015.
1062. Michigan Department of Corrections, Pre-Sentence Investigation Report, Anthony Johnson, Docket 76-001502-FY, February 11, 1977 (on file with the ACLU).
1063. Interview with Anthony Johnson, Lakeland Correctional Facility, Michigan, October 21, 2015.
1064. *Id.*
1065. Michigan Department of Corrections, Pre-Sentence Investigation Report, Anthony Johnson, Docket 76-001502-FY, February 11, 1977 (on file with the ACLU).
1066. Interview with Anthony Johnson, Lakeland Correctional Facility, Michigan, October 21, 2015.
1067. Letter from Professor Raymond Ventre, Northern Michigan University, to K. Morris Gavin, Attorney, October 11, 1988 (on file with the ACLU).
1068. Memorandum from Tyrra Williams, Michigan Department of Corrections, April 28, 1988 (on file with the ACLU).
1069. Memorandum from Jerry Foster, Food Service Supervisor, Michigan Department of Corrections, April 27, 1988 (on file with the ACLU).



1070. Letter from Norman Abey, Food Technology Instructor, Michigan Dunes Correctional Facility, to Michigan Parole Board, February 11, 1991 (on file with the ACLU).
1071. Letter from Norma Killough, Correctional Facilities Administration, to Anthony Johnson, October 11, 2004 (on file with the ACLU).
1072. Michigan Department of Corrections Parole Eligibility/Lifer Review Report, Anthony Johnson, March 13, 2003 (on file with the ACLU).
1073. Michigan Department of Corrections Parole Eligibility/Lifer Review Report, Anthony Johnson, February 5, 2008 (on file with the ACLU).
1074. Michigan Department of Corrections Parole Eligibility/Lifer Review Report, Anthony Johnson, December 17, 2012 (on file with the ACLU).
1075. Michigan Department of Corrections, Security Classification Screens (for Anthony Johnson) (on file with the ACLU).
1076. Letter from Clayton Burch, Office of Legislative Corrections Ombudsman, to Anthony Johnson, December 2, 1986 (on file with the ACLU); Initial Lifer Report, Anthony Johnson, August 24, 1983 (on file with the ACLU); Michigan Department of Corrections, Commutation and Long Term Release Guidelines—Homicide, Anthony Johnson, 1983 (on file with the ACLU).
1077. Michigan Department of Corrections, Memorandum, from Amy Moore, Michigan Department of Corrections, to Debra Scutt, Warden, December 3, 2007 (on file with the ACLU).
1078. Interview with Anthony Johnson, Lakeland Correctional Facility, Michigan, October 21, 2015.
1079. *People of MI v. Anthony Leroy Johnson*, CF No. 1976-001502-FY (C.A. Mich. July 28, 2015) (denying leave to appeal).
1080. Interview with Anthony Johnson, Lakeland Correctional Facility, Michigan, October 21, 2015.
1081. Interview with Aron Knall, Thumb Correctional Facility, Michigan, by telephone, April 21, 2016.
1082. Michigan Department of Corrections, Pre-Sentence Investigation Report, Aron Antonio Knall, June 1, 1988 (on file with the ACLU); Michigan Department of Corrections, Case Summary Report, Aron Knall 2010 (on file with the ACLU); Interview with Aron Knall, Thumb Correctional Facility, Michigan, by telephone, April 21, 2016.
1083. Interview with Aron Knall, Thumb Correctional Facility, Michigan, by telephone, April 21, 2016.
1084. *Id.*
1085. *Id.*
1086. Michigan Department of Corrections, Parole Eligibility/Lifer Review Report, Aron Knall, January 21, 2010 (on file with the ACLU).
1087. Interview with Aron Knall, Thumb Correctional Facility, Michigan, by telephone, April 21, 2016.
1088. Michigan Department of Corrections, Prisoner Program and Work Assignment Evaluation, G.O.A.L.S. Youth Deterrent Program, Aron Knall, December 17, 2015 (on file with the ACLU).
1089. Letters in support of commutation on file with the ACLU.
1090. Michigan Department of Corrections Letter from Elton B. Walker, Lieutenant, Thumb Correctional Facility, to Members of the Board, January 17, 2014 (on file with the ACLU).
