

# A LIVING DEATH

Life without Parole for Nonviolent Offenses



November 2013

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## Life without Parole for Nonviolent Offenses

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### Cover images:

A life sentence in Louisiana means life without the possibility of parole. Because of harsh sentencing laws, about 95 percent of the 5,225 people imprisoned at the Louisiana State Penitentiary at Angola will die there. Louisiana is the state with the highest number of prisoners serving life without parole for nonviolent offenses in the United States, with 429 such prisoners, 91 percent of whom are Black according to the ACLU's estimates.

(Top) Mary Bloomer, a prison security guard, watches as prisoners form a line to travel to their prison jobs, which include farm labor. Angola is a massive maximum security plantation prison, occupying flat delta land equal to the size of Manhattan.

(Middle) George Alexander's socks are marked with his nickname "Ghost." Alexander was a patient in the Angola hospice program who later succumbed to brain and lung cancers. His nickname is short for "Casper, the Friendly Ghost."

(Bottom) Hospice volunteers roll George Alexander's coffin from the prison hospital before burial in the prison's cemetery.

Photo credit: Lori Waselchuk, "Grace Before Dying"

### Back cover image:

The cemetery at Louisiana State Penitentiary at Angola.

# TABLE OF CONTENTS

<b>I. Executive Summary</b>	<b>2</b>
<b>II. Recommendations</b>	<b>14</b>
<b>III. Methodology</b>	<b>16</b>
A. DEFINING “LIFE WITHOUT PAROLE”	17
B. DEFINING “NONVIOLENT”	18
<b>IV. Findings: The Use of Life without Parole for Nonviolent Crimes</b>	<b>20</b>
A. RISE IN LIFE-WITHOUT-PAROLE SENTENCES	20
B. NONVIOLENT CRIMES THAT RESULT IN LIFE-WITHOUT-PAROLE SENTENCES	21
C. WHO IS SERVING LWOP FOR NONVIOLENT CRIMES: THE NUMBERS	22
D. RACIAL DISPARITY IN LIFE-WITHOUT-PAROLE SENTENCING	29
<b>V. How We Got Here: Skyrocketing Extreme Sentences and Mass Incarceration</b>	<b>32</b>
A. THE “WAR ON DRUGS” AND MANDATORY MINIMUM SENTENCING LAWS	33
B. THREE-STRIKES AND OTHER HABITUAL OFFENDER LAWS	35
C. CHANGES TO PAROLE LAWS AND OTHER LIMITATIONS ON RELEASE	36
<b>VI. Case Studies: 110 Offenders Sentenced to Die in Prison for Nonviolent Crimes</b>	<b>38</b>
A. FIRST-TIME NONVIOLENT OFFENDERS	39
B. NONVIOLENT TEENAGE OFFENDERS	67
C. TYING JUDGES’ HANDS: MANDATORY LIFE WITHOUT PAROLE	74
D. LIFE WITHOUT PAROLE FOR NONVIOLENT OFFENSES UNDER HABITUAL OFFENDER LAWS	98
i. State Habitual Offenders	101
ii. Federal Habitual Offenders	149
E. LIFE WITHOUT PAROLE FOR MARIJUANA	156
F. LIFE WITHOUT PAROLE DUE TO CRACK/POWDER COCAINE SENTENCING DISPARITY	168
G. AGING AND ELDERLY NONVIOLENT PRISONERS	174
H. TERMINALLY ILL NONVIOLENT PRISONERS	178
<b>VII. The Reality of Serving Life without Parole</b>	<b>182</b>
A. WHAT IT MEANS TO BE SENTENCED TO LIFE WITHOUT PAROLE	183
i. Hopelessness, Depression, and Suicidal Thoughts and Attempts	184
ii. Isolation from Family	186
B. PRISON CONDITIONS	187
i. Violence	187
ii. Solitary Confinement	188
iii. Restricted Access to Drug Treatment, Vocational, and Educational Programs	189
C. LIMITED JUDICIAL REVIEW OF DEATH-IN-PRISON SENTENCES	190
D. VIRTUALLY NO CHANCE OF CLEMENCY OR COMPASSIONATE RELEASE	192
<b>VIII. The Financial Cost of Sentencing Nonviolent Offenders to Life without Parole</b>	<b>194</b>
A. METHODOLOGY	195
B. FISCAL COST-SAVINGS ESTIMATES	198
<b>IX. Comparative International Practice and Fundamental Rights to Humane Treatment, Proportionate Sentence, and Rehabilitation</b>	<b>200</b>
A. OUT OF STEP WITH THE WORLD	200
B. DISPROPORTIONATE SENTENCES VIOLATE INTERNATIONAL LAW	203
C. RIGHT TO REHABILITATION UNDER INTERNATIONAL LAW	205
D. U.S. CONSTITUTIONAL LAW	206
<b>X. Acknowledgments</b>	<b>209</b>

# I. Executive Summary

Life in prison without a chance of parole is, short of execution, the harshest imaginable punishment.<sup>1</sup> Life without parole (LWOP) is permanent removal from society with no chance of reentry, no hope of freedom. One should expect the American criminal justice system to condemn someone to die in prison only for the most serious offenses.

Yet across the country, thousands of people are serving life sentences without the possibility of parole for nonviolent crimes as petty as siphoning gasoline from an 18-wheeler, shoplifting three belts, breaking into a parked car and stealing a woman's bagged lunch, or possessing a bottle cap smeared with heroin residue. In their cruelty and harshness, these sentences defy common sense. They are grotesquely out of proportion to the conduct they seek to punish. They offend the principle that all people have the right to be treated with humanity and respect for their inherent dignity.

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## About 79 percent of the 3,278 prisoners serving life without parole were sentenced to die in prison for nonviolent drug crimes.

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This report documents the thousands of lives ruined and families destroyed by sentencing people to die behind bars for nonviolent offenses, and includes detailed case studies of 110 such people. It also includes a detailed fiscal analysis tallying the \$1.784 billion cost to taxpayers to keep the 3,278 prisoners currently serving LWOP for nonviolent offenses incarcerated for the rest of their lives.

Our findings are based on extensive documentation of the cases of 646 prisoners serving LWOP for nonviolent offenses in the federal system and nine states. The data in this report is from the United States Sentencing Commission, Federal

Bureau of Prisons, and state Departments of Corrections, obtained pursuant to Freedom of Information Act and open records requests filed by the ACLU. Our research is also based on telephone interviews conducted by the ACLU with prisoners, their lawyers, and family members; correspondence with prisoners serving life without parole for nonviolent offenses; a survey of 355 prisoners serving life without parole for nonviolent offenses; and media and court records searches.

## Sentenced to Die Behind Bars for Nonviolent Crimes

Using data obtained from the Bureau of Prisons and state Departments of Corrections, the ACLU calculates that as of 2012, there were 3,278 prisoners serving LWOP for nonviolent drug and property crimes in the federal system and in nine states that provided such statistics (there may well be more such prisoners in other states). About 79 percent of these 3,278 prisoners are serving LWOP for nonviolent drug crimes. Nearly two-thirds of prisoners serving LWOP for nonviolent offenses nationwide are in the federal system; of these, 96 percent are serving LWOP for drug crimes. More than 18 percent of federal prisoners surveyed by the ACLU are serving LWOP for their first offenses. Of the states that sentence nonviolent offenders to LWOP, Louisiana, Florida, Alabama, Mississippi, South Carolina, and Oklahoma have the highest numbers of prisoners serving LWOP for nonviolent crimes, largely due to three-strikes and other kinds of habitual offender laws that mandate an LWOP sentence for the commission of a nonviolent crime.

The overwhelming majority (83.4 percent) of the LWOP sentences for nonviolent crimes surveyed by the ACLU were mandatory. In these cases, the sentencing judges had no choice in sentencing due to laws requiring mandatory minimum periods of imprisonment, habitual offender laws, statutory penalty enhancements, or other sentencing rules that mandated LWOP. Prosecutors, on the other hand, have immense power over defendants' fates: whether or not to charge a defendant with a sentencing enhancement triggering an LWOP sentence is within their discretion. In case after



“It’s like someone dying but not being put to rest.”<sup>2</sup>

—Dicky Joe Jackson, 55, who has served 17 years of a life-without-parole sentence because he transported and sold methamphetamine to pay for a life-saving bone marrow transplant and other medical treatments for his son.<sup>3</sup>

case reviewed by the ACLU, the sentencing judge said on the record that he or she opposed the mandatory LWOP sentence as too severe but had no discretion to take individual circumstances into account or override the prosecutor’s charging decision.

As striking as they are, the numbers documented in this report underrepresent the true number of people who will die in prison after being convicted of a nonviolent crime in this country. The thousands of people noted above do not include

the substantial number of prisoners who will die behind bars after being convicted of a crime classified as “violent” (such as a conviction for assault after a bar fight), nor do the numbers include “de facto” LWOP sentences that exceed the convicted person’s natural lifespan, such as a sentence of 350 years for a series of nonviolent drug sales. Although less-violent and de facto LWOP cases fall outside of the scope of this report, they remain a troubling manifestation of extreme sentencing policies in this country.

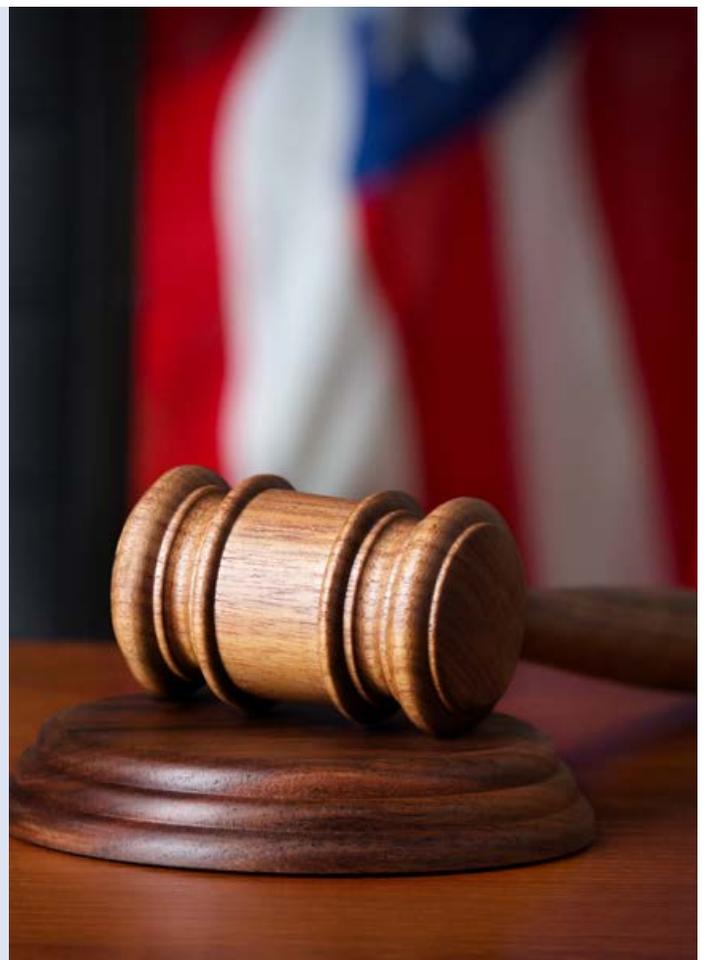
## Nonviolent Crimes that Result in Life-without-Parole Sentences

We documented scores of cases in which people were sentenced to LWOP for nonviolent drug crimes of possession, sale, or distribution of marijuana, methamphetamine, crack and powder cocaine, heroin, or other drugs, including the following:

- possession of a crack pipe
- possession of a bottle cap containing a trace, unweighable amount of heroin
- having a trace amount of cocaine in clothes pockets that was so minute it was invisible to the naked eye and detected only in lab tests
- having a single, small crack rock at home
- possession of 32 grams of marijuana with intent to distribute
- acting as a go-between in the sale of \$10 of marijuana to an undercover officer
- selling a single crack rock
- verbally negotiating another man's sale of two small pieces of fake crack to an undercover officer
- serving as a middleman in the sale of \$20 of crack to an undercover officer
- sharing several grams of LSD with Grateful Dead concertgoers
- having a stash of over-the-counter decongestant pills that could be manufactured into methamphetamine

“I think a life sentence for what you have done in this case is ridiculous. It is a travesty. I don't have any discretion about it. I don't agree with it, either. And I want the world and the record to be clear on that. This is just silly. But as I say, I don't have any choice.”<sup>4</sup>

—Federal District Court Judge James R. Spencer, to Landon Thompson\*, while sentencing him to mandatory life without parole for selling small amounts of crack cocaine at a time, over a period of weeks, out of a hotel room in a run-down section of Richmond in order to support his drug addiction



\* Pseudonym used at prisoner's request.

In cases documented by the ACLU, the nonviolent property crimes that resulted in life-without-parole sentences include the following:

- **attempting to cash a stolen check**
- **a junk-dealer's possession of stolen junk metal (10 valves and one elbow pipe)**
- **possession of stolen wrenches**
- **siphoning gasoline from a truck**
- **stealing tools from a tool shed and a welding machine from a yard**
- **shoplifting three belts from a department store**
- **shoplifting several digital cameras**
- **shoplifting two jerseys from an athletic store**
- **taking a television, circular saw, and a power converter from a vacant house**
- **breaking into a closed liquor store in the middle of the night**

Other nonviolent crimes that resulted in life-without-parole sentences include the following:

- **making a drunken threat to a police officer while handcuffed in the back of a patrol car**
- **possession of a firearm by a convicted felon**
- **taking an abusive stepfather's gun from their shared home**

These cases are not outliers or flukes. Sentencing nonviolent offenders to die in prison is the direct outcome of harsh sentencing laws. This is the end result of policies put in place in the 1980s and 1990s: mothers and fathers separated from their children forever, toddlers and teens left parentless for a lifetime, aging and infirm parents left without family, first-time nonviolent offenders permanently denied a second chance, and young Black and low-income men and women locked up for the rest of their lives at as young as 18 years old.

## Who is Serving Life without Parole for Nonviolent Crimes?

In the cases we documented, the prisoners serving LWOP are generally first-time drug offenders or nonviolent repeat offenders. These nonviolent lifers include drug couriers; drug addicts who sold small amounts of drugs in order to support their addictions; petty thieves; and girlfriends or wives who were caught up in the mass arrests of members of drug conspiracies and, because they knew little about their partners' or ex-partners' drug activities, were unable to trade information for more lenient sentences. Some did distribute large quantities of drugs but have been incarcerated for decades and have demonstrated both remorse and rehabilitation. Others were sentenced to LWOP for crimes they committed as teenagers, in some cases for their minor roles in drug conspiracies starting when they were as young as 15 years old. Several are Vietnam War veterans who were introduced to drugs during their military service and battled addiction after leaving the military. The vast majority come from poor families and did not graduate from high school. Most are Black, and in some cases the circumstances of their stop, search, and subsequent arrests appear to have involved racial profiling. Some are mentally ill and imprisoned for behavior directly related to their mental illnesses. Others spiraled into drug addiction when they could not find work, and some began selling drugs to pay the bills after they lost their jobs or to pay off medical debts incurred when they were uninsured.

Most of the nonviolent crimes for which these prisoners are serving life without parole would be more appropriately addressed outside of the criminal justice system altogether, some by significantly shorter incarceration, and some with more readily available drug treatment and mental health resources. In many of the cases documented by the ACLU, offenders committed their crimes because of drug addictions and had never been offered state-sponsored drug treatment, even during previous brief stints in jail and despite their willingness to enter treatment. Many of these addicts told the ACLU they asked for treatment after previous drug arrests but were denied. When they reoffended, they were locked up for the rest of their lives.

# Racial Disparity in Life-without-Parole Sentencing

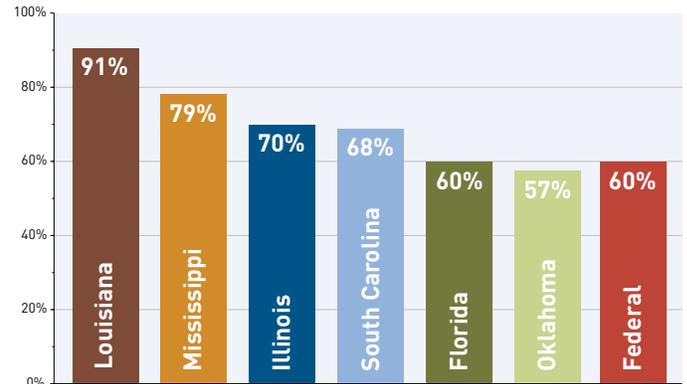
There is a staggering racial disparity in life-without-parole sentencing for nonviolent offenses. Blacks are disproportionately represented in the nationwide prison and jail population, but the disparities are even worse among the nationwide LWOP population and worse still among the nonviolent LWOP population. Based on data provided by the United States 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. In the 646 cases examined for this report, the ACLU found that 72.9 percent of these documented prisoners serving LWOP for nonviolent offenses are Black, 19.8 percent are white, and 6.9 percent are Latino.

According to data collected and analyzed by the ACLU, Black prisoners comprise 91.4 percent of the nonviolent LWOP prison population in Louisiana, 78.5 percent in Mississippi, 70 percent in Illinois, 68.2 percent in South Carolina, 60.4 percent in Florida, 57.1 percent in Oklahoma, and 60 percent in the federal system. In the federal system, Blacks were sentenced to LWOP for nonviolent crimes at 20 times the rate of whites. In Louisiana, the ACLU’s survey found that Blacks were 23 times more likely than whites to be sentenced to LWOP for a nonviolent crime. The racial disparities range from 33-to-1 in Illinois to 18-to-1 in Oklahoma, 8-to-1 in Florida, and 6-to-1 in Mississippi.

**TABLE 1**  
Times more likely Blacks sentenced to LWOP for a nonviolent crime than whites

Florida	7.94
Illinois	33.25
Louisiana	23.1
Mississippi	6.02
Oklahoma	17.97
South Carolina	5.25
Federal system	20.38

**FIGURE 1**  
Percent Black prisoners serving LWOP for nonviolent offenses by state

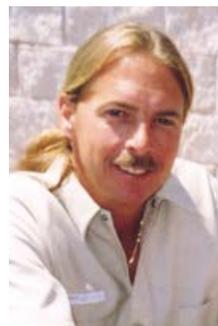


The rate of Latinos serving LWOP for nonviolent offenses ranges from a high of 12.7 per 1,000,000 residents in Louisiana to 9 in Oklahoma, 7.32 in Florida, 1.25 in Illinois, 11.24 in the federal system, and 0 in South Carolina and Mississippi. Latinos are serving life without parole for nonviolent crimes at a rate that is almost 8 times the rate of whites in Illinois and almost twice the rate of whites in Louisiana.

Blacks are sentenced to life without parole for nonviolent offenses at rates that suggest unequal treatment and that cannot be explained by white and Black defendants’ differential involvement in crime alone.

## Case Studies

The following case studies, drawn from the hundreds of cases documented by the ACLU, demonstrate the devastating impact of LWOP sentences on people convicted of nonviolent crimes. The federal prisoners serving life without parole for nonviolent drug crimes whose cases are profiled in greater detail in this report include the following:



**Ricky Minor**, a father of three and self-described meth addict at the time of his crime, was sentenced to life without parole for attempting to manufacture methamphetamine after a gram of methamphetamine and over-the-counter decongestants were found in his home in the Florida Panhandle. Under state law, he would have faced a two-and-a-half-year



“There’s an answer to this without being so extreme. But we’re still-living-20-years-ago extreme. Throw the human away. He’s worthless. Boom: up the river. And yet, he didn’t even kill anybody. He didn’t do anything, but he just had an addiction he couldn’t control and he was trying to support it robbing. That’s terrible to rob people—I’ve been robbed, I hate it. I want something done to him. But not all his life. That’s extreme. That’s cruel and unusual punishment to me.”<sup>5</sup>

—Burl Cain, Warden, Louisiana State Penitentiary at Angola

sentence, but he was indicted by a federal prosecutor after he refused to cooperate by implicating others. Minor chose to plead guilty after his lawyer advised him that refusal to do so would likely trigger prosecution of his wife, which would have left their children without parents. The federal sentencing judge objected to the mandatory LWOP sentence, which he said “far exceeds whatever punishment would be appropriate,” but under the law he had no discretion to take into account the circumstances of the case. Minor’s nuclear family has fallen apart since his incarceration 12 years ago. He and his wife divorced, and his stepson died of a drug overdose. Now long sober, he remains extremely close with his daughter, a self-described “daddy’s girl” who was only seven when he was incarcerated. *See case study p. 77*



**Clarence Aaron**, a college student with no prior criminal record, was sentenced to three life-without-parole sentences at age 23 for playing a minor role in two planned large drug deals—one of which did not take place—in which he was not the buyer, seller, or supplier of the drugs. While in his final semester of college, Aaron introduced a classmate to a cocaine dealer he had known in high school, was present at one cocaine sale, and traveled from Mobile to Houston with cash to purchase cocaine for a planned drug purchase that did not happen. He received a longer sentence than his more culpable co-conspirators, all but one of whom have been released from

prison (the last one is scheduled to be released in 2014). The prosecutor and judge in Aaron's case have both supported his petition for commutation, a fact that was eliminated from the commutation review by the federal government. Now 43, Aaron has spent almost 20 years in prison. *See case study p. 40*



**Sharanda Purlette Jones**, a mother with no prior criminal record, was sentenced to mandatory life without parole for conspiracy to distribute crack cocaine based almost entirely on the testimony of co-conspirators who received reduced sentences for their testimony. All 105 people arrested as part of the conspiracy in her majority-white

Texas town were Black. Other than a taped phone call during which she agreed to ask a friend where two government informants might be able to buy drugs, there was no physical evidence, including no drugs or video surveillance, presented at trial to connect her to drug-dealing with her co-conspirators. She has been incarcerated for more than 14 years and carefully apportions her allotted 300 monthly minutes for non-legal calls to speak 10 minutes each day with her 22-year-old daughter, who was only nine when her mother was imprisoned. *See case study p. 41*

The state prisoners serving LWOP for nonviolent offenses under three- and four-strikes laws whose cases are profiled in this report include the following:



**Kevin Ott** is serving life without parole for three-and-a-half ounces of methamphetamine. When Ott was on parole for marijuana charges, parole officers found the drug and paraphernalia in a warrantless search of the trailer in which he was living. He was sentenced to mandatory LWOP under Oklahoma's state habitual drug offender law based on

prior convictions arising from two arrests, one for having a small amount of meth in his pocket while exiting a bar, and the other for possession and manufacture of marijuana. During his incarceration after both of these arrests, he repeatedly requested treatment for his drug addiction but was denied. Now 50, Ott has served 17 years in prison and has

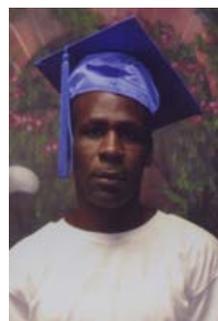
stayed clean despite being ineligible for drug treatment due to the fact that he will never be released from prison. *See case study p. 101*

**Fate Vincent Winslow** was homeless when he acted as a go-between in the sale of two small bags of marijuana, worth \$10 in total, to an undercover police officer. Police did not arrest the white seller, even though they witnessed the entire transaction and found the marked bill used to make the controlled drug buy in his pocket. Winslow, who is Black, was sentenced to mandatory life without parole under Louisiana's four-strikes law based on prior convictions for simple (unarmed) burglaries committed 14 and 24 years earlier and a nearly decade-old conviction for possession of cocaine. *See case study p. 157*



**Timothy Jackson** is serving life without parole for shoplifting a jacket worth \$159 from a Maison Blanche department store in New Orleans in 1996. Jackson, who was 36 at the time, worked as a restaurant cook and had only a sixth-grade education. A store security agent followed Jackson, who put the jacket down on a newspaper stand and tried to walk away when he

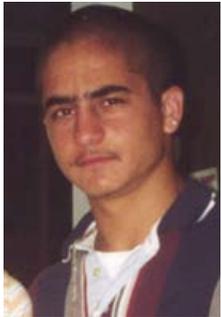
realized he was being followed. At the time, Jackson's crime carried a two-year sentence for a first offender; it now carries a six-month sentence. Instead, the court sentenced Jackson to mandatory life without parole, using a two-decades-old juvenile conviction for simple (unarmed) robbery and two simple car-burglary convictions to sentence him under Louisiana's four-strikes law. Jackson has served 16 years in prison. *See case study p. 116*



**Paul Carter** has been incarcerated for 16 years, serving life without parole for possession of a trace amount of heroin residue that was so minute it could not be weighed. Carter began using drugs at an early age and struggled with heroin addiction for years, but he never received drug treatment before he was sentenced to die in prison. Two New

Orleans police officers investigating narcotics activity at a housing project observed Carter standing on a street corner,

searched him, and found a bottle cap in his coat pocket and a piece of tin foil on the ground containing heroin residue. He was sentenced under Louisiana's three-strikes law because of decade-old convictions for simple escape and possession of stolen property. *See case study p. 113*



**Lance Saltzman** is serving life without parole for armed burglary for taking his abusive stepfather's gun from the house where they both lived. Saltzman, who was 21 at the time, says he was trying to protect his mother after his stepfather shot at her and repeatedly used his gun to threaten her. He was sentenced to mandatory life without parole under

Florida's Prison Releasee Reoffender Law because he committed the crime within three years of his release from prison for a burglary he committed when he was 16. *See case study p. 109*



**Hershel Miles Jr.** was sentenced to LWOP under Mississippi's habitual offender law for forgery and petit larceny. Miles attempted to cash a check bearing the signature of the deceased husband of a woman whose house had been burglarized several days earlier. Miles was not accused of the burglary, during which \$250 worth of items, including a VCR and

video game console, were taken. *See case study p. 105*

## The Immense Physical and Psychological Toll of Serving Life without Parole

LWOP sentences have profound, negative psychological impact on prisoners. In interviews with the ACLU, prisoners reported feelings of unremitting hopelessness, loneliness, anxiety, depression, fear, isolation from family and their community, and suicidal thoughts. Many struggle to find purpose or meaning in their lives. Some expressed the wish for death so that their suffering would end, and some reported contemplating or attempting suicide because of

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## Prisoners serving LWOP reported feelings of unremitting hopelessness, loneliness, anxiety, depression, fear, isolation from family and their community, and suicidal thoughts. Many struggle to find purpose or meaning in their lives.

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the hopelessness of their sentences. Prisoners described the anguish of being separated from family, being unable to be present to parent their children or support aging and ailing parents, missing funerals of parents and siblings who died during their incarceration, being forgotten by friends and family, and facing the prospect of growing old and dying in prison without any hope for release.

Prisoners serving LWOP for nonviolent crimes variously described their sentences as "a slow death sentence," "a slow, painful death," "a slow, horrible, torturous death," "akin to being dead, without the one benefit of not having to suffer any more," "like you're...a walking dead," and "like you are a living dead person on a [life] support machine."<sup>6</sup> Leland Dodd, sentenced to LWOP more than two decades ago for trying to buy 50 pounds of marijuana from an undercover officer, explained, "You are dead. You don't exist anymore...I would be better off dead."<sup>7</sup> Libert Roland said of his LWOP sentence for cocaine possession, "It feels like someone or something is suffocating the life out of you slowly...the only relief you have left, the only hope, is to die [a] fast death."<sup>8</sup>

A life-without-parole sentence means society has given up on a person, regardless of whether he or she exhibits any capacity for growth or change. It robs these prisoners of hope. It is essentially a sentence to die in prison: prisoners are not released. These men and women are categorically ineligible for parole, and once their post-conviction appeals are exhausted, their only chance for release is rarely-granted commutation or clemency by the president or governor of



their state or similarly infrequent compassionate release shortly before they die. Without a date on which they know they will be set free, prisoners wake up each day facing a lifetime of imprisonment with no hope of release. They grow old, fall ill, and eventually die behind bars. The sentence turns prisons into geriatric wards where ailing, aging prisoners who no longer pose any risk to society are warehoused until their deaths.

## The Financial Cost of Sentencing Nonviolent Offenders to Life without Parole

The ACLU estimates that the total fiscal cost-savings to taxpayers if state and federal sentencing statutes were revised to eliminate nonviolent offenses for eligibility for LWOP sentences would be at least **\$1.784 billion**. Under the ACLU’s estimates, the federal prison system would save more than \$1.2 billion. In Louisiana alone, where a single nonviolent offender currently serving LWOP will cost the Louisiana taxpayers approximately half a million dollars over his or her expected lifespan, the state would save \$180 million in total if its sentencing statutes were revised to eliminate life without parole for nonviolent offenses.

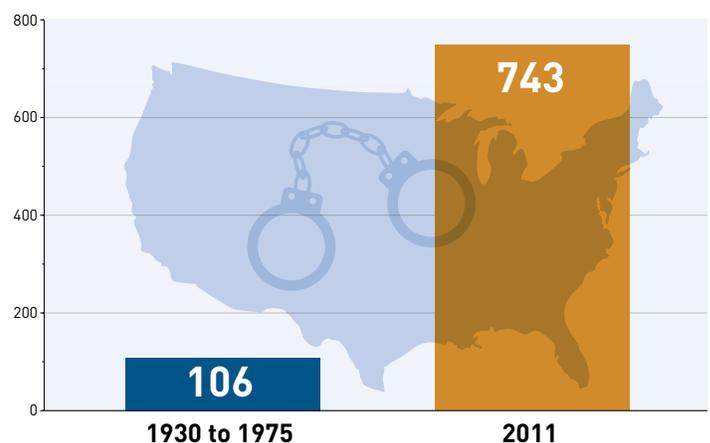
The ACLU’s estimates cover the cost of imprisoning the prisoners currently serving LWOP for nonviolent crimes; they do not take into account the cost of incarcerating people who will be sentenced to LWOP in the future. To arrive at the \$1.784 billion figure, we estimated how much will be spent, in total, to incarcerate those individuals currently serving LWOP and subtracted from this amount how much we believe would instead have been spent to incarcerate

these individuals if LWOP had not been available as a possible sentence for a nonviolent offense under three-strikes laws, mandatory sentencing schemes, or other sentencing enhancements. This figure assumes that the time served in *state* prison would have been 15 years for a drug offense, 12 years for a property offense, and 13.5 years for all other nonviolent offense categories; it also assumes that the time served in *federal* prison would have been 18 years for a drug offense, 15 years for a property offense, and 16.5 years for all other categories of nonviolent offenses. We subtracted the costs of these prison terms to arrive at our final figure.

At a time when budgets are tight and states are struggling to cut costs, paying to permanently incarcerate nonviolent offenders gobbles up scarce budgetary resources. Spending increasing amounts of money on imprisoning nonviolent offenders for the rest of their lives means less money for the institutions that could help young people stay out of trouble, including education, drug treatment, job training, and community policing programs.

The ACLU’s economic analyses of the fiscal cost of LWOP sentencing laws and policies are conservative estimates. Our data considers only the fiscal impact on state and federal corrections budgets and does not in any way account for additional costs incurred beyond the correctional system, such as reductions in labor forces, reductions in tax revenues, increases in healthcare needs due to the physical harm caused by incarceration, and underemployment in already economically-depressed neighborhoods, nor does the data take into account the economic impact on prisoners’

**FIGURE 2**  
Average incarceration rate per 100,000 adults



families, many of which have lost the head of the family and spend their savings or go into debt to finance legal efforts to challenge their loved one's conviction and sentence.

## How Did We Get Here?

The prevalence of LWOP sentences for nonviolent offenses is a symptom of the relentless onslaught of more than four decades of the War on Drugs and “tough-on crime” policies, which drove the passage of unnecessarily harsh sentencing laws, including three-strikes provisions (which mandate certain sentences for a third felony conviction) and mandatory minimum sentences (which require judges to punish people convicted of certain crimes by at least a mandatory minimum number of years in prison). The consequences of the United States' late-twentieth-century obsession with mass incarceration and extreme, inhumane penalties are well-documented. From 1930 to 1975, the average incarceration rate was 106 people per 100,000 adults in the population. Between 1975 and 2011, the incarceration rate rose to 743 per 100,000 adults in the population—the highest incarceration rate in the world—with the total number of people incarcerated in jails and prisons across the country now surpassing 2.3 million.

This growth cannot be explained away by increasing crime rates; although crime rose in the late 1960s, it did not rise enough to explain the extreme spike in the incarceration rate, and in the 1990s crime began to drop. Instead, there is now near-universal consensus among experts that the United States became the world's largest incarcerator as the direct result of deliberately punitive laws and policies—many of which arose in the context of the 40-year failed War on Drugs—aimed at some of the country's most vulnerable populations.

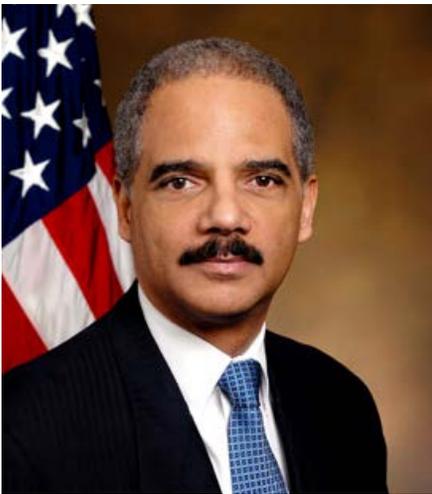
LWOP was virtually nonexistent before the 1970s, but it became prominent in the United States following the Supreme Court's 1972 decision in *Furman v. Georgia*,<sup>9</sup> which temporarily abolished the death penalty. Since then, life without parole has grown to consume many more people than it was first intended to punish. Today, 49 states have some form of LWOP, up from 16 in the mid-1990s.<sup>10</sup> Six states—Illinois, Iowa, Louisiana, Maine, Pennsylvania, and South Dakota—and the federal system have abolished parole for prisoners

sentenced to life, meaning that all life sentences in these jurisdictions are imposed without the possibility of parole. In Louisiana, one in nine inmates (11.5 percent) is serving a life sentence without the possibility of parole, and in Pennsylvania 10 percent of its prison population is permanently imprisoned.<sup>11</sup> Over 49,000 prisoners—one of every 30 people in prison—are serving life-without-parole sentences.



This has been one of the most rapidly growing populations in the prison system. The number of people sentenced to LWOP quadrupled nationwide between 1992 and 2012, from 12,453 to 49,081.<sup>12</sup> The rate of growth of the LWOP population has been nearly four times the percentage rise in people serving parole-eligible life sentences.<sup>13</sup> For example, in Louisiana, 143 people were serving LWOP sentences in 1970; the number had increased to 4,637 by 2012.<sup>14</sup>

Today, the United States is virtually alone in its willingness to sentence nonviolent offenders to die behind bars. It is among a minority of countries (20 percent) known to have LWOP sentences, while the vast majority of countries that do provide for LWOP sentences place stringent restrictions on when they can be issued and limit their use to crimes of murder.<sup>15</sup> Such sentences are rare in other countries and were recently ruled a violation of human rights in a landmark decision by the European Court of Human Rights that would require an opportunity for review of the sentences of the 49 prisoners serving LWOP (for murder) in the United Kingdom—one of only two countries in Europe that still sentence prisoners to LWOP.<sup>16</sup> According to one study, the per capita number of prisoners serving LWOP sentences in the United States is 51 times that of Australia, 173 times that of the United Kingdom, and 29 times that of the Netherlands.<sup>17</sup> Even China and Pakistan provide for a review of life sentences after 25 years' imprisonment.



“Too many people go to too many prisons for far too long for no good law enforcement reason. We need to ensure that incarceration is used to punish, deter, and rehabilitate—not merely to warehouse and forget.”<sup>18</sup>

— Attorney General Eric Holder, August 2013

## The Path Ahead

In far too many cases, imprisonment until death does not serve these goals and constitutes disproportionately severe punishment that violates human rights law, which has long recognized that the punishment must fit the crime. Such sentences violate fundamental human rights to humane treatment, proportionate sentencing, and rehabilitation. These unjust sentences may also constitute arbitrary deprivations of liberty and a form of cruel, inhuman, or degrading punishment.

Life without parole for nonviolent crimes disregards the capacity for personal growth and rehabilitation and yields minimal, if any, public safety gains, as studies show that rates of recidivism decline precipitously with age. Moreover, because of diminishing community drug treatment and mental health resources, many individuals have been sent to prison who do not actually belong there. Many of the people in the cases examined by the ACLU posed little or no public safety risk, and alternative forms of punishment—such as conditional release under parole supervision or court-supervised drug treatment and community supervision—or, in some cases, diversion from the criminal justice system, would have been smarter, less expensive, and more humane solutions.

Louisiana State Penitentiary Warden Burl Cain told the ACLU he thinks it is “ridiculous” to foreclose the possibility of rehabilitation:

I really think it’s ridiculous because the name

of our business is “corrections,” but everybody forgets what corrections means. It means to correct deviant behavior, so if I’m a successful warden and I do my job and we correct the deviant behavior, then we should have a [parole] hearing...If this person can go back and be a productive citizen and not commit crimes again, these nonviolent crimes, then why are we keeping them here, spending all this money?<sup>19</sup>

“I need to keep predators in these big old prisons, not dying old men,” Cain said. “So it’s ridiculous to have someone here that...committed a nonviolent crime, all the way to the point that I’m spending \$400 a day on medicine for him when he can be out back in the community and have health care there.”<sup>20</sup> He added, “I’m real passionate about this because I’ve been a warden 32 years...I have seen this. I know this business. I know we can change lives. I know we can change people.”<sup>21</sup>

In August 2013, the American Correctional Association passed a resolution supporting the elimination of mandatory minimum sentencing policies, signaling that Cain is not alone among corrections officials in his opposition to unnecessarily extreme sentences.

The resulting waste of human life and taxpayer dollars, as well as the destruction of families and communities that are largely working-class and Black or Latino, are both reversible and avoidable. States and the federal government can reduce prison sentences and costs without compromising public safety. Over the past few years, a quiet revolution has been brewing in state capitals. Historically low crime rates and

depleted state coffers have led to a nascent consensus among lawmakers and advocates across the ideological spectrum that the United States' addiction to incarceration is not sustainable, effective, or humane. Republican governors in cash-strapped states have been among those leading the charge. States as varied as Texas, New York, Colorado, and Michigan have passed reforms that have stabilized or significantly reduced prison populations without seeing an increase in crime.

Those who seek a fairer and less wasteful criminal justice system must at a minimum demand that all states and the federal government abolish the sentence of LWOP for nonviolent offenses; eliminate mandatory LWOP sentences, which tie judges' hands; rescind three-strikes laws, which often make no distinction between, for example, armed assault and drug possession; and recalibrate drug policies. The Bureau of Prisons and state Departments of Corrections should conduct case-by-case reviews of federal and state prisoners serving life without parole for nonviolent offenses to determine if their continued incarcerations are in the public interest. And finally, federal and state governments should invest in prevention of imprisonment by providing drug and mental health treatment, education, employment, and job training to prevent criminality and recidivism.

Now is the time to eliminate the unfair and inhumane punishment of life without the possibility of parole for nonviolent offenses.

## II. Recommendations

Life-without-parole sentences for nonviolent offenses defy common sense, are grotesquely out of proportion to the conduct they seek to punish, and offend the principle that all people have the right to be treated with humanity and with respect for their inherent dignity. In accordance with our values, commitment to sensible and fair sentencing practices, respect for human dignity, and to remedy the despair and destruction of family ties of people punished so irrationally, we recommend that all states and the federal government abolish the sentence of LWOP for nonviolent offenses.<sup>22</sup>

In addition, definitions of “violent” vary across the country, and are often so broad that they encompass conduct that some people would not categorize as violent and that many people would tend to view as meriting a punishment less severe than life without parole. Accordingly, we recommend that all states and the federal government define “violent offense” to include only conduct that involves the use or attempted use of physical force against another person.

### TO CONGRESS:

- 1. End federal nonviolent LWOP sentences.** Congress should eliminate all existing laws that either mandate or allow for a sentence of LWOP for a nonviolent offense.
- 2. Make elimination of nonviolent LWOP sentences retroactive and require resentencing.** Congress should make all such amendments retroactive and require resentencing of all individuals currently serving LWOP for a nonviolent offense in the federal system. Upon resentencing, individuals must be resented to a term less than life.
- 3. Until federal nonviolent LWOP is eliminated, amend 18 U.S.C. § 3582 for individuals serving LWOP for nonviolent offenses.** Congress should amend 18 U.S.C. § 3582(c)(1)(A) to allow prisoners serving LWOP for nonviolent offenses to directly petition

federal courts for resentencing (the provision currently allows for resentencing only on motion of the Director of the Bureau of Prisons, not on prisoners’ motions).

- 4. Direct the Sentencing Commission to amend the Sentencing Guidelines.** Congress should direct the U.S. Sentencing Commission to review the U.S. Sentencing Guidelines to eliminate LWOP sentences for nonviolent offenses.
- 5. Enact comprehensive sentencing reform legislation.** Bipartisan federal legislation such as S. 619 and H.R. 1695, the Justice Safety Valve Act of 2013, if passed, would allow judges to use more discretion to determine whether a person—including many individuals facing a term of mandatory LWOP for a nonviolent offense—should be sentenced to a mandatory minimum. Congress should pass this pending legislation.
- 6. Require fiscal impact statements in any future proposal to expand or constrict LWOP sentences for nonviolent offenses.** Congress should require the U.S. Sentencing Commission to develop accurate and complete fiscal impact analyses for all bills that may have the effect of expanding the availability of LWOP for nonviolent offenses. Fiscal impact statements should project the fiscal costs of such bills at least five years into the future.

### TO THE ADMINISTRATION:

- 1. Use the executive clemency power to commute LWOP sentences for nonviolent offenses.** The President should use the clemency power granted by Article II, Section 2 of the Constitution to commute the sentences of all individuals serving LWOP for nonviolent offenses.
- 2. Until all federal nonviolent LWOP sentences are commuted, prioritize certain nonviolent LWOP**

**cases for clemency consideration.** If commutation of all nonviolent LWOP sentences is unfeasible, in exercising the clemency power, the President should prioritize the following cases, taking into consideration the recommendations of the Attorney General:<sup>23</sup>

- i. First-time nonviolent prisoners serving LWOP
  - ii. Prisoners who were sentenced to nonviolent LWOP as teens and/or for illegal conduct that began when they were juveniles
  - iii. Prisoners sentenced to mandatory LWOP sentences for nonviolent offenses
  - iv. Prisoners convicted of crack cocaine offenses before the FSA was enacted and serving LWOP, but who are not eligible for retroactive sentence reductions under FSA because they were sentenced pursuant to mandatory sentences unaffected by the FSA
  - v. Elderly or terminally ill prisoners serving LWOP for nonviolent offenses
  - vi. Prisoners serving LWOP for nonviolent offenses whose sentences were enhanced based on facts other than those decided by the jury, and thus, if they were sentenced today, would receive shorter sentences<sup>24</sup>
- 3. Expand releases of prisoners serving LWOP for nonviolent offenses under existing law in appropriate circumstances.** 18 U.S.C. § 3582(c)(1)(A) allows for sentence modifications when the sentencing court finds that extraordinary and compelling reasons warrant a reduction or that the prisoner is at least 70 years of age and has served at least 30 years in prison and is not a danger to the community, but only upon motion of the Director of the Bureau of Prisons. Currently, this authority is rarely exercised. Pursuant to its authority under 18 U.S.C. § 3582(c)(1)(A), BOP should file a motion for sentence reduction under 18 U.S.C. § 3582(c)(1)(A) for all prisoners serving LWOP for nonviolent offenses.

## TO STATE LEGISLATURES:

- 1. Repeal all existing laws or the portions of such laws that either allow for or mandate a sentence of life without parole for a nonviolent offense.** Such laws should be repealed for nonviolent offenses, regardless of whether LWOP operates as a function of a three-strikes law, habitual offender law, or other sentencing enhancement.
- 2. Make any changes to sentencing laws retroactive and require a resentencing for all people currently serving LWOP for nonviolent offenses.**
- 3. Expand existing statutory mechanisms for relief in appropriate individual cases.** Existing commutation, second look,<sup>25</sup> and similar laws allowing prisoners' sentences to be reviewed should be expanded to include the full array of people sentenced to LWOP for nonviolent offenses, regardless of their prior criminal histories. Decision makers must have the discretion to review individual cases and determine when it is appropriate to release prisoners, many of whom have served decades for crimes that merit short prison terms or even probation.

## TO STATE GOVERNORS:

- 1. Expand the use of the clemency power to commute the sentences of people serving sentences of LWOP for nonviolent crimes.**

## III. Methodology

This report draws from extensive research conducted by the ACLU from September 2012 to August 2013.

It is based in part on data from the United States Sentencing Commission, Federal Bureau of Prisons, and state Departments of Corrections obtained pursuant to Freedom of Information Act and open records requests filed by the ACLU. This report is also based on telephone interviews conducted by the ACLU, correspondence with prisoners serving life without parole for nonviolent offenses, a survey of prisoners serving life without parole for nonviolent offenses, and media and court records searches.

The ACLU filed Freedom of Information Act and open records requests with the United States Sentencing Commission, Federal Bureau of Prisons, and state Departments of Corrections. The ACLU requested the numbers of prisoners serving LWOP for nonviolent offenses, the numbers of prisoners serving such sentences pursuant to habitual offender statutes, the races of the prisoners serving such sentences, these prisoners' current ages and ages at admission, and the offenses for which these prisoners were sentenced to LWOP. We received the data from June 2012 to March 2013. The Departments of Corrections of Delaware, Nevada, and Virginia did not provide any of the data requested by the ACLU. The Departments of Corrections of Alabama and Louisiana did not provide race data for prisoners serving LWOP for nonviolent offenses. Independent ACLU research determined that the list of prisoners serving LWOP for nonviolent offenses provided by the Florida Department of Corrections included numerous prisoners who were sentenced to LWOP for violent crimes; the ACLU excluded these prisoners from the data provided in this report.

The ACLU documented the name, offense(s), prisoner number, prison where incarcerated, race, and sex of 646 prisoners serving LWOP for nonviolent offenses. In addition, the ACLU used legal and press resources to research these 646 individual cases. In all cases, we reviewed any court records, news articles, and Department of Corrections information available online. In many of the cases documented by the ACLU, we obtained court records and other legal documents

from prisoners, their family members, or their attorneys. Whenever possible, we reviewed Presentence Investigation Reports, sentencing transcripts, prison disciplinary records, and district court and appellate court decisions related to the cases we documented, among other legal documents. The ACLU did not have the resources necessary to obtain Presentence Investigation Reports, trial transcripts, sentencing transcripts, and other court records for every case reviewed for this research.

The ACLU conducted 123 telephone interviews with prisoners serving life without parole for nonviolent offenses. These prisoners were incarcerated in 111 federal and state prisons. The ACLU also interviewed parents, children, and other close relatives of prisoners, and we spoke with the attorneys for the prisoners we interviewed who have legal representation. The ACLU also corresponded with more than 646 prisoners serving life without parole for nonviolent crimes by mail; CorrLinks, the Federal Bureau of Prisons e-mail system; and JPay, an e-mail system for corresponding with prisoners incarcerated in state prisons. The ACLU repeatedly requested access to interview prisoners in person at the Louisiana State Penitentiary in Angola, Louisiana, because the prison has one of the largest—if not the largest—populations of prisoners serving LWOP for nonviolent crimes in the country. Despite repeated requests filed with the warden of the prison and the Louisiana Secretary of Corrections and a trip to the prison in June 2013, the warden and Secretary of Corrections denied the ACLU in-person access. Moreover, the prison administration refused to allow the ACLU to speak over the telephone with any of the nearly 180 prisoners serving LWOP for nonviolent offenses at the facility.

This report is also based on responses from an ACLU survey mailed to 646 individuals serving life without parole for nonviolent crimes. The ACLU received completed survey responses from 355 prisoners currently serving LWOP for nonviolent offenses, representing over 10 percent of the known population. The ACLU also received numerous survey responses from additional prisoners who are eligible for parole or were sentenced to LWOP for violent offenses;

therefore, they were excluded from the data set. The survey respondents were identified by the ACLU using data provided to the ACLU by Departments of Corrections, inmate counsel substitutes incarcerated in state prisons, online media and court records searches, public defender offices, letters posted in prison law libraries, word of mouth among prisoners, and other advocacy organizations. Therefore, the resulting data involves selection bias.

The ACLU surveyed all prisoners whom we were able to identify as serving life without parole for nonviolent offenses; it is impossible to know how those surveyed are similar or different from other prisoners serving LWOP for nonviolent crimes. The demographic and quantitative information provided as a result of the survey is not generalizable to a larger population of prisoners, but it represents the experiences of the 355 prisoners whose cases were examined for this quantitative research. Moreover, the ACLU was unable to identify any prisoners serving LWOP in the states of Alabama, Georgia, or Illinois. Despite these limitations, the surveys and our research provide important insights into the circumstances of many prisoners serving life without parole for nonviolent crimes.

Some of the information contained in this report is self-reported by prisoners. The ACLU cross-checked and corroborated information for accuracy whenever possible. Where prisoners' letters, e-mails, or survey responses are quoted, we have corrected spelling and grammatical errors.

The methodology for the ACLU's analysis of the fiscal cost of sentencing people to life without parole for nonviolent offenses is detailed in Section VIII of this report.

## DEFINING "LIFE WITHOUT PAROLE"

For the purposes of this report, the ACLU has defined "life without parole" to include only formal LWOP sentences. However, it is crucial to note that other death-in-prison sentences have increased exponentially in the United States as well. These are sentences given in a term of years—for instance, 100 years—that, in practice, amount to de facto life-without-parole sentences.<sup>26</sup> Also, sentences that run consecutively can add up to prison sentences that exceed an

offender's natural lifespan thus ensuring that the prisoner will die in prison before reaching his or her date of parole eligibility or release. In such cases, because of the length of the sentence and the age of the offender, the projected release date is most certainly after his or her death.

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Although about 100,000 people serving life sentences technically retain the possibility of parole, the steady elimination of meaningful parole consideration over the past few decades has effectively transformed many life sentences into LWOP sentences. For example, over the past decade, the California Board of Parole Hearings has denied 98 percent of lifers' parole petitions it has heard.

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Moreover, although about 100,000 people serving life sentences technically retain the possibility of parole, the steady elimination of meaningful parole consideration over the past few decades has effectively transformed many life sentences into LWOP sentences, even for prisoners who can demonstrate their rehabilitation and fitness for release. The politicization of parole decisions has made review boards and governors extremely reluctant to grant parole, making it increasingly difficult for prisoners serving life sentences to be released on parole.<sup>27</sup> Finally, many states and the federal government have abolished parole release discretion, which has effectively converted many life sentences into life without parole.

Throughout the country, parole-eligible lifers are routinely denied parole. For example, over the past decade, the California Board of Parole Hearings has denied 98 percent of lifers' parole petitions it has heard.<sup>28</sup> Moreover, the board's

decisions may be reversed by the state governor. In 2007, of the more than 31,000 prisoners serving life sentences with the possibility of parole, more than 8,800 had passed their minimum eligible parole dates, but the board found only 172 lifers suitable for parole; of these 172 prisoners, the governor let only 37 parole release decisions stand, meaning only around 0.1 to 0.2 percent of lifers were released that year.<sup>29</sup> While the parole grant rate has increased in California in recent years, the length of time prisoners must wait for a subsequent hearing when denied parole has also increased.<sup>30</sup>

The number of people serving death-in-prison sentences after being convicted of nonviolent crimes is not known, but it is most certainly higher than the number of prisoners serving formal life-without-parole sentences for nonviolent crimes. Although such de facto LWOP sentences are outside the scope of this report, they raise the same urgent issues of fairness and proportionality.

## DEFINING “NONVIOLENT”

The question of what constitutes a nonviolent offense is not a simple one. Some state legislatures’ and federal and state courts’ definitions of violent crimes are so expansive that crimes that are commonly understood to be nonviolent are legally classified as violent. For example, although the term “violent crime” brings to mind very serious offenses such as rape and murder,<sup>31</sup> 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>32</sup> Still others include any offense involving the use, threat, or *risk* of force against the person *or property* of another in the definition of violent crime.<sup>33</sup>

Moreover, calculating the gap between our data and the true number of people serving LWOP for nonviolent offenses is next to impossible because although nearly every statutory definition of violence covers a small group of clearly violent offenses, the extent to which different jurisdictions opt to expand that definition is unpredictable and haphazard. The result is a nationwide patchwork of statutory and judicial definitions of violence, some of which vary depending on context, and very few of which seem to have been informed by a reasoned legislative determination of which crimes truly merit the most severe sentences.

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## Some state legislatures’ and federal and state courts’ definitions of violent crimes are so expansive that crimes that are commonly understood to be nonviolent are legally classified as violent.

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Compounding the problem is the fact that judicial interpretations of what constitutes violent offenses can vary widely. In interpreting sentencing laws that impose enhanced penalties on defendants with prior convictions for “violent crime,” some courts have broadly defined violent crime to include burglary of an unoccupied dwelling, drunk driving, obstruction of justice, or fleeing a law enforcement officer, among other offenses. Lower federal courts have disputed the definitions of the meaning of the terms “violent crime” or “crime of violence” used in several federal laws. For instance, lower federal courts have interpreted federal statutes to find offenses such as the failure to report to a halfway house,<sup>34</sup> theft or attempted theft of an unoccupied car,<sup>35</sup> tampering with a car,<sup>36</sup> or walking away from a prison honor camp<sup>37</sup> to be violent felonies. Lower federal courts have disagreed over whether it is a “violent felony” under the Armed Career Criminal Act to attempt or conspire to commit burglary,<sup>38</sup> retaliate against a government officer,<sup>39</sup> carry a concealed weapon,<sup>40</sup> possess a sawed-off shotgun as a felon,<sup>41</sup> commit statutory rape,<sup>42</sup> or tamper with or make unauthorized use of an automobile.<sup>43</sup>

These inconsistent and overbroad definitions of violence create confusion and obfuscate sentencing practices, which makes calculating the true number of people serving LWOP for crimes that did not involve an act of violence nearly impossible.

