

Statement of Principles: Reform Sentencing and Parole Practices for Serious Offenses

The United States is the world's leading incarcerator: with 5% of the world's population, we have nearly 25% of the world's incarcerated persons. Black and other communities of color are not only particularly affected by this, but also sustain what is now being called “collateral damage” as a result, exacerbating the divisions and injustices in our society. Strategies to address the nation's scale of incarceration will have to go deeper and be broader than focusing on nonviolent offenses to meet the goals of prison population reductions. **Substantial numbers of the nation's prisoners are serving death, life without parole, life with parole, or multi-decade determinate sentences.** As of 2012, there were 159,520 people serving life sentences; one of every nine individuals in prison is serving a life sentence.¹

The problems resulting from excessive sentences for serious offenses do not recognize that most violent crime is situational, that research shows there is a low public safety risk for long-term prisoners, and costs of excessive sentences. Values of the United States criminal justice system involve deterrence, retribution, selective incapacitation, and the potential for transformative growth.

In recent years a guiding principle of criminal justice intervention has been retribution. During this period, public and professional discourses moved away from a focus on rehabilitation as the salient purpose of punishment to ‘just deserts’ or retribution as the primary goal. Consequently, the principle of the potential for transformative growth and even public safety are overshadowed. To reverse and prevent a recurrence of mass incarceration—and, to build a fair and healthy society—the political will must be mobilized to moderate this underlying principle for criminal justice policy.

Clear evidence supports such a change. Among other things:

Most Violent Crime is Situational. The vast majority of people convicted of a serious, violent offense against a person are no more likely to commit such an act in the future than those who have not been convicted but come from the same social circumstances and situation. Most violence is situational, ignited by complex combinations of conflicts, propensities and accelerants like drugs and alcohol. For the few that have a long term propensity to violence, proper risk assessment and the use of some indeterminacy in our sentencing laws for violent crime could allow for selective incapacitation. Across the country, sentence lengths have increased during the past 40 years because of mandatory minimums, three-strikes and “truth in sentencing” laws, determinate sentences and increased use of life without parole.

Research Shows the Low Public Safety Risk for Long Term Prisoners. Studies of recidivism rates among lifers, while few in number, consistently suggest that the recidivism rate—as defined by recommitment for a new offense—is relatively low.² Studies have proven recidivism among life-sentenced prisoners who are granted parole is low, calling into question the accuracy of public safety arguments in support of lengthy terms of imprisonment. A 2004 analysis by The Sentencing Project found that individuals released from life sentences were less than one-third as likely to be rearrested within three years as all released persons.³ More recently, a 2011 California-based study tracked 860 people convicted of homicide and sentenced to life, all of whom were paroled beginning in 1995. Longitudinal analysis of their outcomes

¹ Nellis, Ashley (2013). *Life Goes On: The Historic Rise in Life Sentences in America*. Washington, DC: The Sentencing Project.

² Weisberg, R, Mukamal, D., & Segall J.D (2011). *Life in Limbo: An Examination of Parole Release for Prisoners Serving Life Sentences with the Possibility of Parole in California*. Stanford, CA: Stanford University.

³ Mauer, M, King, R.S., & Young, M. (2004). *The Meaning of ‘Life’: Long Prison Sentences in Context*. Washington, DC: The Sentencing Project.

finds that in the years since their release, only five individuals (less than 1%) have been returned to prison or jail because of new felonies.⁴

Other sources of information on the recidivism risk of lifers are established studies of recidivism rates for non-lifers that focus on crime of conviction, criminal record, age at time of release, length of imprisonment and other factors. The factors examined in these studies can be used as proxies to help us gauge likely recidivism projections for lifers. **A good example is the age factor.** Some non-lifer studies demonstrate that **as a general matter, people age out of crime.** For most offenses—and in most societies—crime rates rise in the early teenage years, peak during the mid-to-late teens, and subsequently decline dramatically. Not only are **most violent crimes committed by people under 30**, but even the criminality that continues after that **declines drastically after age 40.**⁵

Long-Term Sentences are Costly. Life sentences are expensive, shortsighted and ignore the potential for rehabilitation. Sentencing that recognizes the possibility of personal development reflects our human rights, values and moral beliefs. Obviously, examining the number of incarcerated elderly clarifies the harm of excessive sentences that do not recognize the possibility for redemption and rehabilitation. While the nation's crime rate has declined, the number of incarcerated elders has outpaced the growth the nation's prison system: while the overall prison population grew 42 percent from 1995-2010, the aging population increased by 282 percent.⁶ The United States currently spends over \$16 billion annually on incarceration for individuals aged 50 and older more than the entire Department of Energy budget or Department of Education funding for school improvements.⁷

Solutions to curb excessive sentences for violent offenses acknowledge that restorative practices repair harm, recognize the possibility for transformative growth and must go deeper to address current sentencing practices.

- **Restorative Practices to Repair Harm.** The survivors of serious crimes committed endure significant hardship and trauma. They deserve to be provided with supportive services in an effort to repair the harm. Restorative practices that promote healing for the crime survivors as well as the people who have been convicted of serious crimes will serve to broaden public safety approaches.
- **Recognition for Transformative Growth.** Sentencing individuals to life terms, without recognition for the potential of transformative growth, sends an unequivocal message to people that they are beyond redemption. Society should not be in the practice of discarding people convicted of crimes for life, but instead, should provide motivations and opportunities for healing, rehabilitation, and the potential for them to one day return to our communities as productive members of society.
- **Going Deeper to Address Long-Term Sentencing and Parole Reform.** Just alternatives to long-term prison terms for serious offenses include:
 - **Life without parole must be eliminated.** Sentencing structures (including but not limited to mandatory minimums) created under the last decades of lock-them-up policies must change, shortening the terms for violent as well as non-violent categories of offense. The alternative to long prison terms appropriately reflects the harm that has been done, as well as the individual circumstances of the offense, and focuses on rehabilitation and reintegration into society;

⁴ Weisbergh, R. Mukamal, D. & Segall, J.D. (2011). *Life in Limbo: An Examination of Parole Releases for Prisoners Serving Life Sentences with the Possibility of Parole in California*. Stanford University: Stanford Criminal Justice Center.

⁵ Ibid.

⁶ Human Rights Watch. (2012). *Old Behind Bars: The Aging Prison Population in the United States*. New York, NY.

⁷ Staff. (2014). *The High Costs of Low Risk: The Crisis of America's Aging Prison Population*. The Osborne Association. New York, NY.

- **Parole decisions, clemency and compassionate release regulations must prioritize individual offense circumstances, accomplishments in prison, and degree of risk to public safety.** Careful reviews to determine whether, years later, individuals convicted of serious crimes continue to pose a threat to the community;
- **Increase use of executive clemency.** Nationwide, governors have denied virtually all clemency requests over the past three decades.⁸ Readiness for release should be a decision determined by a panel equipped to review the prisoner’s original sentence and his or her rehabilitation since rather than subject to politics and emotion; and
- **Restore Role of Parole.** Review processes should be a meaningful opportunity to demonstrate that the individual is capable of making responsible decisions and does not pose a threat to public safety. Parole boards should be staffed with members who have a background in corrections or relevant social services in order to best assess the suitability for release.

⁸ Gill, M.M. (2010). Clemency for Lifers: The Only Road Out is the Road Not Taken. *Federal Sentencing Reporter*, 23(1), 21-26.