1091. COMPAS Narrative Assessment Summary, Aron Antonio Knall, Oct. 12, 2009 (on file with the ACLU).
1092. Michigan Department of Corrections, Parole Guidelines Scoresheet, Aron Antonio Knall, April 30, 2010.
1093. Letters in support of commutation and certificates of program completion on file with the ACLU.
1094. Interview with Aron Knall, Thumb Correctional Facility, Michigan, by telephone, April 21, 2016.
1095. Interview with Aron Knall, Thumb Correctional Facility, Michigan, by telephone, April 21, 2016.
1096. *State of Iowa v. Christine Marie Lockheart*, Defendant's Sentencing Memorandum, No. OTOC219148, at 7 (Feb. 24, 2014) (on file with the ACLU); Interview with Christine Lockheart, Mitchellville, Iowa, February 9, 2016.
1097. Brian Wellner, *Quad-City Times*, "Man convicted in Davenport murder dies," June 26, 2012, available at [http://qctimes.com/news/local/crime-and-courts/man-convicted-in-davenport-murder-dies/article\\_258a6148-bfbd-11e1-9bc7-0019bb2963f4.html](http://qctimes.com/news/local/crime-and-courts/man-convicted-in-davenport-murder-dies/article_258a6148-bfbd-11e1-9bc7-0019bb2963f4.html).
1098. *State of Iowa v. Christine Marie Lockheart*, Defendant's Sentencing Memorandum, No. OTOC219148, 5-6 (Feb. 24, 2014) (on file with the ACLU).
1099. Interview with Christine Lockheart, Mitchellville, Iowa, February 9, 2016.
1100. *Id.*
1101. *Id.*
1102. *Id.*
1103. Board of Parole Release Plan (March 26, 2014) (on file with the ACLU); Interview with Christine Lockheart, Mitchellville, Iowa, February 9, 2016.
1104. Board of Parole Risk Assessment, Assessed Date August 16, 2013 (on file with the ACLU).
1105. Board of Parole of the State of Iowa, In the Matter of the Review of Lockheart, Christine Marie, Jan. 29, 2015 (on file with the ACLU); Board of Parole of the State of Iowa, In the Matter of the Review of Lockheart, Christine Marie, June 2, 2015 (on file with the ACLU); Board of Parole of the State of Iowa, In the Matter of the Review of Lockheart, Christine Marie, July 9, 2015 (on file with the ACLU); Iowa Department of Corrections, Bureau of Prisons Release Plan Review, Christine Marie Lockheart, Dec. 10, 2014 (on file with the ACLU).
1106. *Id.*
1107. Interview with Christine Lockheart, Mitchellville, Iowa, February 9, 2016.
1108. *In the Matter of the Review of Lockheart, Christine Marie*, January 29, 2015 (on file with the ACLU).
1109. *Christine Marie Lockheart v. Iowa State Board of Parole and Iowa Department of Corrections*, no. CVCV047612, Respondents' Brief In Support of Resistance to Petition For Judicial Review, July 15, 2015, at 23.
1110. *In the Matter of the Review of Lockheart, Christine Marie*, July 9, 2015 (on file with the ACLU).
1111. Interview with Christine Lockheart, Mitchellville, Iowa, February 9, 2016.
1112. *Id.*
1113. Interview with Earl McBride, Ramsey Unit 1, Texas, December 17, 2015.
1114. Interview with Earl McBride, Ramsey Unit 1, Texas, December 17, 2015 (certificates from colleges and other community educational programming on file with the ACLU).
1115. Texas Department of Criminal Justice, Earl McBride Disciplinary Records (printed May 2015) (on file with the ACLU).

1116. FOIA; Interview with Earl McBride, Ramsey Unit 1, Texas, December 17, 2015.
1117. Letter from Terry Foster, Brazoria County Community Supervision and Corrections Department from Sgt. L. Gonzales Re: Prison for a Day Program, May 7, 2015 (on file with the ACLU); Inter-Department Communication, Texas Department of Criminal Justice (on file with the ACLU); Letter from Jerry Sealey, Nailor Industries, Re: Earl McBride, December 17, 2014 (on file with the ACLU); Interview with Earl McBride, Ramsey Unit 1, Texas, December 17, 2015.