For the purposes of collecting and analyzing data and documenting cases for this report, the ACLU classifies crimes as nonviolent if they do not involve the use or threat of physical force against a person. Under this definition, violent crimes include murder and attempted murder; manslaughter; sexual assault and other sexual abuse crimes;

assault; battery; robbery (defined as theft through the use of force); kidnapping; false imprisonment; carjacking; and other crimes against persons. As defined in this report, violent crimes also include some weapons offenses, such as unlawful discharge of a weapon and unlawful throwing, placing, or discharging of a destructive device or bomb. In addition, the ACLU has excluded all sex crimes from the data on LWOP for nonviolent offenses, including sex crimes—such as possession of child pornography—that do not inherently involve an act of violence against another but in which the sexual nature of these offenses inflicts a kind of harm grave enough to set them apart from other nonviolent offenses.

Under the definition used throughout this report, nonviolent crimes include property crimes such as larceny, vehicle theft, burglary, possession or receipt of stolen property or goods, shoplifting, trespass, embezzlement, criminal mischief, criminal damage, issuing a bad check, tax crimes, identity theft, fraud, forgery, criminal impersonation, money laundering, stolen vehicle offenses, and illegal use, theft, or unlawful reproduction of a credit card. Nonviolent crimes as defined in this report also include drug offenses such as possession, possession with intent to distribute, manufacture, sale, and trafficking of controlled substances; financial crimes such as bribery, extortion, and racketeering; and public-order offenses such as violation of probation or parole, obstruction of criminal justice processes, illegal gambling, driving while intoxicated, disorderly conduct, prostitution, public indecency, carrying a firearm without a permit, illegal sale of a firearm, and criminal possession of weapons.

Under this report's definition of nonviolent, there is a strong likelihood that there are individuals serving LWOP for offenses that are statutorily classified as "violent" but that were not based on conduct that actually involved violence. As a result, the data in this report on LWOP sentences for crimes defined as "nonviolent" understates the scope of the problem.

## IV. Findings: The Use of Life without Parole for Nonviolent Crimes

The number of people sentenced to life without parole has quadrupled nationwide in the past 20 years, even while violent crime has been declining during that period. Not only has the use of life-without-parole sentences exploded, but the punishment is available for a broader range of offenses, and those sentenced to LWOP include people convicted of nonviolent crimes, including low-level nonviolent offenses. According to data collected and analyzed by the ACLU, 3,278 prisoners are serving LWOP for drug, property, and other nonviolent crimes in the United States as of 2012. Our data on the people serving LWOP shows marked geographic and socioeconomic patterns, and reveals stark racial disparity in life-without-parole sentencing for nonviolent offenses.

### RISE IN LIFE-WITHOUT-PAROLE SENTENCES

Until the 1970s, life without parole was a very rare sentence—it appeared in few statutes in few states, and judges and juries almost never imposed it.<sup>44</sup> That changed when the U.S. Supreme Court temporarily banned the death penalty in 1972. With the death penalty ruled unconstitutional, some states looked for an alternative sentence for the most heinous crimes and settled on life without parole, the second-most severe sentence available.<sup>45</sup>

Since then, the use of life without parole has exploded nationwide. The number of people serving LWOP increased from a number the American Law Institute describes as “vanishingly small” in the 1960s to 12,453 in 1992; it then tripled to 41,095 by 2008.<sup>46</sup> Since 2008, the population of prisoners serving LWOP has increased 22.2 percent.<sup>47</sup> Today, more than 49,000 prisoners—one out of every 30 people in prison—are serving life-without-parole sentences.<sup>48</sup>

Prisoners serving LWOP comprise one of the most rapidly growing populations in the prison system—since 1992, the

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3,278 prisoners are serving LWOP for drug, property, and other nonviolent crimes in the United States as of 2012.

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increase in their numbers is nearly double the rise in the total prison population and more than double the rise in people serving parole-eligible life sentences.<sup>49</sup> The change has been even more pronounced in certain states. In Louisiana, just 143 people were serving LWOP sentences in 1970; that number had increased to 4,637 by 2012.<sup>50</sup> LWOP is now used in 49 states, up from 16 in the mid-1990s.<sup>51</sup> Six states—Illinois, Iowa, Louisiana, Maine, Pennsylvania, and South Dakota—and the federal system have abolished parole for prisoners sentenced to life, meaning that all life sentences in these jurisdictions are imposed without the possibility of parole. In Louisiana, 10.9 percent of the prison population is permanently imprisoned; in Pennsylvania, the percentage is 9.4.<sup>52</sup>

LWOP has not only expanded to nearly every state but also is an available sentence for many more crimes. In 37 states and in the federal system, a life-without-parole sentence is available for non-homicide offenses, including convictions for selling drugs, burglary, robbery, carjacking, and battery.<sup>53</sup> In 29 states, an LWOP sentence is mandatory upon conviction of particular crimes, thus denying judges any discretion to consider the circumstances of the crime or the defendant.<sup>54</sup> In some states—such as Alabama, Florida, Iowa, Louisiana, Mississippi, Oklahoma, South Carolina, and Washington—LWOP is mandatory under so-called “habitual offender” laws that apply upon a felony conviction if the person has previously been convicted of certain prior felonies,<sup>55</sup> which need not be serious or even violent in many of these states. Under Louisiana’s Habitual Offender Law, for instance, the state requires mandatory life without parole upon conviction of a third drug offense if the third and prior offenses carry

a sentence of 10 years or more. Third-time possession of marijuana, even of a single joint, carries up to a 20-year sentence. Growing a single marijuana plant carries a sentence of up to 30 years. Either offense could trigger a sentence of mandatory life without parole. Moreover, a conviction of conspiracy to distribute most drugs (including marijuana), no matter how minor the defendant's role, will subject a defendant to life without parole if the prosecutor charges him or her as a habitual offender.

The net result of this expansion is that LWOP is now used at historically high levels to punish people who at one time would have received much more lenient sentences. In addition, people sentenced to LWOP are robbed of the opportunity for release, which is rooted in the belief that people have the capacity for growth and rehabilitation and the ability to successfully reintegrate into society. Indeed, studies show that lifers who are released are very unlikely to commit new crimes.<sup>56</sup> A sentence to life without parole, however, means the prisoner has no prospect of release in his or her lifetime, regardless of his or her efforts at rehabilitation: virtually every person sentenced to LWOP dies in prison.

## NONVIOLENT CRIMES THAT RESULT IN LIFE-WITHOUT-PAROLE SENTENCES

As a result of the expansion of the crimes eligible for LWOP sentences to include a greater range of offenses, even people convicted of low-level nonviolent offenses are punished with LWOP sentences, often because of prior convictions. For example, the ACLU documented cases in which people were sentenced to LWOP for simple possession of the following drugs or drug paraphernalia: a crack pipe; a trace, unweighable amount of heroin in a bottle cap;<sup>57</sup> less than half a gram of cocaine;<sup>58</sup> a trace amount of cocaine in clothes pockets that was so minute it was invisible to the naked eye and detected only in lab tests;<sup>59</sup> a single, small crack rock at home;<sup>60</sup> two rocks of crack cocaine;<sup>61</sup> and a small amount of heroin in tin foil.<sup>62</sup> Marijuana crimes that resulted in LWOP sentences include possession of 32 grams,<sup>63</sup> 130 grams,<sup>64</sup> or two pounds<sup>65</sup> with intent to distribute; acting as a go-between in the sale of \$10 of marijuana to an undercover officer;<sup>66</sup> and

serving as a middleman in a sale of \$20 worth of marijuana to an undercover officer.<sup>67</sup>

In cases documented by the ACLU, nonviolent property crimes that resulted in life-without-parole sentences include forgery and petit larceny by attempting to cash a check found to have been stolen;<sup>68</sup> a junk-dealer's possession of stolen junk metal (10 valves and one elbow pipe);<sup>69</sup> possession of stolen wrenches;<sup>70</sup> siphoning gasoline from a truck;<sup>71</sup> stealing tools from the back of a truck;<sup>72</sup> possession of a few pieces of stolen jewelry, a cordless telephone, and an amplifier;<sup>73</sup> stealing tools from a tool shed and a welding machine from a yard;<sup>74</sup> stealing a money bag from a desk drawer in a municipal building;<sup>75</sup> shoplifting a computer from a Walmart;<sup>76</sup> shoplifting three belts from a department store;<sup>77</sup> shoplifting

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**Studies show that lifers who are released are very unlikely to commit new crimes. LWOP, however, means the prisoner has no prospect of release, regardless of his or her efforts at rehabilitation: virtually every person sentenced to LWOP dies in prison.**

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several digital cameras from a Walmart;<sup>78</sup> shoplifting two jerseys from an athletic store;<sup>79</sup> shoplifting a jacket worth \$159 from a department store;<sup>80</sup> slashing tires in the lot of a used car dealer;<sup>81</sup> breaking into a parked car and stealing a bag containing a woman's lunch;<sup>82</sup> stealing a wallet from a hotel room;<sup>83</sup> stealing a car radio from a 16-year-old car;<sup>84</sup> taking a television, circular saw, and a power converter from a vacant house;<sup>85</sup> possession of a stolen car;<sup>86</sup> borrowing a co-worker's truck without permission;<sup>87</sup> and kicking in the back door of a house and entering it in an aborted daytime burglary.<sup>88</sup>

Other drug crimes that have resulted in LWOP sentences include having three and a half ounces of methamphetamine

at home;<sup>89</sup> having an ounce of cocaine and three marijuana cigarettes at home;<sup>90</sup> selling a single crack rock; verbally negotiating another man's sale of two small pieces of fake crack to an undercover officer;<sup>91</sup> buying four ounces of methamphetamine for personal use;<sup>92</sup> serving as a middleman in the sale of \$20 of crack to an undercover officer;<sup>93</sup> selling less than a third of a gram of crack cocaine<sup>94</sup> or \$10 worth of crack cocaine<sup>95</sup> to a confidential informant within a half-mile of a school; selling \$60 worth of crack cocaine to a confidential informant near a building that used to be a school;<sup>96</sup> selling eight grams of crack cocaine near a school;<sup>97</sup> distribution of one-tenth of a gram of crack cocaine; selling \$10 worth of crack cocaine to an undercover police officer; distribution of several grams of LSD to Grateful Dead concertgoers;<sup>98</sup> having a stash of over-the-counter decongestant pills that could be manufactured into methamphetamine;<sup>99</sup> and other crimes of possession, sale, or distribution of marijuana, methamphetamine, crack and powder cocaine, heroin, or other drugs.

Other nonviolent crimes that resulted in life-without-parole sentences include making a drunken threat to a police officer while handcuffed in the back of a patrol car;<sup>100</sup> possession of a firearm by a convicted felon;<sup>101</sup> taking an abusive stepfather's gun from their shared home;<sup>102</sup> damaging a police patrol car while trying to flee after shoplifting soap and Alka-Seltzer from a grocery store;<sup>103</sup> colliding with two patrol cars while being chased by police trying to carry out a traffic stop;<sup>104</sup> breaking into a parked car and stealing a gun inside it;<sup>105</sup> and breaking into a closed liquor store in the middle of the night with a gun.<sup>106</sup>

## WHO IS SERVING LWOP FOR NONVIOLENT CRIMES: THE NUMBERS

The ACLU's research has found that 3,278 prisoners are serving LWOP for drug, property, and other nonviolent

TABLE 2

Inmates serving life without parole for nonviolent offenses compared to total serving LWOP, classified by jurisdiction

Jurisdiction	Inmates serving LWOP for nonviolent offenses (2012)	Total LWOP inmates (2012)	Percent of total LWOP population serving for nonviolent offenses
<b>Federal system</b>	2,074	4,058	51.1%
<b>Alabama</b>	244	1,507	16.2%
<b>Delaware</b>	Unknown	386	Unknown
<b>Florida</b>	270	7,992	3.4%
<b>Georgia</b>	20	813	2.5%
<b>Illinois</b>	10	1,600	0.6%
<b>Louisiana</b>	429	4,637	9.25%
<b>Mississippi</b>	93	1,518	6.1%
<b>Missouri</b>	1	1,063	0.09%
<b>Nevada</b>	Unknown	491	Unknown
<b>Oklahoma</b>	49	780	6.3%
<b>South Carolina</b>	88	988	8.9%
<b>Virginia</b>	Unknown	774	Unknown
<b>Total</b>	<b>3,278</b>	<b>26,607</b>	<b>12.3%</b>

Source: Nonviolent LWOP data provided to the ACLU by state Departments of Corrections and the Federal Bureau of Prisons. Total LWOP data from The Sentencing Project.<sup>107</sup>

crimes in the United States as of 2012. Nearly two-thirds of these prisoners—63 percent—are in the federal system. Under current law, 22 states permit LWOP sentences for certain nonviolent crimes.<sup>108</sup> In nine of these states, prisoners

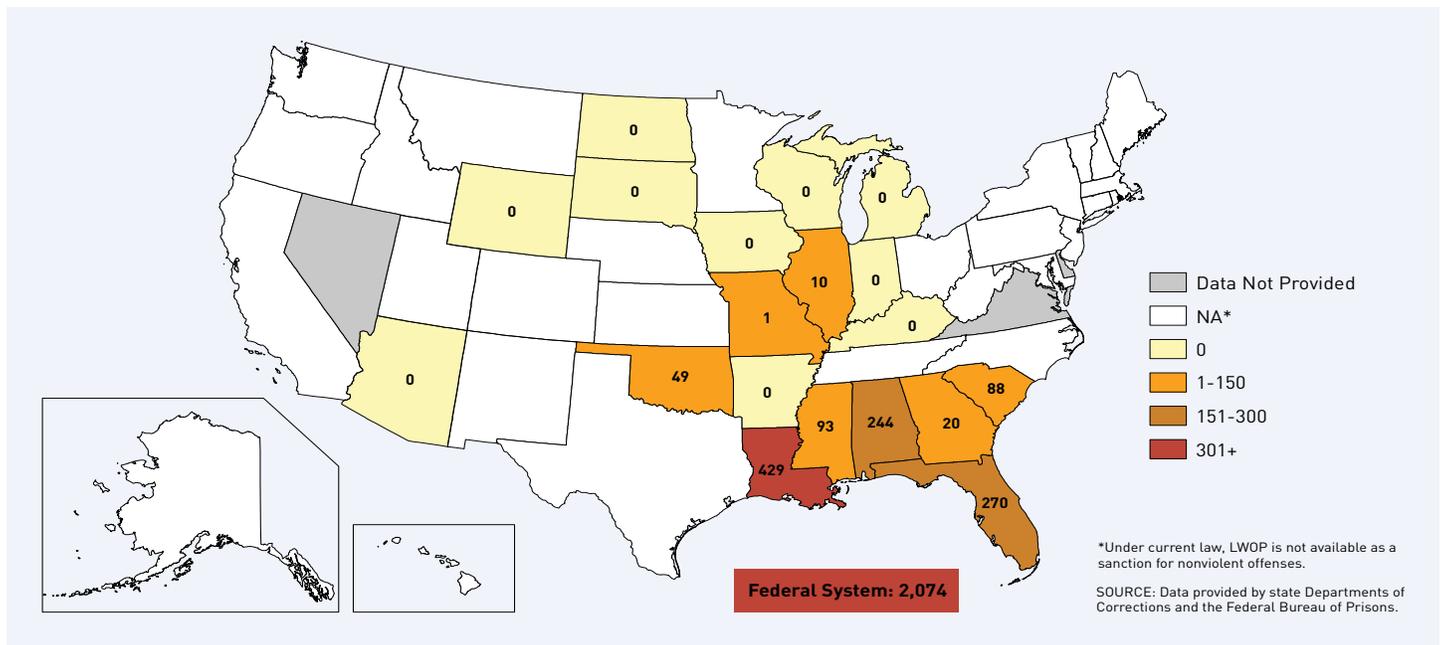
are currently serving life-without-parole sentences for a nonviolent offense, based on data provided to the ACLU by state Departments of Corrections. Of the states that sentence nonviolent offenders to LWOP, Louisiana, Florida, Alabama,

**TABLE 3**  
**LWOP prisoners classified by nonviolent offense category and jurisdiction**

Jurisdiction	LWOP prisoners —nonviolent drug offenses (2012)	LWOP prisoners—nonviolent property offenses (2012)	LWOP prisoners – other nonviolent offenses
<b>Federal system</b>	1,989	85	0
<b>Alabama</b>	49	171	24
<b>Florida</b>	45	203	26
<b>Georgia</b>	15	3	2
<b>Illinois</b>	10	0	0
<b>Louisiana</b>	367	62	0
<b>Mississippi</b>	43	50	0
<b>Missouri</b>	1	0	0
<b>Oklahoma</b>	49	0	0
<b>South Carolina</b>	10	78	0
<b>Total</b>	<b>2,578</b>	<b>652</b>	<b>48</b>

Source: Data provided by state Departments of Corrections and the Federal Bureau of Prisons.

**FIGURE 3**  
**Total number of prisoners serving LWOP for nonviolent offenses (2012)**



**TABLE 4**

**Prisoners admitted to federal prison from 1999 to 2011 to serve LWOP sentences for nonviolent offenses, classified by nonviolent offense category**

<b>Total federal nonviolent LWOP admissions to prison, 1999-2011</b>	2,948	100%
<b>Drug offenses</b>	2,034	69.0%
<b>Firearms offenses</b>	588	19.9%
<b>Auto theft offenses</b>	34	1.2%
<b>Larceny offenses</b>	1	0.03%
<b>Fraud offenses</b>	3	0.1%
<b>Money laundering offenses</b>	1	0.03%
<b>Racketeering/extortion offenses</b>	245	8.3%
<b>Civil rights offenses</b>	3	0.1%
<b>Immigration offenses</b>	5	0.2%
<b>Administration of justice offenses</b>	25	0.8%
<b>Traffic and other offenses</b>	9	0.3%

Source: Data provided by the United States Sentencing Commission.

Mississippi, South Carolina, and Oklahoma have the highest numbers of prisoners serving LWOP for nonviolent crimes. The Departments of Corrections of Delaware, Virginia, and Nevada did not provide data requested by the ACLU; because these three states allow or mandate LWOP sentences for certain nonviolent offenses, the total number of nonviolent LWOP prisoners nationwide is likely higher than the ACLU’s data suggests.

In the federal system, more than half (51.1 percent) of the total population of prisoners currently serving LWOP are serving their sentences for nonviolent offenses. Between 1999 and 2011, 3,465 prisoners were admitted to federal prison to serve LWOP sentences; 2,948 of them were convicted of nonviolent offenses, indicating that nonviolent offenders could account for as much as 85 percent of the federal prison population that was sentenced to life in prison without the possibility of parole during that 13-year period.

In at least five states (Alabama, Louisiana, South Carolina, Oklahoma, and Mississippi), the number of people serving LWOP for nonviolent offenses is more than five percent of the total population of prisoners serving LWOP. In Alabama, more than 15 percent of the total LWOP population is serving the sentence for a nonviolent offense.

**TABLE 5**

**Number of people sentenced to LWOP for a nonviolent offense as a habitual offender, classified by jurisdiction and offense type**

<b>Jurisdiction</b>	<b>Total prisoners sentenced to LWOP as habitual offenders</b>	<b>Drug offense</b>	<b>Property offense</b>	<b>Other nonviolent offense</b>	<b>Percent of total prison population serving LWOP for nonviolent crimes</b>
<b>Federal system</b>	780	602	3	175	26.5%
<b>Alabama</b>	158	31	114	13	64.7%
<b>Florida</b>	105	32	66	7	38.9%
<b>Illinois</b>	2	2	0	0	20%
<b>Louisiana</b>	175	108	67	Unknown	40.7%
<b>Mississippi</b>	71	35	36	0	76.3%
<b>Missouri</b>	1	1	0	0	100%
<b>South Carolina</b>	58	6	52	0	65.9%

Source: Data provided by state Departments of Corrections and the U.S. Sentencing Commission. Federal data is based on number of prisoners admitted to federal prison from 1999 to 2011 to serve LWOP sentences for nonviolent offenses.

## Data by Offense Category

Of the prisoners serving LWOP for nonviolent offenses nationwide, 79 percent (2,577 prisoners) are serving LWOP for nonviolent drug offenses. Of the 2,074 federal prisoners serving LWOP for nonviolent offenses, 96 percent (1,989 prisoners) are serving LWOP for nonviolent drug offenses. Of the 1,204 state prisoners serving LWOP for nonviolent offenses, 49 percent (589 prisoners) are serving LWOP for nonviolent drug offenses.

According to data collected and analyzed by the ACLU, there are geographic patterns in the types of nonviolent offenses punished with LWOP sentences. In Alabama, Florida, and South Carolina, the great majority of those serving LWOP for a nonviolent offense were sentenced for property crimes. In Louisiana, Oklahoma, Georgia, Illinois, and the federal system, the great majority of prisoners serving LWOP for nonviolent crimes had been convicted of nonviolent drug offenses. In Mississippi, the nonviolent crimes for which

prisoners are serving LWOP are evenly divided among drug and property offenses.

Between 1999 and 2011, 2,034 prisoners were admitted to federal prison to serve LWOP sentences for nonviolent drug crimes. According to data the ACLU received from the U.S. Sentencing Commission on the prisoners admitted to federal prisons between 1999 and 2011 to serve LWOP, 588 were sentenced to LWOP for a nonviolent firearms offense and 245 were sentenced to LWOP for a nonviolent racketeering or extortion offense during that 13-year period. (Note that the total number of admissions to prison does not equal the total number of current prisoners. For instance, the Bureau of Prisons reported to the ACLU that there are 1,989 prisoners serving LWOP for a drug offense as of 2012. The discrepancy can likely be explained by events such as successful post-conviction appeals, commutations of sentence, and prisoner deaths.)

**TABLE 6**  
**Prisoners characterized as habitual offenders who were admitted to federal prison from 1999 to 2011 to serve LWOP for nonviolent offenses, classified by nonviolent offense category**

<b>Total federal nonviolent LWOP admissions to prison characterized as habitual offenders, 1999–2011</b>	780	100%
<b>Drug habitual</b>	602	77.2%
<b>Firearms habitual</b>	138	17.7%
<b>Racketeering/extortion habitual</b>	36	4.6%
<b>Auto theft habitual</b>	3	0.38%
<b>Administration of justice habitual</b>	1	0.13%
<b>Civil rights habitual</b>	0	0%
<b>Fraud habitual</b>	0	0%
<b>Immigration habitual</b>	0	0%
<b>Larceny habitual</b>	0	0%
<b>Money laundering habitual</b>	0	0%
<b>Traffic and other habitual</b>	0	0%

Source: Data provided by the U.S. Sentencing Commission.

## Habitual Offenders

In the cases of jurisdictions for which the ACLU received data about prisoners sentenced to LWOP as habitual offenders, about half of those serving LWOP for nonviolent offenses nationwide were sentenced under three-strikes and other habitual offender laws enacted as early as the beginning of the 1970s that punish individuals for repeat offenses. Louisiana, Florida, Alabama, Mississippi, and South Carolina are among the states with the highest numbers of prisoners serving LWOP for nonviolent crimes nationwide, largely because of these states' harsh habitual offender laws that mandate LWOP sentences for repeat offenders. Although the Oklahoma Department of Corrections did not provide data to the ACLU on prisoners serving LWOP who have been categorized as habitual offenders, the ACLU's research indicates that the prisoners serving LWOP for nonviolent offenses in Oklahoma must have been sentenced under a state habitual offender law.

Nearly one out of three federal drug prisoners serving LWOP had their sentences enhanced as so-called "career offenders."<sup>109</sup> Between 1999 and 2011, 26.5 percent (780 prisoners) of the 2,948 prisoners admitted to federal prison to serve LWOP sentences for nonviolent crimes were categorized as habitual offenders. The great majority (77.2 percent) of these prisoners were sentenced to LWOP for drug offenses.

## Mandatory LWOP Sentences and First-Time Offenders Serving LWOP

The overwhelming majority of the LWOP sentences of prisoners surveyed by the ACLU (81.3 percent) were mandatory. This number was even higher in the federal system (91.1 percent) and was slightly lower in the states (75.8 percent). However, the lower number for the state system represents the average of a high variance between states—in Florida, only 58.8 percent of surveyed nonviolent LWOP sentences were mandatory, but in Louisiana, 97.6 percent of surveyed nonviolent LWOP sentences were mandatory.

According to data provided by state Departments of Corrections, 26 and 18 first-time offenders are serving

**TABLE 7**  
Age at the time of the nonviolent crime that resulted in an LWOP sentence, based on ACLU survey

Age	Number of survey respondents	Percent of survey respondents
20 or younger	19	5.4%
21-30	133	37.5%
31-40	138	38.9%
41 or older	65	18.3%

Source: ACLU survey of 355 prisoners serving LWOP for nonviolent offenses.

**TABLE 8**  
Time served to date by prisoners serving LWOP for nonviolent offenses, based on ACLU survey

Years incarcerated to date	Number of prisoners	Percentage of prisoners surveyed
5 or fewer	46	12.7%
5-10	71	20.1%
10-15	79	22.4%
15-20	92	26.1%
More than 20	65	18.5%

Source: ACLU survey of 353 prisoners serving LWOP for nonviolent offenses (two additional survey respondents did not answer the question).

LWOP for their first offenses in Louisiana and Mississippi, respectively. The Alabama and Florida state Departments of Corrections did not provide data on first-time offenders. While the Bureau of Prisons similarly did not provide data on first-time offenders serving LWOP for nonviolent crimes, 18.5 percent—more than one in six—of the federal prisoners surveyed by the ACLU are first-time offenders. Of state prisoners surveyed by the ACLU, 96.4 percent of them had prior convictions. In the cases of jurisdictions for which the ACLU received data about habitual offender enhancements, about half of the prisoners serving LWOP for nonviolent offenses were sentenced under habitual offender laws.

## Age and Time Served

Of the cases documented by the ACLU, prisoners ranged in age from 18 to 57 when they were arrested for the nonviolent offense for which they were sentenced to LWOP. The oldest prisoner whose case the ACLU documented is currently 91, and the youngest is 25. Based on data the ACLU received from the U.S. Sentencing Commission and state Departments of Corrections, the average prisoner serving LWOP for a nonviolent crime was admitted to prison in his or her late 30s and is currently in his or her late 40s. In general, among jurisdictions surveyed by the ACLU, the average and median ages at the time of the crime for prisoners serving LWOP for nonviolent crimes was around 32.<sup>110</sup>

In the cases documented by the ACLU, prisoners serving LWOP for nonviolent crimes have been incarcerated between three and 30 years in the federal system and between one and 36 years in state prisons. In the cases surveyed for this report, the average time spent in prison to date for the LWOP sentence they are currently serving was 14.8 years. The median length of time spent in prison to date for the LWOP sentence they are currently serving was 16.4 years. Of the federal prisoners, the average time spent in prison to date for their LWOP sentence was 16 years, and the median length of time served to date for their LWOP sentence was 19 years. Of the state prisoners, the average time spent in prison to date for their LWOP sentence was 13.6 years, and the median length of time served to date for their LWOP sentence was 13

**TABLE 9**

**Highest grade in school completed prior to incarceration, based on ACLU survey**

Highest grade completed	Number of prisoners	Percentage of prisoners surveyed
<b>Total</b>		
5th grade or below	5	1.4%
6th to 8th grade	53	15.4%
9th or 10th grade	103	29.9%
11th grade	48	14%
12th grade	76	22%
GED	23	6.7%
At least some college	37	10.7%
<b>Federal</b>		
5th grade or below	1	0.8%
6th to 8th grade	7	5.4%
9th or 10th grade	30	23.3%
11th grade	20	15.5%
12th grade	37	28.7%
GED	9	7.0%
At least some college	25	19.4%
<b>State</b>		
5th grade or below	4	1.9%
6th to 8th grade	46	21.3%
9th or 10th grade	73	33.8%
11th	28	13%
12th grade	39	18.1%
GED	14	6.5%
At least some college	12	5.6%

Source: ACLU survey of 345 prisoners serving LWOP for nonviolent offenses (10 additional survey respondents did not answer the question).

years. To put these sentences in perspective, the average time served for murder in the United States is 14 years.<sup>111</sup>

## Socioeconomic Disparities and Education Levels

Although the ACLU’s survey did not quantify socioeconomic background or income data, nearly all of the prisoners with whom the ACLU spoke or corresponded reported growing

up in low-income families and struggling to make ends meet. Many of these prisoners defined themselves as low-income and/or poor, and they also described facing serious financial hardships during their childhoods and prior to their incarcerations. Such anecdotal evidence supports other research revealing a link between socioeconomic levels and incarceration rates and harsh sentences.<sup>112</sup>

Moreover, the majority of the prisoners surveyed by the ACLU reported being undereducated: 60.5 percent of those surveyed dropped out of school before completing high school; among state prisoners, 70 percent of survey respondents said they did not complete high school. On average, prisoners surveyed in the federal system had completed higher levels of education than prisoners in the state system, having on average completed twelfth grade or high school equivalency, whereas prisoners in the state system had, on average, completed school only through tenth grade. In the state system, 23.2 percent of the prisoners surveyed by the ACLU—more than one in five—had education levels of eighth grade or below prior to their incarcerations. Of the cases documented by the ACLU, the lowest reported grade completed by a prisoner before he was incarcerated was third grade.

## Mental Health and Substance Abuse Problems

The majority—57.8 percent—of prisoners surveyed by the ACLU reported that they believe substance abuse was a factor in the commission of the crimes for which they were sentenced to LWOP. This varied substantially between federal and state prisoners. In the federal system, 40.2 percent of the prisoners surveyed said they felt that substance abuse played a role in their crimes. Among state prisoners, 68 percent surveyed said that they felt that substance abuse played a role in their crimes; in Louisiana, the number is 74.1 percent.

A small but significant number of prisoners reported to the ACLU that their untreated or ineffectively treated mental illness(es) played a role in the commission of the crimes for which they were sentenced to LWOP. Twelve point one percent of prisoners surveyed reported that they felt that mental health problems played a role in their crimes. This number was substantially higher among state prisoners than it was in the federal system. In the federal system, 6.2 percent

of prisoners surveyed said that they felt that mental health problems played a role in their crimes, while 15.6 percent of state prisoners said that they felt that mental health problems played a role in their crimes. In Florida, 22.6 percent of prisoners surveyed—more than one in five—said that they felt that mental health problems played a role in their crimes. In some cases, the ACLU was able to corroborate prisoners’ claims about the relationship between their mental illnesses and their crimes through the appellate record and trial and sentencing transcripts (for example, expert testimony that paranoid delusions caused the schizophrenic defendant to run from police and collide with a patrol car, causing the

criminal damage for which the defendant was sentenced to LWOP). In other cases, however, the ACLU has been unable to independently corroborate the prisoners’ assertions.

In addition, 15.2 percent of surveyed prisoners serving LWOP for nonviolent crimes reported that they had been diagnosed with a major mental health issues prior to their incarcerations. This number varied substantially between those incarcerated in the federal system and those incarcerated in state prisons. In the federal system, 6.4 percent of the prisoners surveyed reported they had been diagnosed with major mental health issues prior to their incarcerations,

**TABLE 10**  
Race of prisoners serving LWOP for nonviolent offenses, classified by jurisdiction

Jurisdiction	White	Black	Latino	Other
<b>Federal* system</b>	16.4% 482 prisoners	60% 1,757 prisoners	21.1% 624 prisoners	2.5% 85 prisoners
<b>Alabama**</b>	Unknown	Unknown	Unknown	Unknown
<b>Florida***</b>	29.6% 80 prisoners	60.4% 163 prisoners	9.6% 26 prisoners	<1% 1 prisoner
<b>Illinois</b>	10% 1 prisoner	70% 7 prisoners	20% 2 prisoners	0
<b>Louisiana****</b>	7.5% 14 prisoners	91.4% 171 prisoners	1.1% 2 prisoners	0
<b>Mississippi</b>	20.4% 19 prisoners	78.5% 73 prisoners	0	1% 1 prisoner
<b>Missouri</b>	Unknown	Unknown	Unknown	Unknown
<b>Oklahoma</b>	36.7% 18 prisoners	57.1% 28 prisoners	4% 2 prisoners	2% 1 prisoner
<b>South Carolina</b>	30.7% 27 prisoners	68.2% 60 prisoners	0	1% 1 prisoner

Source: Data provided by state Departments of Corrections, except where indicated otherwise.

\* Racial composition of 2,948 prisoners admitted to federal prison between 1999 and 2011 and sentenced to LWOP for nonviolent offenses, based on data provided by the U.S. Sentencing Commission. These figures do not represent the race of federal prisoners currently serving LWOP for nonviolent offenses, which the Bureau of Prisons refused to provide in response to a FOIA request filed by the ACLU.

\*\* The Alabama Department of Corrections did not provide race data, and the ACLU was unable to document sufficient cases to make any determinations about racial disparity in Alabama.

\*\*\* Based on prisoners’ self-reported race in their responses to the ACLU survey, which the ACLU cross-checked against a complete list of the names, Department

of Corrections number, and race of prisoners serving LWOP for nonviolent offenses provided by the Florida Department of Corrections, the ACLU determined that the Florida Department of Corrections miscategorized at least 17 Latino prisoners as white. The data presented here corrects for these errors.

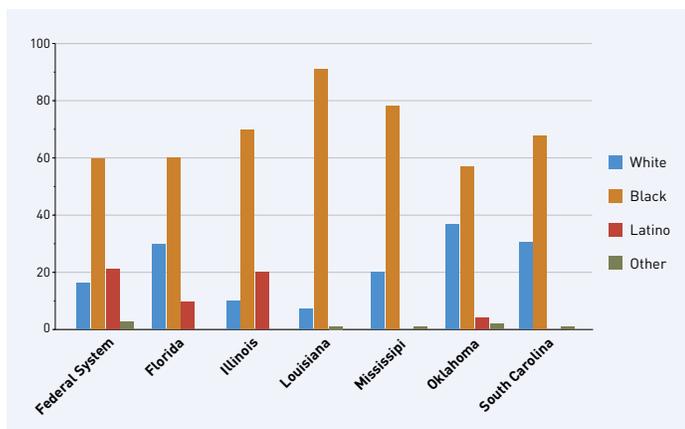
\*\*\*\* Based on ACLU documentation of the cases of 187 Louisiana prisoners serving LWOP for nonviolent offenses, or 43.6% of the total 429 prisoners serving the sentence for nonviolent crimes. The Louisiana Department of Corrections did not provide offense-specific race data in response to a FOIA request filed by the ACLU.

while 20.5 percent of state prisoners surveyed said they had been diagnosed with major mental health issues prior to their incarcerations. In Florida, 27.6 percent of the prisoners surveyed—more than one in four—reported being diagnosed with major mental health issues prior to incarceration.

## RACIAL DISPARITY IN LIFE-WITHOUT-PAROLE SENTENCING

There is stark racial disparity in life-without-parole sentencing for nonviolent offenses. Based on data provided by the United States 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. In the 646 cases examined for this report, the ACLU found that 72.9 percent of these documented prisoners serving LWOP for nonviolent offenses are Black, 19.8 percent are white, and 6.9 percent are Latino.

**FIGURE 4**  
Race of prisoners serving LWOP for nonviolent offenses, by jurisdiction



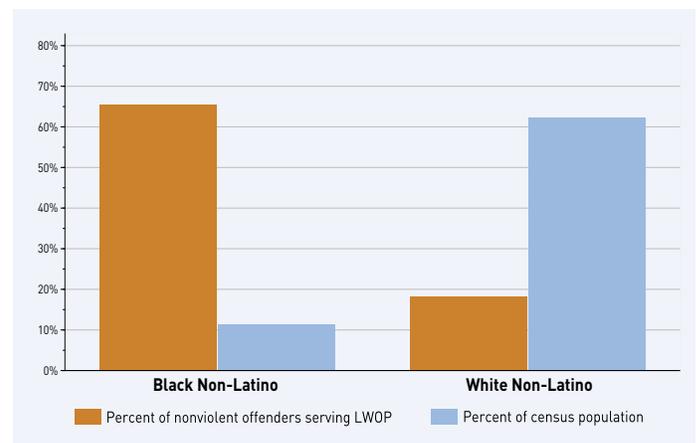
Source: Federal data based on data provided by the U.S. Sentencing Commission documenting the race of 2,948 prisoners admitted to federal prison between 1999 and 2011 and sentenced to LWOP for nonviolent offenses. This federal data does not represent the race of federal prisoners currently serving LWOP for nonviolent offenses, which the Bureau of Prisons refused to provide in response to a FOIA request filed by the ACLU. State data provided by state Departments of Corrections, except that of Louisiana, which is based on ACLU documentation of the cases of 187 Louisiana prisoners serving LWOP for nonviolent offenses, or 43.6% of the total 429 prisoners serving the sentence for nonviolent crimes. The Louisiana Department of Corrections did not provide offense-specific race data in response to a FOIA request filed by the ACLU.

The percentage of Black prisoners serving LWOP for nonviolent offenses is 78.5 percent in Mississippi, 68.2 percent in South Carolina, 60.4 percent in Florida, and 57.1 percent in Oklahoma, according to data provided by state Departments of Corrections. In Illinois, seven of the 10 prisoners serving LWOP for nonviolent crimes are Black. Although the Louisiana Department of Corrections did not provide offense-specific race data in response to an open records request filed by the ACLU, based on our documentation of the cases of almost half of the state's population of prisoners serving LWOP for nonviolent offenses, the ACLU found that a staggering 91.4 percent of such prisoners are Black.

In the federal system, based on data provided by the U.S. Sentencing Commission on the race and number of prisoners admitted to federal prison from 1999 to 2011 to serve LWOP sentences for nonviolent offenses, 60 percent of such prisoners are Black, 21.1 percent are Latino, and 16.4 percent are white. Table 10 shows the racial composition for each state, which is illustrated in Figure 4.

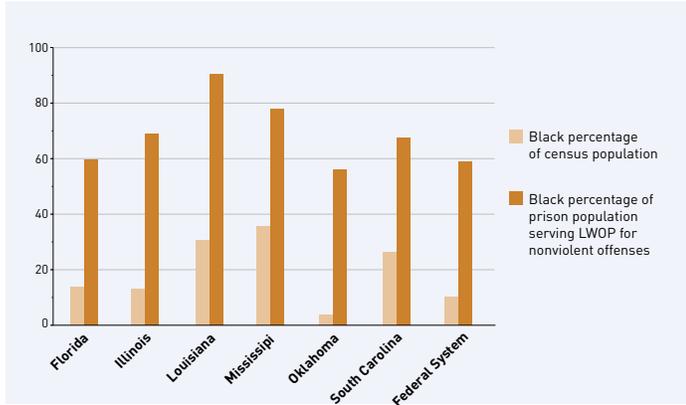
In addition, Blacks are overrepresented in the federal system and in each state researched, constituting a far greater percentage of the nonviolent LWOP population than of the census population as a whole. In the federal system, Blacks constitute only 11.1 percent of the national census population, but they make up 60 percent of the prisoner population serving LWOP for nonviolent offenses; they serve

**FIGURE 5**  
Percent of census population versus percent of nonviolent offenders serving LWOP, by race (2012)



Source: Race data provided by state Departments of Corrections and the Federal Bureau of Prisons; U.S. Census Data

**FIGURE 6**  
**Percentage of Black prisoners serving LWOP for nonviolent offenses compared to representation in census population**

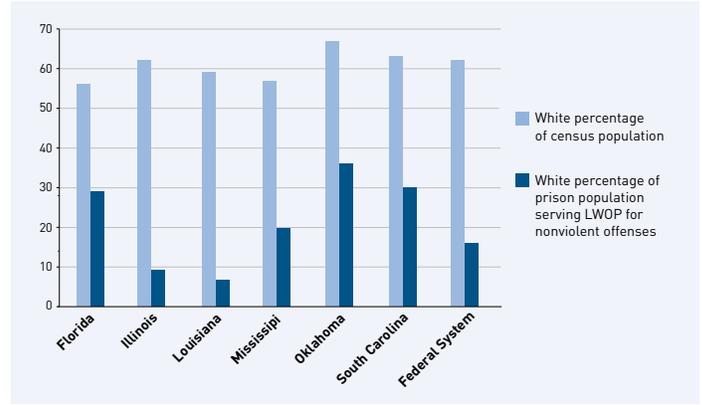


Source: See Figure 4, above.

such sentences at a rate of 46.5 per 1,000,000 residents, over 20 times the rate of whites. In Oklahoma, Blacks constitute only 5.9 percent of the state population, but they make up 57.1 percent of the prison population serving LWOP for nonviolent crimes. Blacks in Oklahoma are serving such sentences at a rate of 197.63, 18 times the rate of whites. In Louisiana, Blacks comprise 91.4 percent of the prison population serving LWOP for nonviolent crimes, but they make up only about one-third of the general population in the state. Blacks in Louisiana are serving such sentences at a rate of 154.85, approximately 23 times (23.1) the rate of whites.

Moreover, Blacks are sentenced to LWOP for nonviolent crimes at rates far greater than whites are. In the federal

**FIGURE 7**  
**Percentage of white prisoners serving LWOP for nonviolent offenses compared to representation in census population**



Source: See Figure 4, above.

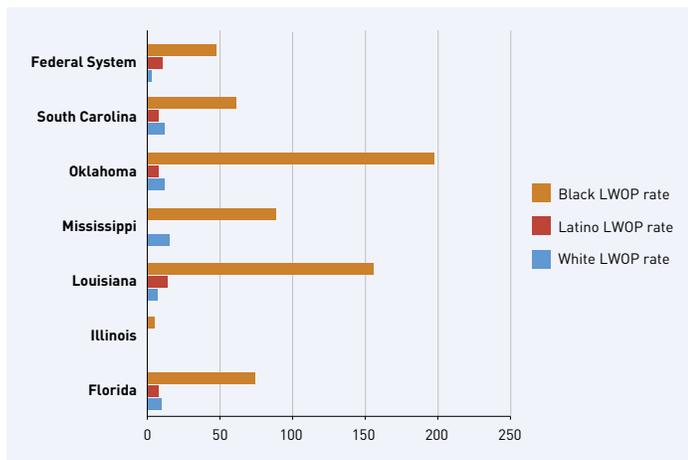
system, Blacks were sentenced to LWOP for nonviolent crimes at 20 times the rate of whites between 1999 and 2011. In Louisiana, the ACLU’s survey found that Blacks were 23 times more likely than whites to be sentenced to LWOP for a nonviolent crime. The racial disparities range from 33-to-1 in Illinois to 18-to-1 in Oklahoma, 8-to-1 in Florida, and 6-to-1 in Mississippi. Table 11 shows the Black-to-white ratio of the rate of prisoners serving LWOP for nonviolent offenses per 1,000,000 residents, which is illustrated in Figure 8.

Blacks are sentenced to life without parole for nonviolent offenses at rates that cannot be explained by white and Black defendants’ differential involvement in crimes alone.<sup>113</sup> The ACLU was unable to obtain data from available sources

**TABLE 11**  
**Rate of prisoners serving LWOP for nonviolent offenses, classified by race and jurisdiction**

State	White LWOP rate	Latino LWOP rate	Black LWOP rate	Times more likely Blacks sentenced to LWOP for a nonviolent crime than whites
Florida	9.28	7.32	73.72	7.94
Illinois	0.16	1.25	5.32	33.25
Louisiana	6.71	12.7	154.85	23.1
Mississippi	14.73	0	88.61	6.02
Oklahoma	11	9	197.63	17.97
South Carolina	11.58	0	60.8	5.25
Federal system	2.33	11.24	47.49	20.38

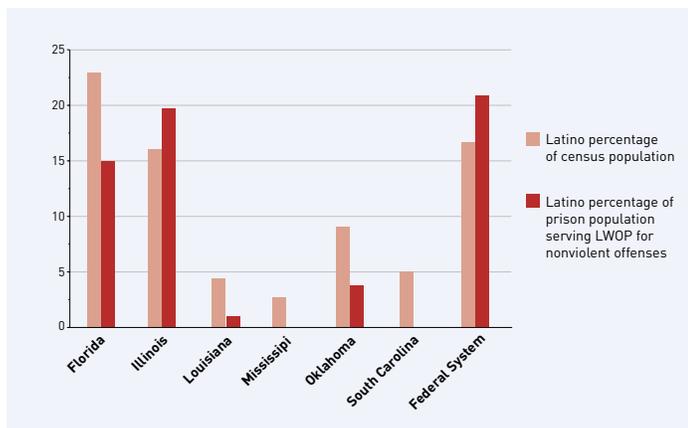
**FIGURE 8**  
**Rate of prisoners serving LWOP for nonviolent offenses, classified by race and compared by jurisdiction**



to determine precisely how much more frequently Black defendants are sentenced to life without parole for nonviolent offenses than white defendants convicted of similar crimes and with similar criminal histories.

The same disparities do not necessarily exist for Latinos. The rate of Latinos serving LWOP for nonviolent offenses ranges from a high of 12.7 per 1,000,000 residents in Louisiana to 9 in Oklahoma, 7.32 in Florida, 1.25 in Illinois, 11.24 in the federal system, and 0 in South Carolina and Mississippi. Latinos are serving life without parole for nonviolent crimes at a rate that is almost 8 times (7.8) the rate of whites in

**FIGURE 9**  
**Percentage of Latino prisoners serving LWOP for nonviolent offenses compared to representation in census population**



Source: See Figure 4, above.

Illinois and almost twice (1.9) the rate of whites in Louisiana. Figure 9 illustrates this variation.

There is clear racial disparity in sentencing in general, including in LWOP and parole-eligible life sentencing for both violent and nonviolent offenses. A report released by the U.S. Sentencing Commission in February 2013 concluded that in recent years, Black male offenders have received sentences that are nearly 20 percent longer than those imposed on white males convicted of similar crimes.<sup>114</sup> The racial disparities increase with the severity of the sentence. The level of disproportionate representation of Blacks among prisoners who are serving LWOP is higher than that among parole-eligible prisoners serving life sentences.<sup>115</sup> The disparity is higher still among prisoners sentenced to LWOP for nonviolent offenses.

Scholarship over the past several decades has examined the intersection of race and sentencing and produced significant evidence of racial disparity in sentencing decisions in the United States.<sup>116</sup> This research indicates that race is often found to contribute to disparities in sentencing decisions in noncapital cases, with Black and Latino offenders sentenced in state and federal courts facing significantly greater odds of incarceration than similarly situated white offenders and receiving longer sentences than their white counterparts in some jurisdictions.<sup>117</sup> Research has also shown that race plays a significant role in the determination of which homicide cases result in death sentences.<sup>118</sup>

Blacks receive disparate treatment at every stage of the criminal justice system, including stops and searches, points of arrest, prosecutions and plea negotiations, trials, and sentencing.<sup>119</sup> In some of the cases documented by the ACLU, there is anecdotal evidence of possible disparate treatment by law enforcement and justice authorities, such as apparently baseless traffic and pedestrian stops and searches that may be the results of racial profiling and targeted drug enforcement in predominantly Black communities. In addition, racial disparities in sentencing can result from theoretically “race neutral” sentencing policies that have significant disparate racial effects, particularly in the cases of habitual offender laws and many drug policies, including mandatory minimums, school zone drug enhancements, and federal policies adopted by Congress in 1986 and 1996 establishing a 100:1 sentencing disparity between crack and powder cocaine offenses.<sup>120</sup>

# v. How We Got Here: Skyrocketing Extreme Sentences and Mass Incarceration

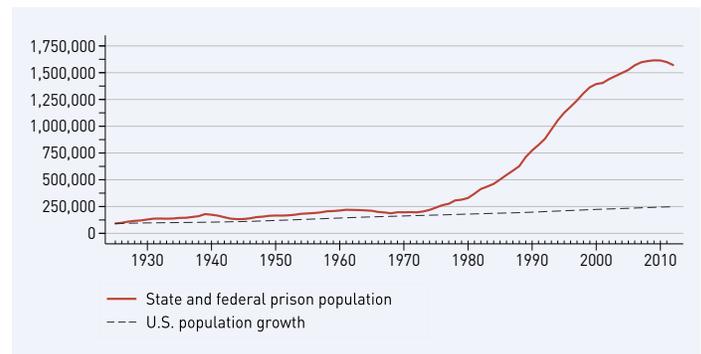
Over the past 40 years, the number of people held in prisons and jails in the United States per capita has more than quadrupled, with the total number of people incarcerated now surpassing 2.3 million.<sup>121</sup> The United States not only incarcerates the greatest number of people in the world, but it also incarcerates at the highest rate. With an incarceration rate five to ten times that of other western democracies, the United States has less than five percent of the world's population, but our country's prisoners account for one quarter of the global prison population. Every state and the federal government have seen a massive increase in inmate populations. Existing facilities have been overcrowded far beyond capacity, with prisoners sleeping in gyms and hallways or triple- and quadruple-bunked in cells. This explosive growth has reverberated far outside the prison walls: one out of every four Americans has a criminal record, which can impose tremendous obstacles to finding employment, securing loans, and obtaining housing.<sup>122</sup> Across the country, young Black men living in neighborhoods of concentrated disadvantage are disproportionately incarcerated and under correctional control. This phenomenon—the excessive use of incarceration and correctional control, especially among poor people and people of color—is commonly referred to as “mass incarceration.”

This report examines one of the most extreme manifestations of mass incarceration: the imposition of sentences of life



without the possibility of parole for people convicted of nonviolent offenses. The 3,278 people in America currently serving life without the possibility of parole for nonviolent crimes represent a tiny fraction of the overall incarcerated population, but their sentences and stories shed light on how extreme, cruel, and ineffective our penal system has become.

**FIGURE 10**  
**Growth in state and federal prison populations (1925–2012)**



NOTE: Data does not include jail populations, except in six states where prisons and jails form one integrated system: Alaska, Connecticut, Delaware, Hawaii, Rhode Island, and Vermont. Data reported for 2012 does not include sentenced inmates not yet in custody, or out to court, and escapees temporarily in custody of local jails. Source: U.S. Department of Justice, Bureau of Justice Statistics; U.S. Census Data

How did we get here? The explosive growth of the U.S. jail and prison population since the 1970s—and the increasing prevalence of LWOP and life sentences in particular—is the inevitable consequence of more than four decades of “tough-on-crime” policies. Since the mid-1970s, state and federal legislators have passed laws creating draconian sentencing and parole schemes designed to keep ever-increasing numbers of people in prison for decades. These policies include mandatory minimum sentencing, which forces judges to issue severe sentences regardless of individual factors meriting leniency, and three-strikes laws, which expand the number of crimes subject to life and life-without-parole sentences. These policies have increased the number of people imprisoned and the lengths of their imprisonments, as well

as limited opportunities for release, causing the population of federal and state prisoners—including those sentenced to die in prison for nonviolent crimes—to soar.

Two factors primarily determine the number of people in prison: the number of admissions and the “length of stay,” meaning the amount of time a person spends incarcerated.<sup>123</sup> When these numbers rise, the number of people behind bars increases. In the United States, both admissions and lengths of stay have increased rapidly in state and federal prison systems for decades. Increases in felony charges by prosecutors, as well as increases in parole and probation revocations for technical and other low-level violations, drove admissions up,<sup>124</sup> while severe sentencing practices such as mandatory minimums, three-strikes and other habitual offender laws, and long sentencing ranges with limited possibilities for release have dramatically elongated length of stay.

## THE “WAR ON DRUGS” AND MANDATORY MINIMUM SENTENCING LAWS

Beginning in the mid-1970s and increasing throughout the 1980s and 1990s, in response to modest increases in crime rates and reports about the prevalence of drug abuse and drug-related crime, lawmakers around the country enacted harsh mandatory minimum sentencing laws designed to severely punish the manufacture, use, and sale of drugs, among other crimes. Mandatory minimum laws require automatic prison terms for those convicted of certain federal and state crimes. These inflexible, often extremely lengthy, “one-size-fits-all” sentencing laws prevent judges from tailoring punishment to the individual and the seriousness of the offense, barring them from considering factors such as the individual’s role in the offense or the likelihood he or she will commit a subsequent crime.

Under federal law, most mandatory minimum sentences apply to drug crimes<sup>125</sup> and are based on the weight of the drug(s) involved; these sentences start at five years for certain drug possession offenses and increase to life without parole.<sup>126</sup> Three federal drug offenses can result in LWOP, even if the offenses are relatively minor. For example, a federal

conviction for possessing 50 grams of methamphetamine carries a mandatory life-without-parole sentence if the defendant has previously been convicted of two other felony drug offenses, which can be as minor as selling personal amounts of marijuana.<sup>127</sup>

In addition, in 1984, Congress created the U.S. Sentencing Commission, which established federal Sentencing Guidelines that apply in all federal cases and were intended to reduce sentencing disparities. The guidelines, however, set harsh mandatory sentences that lengthened prison times for a range of crimes and eliminated judicial discretion to craft individualized sentences. Though the mandatory nature of the guidelines was found unconstitutional by the U.S. Supreme Court in *United States v. Booker* in 2005, federal judges must continue to use them to guide their sentencing decisions.<sup>128</sup> Moreover, as explained in more detail in Section VII(C) of this report, *Booker* is not retroactive, which means that there are thousands of federal offenders sentenced before 2005 still serving mandatory prison sentences handed out under the mandatory guidelines—even in cases where the sentencing judge objected to the mandatory sentence required at the time. In addition, *Booker* did not change any mandatory minimum sentencing laws.