1118. Interview with Earl McBride, Ramsey Unit 1, Texas, December 17, 2015.
1119. Earl McBride Notice of Parole Panel Decision, May 5, 2015 (on file with the ACLU).
1120. Texas Department of Criminal Justice, Letter to Caroline McBride, May 22, 2014; Ex parte Earl McBride, Jr., Affidavit, Caroline McBride, June 3, 2015.
1121. Texas Government Code Sec. 508.313; Letter from Texas Board of Pardons and Paroles to Earl McBride, May 9, 2015 (on file with the ACLU); Letter from Tammy Peden-Henderson to Earl McBride, July 2014 (reviewed by ACLU).
1122. Interview with Earl McBride, Ramsey Unit 1, Texas, December 17, 2015.
1123. *Id.*
1124. Interview with David McCallum, New York, New York, September 14, 2015.
1125. *Id.*
1126. *Id.*
1127. *Id.*
1128. *Id.*
1129. *Id.*
1130. Email from Laura Cohen, Attorney, March 23, 2016.
1131. Interview with David McCallum, New York, New York, September 14, 2015.
1132. *Id.*
1133. *Id.*
1134. *Id.*
1135. *Id.*
1136. Interview with Thomas McRoy, by telephone, Wyoming Correctional Facility, New York, November 13, 2015; Letter from Thomas McRoy to the ACLU, September 27, 2015.
1137. Letter from Thomas McRoy to the ACLU, September 27, 2015.
1138. *People v. Thomas McRoy*, No. 481-84, Sentencing Minutes, November 14, 2984 (on file with the ACLU).
1139. *Id.*
1140. Letter from Christina Olson (sister) to New York State Board of Parole, June 1, 2012 (on file with the ACLU); Letter from Attorney Maurice Najari to New York State Board of Parole, February 9, 2009 (on file with the ACLU); Letter from Frances Simpson (family friend) to New York State Board of Parole, July 14, 2008 (on file with the ACLU); Interview with Thomas McRoy, by telephone, Wyoming Correctional Facility, New York, November 13, 2015; Letter from Thomas McRoy to the ACLU, September 27, 2015.
1141. Letter from Thomas McRoy to the ACLU, September 27, 2015.
1142. Suffolk County Probation Department, Pre-Sentence Investigation, Thomas McRoy, November 14, 1984 (on file with the ACLU); Interview with Thomas McRoy, by telephone, November 13, 2015; Letter from Thomas McRoy to the ACLU, September 27, 2015.
1143. Forensic Psychology PC, Mr. Thomas McRoy Psychological Evaluation, May 13, 2010 (on file with the ACLU); New York State Risk Assessment, Thomas McRoy, July 1, 2014 (on file with the ACLU); Interview with Thomas McRoy, by telephone, Wyoming Correctional Facility, New York, November 13, 2015.
1144. Interview with Thomas McRoy, by telephone, Wyoming Correctional Facility, New York, November 13, 2015.
1145. Thomas McRoy, Risk Assessment, December 18, 2015 (on file with the ACLU).
1146. New York State Risk Assessment, Thomas McRoy, July 1, 2014 (on file with the ACLU); Interview with Thomas McRoy, by telephone, Wyoming Correctional Facility, New York, November 13, 2015; Letter from Attorney Maurice Najari to New York State Board of Parole, February 9, 2009 (on file with the ACLU).
1147. Letter from Greg Kraft, Correctional Officer, to NYS Division of Parole, June 19, 2012 (on file with the ACLU); Letter from CO J. W., State of New York Department of Correctional Services to New York State Board of Parole Re: Inmate McRoy, June 15, 2012 (on file with the ACLU).
1148. Letter from Attorney Maurice Najari to New York State Board of Parole, February 9, 2009 (on file with the ACLU).
1149. NYS Department of Corrections and Community Supervision, Parole Board Release Decision Notice, January 19, 2016 (on file with the ACLU).
1150. Interview with Thomas McRoy, by telephone, Wyoming Correctional Facility, New York, November 13, 2015.
1151. *Id.*
1152. Interview with Steven Parkhurst, Medium John J. Moran Facility, Rhode Island, September 17, 2015.
1153. *Id.*
1154. Interview with Steven Parkhurst, Medium John J. Moran Facility, Rhode Island, September 17, 2015; *State v. Parkhurst*, 706 A.2d 412 (1998).
1155. Interview with Steven Parkhurst, Medium John J. Moran Facility, Rhode Island, September 17, 2015; *State v. Parkhurst*, 706 A.2d 412 (1998).