Many states have enacted similar laws that set long mandatory sentences for many nonviolent offenses, particularly those involving drugs.<sup>129</sup> A handful of states have even instituted mandatory LWOP sentences for certain drug offenses. In Alabama, a conviction for selling more than 56 grams of heroin results in a mandatory LWOP sentence.<sup>130</sup> Similarly, a person convicted of selling two ounces of cocaine in Mississippi must receive LWOP.<sup>131</sup> To put these sentences in perspective, the average time served for murder in the United States is 14 years.<sup>132</sup>

While laws such as these were enacted in part out of concern about drug abuse and drug-related crime, the penalties they prescribe have not succeeded in curbing drug use, or addiction rates, which have essentially remained flat for 40 years.<sup>133</sup> The laws have, however, contributed to mass incarceration in the United States. Harsh drug laws are responsible for a significant portion of our enormous prison population; over the past 15 years, in the wake of policy changes that resulted in a proliferation of extreme sentences for drug crimes, between 19 and 23 percent of state prisoners

were incarcerated for drug offenses.<sup>134</sup> Those figures are even more striking in the federal system; during the same time period, between 55 and 60 percent of federal prisoners were incarcerated for drug offenses.<sup>135</sup>

Federal judges have long been outspoken in their opposition to mandatory sentencing laws that rob them of discretion to respond to the individual facts and circumstances of a case. Judge Andre M. Davis of the Fourth Circuit Court of Appeals wrote that after his 17 years as a federal judge he has concluded that “Federal mandatory minimums...have inappropriately shifted sentencing authority to prosecutors through their charging decisions, impeding judges from considering mitigating factors that would help impose fair and just sentences. They essentially strip away the discretion that judges traditionally employ in sentencing drug offenders, particularly low-level offenders.”<sup>136</sup> Judge Davis later testified at a U.S. Sentencing Commission hearing, “I say with certainty that mandatory minimums are unfair and unjust. These laws, created by an overzealous Congress decades ago...hinder judges from handing out fair and individualized sentences, while prosecutors are given unwarranted power to dictate sentences through charging decisions.”<sup>137</sup>

Judge Mark W. Bennett, a federal judge who has sentenced more than 3,000 defendants in four district courts and reviewed sentences for the Courts of Appeals for the Eighth and Ninth Circuits, has sentenced more than 1,000 nonviolent drug offenders to federal prison, the majority of

whom are small-time drug addicts he describes as “the low-hanging fruit of the drug war.”<sup>138</sup> He says he can count the number of drug kingpins he has sentenced on one hand, and he has criticized “the insanity of mandatory minimums.”<sup>139</sup> Judge Bennett wrote,

If lengthy mandatory minimum sentences for nonviolent drug addicts actually worked, one might be able to rationalize them. But there is no evidence that they do. I have seen how they leave hundreds of thousands of young children parentless and thousands of aging, infirm, and dying parents childless. They destroy families and mightily fuel the cycle of poverty and addiction...[F]or all the times I’ve asked jurors after a drug conviction what they think a fair sentence would be, never has one given a figure even close to the mandatory minimum. It is always far lower.<sup>140</sup>

In recent years, opposition to mandatory minimum sentences has spread beyond the small circles of judges and advocates who have long opposed them. In 2005, four former attorneys general, a former FBI director, and dozens of former federal prosecutors, judges, and Justice Department officials filed an amicus brief in the U.S. Supreme Court opposing the use of mandatory minimums in a case involving a marijuana defendant facing a 55-year sentence. Outspoken conservative commentators Pat Robertson, Pat Nolan, Grover Norquist,



“I say with certainty that mandatory minimums are unfair and unjust. These laws, created by an overzealous Congress decades ago, hinder judges from handing out fair and individualized sentences, while prosecutors are given unwarranted power to dictate sentences through charging decisions.”

— Judge Andre M. Davis, Fourth Circuit Court of Appeals

and former NRA president David Keene have made powerful statements against their use, arguing that they are highly ineffective and expensive and that they undermine the separation of powers.<sup>141</sup> In March 2013, Senators Patrick Leahy, a Democrat, and Rand Paul, a Republican, introduced the Justice Safety Valve Act of 2013, which would expand the number of people in federal court eligible for sentences below the mandatory minimums. In August 2013, Attorney General Eric Holder announced modifications to the Justice Department’s charging policies so that certain people accused of low-level nonviolent drug crimes would no longer be charged with offenses that impose mandatory minimum sentences.<sup>142</sup> While the practical effect of this policy change remains to be seen, it reflects the growing consensus across the political spectrum that mandatory minimums should be phased out.

## THREE-STRIKES AND OTHER HABITUAL OFFENDER LAWS

In the early 1990s, a few highly publicized murders, such as those of two young California girls named Kimber Reynolds and Polly Klaas, drew intense public attention. These murders invoked the specter of a dangerous spike in violent crime, particularly by those who had been convicted of previous crimes.<sup>143</sup> There was a widely held belief that people with criminal histories could not be reformed or corrected and, if released from prison, that they would continue to commit serious, violent crimes following their release.<sup>144</sup>

With public outcry about the problem of violent crime mounting, legislatures across the country responded by enacting habitual offender and “three-strikes-and-you’re-out” laws.<sup>145</sup> These laws were sold to the public as a way to stop irredeemable criminals from committing future crimes by requiring very long sentences, often life in prison, upon conviction of a second or third felony offense. Washington passed the first such law—the prototype for California’s Three Strikes law—in 1993,<sup>146</sup> and dozens of other states passed similar laws throughout the 1990s.<sup>147</sup>

What the public was not told, and what many people still do not realize, is that the convictions triggering extreme sentences under these laws need not always be serious, violent

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“Three-strikes-and-you’re-out” laws were sold to the public as a way to stop irredeemable criminals from committing future crimes. What the public was not told, and what many people still do not realize, is that the convictions triggering extreme sentences under these laws need not always be serious, violent crimes.

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crimes. For example, in Nevada, a person facing a fourth felony conviction of *any* kind—nonviolent or otherwise—may be sentenced to die in prison.<sup>148</sup> In all of the cases the ACLU documented for this report in which an individual was sentenced to LWOP under a state habitual offender law, the offense that triggered the habitual offender law was nonviolent. In some of these cases, all of the individual’s prior convictions were nonviolent as well, while some predicate convictions were for crimes committed as a juvenile and/or were decades old.

Furthermore, the gap between the sentence a defendant would receive without the application of the habitual offender law and the actual sentence is often enormous. For example, a Texas man received a 50-year sentence under the state’s habitual offender law in 2010 for possession of 3.7 grams of cocaine, a crime that carries a sentence of two to 10 years when charged without the habitual offender enhancement.<sup>149</sup>

The three-strikes movement has had a dramatic effect on sentencing throughout the country, and it has contributed substantially to the rise of the incarceration rate.<sup>150</sup> Today, all 50 states, the federal government, and the District of Columbia have some form of habitual offender or three-strikes law. These laws are often extremely severe. Many

## UNDER CALIFORNIA'S THREE STRIKES LAW PEOPLE HAVE BEEN SENTENCED TO 25 YEARS TO LIFE FOR STEALING:



permit LWOP for specified crimes, while 30 states and the federal government have habitual offender laws that *mandate* LWOP for certain crimes; in seven of these 30 states, LWOP is mandatory even if every offense is nonviolent.<sup>151</sup> In addition, in many states prosecutors have discretion whether to charge a defendant under a habitual offender law. In such cases, a prosecutor—not a judge—determines that the person in question deserves to die behind bars, despite the fact that, historically, the U.S. criminal justice system has entrusted judges to impose just and proportional sentences.

The application of these laws is all the more troubling given

the range of offenses that are charged as felonies in the first place. For example, defendants in California have been sentenced to 25 years to life in prison under the state's Three Strikes law for the following nonviolent felony crimes: taking small change from a parked car, stealing a pair of socks, shoplifting nine children's videotapes to give as Christmas gifts, stealing a jack from the back of a tow truck, forging a check for \$146, shoplifting a pair of work gloves from a department store, stealing a \$100 leaf blower, snatching a slice of pizza, attempting to steal a car radio, shoplifting three golf clubs, shoplifting meat from a grocery store, theft of chocolate chip cookies from a restaurant, attempting to break into a soup kitchen for food, and possession of less than \$10 worth of cocaine. In November 2012, California voters passed the Proposition 36 ballot initiative to reform California's Three Strikes law, thus preventing life sentences for defendants whose third strikes are not serious crimes, as defined in state law. Until the law was reformed, more than half of the prisoners sentenced under the law were serving sentences for nonviolent crimes. According to the advocacy group Families to Amend California's Three Strikes, approximately 4,431 third-strikers have received sentences of at least 25 years to life for nonviolent offenses in California; unfortunately, many remain behind bars awaiting resentencing and release.<sup>152</sup>

## CHANGES TO PAROLE LAWS AND OTHER LIMITATIONS ON RELEASE

At the same time that states and the federal government were passing laws to dramatically increase sentences, there was also a significant push to guarantee that prisoners served a significant portion of their sentences before receiving parole or being granted "good time" credits. The federal system abolished parole in 1984, and a number of states followed suit.<sup>153</sup> By the end of 2000, 16 states had completely abolished discretionary parole, 28 states and the District of Columbia required a prisoner to serve 85 percent of his or her sentence before becoming eligible for parole, and four states abolished parole only for people convicted of certain violent crimes.<sup>154</sup> During this period, many states also rolled back earned compliance provisions, known as "good time" credits, that enable prisoners to earn the possibility of parole through

good behavior or completing education and treatment programs while incarcerated.<sup>155</sup>

These so-called “truth-in-sentencing” laws have intuitive appeal: they enhance transparency in the sentencing process and assure crime victims and the public that a defendant will not walk out of prison long before the “true” sentence has been completed. In addition, abolishing parole can have a positive effect on a jurisdiction’s incarceration rate, so long as prison terms are rational. Prison growth over the last four decades was the most restrained in states that both abolished parole release and placed reasonable limitations on sentence length through the adoption of sentencing guidelines.<sup>156</sup>

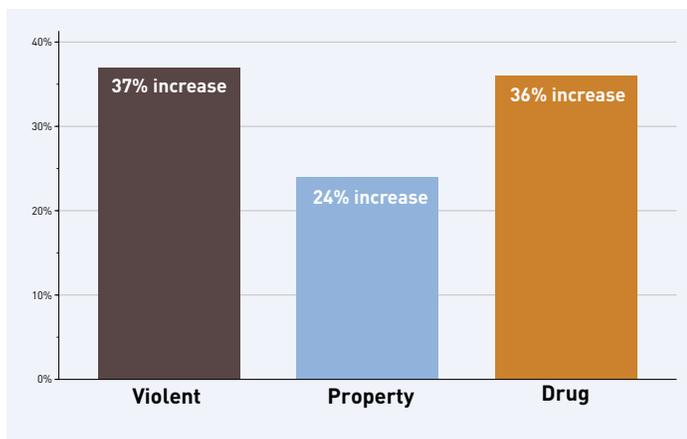
However, severely cutting back on or abolishing parole—which automatically converts a life sentence into an LWOP sentence—while leaving extraordinarily long prison terms intact, can fuel excessive sentences and contribute to mass incarceration, with no obvious benefit to public safety. Predictably, in jurisdictions that have abolished parole while retaining life sentences for people convicted of nonviolent offenses—primarily the federal system, Louisiana, and Oklahoma—the incidence of LWOP sentences for nonviolent offenses has skyrocketed.

These and other changes in sentencing policy have affected the length of prisoners’ confinement in prison across the board. The average time served for all major categories of crime has increased in the vast majority of states over the last two decades.<sup>157</sup> According to research by the Pew Center

on the States, people released from prison in 2009 spent, on average, 36 percent more time in custody than those released in 1990.<sup>158</sup> Some of the state-specific statistics are even more striking: between 1990 and 2009, the average time served increased dramatically in Florida (166 percent increase in amount of time served), Virginia (91 percent), North Carolina (86 percent), Oklahoma (83 percent), Michigan (79 percent), and Georgia (75 percent).<sup>159</sup>

One result of America’s ever-increasing prison terms is that many thousands of people are now serving particularly extreme sentences, including life without the possibility of parole, for nonviolent offenses.

**FIGURE 11**  
**Percent increase in average time served across crime categories, 1990 to 2009**



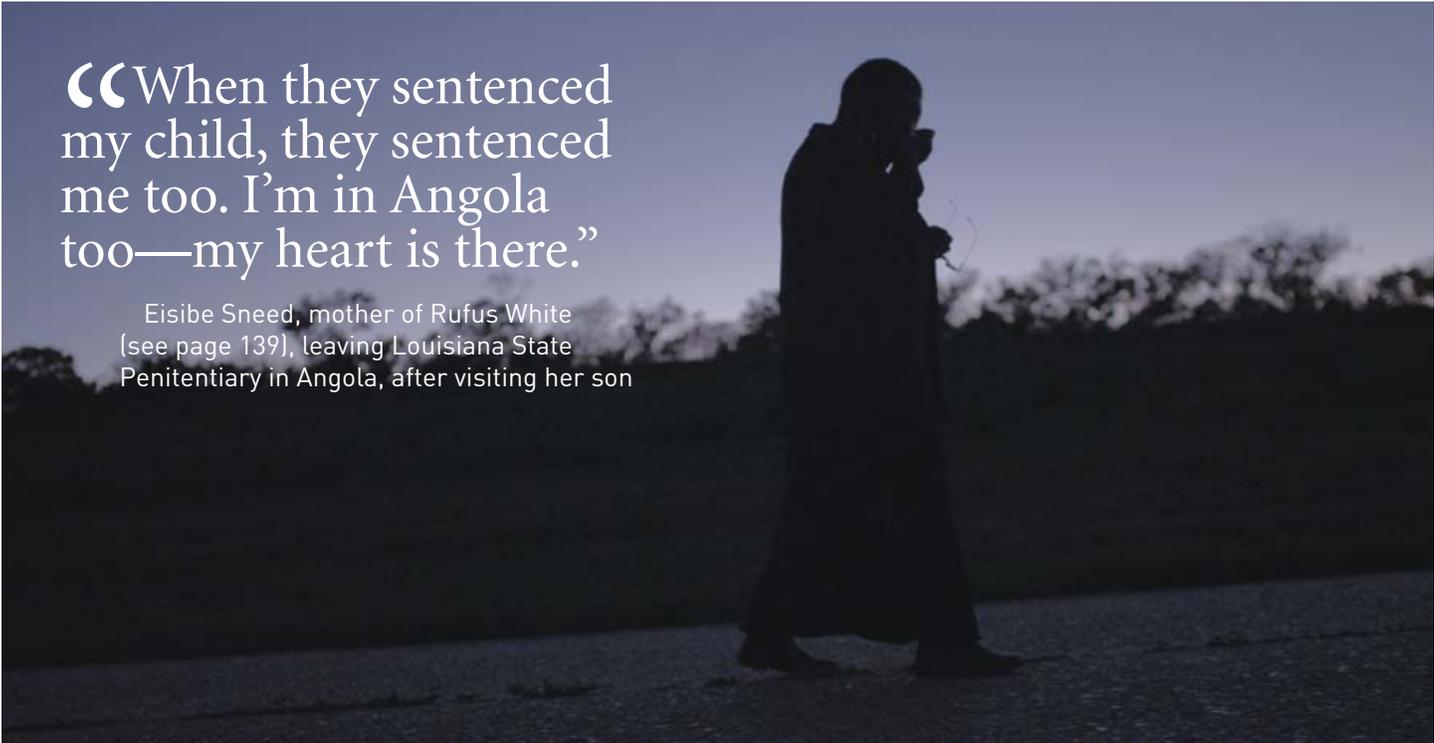
Source: Pew Center on the States (2012)

## VI. Case Studies: 110 Offenders Sentenced to Die in Prison for Nonviolent Crimes

This section provides portraits of 110 people sentenced to die in prison for nonviolent crimes. These are the stories of scores of prisoners who have been warehoused and forgotten, locked up for the rest of their lives for nonviolent drug and property crimes. Their cases are representative of thousands of others serving excessive and disproportionate sentences until their deaths in prison.

In the cases documented by the ACLU, the prisoners serving LWOP were generally first-time offenders and low-level, nonviolent repeat offenders. These nonviolent lifers include drug couriers; drug addicts who sold small amounts of drugs in order to support their addictions; petty thieves; and girlfriends or wives who got caught up in mass arrests of drug conspiracy members and, because they knew little about their partners' or ex-partners' drug activities, were unable to provide information in exchange for more lenient

sentences. Some did distribute large quantities of drugs, but they have been incarcerated for as many as three decades and have demonstrated both remorse and rehabilitation. Some of the prisoners sentenced to LWOP under three-strikes and other state habitual offender laws had previously committed violent crimes; however, in all of the cases documented by the ACLU, the LWOP-triggering offense was nonviolent. Others were sentenced to LWOP for crimes they committed as teenagers, in some cases for their minor roles in drug conspiracies starting when they were as young as 15. Several are Vietnam War veterans who were introduced to drugs during their military service and battled addiction after leaving the military. Others are serving LWOP for selling or importing marijuana, and a number of federal prisoners serving LWOP would already have been eligible for release if the crack/powder sentencing disparity were eliminated. Some are elderly, while others are terminally ill.



“When they sentenced my child, they sentenced me too. I’m in Angola too—my heart is there.”

Eisibe Sneed, mother of Rufus White (see page 139), leaving Louisiana State Penitentiary in Angola, after visiting her son

In the overwhelming majority of the cases we documented, the sentencing judge was required to sentence the defendant to die in prison due to laws requiring mandatory minimum periods of imprisonment, habitual offender laws, statutory penalty enhancements, or other sentencing rules that mandated LWOP. In case after case reviewed by the ACLU, the sentencing judge said on the record that he or she opposed the mandatory LWOP sentence as too severe but had no discretion in the matter.

**TABLE 12**  
Jurisdictions that permit LWOP for certain nonviolent offenses

<b>1</b>	<b>Federal Government</b>
<b>2</b>	<b>Alabama</b>
<b>3</b>	<b>Arizona</b>
<b>4</b>	<b>Arkansas</b>
<b>5</b>	<b>Delaware</b>
<b>6</b>	<b>Florida</b>
<b>7</b>	<b>Georgia</b>
<b>8</b>	<b>Illinois</b>
<b>9</b>	<b>Indiana</b>
<b>10</b>	<b>Iowa</b>
<b>11</b>	<b>Kentucky</b>
<b>12</b>	<b>Louisiana</b>
<b>13</b>	<b>Michigan</b>
<b>14</b>	<b>Mississippi</b>
<b>15</b>	<b>Missouri</b>
<b>16</b>	<b>Nevada</b>
<b>17</b>	<b>North Dakota</b>
<b>18</b>	<b>Oklahoma</b>
<b>19</b>	<b>South Carolina</b>
<b>20</b>	<b>South Dakota</b>
<b>21</b>	<b>Virginia</b>
<b>22</b>	<b>Wisconsin</b>
<b>23</b>	<b>Wyoming</b>

Under current law, 22 states and the federal government permit LWOP sentences for certain nonviolent crimes. Based on data obtained by the ACLU, we know that prisoners are currently serving LWOP for nonviolent offenses in the federal system, Alabama, Florida, Georgia, Illinois, Louisiana, Mississippi, Missouri, Oklahoma, and South Carolina.

## FIRST-TIME NONVIOLENT OFFENDERS

The federal government and seven states—Alabama, Arizona, Florida, Mississippi, Missouri, Nevada, and North Dakota—currently permit or mandate LWOP for first-time nonviolent drug offenses. The federal government also permits LWOP for first-time nonviolent property offenses. Nearly all of the cases we documented of first-time nonviolent offenders serving LWOP were sentenced in the federal system. Although most jurisdictions did not provide data on the numbers of prisoners serving LWOP for their first offenses, the Departments of Corrections of Louisiana and Mississippi reported that 26 and 18 first-time offenders are serving life without parole for nonviolent offenses in their respective states.<sup>160</sup> The ACLU also documented the case of one first-time offender sentenced to LWOP in Florida.<sup>161</sup> While the Bureau of Prisons did not provide data on first-time offenders serving LWOP for nonviolent crimes, 18.4 percent (more than 1 in 6) of the federal prisoners surveyed by the ACLU are first-time offenders.

**TABLE 13**  
Jurisdictions that currently permit LWOP for first-time nonviolent offenses

<b>1</b>	<b>Federal government</b>
<b>2</b>	<b>Alabama</b>
<b>3</b>	<b>Arizona</b>
<b>4</b>	<b>Florida</b>
<b>5</b>	<b>Mississippi</b>
<b>6</b>	<b>Missouri</b>
<b>7</b>	<b>Nevada</b>
<b>8</b>	<b>North Dakota</b>



Clarence Aaron with his nieces. Their mother, Aaron's sister, died suddenly in 2005. Aaron says he is close to his nieces and calls them every week. Before he was imprisoned, Aaron tried to serve as a male role model and father figure to his older niece, as her father did not take an active role in her life. Aaron's nieces visit him in prison whenever they can.

**Clarence Aaron**, a college student with no criminal record, was sentenced to three life-without-parole sentences at age 23 for playing a minor role in two planned large drug deals—one of which did not take place—in which he was not the buyer, seller, or supplier of the drugs.

A linebacker at Southern University in Baton Rouge, Louisiana, Aaron worked as a longshoreman during his summer breaks and was active in community service at home in Mobile, Alabama, as a Mason.<sup>162</sup> According to the trial court, Aaron introduced a college classmate whose brother was a drug supplier to a cocaine dealer he knew in high school, for which he was paid \$1,500; arranged for the transportation of nine kilograms of cocaine; and was present for the sale of those nine kilograms of cocaine and the conversion of one kilogram to crack.<sup>163</sup> Aaron was also found to have travelled from Mobile to Houston with \$250,000 to purchase cocaine for a planned 15-kilogram drug purchase that did not happen.<sup>164</sup>

Aaron refused to testify against his co-conspirators and said that he knew little about the deal because of his minor role, but his co-defendants testified against him in exchange for reduced sentences. He was convicted at trial of conspiracy to possess with intent to distribute more than 23 kilograms of powder and crack cocaine, possessing nine kilograms of cocaine with intent to distribute, and attempting to possess 15 kilograms of cocaine with intent to distribute.<sup>165</sup>

Aaron was sentenced to life without the possibility of parole for these nonviolent drug offenses. They were his first offenses, which he committed when he was only 23 and in his final semester of college. He received a longer sentence than his more culpable co-conspirators, all but one of whom have been released from prison (the last one is scheduled to be released in 2014). Conceding her son's serious error in judgment, his mother, Linda Aaron-McNeil, said, "At the time, neither Clarence nor I had any idea of how harsh a penalty he would receive for this error. When the judge announced the sentence of three life terms, my heart shattered into a thousand pieces. Since this nightmare began, I merely exist. The pain never subsides."<sup>166</sup>

The judge who sentenced Aaron, U.S. District Court Judge Charles Butler Jr., later wrote in response to a motion for resentencing filed by Aaron's attorneys, "Looking through the prism of hindsight, and considering the many factors argued by the defendant that were not present at the time of his initial sentencing, one can argue

that a less harsh sentence might have been more equitable; however, this Court is powerless to act in a pardon capacity.”<sup>167</sup>

Aaron has repeatedly sought clemency, apparently his only chance to be released from prison. The U.S. Attorney’s Office that prosecuted him and the federal judge who sentenced him supported his second petition for commutation, which was filed in 2007; the prosecutor’s office recommended his LWOP sentence be commuted to 25 years, which would have meant release in 2014, and the judge supported commutation to time served.<sup>168</sup> The clemency petition was rejected in 2008. According to an investigation of Aaron’s case by ProPublica, in his recommendation to former President George W. Bush that he reject Aaron’s request for commutation, Pardon Attorney Ronald Rodgers failed to disclose that the prosecutor and judge supported commutation.<sup>169</sup> Aaron submitted a third petition for commutation in April 2010, which is still pending.<sup>170</sup>

Now 43, Aaron has spent almost 20 years in prison. He has completed a two-year religious studies correspondence course through Emory University and has taken every computer skills course offered by the Bureau of Prisons. He has also taken courses in microeconomics, Spanish, photography, and behavioral development.<sup>171</sup> He served the first 12 years of his sentence in maximum security prisons in Florida and Georgia, and he was transferred in 2007 to a lower-security federal penitentiary in Talladega, Alabama, because of his record of good conduct. He has held coveted factory jobs in the institutions where he has been imprisoned and has managed to save a relatively substantial sum from his prison wages. He has stayed in regular touch with his mother, sisters, other family members, and friends from high school and college. His commutation petition has strong support in his family’s close-knit Mobile community. Dozens of letters have been submitted to the president urging his release from pastors, business leaders, and educators, all of whom know him and his family personally. He has been offered several jobs upon his release.

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The federal prosecutor’s office that prosecuted Aaron and the federal judge who sentenced him supported clemency in his case, Aaron’s only chance to be released from prison. The judge supported commutation to time served, but Aaron’s petition was rejected in 2008.

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#### FEDERAL SYSTEM

**Sharanda Purlette Jones**, a mother with no prior criminal record, is serving life without parole for a crack cocaine conspiracy based almost entirely on the testimony of co-conspirators.

Jones’s own mother raised her family of five on a limited income in the small, rural town of Terrell, Texas. When Jones was only three years old, her mother was injured in a car accident that left her paralyzed from the neck down.<sup>172</sup> Due to her mother’s severe health condition, from a young age Jones cared and provided for her siblings



Sharanda Jones (right) and her daughter, Clenesha Garland. Now 22, Clenesha was nine years old when her mother was incarcerated.

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There was no physical evidence presented at trial that connected her to drug trafficking with her five co-conspirators—no producible amount of drugs, video surveillance, or any other physical evidence.

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and paraplegic mother.<sup>173</sup> Jones says she grew up in poverty and continued to face financial difficulties as she tried to support herself and her family. She worked as a licensed cosmetologist and later opened a restaurant with a friend.

Jones was arrested as part of a drug task force operation in Terrell, a majority white town (55 percent white, 32 percent Black) of approximately 13,500 people located 40 miles east of Dallas. A couple in Terrell was arrested on drug charges and became confidential informants, which triggered a larger investigation in the small town. All 105 people arrested as part of the conspiracy were Black. At the time of the operation, actor Chuck Norris was reportedly a volunteer police officer for the Kaufman County Sheriff's Department and participated in some of the arrests.

The couple that was first to be arrested was friendly with Jones. While acting as government informants after their arrests, they asked Jones during a taped telephone call if she knew where they could buy drugs. According to evidence presented at trial, Jones in turn responded that she might know someone she could introduce them to so that they could buy drugs.

Jones was indicted and voluntarily surrendered to police in April 1999; at the time, she was 32 years old and raising her eight-year-old daughter. She had never been arrested before. She was eventually indicted on seven counts of drug distribution. In August 1999, she was acquitted on six counts of crack cocaine possession and found guilty of one count of conspiracy to distribute crack cocaine.<sup>174</sup> There was no physical evidence presented at trial that connected her to drug trafficking with her five co-conspirators—no producible amount of drugs, video surveillance, or any other physical evidence. Other than the taped phone call, the allegations were based entirely on the testimony of co-conspirators.

Prosecutors claimed that Jones drove to Houston on several occasions to meet a supplier (one of the testifying co-conspirators), from whom she bought 30 kilograms of cocaine powder, which was never found by police, over time; she then drove to Dallas and sold it to two buyers, also testifying co-conspirators, who would turn the powder into crack and sell it. Each of these co-conspirators testified against Jones in exchange for reduced sentences, pleaded guilty, and is now out of prison. Notably, Jones's supplier was sentenced to 19 years and released from prison in 2008. The trial court concluded that Jones had sold cocaine to the two buyers, who converted the powder cocaine into crack before selling it to others.<sup>175</sup> The court also found that some of the crack was sold out of Jones's mother's home.<sup>176</sup>

Jones's sister, mother, brother, and stepfather were also arrested. Her paraplegic mother, Genice Stribling, went to trial and was sentenced to 15 years in prison for selling crack out of her own home.<sup>177</sup> Genice was incarcerated in the same facility as her daughter until her death in prison in late December 2012, one year before she was to be released. Jones's brother, who had a prior record, received an 18-year sentence and is still incarcerated. The charges against her stepfather were dismissed.

Even though Jones had no criminal record, she was sentenced to mandatory life without parole in November 1999. To arrive at Jones's base offense level for sentencing purposes, the judge took the 30 kilograms of powder cocaine alleged by the co-conspirators and multiplied it by an arbitrary ratio to hold her accountable for a large quantity of crack cocaine because the conspiracy's end product was crack.<sup>178</sup> The judge then enhanced Jones's offense level based on her managerial role; possession of a firearm (Jones was licensed to carry a firearm in Texas); and obstruction of justice for testifying in her own defense (the judge found that the jury, by virtue of its guilty verdict, had found implicitly that her testimony under oath was false).<sup>179</sup> Jones says of her sentencing, "It was devastating and shocking to me, my body was silent and numb—I couldn't respond I was so shocked."<sup>180</sup>

Jones has exhausted all of her appeals and has a petition for commutation pending. According to her attorney, if she had been convicted of the same amount of powder cocaine instead of crack cocaine, her mandatory minimum sentence would have been 30 years.<sup>181</sup> However, she is not eligible for a sentence reduction based on sentencing reforms that have reduced the disparity in federal sentencing between crack and powder cocaine.<sup>182</sup> Jones says of her sentence, "I will expire in the federal system. It is really a slow death."<sup>183</sup>

Jones has been incarcerated for more than 14 years. She is 45, and her daughter, Clenesha Garland, is 22. Even though Clenesha was only nine when her mother went to prison, the two remain very close and Clenesha calls the eight years she spent living with her mother "a definite gift from God."<sup>184</sup> She visits her mother at least once a month and corresponds with her weekly. Jones says she carefully apportions her allotted 300 monthly minutes for non-legal calls to speak with her daughter for 10 minutes each day.<sup>185</sup>

Jones said of her daughter, "My sister brings her to visit, and every time she comes it's hard. I see her like once a month. And to see her grow from a little bitty baby to almost a grown woman, it's just like, God. My dream is to just show up at her school. I mean, I know they gave me life, but I can't imagine not being at her graduation...I just can't imagine me not being there."<sup>186</sup> She told the ACLU of her daughter, "She didn't even want to graduate because I couldn't be there to watch her walk across the stage. I told her to do it anyway and imagine I'm there in the audience...I told her pick your spot, look at that seat, and say that's me sitting there."<sup>187</sup>

"I miss my mother dearly. Even as a young adult it is very difficult for me to fight back my emotions during visits and phone calls with my mother," Clenesha says. "Being without my mother for over 14 years of my life has been extremely difficult. But the thought that she is set to spend the rest of her life in prison as a first-time nonviolent offender is absolutely devastating.... All I pray for every day is the blessing of being able to spend my life with my mother outside of prison walls."<sup>188</sup>

While in prison, Jones has taken numerous courses related to personal development

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Even though Jones had no criminal record, she was sentenced to mandatory life without parole. She says of her sentencing, "It was devastating and shocking to me, my body was silent and numb—I couldn't respond I was so shocked."

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and self-improvement. She says, “When I first came to prison I told myself, ‘You can be bitter or you can be better.’”<sup>189</sup> Accordingly, she has taken dozens of educational and vocational training courses such as data entry, typing, math, grammar, banking, filing, and office technician training. She has completed courses on building self-esteem, health, and parenting. She also took a six-month cosmetologist instructors’ program in order to help other inmates with an interest in cosmetology, and she has helped train numerous inmates who subsequently obtained their cosmetology licenses. She also actively participated in the SHARE Program, a program for at-risk teenage girls aimed at deterring them from a life of crime.<sup>190</sup> She recently completed an 18-month faith-based program through which she has completed community service, participated in activities to help bring reconciliation to the community, and established re-entry goals and action steps, even though her sentence means she will not have a chance to prove that she can reach her re-entry goals.<sup>191</sup>

In her more than 14 years of incarceration, Jones has maintained a spotless disciplinary record with the exception of a single disciplinary violation dated more than 10 years ago when one of her visitors was involved in a verbal altercation with a corrections officer regarding coins that were lost in a vending machine. In addition, Jones has maintained continuous employment throughout her incarceration; she previously worked in food service and laundry, and for the past ten years she has provided hair care for inmates in the maximum security and hospital units. If she is released, Jones says she wants to work with children and adults and use her struggles and the lessons she has learned about the consequences of drugs and crime to deter others.



Danielle Metz and her two children, Gleneisha Metz and Carl Bernard, who were four and seven when she was first imprisoned. They now are 23 and 27.

#### FEDERAL SYSTEM

**Danielle Metz** is a mother of two serving three life sentences plus 20 years for her involvement in her husband’s cocaine distribution enterprise, her first offense.

The youngest of nine children raised in New Orleans, Metz became pregnant at 17 by a man who was murdered when their son Carl was six months old. She subsequently became involved with a drug dealer named Glenn when she was 18. She recalls that Glenn, then 30, promised to care for her and her baby. She says that she knew he was involved in drug distribution and that she was not initially involved in his activities. They married after they had a daughter together, Gleneisha.

Metz says her husband was very controlling and forbid her from getting a job or leaving their home for more than an hour at a time. According to Metz, he became physically and mentally abusive after they married and made her feel subservient

because he paid the bills. She cut hair inside their home, but she reports she had no other job skills or independent source of income. According to Metz, after one abusive episode, to address her husband's accusation that she did not contribute to the budget, she promised her husband that she would help out in any way he wished. She recalls that he later asked her to ride with her aunt Angela, a petty drug dealer who had become involved in Glenn's drug activities, to transport money to Houston. Metz says she accompanied her aunt twice and brought cocaine back to New Orleans on one of these occasions. According to Metz, she also collected money from Western Union, also at Glenn's request.

Metz reports she never had a bank account in her name or a Social Security number and was dependent on her husband. In 1990, they moved to Las Vegas, separating her from her family. According to Metz, Glenn struck her, causing her nose to gush with blood, while they were visiting her sister in Los Angeles. While returning to Las Vegas, Metz planned her escape. She says that when Glenn left for the casino, she left a note in the closet and took the kids to a hotel, where they stayed the night. The next day, before boarding a flight to New Orleans, where her family still lived, Metz says she called Glenn to tell him where she had left the car and that she was leaving him. Two months later, she was arrested and indicted for participating in a drug conspiracy with her estranged husband.

Metz was arrested in New Orleans at 25 and charged with conspiring with eight co-defendants, some of whom she says she had never met, in her husband's cocaine distribution enterprise. According to Metz, her attorney had never tried a criminal case and visited her only once, the day before her trial. Prosecutors argued that Metz was a "prime force, and not just a passive presence" in her husband's organization's acquisition and distribution of large quantities of cocaine, and the appellate court concluded that she directly oversaw the drug trafficking activities of three of her co-conspirators.<sup>192</sup> Although no drugs were seized from any of the co-defendants or produced at trial, on the basis of the co-conspirators' testimony, the trial court concluded that the operation distributed 1,000 kilograms of cocaine.<sup>193</sup>

Metz was convicted of participating in a continuing criminal enterprise organized and managed by her husband, possession of cocaine with intent to distribute, and money laundering.<sup>194</sup> She recalls that her jury was comprised of 11 middle-aged white jurors and one Black juror. She was not personally linked to any violence or weapons, but at trial the jury heard testimony about firearms seized from some of her co-conspirators and the murder and other violent acts committed by co-conspirators in connection with a fourth charge, conspiracy to possess cocaine with intent to distribute, that was later vacated in her case.<sup>195</sup> Metz, then 26, was sentenced to three LWOP sentences plus 20 years in 1993. It was her first conviction.

Metz was convicted largely on the basis of testimony from her aunt Angela, who had earlier been arrested for an unrelated drug charge and testified against Metz and her husband as part of a plea deal. Metz says that she had no useful information she could trade, the only way to win a sentence reduction under federal mandatory

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“When I was arrested, [federal prosecutors] told me that they didn't want me for anything; that they wanted my husband and if I would tell them everything that they needed to know that I would be set free, and if I couldn't, I would never see my kids again,” she says. “I replied by saying that I couldn't tell them what I did not know.”

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Metz’s son Carl says that on visiting weekends, Sundays “hurt more than fire—knowing I had to leave at a certain time, and she’s not coming with me.” During Christmas visits he would line up to sit on the lap of the prison Santa and always repeat the same Christmas wish: to have his mother home.

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sentencing. She believes she was indicted solely to testify against her husband. “When I was arrested, these people told me that they didn’t want me for anything; that they wanted my husband and if I would tell them everything that they needed to know that I would be set free, and if I couldn’t, I would never see my kids again,” she says. “I replied by saying that I couldn’t tell them what I did not know.”<sup>196</sup>

Metz, 46, has served more than 20 years in prison. Her daughter and son were ages four and seven when she was incarcerated. They are now 23 and 27. For the first few years of Metz’s incarceration, her young daughter, Gleneisha, was told that her mother was in the hospital. Her son, Carl, first visited her in jail a year after her arrest. “When I first saw my mother,” Carl recalls, “I was crying, but I wasn’t hurt. I never really felt like that, so I was confused. Tears are coming out my eyes and I’m happy? My mother explained it to me—‘You’re crying ’cause you’re happy.’”<sup>197</sup>

Carl first learned the details of his mother’s sentence when he was 12. “I didn’t even think it was real at the time,” he said. “I thought she was kidding. I remember saying, ‘You can’t do triple life. You only have one.’”<sup>198</sup> He says that on visiting weekends, Sundays “hurt more than fire—knowing I had to leave at a certain time, and she’s not coming with me.”<sup>199</sup> He recalls Christmas visits during which he would line up to sit on the lap of the prison Santa and always repeat the same Christmas wish: to have his mother home.

“The hardest part of all is the separation from my children,” Metz said. “We need each other terribly. How do you tell your child, ‘Mama will never be coming home’? My heart aches to know that all the love I pour out to them may not be enough to convince them that I haven’t left them so far away out of not caring for them.”<sup>200</sup> She told the ACLU, “To be away from my kids, to miss them growing up, to have to parent them over the phone and in the visitation room, to miss my daughter’s wedding, took a piece of me that can’t be replaced.”<sup>201</sup> She adds, “It’s a tragedy shared by women, children, families and communities across this country...leaving the kids to think they don’t have a hope in the world.”<sup>202</sup>

Metz remains very close with her mother, children, and siblings, who describe her as the “glue” of their family.<sup>203</sup> Her sister, Adrian Bernard, raised her daughter, Gleneisha, and moved from Louisiana to California 10 years ago in order to be closer to Metz, whom they visit twice a month.<sup>204</sup> For the past 20 years, Metz’s 77-year-old mother, Barbara Bernard, has traveled from New Orleans to Dublin, California, to visit her daughter twice a year on her birthday and Christmas.<sup>205</sup> Barbara says, “[M]y only desire is to see my baby, Danielle, free and home to share a laugh or two with me and her children before the Lord call[s] me home to Glory.”<sup>206</sup>

**Michael Fitzgerald Wilson**, a father of three and former business owner, was sentenced two decades ago to LWOP as a first-time nonviolent drug offender.

Wilson and his brother owned a car dealership in Dallas, Texas. Wilson and seven others, including his brother and girlfriend, were arrested and charged with participating in a crack cocaine conspiracy. Following a jury trial, Wilson was convicted of conspiracy to possess with intent to distribute and distribution of more than 50 grams of crack cocaine, three counts of use of a telephone to facilitate a drug trafficking crime, and three counts of aiding and abetting money laundering. At his trial, several of his co-conspirators testified against him in exchange for reduced sentences. To determine the amount of drugs involved in Wilson's case, the judge multiplied numbers noted in a ledger found in a co-conspirator's apartment by the number of weeks prosecutors claimed the conspiracy had run. Using this calculation, the judge determined that Wilson and his co-conspirators were responsible for 54 kilograms of crack, though only one kilogram of crack was actually recovered near a co-conspirator's home and no drugs were recovered in Wilson's home or business.

In Wilson's 1994 sentencing, the judge said that because he sentenced Wilson's co-conspirator to life, he had to sentence Wilson to the same. In 2001, former President Bill Clinton commuted the sentence of the co-conspirator, who was the only white defendant involved in the case. According to Wilson's attorney, if Wilson had been convicted of the same amount of powder cocaine instead of crack cocaine, his mandatory sentencing range would have been approximately 20 to 24 years.<sup>207</sup> However, he is not eligible for a sentence reduction based on sentencing reforms that have reduced the disparity in federal sentencing between crack and powder cocaine.<sup>208</sup> Wilson says he was shocked by his sentence, explaining, "Because I had never been to prison before...you never think you're about to get life.... They give us life without parole, you're like, that can't be possible, but it really is."<sup>209</sup>

Now 48, Wilson has served 20 years in prison. His three sons, who were ages three, four, and six when he was incarcerated, are all now in their mid-20s. He corresponds with his mother, Dorothy Wilson, and sons regularly and says he has a very close relationship with his mother. His mother and sons are seldom able to visit him because he is imprisoned in California and they live in Texas. Since his incarceration, he has taken several classes related to self-improvement. He has also completed several leatherwork courses in which he learned hand-stitching, design, and traditional construction techniques.



Michael Wilson and his three sons in 1996, two years after he was sentenced to life without parole. Wilson's sons are all in their 20s today.

If Wilson had been convicted of the same amount of powder cocaine instead of crack cocaine, his sentence would have been 20 to 24 years. However, he is not eligible for a sentence reduction based on reforms that have reduced the disparity in federal sentencing between crack and powder cocaine.

Wilson suffered a stroke in November 2011 and required hospitalization for several days. The stroke left him with extreme difficulty reading and writing, severely impaired speech, and vision problems.<sup>210</sup> His condition has improved very little since his stroke. He was not provided with speech therapy until nine months after his stroke, when it was too late to recover speech ability. He is imprisoned at Victorville United States Penitentiary in California, a high-security facility at which he reports he has been unable to obtain adequate medical care for his medical condition.



Jesse Webster

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At sentencing, the federal judge said the mandatory sentence was “too high,” but he had no choice under the then-mandatory sentencing guidelines. The judge said that if not bound by these guidelines, he would consider imposing a sentence of around 25 years.

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#### FEDERAL SYSTEM

**Jesse Webster** was sentenced to life without parole in 1995 for his first conviction, which involved an aborted drug deal.

As a teenager living on the South Side of Chicago, Webster began working for tips at a neighborhood carwash to earn bus fare and lunch money for school. Although at first he worked after school and on weekends, eventually he began working full time to help his mother pay bills and buy food for the family. According to Webster, when a customer offered him a job as a driver, he accepted the job, even though he knew the customer was a drug dealer, because his family needed the money. He quit school in the ninth grade and became more involved in the drug trade.

In August 1994, Webster helped set up a deal to purchase 25 kilograms of cocaine from an individual who had recently been arrested on drug charges and was cooperating with the DEA as an informant. That drug deal was abandoned, the DEA made no arrests, and no drugs were ever seized. However, months later, upon hearing that he was wanted for questioning by the authorities in connection with the aborted deal, Webster voluntarily turned himself in. In September 1995, he was indicted, along with two other individuals.

Webster says he wanted to cooperate with the government, but the government would not accept a guilty plea unless he agreed to serve as a confidential informant against a local gang. According to Webster, he was not affiliated with the gang and worried that he would put his family’s safety at risk if he agreed to testify against gang members. He went to trial, and the jury acquitted him of the main count of possession with intent to distribute but convicted him of attempt and conspiracy to possess cocaine with intent to distribute and filing false tax returns.<sup>211</sup> Based entirely on the testimony of Webster’s co-defendants who agreed to testify against Webster in return for significantly reduced sentences, the trial court found that Webster and five others participated in a conspiracy to distribute 200 to 300 kilograms of cocaine from 1992 to 1994.<sup>212</sup> It was Webster’s first conviction.

At sentencing, the federal judge stated that he regarded the policy decision underlying the mandatory sentence as “essentially incorrect” and the mandatory

sentence as “too high,” but he added that he had no choice under the then-mandatory sentencing guidelines.<sup>213</sup> Judge James B. Zagel further stated that if not bound by the mandatory sentencing guidelines, he would consider imposing a sentence of around 25 years with an expectation of 85 percent of the sentence to be served.<sup>214</sup> The judge searched the sentencing guidelines independently for grounds to impose a lower sentence but could not find any that applied in Webster’s case.<sup>215</sup> As a result, because of the large quantity of cocaine involved—a quantity established based on the testimony of Webster’s co-defendants since no cocaine was ever seized—and because his sentence was enhanced for the leadership role his co-defendants attributed to him, Webster received the mandatory sentence of life in prison.<sup>216</sup> His co-defendants received sentences of less than five years in exchange for cooperating with the government and testifying against him.

“The world just got snatched out of me. I was 27 years old, had never been to prison before,” Webster recalls. “I was just numb because you don’t really know [what a life sentence means]. When you’re 27, you still have a little hope. You can’t even understand. Then my daughter started getting older. My only child was three when I left. As your child gets older and you’re missing out on her life, things start to get more real.”<sup>217</sup> He says he has since come to understand the reality of his sentence, explaining, “You never get to go back to society... They are saying that I’m not ever fit to re-enter society. You wonder if this is the end of it for you, which prison you’ll die in, if I’ll just pass here.”<sup>218</sup>

Webster has now served 18 years in prison. In that time, he has counseled other inmates and worked as a Captain’s orderly. In 2011, his request to transfer from a high-security to a medium-security institution was granted, and he moved to a federal prison in Greenville, Illinois. Since his transfer, he has earned his GED and completed classes in typing, creative card-making, financial management, mental math, effective communications, and lifestyle interventions. In addition to pursuing his own educational development, he tutors other inmates working to earn their GEDs and assists prisoners with developing skills to successfully reenter society upon release.

Webster is in close contact with his family and intends to help support them if released. His daughter, who was five when he went to prison, is now 22. She attends Kennedy King College, where she is studying criminal justice, and recently gave birth to Webster’s first grandchild. Webster’s mother is in poor health, and his stepfather recently succumbed to cancer. Webster wishes to return home to help care for his ailing mother and to be a father and grandfather. If released, he intends to help his mother and work with ex-offenders to help them get the skills needed to become productive members of society.

Webster recently filed a petition for commutation of his sentence. Webster’s petition is supported by Judge James B. Zagel, who sentenced him to life in prison, as well as by both of the former Assistant United States Attorneys who prosecuted him. In a letter to President Obama supporting commutation of Webster’s sentence, Judge Zagel stated that he was unable to give Webster the sentence he believed the crime

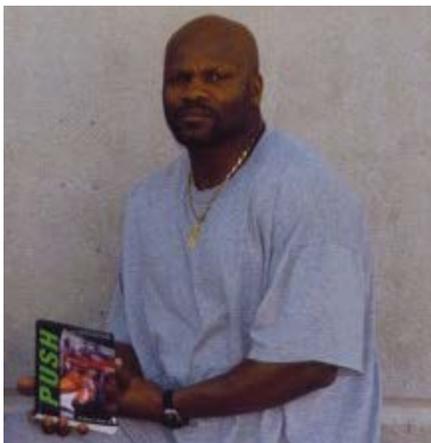
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“I was just numb because you don’t really know [what a life sentence means]. When you’re 27, you still have a little hope. You can’t even understand. [Now, after 18 years in prison], you wonder which prison you’ll die in.”

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actually merited because at the time, “cocaine was incorrectly perceived to inflict social damage so grave that it should be punished in the severest way.”<sup>219</sup> Judge Zagel wrote that Webster’s sentence was “an anomaly at the time,” because “[r]ape, armed robbery, [and] ruinous financial crime were rarely punished with life sentences” and “[i]n many jurisdictions, even murder was not deemed to warrant mandating life in prison.”<sup>220</sup> Writing that he “doubt[s] that after a decade or two in prison [Webster] will represent a danger to society,” Judge Zagel concluded that after “20 or so years in prison,” Webster will have had “enough punishment for his crimes.”<sup>221</sup>

“If both my judge and prosecutors, who know my case better than anyone else, believe that I am fit to return to society, and that my sentence was excessive, then how can it be justice for me to serve a life sentence?” Webster says. “I am not the person that I was 18 years ago. I deserve to be punished for my crime...but surely not condemned to serve the rest of my natural life in prison. Give me an opportunity to prove myself.”<sup>222</sup>



Robert Booker Sr. holding a copy of “Push,” the novel he wrote and published while in prison.

#### FEDERAL SYSTEM

A first-time offender with no criminal record, **Robert E. Booker Sr.** was sentenced to LWOP nearly two decades ago for operating a crack house, despite the sentencing judge’s stated belief that he should serve only 20 years in prison.

Booker was sentenced to LWOP for conspiracy to possess with intent to distribute crack cocaine; operating a crack distribution house in South Bend, Indiana; and possession with intent to distribute crack cocaine when he was 27 years old.<sup>223</sup> The trial judge initially sentenced him to 20 years, declining to enhance his sentence on an allegation that he used a gun during the commission of these crimes—a charge of which he was acquitted at trial.<sup>224</sup> The prosecutor appealed, and on remand, Booker’s sentence was increased to 30 years.<sup>225</sup> When the prosecutor appealed yet again, the case went before a different judge for resentencing and, due to the judge’s decision to add points to Booker’s offense level for sentencing purposes (for using a gun despite the acquittal on the weapons charge), Booker’s sentence was enhanced to life without parole.<sup>226</sup> His co-defendant, who unlike Booker had a criminal record, was ultimately sentenced to only 10 years in prison.

Judge Terence T. Evans of the 7th Circuit Court of Appeals strongly dissented from the decision to send the case for re-sentencing—the decision that ultimately led to Booker’s LWOP sentence, which was mandatory under the federal sentencing guidelines. Judge Evans wrote:

The unfairness of a life sentence without parole for Mr. Booker... is the more important issue; it will be a grossly unjust result compared to the term imposed on his co-entrepreneur, Mr. Pollard.... First, there's the initial decision to charge Booker in federal court, where the penalties are steep, instead of the courts of Indiana. Second, Booker is [B]lack and deals in crack, which carries penalties 100 times greater under the guidelines than would be the case if he sold powder cocaine, the choice of folks who live in tony suburbs. The law, of course, says this is perfectly cricket, but that doesn't make it fair. Lastly, Pollard, who as we noted in our prior opinion is almost a career offender, was every bit the drug dealer Booker (who has no criminal record) was; yet, comparatively, he was handled with kid gloves. The prosecutor, who has enormous (critics suggest too much) power under the guidelines, gave Pollard all sorts of consideration which resulted, upon remand, in a sentence of 10 years and 1 month. On the other hand, the prosecutor wants to lock up Booker and throw the key away...forever. Even bad apples should be treated with some semblance of fairness.<sup>227</sup>

Now 47, Booker has been incarcerated for 19 years. "I was sentenced to death, not life, if you ask me," he says. "You're just waiting until that day you die."<sup>228</sup> Since he has been imprisoned, he has lost his mother and father, whom he described to the ACLU as "the center of my world."<sup>229</sup> His four children have grown up while he has been behind bars; two are now in college and a third is headed to college, while his eldest has become a father himself.<sup>230</sup> Booker has never met his grandchildren.<sup>231</sup>

While in prison, Booker has taken more than 50 courses, earned his GED, and written 52 books, including a published novel.<sup>232</sup> He is currently a facilitator for the Alternative Violence Preparation program, through which he teaches inmates "how to transform their negative energy into a positive change."<sup>233</sup> His petition for commutation of his sentence was denied on February 28, 2013.

#### FEDERAL SYSTEM

**Teresa Griffin** was 26 when she was sentenced to spend the rest of her life in prison for conspiracy to possess and distribute cocaine for her role in a drug distribution operation masterminded by her drug-dealing boyfriend, the father of two of her children. She had no prior criminal record.

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“The unfairness of a life sentence without parole for Mr. Booker will be a grossly unjust result. [T]he prosecutor wants to lock up Booker and throw the key away forever. Even bad apples should be treated with some semblance of fairness.”

—Judge Terence T. Evans

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Teresa Griffin

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According to Griffin, a federal prosecutor threatened that she would never see her children again if she did not testify against her boyfriend. She says her boyfriend threatened her from prison and she was afraid to testify against him. “I had kids and I was just scared. I didn’t want anybody hurting my family.”

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Griffin was working for the U.S. Food and Drug Administration and enrolled at Orlando College in Florida when she says her Colombian boyfriend forced her to quit her job, withdraw from college, and follow him to Texas. At the time, she was 21 years old and pregnant with her first child by him at the time. She says that her boyfriend was extremely jealous and controlling, and that he forbid her to continue her studies or work. She describes her decision to follow her boyfriend to Houston, Texas, as a disaster. According to Griffin, he would take her car and disappear for days or weeks at a time, and he sporadically contributed only \$100 to \$200 at a time to the rent for the apartment she had leased in her name.

Griffin says that while she was still pregnant, she told him she was leaving him, but he hit her and threatened to kill her and take her two children from a previous relationship to Colombia if she left him.<sup>234</sup> After the birth of their child, she recalls he continued to disappear for weeks at a time. She and her three young children survived on public assistance, and she started a data entry training program. She says she purchased a car for her boyfriend in her name so that she could keep a car to go to school and take the baby to the doctor.

One day, after the birth of their child, Griffin says her boyfriend called her to come to Oklahoma and pick up a television for him. She made the trip and brought the television back to Houston. A week later, he showed up in Houston and told her to rent an apartment in Oklahoma for him. According to Griffin, soon thereafter her boyfriend had her transporting drugs for him.

Griffin says her boyfriend repeatedly used her as a mule to transport drugs. She would take a bus from Houston to Oklahoma City, carrying packages of cocaine while her boyfriend flew to meet her there; after making the delivery, she would return home to her children the same day, and he would remain in Oklahoma to distribute the cocaine.<sup>235</sup> She says he would pay her \$1,000 for each trip; on one such trip, she found him in bed with another woman.<sup>236</sup> According to Griffin, in Houston she frequently drove her boyfriend around after he lost his license, driving him to and from drug sales. She also used her credit card to pay for places for her boyfriend and his friends to stay.

Griffin recalls she began to fear for her and her children’s lives. She says that she became scared to sleep in her home because dealers close to her boyfriend, their girlfriends, and their children were being killed.<sup>237</sup> After dropping her children off at school, she would drive around Houston to make sure no one was following her before she returned home. She says she finally told her boyfriend she was leaving him and returning to Florida, but he threatened to take her children to Colombia. She says she stayed in Houston because of his threats to her children. Her boyfriend then started having her fly or drive to him to pick up cash proceeds from his drug distribution activities.<sup>238</sup>

In October 1991, Griffin was arrested after police officers apprehended her and a companion at the Oklahoma City airport with \$38,500 of her boyfriend’s cash.<sup>239</sup>

She was seven months pregnant with her second child by her boyfriend. Upon questioning by police, who did not read her Miranda rights, she provided the officers with a detailed description of her drug-related activities and led them to her car, where approximately one-half pound of cocaine was found.<sup>240</sup> She had never been arrested before.

According to Griffin, a federal prosecutor threatened that she would never see her children again if she did not testify against her boyfriend.<sup>241</sup> She says he was afraid to testify against him, explaining, “I had kids and I was just scared. I didn’t want anybody hurting my family.”<sup>242</sup> She says that her boyfriend threatened her from prison, threatening to send his cousin to her mother’s house to take her children to Colombia. She also says that she did not know the majority of her boyfriend’s co-conspirators, as her role in his operation was fairly limited and he conducted much of his drug-dealing out of town. Unwilling to testify against her boyfriend and unable to provide substantial assistance in the prosecution of his co-conspirators, Griffin opted to go to trial.

The trial court concluded that Griffin and her boyfriend managed a cocaine distribution ring, obtaining large amounts of cocaine in Houston and transporting the powder cocaine to Oklahoma City, where it was converted into crack for sale by resellers.<sup>243</sup> The court found Griffin’s boyfriend had masterminded the entire operation.<sup>244</sup> According to an FBI special agent, it was one of the largest cocaine distribution conspiracies in Oklahoma history.<sup>245</sup> According to prosecutors, Griffin was responsible for getting “mules” to transport the cocaine from Houston to Oklahoma City, as well as heading the organization when her boyfriend was out of town.<sup>246</sup> Though prosecutors referred to her boyfriend of about five years as her common-law husband and argued she ought to have had knowledge of all his activities, she says he had other girlfriends and they lived together sporadically.

Griffin was convicted of conspiracy to possess cocaine with intent to distribute, unlawful travel in interstate commerce with intent to carry on unlawful activity, and two counts of distribution of one kilogram of cocaine.<sup>247</sup> The judge held her responsible for the conspiracy’s distribution of 34 kilograms of crack cocaine, while her boyfriend was held responsible for conspiring to distribute nearly 48 kilograms of crack; both claimed their activities were limited to powder cocaine.

On account of the quantity and type of drugs involved, and because the judge found Griffin to have held a leadership role in the conspiracy, she was sentenced to LWOP on the conspiracy charge, as well as two concurrent 280-month sentences and a 60-month sentence.<sup>248</sup> The co-conspirators who testified against Griffin and her boyfriend in exchange for reduced sentences received sentences of five to 10 years, according to Griffin. She recalls that her father cried throughout her sentencing. Griffin says she was so distraught at her own sentencing that she did not fully understand what had happened until she was given an antipsychotic, anti-anxiety medication the next morning. She says, “Being sentenced to life without parole

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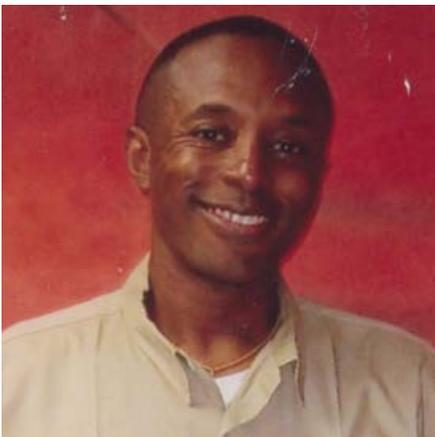
“Being sentenced to life without parole was like witnessing my own death. I know I did something wrong, but not enough to take away my life.”

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was like witnessing my own death. It's an ache I can't explain: feeling lonely and numb."<sup>249</sup>

Griffin, now 47, has served 22 years in prison and says she feels immense remorse for her actions. "I would give anything to turn back the hands of time. Just to be able to make different decisions,"<sup>250</sup> she says. "I know I did something wrong, but not enough to take away my life."<sup>251</sup> She says that she feels constant sorrow, depression, and pain over her sentence.

While incarcerated, Griffin has earned a business certificate from Tallahassee Community College and works at the prison recreation center. She reports she remains close to her mother and four children, and she mourns her father's death since she was incarcerated. According to Griffin, most devastating to her is that her children, who were ages seven months, four, six, and eight when she was incarcerated, have grown up without her and were raised instead by her aunt and mother. Griffin says one of her daughters was sexually abused in her aunt's home, after which Griffin's mother raised her daughters. Her son began acting out after her incarceration and has not visited her since he was 16 because he says he cannot handle visiting her in prison. Her youngest daughter, who was just an infant when she began her sentence, is now 21 and has a severe disability. "I have been cut off from my family by seeing my children grow through visitation," Griffin told the ACLU.<sup>252</sup> "It is devastating. 'Cause I was always there with them every day...It's hurt me because I missed out on a lot of their lives and I can't make that up."<sup>253</sup>



Thomas Bryant Jr.

#### FEDERAL SYSTEM

**Thomas Bryant Jr.**, a former police officer and first-time nonviolent offender, was sentenced to LWOP when he was 32 as the result of a reverse sting operation by the FBI to root out drug-related corruption in the police force.

The oldest of eight siblings raised in a devoutly Christian family, Bryant served seven years in the Army before he was honorably discharged and joined the police force in Savannah, Georgia.<sup>254</sup> A married father of five, he says he struggled to support his children on his policeman's salary. In order to support his family and pay child support for three children from previous relationships, he took on additional jobs as a security guard at grocery stores, dollar stores, and nightclubs.<sup>255</sup> He recalls working so many hours a week that he would fall asleep on the graveyard shift.

In November 1995, when Bryant had been with the police force for five years, he was approached by an old acquaintance from elementary school whom he had not seen in 20 years.<sup>256</sup> Bryant says that the acquaintance, a former felon who had become a confidential informant, offered him a job working security at a new nightclub and told Bryant he would pay him well to provide security while he transported powder cocaine from one location to another.<sup>257</sup> According to Bryant, other officers on the force were already being paid to provide such security. He says he agreed to escort couriers transporting cocaine into and out of Savannah, and provide security for the cocaine while it remained in Savannah, on the condition that he never had to see or touch the drugs or transport or store them himself.<sup>258</sup>

Bryant's role was to drive behind a car containing one to two kilos of cocaine and, if police stopped the car containing the drugs, to jump out of his vehicle and wave them off with his badge. Over a one-year period, FBI officers had Bryant provide protection services for 13 shipments of cocaine, paying him a total of \$19,900 for his escort services.<sup>259</sup> Bryant never saw the cocaine he was paid to protect and assumes the sting operation either used fake cocaine or empty vehicles. Regarding his involvement in the crime, Bryant told the ACLU:

In my mind, I saw an easy opportunity to charge the informant one, two, four thousand dollars for escort and all along I'm thinking—if this guy is gonna pay me good money to follow behind him in a separate vehicle for his protection, and I don't have to ever see the drugs nor put it in my car, then I'm gonna take this easy money and if another police pulls him over, I will keep going like I don't know him! But all along the joke was on me!<sup>260</sup>

The confidential informant also asked Bryant to recruit additional officers. Bryant says that when he named several white officers he knew from the police academy as prospective recruits, the informant told him they wanted only Black cops for the operation.<sup>261</sup> Bryant eventually recruited four other Black officers, including his brother, to engage in these activities.<sup>262</sup> Also at the confidential informant's request, Bryant procured and sold eight firearms to him in return for \$1,700, as well as eight grams of cocaine he obtained on the job.<sup>263</sup> At times, Bryant and the other officers were in possession of firearms while providing security for the cocaine.<sup>264</sup>

Bryant was arrested with 11 other police officers, all of whom were Black. He was convicted of conspiracy to aid and abet the distribution of cocaine, attempting to aid and abet the distribution of cocaine, distribution of cocaine, selling a stolen firearm, providing a firearm to a convicted felon, and carrying a firearm during a drug trafficking crime.<sup>265</sup> In a federal presentence report, a probation officer calculated the amount of drugs for which Bryant was responsible based on the money received for each escort, determining he was responsible for 24.35 kilograms of cocaine hydrochloride.<sup>266</sup> During trial, an FBI agent testified that the confidential informant was paid nearly \$63,000 for his role in the operation and may also have received a bonus.<sup>267</sup>

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“It feels like you're a walking dead. You're just going to die and never see society again. In fact, if I wasn't spiritually strong, it's enough to cause you to consider suicide. It is too demoralizing; it seems like something meant to kill you mentally.”

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Although Bryant had no criminal record, he was sentenced to life without the possibility of parole. He says of his sentence, “It feels like you’re like a walking dead. They try to give you the impression that you’re just going to die and never see society again. In fact, if I wasn’t spiritually strong, it’s enough to cause you to consider suicide.”<sup>268</sup> He admits that the hopelessness of his sentence has led him to contemplate suicide. “It is too demoralizing; it seems like something meant to kill you mentally,” he says.<sup>269</sup>

When he first arrived in prison, and whenever he was transferred to a new prison, Bryant says he was placed in solitary confinement for his protection because of his past work in law enforcement.<sup>270</sup> The guards’ fears were well-founded: Bryant reports that once, while being transferred to a new facility, he was assaulted by an inmate who learned he was a former police officer.<sup>271</sup>

Bryant is now 48 and says he has served 16 years in prison without being reported for a single disciplinary infraction.<sup>272</sup> His five children, who were between the ages of two and 13 when he was incarcerated, are now 18 to 29. In prison, he says he has become “a Christian leader, mentor, counselor, minister of music, musician, psalmist, and songwriter,” and has obtained an associate’s degree in theology.<sup>273</sup> He spends his time writing books, one of which he has published, titled “A Thug Cop’s Redemption.”<sup>274</sup> He works 20 to 30 hours a week sweeping the prison grounds, for which he is paid \$10 a month. If he were to be released from prison, he would work with at-risk youth and continue publishing books.<sup>275</sup>

Bryant says he fully accepts responsibility for his actions and believes he has long been rehabilitated. He told the ACLU, “I’ve gotten older and I was the type of person that if I was sentenced to five years, I would have learned my lesson and wasn’t planning on ever coming back to prison! For me, it didn’t have to take a life sentence...I just need one last chance to get out and make right by my family and community for the wrong choices I made.”<sup>276</sup>



Alice Marie Johnson with her living children and grandchildren.

#### FEDERAL SYSTEM

**Alice Marie Johnson** is a first-time nonviolent offender and mother of five serving LWOP for drug conspiracy and money laundering.

One of nine children, Johnson was born and raised in Olive Branch, Mississippi, by a family of leaders in their African-American community. Johnson married and had her first child, Tretessa, when she was only 15. Though she recalls the school board tried to force her to drop out of high school, she refused to do so and graduated with honors two years later before going on to complete some college. She says she had always worked since she was 11. She held numerous professional jobs and

worked for the FedEx Corporation for 10 years, including seven in management. She went on to have four more children, later divorcing their father in 1989.

A single mother trying to raise five children with no help from her ex-husband, Johnson says she struggled financially. When she lost her job of 10 years in December 1990 due to her gambling addiction, she recalls her life began to spiral out of control. In 1991, she filed for bankruptcy and her house was foreclosed on; she says she did not know how she would be able to pay her bills. After months of unemployment, she found a job as a factory worker at a Kellogg's factory in Memphis, but she says her wages were insufficient to support her family. She began to associate with people involved in drug dealing and says she became involved in their drug conspiracy out of desperation. Her youngest son, Cory, then died in a scooter accident at age 12 in 1992.

Johnson was arrested in 1993 and accused of participating with 15 others in a drug trafficking and money-laundering operation that transported cocaine from Houston and distributed it in Memphis from 1991 until September 1994.<sup>277</sup> She was linked to her co-conspirators primarily through numerous unrecorded telephone calls made to and from her phone, and also through the testimony of 10 of her co-conspirators who testified against her and others to avoid prosecution or receive reduced sentences.<sup>278</sup> At trial, she and one of her co-defendants were found to have received numerous deliveries of cocaine from Houston, directed the distribution of large quantities of cocaine in Memphis, and controlled the shipment of drug proceeds back to Houston.<sup>279</sup>

Johnson says that she never personally made drug deals or sold drugs. She admits that she relayed messages and allowed others involved in the drug conspiracy to use her telephone. According to Johnson, when conspirators came to town, they called her, and she contacted her co-defendant to inform him what telephone number to use to reach them. She says she would give him coded messages such as, "Everything is straight." Occasionally, she says she temporarily held money for her co-defendant. At the time of her arrest, she had recently purchased a commercial cleaning company franchise; she had also purchased a house, for which she structured a \$26,000 down payment by purchasing three separate money orders for less than \$10,000 each.

Johnson was convicted of conspiracy to possess with intent to distribute cocaine, attempted possession of cocaine with intent to distribute and deliver, money laundering, conspiracy to commit money laundering, and structuring a monetary transaction.<sup>280</sup> It was her first conviction. She was sentenced to a mandatory sentence of LWOP plus 25 years in 1997. The cooperating co-defendants who testified against her received sentences ranging from probation without prison time to 10 years.

Johnson's incarceration has been extremely difficult for her family. Her son spiraled downward without his mother and is now incarcerated himself. She says, "When I was snatched away from my son, two years later he dropped out of school. He just went crazy. There was no guidance. He started living with friends in the

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☹☹ It's like a waking death, it's like the person is alive but they're not. They're not there; you can talk to them, but they're not there. There's never a point of closure, ever. Never. It never ends."

—Tretessa Johnson, on her mother's sentence

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neighborhood; he said, ‘I just want to be in the last place that my momma left.’”<sup>281</sup> To help pay her mother’s legal bills, her eldest daughter, Tretessa, took on a second job, extra student loans, and an extra car loan.

Johnson is 58 and has served 16 years of her life-without-parole sentence. She says of her sentence, “It feels like I am sitting on death row. Unless things change, I will never go home alive.”<sup>282</sup> According to Johnson, a close family member recently told her, “Visiting you in prison is like going to a grave site. We can go to the place where your body is located, but we can never take you back home again.”<sup>283</sup>

Tretessa says of her mother’s sentence, “There is no light at the end of the tunnel. It’s like a waking death, it’s like the person is alive but they’re not. They’re not there; you can talk to them, but they’re not there. There’s never a point of closure, ever. Never. It never ends. It never stops. And this is life for you. It’s heartbreaking for me.”<sup>284</sup> She adds, “You can’t get closure, because it’s not like someone died. I feel bad saying this, but it would have been easier if she had died.”<sup>285</sup>

Tretessa says of her maternal grandmother, who has Alzheimer’s, “She went through a really, really hard time. She would call me upset and crying quite a bit. My grandmother was so deeply upset about my mom’s incarceration, and it’s like her mind shut down. I wonder if her mind just wanted to forget. She doesn’t even remember who my mom is now. It’s like a protective thing. It’s ironic she was in so much pain and she got this forgetting disease. She cried more than my mother did, and my mother was the one in jail.”<sup>286</sup>

Johnson says that she takes full responsibility for her actions, explaining, “I now know that I’m just as guilty as if I had sold drugs myself... I live daily with the pain and regret of my choices.”<sup>287</sup> She says she has particularly struggled with being unable to care for her sick mother and being physically separated from her children, though she speaks with them regularly. Johnson’s close-knit family—comprised of four children, four grandchildren, six siblings, and a host of nieces, nephews, and cousins—remains supportive and eager to have her home.

Johnson reports she has maintained a clean disciplinary record throughout her imprisonment. She became a hospice volunteer to help sick and dying prisoners, helped coordinate the prison’s Special Olympics event for inmates with disabilities, tutored other prisoners to help them obtain their GEDs, and served as a mentor with the prison’s Choosing Healthy Alternatives and New Growth Experiences program. She has taken numerous educational and vocational training programs, including clerical and computer skills courses, Spanish language classes, and self-help programs. She has held jobs with the prison’s business office, hospital, chapel, and food service administration. She has written and directed many plays, including a 100-person play about Jesus Christ that has been performed annually for the past decade, and directs her prison’s Protestant praise dance ministry. While incarcerated, she has also been ordained by proxy as a minister. She says, “Even though I have had no out-date, I have still worked toward bettering myself and preparing for a future outside of prison.”<sup>288</sup>

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“It feels like I am sitting on death row. Unless things change, I will never go home alive.”

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## Roberto Ortiz is serving LWOP for his first offense, a nonviolent drug crime committed in the state of Florida.

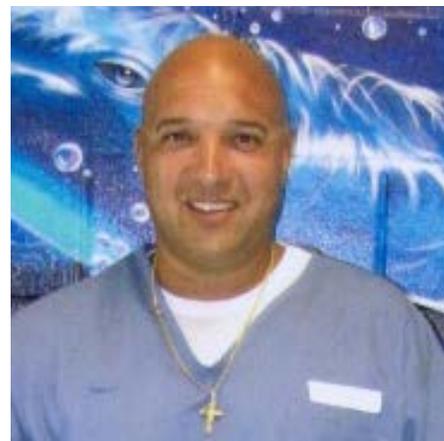
Ortiz says his arrest resulted from a sting operation during which an acquaintance, Orlando Adams, agreed to sell heroin to a confidential informant.<sup>289</sup> Through a series of tape-recorded conversations between Adams and the confidential informant, police officers in Hillsborough County, Florida, had learned of an impending drug deal and pulled over Adams's vehicle in October 2001. According to Ortiz, when the car was pulled over, he and Jorge Mictil, who had been living with Ortiz at the time, were riding in the backseat, while a woman named Eileen sat in the front passenger seat next to Adams.<sup>290</sup> Ortiz was in possession of a gun at the time.<sup>291</sup> While searching the car, officers found two bags of heroin on the rear floorboard, near Ortiz.<sup>292</sup> Ortiz claimed that the drugs were not his and had been thrown in the backseat by Eileen when police stopped the car.<sup>293</sup> Officers subsequently searched Ortiz's residence and discovered 67 grams of heroin and drug paraphernalia.<sup>294</sup>

Ortiz was charged with trafficking between 14 and 28 grams of heroin, conspiracy to traffic drugs, and trafficking between 286 grams and 30 kilograms of heroin. Ortiz and Adams proceeded to trial; Mictil pleaded guilty and testified against them. According to Ortiz, his attorney called only one witness during his trial.<sup>295</sup> Through cross-examination of the confidential informant, his attorney did demonstrate that the informant had never met Ortiz, Ortiz was never heard on the taped conversations discussing the drug deal, and he was not present when the heroin was initially purchased.<sup>296</sup>

In September 2002, when he was 31, Ortiz was convicted on all counts and sentenced to mandatory LWOP for heroin trafficking under § 893.135 of the Florida Penal Code, which requires a life-without-parole sentence for certain first-time drug offenses.<sup>297</sup> He received a mandatory minimum 30-year sentence for the other charges.<sup>298</sup>

Ortiz, who was born and raised in Puerto Rico, had only a fourth-grade education and barely spoke English at the time of his arrest.<sup>299</sup> He spoke through an interpreter during his trial and says he was confused about many aspects of his case. "I wasn't informed, or, better said, I didn't understand," he recalls.<sup>300</sup> Prior to his incarceration, the father of four worked as a cabinet maker, truck driver, and transport mechanic for a school bus company.<sup>301</sup> He told the ACLU, "Before I came to prison, my only intention was to be a good citizen and have a better life progressively... All I've ever wanted to be, above all else, was to be a good father to my children."<sup>302</sup>

Now 42, Ortiz has been incarcerated for more than a decade. He said that excessive sentences like his "cause not only a distortion of one's perception of the higher



Roberto Ortiz

“When he told me his story, I could not believe it. There [were] inmates that were in for rape or killing someone that were getting out in 15 to 25 years. Something is wrong with this picture.”

—A prison corrections officer

governmental powers that be, but also tear down completely one's life aspirations of an onward successful life in all areas."<sup>303</sup> Once, Ortiz says, he served 30 days in solitary confinement for greeting someone else's family member during visitation.<sup>304</sup>

A corrections officer who worked at the prison where Ortiz is incarcerated told the ACLU, "When he told me his story and that he was in prison for life, I could not believe it. There [were] inmates that were in for rape or killing someone that were getting out in 15 to 25 years. I had one inmate that was drunk and ran a stop light hitting a van and killing six people, including children, and only got 30 years, and he will be out in six years due to earning gain time. I kept thinking [that] something is wrong with this picture."<sup>305</sup>

"It's a very sad thing," Ortiz said, "to be taken out of your family and be charged with such a massive charge that I got."<sup>306</sup> He says that it has been especially difficult to be separated from his three sons and one daughter, who were only two, four, six, and seven years old when he was incarcerated and "have a great need and desire to see [their father] again in the free world."<sup>307</sup> Ortiz says he also longs to see his ailing mother, who lives in Puerto Rico and used to travel to Florida for a month every other year to visit him in prison. Ortiz has not seen her in many years and says he misses the days he spent in Puerto Rico helping with her community service work.<sup>308</sup> He told the ACLU, "The only thing I ask God for is to give me the liberty to be out of prison that I may have my mother in my arms again with what years she has left."<sup>309</sup> He says he hopes to be released from prison so that he can spend time with his family and get back to work.<sup>310</sup> While in prison, he has taken a number of wellness courses, and works from 4:00 a.m. to 1:00 p.m. at the prison laundromat.<sup>311</sup>



Altonio O'Shea Douglas with his mother, daughters, grandsons, and nephew.

#### FEDERAL SYSTEM

**Altonio O'Shea Douglas, a 51-year-old grandfather, has been incarcerated for 20 years for his first and only conviction.**

One of 13 siblings, Douglas worked steadily from age 15 until he was laid off from his job of several years at age 27. Unable to find another job to support his family, he says he began dealing drugs to make ends meet. Less than three years later, Douglas was accused with 23 others, including his father and uncles, of participating in a large crack cocaine distribution operation that operated in Fort Worth for 18 months between 1991 and 1992.<sup>312</sup> Following a trial with 16 co-defendants, Douglas was convicted of conspiracy to possess and distribute crack cocaine; possession with intent to distribute and distribution of crack cocaine; and use and carrying a firearm during and in relation to a drug trafficking crime.<sup>313</sup> The trial judge found Douglas and his co-conspirators responsible for distributing 15 kilograms of crack cocaine.<sup>314</sup>

When he was 31, Douglas was sentenced to LWOP. Had he been convicted for an equal amount of powder cocaine instead of crack cocaine, he could have received a sentence of 15 to 20 years. At sentencing, Judge Terry R. Means told Douglas that he had demonstrated he was a compassionate person and caring father and remarked, “[I]t’s not easy to give a sentence that the law seems to require.”<sup>315</sup> Douglas says prosecutors offered him a plea deal of only four years in prison if he testified against his co-conspirators; he says he refused because he would not testify against his relatives and others he had known his whole life.<sup>316</sup> Three of his uncles who were co-defendants in his trial have since died in prison; all were in the 70s at the time of their death.<sup>317</sup>

“We’ve got murderers that get second chances, rapists that get second and third chances, but here, Tony makes one mistake and his life is gone,” said Douglas’s mother, Martha Waits.<sup>318</sup> Douglas explains, “I decided to sell drugs mainly because of two reasons. First, I needed the money. Second, everyone else around me was selling drugs and getting what they needed. I did not take the time to sit down, and to really think it through. The seriousness of the decision I was making, the consequences, the pain for me and my family... Not in my wildest dreams, did I think I would be given a life sentence for my decision.” He adds, “When I made my fatal decision, I had a wife and kids at the time...but now, look at me; no wife, all my kids have grown up without a father.”<sup>319</sup>

Douglas’s 11 children, the youngest of whom was three years old when his father was incarcerated, are all in their 20s and 30s. He now has 23 grandchildren. He laments that he was able to teach only one of his children how to drive: his eldest daughter, who was a young teenager when he was incarcerated. “I watched my kids grow up from in here. So much time, so many memories lost,” he says.<sup>320</sup> He says he has done everything he can to parent from within prison, regularly checking on his children, sending them birthday cards, and making them annual presents such as ceramic banks, clocks, and lamps. He remains in contact with all of his children, who travel to see him every Father’s Day. “I thank God that my bond with them hasn’t been broken,” he adds.<sup>321</sup>

In the two decades Douglas has been incarcerated, he says he has focused on acquiring skills and sharing them with other prisoners. Since completing a welding training program, for the last five years he has taught other inmates the trade of welding and fabricating metals. He was also selected by the prison to participate in the Better Path program, through which he talks to troubled youth about his experiences in prison and his past poor choices and advises them about the opportunities they should seek to avoid repeating his mistakes.

If the crack/powder cocaine sentencing disparity were eliminated, Douglas would be eligible for immediate release. He says, “It is very scary...to have to die in prison. We all have to die one day, but you would like to die around your family. You die in a place like this, you just die in a room by yourself. It’s terrifying to think that this could possibly happen to you.”<sup>322</sup>

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“It is very scary to have to die in prison. We all have to die one day, but you would like to die around your family. You die in a place like this, you just die in a room by yourself.”

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Luis Lazaro Viera

FEDERAL SYSTEM

## Luis Lazaro Viera has been incarcerated for 24 years for his role in a cocaine distribution operation in Florida.

Viera was a passenger in a vehicle driven by another Latino man when they were stopped by a Delaware state police officer in September 1987 for driving 62 miles per hour, seven miles over the speed limit, on Interstate 95.<sup>323</sup>

The officer searched the car and found two packages of cocaine hidden in the backseat; Viera was arrested for possession with intent to distribute two kilos of cocaine and released on bail. He says his attorney informed him that he would not receive more than a seven-year sentence and advised him to plead guilty to the state charges; instead, he was sentenced to 15 years after pleading guilty.

Two months after sentencing, based in part on the same drugs seized in the Delaware state case, Viera was indicted with 10 others on federal drug conspiracy charges. Although the district court ruled that the search of the car was unconstitutional in Viera's case, the appellate court overruled that decision and allowed the drugs seized on the interstate to be used against Viera at trial.<sup>324</sup> He was convicted of conspiracy to distribute and possess with intent to distribute crack and powder cocaine, largely due to the testimony of co-defendants who received sentence reductions and unindicted co-conspirators who received immunity in exchange for their assistance.<sup>325</sup> At trial, Viera was found to have been a member of a drug distribution operation that sold large quantities of crack and powder cocaine out of Gainesville, Florida.<sup>326</sup> He was found to have supplied cocaine to several of his co-conspirators. Because of the large drug quantities involved, and also because he was an organizer of the conspiracy and carried two firearms, Viera was sentenced to LWOP at age 30.<sup>327</sup> His only prior conviction was the related Delaware state conviction.

Viera is now 54 and has served 24 years in prison. He says of his sentence, "When I look in the mirror, I see that I get older, but at the same time, time stops. I can't achieve anything or help my family."<sup>328</sup> He adds, "I lost my whole youth in prison, but I live with the hope of walking out of prison one day."<sup>329</sup> Viera remains close to his 89-year-old Cuban-born mother and says that the worst aspect of his imprisonment is not being able to help her. Prior to his incarceration, he worked with his mother selling and delivering silk flowers and teaching floral arranging to senior citizens. He dropped out of school in the ninth grade to work and help his mother with living expenses. While imprisoned, he has earned his GED and held the same prison job for more than 20 years.

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“When I look in the mirror, I see that I get older, but at the same time, time stops. I can't achieve anything or help my family.”

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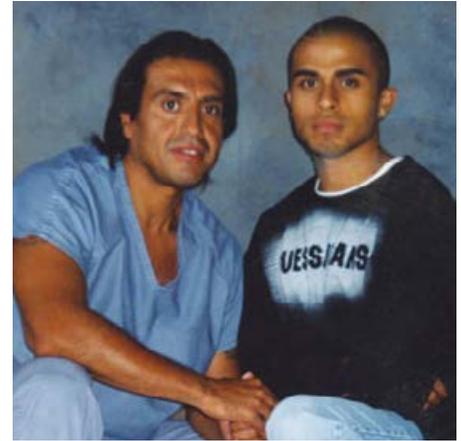
## Rudy Martinez is serving a mandatory LWOP sentence for his first conviction, for his involvement in a drug conspiracy from age 22 to 25.

Martinez, who is Mexican-American, was born and raised in Chicago. He says he never knew his father and his mother suffered from depression and alcoholism.<sup>330</sup> Martinez's older, drug-dealing brother went to prison when he was 15. According to Martinez, he followed in his brother's footsteps and began selling marijuana joints at age 12 and cocaine at age 14; he says he saw drug-dealing as a way out of his childhood poverty after witnessing how hard his mother worked to earn \$45 a week at a laundromat.<sup>331</sup> He was expelled from school after completing the ninth grade and left home at age 16.<sup>332</sup> Martinez explained that he takes full responsibility for his actions and he does not want to use his upbringing "as a cop-out either, because it's a cheap cop-out."<sup>333</sup>

Martinez was sentenced to a mandatory LWOP sentence for his involvement in a St. Paul drug ring that operated out of a farmhouse in Pine County, Minnesota, and in Chicago from 1988 to 1991. Six members of the drug ring were charged with conspiracy to distribute cocaine. Cindy Pluff, the owner of the farmhouse and alleged ringleader of the drug ring, testified against Martinez pursuant to a plea deal under which she served less than three years in prison. Martinez claims Pluff gave false testimony against him and has since admitted that she lied about the extent of Martinez's involvement in the conspiracy.<sup>334</sup>

According to Martinez, he met Pluff when he was 19 and working as assistant manager of a Chicago nightclub owned by a man involved in distributing cocaine on Chicago's North Side. Pluff became a cocaine distributor in the Twin Cities, and Martinez says his boss at the nightclub was one of her suppliers until his death, after which Martinez assumed the role at age 22. According to prosecutors, Martinez and others provided Pluff with cocaine that she then sold in Minnesota. After a raid on the Minnesota farmhouse in February 1991, Martinez, then 25, turned himself in. He admitted that he sold drugs and had an illegal business relationship with Pluff, but he has consistently denied being the head of the organization and says he did not know about the drug-dealing operation in Minnesota, but was simply one of Pluff's suppliers.<sup>335</sup>

Martinez was charged with conspiracy to distribute cocaine. According to Martinez, the prosecutor offered him a plea deal of eight years if he cooperated by identifying and testifying against his supplier, which he rejected. Three days later, a superseding indictment was brought against Martinez, charging continuing criminal enterprise and increasing the alleged amount of cocaine the drug ring had



Rudy Martinez with his son, Julian, at the federal prison in Allenwood, Pennsylvania, in 2004. Julian was four years old when his father was incarcerated.

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The prosecutor offered Martinez a plea deal of eight years if he identified and testified against his supplier, which he rejected. Sentencing him to life without parole, the judge objected to the mandatory sentence and said, “Fairness has departed from the system.”

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distributed. Martinez says Pluff later wrote to him that federal authorities pressured her to testify to increased amounts of cocaine and to say that Martinez was her only source. In a letter on file with Martinez, Pluff wrote, “There was no way [the amount of cocaine] was that much.... Besides, it wasn’t all you. There were other people... [t]hey wanted us to focus on you.”<sup>336</sup> Pluff also later wrote an affidavit confirming that she had exaggerated the amount of cocaine sold by the drug ring.<sup>337</sup> Martinez was convicted of running a continuing criminal enterprise that sold cocaine and conspiracy to distribute cocaine. He was sentenced to life without parole, a mandatory sentence, on the continuing criminal enterprise charge.

At sentencing, Judge Milton I. Shadur told Martinez that he “simply does not have discretion” in sentencing him to LWOP and was troubled by the federal sentencing guidelines, which “evidence... more trust in prosecutors than in federal judges.”<sup>338</sup> Judge Shadur added, “[F]airness has departed from the system. It is no longer the operative standard for federal judges. And as a result in a way it is sort of an insult... to the process to talk of fairness within the context of standards that to such a great extent do not involve considerations of fairness.”<sup>339</sup>

Judge Shadur later reflected on Martinez’s case in an appearance on the “MacNeil/Lehrer NewsHour,” “It seems to me... that it’s very difficult to say that, that someone in that position is sufficiently hopeless in terms of redemption.”<sup>340</sup> In a letter to a journalist investigating Martinez’s case, Judge Shadur wrote that the case is “a prime example of the way in which the guidelines could operate in an inappropriately disparate manner.”<sup>341</sup> Judge Shadur noted that Pluff was “the principal offender in a conspiracy in which the jury found Mr. Martinez to have been a participant,” and added that Pluff’s significantly shorter sentence “made it particularly troubling that Rudy Martinez, then in his middle twenties, should have a life sentence imposed under the mandate of the guidelines.”<sup>342</sup>

Martinez has served 22 years in prison. All of his co-defendants have been out of prison for more than a decade. A strict federal statute enacted since Martinez was sentenced, the Antiterrorism and Effective Death Penalty Act of 1996, bars him from appealing his case and taking advantage of a Supreme Court ruling that struck down the mandatory nature of the sentencing guidelines used to incarcerate him for the rest of his life.

Martinez says it has been particularly difficult to be separated from his two sons, Edwin and Julian, who were ages three and four when he was incarcerated. When asked about his sons he becomes too emotional to speak, so he wrote to the ACLU, “No words could ever fully describe the pain within when you know that you will never spend any type of quality time with your children, for the rest of their lives. I wish that on no parent.”<sup>343</sup> Martinez says he talks with his sons and granddaughter about once a week, but he is not able to see them as often as he would like, as he is incarcerated about nine hours away from them.<sup>344</sup>

While in prison Martinez, has earned his GED and completed close to 200

programs, including a 500-hour drug treatment program, Alcoholics Anonymous, parenting classes, a web design class, and other educational classes.<sup>345</sup> Although he had never read a book before he was incarcerated, he is now an avid reader. He has been imprisoned in federal prisons in Kansas, Pennsylvania, Illinois, and Kentucky, where he is currently incarcerated.

## FEDERAL SYSTEM

### **Elisa Castillo**, a Texas grandmother with no criminal record, says she never saw or touched the drugs that sent her to prison for the rest of her life.

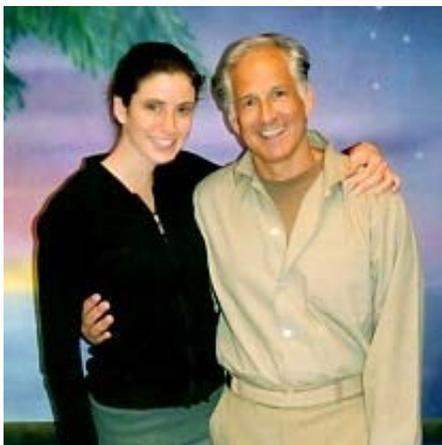
Convicted of participating in a drug-smuggling conspiracy for her role in a Houston-based bus company, Castillo was sentenced in May 2009 to LWOP for the nonviolent crime.

An immigrant from Mexico, Castillo dropped out of school when she was 14. She says she was struggling to make ends meet; she had to pawn her jewelry in order to pay the rent on her southwest Houston home, and she relied on her son to pay her electric bill with his credit card.<sup>346</sup> She worked as a bus station ticket-taker and recalls she dreamed of owning her own bus. According to Castillo, she acted on the advice of her boyfriend, a bus driver, and became partners with a resident of Mexico who wanted to set up a Houston-based bus company. The Mexican businessman sent her money to purchase three tour buses that would travel between Mexico and Houston; they were kept in her name. She says her Mexican contact sent her money to cover bus company expenses but never paid her the monthly salary she was promised. She maintains that she did not know she was being used as a pawn in a cocaine trafficking operation between Mexico and Houston and that she was unaware that the buses were outfitted with secret compartments in which cocaine was stashed.<sup>347</sup>

In part because she was unable to provide any valuable information to federal agents that could lead to the arrest and prosecution of the leaders or other high-level members of the drug conspiracy, Castillo received the harshest sentence of the approximately 68 people convicted for their involvement in the scheme.<sup>348</sup> Her boyfriend, who had involved her in the conspiracy, was sentenced to only 25 years. She was sentenced to LWOP under federal sentencing guidelines as a manager of the conspiracy. Now 57, Castillo is known as “Grandma” at the federal prison in Fort Worth, Texas, where she is incarcerated. When her toddler grandson visits her in prison, he believes he is visiting her in the hospital.



Elisa Castillo, a grandmother, is currently incarcerated at a Fort Worth, Texas, federal prison. Photo credit: Cody Duty / Houston Chronicle (2011)



George Martorano with his daughter, Francesca, who was four years old when he was imprisoned.

**George Martorano** has served 30 years in prison for managing a large drug distribution enterprise. He believes he is the longest-serving first-time nonviolent offender sentenced to LWOP in the federal system.

Martorano says he dropped out of school at age 15 and began selling marijuana to friends. By 1980, he had joined smugglers flying marijuana from Jamaica to Florida. According to prosecutors, the ring eventually also distributed cocaine, heroin, methamphetamine, and Quaaludes. After a 15-month undercover FBI operation involving informants and taped phone conversations and meetings, Martorano was arrested in September 1982 at age 31. The government seized 3,000 pounds of marijuana, two kilograms of heroin, and 300,000 fake Quaaludes.<sup>349</sup> Martorano was charged with 19 counts of managing a continuing criminal enterprise, drug possession, and conspiring to distribute large quantities of cocaine, methamphetamine, methaqualone, and marijuana.

According to Martorano, on the advice of his lawyer, he pleaded guilty to all of the charges against him, assuming he would receive a 10-year sentence at the most. He had no prior convictions—not even a traffic ticket. The federal Presentence Investigation Report recommended that he be sentenced to 40 to 52 months in prison, but the sentencing judge sentenced him to life. Because parole was abolished in the federal system in 1987, Martorano is now serving life without parole.

Martorano, now 63, has served 30 years in prison. “When I came in, they called me ‘the kid,’” he says. “Now they call me ‘pops.’”<sup>350</sup> He calls his imprisonment a “waking nightmare.”<sup>351</sup> Since he has been incarcerated, his wife died of cancer, his son was killed in a motorcycle accident, and his father was murdered. He remains in close contact with his elderly mother and daughter.

While in prison, Martorano has become a prolific writer. He has written more than 31 books, including several novels and a published autobiography about growing up in an Italian-American community in Philadelphia, nine screenplays, poetry, and numerous short stories about life in prison. He has bartered cookies for typing paper and cigarettes for ballpoint pens to write his manuscripts. For decades, he has taught inmates reading and creative writing, he counsels suicidal prisoners, and he reports he has not been written up for a single disciplinary infraction in 30 years.<sup>352</sup> He says, “I’m not the person I was. I worked hard to change. If they would give me a chance, they would see that. As far as the streets are concerned, it’s over with.”<sup>353</sup>

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Now 63, Martorano has served 30 years in prison. “When I came in, they called me ‘the kid.’ Now they call me ‘pops.’”

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## NONVIOLENT TEENAGE OFFENDERS

### FEDERAL SYSTEM

**Reynolds Wintersmith Jr.** is a first-time offender who was sentenced to a mandatory LWOP sentence at age 20 for his involvement in a crack cocaine conspiracy starting when he was 17 years old.

Wintersmith says he grew up surrounded by family members and family friends who used drugs and cooked, packaged, and sold crack cocaine. According to Wintersmith, both of his parents were drug addicts. After his mother, a heroin addict, died of a drug overdose when he was 11 years old, he went to live with his grandmother, who sold crack and operated a brothel out of her home. Prior to moving in with his grandmother, Wintersmith recalls his lowest grade was a B. After living with her for a year, he says his highest grade was a C, and he started receiving mostly Ds.<sup>354</sup> Although still a child himself, he frequently had to take care of his three younger siblings. Social services agencies failed to investigate complaints of child abuse and neglect. While living at his grandmother's as a young teenager, he says his aunts taught him how to cook crack. When he was 16, his grandmother was imprisoned for selling drugs and he was left responsible for contributing to the rent and electricity bills and supporting his younger siblings.<sup>355</sup> He says he secured a summer job at a local Red Lobster restaurant, but on only \$4.25 an hour, and without a car or reliable public transportation to get to work, he ultimately quit his job at the restaurant and began selling crack cocaine on the street.<sup>356</sup>

In 1992, when Wintersmith was 17, he dropped out of high school.<sup>357</sup> He became involved with a drug ring in Rockford, Illinois, and began selling cocaine for them. The drug ring sold crack and powder cocaine out of various drug houses in Rockford and was highly organized, with several levels of management, including runners, lookouts, and supervisors. The members of the operation owned guns and carried them on a regular basis, but the case against them did not include charges that the defendants committed any specific acts of violence. Wintersmith was arrested shortly after his nineteenth birthday, a year after becoming involved in the drug ring. He and 19 others were indicted in federal court for their participation in the conspiracy. Wintersmith declined a plea offer of 10 years' imprisonment, and says he was unaware he faced a mandatory life-without-parole sentence when he chose to go to trial. Wintersmith was convicted of conspiracy to distribute and to possess with the intent to distribute crack and powder cocaine, and possession of crack cocaine. Although he was a street dealer, Wintersmith was convicted as part



Reynolds Wintersmith Jr.

of the much larger drug conspiracy case, and he was held accountable for the entire amount of cocaine sold by the conspiracy during his one-year involvement.<sup>358</sup>

Even though Wintersmith had no criminal record, was convicted of nonviolent drug crimes he became involved in as a juvenile, and was still a teenager when he was arrested, he was sentenced to a mandatory life-without-parole sentence in 1994.<sup>359</sup> His sentence was the product of disparately harsh crack sentencing policies. According to his clemency attorney, if he had sold the same—or almost triple—the amount of cocaine, but entirely in its powder form, the federal sentencing guidelines would have required just 30 years’ imprisonment. However, because he distributed crack as well, the guidelines mandated a life sentence.<sup>360</sup>

When sentencing Wintersmith, U.S. District Judge Philip Reinhard told him, “Under the federal law I have no discretion in my sentencing. Usually a life sentence is imposed in state courts when somebody has been killed or severely hurt, or you got a recidivist, that is, a defendant who’s been convicted time and time again. This is your first conviction...and here you face life imprisonment. I think it gives me pause to think that that was the intention of Congress, to put somebody away for the rest of their life.”<sup>361</sup> Judge Reinhard added, “Even though...there ought to be some latitude for the court to take that into consideration when you have a 17-year-old who gets involved...there is not another alternative available.”<sup>362</sup> Judge Reinhard told Wintersmith that he could hope that “something will change in the law” and he could be released at an earlier date as a result.<sup>363</sup>

Wintersmith is now 39 and has spent half his life in prison. During his nearly two decades in prison, he has completed multiple educational and vocational programs. He completed 4,100 hours of teaching apprenticeship and has become a U.S. Department of Labor-certified teacher’s aide.<sup>364</sup> He tutors other inmates, works as a certified victim impact counselor, and serves as a companion for suicidal prisoners as part of a federal inmate suicide prevention program. As a federal community re-entry mentor, he counsels prisoners on how to be productive members of society following their release from prison, an opportunity he does not share with the prisoners whom he mentors.

Wintersmith’s appeals have been exhausted, and in March 2012 he filed a petition for commutation of his sentence, which is pending. His daughter, Chonte’, wrote in support of the commutation petition:

Even though my father has been away from me physically, he’s been there for me mentally. My father and I have a really close relationship; I can talk to him about anything. He always makes me smile even when I’m down...My father has served almost 20 years already; he didn’t get a chance to see me grow up...Every girl deserves to have their father in their life. Obama, please commute my father’s sentence...I miss him so much and I just want him to have a second chance at life.<sup>365</sup>

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Even though Wintersmith had no criminal record and was still a teenager when he was arrested, he was sentenced to mandatory life without parole for a drug conspiracy he became involved in as a juvenile.

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If Wintersmith's clemency request is granted, he says he intends to continue teaching and counseling. He is incarcerated in a federal prison in Greenville, Illinois. He writes, "My past mistakes—though serious in nature—were done in the ignorance of my youth. I grew up without a mother or father in what was considered a drug-house. I was surrounded by drug use and drug deals. I had nothing else to compare that life to. What I saw daily was what I believed."<sup>366</sup> He adds, "The person I have grown into was my way of apologizing to everyone I have ever wronged."<sup>367</sup>

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## FEDERAL SYSTEM

# Donald Allen was sentenced to serve two life-without-parole sentences when he was just 20 years old.

Allen grew up living for periods of time with his grandmother in Alabama; his mother in Panama City, Florida; and his father in Albany, New York. He says he became involved in selling drugs after witnessing his father selling drugs from time to time. At age 14, he began selling marijuana to friends at a nightclub, and by age 15 he started selling crack cocaine. At the time of his arrest, Allen worked at a Kmart.

At age 19, Allen was arrested with two co-conspirators following a controlled drug buy that took place in a truck. According to Allen, in December 1997, he and his brother-in-law, Michael Montalvo, discussed selling crack cocaine that Montalvo had brought to Panama City, Florida, from Atlanta.<sup>368</sup> Allen says that while he was present, Montalvo sold three-quarters of an ounce of crack cocaine to a four-time convicted felon.<sup>369</sup> The buyer later testified that he had twice bought drugs from Montalvo in the past in Allen's presence, and that he had made arrangements to buy additional crack from Montalvo later that night.<sup>370</sup> The buyer's brother was incarcerated in federal prison at the time. Reportedly in an effort to obtain a sentence reduction for his brother, the buyer contacted the police to inform them of the impending drug deal and serve as a confidential informant.<sup>371</sup>

Later that night, Allen and Montalvo drove to the buyer's house to complete the drug deal. Allen says that he sat in the passenger seat, Montalvo drove, and a third co-conspirator sat in the backseat.<sup>372</sup> According to Allen, after he met the buyer at the door and explained he had to deal directly with Montalvo, the buyer entered the truck and negotiated the price with Montalvo.<sup>373</sup> Upon the buyer's signal at the conclusion of the deal, police entered the vehicle and found the crack cocaine, two firearms, and cash. According to Allen, when police subsequently searched him and his house, they did not find any physical evidence.<sup>374</sup>

Montalvo pleaded guilty to conspiracy to possess with intent to distribute crack and cocaine and the use or carry of a firearm during the commission of a drug



Donald Allen with his sister, nieces, and nephews.

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Allen's conviction was based in part on the testimony of his brother-in-law and a confidential informant, both of whom received sentence reductions in exchange for their cooperation.

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“I came in when I was only 19 years old and I have almost spent the same amount of time in prison that I have lived free. I have been locked up my entire adult life thus far.”

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trafficking offense; he agreed to cooperate with the government.<sup>375</sup> Allen proceeded to trial on the same charges.<sup>376</sup> His conviction was based in part on the testimony of his brother-in-law and the confidential informant, both of whom received sentence reductions in exchange for their cooperation.<sup>377</sup> Although Allen maintains that he had no involvement in the deal itself, the court found that his actions constituted conspiracy and possession.

Allen complains that his court-appointed lawyer did not provide adequate legal representation. Moreover, he says his lawyer was also defending the confidential informant’s brother—the man whose possibility of receiving early release from prison motivated the informant to cooperate with police, and who therefore directly benefitted from Allen’s conviction.<sup>378</sup>

Allen was convicted of possession of crack cocaine with intent to distribute, conspiracy to possess with intent to distribute 421 grams of crack cocaine, and possession of a firearm during a felony drug offense.<sup>379</sup> Shocked upon hearing the verdict, he said, “I simply did not know that I could be convicted of showing someone where someone lives at because I knew they were going to sell them something illegal.”<sup>380</sup>

In 1998, Allen was sentenced to two terms of life without parole, plus a mandatory minimum sentence of five years on the gun charge.<sup>381</sup> His LWOP sentence was mandatory because of two prior state convictions. Earlier that year, he says he had pleaded guilty to a charge of simple possession of two small rocks of crack cocaine, committed when he was 17, as well as possession of cocaine with intent to distribute, committed just after his nineteenth birthday.<sup>382</sup> Though the offenses took place more than a year apart, he pleaded guilty to both on the same day in May 1997. He received probation for both crimes, but was subsequently sentenced to 20 months in prison when he violated probation by committing the federal drug offenses.

Following his 20-month sentence in state prison for his prior convictions, Allen was transferred to federal prison, where he will remain for the rest of his life. He said that he was “too young to really understand” the implications of his sentence at the time.<sup>383</sup> What hurt the most, he said, “was the fact that my mother cried in the courtroom and I was able to hear her sobs.”<sup>384</sup>

Allen is now 35 and in his fifteenth year of incarceration. He told the ACLU, “I came in when I was only 19 years old and I have almost spent the same amount of time in prison that I have lived free. I have been locked up my entire adult life thus far.”<sup>385</sup> He says, “It’s hard being separated from his family,” especially “being shipped all over the country and my family not being able to come and visit me...I have seen my nieces and nephews grow from little kids, which I used to walk to the bus stop, into mothers and fathers. All from prison. I have a nephew named after me because my brother thinks I will never get out of prison to have my own.”<sup>386</sup> Allen has never seen his namesake nephew. After a decade and a half in prison, Allen says he has had only seven visits—about one every two years.

Allen spends his time crafting leather, learning Spanish, participating in church activities, and working a prison job. He reports that he has a clean disciplinary record. Despite having to grapple daily with the reality of his sentence, which he refers to as “the pain of foreverness,” he remains optimistic: “[I]t’s been hard, but you must find hope in all situations...I do the best that I can with what I have and that is all I can do. Regardless of my current situation, I simply strive for a better day.”<sup>387</sup>

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## FEDERAL SYSTEM

# **Pinkney Clowers III** is serving life without parole for a drug conspiracy he was accused of participating in from age 15 to 19.

His only prior run-ins with the law were minor fines for loitering and reckless driving at age 17, as well as probation for twice pleading guilty to possession of small amounts of marijuana at age 19. According to Clowers, while he was being held in county jail for one of these marijuana arrests, two federal agents asked to speak with him about drug-dealing activities about which he says he knew nothing.<sup>388</sup> Clowers says the agents threatened to charge him if he did not cooperate, which he did not. Eight months later, he was arrested following a traffic stop, when a police search of his car revealed the end of a smoked marijuana cigarette, a revolver, and cash.<sup>389</sup>

At the time of his arrest in November 1991 at age 20, Clowers was expecting a child. Raised in Macon, Georgia, he had just started a D.J. service and landscaping business, and he says he was trying to find ways to provide for his new family. According to the trial court, he had been a member of a drug ring in Macon as a young teenager, starting when he was 15.<sup>390</sup> The court found that after the ring was broken up, Clowers and one of the former leaders went into business for themselves, selling crack cocaine.<sup>391</sup> According to prosecutors, the two eventually recruited others to do the street-level dealing and commit robberies to finance their drug operations; Clowers was never charged with participating in a robbery offense. He was convicted primarily on the basis of witnesses who testified against him in exchange for reduced sentences.

Two days before his twenty-first birthday, Clowers was convicted of conspiracy to distribute crack cocaine, operating a continuing criminal enterprise involving 15 kilograms of crack cocaine, conspiring to interfere with commerce, and conspiring to use or carry firearms in the commission of drug trafficking crimes.<sup>392</sup> The drug amounts he was held responsible for were not charged on the indictment, proven in court, or determined by a jury; they were adopted by the sentencing judge based on a determination by a federal probation officer, even though no crack or powder cocaine had been seized by the authorities.<sup>393</sup> Despite his minor criminal history,

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Despite his minor criminal history, and the fact he had become involved in the drug conspiracy at age 15, Clowers was sentenced to mandatory life without parole because of the amount of drugs determined by a federal probation officer.

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Clowers is particularly baffled as to how a teenager could be found to have run a continuing criminal enterprise, a charge normally reserved for drug kingpins.

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Clowers was sentenced to a statutory mandatory sentence of life without parole because of the amount of drugs determined by the probation officer.<sup>394</sup>

Clowers adamantly denies participating in any such drug distribution enterprise. He admits he is not an angel and says that growing up in the “hood,” he knew people involved in drug activities but was not “a street guy” himself.<sup>395</sup> He says he believes he was charged because he refused to serve as an informant. He reports he is particularly baffled as to how a teenager could be found to have run a continuing criminal enterprise, a charge normally reserved for drug kingpins, remarking, “How can a 15-, 16-, 17-year-old run a continuing criminal enterprise?”<sup>396</sup>

Clowers is now 41 and says he has become a different person in the more than two decades since his youthful conviction. He writes, “A person who is twenty and one who is forty are worlds apart. So the differences are great. A certain degree of understanding and patience can come with time.”<sup>397</sup> He has earned his GED and has taken almost every educational class available to him; he says he views education as a “master key...to unlock [my] potential and live a prosperous and successful life.”<sup>398</sup> Long interested in philosophy, while in prison he says he loves to read, meditate, “and travel with my spirit and mind.”<sup>399</sup> As a follower of the Tree of Life school of thought, he says he is “fighting for my freedom and trying to align with the positive aspects of my destiny.”<sup>400</sup> If he is released from prison, he says he would like to “contribute my part in making the planet just a little better” and “travel and seek ways to help others and myself.”<sup>401</sup>

His son, born just a few months after Clowers began his life sentence, is now a college student. Clowers laments that they “have never spent a single day in the ‘free world’ together.”<sup>402</sup> He says being in prison is painful, “especially when feeling and hearing the struggles that my loved ones may be going through. Or when thinking about the fact that I have a son whom I’ve never been able to spend time with, provide for, or watch and help grow into a young man. Just as painful as to know I have a mother who has spent many nights suffering, petitioning, and praying.”<sup>403</sup> Yet, he remains positive. “On the other hand, I believe that there is good that can be taken from every experience, even adversity. And this is what I try daily to focus on,” he says.<sup>404</sup>

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#### FLORIDA

In 1991, just one week before his 20th birthday, **Ira Bernard Parker** was sentenced to serve the rest of his life in prison without the possibility of parole for sale and possession of cocaine within a school zone.