1156. Interview with Steven Parkhurst, Medium John J. Moran Facility, Rhode Island, September 17, 2015.
1157. Letter from Steven Parkhurst to ACLU, September 2015 (on file with the ACLU).
1158. Letter to Parole Board from Jennifer Lebrun (on file with the ACLU); Letter to Parole Board from Carl Parkhurst, June 23, 2014 (on file with the ACLU); Letter to Parole Board from Deborah Gernt, June 24, 2014 (on file with the ACLU).
1159. Certificates and transcripts on file with the ACLU.
1160. Letter from Jim Bullington, Prison College Program, Adams State University, to Rhode Island Parole Board, August 14, 2014 (on file with the ACLU).
1161. *Id.*
1162. Parkhurst Parole Packet: Letter from Jennifer Kensky to Steven Parkhurst (on file with the ACLU); Interview with Steven Parkhurst, ACI, Rhode Island, September 2015.
1163. Parkhurst Parole Packet Certificates, Letter from Kathleen Carty, Vantage Point Domestic Violence Prevention Program, March 28, 2014; CON\* MIC City certificates and letter from Rhode Island department of Corrections to Steven Parkhurst, April 25, 2008 (on file with the ACLU).
1164. Letter from Judi Tassel, MSW, to Parole Board, June 18, 2014.

1165. R.I. Department of Corrections, Parole Board Results, Parole Hearing Minutes, August 20, 2014.
1166. Letter from Steven Parkhurst to ACLU, September 2015 (on file with the ACLU).
1167. Letter from Chester Patterson to ACLU, September 17, 2015 (on file with the ACLU).
1168. Interview with Chester Patterson, Ionia Facility, Michigan, October 22, 2015.
1169. Chester Patterson's certificates on file with the ACLU.
1170. Michigan Department of Corrections, Bureau of Health Care Services, Qualified Mental Health Professional Evaluation, February 12, 2013 (on file with the ACLU).
1171. Interview with Chester Patterson, Ionia Facility, Michigan, October 22, 2015.
1172. Michigan Department of Corrections, Parole Board Notice of Decision, Chester Patterson, Aug. 9, 2013 (on file with the ACLU).
1173. Letter from Chester Patterson to ACLU, September 17, 2015 (on file with the ACLU).
1174. Interview with Chester Patterson, Ionia Facility, Michigan, October 22, 2015.
1175. Michigan Department of Corrections, Wayne County Adult Probation Services, Pre-Sentence Investigation Report, Maurice Reynolds, August 6, 1987.
1176. Interview with Maurice Reynolds, Thumb Correctional Facility, Michigan, October 19, 2015.
1177. *Id.*
1178. *Id.*
1179. Maurice Reynolds' disciplinary reports, program evaluations, and related case file documents were procured by the ACLU from the Michigan Department of Corrections.
1180. Michigan Department of Corrections, Prisoner Program and Work Assignment Evaluation, Maurice Reynolds, Academic Tutor, September 14, 1990 (on file with the ACLU).
1181. Maurice Reynolds' disciplinary reports, program evaluations, and related case file documents were procured by the ACLU from the Michigan Department of Corrections. Records indicate that Mr. Reynolds was briefly placed in administrative segregation due to a lack of bed space but that he was following rules at the time.
1182. Michigan Department of Corrections, Time Review & Disposition, Maurice Reynolds, March 1, 2010 (on file with the ACLU).
1183. Interview with Maurice Reynolds, Thumb Correctional Facility, Michigan, October 19, 2015.
1184. *Id.*
1185. *Id.*
1186. Transcript of Resentencing Hearing at 32, 59, and 71, State of Iowa v. Sean M. Rhomberg, No. 1311 FECR017108 (April 1, 2014) (on file with the ACLU). State of Iowa v. Sean M. Rhomberg, No. 1311 FECR017108, Transcript of Resentencing Hearing, April 1, 2014 at 32, 59, 71 (on file with the ACLU).
1187. *Id.* at 31:11-12.
1188. *Id.* at 34:14-15.
1189. *Id.* at 58:15-20 (on file with the ACLU).
1190. Interview with Sean Rhomberg, Fort Dodge Correctional Facility, Iowa, February 11, 2016.
1191. Transcript of Resentencing Hearing at 51-52, State of Iowa v. Sean M. Rhomberg, No. 1311 FECR017108, (April 1, 2014) (on file with the ACLU); Interview with Sean Rhomberg, Fort Dodge Correctional Facility, Iowa, February 11, 2016.
1192. *Id.*
1193. Interview with Sean Rhomberg, Fort Dodge Correctional Facility, Iowa, February 11, 2016.
1194. *Id.*
1195. State of Iowa v. Sean Michael Rhomberg, No. 17108, Judgment and Sentencing (Nov. 16, 1992) (on file with the ACLU).
1196. State of Iowa v. Sean M. Rhomberg, No. 1311 FECR017108, Transcript of Resentencing Hearing, April 1, 2014 32:6-10 (on file with the ACLU).
1197. Interview with Sean Rhomberg, Fort Dodge Correctional Facility, Iowa, February 11, 2016; Transcript of Resentencing Hearing at 95, State of Iowa v. Sean M. Rhomberg, No. 1311 FECR017108, (April 1, 2014).
1198. Interview with Sean Rhomberg, Fort Dodge Correctional Facility, Iowa, February 11, 2016.
1199. *Id.*
1200. Transcript of Resentencing Hearing at 27, State of Iowa v. Sean M. Rhomberg, No. 1311 FECR017108 (April 1, 2014).
1201. *Id.* at 93.
1202. State of Iowa v. Sean Michael Rhomberg, No. 1311 FECR017108, Order Re Resentencing (Oct. 29, 2014) (on file with the ACLU).
1203. Transcript of Sentencing Hearing at 7-8, State of Iowa v. Sean M. Rhomberg, No. 1311 FECR017108 (Oct. 29, 2014) (on file with the ACLU).
1204. Board of Parole of the State of Iowa, In the Matter of the Review of Sean Michael Rhomberg, December 18, 2014.
1205. *Id.*
1206. *Id.*
1207. Interview with Sean Rhomberg, Fort Dodge Correctional Facility, Iowa, February 11, 2016.
1208. State of Iowa v. Sean M. Rhomberg, No. 1311 FECR017108, Transcript of Resentencing Hearing, April 1, 2014 at 14 (on file with the ACLU).
1209. Interview with Sean Rhomberg, Fort Dodge Correctional Facility, Iowa, February 11, 2016; Transcript of Resentencing Hearing at 24, 64, 86, 102-103, State of Iowa v. Sean M. Rhomberg, No. 1311 FECR017108 (April 1, 2014) (on file with the ACLU).
1210. Interview with Sean Rhomberg, Fort Dodge Correctional Facility, Iowa, February 11, 2016.
1211. New York City Department of Probation, Pre-Sentence Report, Richard Rivera (on file with the ACLU).
1212. New York City Department of Probation, Pre-Sentence Report, Richard Rivera (on file with the ACLU); Interview with Richard Rivera, Otisville Correctional Facility, New York, November 16, 2015.
1213. Parole Summary of Richard Rivera, Preliminary Statement, September 2014 (on file with the ACLU).
1214. New York City Department of Probation, Pre-Sentence Report, Richard Rivera (on file with the ACLU); Interview with Richard Rivera, Otisville Correctional Facility, New York, November 16, 2015.
1215. Parole Summary of Richard Rivera, Preliminary Statement, September 2014 (on file with the ACLU).
1216. New York City Department of Probation, Pre-Sentence Report, Richard Rivera (on file with the ACLU); Interview with Richard Rivera, Otisville Correctional Facility, New York, November 16, 2015.
1217. *Id.*
1218. Interview with Richard Rivera, Otisville Correctional Facility, New York, November 16, 2015.
1219. *Id.*

1220. Parole Summary of Richard Rivera, Preliminary Statement, September 2014 (on file with the ACLU).
1221. *Id.*
1222. Interview with Richard Rivera, Otisville Correctional Facility, New York, November 16, 2015.
1223. *Id.*
1224. Interview with Larry Roberts, Hughes Unit, Texas, December 14, 2016.
1225. State of Texas v. Larry Vernon Roberts, Indictment (Aggravated Robbery), Oct. 21, 1983 (on file with the ACLU); State of Texas v. Larry Vernon Roberts, No. 390927, Judgment, Jan. 21, 1985 (on file with the ACLU); State of Texas v. Larry Vernon Roberts, Indictment (Felony Murder), Oct. 21, 1983 (on file with the ACLU); State of Texas v. Larry Vernon Roberts, No. 387649, Judgment, Sept. 12, 1984 (on file with the ACLU).