He had a series of prior convictions for drug-related crimes committed during his teenage years, during which he says he made “friends with bad company” and was influenced by “peer pressure, alcohol, and drugs.”<sup>405</sup>

Parker, who is Black, was born partially deaf in both ears and says he has always relied heavily on his family and others who know about his disability to help him understand things.<sup>406</sup> He was first convicted of sale or purchase of cocaine for acts committed when he was 16 years old. He was sentenced for this crime, as well as two additional charges of sale or purchase of cocaine and one charge of battery of a law enforcement officer committed when he was 17, in 1989 at age 18. The following year, he was convicted of possession of cocaine and of being a felon in possession of a weapon, both offenses he had committed when he was 18.

Parker has been in prison for 23 years, during which he says he has matured. He told the ACLU, “When I was a child, I talked like a child. I thought like a child. I reasoned like a child. When I became a man, I put childish ways behind me.”<sup>407</sup> Since his incarceration, he has surrounded himself with positive influences such as his family, which he says have made him “become a better person inside and outside.”<sup>408</sup> Sadly, since his imprisonment his father, mother, brother, and two sisters have passed away.<sup>409</sup> He says he remains close with his son, daughter, three sisters, nieces, nephews, and cousins, and works to set a positive example for them and his two grandchildren.<sup>410</sup>

Parker was recently transferred to a prison far from home. “It is very hard for me here,” he told the ACLU, “Cause I cannot obtain [a] visit from my family...I have a lot of time here, I can only go to the law library once or maybe twice a month for one hour for each day.”<sup>411</sup> He spoke of missing life outside the prison walls: “It is beauty of life, that you will never be able to see again and the thought of you never being able to spend those moments that only happen once in a chance of a lifetime with the people you love and care about.”<sup>412</sup>

Now 42, Parker says he hopes for an opportunity to prove how much he has changed and have a second chance at being a part of society. Prior to his incarceration, the highest level of education he had completed was eighth grade.<sup>413</sup> In prison, he has earned his GED and participated in the vocational trade and literature programs, and he has worked in food service. He spends his time educating himself, reading, and analyzing the law. He told the ACLU, “I made a commitment to Father and Mother...I will make drugs my enemy and stay out of jail and prison...I have a reason to live and be happy. No burden. No reason to mess with drugs. I will not disappoint myself.”<sup>414</sup>

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Sentenced to life without parole at age 19, Parker says he has matured during his 23 years in prison. “When I was a child, I talked like a child. I thought like a child. I reasoned like a child. When I became a man, I put childish ways behind me.”

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## TYING JUDGES' HANDS: MANDATORY LIFE WITHOUT PAROLE

Mandatory sentencing laws require harsh, automatic LWOP prison terms for defendants convicted of certain federal and state crimes. Under these federal and state laws, judges have no discretion to consider the facts and circumstances of the crime or mitigating factors such as the defendant's age, history of abuse, parenthood, mental illness, or substance abuse issues. These mandatory sentencing laws generate unnecessarily harsh sentences, tie judges' hands in considering individual circumstances, and empower prosecutors to force defendants to bargain away their constitutional rights. The rise of mandatory sentences is discussed in more detail in Section V(A).

Under current law, 15 states and the federal government mandate life without parole for certain nonviolent offenses. Based on data obtained by the ACLU, nonviolent offenders are currently serving mandatory LWOP sentences in the federal system, Alabama, Florida, Illinois, Louisiana, Mississippi, Oklahoma, and South Carolina. Prisoners may be serving mandatory LWOP for nonviolent crimes in additional states.

There are two forms of federal mandatory sentences under which defendants convicted of nonviolent offenses are currently serving LWOP. The first, federal mandatory minimum sentences, establish mandatory drug sentences, which increase exponentially based on prior convictions, based on the weight of the drug for which the criminal defendant is held accountable. The second are sentences meted out under the federal Sentencing Guidelines, which were created in 1987 and apply in all federal cases. The guidelines were mandatory until 2005, when the Supreme Court decided in *United States v. Booker* that the mandatory nature of the guidelines was unconstitutional.<sup>415</sup> Since 2005, the guidelines have been advisory, which means that judges must still use and consider them but can sentence outside of them when the facts of the case, the uniqueness of the offender, or justice demand it. However, because *Booker* is not retroactive, federal prisoners who were sentenced to mandatory LWOP under the pre-2005 Sentencing Guidelines have been unable to obtain retroactive sentence reductions, even in cases where the sentencing judge objected to the mandatory sentence required at the time. Moreover, *Booker* did not change any mandatory minimum sentencing laws, and judges must still apply statutory

mandatory minimum sentences, unless one of two narrow exceptions applies to the defendant.

A handful of states have instituted mandatory LWOP sentences for certain drug offenses. In Alabama, the simple, or even constructive, possession of 56 grams of LSD or heroin, or of 10 kilos of cocaine, triggers a mandatory LWOP sentence for drug trafficking.<sup>416</sup> Similarly, an individual convicted of selling a mere two ounces of heroin in Mississippi must receive LWOP.<sup>417</sup> In addition, state habitual offender laws require mandatory LWOP upon conviction for a broad range of petty drug, property, and other nonviolent offenses; these are described in more detail in Sections V(B) and VI(D) of this report.

Following are case studies of nonviolent offenders who were automatically sentenced to die in prison. In almost all of these cases, the sentencing judge objected to the sentence and clearly stated on the record that he or she believed the required LWOP sentence was disproportionate and inappropriate in the given case, but his or her hands were tied.

**TABLE 14**  
**Jurisdictions that mandate LWOP for certain nonviolent offenses**

<b>1</b>	<b>Federal government</b>
<b>2</b>	<b>Alabama</b>
<b>3</b>	<b>Arizona</b>
<b>4</b>	<b>Delaware</b>
<b>5</b>	<b>Florida</b>
<b>6</b>	<b>Georgia</b>
<b>7</b>	<b>Illinois</b>
<b>8</b>	<b>Iowa</b>
<b>9</b>	<b>Louisiana</b>
<b>10</b>	<b>Michigan</b>
<b>11</b>	<b>Mississippi</b>
<b>12</b>	<b>Missouri</b>
<b>13</b>	<b>Oklahoma</b>
<b>14</b>	<b>South Carolina</b>
<b>15</b>	<b>Wisconsin</b>
<b>16</b>	<b>Wyoming</b>

**Stephanie Yvette George**, a single mother of three, is serving life without parole for drugs her former boyfriend had stored in a lockbox in her attic and for her minor role in a crack cocaine conspiracy.

She received a mandatory LWOP sentence because of prior convictions for selling small amounts of crack cocaine several years earlier. George has never been accused of committing a violent crime.

Despite becoming pregnant with her first child during her senior year, George graduated from high school after her son's birth. According to George, after high school she moved into her own apartment and entered into a series of relationships with men who sold crack cocaine. She soon had two more children, both of whom were fathered by men who sold drugs and were not involved in their children's lives. Struggling to support her children, she worked a series of jobs as a sales clerk, receptionist, housekeeper at a hotel, patient assistant at two nursing homes, and beautician in her hometown of Pensacola, Florida.

A 23-year-old single mother struggling to support three young children on her salary, welfare, and food stamps, George says she became involved in her boyfriends' criminal activities and sold crack in order to help pay the bills. According to George, these boyfriends used her home to store money and drugs, and she sometimes handled drugs and money and took messages for them. In October 1993, police arrested George when they found her sitting on the front porch of a house next to a bag containing cocaine residue; she confessed she had crack in her bra, turned it over to officers, and received probation. In November 1993, she was convicted of selling two crack rocks to a confidential informant for \$120; in December, she and several co-defendants sold the confidential informant \$40 of crack, and officers found four pieces of crack and drug paraphernalia in her home. George pleaded guilty to these state charges and was sentenced to nine months in a work-release program; she worked at a hair salon during the day and was imprisoned at the county jail at night.<sup>418</sup>

Michael Dickey, the father of one of George's children, was involved in selling drugs and imprisoned in the early 1990s for drug and firearm offenses. When he was released from prison in 1995, he resumed distributing crack cocaine. Shortly thereafter, in August 1996, police searched George's apartment in Pensacola, Florida, with a warrant and found a safe in her attic containing 500 grams of cocaine and \$13,710. In the bedroom, police found cooking utensils used to turn powder cocaine into crack. Dickey had the key to the safe and confessed the cocaine, money,



Stephanie George

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Dickey had the key to the safe and confessed the cocaine, money, and paraphernalia were his. Although Dickey was the leader of the drug conspiracy and had a longer prison record, he was released from prison more than five years ago.

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and paraphernalia were his, and George adamantly insisted she had no idea the drugs were hidden in the attic of her home. At the time of her arrest, she reports she had no cash, no bank account, and no property other than her car.

At George's jury trial, six cooperating witnesses, all of whom admitted they had sold large quantities of cocaine, testified that George was paid to store the cocaine in her apartment, was present during drug transactions conducted by Dickey and other drug dealers she had dated, and had delivered cash or crack for these boyfriends. Although George denied these uncorroborated accusations, she was convicted of conspiracy to possess crack cocaine with intent to distribute, and she was held accountable for the 500 grams of cocaine in the attic safe, 500 grams Dickey said he sold, and an additional 290 grams of crack based on the cooperating defendants' historical testimony. George's sentence was enhanced for obstruction of justice because she testified that she had no knowledge of and did not participate in Dickey's drug activities.

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“Your role has basically been as a girlfriend and bag holder and money holder. So certainly, in my judgment, it doesn't warrant a life sentence. I don't really have any choice in the matter.”

—Judge Roger Vinson

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Because of her 1993 minor drug offenses, George was categorized as a career criminal, which mandated a life-without-parole sentence—significantly longer prison time than her five co-defendants. Under mandatory sentencing, the judge was prohibited from considering 26-year-old George's minor role in the conspiracy. Judge Roger Vinson told George at her sentencing hearing, “Even though you have been involved in drugs and drug dealing for a number of years...your role has basically been as a girlfriend and bag holder and money holder. So certainly, in my judgment, it doesn't warrant a life sentence.”<sup>419</sup> Unfortunately, Judge Vinson had no other choice. He told George, “I don't really have any choice in the matter.... If there was some way I could give you something less than life I sure would do it, but I can't. Unfortunately, my hands are tied...I wish I had another alternative.”<sup>420</sup>

In exchange for their testimony (termed “substantial assistance”), her co-defendants avoided mandatory sentences like George's and instead each received reduced sentences of less than 15 years in prison.<sup>421</sup> Although Dickey was the leader of the drug conspiracy and had a longer prison record, he was released from prison more than five years ago.<sup>422</sup>

George's children, who were ages four, six, and eight when she was incarcerated, are all now in their early 20s. She says that having her children grow up without her has been an “ordeal.”<sup>423</sup> She says she talks to her children every Sunday and though her sister raised her children, she tries to parent from prison. “Trying to raise them from here is tough. My oldest son does the most crying, reaching out,” she says. “It's a hurting thing for everybody.”<sup>424</sup> She says she wishes she could return to guide her children through early adulthood and help raise her five young grandchildren, explaining, “I feel like if I was there, they would make better decisions about life. Even though they're grown up, if I can get there, they will still have a chance to make it. That keeps me going, too; I pray and ask God to keep them safe until I can get there and help them out.”<sup>425</sup>

George's children desperately miss their mother. Her daughter, Kendra, says, “My mom has been incarcerated for 15 years of my life...I wasn't able to get that motherly

advice or lay my head in her lap when I was feeling hurt or sad. I wish she was around to talk with me, see me off to the prom, or come see me graduate from high school...I miss her so much.”<sup>426</sup> Her youngest son, William George, said he misses his mother’s comfort: “It hurts me every day to wake up and not be able to see her...Words can’t explain the hurt and pain I deal with day to day and how I truly miss her.”<sup>427</sup> He added, “She has been away from me for too long and I need her more now than ever.”<sup>428</sup> His mother was unable to help him, and William was murdered in October 2013.

George, now a 43-year-old grandmother, has been imprisoned for 16 years. While in prison, she has earned more than 30 skills certificates, received a certificate in business administration and management, and has nearly completed an associate’s degree in business. She has taken numerous counseling and self-improvement classes addressing anger management, healthy relationships, drug abuse, and domestic violence. She says she has developed profound faith through weekly Bible study classes and church services. She says that she “want[s] more than anything to have the opportunity to be a part of the solution [rather] than the problem that plagues society.”<sup>429</sup> To pay for her weekly calls to her children, which cost 23 cents a minute, she works two prison jobs: an eight-hour data processing job that pays 92 cents an hour and a four-hour overtime shift at a call center that provides directory assistance to phone companies.

#### FEDERAL SYSTEM

**Ricky Minor**, a self-described meth addict at the time of his crime, was sentenced to LWOP after just over one gram of methamphetamine and over-the-counter decongestants were found in his home.

Minor was born and raised in Niceville, a town in the Florida Panhandle. He says he began using drugs at 13, dropped out of school at 16, and became addicted to cocaine at 20. He ran a carpet installation business for 15 years, married, and tried to be a responsible father to his daughter and two stepchildren, but he says he struggled with depression and drug addiction; after a period of sobriety, he became addicted to methamphetamine in 1998.

Minor was convicted of a number of nonviolent prior offenses, most of which he says were committed under the influence of drugs or alcohol. He did not serve any time for these prior offenses, which included convictions for assault and trespass in 1991 for yelling at a neighbor who had poisoned his dogs; convictions for battery and breach of peace in 2000 for bumping a vehicle with his car after a verbal confrontation with another driver; and several convictions for possession of marijuana, cocaine, or methamphetamine.<sup>430</sup>



Ricky Minor with his daughter, Heather. Now 19, Heather was seven years old when her father was sentenced to life without parole.

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“I had a drug problem, but hurt someone? Never. I never even carried a gun. I was raising a family. I was a responsible person, and all this was destroyed and my life was taken away from me over some sinus pills.”

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In 2000, acting on a tip from a confidential informant, police found 1.2 grams of methamphetamine dissolved in liquid in Minor’s home. They also found an over-the-counter decongestant (pseudoephedrine), acetone, matches, and lighter fluid. Although there was no meth lab in Minor’s home, the Drug Enforcement Agency estimated that 191.5 grams of methamphetamine could have been produced from the decongestant pills, an estimate that sentencing guideline experts later determined was far too high.<sup>431</sup> Minor says he never sold meth and reduced the recipe to make only enough to support his and his wife’s addiction.<sup>432</sup>

Initially, Minor was charged under state law; he recalls he was told he faced a two-and-a-half-year sentence. He says the prosecutor threatened to “bury [him] in the federal system” if he would not cooperate, but he refused to snitch on others.<sup>433</sup> Two months after his arrest, he was indicted under federal law and faced a mandatory life-without-parole sentence because of his prior crimes. He pleaded guilty to attempting to manufacture methamphetamine. According to Minor, his federal public defender told him that his wife would be prosecuted and likely sentenced to 10 years if he chose to go to trial, and he says he felt he had no choice but to plead guilty in order to avoid leaving their three children parentless.<sup>434</sup>

Minor was sentenced to mandatory LWOP as a career criminal in August 2001.<sup>435</sup> Judge Clyde Roger Vinson, an appointee of former President Ronald Reagan, said when sentencing Minor, “The sentence...far exceeds whatever punishment would be appropriate.... Unfortunately, it’s my duty to impose a sentence. If I had any discretion at all, I would not impose a life sentence...I really don’t have any discretion in this matter.”<sup>436</sup> Minor’s mother, Judy Minor, told the ACLU, “I was sitting in the courtroom when it happened, and it was all I could do to stay seated in my chair. I was so shocked. I just couldn’t believe they could do that to him. For what they didn’t find...no money, no violence.”<sup>437</sup> Minor told the ACLU, “For this to happen to someone like me, I was devastated.... I had a drug problem. I had been dabbling in drugs all my life, but hurt someone? Never. I never even carried a gun.... The hardest thing is how minor the crime that I did was, and my past history, and I get this lifetime sentence.”<sup>438</sup> He added, “I was raising a family. I was a responsible person, and all this was destroyed and my life was taken away from me over some sinus pills.”<sup>439</sup>

Minor’s nuclear family has fallen apart since his incarceration in February 2001. He and his wife divorced. His stepson died of a drug overdose. His ex-wife, who also struggled with drug addiction, was unable to care for their daughter. Minor’s retired parents have been raising his teenage daughter, Heather, since he was incarcerated when she was seven years old. Heather told the ACLU that when her father was sentenced, “I was so young I didn’t grasp that for the rest of my life he wouldn’t be here. At 10, I started to grasp that he would never come home and I’d be alone forever and that was how it was going to be.”<sup>440</sup> She added, “It’s hard being a young girl being without your dad. I was so close to my dad; he was my right-hand man and we were inseparable. It’s hard being separated from him...just his presence alone would make things easier for me.”<sup>441</sup> Minor told the ACLU that “it’s been an absolute nightmare” to be separated from his family.<sup>442</sup> He said, “Being away from

my daughter, my biological child, being as close as we are, it tore us both up.... It messes with your head because you want so bad to be there for her and you can't."<sup>443</sup> He says he talks to Heather at least once a week and e-mails her every day. Minor's parents, who are both in their late 70s, continue to financially support Heather, who was the first person in the family to graduate from high school and is pursuing advanced education. Minor's mother says Heather has always been "really devoted to her daddy," and they have struggled to schedule their visits to see Minor, who is incarcerated 10 hours away in Salters, South Carolina, so that Heather does not miss too much school or work.<sup>444</sup>

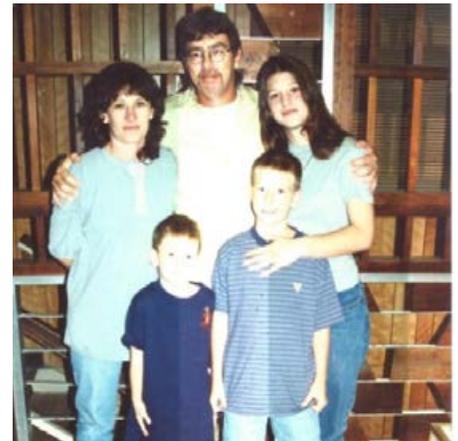
During his 12 years in prison, Minor has earned his GED and taken classes in computer skills, business, real estate, and accounting. He reports he has stayed sober since his incarceration and completed a 40-hour drug abuse education class, but is not eligible for the 500-hour residential drug treatment program because he will never be released from prison. He is now 50 years old and says that he is a changed man since getting sober.

#### FEDERAL SYSTEM

A father of three, **Dicky Joe Jackson** was sentenced to LWOP for a methamphetamine conspiracy because he transported and sold drugs to pay for a life-saving bone marrow transplant and other medical treatments for his sick son.

Jackson was born and raised on a dairy farm in Boyd, Texas. When he completed tenth grade, he left school to begin working in the trucking industry with his father. Jackson purchased his own truck when he was 27 and continued to work in the trucking industry until his incarceration. He says that he began to take speed when he was only 17 in order to stay awake during long truck routes, just as his father did.<sup>445</sup> In 1988, Jackson was convicted of possession of one-half gram of methamphetamine when an undercover informant posing as a trucker asked to bum a pill from him at a Florida truck stop. In 1989, he was convicted of transporting more than one kilogram of marijuana, for which he served one year in county jail in Tylertown, Mississippi. Shortly thereafter, he lost his truck due to legal fees. While he was in jail, his two-year-old son, Cole Jackson, was diagnosed with Wiskott-Aldrich Syndrome, a rare immunodeficiency disease.

A year after his youngest son's diagnosis, doctors determined that a bone marrow transplant was required to save his life, without which they said he would likely not live to the age of five. Jackson's 11-year-old daughter, April Anderson, was a



Dicky Joe Jackson with his wife and three children, April, Jon, and Cole, shortly after he was sentenced to serve life without parole 17 years ago.

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“It’s like someone dying but not being put to rest, that’s what happened to my family. It’s just an ongoing misery for everyone. I wish it were over, even if it meant I were dead.”

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perfect match to serve as a bone marrow donor for her baby brother. According to Jackson, the family’s insurance company raised their monthly premium, and when an automatic deduction of their monthly fees did not clear the family’s bank account, the insurance company they had used for years terminated their coverage. Jackson says he made \$20,000 a year, too much to qualify for government assistance, but too little to afford the \$250,000 bone marrow transplant and other medical bills for his son’s care. Through fundraisers, the family was able to raise \$50,000, not nearly enough to cover the life-saving surgery. According to Jackson, after the transplant, his son’s monthly treatments cost around \$4,000, and the family remained uninsured. Owing \$200,000 in medical bills and struggling to support his family and recently widowed mother, Jackson says he began driving his deceased father’s 18-wheeler truck.

Jackson transported livestock and produce from Texas to California. According to Jackson, the supplier—from whom he was purchasing small amounts of methamphetamine, which he says he took to stay awake while trucking—told him he was buying the methamphetamine in California and asked Jackson to assist with transporting the drugs back from California.<sup>446</sup> He says his supplier offered to pay him well because he knew of his son’s medical expenses. He maintains he decided to utilize the family business to transport drugs to California and back in order to make the money necessary for the lifesaving surgery. He says he transported the drugs in his truck on a monthly basis for about a year.

In 1995, Jackson sold half a pound of methamphetamine to an undercover officer, and he, his younger brother Tommy, and the supplier were arrested and charged with participating in a methamphetamine conspiracy. The supplier testified against Jackson, claiming that he was the ringleader of the conspiracy, in exchange for which the supplier was sentenced to 10 years in prison. Jackson was convicted of conspiracy to possess with intent to distribute methamphetamine, possession with intent to distribute methamphetamine, being a felon in possession of a firearm, and possession of an unregistered firearm. The district court judge found that Jackson and his brother were responsible for 81.5 kilograms of methamphetamine and concluded that Jackson was the leader of the conspiracy.<sup>447</sup> More than 40 members of the community wrote to the sentencing judge asking for leniency because of Jackson’s family’s plight. Jackson and his brother received mandatory minimum sentences of life without parole.

Jackson has been incarcerated for 17 years. His youngest son, Cole, who was only five years old and gravely ill when Jackson was incarcerated, is now 22. He says that he first understood his father’s sentence during the long drive home after visiting his father in a federal prison in Kansas, explaining, “I was about six years old and it took us so long to get there. We were driving on the way back and it hit me that he will never come home again, we’ll always have to drive to visit him, and I’ll never have a dad like my friends have.”<sup>448</sup>

Jackson says he speaks with his mother, three children, and three grandchildren every two or three days. After he lost his last appeal, he says he divorced his wife of 19 years to allow her to get on with her life. He told the ACLU, “It’s like someone

dying but not being put to rest, that's what happened to my family. I would rather have had a death sentence than a life sentence. It's just an ongoing misery for everyone.... I wish it were over, even if it meant I were dead."<sup>449</sup>

Jackson, who is 55, says he has never had a disciplinary report filed against him. He reports he has taken every drug and alcohol abuse program for which he is eligible and has not used drugs since he was incarcerated. He has completed more than 20 living skills and educational classes on business and other subjects. He volunteers as a companion for suicidal prisoners. He said, "When these guys get hopeless, I sit with them and talk to them—and this is coming from a guy who has no hope. They'll get out in two years and I'm doing life and *I'm* the one talking them down."<sup>450</sup>

Jackson says that he knows he has done wrong and takes responsibility for his mistakes, but he would like "one more chance at life so I could be with my kids and grandkids."<sup>451</sup> If he were released, he says he would like to talk to youth about the dangers of drugs. His commutation petition was denied on February 28, 2013. The federal prosecutor who tried Jackson's case wrote a letter supporting clemency for Jackson. The prosecutor, now a criminal court judge in Dallas, wrote, "I saw no indication that Mr. Jackson was violent, that he was any sort of large scale narcotics trafficker, or that he committed his crimes for any reason other than to get money to care for his gravely ill child."<sup>452</sup>

## A Daughter's Story: April Anderson, daughter of Dicky Joe Jackson

I'm not going to cry this time. I'm going to be strong. I didn't cry yesterday, I should be able to handle this. It's not like it's the first time I've had to go through this. I've been doing this for over 18 years now. That's what I keep telling myself as I stare across the aisle at my Dad. As the time for us to leave approaches, you can almost feel the tension, the unease. Dad's as upset as I am, but he always puts on a good front. He usually suggests we leave a little early because leaving is the 'elephant in the room' that we're all trying to avoid. "Ya'll go on and head home and get some rest. Don't worry about me, I'm fine." It's the same stuff every time.

The fact is that Dad's getting old. He's only 54, but 18 years in a federal prison has a way of wearing you down and aging you. He takes 7 pills a day, mostly for high blood pressure. My grandfather died just after his 55th birthday, and I'm well aware of the implications. Not a single day goes by

that I don't think of my Dad and worry about him. If I don't get one of our cherished 15-minute phone calls on a regular basis, I begin to get even more concerned that something is wrong. For all I know, he could be dead and it could be some time before I was contacted. The thought of my Dad sitting day after day, hour after hour in a federal prison breaks my heart. It seems that regardless of where he goes the prison seems to stay in lockdown at least 30% of the time. That means no e-mails and very limited phone calls. Most pains dull with time. Unfortunately, having a loved one incarcerated is not one of those pains.

How did we get here? Simply put...drugs. My Dad's decision to participate in illegal drug trafficking has affected my life in such a profound way. I remember the first time the SWAT team raided our home. I was in the ninth grade. It was still dark outside. I had gotten up to get ready for school and was sitting at the dining room table eating a bowl of cereal. I'll never forget mom in her nightgown stepping out the front door with her hands up

and seeing what seemed like hundreds of red laser dots all over her body from the guns' scopes. I was terrified.

Shortly after the SWAT raids, my dad went to trial. My dad received three life sentences and three ten-year charges on top of that. All for a nonviolent drug offense. I still remember sitting in the courtroom on that day and hearing Judge McBryde say "life" over and over. I will never forget my mom standing up in the courtroom and screaming, "No! You can't do that! You're not God! You can't just take him away." The overwhelming sense of desperation and sorrow as my mother screamed in that courtroom had such a profound impact on me that to this day I can't read that part of Dad's transcripts without breaking down. Unfortunately, Dad was taken away, and he's been gone for over 18 years now.

The effect of Dad's decision extends so far beyond the obvious incarceration. Kids need their Dad in their life. At 14 years of age, I was no different. Seeking acceptance, my relationship with my boyfriend became extremely intense. The relationship became abusive and controlling, but I felt trapped. After two and a half years and a restraining order, I was finally able to get out of the relationship. Unfortunately, the deep need for acceptance from someone did not flee with the relationship. For many years, my relationships seemed to take on the same pattern. Inside, I believed I deserved the abuse.

Bitterness and grief have a way of bringing out the worst in a person. My relationship with my mom was difficult to say the least. Mom was stressed, as she was trying to deal with being a single mother to three children, one of whom was chronically ill. I remember mom being completely shunned by the community as well. She'd show up at a basketball game to see me play, and people would literally get up and move away from her. I'd look up and she'd just be sitting there by herself. The transition wasn't easy on any of us. Mom pulled my middle brother out of school because he was getting in so many fights. The kids would constantly make remarks about how he didn't have a Dad around. He received his diploma through homeschooling.

Dad wasn't there to go to my ball games or see me off on my first date. He missed my graduation and walking me

down the aisle. As I've gotten older, he's also missed the birth of my three children. There have been countless times in the last 18 years that I have wanted to pick up the phone and speak with my Dad. Countless times, I've sincerely needed his advice or his loving guidance. I can't drop in and visit him when I have an issue that I want to discuss.

Instead, I've traveled to five different states visiting my father in federal prisons over the last 18 years. Our relationship has consisted of supervised visits heavily laden with rules and regulations and the occasional 15-minute phone conversation. Rather than going out to eat or sharing a meal around a table, we've opened bags of chips within earshot of armed guards. Our family pictures are all the same—Dad in some hideous colored jumpsuit while we all try to smile for the camera. My family vacations are primarily centered around whatever prison my Dad happens to be in at the time. Visiting prisons is an experience in itself. The rules change with each visit, depending on the guard on duty.

My children have only known my Dad incarcerated. They have no idea how Dad loves wrestling around on the floor at night or how he would get more excited preparing for our annual Halloween party than me. They only know him as the grandpa in the jumpsuit that lives in prison. When they were younger it was difficult to explain. At 10 and 11, it's still hard to comprehend the concept of forever. "Papa's never going to get out?" "Well, we can only pray that something will change," I keep telling them.

Every birthday cake provides another year lost and another opportunity to blow out the candles and make the same wish I've made since I was 14. I've also done my part to devastate the ever-growing dandelion population in the last 18 years with hundreds of wishes sent up to God. It hasn't been a walk in the park, and most families find it difficult and often too overwhelming to maintain relationships with their incarcerated loved ones. Fortunately, we've managed to maintain some semblance of normality considering the circumstances. We continue to pray for change, and we strive to educate the public about the truth behind the prison system.

**Timothy Tyler** is a vegan Deadhead who was sentenced in 1994, at age 24, to two mandatory LWOP sentences for conspiracy and possession with intent to distribute LSD because of 5.2 grams of LSD he mailed to a confidential informant.

Tyler grew up in Connecticut with his mother, stepfather, and sister; as a teenager, he says he moved to Florida to live with his father and escape physical abuse at the hands of his stepfather. After graduating from high school, he traveled around the country to follow the Grateful Dead and became a regular user of LSD. According to Tyler, LSD was a spiritual sacrament to him, and he overdosed on the drug several times, triggering episodes of mental illness that required hospitalization in mental health institutions. He sold fried dough at Grateful Dead concerts and would feed other Deadheads for free when they could not afford food.<sup>453</sup>

In 1991, when Tyler was 21, he was arrested twice for selling small amounts of LSD and received probation both times. In May 1992, he sold marijuana and LSD to a friend who had become a confidential informant and was setting up drug buys for federal law enforcement in exchange for a lighter sentence. Five times over the course of two months, Tyler mailed hits of LSD to the informant; he says he believed he was sharing a spiritual experience with a friend and remained unaware he was being set up. In August 1992, when he was 23, he was arrested and charged with three co-defendants, including his father.

Tyler pleaded guilty to possession of LSD with intent to distribute and conspiracy to possess LSD with intent to distribute. According to Tyler, his public defender told him pleading guilty would get him a reduced sentence of 21 years. Instead, he was sentenced to mandatory life without parole on each count because of his two previous convictions and the amount of LSD he was convicted of selling. Because the judge counted the weight of the “carrier” paper the LSD was placed on in addition to the 5.2 grams of LSD, Tyler was held accountable for selling more than 10 grams of LSD, a threshold amount that triggers a mandatory minimum sentence of life in prison without the possibility of parole on a third offense.<sup>454</sup>

Tyler reports he was never made aware of the fact that there was a mandatory minimum life-without-parole sentence before he pleaded guilty. As the sentence was mandatory, the judge could not consider Tyler’s drug addiction, lack of violent conduct, mental health issues, or young age. Without the mandatory minimum



Timothy Tyler with his mother and sister.

Because the judge counted the weight of the “carrier” paper the LSD was placed on in addition to the 5.2 grams of LSD, Tyler was held accountable for selling a threshold amount that triggers a mandatory minimum LWOP sentence.

based on his prior offenses, Tyler would have received a sentence of 262 to 327 months under the federal sentencing guidelines.

Tyler attempted to file a pro se motion for post-conviction relief based on ineffective assistance of counsel, which was denied because the filing deadline had passed. His father was sentenced to 10 years and died in prison in 2001. The informant was sentenced to 10 years in return for his cooperation.

Tyler has served almost 21 years in prison. He told the ACLU that he “lost [his] mind” after his first 10 years in prison. He has been diagnosed with bipolar disorder, for which he has been periodically hospitalized in mental health institutions since he was a teenager.<sup>455</sup> After more than a decade in prison, he was transferred to Springfield Mental Hospital for treatment for a year; he returned to prison afterward.<sup>456</sup> Despite his mental illness, he has been repeatedly held in isolation. He was recently held in isolation due to a prison-wide lockdown following the murder of a prison guard. As a result of the stress of isolation and being deprived of essential contact with his family, he told the ACLU he suffered a mental breakdown in March 2013, during which he was banging his head against the walls, singing at the top of his lungs while naked, and spreading feces on himself.

In addition, Tyler came out as gay five years ago, and he says he struggled with isolation and fear of becoming a target for violence.<sup>457</sup> During the first two years after he came out, he reports he never went to the dining room to eat for fear he would be assaulted.<sup>458</sup> He says he became depressed and nearly took his own life because of the isolation that followed his coming out.

Tyler says of his sentence, “Life, it says, but life means you die in prison.”<sup>459</sup> His sister, Carrie Tyler-Stoafer, who talks with her brother every other day and calls him her best friend, told the ACLU that Tyler struggles to cope with his sentence to die in prison. She said, “If he had a release date he could look forward to—he has nothing to look forward to, no release date—it would change everything. He was looking forward to 2012, the end of the world, because at least he would get out. For a decade, he was looking forward to that date, and he was so disappointed when it didn’t happen. He keeps his hope alive by using his mind to play tricks on himself.... A release date would keep him going to help him get through this.”<sup>460</sup> She explained of her brother’s sentence, “It’s worse than a death in your family, and I’ve lost a lot of loved ones. It’s never-ending because he’s still there and your heart just keeps breaking over and over.”<sup>461</sup>

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over.”

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Addicted to methamphetamine in his early 20s, **Scott Walker** was sentenced to LWOP at age 26 for selling drugs with friends in southern Illinois, which he began doing in order to pay for his drug addiction.<sup>462</sup>

Walker's parents divorced when he was six years old.<sup>463</sup> According to Walker, his father physically abused his mother, inflicting injuries that once required her hospitalization for days, an incident Walker recalls from when he was in kindergarten.<sup>464</sup> Two years after they divorced, Walker's father was killed in a motorcycle accident.<sup>465</sup> Walker says he turned to marijuana at age 14 or 15 in an effort to cope with the resulting emotional distress.<sup>466</sup> He recalls becoming psychologically addicted, and his drug use escalated to LSD, cocaine, and methamphetamine.<sup>467</sup> As a result of his drug addiction, he dropped out of high school on three occasions before dropping out permanently during his senior year.<sup>468</sup> After his family moved from southern Illinois to Arizona when he was 17, Walker began purchasing small quantities of drugs in Arizona and taking them to Illinois for resale to support his drug addiction.

When Walker was arrested in 1996, 500 grams of marijuana were seized from him. On the basis of testimony of several of his co-defendants who cooperated in exchange for sentence reductions, Walker was convicted of conspiracy to distribute and possession with intent to distribute methamphetamine, marijuana, and LSD.<sup>469</sup> It was his first felony conviction; previously, he had committed two petty juvenile offenses—for stealing a bicycle in November 1988 and theft of aluminum gutters from a yard in 1989, when he was 17 years old—and had adult misdemeanor convictions for underage consumption of alcohol at age 19 and criminal trespass at age 22.<sup>470</sup>

Walker was sentenced at age 26 to life without parole, a mandatory sentence due to the calculation of his offense level, which was based on an aggregation of all the drug quantities that cooperating co-defendants testified about, plus increases for his leadership role; possession of a gun; obstruction of justice; and his use of minors, including his younger brother, to commit the offense.<sup>471</sup> His offense level was also increased because of his prior petty offenses and because he was on probation for a misdemeanor for which he had not served jail time. His co-defendant, Timothy Conway, the supplier and alleged kingpin of the conspiracy who was 20 years older and had two prior felony drug convictions, served less than five years in prison. Conway initially received a sentence of only 71 months because the government stipulated to a significantly reduced drug amount in exchange for a guilty plea;



Scott Walker

When Walker was arrested, 500 grams of marijuana were seized from him. On the basis of testimony of several of his co-defendants who cooperated in exchange for sentence reductions, he was convicted of conspiracy to distribute and possession with intent to distribute methamphetamine, marijuana, and LSD.

the sentence was further reduced because of his testimony against Walker. Walker states that his first lawyer encouraged him to take his case to trial despite the overwhelming evidence against him; he also says that his attorney never told him that he faced a life sentence without parole if he was convicted. Walker would likely have received a five- to 10-year sentence if he had cooperated, and 20 years if he had pleaded guilty rather than go to trial. In recognition that 20 years would have been the most likely outcome of his case at the time, Walker's commutation petition requests that his sentence be reduced to 20 years rather than seek immediate release.

Judge J. Phil Gilbert, a former prosecutor and appointee of former President George H.W. Bush, had no discretion in sentencing Walker to die in prison. Judge Gilbert told him at his sentencing hearing in 1998, "[T]o do what I am compelled to do under the law is not easy for me. If you think it's easy to sit up here and impose a life sentence on someone, it's not. And there's no question you need to be punished severely for what you have done. Whether this is the right sentence or not, is not for me to judge. I have to apply the law and apply the facts to the law, and I've done that here. And it's a very harsh sentence, but that, as I said, is not for me to decide, but I want you to know that it's not easy on this Court to impose a life sentence on anybody. This isn't the first time I've done it. I hope it's the last because I don't like to do it."<sup>472</sup> Calling the sentence "excessive and disproportionate," Judge Gilbert added, "[M]aybe somewhere down the line Congress will relieve the people in your position," and he encouraged Walker to write to legislators in Washington.<sup>473</sup>

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“As a judge, as a citizen, and as a taxpayer, I see no reason that this individual should spend the rest of his natural life incarcerated.”

—Judge J. Phil Gilbert

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Judge Gilbert wrote in support of Walker's pending commutation petition, "Mr. Walker's fourteen years of incarceration read like a handbook on self-improvement," concluding, "As a judge, as a citizen, and as a taxpayer, I see no reason that this individual should spend the rest of his natural life incarcerated."<sup>474</sup> Judge Gilbert later told the *Southern Illinoisian* that Walker's sentence continues to haunt him, explaining, "There have been times that I've had to render decisions, such as in the sentencing area with sentencing guidelines and mandatory minimums, that are dictated by the law. In one particular case, I had to give a life sentence to an individual who I didn't feel deserved it. That affected me for quite a while, day and night, and there was nothing I could do about it."<sup>475</sup>

Now 41, Walker has been incarcerated for almost 17 years. He has maintained a clean disciplinary record with the exception of one minor citation for remaining in bed following a work call.<sup>476</sup> He reports he has been sober for 16 years and has completed self-awareness, values, drug education, literature, and correspondence courses.<sup>477</sup> Walker's mother, Brenda Shelton, has been raising his teenage daughter since taking custody of her when Walker was incarcerated. His daughter said:

My father never forgets to send me cards on holidays. He writes me letters, calls me on the phone and on birthdays and Christmas, and always tries to see I have a gift of some kind from him. Most of all, he talks to me about staying in school and away from drugs, alcohol, and people that are involved in drugs. He tells me he has been in prison

a long time because of his bad decisions, but it would be worth it if I never make the same mistakes.<sup>478</sup>

If he were released, Walker says he would like to go to college to earn a degree in social rehabilitation.<sup>479</sup> Recognizing the hurdles he would face in obtaining employment upon release, he has also completed vocational training programs in trades such as waste-water treatment and plumbing.<sup>480</sup>

Walker is an avid reader and says he has read hundreds of books while in prison; he particularly loves Russian classics and history books. He credits his rehabilitation in part to all of the reading he has done in prison. “Since I was a child, I was taught that America was the land of redemption. But if you are a first time offender sentenced under a mandatory minimums sentence, this is not the case,” he said.<sup>481</sup> “Prison probably saved my life. I just hope I can get out someday to live that life.”<sup>482</sup>

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#### FEDERAL SYSTEM

**Robert J. Riley**, now 60, has been imprisoned for 19 years for sharing a miniscule amount of LSD with other Deadheads.

Riley served in the Army after graduating high school in 1971 and later became a follower of the Grateful Dead.

Over 15 years in the 1970s and 1980s, Riley says he regularly used, shared, and sometimes sold drugs to fellow Deadheads. On four occasions, he pleaded guilty to charges involving small amounts of marijuana, hashish, and amphetamines; he was incarcerated for short periods in county jails in California and Wisconsin for two of these offenses.<sup>483</sup> Each of these convictions arose out of activities outside of Grateful Dead shows. Riley also maintained jobs at a paper mill in Northern California, where he worked as a dockworker, truck driver, and warehouse laborer. He married and had two children.

In 1993, Riley was convicted in a federal court in Iowa of conspiracy to distribute LSD. Prosecutors alleged that he had mailed or delivered LSD and psychedelic mushrooms to other Deadheads. According to Riley, one of his co-defendants cooperated with authorities against him in order to avoid a life sentence.<sup>484</sup> The recipient of two mailings of small amounts of LSD also testified against Riley at trial, and both co-defendants were sentenced to much shorter terms than Riley.

Riley was held accountable for more than 10 grams of a “mixture or substance” of LSD, a threshold amount that triggers a mandatory minimum sentence of life in prison without the possibility of parole on a third offense. In determining the



Robert Riley

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Riley was sentenced to mandatory LWOP because of prior convictions for 1.75 and 5.25 grams of marijuana, without which his sentence would have been 27 to 34 months.

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“The mandatory life sentence as applied to you is not just, it’s an unfair sentence, and I find it very distasteful to have to impose it. The laws of Congress [are] not letting me impose what I think would be a fair sentence.”

—Judge Ronald Longstaff

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amount of drugs for which Riley was responsible for sentencing purposes, the judge counted the weight of the blotter paper on which the LSD was dissolved, in addition to the miniscule weight of the actual drug he had mailed. The judge also held him accountable for amounts of LSD testified to by the cooperating witnesses, even though there was no physical evidence these drugs existed.

Because the prosecutor filed for statutory sentencing enhancement based on Riley’s two prior felony convictions for possession of 1.75 grams and 5.25 grams of marijuana with intent to distribute, Riley was sentenced to mandatory life without parole under the recidivist provision of the 1986 Anti-Drug Abuse Act, a sentence Riley calls “murderers’ time.”<sup>485</sup> According to Riley, without the statutory sentencing enhancement for his prior convictions, his sentencing range under the United States Sentencing Guidelines would have been 27 to 34 months.<sup>486</sup>

At sentencing, Judge Ronald Longstaff told Riley, “The mandatory life sentence as applied to you is not just, it’s an unfair sentence, and I find it very distasteful to have to impose it.... I agree with one thing you said...about the laws of Congress... keeping me from being a judge right now in your case, because they’re not letting me impose what I think would be a fair sentence.”<sup>487</sup> Judge Longstaff added, “[E]ven though this is a life sentence, I want it made clear that...it’s one the Judge was very dissatisfied in imposing. And Mr. Riley is not a threat in terms of violence.”<sup>488</sup> Judge Longstaff later told a law professor that he believed that a 10- to 12-year sentence would have been appropriate in Riley’s case.<sup>489</sup>

Judge Longstaff, an appointee of former President George H. W. Bush, wrote nine years later, in 2002, in support of Riley’s commutation petition, “Given the circumstances of Mr. Riley’s case, it was difficult for me to impose the required life sentence. To this day, it remains the harshest punishment I have imposed as a district court judge. There was no evidence presented in Mr. Riley’s case to indicate that he was a violent offender or would be in the future. It gives me no satisfaction that a gentle person such as Mr. Riley will remain in prison the rest of his life.”<sup>490</sup> Riley’s commutation petition was not granted.

Riley said at his sentencing hearing, “Today I will see the remainder of my life stand in forfeit.”<sup>491</sup> He added, “I stand before this Court today with no choice but to promise to allow the Federal Government of the United States to spend freely, and unendingly, the money of the taxpayers...that they will spend each year to protect and isolate the American people from me.”<sup>492</sup>

Riley refers to himself as a “dead man” because of his life-without-parole sentence and says that “the horror of a life term” is “to not be able to see an end.”<sup>493</sup> Since his incarceration nearly two decades ago, his father has died and his mother has been afflicted with Alzheimer’s. He spends his time writing poetry and studying the Upanishads and the writings of Friedrich Nietzsche.

**Kenneth George Harvey Jr.** has served 23 years of a mandatory LWOP sentence for serving as a drug courier. He was arrested after a vial of crack cocaine was found strapped to his leg following a flight from Los Angeles to Kansas City.

Harvey was 24 years old when he was arrested in December 1989 in the Kansas City airport shortly after he deplaned from Los Angeles, by DEA agents who had been monitoring his activity. A vial containing 496 grams of crack cocaine was found taped to his leg in a consensual search, and an additional six grams of crack were found in his bag.<sup>494</sup> Harvey had been acting as a courier to carry drugs from Los Angeles to Kansas City; he was paid \$300 per trip. He was convicted in 1990 of possession with intent to distribute 50 grams or more of crack cocaine and sentenced to life in prison under the federal three-strikes provision based on two prior California state drug convictions for which he had received probation.<sup>495</sup> He had no gun, and his presentence report indicates no record of violence.

The federal government offered to recommend a 15-year sentence if Harvey pleaded guilty, an offer his federal defender advised him to accept, but Harvey elected to proceed to trial and the jury found him guilty as charged. After the verdict, the federal government offered to withdraw one of the priors so that he would not be exposed to a life sentence, offering to recommend a sentence of 20 years if Harvey would waive his right to appeal. Harvey refused this offer, too.

Because of Harvey's two prior drug convictions, the sentencing judge had no alternative but to impose a life sentence. At Harvey's sentencing, Chief Judge Howard Sachs said, "I do not think it was fully understood or intended by Congress in cases of this nature...but there is no authority that I know of that would permit a different sentence by me."<sup>496</sup> Because Judge Sachs stated that he considered this sentence unfair and inappropriate, he took the unusual step of recommending that Harvey's sentence be commuted by the president after 15 years, a recommendation also endorsed by the court of appeals in Harvey's case.<sup>497</sup> At sentencing, Judge Sachs opined that Harvey's case was only technically within the three-strikes provision (neither of his two state priors involved a prison sentence). Under the Fair Sentencing Act of 2010, the same conduct with which Harvey was charged would now result in a substantially lower mandatory sentence.<sup>498</sup> However, because this legislation was not made retroactive, Harvey will remain in prison for the rest of his life unless his sentence is commuted by the president.



Kenneth George Harvey Jr.

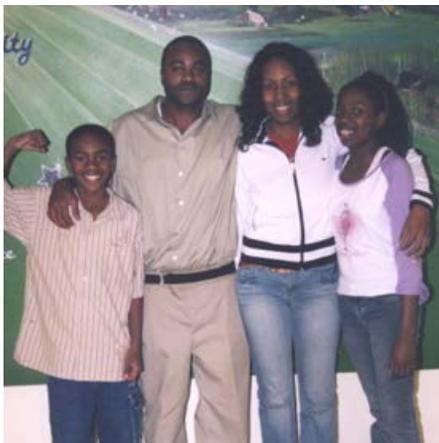
“I do not think [a life-without-parole sentence] was fully understood or intended by Congress in cases of this nature but there is no authority that I know of that would permit a different sentence by me.”

— Chief Judge Howard Sachs

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Clarence Robinson with his son and his son's mother.

Harvey told the ACLU that when he was sentenced, "I felt as if I had just been given the death sentence."<sup>499</sup> He is now 47. During his more than two decades in prison, Harvey says he has matured, maintained a good disciplinary record, earned his GED, and found consolation in a faith community. He reports he has a stable and supportive family with whom he has maintained close ties over the years, and he says that being separated from his father, mother (who died in 2011), brothers, sister, nieces, and nephews is "unbearable to the point of numbness."<sup>500</sup> While in prison, Harvey has taken numerous job training, continuing education courses, and intensive computer training programs to gain concrete work skills. One prison official observed that he has been an excellent role model for younger inmates by carrying himself with dignity and always "trying to do the right thing."<sup>501</sup> According to Harvey, he has had more than two decades to reflect upon the poor judgment and bad attitude that led to his conviction and says he is sincerely remorseful.

Harvey has consistently worked while in prison. He currently works 40 to 45 hours a week in food service, for which he is paid 17 cents an hour.<sup>502</sup> He has worked in the prison furniture factory, spraying polyurethane; cable factory, building cables for battleships and tanks; and has learned how to upholster furniture and sew mailbags in his upholstery and textile jobs.<sup>503</sup> He is well-regarded by prison officials who work with him on a daily basis and state he has become a reliable and conscientious employee.

Harvey's first clemency petition was denied by former President George W. Bush in 2008, and his second petition, filed in March 2010, was denied by President Obama in February 2013. Judge Sachs has written in support of his request for commutation, and according to Harvey's attorney, the U.S. Attorney who prosecuted Harvey's case did not object to clemency in his case.

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#### FEDERAL SYSTEM

**Clarence Robinson** is serving LWOP for participating as a small player in a crack cocaine conspiracy when he was only 21 and 22 years old.<sup>504</sup>

Later in the course of the conspiracy, Robinson had been brought into the drug enterprise by a long-time friend who was one of its leaders. At trial, Robinson was found to have personally assisted in "rocking up" (converting from powder cocaine into crack) and packaging a single 83-ounce shipment of crack cocaine destined for delivery in Omaha, for which he was paid \$1,000.<sup>505</sup> There was no evidence that Robinson distributed any drugs.<sup>506</sup> Three drug dealers higher up in the drug distribution conspiracy testified against Robinson and received reduced sentences of nine to 10 years in exchange for their cooperation, although they were charged with the same offenses.

The prosecutor agreed to the sentencing judge's request to set aside an enhancement provision, which would have allowed the judge to impose a 27-year sentence, but only under the condition that Robinson drop his appeal of the conviction. Because Robinson refused to give up any right to appeal the conviction, he was subject to a mandatory life-without-parole sentence. He had two prior convictions for crack cocaine possession when he was 18 and 19 and a conviction for possession of a firearm as a felon when he was 22.

Judge Lyle E. Strom, a District of Nebraska judge and Reagan appointee, required to sentence Robinson to LWOP for conspiracy, said, "I have before me a 23-year-old man who is facing a mandatory life sentence. And we have people in Nebraska every month being convicted of first-degree murder and second-degree murder whose sentences are going to be substantially less than what I have imposed on this defendant."<sup>507</sup> Judge Strom explained that the average time served by defendants convicted of murder in Nebraska is 15 years. At his sentencing hearing, Robinson said, "I really don't understand how all this occurred. I'm in jail, and they are giving me more time than the guys who really did all the stuff...I don't know what to do."<sup>508</sup> Strom replied, "I'm disturbed by that. I think it's wrong, Mr. Robinson."<sup>509</sup>

On appeal, Circuit Judge Gerald W. Heaney called Robinson's sentence "unconscionable." He wrote,

At sentencing, the district court's hands were tied. Despite the court's statement that it was "disturbed" about its lack of discretion and that it thought the sentence was unjust, a life sentence without possibility of parole was mandatory for Robinson... Congress has clearly elected to eschew individualized sentencing for repeat drug offenders in favor of a draconian approach that is unmistakably tough on crime.... I fear, however, that fairness is too often sacrificed in the process.... Unfortunately, Congress has taken away the court's ability to use its informed discretion in these matters, placing any discretion instead in the prosecution.<sup>510</sup>

Now 41, Robinson has been imprisoned for 17 years. He says that his sentence is his "worst nightmare" and describes prison as "a constant battle to keep morals and principles and spirituality."<sup>511</sup> While imprisoned, he has taken college courses, computer training, and Bible study classes. He told the ACLU, "I've learned from the mistakes I made, and I believe I can prevent other people from going down the same path."<sup>512</sup>

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“I have before me a 23-year-old man who is facing a mandatory life sentence. And we have people in Nebraska every month being convicted of first-degree murder and second-degree murder whose sentences are going to be substantially less than what I have imposed on this defendant.”

—Judge Lyle E. Strom

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Sherman Chester with his nephew.

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“This case is an illustration of the difficulties and problems that result from the application of mandatory minimum sentences. This man doesn’t deserve a life sentence, and there is no way that I can legally keep from giving it to him.”

—Judge William J. Castagna

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**Sherman Dionne Chester** was sentenced to mandatory LWOP for conspiracy to possess and distribute cocaine and heroin at age 27.<sup>513</sup> Although he had two prior drug convictions, he had never before served a day in prison.<sup>514</sup>

Growing up, Chester was a star of his high school football team in St. Petersburg, Florida. He pursued a college degree at his local community college, but his grades suffered. He says he transferred to a community college in Minnesota in 1987, where, with the help of an encouraging football coach, he became involved in the sport again. However, back in Florida, Chester’s mother was diagnosed with cancer. According to Chester, the burden of the disease was compounded by financial difficulties that threatened to force his mother, who worked two jobs, into foreclosure. Less than a year after moving to Minnesota, Chester returned to Florida to care for his mother.<sup>515</sup>

Chester told the ACLU, “My family needed financial support...and like yesterday!”<sup>516</sup> He says that he began selling cocaine because he was unsure of how to provide for his mother and in desperate need of money. In 1989, when he was 23, he was convicted under Florida law of possession of cocaine after police officers found a baggie with cocaine residue in it when he was pulled over for a traffic violation.<sup>517</sup> In 1991, while on probation for the possession charge, he was caught with a quarter-gram of cocaine, a user quantity of marijuana, and drug paraphernalia; he was convicted under Florida law of possession of cocaine, marijuana, and paraphernalia.<sup>518</sup>

Around this time, Chester says he began working as a street-level dealer in a drug conspiracy led by a family friend, whom he describes as an uncle figure. The conspiracy was under investigation by authorities, and over the course of eight months Chester sold cocaine and heroin to undercover detectives on multiple occasions, in amounts ranging from one to 40 grams of cocaine.<sup>519</sup> In April 1992, when Chester was 26, he and nine co-defendants were indicted for their roles in the conspiracy. He was convicted and held accountable for almost four kilograms of heroin and 57.4 kilograms of cocaine, nearly the entire amount of drugs involved in the conspiracy.<sup>520</sup>

Because of Chester’s two prior convictions, an LWOP sentence was mandatory under the federal three-strikes law. If he had been sentenced under the federal sentencing guidelines instead, he would have received 235 to 293 months in

prison and be home with his family now.<sup>521</sup> The sentencing judge, Judge William J. Castagna, expressed frustration with the mandatory sentence, stating, “The minimum mandatories are an unfortunate development in the criminal jurisprudence and we’d be much better off without them.”<sup>522</sup> He added, “This case is an illustration of the difficulties and problems that result from the application of mandatory minimum sentences. This man doesn’t deserve a life sentence, and there is no way that I can legally keep from giving it to him.”<sup>523</sup> With the exception of the leader of the conspiracy, Chester’s co-defendants have all been released from prison.<sup>524</sup>

Five months after Chester was sentenced to LWOP, his mother lost her battle with cancer and other illnesses. Now 47, Chester has been incarcerated for more than 20 years. He told the ACLU, “I was a very young man with no direction or respect for the law...I’m over two decades wiser now, and a second chance at freedom and life would be a very humbling and grateful opportunity.”<sup>525</sup> In prison, he counsels youth, reads, and searches for legal cases that could help him reduce his sentence; he has also taken classes ranging from yoga to sewing.<sup>526</sup> He says he hopes for an opportunity to show the world how much he has changed, explaining, “I have so much more in life to offer, and this is not how I want to reward my mother’s memory about her only son. She’s deceased and I have to carry this burden around for the rest of my life.”<sup>527</sup>

Chester told the ACLU that his great-grandmother recently died at the age of 100. He says his first thought when he learned of her death was, “100 years. How could I deal with the concept of living that long and still be incarcerated?”<sup>528</sup>

#### FEDERAL SYSTEM

## **Ricky Darden** was sentenced in 1996 at age 34 to mandatory LWOP for possession with intent to distribute 217.7 grams of crack cocaine.