1226. Interview with Larry Roberts, Hughes Unit, Texas, December 14, 2016.
1227. *Id.*
1228. *Id.*
1229. *Id.*
1230. *Id.*
1231. Texas Department of Criminal Justice, Larry Vernon Roberts, Minutes Detail Information, Jan. 3, 2005 (on file with the ACLU); Denial and Approval codes available at the Texas Board of Pardons and Paroles, Approval / Denial Reasons, available at [http://www.tdcj.state.tx.us/bpp/what\\_is\\_parole/reasons.htm](http://www.tdcj.state.tx.us/bpp/what_is_parole/reasons.htm).
1232. Texas Department of Criminal Justice, Larry Vernon Roberts, Minutes Detail Information, May 13, 2008 (on file with the ACLU); Texas Department of Criminal Justice, Larry Vernon Roberts, Minutes Detail Information, Aug. 22, 2011 (on file with the ACLU); Texas Department of Criminal Justice, Larry Vernon Roberts, Minutes Detail Information, Sept. 8, 2014 (on file with the ACLU).
1233. Interview with Larry Roberts, Hughes Unit, Texas, December 14, 2016.
1234. *Id.*
1235. *Id.*
1236. *Id.*
1237. Interview with Stephen Smith, Otisville Correctional Facility, New York, November 16, 2015.
1238. *Id.*
1239. *Id.*
1240. *Id.*
1241. *Id.*
1242. Letter on behalf of Stephen Smith, St. Gabriel's Episcopal Church, September 26, 2013 (on file with the ACLU).
1243. Certificates of completion and appreciation on file with the ACLU.
1244. Letter on behalf of Stephen Smith, St. Gabriel's Episcopal Church, September 26, 2013 (on file with the ACLU).
1245. Michael J. Murphy, LCSW, Outside AVP Coordinator, Forensic Specialist, Otisville Correctional Facility, Commendable Behavior Report for Stephen Smith, September 27, 2013 (on file with the ACLU).
1246. Letter to Parole Board from Officer Barriell on behalf of Stephen Smith, September 25, 2013 (on file with the ACLU).
1247. Letter on behalf of Stephen Smith, St. Gabriel's Episcopal Church, September 26, 2013 (on file with the ACLU).
1248. NYS Parole Board Release Decision Notice, Stephen Smith, April 24, 2015 (on file with the ACLU).
1249. Interview with Stephen Smith, Otisville Correctional Facility, New York, November 16, 2015.
1250. *Id.*
1251. Interview with T.J. Smith\* (pseudonym), Ypsilanti, Michigan, October 23, 2015.
1252. *Id.*
1253. *Id.*
1254. *Id.*
1255. *Id.*
1256. *Id.*
1257. *Id.*
1258. *Id.*
1259. People v. T.J. Smith\*, Ct.App.Mich., July 5, 1983 (on file with the ACLU); *People v. Aaron*, 409 Mich. 672 (1980).
1260. Report of Denis E. Walsh, M.D., to the Hon. William A. Porter, Re: T.J. Smith\*, Feb. 13, 1986 (on file with the ACLU).
1261. Michigan Department of Corrections, Basic Information Sheet, T.J. Smith\* (on file with the ACLU).
1262. Written Objection Correspondence from the Hon. James M. Graves, Jr. to Michigan Parole Board, Case No. 75-18765 (Jan. 16, 2009) (on file with the ACLU).
1263. Interview with T.J. Smith\* (pseudonym), Ypsilanti, Michigan, October 23, 2015.
1264. *Id.*
1265. People v. Timothy S., No. 75-18765-FH, June 27, 2014 (on file with the ACLU).
1266. *Id.*
1267. Interview with T.J. Smith\* (pseudonym), Ypsilanti, Michigan, October 23, 2015.
1268. Michigan Department of Corrections, Parole Board Notice of Decision, Decision Date June 13, 2014, mailed June 19, 2014 (Projected Parole Date July 18, 2014).
1269. Michigan Department of Corrections, Wayne County Adult Probation Services, Pre-Sentence Investigation Report, July 20, 1987 (on file with the ACLU); Interview with Carol Thomas\* (pseudonym), Women's Huron Valley Correctional Facility, Michigan, October 19, 2015.
1270. Interview with Carol Thomas\* (pseudonym), Women's Huron Valley Correctional Facility, Michigan, October 19, 2015.
1271. The People of the State of Michigan v. Carol Thomas, Affidavit, April 23, 2013; Michigan Department of Corrections, Wayne County Adult Probation Services, Pre-Sentence Investigation Report, July 20, 1987 (on file with the ACLU).
1272. Interview with Carol Thomas\* (pseudonym), Women's Huron Valley Correctional Facility, Michigan, October 19, 2015.
1273. The People of the State of Michigan v. Carol Thomas, Affidavit, April 23, 2013.
1274. Interview with Carol Thomas\* (pseudonym), Women's Huron Valley Correctional Facility, Michigan, October 19, 2015; The People of the State of Michigan v. Carol Thomas, Affidavit, April 23, 2013.
1275. Michigan Department of Corrections, Wayne County Adult Probation Services, Pre-Sentence Investigation Report, July 20, 1987 (on file with the ACLU).
1276. *Id.*
1277. Ms. Thomas' full case file, including her disciplinary record, program and work evaluations, and related materials were requested by the ACLU though a public records request. Her RSAT work evaluations and certificates are on file with the ACLU.

1278. Michigan Department of Corrections, Prisoner Program and Work Assignment Evaluation, September 2014 (on file with the ACLU).
1279. Letter to the ACLU, October 21, 2015.
1280. Program and Work Evaluations 1987-January 2016, on file with the ACLU.
1281. Disciplinary Records on file with the ACLU.
1282. Michigan Department of Corrections, Parole Board Notice of Decision, November 20, 2009.
1283. Interview with Carol Thomas\* (pseudonym), Women's Huron Valley Correctional Facility, Michigan, October 19, 2015.
1284. Letter to the ACLU, October 21, 2015.
1285. *Id.*
1286. Letters of support on file with the ACLU.
1287. *Id.*
1288. In Michigan, lifers are reviewed every five years. However, due to a class action lawsuit regarding the parole board's treatment of individuals serving life sentences, in 2008-2009, all lifers received an additional review.
1289. Interview with Carol Thomas\* (pseudonym), Women's Huron Valley Correctional Facility, Michigan, October 19, 2015.
1290. Interview with Deon Williams, Coffield Unit, Texas, December 21, 2015.
1291. *Id.*
1292. *Id.*
1293. Interview with Deon Williams, Coffield Unit, Texas, December 21, 2015; State of Texas v. Deon Lashun Williams, Indictment, Dec. 14, 1993 (on file with the ACLU).
1294. Interview with Deon Williams, Coffield Unit, Texas, December 21, 2015.
1295. *Id.*
1296. *Id.*
1297. Texas Department of Criminal Justice Disciplinary Report and Hearing Records for Deon Lashun Williams 1995-February 2016, on file with the ACLU.
1298. Certificates on file with the ACLU.
1299. Interview with Edward Williams, Texas, by telephone, March 1, 2016.
1300. Interview with Deon Williams, Coffield Unit, Texas, December 21, 2015.





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Each year in the United States, thousands of young people who have committed crimes are prosecuted as adults and sentenced to grow up and even die in prison. In recent years, recognizing that youth are capable of rehabilitation, the U.S. Supreme Court has limited one such sentence: juvenile life without parole, a punishment that many states have now completely prohibited. But too often, a sentence of life with the possibility of parole is functionally the same as life without parole. Despite the U.S. Supreme Court's prescription that young offenders must be given a "meaningful opportunity to obtain release," for many parole applicants, their subsequent growth, remorse, and rehabilitation are

never considered and are always overshadowed by their offense. For these individuals who came to prison as children, have spent decades in prison, and have demonstrated their growth and change, the possibility of parole is increasingly illusory. In many states, few or zero young offenders serving a life sentence have been released in recent years. Moreover, parole processes around the country lack basic protections to make release decisions fair, and parole hearings—when they even exist—are generally hostile, brief, and rare. This report documents the stories of 124 people who have grown up in prison and the challenges from the parole system that make release a vanishing possibility.

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