In August 1991, when Darden was 29 years old, two Metro Transit police officers stopped Darden as he arrived in Maryland on a train from New York. The officers demanded that he let them search his bag, claiming that he looked nervous and was sweating that summer day.<sup>529</sup> Darden refused and attempted to leave the station, but the officers seized his bag and had it examined by a drug-sniffing dog that indicated it contained drugs.<sup>530</sup> The officers then obtained a warrant to search the bag and found just over 200 grams of crack.<sup>531</sup> Darden was arrested the next day carrying a bag with two handguns and a triple-beam scale.<sup>532</sup>

A Maryland state judge threw out the case, ruling that the officers did not have probable cause to detain Darden’s bag.<sup>533</sup> The Maryland Supreme Court upheld the ruling that the search was unconstitutional. Federal prosecutors then decided to



Ricky Darden

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“At times I get depressed. It’s hard, with the thought one may never get out of prison. My family all think that I had to have took someone’s life to have got this much time.”

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prosecute Darden and indicted him two years after the incident that was the basis for the charges. Darden was arrested in 1995—four years after he committed his crime—when he was stopped for a traffic violation.

Darden was convicted in federal court of possession of crack cocaine with intent to distribute; the court dismissed the charges for drug conspiracy and firearm possession.<sup>534</sup> Because of his prior drug felonies, he received a mandatory LWOP sentence; he had two prior felony drug convictions for criminal sale of a controlled substance at age 19 and attempted criminal possession of 14 grams of cocaine at age 23. At sentencing, Judge Peter Messitte told him, “The Court doesn’t have any leeway in this matter. Your sentence is mandatory life without release and that’s what I impose.”<sup>535</sup>

Darden, now 51, has served 17 years in prison. He told the ACLU, “At times I get depressed.... It’s hard, with the thought one may never get out of prison. My family all think that I had to have took someone’s life to have got this much time.”<sup>536</sup> He has two children, a son who was 14 and a daughter who was 18 months old when he was imprisoned. Darden, who had dropped out of school in the tenth grade, has earned his GED in prison. While imprisoned, he has focused on studying and gaining vocational skills. He has been certified in construction and floor care, and he is working on an apprenticeship as a custodian. He adds, “If given a chance to be, I would show and prove that I’m not someone that deserves to be locked up like this. I just want a chance to prove that I’m not a threat.”<sup>537</sup>

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#### FEDERAL SYSTEM

**Landon Thompson\*** is serving a mandatory LWOP sentence for selling a few grams of crack cocaine at a time to support his drug addiction.

A tenth-grade dropout, Thompson began to use illegal drugs in his early teens. According to the trial court, he lived in an abusive and unstable family environment, and his youth was marked by suicide attempts and jail and prison stays. He served as a confidential informant for the FBI’s Violent Crime Task Force, for which he conducted six undercover drug transactions.<sup>538</sup> During his association with drug users and dealers through his work on behalf of the FBI to prosecute others for drug offenses, Thompson relapsed and began to use drugs again. He resorted to selling small amounts of crack cocaine at a time, over a period of weeks, out of a hotel room in a run-down section of Richmond, Virginia.<sup>539</sup>

Thompson, who is Black, was arrested in May 2009. At trial, the government’s four non-law-enforcement witnesses were women who, like Thompson, were users and

\* Pseudonym used at prisoner’s request.

sellers of crack and heroin. His first trial ended in a hung jury; after a second trial, he was convicted of conspiracy to distribute and possess with intent to distribute 50 grams or more of crack cocaine. Although he had only 3.57 grams of crack on him at the time of his arrest, he was held responsible for 50 grams or more of crack based on testimony of others.<sup>540</sup> Prior to trial, he had rejected a plea offer for a 20-year sentence.

Because it was Thompson's third felony drug offense, he was sentenced to mandatory life without parole. The district court judge, Judge James R. Spencer, who has served on the federal trial bench for 25 years and was a highly respected federal prosecutor prior to his appointment to the bench, told Thompson at the sentencing hearing, "I think a life sentence for what you have done in this case is ridiculous. It is a travesty. I don't have any discretion about it. The government, obviously you irritated them in some way and they reached back to these 1996 possession and possession with intent [convictions] to do this, which under the law they have the right to do. I don't agree with it, either. And I want the world and the record to be clear on that. This is just silly. But as I say, I don't have any choice."<sup>541</sup>

Two weeks after imposing the mandatory LWOP sentence, the district court identified a flaw in information provided by the government and reduced Thompson's sentence to 25 years, but the Fourth Circuit Court of Appeals reinstated the mandatory life sentence.<sup>542</sup> In a concurring opinion, Judge Andre M. Davis of the Fourth Circuit Court of Appeals wrote that he was dismayed by the mandatory LWOP sentence the court was required to give Thompson:

[M]any would say that [the defendant] seems to be one more of the drug war's "expendables".... This case presents familiar facts seen in courts across the country: a defendant addicted to narcotics selling narcotics in order to support his habit. Unfortunately for [the defendant] and countless other poorly-educated, drug-dependent offenders, current drug prosecution and sentencing policy mandates that he spend the rest of his life in prison....

Here, as in many other cases, the district court expressly noted its discontent with the statutory mandatory minimum sentence. This disapproval among distinguished jurists is not unusual. [ ] I share the district judge's dismay over the legally mandated sentence he must impose in this case. While the controlling legal principles require us to order the reimposition of a sentence of life without parole in this case, the time has long passed when policymakers should come to acknowledge the nation's failed drug policy and to act on that acknowledgement. As a nation, we are smart enough to do better.<sup>543</sup>

Thompson, now 42, has served four years of his life-without-parole sentence. His wife told the ACLU, "They destroyed our lives, basically—not just his, but mine as well, and our children's as well. It's a shame that it had to even go that far. That type of sentence for personal use is uncalled for."<sup>544</sup>

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“I think a life sentence for what you have done in this case is ridiculous. It is a travesty. I don't have any discretion about it. I don't have any choice.”

—Judge James R. Spencer

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**Sylvester Mead** was sentenced to mandatory life without parole for a drunken threat to a police officer while handcuffed and sitting in the back of a patrol car on the way to a police station.

“The instant offense, public intimidation, does not warrant, under any conscionable or constitutional basis, a life sentence. I just simply don’t think that this particular case warrants a life sentence. I have no choice.”

—Judge Leon L. Emanuel III

Mead worked as a factory machine operator and installed sprinkler systems in Shreveport, Louisiana. He says he worked hard to support his family, including his wife, children, and mother. In October 2000, he drank too much at a party with his wife, burned the catfish he began cooking after returning home, and became angry and belligerent. His 15-year-old stepdaughter called the police. Police responded to the call at about 2:00 a.m., arrested and handcuffed Mead, and escorted him out of his house and into a patrol car. According to the trial court, during the ride to the police station, Mead, who was still drunk and handcuffed, told the Shreveport police officer, “I should have shot you this time,” and something to the effect of, “If you come back again, you better bring your arsenal.”<sup>545</sup> He also reportedly said, “I’ll do everything I can to get your damn badge,” and “in about two hours, you make the trip back to my house.”<sup>546</sup>

After a jury trial in September 2001, Mead was convicted of public intimidation, for his drunken threat to the police officer. Though the jury found him guilty of public intimidation, the trial court ruled that the evidence, viewed in the light most favorable to the prosecution, did not support a guilty verdict and accordingly set aside the jury’s verdict.<sup>547</sup> The prosecutor appealed the post-verdict acquittal, the appellate court reinstated the conviction, and Mead was sentenced to 10 years in prison as a second-time felony offender.<sup>548</sup> The prosecutor again appealed, and the appellate court then found Mead should be sentenced as a third-time felony offender.<sup>549</sup>

Mead was subsequently resentenced to a mandatory sentence of life without parole under Louisiana’s habitual offender law because of his previous convictions for aggravated battery, to which he pleaded guilty in 1995, and simple burglary in 1985.<sup>550</sup> Under Louisiana law, public intimidation is usually punished by a fine of no more than \$1,000 or imprisonment of no more than five years.<sup>551</sup> Mead filed a number of motions without the assistance of a lawyer and represented himself for some of the appellate and remand hearings.<sup>552</sup> He says that he told the trial judge he did not understand the proceedings and should not have been allowed to represent himself.<sup>553</sup>

When resentencing Mead, the trial court acknowledged that he suffered from

substance and alcohol abuse problems that may have contributed to his crime, and found that the conviction “did not involve physical violence, but rather the use of words, which were perceived by the police officer as threatening.”<sup>554</sup> The judge, Judge Leon L. Emanuel III, again stated that the trial evidence did not support the conviction for public intimidation and told Mead that he disagreed with the mandatory life-without-parole sentence, but he had no choice. Judge Emanuel said:

Now, having considered the evidence that’s been presented, the whole record, this court is still convinced and still believes that the nature of the instant offense, public intimidation, does not warrant, under any conscionable or constitutional basis, a life sentence.... I just simply don’t think that this particular case warrants a life sentence.... I still don’t think he was a threat to the police officer, and I don’t know what could ever convince me that you were a threat....

I’m convinced that I have no choice and the law does dictate. So having said that, rather than spend any more of my time, the Court’s time, or any other resources and try to come up with a reason for you not to get a life sentence, I’ve given up. I’ve done all that I can do. Because I think this would be the fifth time I would try to do something and I think it would be the fifth time I would be reversed.<sup>555</sup>

At the resentencing hearing, a prison ministry counselor at the prison where Mead was incarcerated at the time testified that Mead was a good candidate for the organization’s rehabilitation program, which assisted prisoners in their efforts to re-enter society.<sup>556</sup>

Mead told the ACLU that when he was sentenced, “It made me feel lost, and helpless. Because I mitigated my life, by getting married, buying my home, and raising my children. [And] [h]elping my mother.”<sup>557</sup> He added, “The hopelessness will eat you alive if you can’t handle it.”<sup>558</sup>

Mead, who is Black, is 51 and in his thirteenth year in prison. He reports he has never been written up for a disciplinary infraction. While in prison, he has earned his GED and completed substance abuse, anger management, and religious programs.<sup>559</sup> He spends his time reading books and researching law in the law library. He says that he is a changed man and explains, “I respect life more today. Each day is a blessing. I am a better person today... I have greatly improved my demeanor and actions.”<sup>560</sup> If he were released from prison, he says he would return to work and be with his children and his mother for “whatever time she has left to live.”<sup>561</sup>

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“The hopelessness will eat you alive if you can’t handle it.”

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# LIFE WITHOUT PAROLE FOR NONVIOLENT OFFENSES UNDER HABITUAL OFFENDER LAWS

Under current law, 19 states and the federal government permit life-without-parole sentences for nonviolent offenses under habitual offender laws. Of the states that sentence nonviolent offenders to LWOP, Louisiana, Florida, Alabama, Mississippi, South Carolina, and Oklahoma have the highest numbers of prisoners serving LWOP for nonviolent crimes, largely because of these states’ harsh habitual offender laws that mandate LWOP sentences for repeat offenders.

In the cases of prisoners serving LWOP for second, third, and fourth strikes, the defendants had already served time for their prior convictions and paid their debts to society. In all of the habitual offender cases documented by the ACLU, the LWOP-triggering offenses were nonviolent, but in some cases the offender had previously committed a violent crime. In some cases, federal and state courts used juvenile convictions as necessary third or fourth strikes to sentence defendants to LWOP.

For the purposes of sentencing habitual offenders, some state courts define triggering and predicate “serious” or “violent” offenses so broadly as to include crimes that are commonly understood to be nonviolent; this issue is explained in more detail in Section III(B). In addition, in interpreting habitual offender laws that impose enhanced penalties on offenders with prior convictions for “violent” crimes, some courts look to whether prior offenses fall into this category without evaluating the facts underlying the prior convictions. As a result, in some cases courts sentence defendants to LWOP because of a prior conviction that falls into the statutorily or judicially defined “violent” category, while simultaneously noting that the prior offense did not in fact involve any violence.

**Louisiana’s** habitual offender law requires mandatory life without parole for third and fourth felony strikes in a number of circumstances. The strikes that can trigger these mandatory LWOP sentences are defined very broadly. For instance, any controlled substances offense carrying a maximum sentence of 10 years or more will count as a strike.<sup>562</sup> Given Louisiana’s very high sentences for drug

**TABLE 15**  
Jurisdictions that allow LWOP for nonviolent offenses under habitual offender laws

<b>1</b>	<b>Federal Government</b>
<b>2</b>	<b>Alabama</b>
<b>3</b>	<b>Arkansas</b>
<b>4</b>	<b>Delaware</b>
<b>5</b>	<b>Florida</b>
<b>6</b>	<b>Georgia</b>
<b>7</b>	<b>Illinois</b>
<b>8</b>	<b>Indiana</b>
<b>9</b>	<b>Iowa</b>
<b>10</b>	<b>Kentucky</b>
<b>11</b>	<b>Louisiana</b>
<b>12</b>	<b>Michigan</b>
<b>13</b>	<b>Mississippi</b>
<b>14</b>	<b>Missouri</b>
<b>15</b>	<b>Nevada</b>
<b>16</b>	<b>Oklahoma</b>
<b>17</b>	<b>South Carolina</b>
<b>18</b>	<b>South Dakota</b>
<b>19</b>	<b>Virginia</b>
<b>20</b>	<b>Wisconsin</b>

offenses, strikes include the simple possession of any amount of ecstasy or heroin, growing a single marijuana plant, or possession with intent to distribute any amount of almost any drug. Three of any of these drug strikes trigger a mandatory LWOP sentence. In addition, the simple possession of any amount of marijuana on a third or subsequent conviction counts as a strike, meaning that five convictions for the simple possession of small amounts of marijuana can trigger a mandatory LWOP sentence.

Other strikes include “crimes of violence” as well as *any* other felony that carries a maximum sentence of 12 years. Potential strikes include purse-snatching, which is an unarmed offense that may involve removing a wallet from a purse or stealing cash from a wallet; simple (unarmed) burglary of a non-residential building; looting; credit card fraud by a person authorized to provide goods and services; and even perjury under certain circumstances. Under Louisiana’s law, a person convicted any of these crimes—drug, violent, or property—*must* receive an LWOP sentence if he or she has two prior strikes.

Under **Louisiana’s** four-strikes habitual offender law, a person facing a fourth or subsequent conviction for *any* felony may receive a discretionary life sentence.<sup>563</sup> Four convictions for simple possession of almost any drug, including cocaine, oxycodone, or steroids, can trigger a life sentence. If any one of those four convictions was for purse-snatching or simple robbery (robbery without a weapon or injury), both of which are considered crimes of violence in Louisiana, the life sentence will be ineligible for parole.

**Florida** has a number of overlapping habitual offender laws that require extremely long sentences based on prior convictions. Several can trigger mandatory LWOP sentences. Anyone convicted twice before of certain crimes, including simple (unarmed) robbery or even attempted simple (unarmed) robbery, can be sentenced on a third strike as a “three-time violent felony offender.” If the present conviction is for a felony punishable by life, such as a burglary of a commercial or industrial building that causes more than \$1,000 of property damage, the person must receive a mandatory LWOP sentence.<sup>564</sup>

Under Florida law, a person facing a fourth or subsequent conviction for burglary, even commercial or industrial

burglary, is a “violent career criminal” and will presumptively receive an LWOP sentence unless the judge makes a finding that such a sentence would be unnecessary for the protection of the public.<sup>565</sup>

Florida’s Prison Releasee Reoffender Law requires the mandatory imposition of the maximum possible sentence upon conviction of a “serious crime” if it occurs within three years of someone’s release from prison, regardless of the severity of the previous offense or the nature of the person’s criminal record. Crimes such as armed burglary of an unoccupied commercial or industrial building or burglary of an unoccupied commercial or industrial building causing more than \$1,000 of property damage normally allow for the *possibility* of a sentence up to LWOP. However, the simple fact that someone has been convicted of one of these crimes within three years of getting out of prison requires the *mandatory* imposition of an LWOP sentence regardless of whether such a sentence is appropriate. The Prison Releasee Reoffender Law has resulted in numerous LWOP sentences for nonviolent offenses, such as armed burglary, in Florida.

Under **Alabama** law, a person can face a mandatory LWOP sentence for trafficking drugs, a crime triggered simply by the quantity of drugs involved, not the nature of the person’s conduct or relationship to the drugs. For instance, the simple, or even constructive, possession of 56 grams of LSD or heroin triggers a mandatory LWOP sentence for drug trafficking. Alabama’s Habitual Felony Offender Act, which applies to all felonies, requires that people convicted of a Class A felony be sentenced to LWOP if they have three prior felony convictions, one of which is for a Class A felony; LWOP is discretionary if the prior felonies are more minor Class B and C.<sup>566</sup> Class A felonies include the simple possession of more than 28 grams of cocaine, more than one kilogram of marijuana, and more than four grams of either heroin or LSD.<sup>567</sup> In addition, under Alabama law, a person convicted a second time of engaging in a drug-trafficking enterprise in a management role *must* receive a mandatory LWOP sentence.<sup>568</sup> The law does not truly consider the severity of prior offenses or the amount of time that has elapsed since priors.

Under **Mississippi’s** habitual offender law, a person convicted of *any* felony (including drug and property offenses) who has two or more prior felony convictions, only one of which

was a “crime of violence” and both of which actually resulted in prison sentences of one year or more, *must* receive a mandatory LWOP sentence.<sup>569</sup> Although Mississippi does not have a statutory definition of what constitutes a crime of violence, state courts have broadly interpreted what constitutes a violent felony. Mississippi state courts have held that offenses such as unarmed carjacking,<sup>570</sup> unarmed burglary of an unoccupied dwelling,<sup>571</sup> and simple robbery<sup>572</sup> are crimes of violence.

Under **South Carolina**’s three-strikes law, a person facing a third conviction for a “serious offense” *must* receive a mandatory LWOP sentence.<sup>573</sup> Qualifying “serious offenses” include trafficking in controlled substances, distribution or possession with intent to distribute controlled substances near a school, burglary of a commercial or industrial building at night, theft from a person using an ATM, embezzlement of public funds, and obtaining a signature or property by false pretenses. “Serious offenses” also include *any* other offense punishable by 30 years or more, such as safecracking,<sup>574</sup> entering a bank with intent to steal,<sup>575</sup> and a number of drug offenses such as manufacture or delivery of more than 400 grams of cocaine<sup>576</sup> or more than 400 grams of methamphetamine, for example.<sup>577</sup> Under the two- and three-strikes laws, a person convicted of a “most serious offense” *must* be sentenced to mandatory LWOP sentence if that person has either one conviction for a “most serious offense,”<sup>578</sup> or two convictions for a “serious offense.”<sup>579</sup> “Most serious offenses” such as unarmed as well as armed first-degree burglary can trigger a mandatory LWOP sentence in just two convictions.

Under **Oklahoma**’s Trafficking in Illegal Drugs Act, a harsh habitual drug offender law, a third conviction for “trafficking” drugs, after convictions for any two drug felonies (including possession), *must* be punished with a mandatory LWOP sentence.<sup>580</sup> The law defines trafficking very broadly to include possessing, distributing, transporting, or manufacturing at least 25 pounds of marijuana, 28 grams of cocaine, 10 grams of heroin, 20 grams of methamphetamine, one gram of LSD, five grams of crack cocaine, 20 grams of PCP, or 10 grams of ecstasy.<sup>581</sup> Oklahoma prosecutors often charge defendants with trafficking based solely on the amount of drugs discovered, regardless of whether the individual was transporting, selling, or distributing the narcotics, and prosecutors have to prove only that an individual knowingly possessed a controlled dangerous substance.

There are two **federal** habitual offender statutes that mandate life in prison. Under the federal third-offender sentencing enhancement law, known as the 851 enhancement, if a federal drug conviction involves a particular quantity of drugs (such as 50 grams of methamphetamine, 280 grams of crack cocaine, or five kilograms of powder cocaine) and the defendant has two prior felony convictions in state or federal courts, he or she *must* be sentenced to mandatory LWOP.<sup>582</sup>

Under the federal three-strikes law, a defendant convicted of a “serious violent felony” *must* be sentenced to mandatory LWOP if he or she has two or more prior serious violent felony convictions or a combination of at least one prior serious violent felony conviction and at least one prior “serious drug offense” conviction.<sup>583</sup> “Serious drug offenses” include engaging in a continuing criminal drug enterprise and manufacturing or distributing, for example, at least one kilogram of heroin or 50 grams of meth.<sup>584</sup> Under the statute, a “serious violent felony” includes gun possession offenses, as well as any other offense punishable by at least 10 years in prison “that has as an element the use, attempted use, or threatened use of physical force against the person of another that, by its nature, involves a substantial risk that physical force against the person of another may be used in the course of committing the offense.”<sup>585</sup> Because of this broad definition of “serious violent felony,” and because the definition of a “serious drug offense” includes most federal and state drug crimes, the statute is very broad and can encompass crimes that would ordinarily be considered nonviolent but are defined as violent under the law.<sup>586</sup>

In addition, the federal Armed Career Criminal Act (ACCA) allows for a discretionary LWOP sentence for any offense involving unlawful firearms possession or transportation if the defendant has three or more prior convictions for “serious drug offenses,” defined as drug offenses punishable by 10 years or more, or “crimes of violence.”<sup>587</sup> Qualifying “crimes of violence” include burglary, robbery, or other crimes that have as an element the use, attempted, or threatened use of physical force against the person or property of another. Lastly, habitual offender enhancements also appear in the federal sentencing guidelines, under which courts use prior convictions to calculate a defendant’s criminal history category, with higher categories resulting in higher sentencing ranges that can yield an LWOP sentence.<sup>588</sup>

## Kevin Ott was sentenced to LWOP for 3.5 ounces of meth, an amount that could fit in a small envelope.

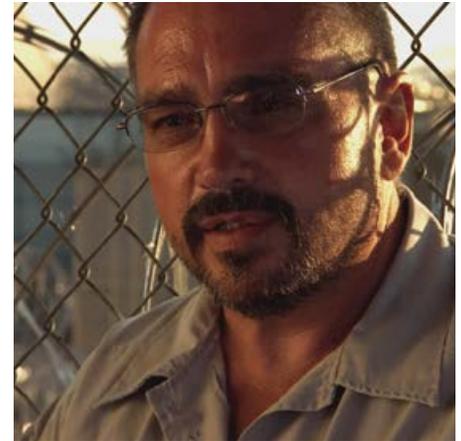
Ott worked as a carpenter building portable buildings in Oklahoma City. According to Ott, he started using methamphetamine after he lost his job, quickly became addicted, and had to sell the drug to pay for his addiction. He says that he spent the period before his incarceration in a “drug-induced alcoholic haze,” preoccupied with whether he had “enough money for more dope.”<sup>589</sup>

In September 1996, when Ott was 33 years old and on parole for marijuana charges, probation and parole officers performed a warrantless search of the trailer in which he was living in Cleveland County, Oklahoma, and found 3.5 ounces of methamphetamine, scales, empty baggies, and a handgun.<sup>590</sup> Ott was convicted of trafficking in illegal drugs, maintaining a dwelling house to keep or sell a controlled drug, possession of a firearm in the commission of a felony, failure to display a tax stamp, and possession of drug paraphernalia.<sup>591</sup> He was sentenced to a statutory mandatory sentence of LWOP under Oklahoma’s habitual drug offender law for trafficking in controlled dangerous substances after two or more prior drug-related convictions.<sup>592</sup>

Ott had prior convictions arising from two arrests; one conviction was for possession of methamphetamine with intent to distribute stemming from an arrest while exiting a bar with meth in his pocket, and the second was for possession and manufacture of marijuana and possession of a firearm by a convicted felon. Ott reports that each time he was incarcerated after these arrests he repeatedly requested treatment for his drug addiction but was denied. He says, “I honestly think if I would have been given the chance [for drug treatment], I wouldn’t be here waiting to die today.”<sup>593</sup>

Ott believes he is the second person to have been sentenced to mandatory LWOP for a nonviolent drug crime under Oklahoma’s habitual offender law; today, there are 49 people serving such sentences in Oklahoma. His 69-year-old mother, Betty Chism, told the ACLU, “I didn’t know that there was such a thing as life without parole for Kevin’s crime. I had no earthly idea that that could happen...I was absolutely dumbfounded. It was not in the realm of my imagination that that could happen...I felt for sure that this could not be real.”<sup>594</sup>

Chism, sobbing while discussing her son, says of her son’s sentence, “It’s the hardest thing I’ve ever had to live through.... I’m concerned every day of my life about his safety... Even today after all these years, when I have to leave him and I have to walk away and know where he is now and know it will be a month before I will see him again, the pain is so incredible. It’s very hard to bear.”<sup>595</sup> She added, “Death in prison is going to be his fate.... If only I could have hope that Kevin would be home this



Kevin Ott in a still from Eugene Jarecki’s documentary film “The House I Live In.” Photo credit: Samuel Cullman / [www.thehouseilivein.org](http://www.thehouseilivein.org)

“I honestly think if I would have been given the chance [for drug treatment] I wouldn’t be here waiting to die today.”

time next year, oh, my life would be so glorious, and my daily prayer would be keep him safe, Lord, keep him safe until he can come home.”<sup>596</sup>

Ott, who is 50 years old, has served 17 years in prison and says he is “get[ting] ready to die in a cage.”<sup>597</sup> His youngest sister was killed in a car accident while driving to visit him in prison, located about three hours from his family.

Ott describes himself as a completely changed man since his incarceration 17 years ago. “My faith in God is stronger. I am more patient, maybe a little sadder,” he says.<sup>598</sup> He says he has been clean and sober for 15 years, though he was ineligible for any drug treatment program because of the length of his sentence. He told the ACLU, “When I first came in I would have loved to take a substance abuse program, but there was none available to me because I have life without parole...I have rehabilitated myself; the state has done nothing.”<sup>599</sup> Ott is ineligible for many prison rehabilitation programs because of the length of his sentence, but he has participated in Christian-based programs including Christians Against Substance Abuse, has taken classes on Thinking for a Change and life skills, volunteered with a program for at-risk youth, and learned to be a leather-crafter.



Onrae Williams with his daughter, Onajah, who was three years old when her father was sentenced to life without parole.

#### SOUTH CAROLINA

**Onrae Williams** was sentenced to LWOP for selling less than a third of a gram of crack cocaine, an offense he was accused of committing when he was only 22 years old.<sup>600</sup>

His two prior convictions that triggered South Carolina’s habitual offender sentencing law included an offense that he committed as a juvenile.<sup>601</sup> According to Williams, the combined value of the drugs involved in his three strikes is \$60.<sup>602</sup>

Williams was raised in a downtown Charleston public housing project, and at times his family was without electricity or food to eat. His mother and other family members struggled with drug addiction, and he says that without a functional adult figure in his life or steady job opportunities, he began selling marijuana at age 12 or 13 to support himself and his sister. He first got in trouble with the law when he was 13 years old, after which he was barred from entering the housing project where he was raised. As a teenager, Williams was arrested repeatedly for trespassing at the Gadsden Green housing project where he lived with his grandmother. Because he was no longer permitted on the project grounds on account of his juvenile record, his grandmother was eventually forced to move out of the apartment they shared. He dropped out of school in the ninth grade and was shot in the head when he was 18 years old.

In 2000, when he was only 17 years old, Williams was arrested by police in a park adjacent to the housing project where he lived. He pleaded guilty to possession of crack cocaine, possession with intent to distribute cocaine, and a separate charge for doing so within 1,000 feet of a school, for which he received adult probation. According to Williams, he had probation fees to pay and his conviction made it hard to find a job, so he returned to the streets. When he was 20, he was arrested again in the same park and charged with distribution of marijuana, distribution of cocaine, distribution within proximity of a school, and possession of cocaine. Although he says police did not find drugs on him and had no physical evidence to use against him, he pleaded guilty to the charges because he was told it was the quickest way out of prison and he wanted to return to his newborn daughter as soon as possible. For the second conviction, Williams was sentenced under South Carolina's Youthful Offender Act and served a year before he was paroled. While incarcerated, he asked for drug treatment but was not accepted. Williams reports that after the birth of his daughter, Onajah, and his release from prison, he began to turn his life around.

In 2004, Charleston police set up a controlled drug buy by sending a confidential informant into the same park where Williams had been previously arrested.<sup>603</sup> The informant purchased two pebbles of crack weighing only 0.3 grams.<sup>604</sup> Although the drug buy took place in August 2004, when Williams was 22, Williams was not charged and arrested for selling to the confidential informant until January 2005, almost half a year later. He had been reporting regularly to his parole officer during the intervening months, but police never approached him about the drug buy. Williams was offered a plea deal but maintained his innocence and chose to go to trial. The informant, who had spent half his life in prison or jail, later testified that he had purchased the crack pebbles from Williams. Williams was convicted of distribution of crack cocaine and distribution of crack cocaine within a half-mile of a school.<sup>605</sup>

Williams was sentenced to mandatory life imprisonment without the possibility of parole on both charges. The court used one of Williams's juvenile offenses as a necessary third strike to sentence him to life without parole. He was sentenced under South Carolina's habitual offender law, which requires a life-without-parole sentence for a third conviction for a "serious offense."<sup>606</sup> Distributing controlled substances within a half-mile of a school is considered a "serious offense" under the law.<sup>607</sup> All of Williams's alleged offenses took place in Harmon Park, a public park located about 100 yards away from the housing project where Williams lived and within a half-mile of a high school. Williams points out that mandatory LWOP school-zone laws discriminate against people living in densely populated urban communities such as downtown Charleston, where drug sales are unavoidably within South Carolina's expansive drug-free school zones.

Williams told the ACLU that he regrets what he has done and has learned from his mistakes but believes his sentence is too severe: "I know I don't deserve to be in a situation like this. Being given a life sentence without parole, it's just not right. They locked me up for half a gram, something that amounted to \$20 worth [of drugs]. That doesn't make any sense, that they sentenced me for the rest of my life. I don't

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“They locked me up for half a gram, something that amounted to \$20 worth [of drugs]. That doesn't make any sense, that they sentenced me for the rest of my life.”

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want them to do this to anybody else after me.”<sup>608</sup> His aunt, Dee Williams, said that when Williams called her a few hours after being sentenced, his primary worry was his then-three-year-old daughter. “He kept saying, ‘What am I going to tell her?’”<sup>609</sup> She said of her nephew’s sentence, “He has over half his life left. It’s crazy.”<sup>610</sup> Williams’s uncle, Sidney Williams, told a local paper at the time of his nephew’s sentencing, “It just seems unfair and cruel.... I by no means of the imagination condone what he has done. But I still don’t think that adds up to life in prison.”<sup>611</sup>

Williams has served seven years in prison and is now 30 years old. Since he has been incarcerated, his mother died, and he was unable to attend the funeral. He has earned his GED in prison, is writing a book, and spends his time studying the law, reading, and playing chess. He told the ACLU that if he were allowed out of prison, his priority would be to go to college, adding, “Since I’ve been locked up...I’ll do whatever I can do to increase my development and my knowledge,” but adds that “I just pushed my education as far as I could push it” in prison.<sup>612</sup> He speaks regularly with his daughter and says, “What matters the most to me is to...be a father to my daughter and build a relationship with her. That’s what helped change me and helped me understand that I don’t need drugs in my life. I’ve grown up and matured from an adolescent into a man.”<sup>613</sup>



Anthony Jerome Jackson. Photo credit: South Carolina Department of Corrections

#### SOUTH CAROLINA

## Anthony Jerome Jackson is serving LWOP for stealing a wallet from a hotel room.

From Conway, South Carolina, Jackson has a sixth-grade education and worked as a cook. He was convicted of burglary for stealing a wallet from a Myrtle Beach hotel room in November 2011, when he was 44 years old. According to prosecutors, he woke two vacationing golfers as he entered the room and stole a wallet, then pretended to be a security guard and ran away. Police arrested him when he tried to use the stolen credit card at a pancake house.<sup>614</sup> Jackson says that he did not commit the burglary but did attempt to use the stolen credit card.<sup>615</sup> According to Jackson, because his court-appointed attorney failed to properly prepare for trial and did not even know the charges against him, Jackson chose to represent himself but did not understand anything during his trial.<sup>616</sup> Because of prior convictions for burglary in 2006 and 2009, Jackson was sentenced to mandatory life without parole under South Carolina’s three-strikes law. He also had prior convictions for burglary and distribution of cocaine dating back to 1986, but these offenses did not impact his sentence.<sup>617</sup> “I felt hurt and afraid [of] the ending of life,” Jackson says of his sentencing.<sup>618</sup> “You will think that I kill[ed] someone with that kind of time.”<sup>619</sup> Jackson, who is now 46 years old and speaks weekly with his mother, a pastor, says his drug addiction motivated the crime for which he was sentenced to die in prison. When he requested substance abuse treatment while serving time for a prior burglary conviction, he reports he was denied treatment. Jackson says, “I begged them for help. They said no.”<sup>620</sup>

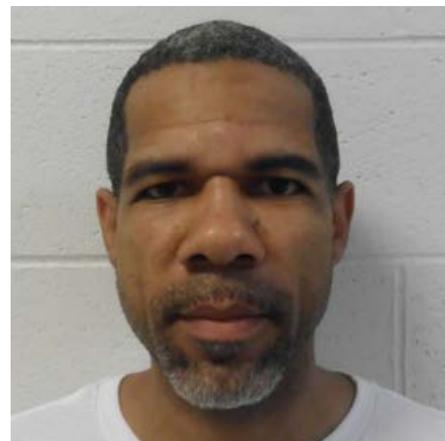
“You will think that I kill[ed] someone with that kind of time.”

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**MISSISSIPPI**

## **Hershel Miles Jr.** was sentenced as a habitual offender to LWOP for forgery and petit larceny for attempting to cash a stolen check.<sup>621</sup>

A mother and son in Panola County, Mississippi, returned home in September 2001 to find that their front door was damaged and a VCR, Sony PlayStation, Nintendo 64 console, and Nintendo games were missing.<sup>622</sup> The value of all of the stolen items was under \$250.<sup>623</sup> Several days later, Miles attempted to cash a check bearing the signature of the deceased husband of the woman whose house had been burglarized. Miles maintains that he received the check for payment for a motor that he sold to a man named Al on the same date as the burglary. None of the stolen items were found to be in Miles's possession, and he was not charged with the burglary.<sup>624</sup> In 2002, Miles was sentenced to life without parole under Mississippi's habitual offender law. According to prosecutors, Miles had prior convictions for sale of cocaine, burglary of a non-habitation, robbery, burglary, and aggravated burglary, and he had served time in prison for each of these prior offenses.<sup>625</sup> Miles, who is Black and 42 years old, has served nearly 11 years of his life-without-parole sentence.



Hershel Miles Jr.

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**MISSISSIPPI**

## **Phillip Earl Young** was sentenced to LWOP for siphoning gasoline out of a truck.

Young siphoned gasoline from an 18-wheeler truck parked in Pearl, Mississippi.<sup>626</sup> When the owner of the truck confronted Young, he fled in his own 18-wheeler. According to the district court, law enforcement officers followed Young for about 40 minutes around Jackson, Mississippi, until they arrested him.<sup>627</sup> In May 2010, he was convicted of felony evasion and automobile burglary and sentenced to life without parole under Mississippi's habitual offender law.<sup>628</sup> Young had previously been convicted of unarmed carjacking and grand larceny. The district court found that his prior conviction for unarmed carjacking, in which no one was injured, constituted a "violent crime" for the purposes of enhanced sentencing under Mississippi's habitual offender law.<sup>629</sup> Young, who is Black, is 46 years old.



Phillip Earl Young



Robert Lee Mathis

FLORIDA

**Robert Lee Mathis**, a 66-year-old Vietnam War veteran diagnosed with paranoid schizophrenia, was sentenced to LWOP at the age of 44 for sale of 8.2 grams of crack within 1,000 feet of a school.

Mathis was drafted into the Army and served in the Vietnam War from 1966 to 1968, after which he was honorably discharged. He says he has suffered from post-traumatic stress disorder as a result of his combat service and that he sought treatment for his mental illnesses, but this treatment was ineffective.<sup>630</sup> Prior to his incarceration, he worked picking fruit and selling produce and was training to be a truck driver.<sup>631</sup>

In February 1989, Mathis was arrested for selling 8.2 grams of crack cocaine valued at \$20 near a school zone. He was also charged with possession of drug paraphernalia for a piece of copper screen found in his pocket containing crack residue. Mathis believes he was framed for this crime by the sheriff, whom he says has had his eye on him ever since the two were involved in a car accident years before.<sup>632</sup> He went to trial, during which his mental illness and competence to stand trial were central issues. His court-appointed lawyer told the court he believed Mathis was not competent to proceed and “may have been insane at the time of the offense.”<sup>633</sup> However, Mathis would not allow his lawyer to raise his mental illness at trial and continually sought permission to represent himself.<sup>634</sup> The trial judge denied these requests on account of Mathis’s mental illness.

Mathis was found incompetent to stand trial in July 1989 and was involuntarily committed to the Department of Health and Rehabilitative Services in Tallahassee.<sup>635</sup> In March 1990, the court ruled him competent to proceed to trial.<sup>636</sup> Mathis was convicted of distribution of crack cocaine within proximity of a school and sentenced to life without parole as a habitual offender in April 1990. He had prior nonviolent drug convictions: in October 1985, Mathis was sentenced to five years in prison for two counts of constructive possession of drugs and possession of a hallucinogen other than marijuana, and in 1986, he was convicted of sale or purchase of heroin and sale or purchase of \$5 bags of marijuana.

Mathis says that when he was sentenced to die in prison, it “felt like I had died again in the Vietnam War.”<sup>637</sup> His petition for rehearing, which he filed and prepared himself without the assistance of an attorney, was denied as incoherent.<sup>638</sup> His pro-se appeals were similarly unsuccessful.

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Mathis says that when he was sentenced to die in prison, it “felt like I had died again in the Vietnam War.”

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Mathis has been incarcerated for 23 years, during which he says he has received only one visitor.<sup>639</sup> Now 67 years old, he suffers from glaucoma, headaches, and extremely high blood pressure, and requires regular dialysis.<sup>640</sup> He describes the feeling of being separated from his family and friends as “going off to war!”<sup>641</sup>

Mathis reports he was held in solitary confinement for one year after he was charged with attempted assault of a prison guard.<sup>642</sup> According to Mathis, inmate witnesses to the incident observed the guard assaulting him over an apple that pre-dialysis inmates such as himself were allowed to take into their dorms for a snack.<sup>643</sup> In a separate incident, Mathis was assaulted by another prisoner, who caused injuries requiring emergency eye surgery.<sup>644</sup> Mathis describes his incarceration as “hell.”<sup>645</sup> Despite this, he says he has tried to better himself in prison and has taken educational courses, including GED classes and vocational training in masonry.<sup>646</sup>

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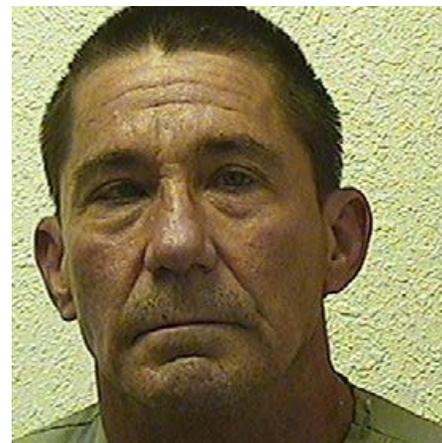
## OKLAHOMA

### **Daniel Gene Mosley is serving LWOP for buying four ounces of methamphetamine.**

In August 2008, Mosley had just purchased four ounces of meth from a dealer and was backing out of the dealer’s driveway when Norman, Oklahoma, drug task force officers arrived to serve a search warrant. Officers searched his pockets and found the drugs. He was 52 at the time. A mistrial was declared following his first trial, and the trial judge dismissed the case.<sup>647</sup> Following the district attorney’s appeal, the dismissal was reversed and Mosley was retried and convicted of trafficking in methamphetamine.<sup>648</sup>

For years, Mosley had suffered from drug addiction and alcohol abuse, leading to a series of convictions for drug possession and driving under the influence of alcohol. He says he did not steal or deal drugs to support his habit, and he was never accused of such offenses. He was convicted three times of DUI in 1992 and 1993, possession of marijuana in 1993 and 1995, and possession of marijuana and methamphetamine in 2000. In 2005, police searched his home and found 39 grams of marijuana and baggies with methamphetamine residue totaling less than five grams. Several months later, police stopped him while he was walking on the street and asked him if he had drugs in his possession; he handed over a small bag of marijuana, a small bag of meth, and two syringes. As a result of the two arrests, in 2006 Mosley was convicted of two counts of marijuana possession, one count of meth possession, and one count of maintaining a place for keeping controlled drugs, for which he received a suspended sentence.

As soon as he was released on bond for the August 2008 arrest, Mosley, realizing that he was sick and needed help, signed up for drug treatment. After a two-month waiting period, he entered and completed an intensive 10-month inpatient drug



Daniel Gene Mosley

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“In my case the legal war on drugs has done more damage than the drugs themselves. I’ll take this to the grave.”

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“I needed long-term extensive [drug] treatment and therapy but did not get it in prison. Prison didn’t help me, but recovery did, and now you want to put me in prison for the rest of my life?”

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treatment program. He had gotten clean for the first time in his life, enrolled in graduate school, and was working toward a master’s degree in drug and alcohol counseling.

“I needed long-term extensive treatment and therapy but did not get it in prison. Prison did not work. I got to this very effective treatment program. I actually get into recovery!” he recalls.<sup>649</sup> Mosley says he grew up in a family of alcoholics and drug addicts and left home at age 17 to escape physical abuse, all of which he believes contributed to his later drug addiction, and which he finally addressed in drug treatment. He had a bachelor’s degree in medical technology, but because his criminal record made it impossible for him to get work in his field, he worked at McDonald’s while he was studying to become a drug and alcohol counselor.

In April 2010, he was imprisoned when his suspended sentence for the 2006 charges was revoked on account of the August 2008 arrest. Two years later, he was about to be released to a halfway house and resume his studies when he was sentenced to mandatory LWOP for the August 2008 charge. Mosley had been recommended for one-year community sentencing. In a pre-sentence investigation report, a parole officer noted that Mosley had completed inpatient drug treatment and maintained a drug-free lifestyle, concluding, “[H]e does not appear to pose an immediate threat to the community...it seems it would be most beneficial to work with him in a community setting.”<sup>650</sup> Although the judge stated she wanted to show mercy, she was not permitted to do so under Oklahoma’s habitual drug offender statute because of his prior nonviolent drug convictions.

“Prison didn’t help me, but recovery did, and now you want to put me in prison for the rest of my life? I had a drug addiction; I needed recovery,” Mosley told the ACLU. “In my case, the legal war on drugs has done more damage than the drugs themselves. I’ll take this to the grave.”<sup>651</sup>

Now 57, Mosley has been incarcerated for three and a half years, during which he has participated in drug recovery and faith-based programs. He reports he has stayed clean and sober despite the hopelessness of his sentence, which he says “is like being buried alive.”<sup>652</sup> If released from prison, he wants to resume the career path he was on when he was incarcerated and help other people with drug addiction.

“I went to school to work toward a degree in counseling to be a part of the solution rather than the problem,” he told the ACLU.<sup>653</sup> “I got into recovery, and I took it as a vision of God. I had this deep-down feeling that this is what I’m supposed to do for the rest of my life, to educate myself and use my past experiences of addiction, depression, and prison, and use my success to...get these people the help they need instead of just throwing them in prison.”<sup>654</sup>

**Lance Saltzman** is serving LWOP for armed burglary when he was 21 years old, when he broke into his own home and took his stepfather's gun, which his stepfather had shot at his mother and repeatedly used to threaten her.

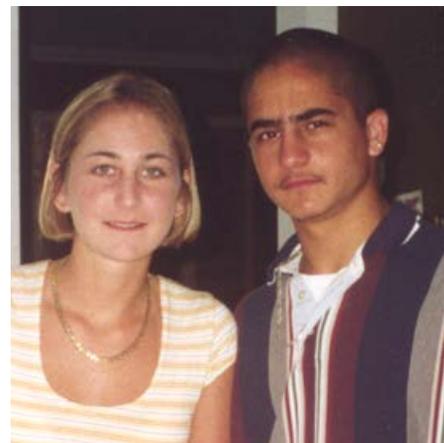
Saltzman was attacked by a pit bull when he was 17 months old, which caused head trauma that left him with ongoing cognitive deficit, according to his mother.<sup>655</sup>

As a teenager, Saltzman had a serious drug problem, for which he says he never received treatment.<sup>656</sup> He was convicted of a series of misdemeanor offenses before his eighteenth birthday, including driving with a revoked license, providing a false name, marijuana possession, petty theft, and trespass.<sup>657</sup> In 2003, Saltzman was sentenced to two years in prison for burglary of his brother's friend's house with his brother when he was 16 years old. He dropped out of school after completing the ninth grade and worked a number of odd jobs including roofing, block work, and house construction.<sup>658</sup> He lived at home with his mother, Christina Borg; stepfather, Toni Minnick; and younger brother.

One afternoon in March 2006, Saltzman told the ACLU, Minnick and his mother were in the midst of a heated argument.<sup>659</sup> At one point, Minnick retrieved his gun from the bedroom, pointed it at Saltzman's mother, and fired it near her.<sup>660</sup> Borg called the Green Acres Police Department to file a report.<sup>661</sup> Officers took the gun, for which Minnick had a permit, but returned it to him a few days later.<sup>662</sup> No charges were filed. According to Saltzman and his mother, shortly after his weapon was returned, Minnick pulled the gun on Borg again and threatened to kill her.<sup>663</sup>

Saltzman told the ACLU that he feared for his mother's life and "decided that [Minnick] should not keep this firearm, as he already proved that he is not responsible and a danger to all of us in the house."<sup>664</sup> One day in June, when no one else was home, Saltzman removed the gun from his stepfather's bedroom.<sup>665</sup> According to evidence presented at trial, Saltzman subsequently sold the gun to a friend to feed his drug addiction.<sup>666</sup> The gun was later used in the commission of a burglary. His mother told the ACLU, "As far as I'm concerned, I would be dead right now if he hadn't taken the gun."<sup>667</sup>

When Minnick returned home from work that day, he noticed that his gun was missing and notified the police. The police later found the gun in the possession of the young man who had committed the burglary, who told the police he obtained the firearm from Saltzman.<sup>668</sup> Saltzman was charged with armed burglary, grand



Lance Saltzman with his sister, Jessica.

When he was 22 years old, Saltzman was sentenced to mandatory life without parole for the burglary of his own home, because he committed the crime within three years of his release from prison for a burglary he committed when he was only 16.

theft of a firearm, and being a felon in possession of a firearm—all for breaking into his own home and taking his stepfather’s gun. He had taken nothing other than the gun and was charged with stealing only the gun. When police arrested Saltzman, they found cocaine in his car and charged him with possession of cocaine as well. Two months later, Saltzman was also charged with the burglary and grand theft committed by the young man with his stepfather’s gun, though Saltzman claims he was not involved in that crime.<sup>669</sup>

In February 2007, when he was only 22 years old, Saltzman was sentenced to mandatory life without parole for the burglary of his own home. He was sentenced under Florida’s Prison Releasee Reoffender Law because he was found to have taken his stepfather’s gun within three years of his release from prison for the burglary he had committed when he was only 16. According to Saltzman, prior to trial he was offered a plea deal of five years; he says his attorney never explained to him that he faced a likely life sentence if he was convicted at trial.<sup>670</sup>

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“I was 21 years old at the time [of the crime]. I will remain in prison until I die. Now I ask, has justice been served?”

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Saltzman’s mother was shocked by her son’s sentence. “He left the house with a gun... because he feared for his and my life,” she said.<sup>671</sup> “It was a home he had lived in his whole life. How do you burglarize your own home?”<sup>672</sup> In an affidavit filed with the Palm Beach County Court, Minnick argued for a reduction of his stepson’s sentence:

When Lance was suspected of stealing my firearm, I had never intended to report more than a grand theft offense. Had I known the State of Florida would prosecute this offense as one of a burglary which would expose Lance to being incarcerated for life, I never would have reported the offense to the police, as it was only a grand theft, at the most.<sup>673</sup>

“In my heart,” he told the court a few years after Saltzman was imprisoned, “Lance Saltzman should not have a life sentence...I feel Lance has done enough time in prison for the crime he committed three years ago.”<sup>674</sup>

Saltzman’s incarceration has been devastating for his mother, who told the ACLU, “I can’t eat, I can’t sleep. I’m 91 pounds because of this, because I am sick to death over what they are doing to my son. I’m dumbfounded over the whole thing.”<sup>675</sup> Compounding her mental anguish, Borg says she is broke from paying her son’s legal fees and can no longer afford an attorney to represent her son.<sup>676</sup>

Saltzman told the ACLU, “I was just trying to do the right thing. I didn’t burglarize my own house; I lived there my whole life with mom and dad and brother. I shouldn’t have a life sentence for going into dad’s bedroom.”<sup>677</sup> He has now been in prison for six years. In this time, he has taken a number of courses and participates in a faith-based program. “I was 21 years old at the time [of the crime],” he said. “I am now 29 years old. I will remain in prison until I die...Now I ask, has justice been served?”<sup>678</sup>

## Kawan Stack has been serving LWOP for possession of stolen things for 17 years, since he was only 23 years old.

Stack was a small-time street hustler who bought and sold items from others who needed money to support their drug addictions. According to Stack, he did this to support his own addiction to crack cocaine, which he had been using since age 14.<sup>679</sup> Stack grew up without a father and says he repeatedly witnessed his mother being beaten by boyfriends.<sup>680</sup>

Following a burglary in an apartment, police found stolen property in Stack's apartment in November 1996: rings (including a ring depicting the face of Jesus Christ), a gold chain, a men's watch, a cordless telephone, and an amplifier.<sup>681</sup> Police investigating the burglary had contacted Stack's probation officer to inquire whether he was in possession of some of the stolen items. Stack told police that he had bought the items from a "clucker," a term for a drug addict who will do anything to obtain drugs.<sup>682</sup>

Stack's first trial ended in a mistrial when the owner of the property perjured herself in court. According to Stack, the owner recanted and initially refused to testify against him in his retrial, but she relented after the District Attorney's office threatened to charge her with falsifying a police report.<sup>683</sup> On retrial, Stack was convicted of two counts of possession of stolen things in May 1997.<sup>684</sup>

Stack was originally sentenced to seven years in prison on each of the two counts, but he was resentenced to mandatory LWOP as a third-strike offender.<sup>685</sup> Stack had pleaded guilty to his two prior convictions for attempted armed robbery when he was 17 years old and for two counts of distribution of 0.15 grams of cocaine when he was 18 years old. Stack used no violence in the commission of the attempted armed robbery.<sup>686</sup> Of his second conviction, Stack says that he was selling fake crack rocks to support his drug addiction and pleaded guilty to cocaine distribution even though the prosecutor never produced a videotape of him selling the counterfeit rocks to an undercover agent. According to Stack, he was never advised that his next charge could result in a life sentence on account of his prior convictions.<sup>687</sup>

He says of his sentence, "It's like saying you'll never amount to anything, as what was told to me as a child... You have no rights, no privileges, and the government now owns you."<sup>688</sup> He adds, "A man should have a chance at being redeemed."<sup>689</sup> His fiancée, Sandra Morris, and mother, Brenda Stack, stay in regular contact with him and fervently hope for his release one day.

Stack has served 17 years of his LWOP sentence. He says that he has been reformed, is now humble and wiser, and has purpose and vision. He has completed anger



Kawan Stack

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“It’s like saying you’ll never amount to anything. You have no rights, no privileges, and the government now owns you. A man should have a chance at being redeemed.”

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management, substance abuse, and self-help programs while incarcerated. He describes prison as “pure hell” and says he has been held in solitary confinement for a combined five years for defiance, drug use, and possession of currency bills.<sup>690</sup> In addition, according to Stack, Louisiana State Penitentiary prison guards sprayed him with Sabre Red, a chemical agent, leaving him with second-degree burns on his face and upper torso.

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## LOUISIANA

### **Ricky Carthan, a junk dealer, is serving LWOP for possession of stolen metal parts.**

In August 1998, a jury convicted Carthan of felony possession of 10 stolen stainless steel railroad tank car valves and a steel elbow pipe.<sup>691</sup> The metal parts had been stolen from a valve company and were found in the possession of a junk aluminum recycling center. The junk dealer said he had purchased the metal parts as scrap metal from Carthan for \$65.<sup>692</sup> Carthan, who had a junk business of his own, says he had bought the items for \$10 or \$15 from another man known as Scarface.<sup>693</sup> Though the \$65 value of the metal parts was based on the set market rate per pound of stainless steel, and the owner of the parts had not paid money for them but received them in a swap from the owner of a recycling center, the jury found the parts had a value greater than \$100, the threshold for the offense to qualify as a felony.<sup>694</sup> The jury also convicted Carthan of misdemeanor possession of a stolen cellular phone.<sup>695</sup>

Carthan, who also worked as an offshore rigger prior to his incarceration and served in the U.S. Army until he was honorably discharged in 1977, was sentenced to mandatory LWOP in December 1998 as a fourth felony offender under Louisiana’s habitual offender law. He had previously pleaded guilty to two counts of issuing worthless checks in 1997 and to theft of items valued between \$100 and \$500 in 1995, when he was 36 years old.<sup>696</sup> He had also been convicted of attempted aggravated rape in 1979, at age 20, for which he served eight years in prison.<sup>697</sup>

Now 54 years old, Carthan has been in prison for 16 years. He is married with three children and talks with his mother once a week. The state of Louisiana terminated his parental rights on account of his life sentence and also sought to terminate his wife’s parental rights following her incarceration for issuing worthless checks.<sup>698</sup> Carthan says his sentence is “like knowing you are alive, but not living.”<sup>699</sup> He unsuccessfully sought post-conviction relief, his habeas corpus petition challenging his conviction and sentence was rejected as time-barred under the Antiterrorism and Effective Death Penalty Act of 1996, and several subsequent habeas petitions were similarly dismissed.<sup>700</sup> Carthan, who is Black, works as an inmate-counsel substitute assisting other inmates with legal matters.

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The stolen metal parts were found in the possession of a junk aluminum recycling center. The junk dealer said he had purchased the pipe and 10 valves as scrap metal from Carthan, also a junk dealer, for \$65.

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**Ronald Lee Washington, 48, is serving LWOP for shoplifting two Michael Jordan jerseys from a Foot Action athletic store in Shreveport, Louisiana, in August 2004.**<sup>701</sup>

On his way out of the store, Washington was confronted by the assistant manager and gave him one of the jerseys before departing.<sup>702</sup> When mall security apprehended Washington outside the store, they found the second of the stolen jerseys on him, and he admitted to taking it.<sup>703</sup> Although Washington says the jerseys were on sale that day for \$45 each, he was held responsible for their full price of \$60 each, raising his theft conviction from a misdemeanor to a felony because the total amount exceeded \$100.<sup>704</sup> Following a 45-minute trial, Washington was convicted of one count of felony theft of goods valued at over \$100. A crack addict who also worked as a drywall finisher, cook, and general laborer, Washington says that he shoplifted in order to support his drug addiction.<sup>705</sup>

Washington was sentenced to LWOP as a fourth-strike felony offender under Louisiana's habitual offender law.<sup>706</sup> Over the previous 21 years, he had been convicted of forgery, possession of cocaine, four counts of theft of goods, and twice of simple burglary.<sup>707</sup> According to Washington, he had never received drug treatment prior to being sentenced to spend the rest of his life in prison. He recalls of his sentencing, "I felt as though somebody had just taken the life out of my body."<sup>708</sup> He adds, "I seriously felt rejected, neglected, stabbed right through my heart. I also felt it was...to be sentenced to death."<sup>709</sup>

Washington has been incarcerated for 10 years. He has finally received substance abuse treatment and counseling, and he has completed anger management and victim awareness programs. He works as a baker in the prison and spends his free time in religious study. He laments that no matter his achievements in prison, he will never be permitted to return to society. "Whatever you had or established, it's now useless, because you're being buried alive at slow pace," he says.<sup>710</sup>

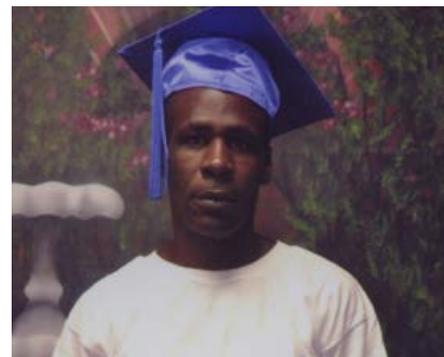
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“I felt it was to be sentenced to death. Whatever you had or established, it's now useless, because you're being buried alive at slow pace.”

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**Paul Carter is serving LWOP for possession of a trace amount of heroin residue that was so minute it could not be weighed.**<sup>711</sup>

Carter grew up fatherless in what he describes as the “ghetto” of New Orleans, and



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He was initially sentenced to 10 years in prison, but after the prosecutor won a motion to reconsider his sentence, Carter was resentenced to LWOP. Of his sentencing, Carter says it felt “like the life within you is taken away.”

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Patrick Matthews with his mother, Cathy Matthews, and two children, Blayton and Hayley, who are eight and six years old.

he began using drugs at an early age. He struggled with heroin addiction for years but says he never received drug treatment before he was sentenced to die in prison.

In November 1997, when Carter was 29 years old, two New Orleans police officers investigating narcotics activity on a street corner near a housing project observed Carter, with a plastic bag, standing with another man.<sup>712</sup> Reportedly because they believed Carter was about to make a drug sale, police searched him; they found a hypodermic needle and a bottle cap in Carter’s coat pocket.<sup>713</sup> Police also found a small amount of powder inside a piece of foil on the ground, which prosecutors said Carter had thrown.<sup>714</sup> The residue in the bottle cap and the small amount of powder inside the piece of foil tested positive for heroin; the syringe was clean.<sup>715</sup> A New Orleans Police Department criminalist testified for the prosecution that “the amounts were too insignificant to weigh.”<sup>716</sup> Police also found fake crack rocks on Carter, which he said he was selling in order to obtain heroin for his own use.<sup>717</sup>

Carter was convicted of possession of heroin. He was initially sentenced to 10 years in prison as a third-strike habitual offender, but after the prosecutor won a motion to reconsider his sentence, Carter was resentenced to LWOP.<sup>718</sup> Carter’s sentence was based on two prior convictions, one for simple escape in 1987 at age 18, and the other for possession of stolen property in 1990 at age 21.<sup>719</sup> Of his sentencing, Carter says it felt “like the life within you is taken away.”<sup>720</sup> Now 45 years old, Carter has served 16 years in prison. While imprisoned, he has earned his GED, completed courses in anger management and culinary arts, and is receiving substance abuse treatment. He says that he wishes he could be given one more chance to become a productive citizen, and he wishes to help prevent others from following the same path.<sup>721</sup>

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#### LOUISIANA

**Patrick W. Matthews** is serving LWOP for stealing tools from a tool shed and a welding machine from a yard when he was 22 years old.

A father of two, Matthews worked for a historical restoration company, but after construction work dried up he says he could not find employment and spiraled into drug addiction. Despite his addiction to methamphetamine and heroin, Matthews reports he never received any substance abuse evaluation or treatment after his first conviction at age 18 or before he was sentenced to die in prison at age 22.

According to prosecutors, in April 2009, Matthews stole tools from the tool shed on a property in Slidell, Louisiana, with a co-defendant.<sup>722</sup> They also allegedly stole a welding machine and generator from the yards of two other houses in Slidell.<sup>723</sup> The property was recovered and returned. Matthews was arrested while riding in

the truck of a friend who pawned the tools; he says that he merely helped his friend pawn some items he did not know were stolen.<sup>724</sup>

In November 2009, Matthews was convicted of one count of simple burglary, for stealing the tools, and two counts of theft, for stealing the welding machine and generator. Prior to convicting him, the jury asked whether he could instead be convicted of accessory to burglary after the fact, but the court said no. Matthews was originally sentenced to 10 years on the burglary count and seven years on each of the theft counts. He was resentenced to life without parole for the burglary charge as a fifth-time habitual offender and to 20 years on one of the theft charges.

“I never in the world would’ve thought that could happen,” he says. “Made one mistake and was treated like a murderer.”<sup>725</sup> He had no violent criminal history and had never served a single day in a Department of Corrections facility. His co-defendant also had prior convictions but received a five-year suspended drug court sentence.

Matthews’s prior convictions were four simple burglary convictions stemming from a single incident in 2005 when he was 17 years old; he burglarized a pawn shop and fruit stand with friends while high on methamphetamine, reportedly to get money to buy more drugs. According to Matthews, his attorney told him that the other charges would be dropped if he pleaded guilty to three simple burglaries, so in order to return to his one-year-old son, he pleaded guilty to three counts of simple burglary in 2005 and received a five-year suspended sentence. He was then rearrested on a fourth simple burglary charge that was supposed to be dropped due to the plea agreement (this count should have been resolved as part of the 2005 plea deal but was inadvertently omitted) and was convicted of the fourth charge in 2007, making him a four-time offender even though the charge had stemmed from the same incident in 2005, his first offense. He received an additional two years of probation. He says he was never warned that he faced a potential life sentence if he burgled again.

In denying Matthews’s appeal, Judge Page McClendon wrote in a concurring opinion, “I do not believe that the ends of justice are met by a mandatory sentence for this 22-year-old defendant, who did not invade any homes and whose past criminal history was limited to nonviolent crimes. Thus, I am constrained to follow the mandate of the legislature... However, I am compelled to note that the imposition of a life sentence for this particular defendant forever closes the door of hope, negates any chance of the defendant becoming a contributing member of society, and imposes an undue burden on the taxpayer, who is required to feed, house, and clothe him for life.”<sup>726</sup>

His mother, Cathy Matthews, told the ACLU, “To see your child get life without parole at 22 years old has to be the most gut-wrenching feeling that you could ever feel. Because it’s like giving him a death sentence. Because there’s no life—no life for a man, with his children or his parents or anybody else once they’re in there.”<sup>727</sup> She adds, “Something has to change. Because these boys are just getting wasted away in these prisons for no reason... They’re not really bad, they just have a drug problem

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“I do not believe that the ends of justice are met by a mandatory [life] sentence for this 22-year-old defendant [which] forever closes the door of hope, negates any chance of the defendant becoming a contributing member of society, and imposes an undue burden on the taxpayer.”

— Judge Page McClendon

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and needed help and didn't get that, either. Patrick didn't get one ounce of drug help. None."<sup>728</sup>

Now 25, Matthews has earned his GED in prison and participates in Narcotics Anonymous and Alcoholics Anonymous. He desperately misses his two young children, Blayton and Hayley, who are eight and six years old, respectively. He says of his sentence, "It feels like you are dead to the world, empty inside and stripped of your children's life... Stripped from the world, who treats you as if you are dead, in the tomb."<sup>729</sup> He told the ACLU that he wishes for another chance to raise his children and be a law-abiding citizen. "I pray I get another shot at life," he said.<sup>730</sup>



Timothy Jackson

#### LOUISIANA

**Timothy Jackson** is serving LWOP for shoplifting a jacket from a Maison Blanche department store in New Orleans when he was 36 years old.<sup>731</sup> The jacket cost \$159.

Jackson, who worked as a restaurant cook and had only a sixth-grade education, was addicted to drugs and says he was on drugs when he walked out of the store without paying for the jacket in January 1996.<sup>732</sup> A store security agent followed Jackson, who put the jacket down on a newspaper stand and tried to walk away when he realized he was being followed.<sup>733</sup>

At the time, Jackson's crime carried a two-year sentence; it now carries a six-month sentence. Instead, the court sentenced Jackson to mandatory life without parole, using a two-decades-old juvenile conviction for simple robbery (from 1979, when he was 17) and two simple car-burglary convictions (from 1986 and 1991) to sentence him as a fourth-strike offender.<sup>734</sup> The Louisiana Fourth Circuit Court of Appeal initially decreased the sentence, calling it "excessive," "inappropriate," and "a prime example of an unjust result."<sup>735</sup> Stating that Jackson "is a petty thief, but he has not shown himself to be a violent criminal," the court noted that he had not used a weapon when he committed the 1979 robbery, during which he took \$216.<sup>736</sup>

However, the Louisiana Supreme Court ruled that judges may not depart from life sentences mandated by the habitual offender law except in rare instances. The life sentence was reinstated despite the objections of Judge Bernette Johnson, who wrote, "This sentence is constitutionally excessive in that it is grossly out of proportion to the seriousness of the offense."<sup>737</sup>

"I'm locked up like I killed someone. They've got people who killed people got less time than I did," Jackson said. "A \$159 jacket. If somebody had told me I could get life for that, I wouldn't believe them."<sup>738</sup> His sister, Loretta Lumar, recalls of his

sentencing, “When I heard ‘life,’ only thing I was thinking, [was] ‘death.’ And I just broke down crying and just ran out of the courtroom...to me, that’s death.”<sup>739</sup>

Of his sentence, Jackson says, “A life sentence without parole, it take all hope from a person and their family.”<sup>740</sup> Sobbing, his sister told the ACLU, “It’s like he don’t even exist no more because they took his life from him. He never been married. He don’t have no kids whatsoever. And it’s a shame to see his life is just gone to waste. I try not to think about him dying in there.”<sup>741</sup> She adds, “It’s a hurting thing. It just hurts to even just talk about him.”<sup>742</sup>

Jackson has served 16 years in prison. He is 52 years old and suffers from various health problems, including diabetes, high blood pressure, and blackouts. He has learned woodworking in prison and makes rocking chairs, dining sets, and grandfather clocks, all of which are sold at the Angola prison rodeo. He has earned his GED and has also participated in Alcoholics Anonymous and other self-improvement programs. Jackson reports he has an excellent disciplinary record and has achieved “trustee” status at Louisiana State Penitentiary, a classification granted to prisoners who have served at least 10 years with good conduct and are trusted to work outside the prison’s secure perimeters.

“I am much older and...I am a changed man,” Jackson says.<sup>743</sup> “I would like to get out of prison at an age that I could be able to work and help myself and others.”<sup>744</sup> His sister told the ACLU that she prays her brother gets a second chance: “He done paid his dues...I pray, every day, that he come home. That’s all I want to do, is see him walk through them doors upstairs. Or be here before I get off from work and just surprise me. That’s all I want. That’s all I want. I don’t want a million dollars—I want none of that. I just want to see my brother walk home.”<sup>745</sup>

## OKLAHOMA

**Larry Yarbrough**, a grandfather, restaurant owner, and livestock farmer, was sentenced to LWOP after police found an ounce of powder cocaine, three marijuana cigarettes, and scales during a raid of his home in November 1994.

Yarbrough was convicted of trafficking in a controlled dangerous substance (cocaine) and misdemeanor possession of marijuana and paraphernalia. Yarbrough claims the cocaine was planted by law enforcement officers, noting that evidence introduced at trial revealed police found the drugs two hours after a drug-sniffing dog failed to find them.<sup>746</sup>

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“I’m locked up like I killed someone. They’ve got people who killed people got less time than I did. A \$159 jacket. If somebody had told me I could get life for that, I wouldn’t believe them.”

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Larry Yarbrough with a guide dog he trained through a prison program.

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In 2002 and again in 2011, the Oklahoma Pardon and Parole Board unanimously recommended that Yarbrough's sentence be commuted, but the governor has refused to do so. Yarbrough has now been incarcerated for 18 years.

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In 1997, Yarbrough was sentenced to mandatory LWOP on the cocaine trafficking charge for the 28 grams of cocaine found in his house. He was 47 years old. "After I learned he was being given life without parole, I was upset about it," one of the jurors who convicted Yarbrough later wrote to the pardon board. "I lost it because we were not told before we voted."<sup>747</sup>

Oklahoma state law requires an LWOP sentence for drug-trafficking charges after prior convictions for two or more felonies.<sup>748</sup> Yarbrough had been convicted of receiving stolen property in 1989, for which he received probation. He had also been convicted of four counts of unlawful delivery of marijuana and one count of LSD delivery arising from a single sting operation in 1982, during which he says he purchased four bags of marijuana from a dealer over four months for his own use and shared a two-ounce bag of the marijuana with the dealer's cousin, a confidential informant. According to Yarbrough, the dealer also gave him a stamp to give to his cousin, which he says he did not recognize as a tab of LSD.

In 2002, the Oklahoma Pardon and Parole Board unanimously recommended commutation, but former Governor Frank Keating refused to commute the sentence. In August 2011, the Pardon and Parole Board again recommended that his sentence be commuted, but in October 2011 Governor Mary Fallin refused to do so.<sup>749</sup>

"I feel like I had just died," Yarbrough says of his sentence. "It's like your whole world just end."<sup>750</sup> Now 63 years old, he has been incarcerated for 18 years. He reports he has not been written up for any disciplinary infraction during his nearly two decades in prison. He trains guide dogs for the blind and others with disabilities, counsels young men entering prison, and says he has taken every substance abuse program offered at his prison.

Yarbrough and his wife, Norma, have been married more than 42 years and have five children and 13 grandchildren. Yarbrough says that being separated from his family "is like taking out your heart, because my wife and kids are my reason for living."<sup>751</sup> Before his incarceration, Yarbrough owned and operated a popular barbecue restaurant in Kingfisher, Oklahoma, where he was known for giving back to his community. If he were released, he would join his family in California and run a barbecue restaurant with his wife, daughter, and son-in-law.

## SOUTH CAROLINA

### **Lloyd Wright**, a 34-year-old Charleston man, is serving LWOP for selling \$50 worth of crack cocaine within a half-mile of a school.

In September 2007, Wright, then 28, sold crack cocaine to an undercover officer posing as a drug buyer as part of a joint undercover operation by Charleston police and the FBI.<sup>752</sup> Police videotaped the transaction and arrested Wright three weeks later.<sup>753</sup> He says that he was selling crack because he was poor and unable to find work; according to Wright, at the time, it was the only way he knew how to take care of his family, including his ailing mother.<sup>754</sup>

A jury convicted Wright of charges of distribution of \$50 worth of crack cocaine and distribution of crack within a half-mile of a school.<sup>755</sup> In May 2009, he was sentenced to mandatory life without parole under South Carolina's three-strikes law. The court used a juvenile conviction as a necessary third strike to sentence Wright to LWOP. According to prosecutors, Wright had previous convictions for possession of crack, possession of a stolen vehicle, and unlawful carrying of a pistol dating back to 1997, when he was 18 years old.

Wright has been incarcerated for five years, and he spends his time studying the law, reading the Bible, and praying. He says he remains close to his wife and mother. Wright told the ACLU of his sentence, "To me to have life without parole is just like being dead... I am very stress[ed] and depress[ed] to know I might not ever be with my loved ones and I might die back here in this place."<sup>756</sup> If given the opportunity to appear before a parole board, he says, "I would [tell] them how I made some mistakes in my life, [but] being in prison has changed my life... Even though I committed a crime, I'm not a violent person, and I have changed my life to be more positive and productive if I was to be let back in society."<sup>757</sup>



Lloyd Wright. Photo credit: South Carolina Department of Corrections

“To me to have life without parole is just like being dead. I am very stress[ed] and depress[ed] to know I might not ever be with my loved ones and I might die back here in this place.”

## FLORIDA

### **Oscar Giles**, 64, is serving a life-without-parole sentence for an armed burglary committed when he was 29. He has been incarcerated for over three-and-a-half decades.

At 3:30 a.m. on December 20, 1978, a week before turning 30, Giles reports he broke into a liquor store in Lakeland, Florida. According to Giles, no one was present



Oscar Giles

during the break-in.<sup>758</sup> He says that when officers arrived on the scene, he ran and was caught about 20 minutes later.<sup>759</sup> According to Giles, officers found a gun on the ground about three blocks away from the store and attributed the gun to him; he says his fingerprints were not found on it.<sup>760</sup> Giles told the ACLU he committed the burglary because he was “young and stupid.”<sup>761</sup> He had a tenth-grade education and had been working as a laborer.<sup>762</sup> He had one prior conviction for attempted burglary of an unoccupied building committed in July 1978 for which he received a five-year sentence.

In May 1979, Giles was convicted and sentenced to life imprisonment for the armed burglary of the liquor store, 15 years for possession of an illegal weapon, and five years for grand theft of over \$300 but less than \$20,000. When he heard the sentence, Giles said, “It felt like I had been sentenced to the electric chair.”<sup>763</sup>

Since he was incarcerated 36 years ago, Giles says he has had only one visit.<sup>764</sup> He hopes to be released from prison so that he can spend time with his 85-year-old mother before she dies.<sup>765</sup> She lives in Alabama and is too old to visit him.<sup>766</sup> It’s “tough and lonely” in prison, Giles says. “I been in prison for 36 years. Seems like I would get used to it. But that will never happen.”<sup>767</sup> While in prison, he has taken life skills programs and participated in Alcoholics Anonymous and Narcotics Anonymous.<sup>768</sup> He attends programs six nights a week and reads, exercises, and walks in his spare time.<sup>769</sup> He told the ACLU, “I am older and wiser now, I am sorry for all the pain that I caused for my family...I just want to get out and do the right things.”<sup>770</sup>

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#### LOUISIANA

## **Roderick Karzon Godbolt** was sentenced to LWOP for stealing a car radio from a 1988 Nissan Stanza in January 2004.

Godbolt had been fixing and reselling radios and claimed that he had permission from the car owner’s cousin to take his car radio for repair and says he believed he was taking the cousin’s car radio, but had the wrong car.<sup>771</sup> He testified that he was intoxicated at the time of the offense and later paid nearly \$100 restitution to the owner of the radio.<sup>772</sup> Godbolt was convicted of simple burglary and was initially sentenced to six years in prison, but was resentenced to LWOP as a habitual offender.<sup>773</sup> He had previous convictions for distribution of cocaine in 1995, possession of cocaine in 1994, simple burglary of an inhabited dwelling in 1994, and distribution of cocaine in 1994 and 1993.<sup>774</sup> The trial court never informed him of the one-year deadline to file a post-conviction appeal, and his applications for post-conviction relief were denied as too late.<sup>775</sup> His subsequent habeas corpus petition was also denied as time-barred under the Antiterrorism and Effective Death

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Godbolt was convicted of simple burglary and was initially sentenced to six years in prison, but was resentenced to life without parole as a habitual offender.

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Penalty Act of 1996, which imposes a one-year deadline.<sup>776</sup> Godbolt, who is Black, is 45 years old.

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LOUISIANA

## Ronnie Chester was sentenced to LWOP for possession of stolen tools.

In February 1994, a truck containing tools used in the owner's construction business disappeared from his carport in Hammond, Louisiana.<sup>777</sup> The next day, Chester and another man sold a toolbox containing over a dozen straight wrenches and four offset wrenches to a friend for \$30.<sup>778</sup> The purchaser, who worked clearing land at construction sites, subsequently discovered that the tools had been stolen from his former employer and returned the tools to him.<sup>779</sup> At Chester's trial, the prosecutor presented no direct or circumstantial evidence of how Chester came into possession of the stolen tools.<sup>780</sup> Nonetheless, Chester was convicted of possession of stolen property and was sentenced to life without parole under Louisiana's habitual offender law.<sup>781</sup> The court of appeal reversed his conviction and sentence on the grounds that there was insufficient evidence to show that Chester was aware that the tools had been the subject of a theft, and additional circumstantial evidence concerning his acquisition of the tools would be required to sustain a conviction.<sup>782</sup> On appeal, the conviction and sentence were reinstated.<sup>783</sup> Chester, who is Black, is 59 years old.

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LOUISIANA

## Charles Alford is serving LWOP for attempted possession of more than 28 but less than 200 grams of cocaine.

Alford ran and operated a parking lot in New Orleans. In February 1996, when he was 30 years old, Alford says he tried to set up a drug deal, unaware that he was interacting with an undercover officer. Alford was charged with possession of cocaine, but he was convicted at trial of the lesser offense of attempted possession. He was sentenced to mandatory LWOP as a third-strike offender under Louisiana's habitual offender law. According to Alford, he had two prior convictions, one for possession of a stolen 10-speed bike in 1985 when he was 20 years old, and another for possession of cocaine with intent to distribute in 1989 when he was 24.<sup>784</sup>

Alford says of his sentencing, "My life flashed in front of me. I thought I was going to die in Angola. I remember being scared to tell my mother, I did not think she could have handled this."<sup>785</sup> Since he was incarcerated 17 years ago, he has studied welding and woodwork and graduated from his prison's welding program. If



Charles Alford, at his graduation from the Louisiana State Penitentiary welding program.

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“When you watch T.V. it really hurts; you see how beautiful the world is.”

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released from prison, he wants to get married and work as a welder. Alford, who now is 47 years old and incarcerated at Louisiana State Penitentiary in Angola, Louisiana, told the ACLU, “[It is] hell here at Angola, wondering will I ever get married, will I ever own land, build a house. When you watch T.V. it really hurts; you see how beautiful the world is.”<sup>786</sup>

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LOUISIANA

## Percy Jones is serving LWOP for possession of a stolen van.

In September 2006, Jones was found driving the Harvest Time Fellowship Church’s stolen van, which bore the church’s logo and had been stolen four days earlier.<sup>787</sup> Jones claimed that he had gotten the van from a friend.<sup>788</sup> After a one-day trial, he was found guilty of possession of a stolen vehicle worth more than \$500. He was initially sentenced to 10 years in prison but was subsequently sentenced to life without parole as a fourth-strike felony offender in December 2007.<sup>789</sup> Jones had pleaded guilty to the three predicate convictions used to sentence him to LWOP: attempted possession of a firearm by a convicted felon in 1996, theft in 1996, and manslaughter in 1997.<sup>790</sup> He also had a prior conviction for attempted simple burglary in 1987.<sup>791</sup> Jones, who is Black, is now 44 years old.



Stanley Carnell Veal

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LOUISIANA

## Stanley Carnell Veal is serving LWOP for simple possession of two rocks of crack cocaine.

Veal says he dropped out of school after completing the eighth grade and later descended into drug addiction.<sup>792</sup> According to Veal, who is Black, he was pulled over for speeding 50 miles per hour in a 20 mile-per-hour zone in Avondale and patted down and searched by police, who found the crack.<sup>793</sup> In February 2000, he was initially sentenced to five years in prison but was subsequently sentenced to LWOP at age 41 because of his prior convictions for attempted armed robbery in 1985, distribution of cocaine in 1991, and cocaine possession in 1995.

Veal says of his sentence, “It felt like a death penalty...for getting high off of drugs.”<sup>794</sup> Formerly a drug addict, Veal says, “I wished that I would have received treatment for substance abuse and I believed that my effort would have changed my life. I was denied treatment.”<sup>795</sup> Veal has been incarcerated for 14 years and is now 55. He told the ACLU that he believes he has been rehabilitated through Louisiana State Penitentiary’s self-help programs. While imprisoned, he has completed substance abuse treatment and is drug free; he also participates in faith-based programs and reads the Bible daily. He says that prison has been “a living hell,”

and after witnessing the stabbing of another prisoner, he says, “I was in shock by realizing that I really don’t belong here.”<sup>796</sup>

## MISSISSIPPI

**William Henry Clay** was sentenced to LWOP for stealing tools valued at about \$250 from the back of a truck.<sup>797</sup>

Clay testified that he was drunk on corn whisky at the time of the crime, which took place on New Year’s Eve 2001. Prosecutors systematically excluded four Black potential jurors from the jury, which Clay unsuccessfully tried to challenge on appeal.<sup>798</sup> The jury convicted Clay of grand larceny, and although the crime carries a maximum sentence of five years’ imprisonment, he was sentenced to a mandatory LWOP sentence under Mississippi’s habitual offender law because of his prior violent felony convictions more than twenty years earlier for attempted rape in 1975 and manslaughter in 1980.<sup>799</sup>



William Henry Clay

## MISSISSIPPI

**James Curtis Kelly** was sentenced to LWOP for grand larceny for stealing a money bag from a desk drawer in a municipal building.<sup>800</sup>

A married father, Kelly worked as a forklift operator. According to Kelly, he struggled with drug addiction and previously stole to support his addiction, but had finally entered treatment following a prior arrest and was getting his life back on track. In June 2003, he was working off fines by washing cars and doing janitorial work for the Flowood Police Department in central Mississippi.<sup>801</sup> A court clerk noticed a money bag was missing from a desk drawer, and police later recovered it from Kelly’s car.<sup>802</sup> He was sentenced to a mandatory LWOP sentence under Mississippi’s habitual offender law because of his prior convictions for robbery and grand larceny.<sup>803</sup> According to court records, he had previously pleaded guilty to one count of grand larceny, one count of strong arm robbery, and three counts of armed robbery in 1986, when he was 19 years old, and in 1998, when he was 28 years old.<sup>804</sup> Kelly, who is Black, is now 47 years old and has served 10 years of his LWOP sentence. He has completed drug treatment in prison and says that being separated from his family has been “pure hell.”<sup>805</sup>



James Curtis Kelly

## Vincent Carnell Hudson was sentenced to LWOP for having a trace, unweighable amount of cocaine in his pockets—an amount invisible to the naked eye.

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The trace amount of cocaine in his pockets was so small that the state crime forensic examiner testified it was “not a weighable amount of substance.”

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In February 2007, Hudson a mechanic, was arrested for having an open container of beer while riding as a passenger in his brother’s car near the small town of Louisville, Mississippi.<sup>806</sup> After his arrest, police sent the clothing Hudson was wearing to a state crime lab for testing.<sup>807</sup> The lab reportedly found a trace amount of cocaine in one shirt pocket and one pants pocket. The amount of cocaine was so small that the state crime forensic examiner testified it was “not a weighable amount of substance” and “just a very, very minute amount of substance.”<sup>808</sup> Hudson was convicted of possession of cocaine and sentenced to LWOP under Mississippi’s habitual offender statute because of his prior felony convictions, which dated back more than 20 years.<sup>809</sup> According to the court, Hudson’s prior convictions were for felony shoplifting, possession of heroin, aggravated assault of a law enforcement officer, armed robbery, and felony driving under the influence.<sup>810</sup>

Hudson was imprisoned at the Mississippi State Penitentiary in Parchman in October 2008. He was in good health and was well enough to work in the cafeteria. In September 2009, he was placed in solitary confinement as a disciplinary action for having a cell phone in his possession. After his two- or three-week confinement, 61-year-old Hudson reported he emerged frail, weak, and suffering from severe pneumonia. According to the Southeastern Christian Association, he complained that he could hardly walk, and for three weeks he was treated at the prison infirmary, where he coded twice. He was transferred to a hospital, where he was placed on a respirator, underwent dialysis, and required insertion of a feeding tube over the course of his four-week hospitalization. Following his return to the prison infirmary in December 2009, he was unable to walk, speak, see, or eat. He still had a tracheostomy and feeding tube inserted and was partially paralyzed and incontinent. In early 2010, his family reported that he appeared to be malnourished and dehydrated, and they feared for his life.

In March 2010, the Supreme Court of Mississippi reversed and rendered his conviction and sentence, not because his sentence was excessive, but because the court found that the evidence against him was insufficient to show that Hudson was aware of the trace amount of cocaine in his pockets or that he consciously and intentionally possessed it.<sup>811</sup>

## LOUISIANA

### **Ronald Kyles** is serving LWOP for simple burglary of a vacant house in Bogalusa, Louisiana.

The house had been vacant for over a year; the owner had moved out of the house after her son was found dead there.<sup>812</sup> Late one morning in February 2006, a neighbor noticed Kyles exiting the house with a television set.<sup>813</sup> Based on the neighbor's description of Kyles's car, police later arrested Kyle at his house. He told police he had a circular saw and power converter from the house and claimed that a white man named Danny had sold him the tools and left with the television.<sup>814</sup> The police report supported some aspects of Kyles's story, as it stated that the neighbor witnessed Kyles with a white man.<sup>815</sup> His first trial resulted in a mistrial when jurors could not agree on a verdict. Kyles was convicted of simple burglary on retrial and initially sentenced to 10 years in prison. That sentence was then vacated and he was given a mandatory life-without-parole sentence under Louisiana's four-strikes law because of his prior convictions for simple burglary of two sheds, two convictions for possession of stolen property, and two convictions for theft dating back as far as two decades.<sup>816</sup> Kyles, who is Black, reports he had struggled with mental health and substance abuse, but he says he had married, had finally turned his life around since 2004, and was working as a truck driver to support his family.<sup>817</sup> He recalls that when he heard his sentence, "I almost passed out."<sup>818</sup> Now 49, he has been incarcerated for seven years, during which his son, sister, brother, and mother have died.<sup>819</sup> He remains in contact with his wife, and participates in Narcotics Anonymous and a Bible studies program in prison.

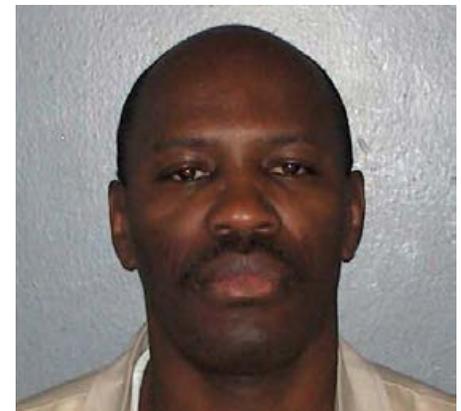


Ronald Kyles with his wife, Mechelle Kyles.

## SOUTH CAROLINA

### **Lowell J. Washington** is serving LWOP for kicking in the back door of a house during the daytime and entering the home in an aborted burglary attempt.<sup>820</sup>

The house belonged to a police officer with the Greenville County Police Department, who returned home while Washington was inside. Washington had not taken any possessions, did not resist the officer, and remained seated until more officers arrived at the scene. He had two previous housebreaking convictions and one burglary conviction. These previous convictions were the only aggravating circumstances elevating the break-in to first-degree burglary, and without the prior convictions Washington would have been charged with second-degree burglary.<sup>821</sup>



Lowell Washington. Photo credit: South Carolina Department of Corrections

His defense lawyer explained to the jury, “There is no violence in this case. There is no weapon. This is not a nighttime burglary. This is a burglary second charge, which they want to elevate to a burglary first based on his prior record. This is a classic burglary second case. He was caught red handed in the act. No violence. Total cooperation. Made a statement. Sat down. No problem. No resistance. Daylight hours. And they want you to convict him on a technicality.”<sup>822</sup> Notwithstanding his lawyer’s arguments, the jury convicted Washington of first-degree burglary. Because the trial judge found that Washington’s two burglary charges constituted a “most serious” offense under South Carolina’s two-strikes law, he was sentenced to life without parole.<sup>823</sup>



James Byers Jr. with (from left) his sister, Elnita Garner; his mother, Rubie Davis; and his sister, Regina Ellis.

#### SOUTH CAROLINA

**James R. Byers Jr.** is serving LWOP for selling \$10 worth of crack cocaine to a confidential informant within a half-mile of an elementary school in August 2009.

Cherokee County sheriff’s deputies videotaped the controlled drug buy, and Byers was convicted at trial of distribution of crack cocaine and distribution of crack cocaine within a half-mile of a school or park.<sup>824</sup> Byers, who is Black, objected to the prosecutor’s striking of potential Black jurors from the jury pool.<sup>825</sup> In April 2011, Byers was sentenced at age 28 to mandatory LWOP under South Carolina’s three-strikes law.<sup>826</sup> According to prosecutors, Byers had five prior drug convictions.<sup>827</sup>



Mario London

#### MISSISSIPPI

**Mario London** is serving LWOP for shoplifting a computer from a Walmart.<sup>828</sup>

London, who is Black, was not identified until three weeks later, when a witness picked him out of a photographic lineup. London was convicted of grand larceny, and although the crime carries a maximum sentence of five years’ imprisonment, because of his prior felony convictions he was sentenced to a mandatory LWOP sentence under Mississippi’s habitual offender law.<sup>829</sup> According to court records, London had 11 prior felony convictions, four of which were classified as “crimes of violence” by the court.<sup>830</sup> His prior convictions included kidnapping, aggravated assault, theft of over \$100,000, burglary, entering an airport with intent to commit a felony, and possession of a controlled substance.<sup>831</sup> He had served three years and eight months in total for these prior offenses.

## Curtis Eugene Land is serving LWOP for prying open the back door of a house in an attempt to burglarize it.

A jury found that Land had pried open the back door of a house in Westminster, South Carolina.<sup>832</sup> According to prosecutors, he ran away when a 13-year-old pointed a shotgun at him and was arrested a short distance from the home.<sup>833</sup> He was convicted of first-degree burglary, and in August 2012, at age 47, he was sentenced to LWOP under South Carolina's three-strikes law because of his prior convictions.

## Alfonse Danner, a decorated U.S. Navy veteran, is serving LWOP for armed burglary and grand theft. He has been incarcerated for almost 18 years.

Danner joined the U.S. Navy in 1989 and worked on the flight deck of the U.S.S. Ranger aircraft carrier in San Diego, California. In 1991, he served in the Persian Gulf War.<sup>834</sup> After that, "things went downhill for me," he told the ACLU.<sup>835</sup> He reports he had a drug addiction and was discharged from the military due to his substance abuse.<sup>836</sup> He says he realized the severity of his problem too late and wishes he had sought help early on.<sup>837</sup> "What really bothers me," he says, "is the fact that I never truly had any treatments or was offered any... I was confused and was not coping with my life properly. I had a lot of potential but my mind was not right. Needed help."<sup>838</sup>

In order to support his drug addiction, Danner said, he committed a series of burglaries over four months in 1995. He was charged with a burglary and grand theft committed on May 4, 1995; a burglary and grand theft committed on May 26, 1995; and an attempted burglary committed on June 28, 1995. According to Danner, while he was incarcerated in the Hillsborough County Jail in September 1995 for both these charges and a few probation violations, a new charge for a burglary allegedly committed on September 6, 1995, was brought against him.<sup>839</sup> The prosecutor, he said, offered him a 34-month prison sentence if he pleaded guilty to all charges.<sup>840</sup> Although he maintains he did not commit the September 6 burglary, Danner accepted the offer and was sentenced to 34 months on October 13, 1995.<sup>841</sup>

While waiting to enter custody to serve his sentence, prosecutors brought another charge against Danner: armed burglary and grand theft, allegedly committed on



Alfonse Danner

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“After 18 years I still can’t believe this. [Life without parole] makes you feel almost hopeless, useless and you’re just waiting on your death. It’s like a slow, long, agonizing death sentence.”

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September 4, 1995, during which a gun, three televisions, a VHS camcorder, a Canon camera, a boom box, \$500 in cash, and a 7-week-old puppy were stolen from a house while its residents were away.<sup>842</sup> The burglary was “armed” because a gun was taken.<sup>843</sup> Danner maintains he did not commit this crime and says that there were no eyewitnesses and no property or weapon was ever recovered or traced back to him. He was convicted based only on fingerprints that were matched to him.<sup>844</sup> Danner fought the charges in court but was convicted as charged. In March 1996, when Danner was 28 years old, the same judge who had only recently sentenced him to 34 months in prison this time imposed a sentence of life without parole.<sup>845</sup>

Danner says he was shocked that the judge so drastically increased the sentence when “just a few months prior to that, he was the same judge that gave me 34 months, which means he did not feel the need to protect the public or think I was a danger to society.”<sup>846</sup> His confusion was compounded by the fact that, according to him, his Pre-Sentence Investigation Report recommended a sentence of five to seven years.<sup>847</sup>

Serving a life sentence is “traumatizing,” Danner said. “After 18 years I still can’t believe this.”<sup>848</sup> He told the ACLU that life without parole “makes you feel almost hopeless, useless and you’re just waiting on your death. It’s like a slow, long, agonizing death sentence.”<sup>849</sup> Since he has been in prison, he has lost his father, mother, and sister. Before his sister’s death, she visited Danner almost every month. Their deaths “hurt even more than the sentence,” he said.<sup>850</sup>

During his first few years in prison, Danner reports he was very angry and served 30 days at a time in solitary confinement on eight or 10 occasions.<sup>851</sup> Now 45 years old and nearly 18 years into his sentence, he says he has taken responsibility for his past actions and has become “very much more mature, humble...and a lot more focused” and has gained “a lot of respect for freedom.”<sup>852</sup> Danner has taken a number of courses, including life skills classes, family enrichment, and computer drafting. While incarcerated, he has worked as an AutoCAD software operator and for Pride Furniture. He spends his time reading everything from history to science to current events.<sup>853</sup> Danner calls himself a changed man and says he believes he can now be a productive citizen and “prove people can change.” “I’m in no way saying I shouldn’t be punished,” Danner said. “But I feel justice in America should be fair.”<sup>854</sup>

**Ivan Anderson** was sentenced to LWOP in 2007 for an armed burglary that he committed in 2005, when he was 22 years old.

Anderson's mother died when he was an infant, and he was put in foster care, where he says he was physically and sexually abused.<sup>855</sup> When he was seven, he met his father for the first time. He went to live with his father and stepmother but reports he was abused by family members and eventually was returned to the foster care system, where, he says, "Sexual abuse and running away was the norm."<sup>856</sup> Anderson, who is Black and Latino, has since been diagnosed with depression and an anxiety disorder.<sup>857</sup>

In January 2005, Anderson burglarized the unoccupied home of part-time Florida residents who were in Canada at the time. According to prosecutors, he took power tools, a television, a car, and a rifle.<sup>858</sup> At the time of the crime, Anderson was enrolled in Florida Career College and pursuing a career in the medical field.<sup>859</sup> He had held numerous jobs, including at the Missing Children Help Center, a supermarket, and car rental and car sales lots; he also held temp positions at construction and assembly-line job sites. He worked to support his wife and infant daughter and says he was struggling to pay off his and his wife's college loans and credit card debts.<sup>860</sup>

At trial, Anderson was convicted of armed burglary, grand theft auto, and two counts of dealing in stolen property for pawning the stolen television and power tools.<sup>861</sup> The burglary was charged as armed because a rifle was taken from the home. A conviction for grand theft of items valued at under \$300 was later overturned on appeal.<sup>862</sup> Anderson was sentenced to LWOP under Florida's Prison Releasee Reoffender Law. Because he committed the armed burglary within three years of his release from prison, he was mandatorily sentenced to the maximum sentence for this crime in the state of Florida: life in prison without the possibility of parole.<sup>863</sup> Anderson's prior convictions were for burglary of a structure, two grand thefts of a car, grand theft, and aggravated fleeing, all of which he committed at 19 over the course of seven months.

At Anderson's sentencing hearing, the judge, Judge Richard I. Wennet, asked whether there was any legal basis for him to avoid imposing the sentence before announcing that he had "no alternative" but to impose life imprisonment as a mandatory minimum sentence.<sup>864</sup> Judge Wennet told Anderson, "Mr. Anderson, I'm very sorry. There [are] a lot of bad people that have done a lot worse things than you—not that I'm saying that this was particularly a nice or good thing, but they've done a whole lot worse than you and not have had the opportunity to suffer what you're about to."<sup>865</sup>



Ivan Anderson

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“Mr. Anderson, I’m very sorry. There [are] a lot of bad people that have done a lot worse things than you and not have had the opportunity to suffer what you’re about to.”

— Judge Richard I. Wennet

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Anderson's wife gave birth to a son in the months after the burglary and before his trial. At the time of Anderson's sentencing, his daughter was two years old and his son was less than a year old. Now, his daughter, Aline, is eight and his son, Elijah, is seven.<sup>866</sup> Anderson says that because of his own experience growing up without a family, he desperately wants to parent his children, whom he describes as the light of his life. "Life without parole means forever," he says. "It means I won't be able to buy my daughter her graduation present, I won't be able to pay for her college tuition. I won't be able to watch her or my son grow up....What it means, is endless."<sup>867</sup>

Anderson is now 31 years old and has been in prison for six years. He has worked as an orderly in the prison chapel and in the canteen. During his free time, he enjoys reading novels, writing his own novels, teaching other prisoners about entrepreneurship, and watching world news.<sup>868</sup> If released from prison, Anderson says he would like to start a non-profit geared toward teaching the elderly how to use computers and another non-profit to help families who cannot afford to visit their relatives in prison to do so.<sup>869</sup>



Leroy Fields

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LOUISIANA

## Leroy Fields is serving LWOP for possession of a stolen car.

An unemployed 30-year-old father of three, Fields was arrested in October 1999 when he was pulled over in New Orleans for a traffic violation and found to be driving a Dodge Intrepid that had recently been reported stolen.<sup>870</sup> Fields says that he did not know the car was stolen and had borrowed the car from a friend named Michael Fairly, whom his state-appointed attorney failed to call as a witness at trial. Fields was never accused of stealing the car and was charged only with possession of a stolen vehicle worth over \$500.<sup>871</sup> The jury could not reach a verdict in his first trial, which ended in a mistrial.<sup>872</sup> According to court records, his attorney called no witnesses and introduced no evidence in his one-day retrial, and the jury returned a guilty verdict after deliberating for 25 minutes.<sup>873</sup>

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**His attorney called no witnesses and introduced no evidence in his one-day retrial, and the jury deliberated for only 25 minutes.**

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In June 2000, Fields was sentenced to mandatory LWOP as a third-strike habitual offender because of his prior convictions for possession of crack cocaine in 1993 and simple robbery in 1986 for stealing a \$90 pair of shoes from a shoe store when he was 17 years old.<sup>874</sup> Fields had also been convicted of simple burglary of an inhabited dwelling in 1989, but this conviction was not used to enhance his sentence because he had not been properly advised of his rights. Fields had pleaded guilty to all three prior charges and says his prior crimes were directly related to his drug addiction and efforts to provide for his wife and young children when he was unable to find work. He tried to challenge the juvenile robbery conviction used to sentence him to LWOP, but his habeas petitions were rejected as untimely.<sup>875</sup> "The court wrongfully took my life from me," Fields said. "I felt like there was no help for me, and I was expected to die here in prison. And I still feel that...I'll die here in Angola."<sup>876</sup>

Now 45, Fields has been incarcerated for 14 years. He describes prison as a “living hell” and says that earlier during his imprisonment, “I really wanted to give up on myself and my life...I saw no hope.”<sup>877</sup> He has committed a number of disciplinary infractions in prison and reports that he has spent 12 of his 14 years in solitary confinement.<sup>878</sup> Fields explains, “When I first got life, I really felt my life was over and I would die here in prison, so I really act[ed] out a lot.”<sup>879</sup>

Fields says that now that he has gotten clean and developed some hope that Louisiana’s sentencing laws will change, he is a completely different person. He wishes he could have the opportunity to appear before a parole board, “to meet Mr. Leroy Fields now instead of the drug addict I once was.”<sup>880</sup> If released from prison, he says, “I would work, I’ll go home and be with my family and enjoy what little life I have left in me, crime-free.”<sup>881</sup>

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## LOUISIANA

### **Aaron Jones** is serving LWOP for unauthorized use of a motor vehicle for borrowing a co-worker’s truck without permission.

An electrician, Jones was working on renovating a motel in Kissimmee, Florida, in April 1999.<sup>882</sup> According to Jones, he shared an employer-provided apartment with two other workers, one of whom had a truck that was used as a company vehicle by all the co-workers, and Jones decided to use it to drive home to Louisiana and visit his wife and four children.<sup>883</sup> Jones’s co-worker woke up to find his truck missing and reported it stolen.<sup>884</sup> Jones, who is Black, was subsequently found driving the truck by police, who pulled him over for driving through a stop sign.<sup>885</sup> He was sentenced to mandatory LWOP as a fourth felony offender at age 34 because of prior convictions for issuing worthless checks in 1995, negligent homicide in 1989, and armed robbery in 1982.<sup>886</sup> After he served two years in prison for the negligent homicide conviction, which stemmed from a knife fight outside of a bar during which Jones unintentionally killed his attacker, he had turned his life around.<sup>887</sup> He earned an electrical technician degree, married, became an ordained reverend, and founded the Perfect Love Outreach Ministry. Now 49 years old, Jones has been incarcerated for 14 years. He says of his sentence, “You are just waiting for your number to be called, to heaven or hell.”<sup>888</sup>



Aaron Jones with his daughter, Joy Jones, whom he describes as “the apple of my eyes.”

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“You are just waiting for your number to be called, to heaven or hell.”

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Darrell Johnson

#### LOUISIANA

**Darrell Johnson** is serving LWOP for serving as a middleman in the sale of \$20 worth of crack cocaine to an undercover officer in New Orleans.

According to Johnson, a self-described crack addict who worked at Popeye's, he was approached by an undercover officer about purchasing cocaine and referred her to someone who sold her two crack rocks. He says he never sold the officer anything himself. He was convicted of distribution of cocaine in 1998, when he was 34 years old. He was initially sentenced to seven-and-a-half years but was subsequently sentenced to LWOP under Louisiana's three-strikes law, because of prior convictions for simple burglary of a vehicle in 1991 and possession of cocaine in 1988.<sup>889</sup> Johnson recalls of his sentencing, "It felt like my life was sucked right out of me."<sup>890</sup> When he began serving his sentence at Louisiana State Penitentiary in Angola, he reports he continued to struggle with drug addiction. He says, "Words cannot explain the heartaches I have endured being in Angola because of my drug addiction."<sup>891</sup> Now 49, he has been incarcerated for 15 years, during which he has completed substance abuse, anger management, and faith-based programs. Johnson is presently studying for his GED, as he had only completed the eighth grade prior to his incarceration. "It feels as if there is no hope or life for you whatsoever," he said of his sentence. "I would like a chance to prove myself to the world."<sup>892</sup>



John Montgomery with his mother and grandmother.

#### FLORIDA

**John Montgomery** is serving LWOP for an armed burglary committed while he was off of the medications that treat his bipolar disorder.

On April 21, 2011, Montgomery was convicted of armed burglary, possession of burglary tools, burglary of an unoccupied structure, and grand theft. According to the arrest report, on August 26, 2010, Montgomery entered John Wilson's home with a crowbar and tried to steal a safe containing \$3,000 in cash.<sup>893</sup> The arrest report indicates that Wilson told police that when Montgomery saw Wilson, he attempted to hit him with the hand cart he had been using to transport the safe.<sup>894</sup> The two began fighting, and Wilson reportedly struck Montgomery a few times on the head before Montgomery fled in his Jeep Cherokee.<sup>895</sup> Montgomery claims he entered the home to help his friend move and did not intend to commit theft.<sup>896</sup> He says he did not realize anything was wrong until Wilson entered the house and the two got into a struggle.<sup>897</sup>

According to the arrest report, police chased after Montgomery's car, and Montgomery eventually fled on foot into the woods.<sup>898</sup> The officer deployed his Taser after Montgomery refused to come out from behind the brush, and, according to the officer, Montgomery struggled with him to knock the Taser away.<sup>899</sup> The officer eventually deployed the Taser on Montgomery's back and took him into custody. Police found Wilson's air compressor, floor jack, and BC regulator for open water diving in Montgomery's car.<sup>900</sup> Montgomery told the police that he had been chased by demons for the last four days and was unable to recall where he was coming from, where he was going, or if he had run from the officer.<sup>901</sup>

Montgomery has been diagnosed with bipolar disorder with psychosis.<sup>902</sup> According to Montgomery, he had been receiving treatment for his mental illness but became delusional and psychotic when, at times, he went off his medication. He says his family was concerned for his safety and tried to get help for him.<sup>903</sup> Montgomery told the ACLU that immediately before committing the armed burglary that led to his life-without-parole sentence, he was turned away from the hospital, where he sought treatment for his mental illness, because there was no room.<sup>904</sup>

Although in an initial psychological evaluation requested by defense counsel, Montgomery was found to be sane at the time of the offense and competent to proceed with trial, the evaluator noted that he suffers from serious and continuing mental health issues.<sup>905</sup> According to his lawyer, during trial Montgomery stated he was not receiving proper medications and reported experiencing auditory hallucinations.<sup>906</sup>

Montgomery was sentenced to life without parole on the armed burglary charge under Florida's Prison Releasee Reoffender Law, and five years' imprisonment for the other charges. He says that hearing his sentence made him feel "like a nightmare was coming true."<sup>907</sup> He was 38 years old.

According to Montgomery, due in large part to his mental illness and lack of proper treatment, he had previously committed a series of crimes as a teenager and young adult. In June 1998, Montgomery was sentenced to over three years in prison for a series of offenses committed between the ages of 18 and 21: four counts of burglary of an unoccupied structure, two counts of grand theft, one count of battery of a law enforcement officer, one count of resisting an officer with violence, and one count of possession of a firearm by a felon. A few months later, in September 1998, he was sentenced to three-and-a-half years and four-and-a-half years for possession of cocaine and burglary of an occupied dwelling, respectively. In May 2007, he was sentenced to four years in prison for aggravated assault of a law enforcement officer and fleeing a law enforcement officer. Prior to his incarceration, Montgomery worked as a fine dining food server and in the tree service industry.<sup>908</sup> He had a GED and had completed some college courses.<sup>909</sup>

Since he began serving his LWOP sentence three years ago, Montgomery reports he has sought treatment from a prison psychiatrist who at last ascertained the correct

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Montgomery said that immediately before committing the armed burglary that led to his LWOP sentence, he was turned away from the hospital, where he sought treatment for his mental illness, because there was no room.

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dosage and medication for him.<sup>910</sup> “This changed my life,” he said.<sup>911</sup> Armed with the correct medications, he says he believes he can return to society, finish college, and obtain a job.<sup>912</sup> In prison, he has participated in Alcoholics Anonymous, Bible study, and anger management programs, and has received other counseling.<sup>913</sup> He also attends church and sings in the choir.<sup>914</sup> Now 41 years old, he hopes to be released so that he can spend time with his family, whom he says he misses dearly.<sup>915</sup> It is “devastating,” he said. “To think that I might never be out there with [my family] again is heartbreaking.”<sup>916</sup> He speaks with his mother and grandmother on the phone every day, and they visit when they are able.<sup>917</sup>

Discussing his sentence, Montgomery told the ACLU, “There is a hopelessness that cannot be explained—to think that you will die in here is ever present, always in the back of your mind.”<sup>918</sup> Montgomery reports he was once placed in solitary confinement for 37 days for laughing at the wrong time, which was considered disorderly conduct.<sup>919</sup>

Prison “has turned out for the good,” Montgomery said. “I’ve gotten proper mental health care, learned about my illness, gotten on a medication program that works, but now I am ready to go home.”<sup>920</sup>



Kenneth Penton

#### FLORIDA

## **Kenneth Penton** is serving mandatory life without parole for an armed burglary he committed when he was just 20 years old.

According to Penton, in January 2005, after walking out following an argument with his uncle, he later returned home when no one else was present to retrieve his clothes and work boots.<sup>921</sup> He says he came across two guns that his cousins had brought over, took them, and left.<sup>922</sup> Penton was charged with armed burglary (because he stole weapons), two counts of grand theft of a firearm, and two counts of possession of a firearm by a convicted felon.<sup>923</sup> Penton pleaded guilty to the possession and theft counts and proceeded to trial on the armed burglary charge.<sup>924</sup> In May 2006, he was convicted and sentenced to life without parole for armed burglary. He was 22 years old.

Penton was sentenced to LWOP under Florida’s Prison Releasee Reoffender Act.<sup>925</sup> According to Penton, his uncle repeatedly wrote to the court, asking that his nephew not be sent to prison and instead receive much-needed drug treatment, but the sentence was mandatory under the law.<sup>926</sup> “It is hard to explain how horrible it felt to be standing there and receive a life sentence for next to nothing,” Penton said. “It is the worst experience I have ever felt.”<sup>927</sup>

Penton had numerous prior convictions for crimes he committed at ages 16, 17,

20, and 21. In 2002, he was sentenced to two-and-a-half years in prison for a string of burglaries and thefts committed over several days when he was 16 years old, resulting in convictions for four counts of burglary, two counts of grand theft, and one count of criminal mischief (for property damage) committed on August 4, 2000, and one count of burglary and one count of grand theft committed three days later. Penton pleaded no contest to misdemeanor petty theft in December 2000.<sup>928</sup> In May 2001, when he was 17, Penton pleaded no contest to battery and breach of peace or disorderly conduct and was sentenced as a youthful offender to 11 months and 30 days in jail.<sup>929</sup> When he was 20, Penton was convicted of felony battery (touch or strike) committed in July 2004.<sup>930</sup> He was also convicted of battery, underage possession of liquor, and disorderly conduct committed a few weeks later.<sup>931</sup> In 2005, Penton was convicted of grand theft of a motor vehicle, trespassing, and bribery committed on his twenty-first birthday.<sup>932</sup> He says that his crimes were a result of his drug abuse. Prior to his incarceration, he had been working with his uncle on tree work and erosion control.

Penton told the ACLU that prison has been extremely difficult for him, explaining, “I feel like a dead man walking. My life seems over, that there really isn’t no point to live.”<sup>933</sup> He said he was “young and dumb” at the time of his crimes and that he has since learned patience. “I made a bad decision at 20 years old,” he said. “I’ve grown up over these last eight and a half years; please don’t make me die in prison for a mistake I made that my victim didn’t even want me to go to prison for!”<sup>934</sup>

Penton has been incarcerated for seven years and now is 29 years old. He says he has tried to reform himself but struggles to gain access to many rehabilitation programs in prison on account of his sentence. He participates in his prison’s Alcoholics Anonymous and Narcotics Anonymous programs and has taken parenting and wellness classes.<sup>935</sup> If Penton were released, he wants to live with his family and help provide for his mother.<sup>936</sup> He said it breaks his heart knowing that he has left his family when they need him.<sup>937</sup>

## FLORIDA

In 2009, **Joel Daigle** was sentenced to LWOP for armed burglary for stealing DVDs, tools, three World War II rifles, and two bayonets.<sup>938</sup>

According to Daigle, the firearms that were stolen and used to increase the charge to armed burglary did not contain any ammunition.<sup>939</sup> He was caught after crashing his car into a truck and subsequently hiding a bundle containing the stolen items in the woods. Police searched Daigle’s car and found burglary tools, oxycodone, and morphine.<sup>940</sup>

Daigle has been diagnosed with bipolar disorder.<sup>941</sup> His wife, Nicole Daigle, says she

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“I’ve grown up over these last 8½ years, please don’t make me die in prison for a mistake I made that my victim didn’t even want me to go to prison for!”

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Joel Daigle with his two sons, who were ages three and seven when he was sentenced to life without parole.

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The man whose house was broken into asked that the judge not give Daigle a life sentence and said a sentence of five to 10 years would be more appropriate. However, because the LWOP sentence was mandatory, the judge's hands were tied.

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tried to seek professional help for him, but because the family did not have health insurance and struggled to make ends meet, Daigle could not afford sustained mental health treatment.<sup>942</sup> As a result, she says, he often turned to “self-medication” to “regain his mental balance and emotional stability.”<sup>943</sup> Unfortunately, she said, “Self-medicating in reality means addiction. My husband has battled an on-and-off drug addiction for many of years.”<sup>944</sup> According to both Daigle and his wife, at the time of his crime, he was depressed and self-medicating with narcotics in an attempt to treat his bipolar disorder.<sup>945</sup>

Daigle was sentenced to LWOP under Florida’s Prison Releasee Reoffender law. At his sentencing, the man whose house was broken into testified on Daigle’s behalf, asking that the judge not give Daigle a life sentence and stating that he believed a sentence of five to 10 years would be more appropriate.<sup>946</sup> His wife also spoke during his sentencing hearing, describing her husband’s attentiveness and devotion to his children, aged three and seven when Daigle was sentenced, despite his life-long struggle with bipolar disorder, depression, and anxiety. She said:

Having someone ripped out of our lives in one day with no warning, and not a part of the daily picture is almost like death, but not. The uncertainty of when this sentence will end is unbearable. I have had so much anxiety that it affects me every day. My children do not really understand, and I’ve had to try to simplify it to them as to not create anxiety in them either. They ask for him all of the time, and I can see a huge change in them with him not being around. He made us complete. We were a family when we were together... Please help us to be a family again, and let him have the right to return home to us in the future... I plead to the court to not give him a life sentence and throw him away like garbage, but rather treat him like the human being he is.<sup>947</sup>

However, because the sentence was mandatory, the judge’s hands were tied, and Daigle received a mandatory sentence of life in prison without the possibility of parole. Daigle has been in prison for five years, during which he has completed a parenting class. His father, wife, and two sons, now seven and 11, visit him twice a year.<sup>948</sup>



Rayvell Finch with his mother, Linda.

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#### LOUISIANA

## Rayvell Finch is serving LWOP for simple possession of heroin at age 22.

Finch, who is Black, was sitting with a friend on the steps of an abandoned residence next door to his grandmother and aunt’s house in February 1997.<sup>949</sup> A New Orleans police officer and a DEA agent patrolling the area as part of a joint initiative to target violent crime in New Orleans arrested the young men for trespassing.<sup>950</sup> Finch was visiting his aunt and grandmother, who lived next door.<sup>951</sup> The officers searched Finch, a self-described heroin addict, and found eight aluminum foil packets in his sock that tested positive for heroin.<sup>952</sup> A dissenting appellate judge concluded that

Finch's arrest "is more than suspect," noting that Finch "was not issued a summons for this questionable municipal violation, because to do so would not allow arresting officers to empty his pockets."<sup>953</sup>

Finch was charged with heroin possession but was never accused of distributing the drug.<sup>954</sup> He was sentenced to mandatory LWOP as a third-strike offender because of his prior convictions for possession of stolen property worth over \$500 in 1993 and possession with intent to distribute 24 rocks of crack cocaine in 1994.<sup>955</sup> Finch had no violent criminal history, and the court noted that "there is no indication that the defendant is a violent person."<sup>956</sup> He was 19 years old at the time of his first conviction and only 23 years old when he was sentenced to die in prison. In dissenting to the affirmation of Finch's LWOP sentence, appellate Judge William H. Byrnes declared the sentence "clearly excessive, and designed to cause needless suffering."<sup>957</sup>

Now 39, Finch has been incarcerated for 16 years. In prison he has completed four levels of substance abuse treatment, as well as anger management, literary, and Christian ministry programs. He remains close with his mother, aunt, uncle, and cousins, and says that being separated from family "feel[s] like my soul has been pierced and assaulted."<sup>958</sup>

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## LOUISIANA

### **Donnel Coleman** is serving LWOP for attempted distribution of fake crack when he was 22 years old.

Coleman says he tried to check into rehab for his drug addiction on the day of his arrest in 1998, but there were no beds available at the drug treatment centers. He was arrested later that day as part of an undercover "buy/walk" drug operation in New Orleans.<sup>959</sup> An undercover New Orleans police officer approached Coleman and another man on a street corner and asked to purchase \$10 of crack.<sup>960</sup>

According to the undercover officer, Coleman verbally negotiated a \$20 drug sale with her, and his acquaintance sold her two small pieces of fake crack.<sup>961</sup> Coleman claims he had nothing to do with the drug sale and was merely standing on the same street corner as the seller.<sup>962</sup> The co-defendant who sold the drugs supported Coleman's account and testified that he, not Coleman, sold the drugs.<sup>963</sup>

Coleman was convicted of attempted distribution of a substance falsely represented to be a controlled dangerous substance. The crime usually carries a sentence of zero to two-and-a-half years, but he was sentenced to mandatory LWOP as a third-strike offender because of his prior convictions for possession of two small bags of cocaine in 1995 at age 19 and attempted armed robbery with a 2-by-4 board in 1997, an incident that he describes as a fight, not a robbery. The drug seller received probation.

At the time of his arrest, Coleman was 22 years old and had recently become a

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Judge William H. Byrnes declared Finch's life-without-parole sentence "clearly excessive, and designed to cause needless suffering."

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“On the day of my arrest, I tried to go to a rehab center, but none had bed space, so I left with my addiction and that same evening, I found myself in jail. To this day, I'm still here.”

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father; his daughter had been born three weeks earlier. According to Coleman, he had a serious drug problem, and “wanted desperately to get help” so that he could be a father to his newborn daughter, to whom he says he was instantly devoted.<sup>964</sup>

“On the day of my arrest, I tried to go to a rehab center,” he recalls. “The lady I spoke with tried to contact several places for me, but none had bed space, so I left with my addiction and that same evening, I found myself in jail. That was September 22, 1998, and to this day, I’m still here.”<sup>965</sup>

Now 37, Coleman has been incarcerated for nearly 15 years, during which he says he has taken every course available to him. He has earned his GED and certificates in welding, graphic communications, collision repair, construction, and refrigerant repair. He has completed at least 10 substance abuse programs and several parenting courses, and he serves as a re-entry mentor for prisoners who are nearing their release dates. He reports he has an excellent disciplinary record and has achieved “trustee” status at Louisiana State Penitentiary. He says he remains extremely close with his parents and 14-year-old daughter, with whom he speaks once a week. He told the ACLU, “[I] shouldn’t have to die here...I’m mature, responsible, educated, and fully rehabilitated. I’m sorry for all the wrong I[’ve] done. If given another chance, I can be productive in society and there to help my family...so I can be the man/father that I was intended to be.”<sup>966</sup>



Leon Horne with his wife, Sheila Horne, and their grandchildren.

#### LOUISIANA

**Leon Horne** is serving LWOP for damaging two patrol cars while being chased by police in New Orleans when he was 27 years old.

In September 1997, Horne struck two police cars as he was fleeing from police, who were attempting to stop him on suspicion that he was driving a stolen car.<sup>967</sup> He was charged with two counts of aggravated criminal damage to property, and in October 1998 he was convicted as charged. He was initially sentenced to 15 and six years in prison on each of the respective charges, but he was subsequently sentenced to LWOP as a habitual offender on the first charge because of his prior convictions for simple burglary in 1988 at age 18 and theft in 1991 at age 21.<sup>968</sup> Horne grew up with no family and bounced in and out of foster homes. He became addicted to crack, and he says that he was getting high “all day every day” at the time he committed his last crime.<sup>969</sup> He has been incarcerated for 16 years, during which he has completed his GED and associate’s degree. He also founded a non-profit organization, One Community, which he runs with his wife, to provide faith-based classes for prisoners, assist men released from prison with reintegration and housing, and provide counseling to runaway teens.<sup>970</sup> Horne says of his sentence, “I will never have the opportunity to make the wrong that I did right. So I feel that I will die in prison and never know how life really feels.”<sup>971</sup>

## Rufus White is serving LWOP for simple possession of less than half a gram of cocaine, mere “crumbs” in White’s words.<sup>972</sup>

In March 2001, a Shreveport police officer attempted to pull over White’s car for having tinted windows, captured him after a short foot chase, and recovered a handgun on the ground that the officer suspected White had dropped.<sup>973</sup> Hours after White was arrested and booked for gun possession, a baggie of cocaine was found on the floorboard in the back of the police car that was used to transport him to the police precinct.<sup>974</sup> He was later charged with leaving the baggie in the patrol car, and a forensic analyst concluded that the DNA found on the bag matched White’s.<sup>975</sup>

According to court records, during voir dire the prosecutor objected to all Black potential jurors, and all but one of the jurors was white.<sup>976</sup> White was convicted at trial of cocaine possession and was sentenced to mandatory LWOP as a third-strike offender for an offense that usually carries a sentence of zero to five years. He was 26 years old. He had prior convictions for attempted manslaughter in 1992 at age 17 and attempted robbery in 1995 at age 20.<sup>977</sup> White says that he was addicted to and strung out on drugs when he committed his crimes.<sup>978</sup>

“It just seemed like your whole world end,” White recalls of his sentencing. “It hurts very deep, and you lose everything on the outside.”<sup>979</sup> Now 38 years old, White has been incarcerated for over 12 years, during which he has participated in Narcotics Anonymous, anger management, and academic programs.

His mother, Eisibe Sneed, told the ACLU, “When they sentenced my child, they sentenced me too. I’m in Angola too—my heart is there.”<sup>980</sup> “It destroyed me,” she added. “My life was taken too.”<sup>981</sup> She says that the 12 years she has been separated from her son, who is incarcerated a six-hour drive from her Shreveport home, have been a nightmare. “If my son has done something, let the sentence fit the crime. But you are going to oversentence my child, it just don’t make no sense,” she said. “They gave my baby natural life. The crime doesn’t match the time.”<sup>982</sup>



Rufus White with his mother, Eisibe Sneed.

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White was sentenced to mandatory life without parole as a third-strike offender, for an offense that usually carries a sentence of zero to five years.

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Thomas Wade

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Wade has been in prison for 21 years. Illiterate when he entered the prison system, he has since taught himself how to read and is now teaching himself how to spell.

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FLORIDA

**Thomas B. Wade** was sentenced to LWOP for breaking into an unoccupied car and stealing a gun, car stereo, and bath mat from inside it one week before his twenty-first birthday.

Wade dropped out of school in the tenth grade but never learned to read. “I was dumb to a lot of things,” he says.<sup>983</sup> Of his life at the time of the crime, Wade says, “It wasn’t the best, I didn’t have a job, but I take care of my family the best way I can.”<sup>984</sup> In 1992, Wade served 30 months in prison for two counts of grand theft of a motor vehicle, grand theft of over \$300, and burglary of an unoccupied dwelling, committed when he was 18, and escape and resisting an officer without violence when he was 19.

On January 9, 1993, when he was 20, Wade’s life “changed forever.”<sup>985</sup> According to court records, at 4:30 a.m., a 1985 Pontiac was reported stolen in Winter Haven, Florida.<sup>986</sup> A police officer discovered a vehicle matching the description in the Winter Oaks Apartments Complex one hour later. At trial, the officer testified to observing two individuals, later identified as Wade and his co-defendant, Watson, peering into the vehicle.<sup>987</sup> Because a concrete wall blocked the officer’s view of the car’s tag number, he made a U-turn, drove past the vehicle, and verified that it was in fact the stolen car he had been looking for.<sup>988</sup> Wade and Watson then drove off in Wade’s Chrysler, which had been parked next to the reportedly-stolen Pontiac. The officer had been told that a loaded handgun was in the passenger’s compartment of the stolen vehicle and, as such, called for back-up.<sup>989</sup>

Shortly after Wade and Watson drove away, officers signaled for Wade to pull his car over, and he complied, exiting the vehicle and submitting to a pat-down.<sup>990</sup> Upon searching Wade’s car, officers discovered a bath mat and “car stereo or equalizer” on the rear floorboard, allegedly belonging to the owner of the stolen vehicle, and arrested the men.<sup>991</sup> Wade maintains these items belonged to him and were not stolen property.<sup>992</sup> The officers also found a revolver on the ground beside the stolen vehicle.<sup>993</sup> In his appeal, Wade argued that he was never in possession of the firearm, and noted that his fingerprints were not found on the weapon.<sup>994</sup>

Wade says he did not “know nothing about the law.”<sup>995</sup> He went to trial on charges of armed burglary of an unoccupied conveyance (a car), grand theft of a motor vehicle, and escape.<sup>996</sup> He was sentenced as a habitual offender to life without parole for the armed burglary charge, 10 years for the theft, and 30 years for escape.<sup>997</sup>

Wade recalls of hearing his sentence, “It hurt very, very bad. They take everything in me that day.”<sup>998</sup>

Now 41 years old, Wade has been in prison for 21 years.<sup>999</sup> Illiterate when he entered the prison system, he has since taught himself how to read and is now teaching himself how to spell.<sup>1000</sup> He says the separation from his family has been difficult for him. He told the ACLU, “I missed all of my kids’ child hood. It hurt like hell.”<sup>1001</sup> He tries to remain optimistic, stating, “I know deep in my heart I will make it. I’ll take it one day at a time.”<sup>1002</sup> His stepfather, Maurice Jordan, told the ACLU, “They gave him life and that don’t make no sense at all because he didn’t kill anybody. He’s been gone 21, 22 years...I feel like he’s served the time he should have served, and more.”<sup>1003</sup>

## LOUISIANA

### Quierza Lewis is serving LWOP for possession of crack cocaine when he was 25 years old.

Lewis was arrested with two others during a drug bust in February 2005. Acting on a tip, Minden police were conducting surveillance of a residence. Police saw Lewis, his girlfriend, and a friend leave the residence and followed them as they drove to Lewis’s parents’ house in two cars. There, police searched Lewis’s girlfriend’s car, in which they found scales and 350 grams of crack cocaine zipped inside her purse.<sup>1004</sup> No drugs or paraphernalia were found on Lewis or in his home.<sup>1005</sup> Police returned to the residence that had been under surveillance, where they found a plastic bag containing cocaine residue and items prosecutors said could be used in the manufacturing of crack cocaine (a Pyrex dish, a box of baking soda, and a whisk).<sup>1006</sup> Lewis chose to go to trial to fight the charges against him. His three co-defendants—including his girlfriend—testified against him in exchange for dismissal of the charges against them or reduced sentences. Lewis was convicted at trial of distribution of more than 28 grams but less than 200 grams of cocaine.<sup>1007</sup>

Lewis was originally sentenced to 20 years in prison, but he was subsequently sentenced to mandatory LWOP as a third-strike offender because of two prior convictions for selling \$20 worth of cocaine to undercover agents in 1997, when he was 17 years old, and again in 1998, when he was 19 years old; he was convicted of these offenses in 1998 and 2000.<sup>1008</sup>

Now 34, Lewis has been incarcerated for eight years. “Words can’t explain the pain I endure here daily...It’s like staring death directly in the eyes every day,” he says.<sup>1009</sup> Lewis, who dropped out of school after completing the eighth grade, is studying for his GED and has completed substance abuse, anger management, and Bible study courses in prison. He calls his family every other day, and says he is deeply pained by the prospect of never reuniting with them outside prison walls.<sup>1010</sup>

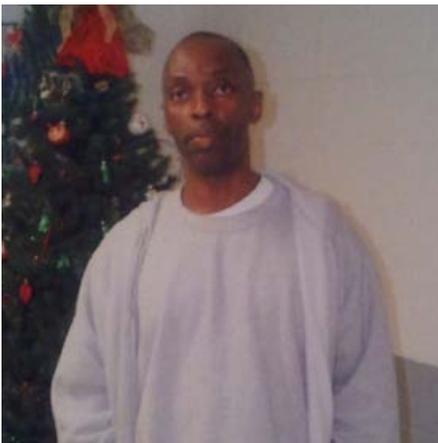


Quierza Lewis with his mother, DeLoice Lewis; two sisters; cousin; and niece.

“Words can’t explain the pain I endure here daily. It’s like staring death directly in the eyes every day.”

His mother, DeLoice Lewis, said that she has been so devastated by her son's sentence that it has driven her to contemplate suicide. She said, "At one time, I say, I wish I could just drive into a river. And it would take it away, the hurt that I was having. The hurt that it was doing to me. I just wanted to drown at one time...I was really ready to commit suicide. That's the only thing I could think of, 'cause I couldn't help my child."<sup>1011</sup> She says that holidays, family birthdays, and Mother's Day are extraordinarily difficult. "Those are days I break. I break. I just have to fall down and start praying and crying and telling God to give me the strength to make it through that day," she said.<sup>1012</sup> The stress of her son's incarceration and sentence has caused her to lose nearly 100 pounds.

Lewis's 72-year-old father, Willie, told the ACLU, "It's been hard. Old man like me, you know, have to take something like that...I stay awake most nights just thinking, thinking, thinking...It done took its toll a while."<sup>1013</sup> Willie cries every time he visits his son, and he sobs when he talks about him. "I go down there and see him. I can't hardly stand it, leaving, but I know I have to go," he said.<sup>1014</sup>



Alexander Surry

#### LOUISIANA

## Alexander Surry, a grandfather, is serving LWOP for possession of a single crack rock.

Surry married his high school sweetheart, with whom he has three children. To support his family, he consistently worked as a professional painter, roofer, and asphalt paver. Though he had never been a smoker or a drinker, Surry says he became addicted to crack and gradually progressed from using the drug to selling it in order to support his own habit, leading to two convictions for cocaine distribution. On January 9, 2001, when Surry was on parole for his second drug charge, his parole officer went to his Shreveport home and, through the window, saw him lying on a sofa.<sup>1015</sup> As the officer approached, Surry hid a small white bottle beneath a sweatshirt.<sup>1016</sup> Upon entering, the officer lifted the shirt and retrieved the bottle, which contained a small crack cocaine rock, an amount Surry characterizes as "crumbs."<sup>1017</sup>

Surry was convicted of cocaine possession. Although the offense ordinarily carries a maximum sentence of five years, he was adjudicated as a third-strike felony offender and sentenced to a mandatory term of life in prison without parole in April 2002 because of his prior convictions for drug distribution in 1993 and 1998.<sup>1018</sup> Surry appealed his sentence, arguing that he should benefit from a June 15, 2001, amendment to the habitual offender statute that limited the maximum sentence in his case to 10 years.<sup>1019</sup> The appeal was denied on the grounds that the amendment, enacted only six months after his offense and before his sentencing, was not retroactive.<sup>1020</sup> In 2009, Surry filed a federal habeas corpus petition alleging prosecutorial misconduct and a violation of his Fifth Amendment rights when he

was required to give his fingerprints at the multiple offender hearing. The petition was denied.<sup>1021</sup>

“Everything he did was to hurt himself, not others,” his wife, Sarlower Surry, told the ACLU. “I think that the system could have did something to help [with his drug use] instead of putting him away for life. I think they should have had a program that would help rehabilitate him... A life sentence is no way to deal with a drug addiction at all.”<sup>1022</sup> She said it has been difficult raising their three children without their father, adding, “He always was there as a father to take care of us. He just made some mistakes. He just made some wrong turns. And the system just like threw him away, like it doesn’t matter.”<sup>1023</sup>

Now 49 years old, Surry has been imprisoned for 13 years and has five grandchildren. He talks at least twice a week with his children, who were teenagers when he was incarcerated. His daughter, Cashawna, told the ACLU that her father’s incarceration has been immensely difficult for her. “It’s like a hole is there in my heart, in my life,” she said.<sup>1024</sup> “I’ve cried many a nights... It was so hard not having my father around when I had relationship problems or just going through hard times in life. Just praying and talking to God and just crying, like, ‘God, I need my father.’”<sup>1025</sup> She says that because her father could not walk her down the aisle when she got married, she chose to be married by a justice of the peace instead of in a church.

The Louisiana pardon board unanimously approved Surry to complete only one-third, or 25 years, of his sentence, but according to Surry, the pardon request has been sitting on the Governor’s desk since 2009. His wife continues to advocate for his release.

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“Everything he did was to hurt himself, not others,” his wife said. “A life sentence is no way to deal with a drug addiction at all.”

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FLORIDA

**Walter Sergio Gray** is serving LWOP for selling crack cocaine within 1,000 feet of a school zone, even though the “school building” was no longer being utilized as a school at the time of the crime.

On September 4, 1990, when he was 27 years old, Gray sold three pieces of crack cocaine to an undercover police investigator for \$60.<sup>1026</sup> The sale, which Gray said he participated in because he “felt that was the only way for me to get me some money,” occurred across from a former school.<sup>1027</sup> According to Gray and the superintendent of the school district, the building had not been used as a school for



Walter Sergio Gray

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Gray asked the court for a chance to “say last goodbye and touch their hand and say I love you” to his family. Now, 22 years later, he says, “To receive a life sentence without parole is a death sentence; family and friend[s] forget you every year go[es] by.”

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Samuel Morris Gibson Jr.

four or five years.<sup>1028</sup> However, Gray’s attorney did not investigate this or address it during his trial.<sup>1029</sup>

Gray, who is Black, was convicted of sale of cocaine within 1,000 feet of a school zone and sentenced to life without parole under Florida’s habitual offender law in September 1991.<sup>1030</sup> He had previously been convicted of unarmed robbery in 1982 at age 18; failure to appear at age 19; conspiracy to sell or purchase cocaine, possession of cocaine, and sale or purchase of cocaine in 1986, when he was 23; and sale or purchase of cocaine in August 1990, at age 26.

Upon sentencing Gray to life, Judge Jack Singbush told him, “Mr. Gray, the Court takes no pleasure in this.”<sup>1031</sup> After the sentence was pronounced, Gray asked the court for an opportunity to see his family, with whom he had not been able to physically interact since he was incarcerated in county jail for the previous eight to nine months. Acknowledging that “I’m going to prison for the rest of my life,” Gray asked the court for a chance to “say last goodbye and touch their hand and say I love you.”<sup>1032</sup>

Now 49 years old, Gray has been in prison for 22 years.<sup>1033</sup> Gray, who had only an eighth-grade education prior to his incarceration, earned his GED in prison in 1996. He says he has been unable to take other courses, however, because of his life-without-parole sentence.<sup>1034</sup> Gray told the ACLU, “To receive a life sentence without parole is a death sentence; family and friend[s] forget you every year go[es] by.”<sup>1035</sup> According to Gray, being separated from friends and family makes him feel “empty, hurt, alone, [and] unloved.”<sup>1036</sup> He reports that he has changed and accepts responsibility for his actions, and if he were to be released, he says, he would stay out of trouble with the law and give back to the community. “After 22 years it’s hard to accept,” he said. “I come to realize how I change.”<sup>1037</sup>

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#### FLORIDA

**Samuel Morris Gibson Jr.** was sentenced to LWOP in 1990 for an armed burglary that was committed in 1989, when he was 23 years old.

Gibson maintains that he is innocent of the crime, claiming that he was picking up breakfast for his diabetic aunt when the burglars gave him a ride to the store.<sup>1038</sup> According to Gibson, he was homeless and suffered from a drug addiction at the time. He says he had also been diagnosed with depression and worked as a high school janitor.<sup>1039</sup> Gibson was sentenced to LWOP under Florida’s habitual offender law because of his prior convictions for two burglaries and two grand thefts that he committed five months apart at age 17 and an armed robbery that he committed when he was 19. Now 47 years old, Gibson has been incarcerated for 24 years. Gibson spends his time attending church, singing in prison programs, and writing his own music.<sup>1040</sup>

**Tyrone Taylor** is serving LWOP for a nonviolent drug offense committed when he was 21 years old. He was sentenced as a habitual offender on the basis of a prior crime he committed when he was only 16 years old.

Taylor told the ACLU that he was “never a person to disregard the law” but found himself “selling drugs as a source of survival.”<sup>1041</sup> In September 1983, when he was 16 years old, Taylor snatched a woman’s purse containing less than \$100 worth of property and lacerated the woman’s arm in the commission of the crime.<sup>1042</sup> He pleaded guilty to robbery and aggravated battery, and served two years in a youth offender camp.<sup>1043</sup>

When he was 22 years old, Taylor was convicted of possession of cocaine and two counts of cocaine trafficking in Polk County and Hillsborough County. His juvenile conviction was used to enhance his sentence, and he was accordingly sentenced to LWOP under Florida’s habitual offender law for one of the cocaine trafficking charges, for knowingly possessing, selling, delivering, or manufacturing between 28 and 200 grams of cocaine. At the time of his sentencing, Taylor did not know how to read or write.<sup>1044</sup>

Taylor appealed his conviction, arguing that his one prior youthful conviction could not be used to give him an enhanced sentence as a violent habitual offender.<sup>1045</sup> The Second District Court of Appeal of Florida remanded the case for further consideration, but his sentence was reaffirmed.<sup>1046</sup> According to the criminal punishment code score sheet calculated for sentencing purposes, the recommended sentence for Taylor was nine to twelve years.<sup>1047</sup>

In the 24 years since Taylor has been imprisoned, he says all his family and friends have either stopped visiting him or died.<sup>1048</sup> Now 46 years old, he has no one outside the prison walls to speak with.<sup>1049</sup> Taylor said that it is hard “day in and day out knowing you may die in prison. It can drive you to some crazy thoughts.”<sup>1050</sup> One year ago, while he was asleep in the middle of the night, Taylor reports he was assaulted by another inmate, causing a serious eye injury.<sup>1051</sup> He describes his more than two decades of incarceration as “crazy,” and said, “I’m still in shock 24 years later, and my mental level has took a beating.”<sup>1052</sup> He tries to study law and pray in prison, but says he has trouble finding activities to occupy his time, since, he told the ACLU, prisoners serving life sentences are not eligible for most educational programs. “So here I sit just waiting to die in prison,” he said.<sup>1053</sup>



Tyrone Taylor

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Imprisoned for 24 years, he has trouble finding activities to occupy his time, since prisoners serving life sentences are not eligible for most educational programs. “So here I sit just waiting to die in prison.”

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Pettus was initially sentenced to two years in prison, the maximum sentence for the crime he was convicted of, but he was resentenced to LWOP under Louisiana's habitual offender law.

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Although the maximum sentence for Caliste's offense was 10 years, he was sentenced to LWOP as a fourth-time felony offender.

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**Nathan Pettus** was sentenced to LWOP for the theft of three Ed Hardy belts from a Dillard's department store in Metairie, Louisiana, in January 2009.<sup>1054</sup>

A police officer with the Jefferson Parish Sheriff's Office was working a security detail at the store and testified at trial that he moved to stand between the exit doors to the store when he was radioed that a man was observed concealing three belts beneath his jacket.<sup>1055</sup> When Pettus observed the uniformed officer, he abandoned the belts in the store before exiting into the mall.<sup>1056</sup> The officer then ran after Pettus and Tasered him before arresting him in the adjacent mall area.<sup>1057</sup> According to the store's loss prevention officer, the belts were valued at \$301 or \$307 in total, but Pettus claims that their aggregate value was under the \$300 felony threshold.<sup>1058</sup> Though Pettus argues that he was guilty of attempted theft at most, he was convicted at trial of theft of goods valued at over \$300.<sup>1059</sup> Pettus was initially sentenced to two years in prison, the maximum sentence for the crime of which he was convicted, but he was resentenced to LWOP under Louisiana's habitual offender law. He was sentenced to LWOP as a fourth-strike offender because of three prior convictions: possession of cocaine, obstruction of justice, and bank robbery.<sup>1060</sup> He was subsequently convicted of simple unarmed robbery in December 2009 for robbery of a boutique committed in April 2008. Pettus, who is white, is 33 years old.

**Damon Caliste** is serving LWOP for the theft of several digital cameras from a Walmart in Slidell, Louisiana, in November 2008.<sup>1061</sup>

Cameras were discovered missing when a store manager found several empty camera packages in the store.<sup>1062</sup> Caliste and a co-defendant were arrested when they returned to the store the following day. Caliste's fingerprints were lifted from one camera box, and surveillance footage showed Caliste and his co-defendant each stealing cameras.<sup>1063</sup> Following an inventory check, the store estimated that 12 to 14 cameras, each worth approximately \$80 to \$150, had been stolen.<sup>1064</sup> Caliste was convicted of theft of goods valued at over \$500. Although the maximum sentence for Caliste's offense was 10 years, he was sentenced to LWOP as a fourth-time felony habitual offender based on a 1996 conviction for possession of contraband in prison

for a small amount of marijuana; a 1994 conviction for armed robbery, in which a co-defendant used a knife while robbing a business while Caliste waited outside the building; a 1993 conviction for distribution of a single rock of crack cocaine; and a 1993 conviction for forgery of two checks, each in the amount of \$25.75.<sup>1065</sup> His co-defendant sentenced to 40 years as a habitual offender.<sup>1066</sup> Caliste, who is Black, is 39 years old.

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## LOUISIANA

### **Michael Nicholas** is serving LWOP for the theft of two used cars in 1996.<sup>1067</sup>

Nicholas cleaned and detailed cars in New Orleans, and he sold cars on consignment at an auto shop. He was accused of stealing three used cars. Although he argued that he was incompetent due to mental illness, the court found him competent to stand trial. At trial, he was found to have stolen a 1987 Peugeot and a 1993 Isuzu Rodeo, and also to have driven a used 1989 Lincoln Town Car without authorization following a test drive.<sup>1068</sup> He was convicted of two counts of theft of property worth \$500 or more and one count of unauthorized use of an automobile.<sup>1069</sup> Nicholas, who is Black, says he never saw his court-appointed lawyer before his trial, and reports his defense witnesses were not subpoenaed.<sup>1070</sup> He was initially sentenced to 10 years on each of the two theft charges and five years on the unauthorized use charge.<sup>1071</sup> The original 10-year sentence on one of the theft charges was vacated, and he was resentenced to LWOP as a fourth-time felony offender because of three prior convictions; he pleaded guilty to theft in 1991, forgery in 1984, and possession of stolen things in 1975.<sup>1072</sup> Nicholas had at least six additional felony convictions dating back to 1969 for avoiding paying telephone bills, theft, possession of stolen property, forgery, issuing worthless checks, and battery.<sup>1073</sup> Now 61, Nicholas has been incarcerated for over 17 years.

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## LOUISIANA

### **Keith A. Barnes** is serving LWOP for shoplifting goods valued at \$188.22 from a Walmart in Jefferson Parish, Louisiana.<sup>1074</sup>

In May 1999, a security officer detained Barnes in the store parking lot after he was observed placing several items of merchandise in a checkout bag used for customers' purchases.<sup>1075</sup> A self-described crack addict, Barnes later told the appellate court that he was on crack at the time he committed the crime.<sup>1076</sup> He was convicted of theft of goods valued over \$100 in March 2000. Barnes was initially sentenced to two years in prison, the maximum sentence for the crime for which he was convicted,

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The original 10-year sentence for theft was vacated, and he was resentenced to LWOP because of prior convictions for theft, forgery, and possession of stolen things.

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but he was resentenced to LWOP as a third-strike felony offender under Louisiana's habitual offender law at age 39.<sup>1077</sup> Barnes had been convicted of armed robbery as a teenager in 1980, for which he served 16 years in prison, and theft in 1998.<sup>1078</sup> He never hurt anyone in the commission of his crimes.<sup>1079</sup> Now 51 years old, Barnes, who is Black, has been incarcerated for more than 13 years.

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LOUISIANA

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He was convicted of simple criminal damage to property, and was sentenced to mandatory life without parole as a third-strike felony offender. His last felony had occurred almost 20 years earlier.

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## **Vincent Cushinello** is serving LWOP for slashing tires in March 2001.<sup>1080</sup>

At trial, Cushinello was found to have slashed the tires of nine cars in the lot of a used car dealer and those of a truck near the used car lot.<sup>1081</sup> He was not observed slashing the tires, but two patrons of a nearby bar testified at trial that they saw Cushinello walking in an adjacent parking lot and putting something in his pocket.<sup>1082</sup> A pocket knife was recovered from him following his arrest. He was convicted of simple criminal damage to property and was sentenced to mandatory life without parole as a third-strike felony offender.<sup>1083</sup> Without the habitual offender sentencing enhancement, the maximum sentence for his offense is two years in prison. Previously, Cushinello had pleaded guilty to simple burglary in 1982, and about five years later pleaded guilty to eight counts of armed robbery and two counts of attempted murder, all of which occurred on the same day in 1986, for which he served 12 years in prison.<sup>1084</sup> His last felony had occurred almost 20 years earlier. Cushinello, who is white, is 56.

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LOUISIANA

## **Noble Elias Bates** is serving LWOP for aggravated criminal damage to property for hitting a police patrol car while attempting to flee.

In July 2000, after he was observed shoplifting soap and Alka-Seltzer at a Kroger grocery store in Bossier City, Louisiana, Bates fled police and damaged a Shreveport police patrol car in the process.<sup>1085</sup> The police patrol car struck a steel light pole, injuring two police officers, allegedly after Bates's vehicle struck theirs.<sup>1086</sup> A Shreveport officer fired three shots at Bates's car to stop him, hitting Bates once in the left leg.<sup>1087</sup> Bates, then 51, got out of his car and ran a short distance before officers caught him.<sup>1088</sup>

Bates, a Vietnam War veteran, suffered from mental illness and had previously been diagnosed with auditory hallucinations, post-traumatic stress disorder, and paranoid schizophrenia.<sup>1089</sup> He reported he was not taking his prescribed

medication for mental illness at the time of the shoplifting. He argued that during the commission of his crime he was “in a state of paranoia due to his psychological illness” and pleaded not guilty by reason of insanity.<sup>1090</sup> Bates testified at his trial that he had sustained several head injuries while growing up and was exposed to Agent Orange as an infantry soldier in Vietnam.<sup>1091</sup> He testified that on the day of the shoplifting, he thought someone was trying to kill him, he was “running for [his] life,” and he was experiencing flashbacks to combat. A psychiatrist who evaluated him concluded that at the time of the crime, “he was psychotic, overly suspicious, paranoid, and misperceiving his environment.”<sup>1092</sup>

Bates was convicted of aggravated criminal damage to property and sentenced to mandatory LWOP on that count as a third-time felony offender; the maximum sentence for his offense was 15 years without the habitual offender enhancement.<sup>1093</sup> He was also convicted of aggravated flight from an officer, for which he was sentenced to two years in prison.<sup>1094</sup> The mandatory LWOP sentence did not take into account mitigating factors such as his mental illness. Previously, Bates had been arrested 63 times and had 23 prior convictions for minor nonviolent offenses dating back to 1974, including misdemeanor and felony theft, and drug and traffic violations. Bates, who is Black, is 62 years old. During his more than a decade in prison, Bates has earned an associate’s degree in Christian Ministry from New Orleans Baptist Theological Seminary.

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The maximum sentence for his offense was 15 years without the habitual offender enhancement. The mandatory LWOP sentence did not take into account mitigating factors such as his mental illness.

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#### FEDERAL SYSTEM

**Donald Lee Graham** was sentenced to mandatory LWOP for nonviolent crack cocaine offenses when he was 30 years old.<sup>1095</sup>

He was arrested in 2006 as part of a Northern Kentucky Drug Strike Force and Kenton County Police Department investigation, during which a confidential informant carried out six controlled buys of crack cocaine from Graham and two companions.<sup>1096</sup>

After a three-day trial, Graham was convicted of conspiracy to distribute and possess with intent to distribute more than 50 grams of crack cocaine; crack cocaine distribution; and aiding and abetting distribution.<sup>1097</sup> His co-defendants, including the drug supplier who was the target of the operation, pleaded guilty and testified against him in exchange for reduced sentences.<sup>1098</sup> This testimony, and that of corroborating witnesses, was the only evidence of Graham’s involvement in the crime.<sup>1099</sup>

The judge used a nonviolent juvenile felony conviction for aggravated drug trafficking as the necessary third strike to sentence Graham to life without parole.<sup>1100</sup>

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“It feels like I’m trapped in a burning fire. It’s like you’re nothing. Why should I want to live? I would rather [have] been sentenced to lethal injection, than suffer the way I am.”

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In 1995, when he was 17 years old, Graham had pleaded guilty to two counts of aggravated drug trafficking under Ohio law and served one year in prison.<sup>1101</sup> The juvenile conviction and Graham’s only other prior conviction—for cocaine trafficking at age 19—occurred a decade before he was sentenced to LWOP.<sup>1102</sup>

Dissenting from the majority’s decision affirming the life sentence on appeal, Judge Gilbert S. Merritt of the 6<sup>th</sup> Circuit Court of Appeals objected to the sentence:

[T]he sentencing of this nonviolent, 30-year-old petty drug trafficker to life imprisonment by using a juvenile conviction as a necessary third strike not only violates clear congressional intent...but also violates sound principles of penological policy based on the Eighth Amendment values recently outlined by the Supreme Court....

In what seems to me my colleagues’ strained effort to justify the life sentence in this case based on juvenile conduct, they take account of neither the well-established canons of statutory construction...nor the social consequences of what has only recently become conventional judicial behavior favoring long prison terms for nonviolent drug offenses.<sup>1103</sup>

Before his arrest, Graham worked at a cleaning service and delivered newspapers on the weekends.<sup>1104</sup> He has only a sixth-grade education and explains that it is “hard for me to read and understand some things.”<sup>1105</sup>

Graham, who is Black and 35 years old, says of his sentence, “[I]t still feels like I’m trapped in a burning fire. It hurts a lot.”<sup>1106</sup> He adds, “It’s like you’re nothing. Why should I want to live? I would rather [have] been sentenced to lethal injection, than suffer the way I am. If I did not care for my family I would ask to die, but I must keep my family together. I don’t want them to suffer any more than they already are.”<sup>1107</sup> He says that he struggles with suicidal feelings because of the hopelessness of his sentence: “It hurts, fighting myself each day to continue to allow the light of our Father shine upon me.”<sup>1108</sup> Graham told the ACLU he is sorry for letting his family down and asks for “one more chance at society.”<sup>1109</sup>

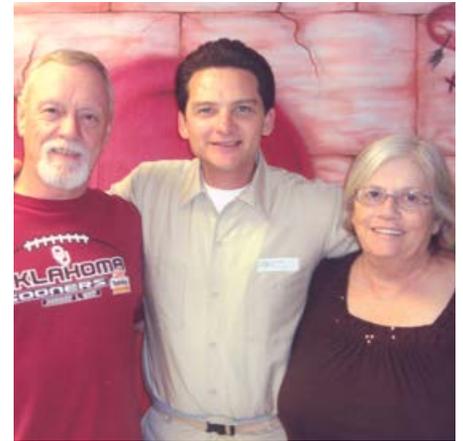
## Steven Speal's sentence of life imprisonment without parole arose from a search following a traffic stop for allegedly making an illegal U-turn; police found methamphetamine, marijuana, and firearms.<sup>1110</sup>

After Kansas Highway Patrol officers discovered drugs and firearms in a car in which Speal was a passenger, he was convicted of conspiracy to distribute a controlled substance, possession of 267 grams of methamphetamine and 41 pounds of marijuana with intent to distribute, possession of a firearm during a drug trafficking crime, and two counts of possession of a firearm by a convicted felon. He was sentenced to LWOP.<sup>1111</sup> He was 25 years old.

Raised in Oklahoma City, Speal is the sole child of parents who separated when he was an infant. His mother was a drug addict and often used drugs in front of him. Grappling with a dysfunctional family and a learning disability, Speal says he struggled in school and constantly felt like an outcast.<sup>1112</sup> At an early age, he began using alcohol and drugs. He says that when he had his first drink at just nine years of age, “all the pain went away.”<sup>1113</sup> He began experimenting with drugs at age 11, and as he got older he sometimes did drugs with his mother. “When I realized that other drugs numbed the pain also, I tried to stay high on anything that I could,” he recalls. “From 11 years old on I just wanted to feel normal, be liked, and to fit in. At 15, I found out that if I had drugs people really wanted to be around me. They accepted me and even acted like they really cared about me.”<sup>1114</sup>

When he was 18, Speal was convicted of possession of a controlled dangerous substance with intent to distribute after police searched his car and found baggies of marijuana and 26 Xanax pills.<sup>1115</sup> Later that year, he pleaded guilty to separate offenses of auto burglary and unlawful use of a motor vehicle.<sup>1116</sup> At age 19, Speal pleaded guilty to charges of possession of a controlled dangerous substance with intent to distribute upon the discovery of large baggies of marijuana and a plastic bag of pills in his vehicle.<sup>1117</sup> A few years later, when he was 22, Speal pleaded guilty to possession of methamphetamine and served four years in prison.<sup>1118</sup> Just over a year after he finished that sentence, he was sentenced to LWOP as a career offender on the basis of his two prior marijuana convictions.

Speal describes the punishment of life without parole as “life without hope, life without compassion, life without a chance, life without love, life without peace, life without ‘you fill in the blank.’”<sup>1119</sup> He fears dying in prison, he says, because “my



Steven Speal with his mother, Mary McMillan, and his stepfather.

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“Life without hope, life without compassion, life without a chance, life without love, life without peace, life without ‘you fill in the blank.’”

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bloodline dies if I die in here... They took away my whole bloodline. I know I made a mistake, but I didn't make a mistake that's worth the rest of my life."<sup>1120</sup>

Speal's mother, Mary McMillan, who is clean and sober now, says her son's imprisonment has been unbearable for her. "My God, I want my boy home. It's been too long,"<sup>1121</sup> she told the ACLU. She says she feels guilty for raising her son in a house full of drug dealers. "Steven did not have a chance," she says. "He saw from a very young age using and selling drugs... His biggest crime was that he was a junkie and he got hooked worse on stuff worse than I ever did. The only person he hurt was himself."<sup>1122</sup> According to McMillan, Speal's imprisonment pains his entire extended family. "They put us all in jail. It hurts every one of us. Your life in some areas doesn't go on," she told the ACLU.<sup>1123</sup> She says Speal's nieces don't even remember seeing their uncle outside of the prison gates, explaining, "They think he is the sweetest thing... they don't understand why Uncle Steven can't come home. It affects everyone."<sup>1124</sup>

Speal continued to struggle with drug and alcohol addiction when he began serving his life-without-parole sentence. He reports he had difficulty coping with the numerous killings he witnessed in the first years of his sentence and began taking heroin in prison. Speal says he finally turned his life around when he completed intensive drug treatment and Alcoholics Anonymous and Narcotics Anonymous programs in prison and overcame his addictions. He is now the co-facilitator of these programs, serves as an inmate companion for prisoners on suicide watch, and provides pre-release counseling to prisoners who are about to be released. He says, "I feel I am doing just what I am supposed to at these times, helping others."<sup>1125</sup> Speal has become profoundly religious and preaches to other inmates.<sup>1126</sup> He also works in a prison sewing factory making military shirts.

After 17 years in prison, Speal says he has learned from his mistakes and taken responsibility for his actions. "I know what I did was wrong but I did not know any other way at the time, and I just wanted to be loved," he told the ACLU.<sup>1127</sup> "They gave us a death sentence because we made mistakes when we were kids."<sup>1128</sup>

Speal, now 42, exhausted his appeals process long ago, and his commutation petition was denied in February 2013. He prays for a chance to show society how he has changed and is eager to demonstrate how he can contribute to society, saying, "I will never give up the right to be free again when I get out. I understand life is too short. I have made choices to help as many people as I can in here or out there. Given the chance to be free, I will make the people that helped me to get my freedom proud that they took the time and effort."<sup>1129</sup>

## Euka Wadlington was sentenced to LWOP following a failed drug sting based entirely on the testimony of co-conspirators.

Wadlington was raised in a housing project on the North Side of Chicago and later moved to the South Side, where he worked construction, drove a garbage truck, and ran a carwash. For a couple of years in the mid-1990s, Wadlington managed one of the first nightclubs catering to the African-American community in Clinton, Iowa, a majority white town on the Mississippi River. Around 1995, a joint federal and state task force began investigating a crack cocaine distribution operation in Clinton headed by another South Side native known as Geo. According to Wadlington, during most of the time that Geo sold drugs in Clinton, Wadlington was working five days a week as a garbage man 200 miles away in Chicago. In 1996, Geo and five associates were convicted of federal drug conspiracy charges. Wadlington believes he was targeted when Iowa-based federal drug agents were looking for their next drug case.

Wadlington was arrested in Chicago in 1998, following a failed drug sting in which a confidential informant attempted to induce him to sell cocaine to an undercover agent. According to Wadlington, a government informant known as Flame, an admitted cocaine and meth dealer cooperating with the government to avoid incarceration, tried to get Wadlington to help him sell drugs. For months Wadlington refused, and he says he finally agreed to meet with Flame in late 1998 to help him carry out a money-making scam in order to discharge a longstanding debt (Flame had loaned Wadlington \$3,000 in 1994 to help him open a car wash). The government informant claimed he had arranged to introduce Wadlington to an undercover agent posing as an Iowa drug dealer, to whom Wadlington was to sell one kilo of cocaine at the planned meeting. Wadlington was arrested at the meeting location, but he had no drugs or weapons on his person or in his vehicle and less than three dollars in his pocket.

At Wadlington's trial in the Southern District of Iowa, the prosecutor argued that from 1992 to 1998 Wadlington was the leader of a drug organization selling powder and crack cocaine in Clinton, Iowa. According to the prosecutor and government witnesses, Wadlington employed and supervised others who concealed cocaine in Tide detergent boxes and transported, cooked, and distributed the drugs.<sup>1130</sup> The case was based entirely on the testimony of cooperating witnesses who testified in exchange for immunity or leniency for their own drug sentences, including one of Wadlington's co-defendants who pleaded guilty.<sup>1131</sup> Wadlington was not connected to the crime via any physical evidence; he was never caught with any drugs, either on his person or in his vehicle, home, or business.<sup>1132</sup> No drugs were ever seized



Euka Wadlington (center, not in a cap and gown) with several of his students who earned GEDs under his tutelage.

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Four witnesses have come forward and signed affidavits supporting Wadlington's claims of innocence and alleging prosecutorial misconduct. One key witness stated that his false accusations at Wadlington's trial were coerced by federal agents who told him he could avoid a life sentence only by implicating Wadlington.

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Since he first helped his cellmate become literate and obtain his GED over 10 years ago, Wadlington has helped hundreds of incarcerated men to obtain their GEDs

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during raids of the nightclub he managed. Police surveillance of Wadlington's nightclub never revealed any indication of drug activity. No cell phone, pager records, or fingerprints connected Wadlington to drug activity, and the prosecutor offered no evidence of unexplained wealth.

Wadlington was convicted of conspiracy to distribute and possess with intent to distribute powder and crack cocaine, and attempted distribution of crack cocaine. All but one of his jurors were white.<sup>1133</sup> Although no drug amounts were specified in the indictment or decided by the jury, Wadlington was held accountable for more than 18 kilograms of cocaine.<sup>1134</sup>

Because his sentence was enhanced based on two prior drug felonies, Wadlington was sentenced to two concurrent LWOP sentences in 1999, when he was 33 years old. He had two prior state drug convictions: a 1988 arrest for 14 grams of cocaine found in a friend's underwear after they were pulled over for a traffic violation, and a 1991 arrest for possession with intent to deliver cocaine when he was 25; he pled guilty to both charges in 1991. Wadlington says, "When I heard the sentence, I went into a kind of shock. I couldn't remember a lot of things that truly mattered in my life. For at least a month, I couldn't even remember my mother's telephone number, which had not been changed for 30 years."<sup>1135</sup>

Since the trial, four witnesses have come forward and signed affidavits supporting Wadlington's claims of innocence and alleging prosecutorial misconduct.<sup>1136</sup> One of the key witnesses who testified against Wadlington submitted an affidavit stating that his false accusations at Wadlington's trial were coerced by federal agents who told him he could avoid a life sentence only by implicating Wadlington.<sup>1137</sup> Two members of Geo's drug-dealing conspiracy gave sworn statements that Wadlington was not a member of their conspiracy, much less the leader. The appellate court also found that circumstances indicated the prosecutor improperly used grand jury subpoenas to secure interviews with two individuals who eventually testified against Wadlington—falsely, according to Wadlington.<sup>1138</sup> Wadlington has exhausted all of his appeals, which were unsuccessful despite the witness recantations.

Wadlington is 47 years old and has served 14 and a half years in prison. He says he became deeply depressed following his sentencing but found new purpose by teaching fellow prisoners.<sup>1139</sup> Since he first helped his cellmate become literate and obtain his GED more than 10 years ago, Wadlington has helped hundreds of incarcerated men obtain their GEDs, taught literacy classes for illiterate inmates, worked with his prison's warden to create re-entry programs for soon-to-be-released prisoners that will help them to adjust to daily life outside of prison, and started partnerships with local universities to allow students to play chess with inmates and create positive relationships. He also teaches grammar, essay writing, and creative writing courses, and helps enroll other prisoners in vocational classes and college correspondence courses. At the same time, he says he has enrolled in every class available to him that does not interfere with the classes he teaches.

If he were released from prison, Wadlington wants to return to his South Side neighborhood, Englewood, to run educational programs for youth and adults. He says, “I dream of going to schools and speaking with children about the realities of actions and consequences.”<sup>1140</sup> He adds, “I hope that I could somehow be forgiven for my actions and help rebuild what I contributed to destroying...I want to return home with newfound wisdom, energy, and a unique perspective to promote nonviolence and create a safer place for children and young adults alike.”<sup>1141</sup>

At the time of his incarceration, Wadlington was engaged to be married to the mother of three of his children. He maintains a relationship with his five children, but he says it pains him to have missed raising them. Wadlington’s mother, Gloria Driver, suffers from Alzheimer’s and her condition is steadily deteriorating. While she still remembers and loves her son, she is becoming increasingly confused by his absence. At her son’s sentencing, she told the judge of her children, “When they are wrong, I’ll admit that they are wrong. When they are right, however, I’ll go to my death fighting for them. I’m asking for the one thing every mother wants for a child—a fair chance at life.”

## LIFE WITHOUT PAROLE FOR MARIJUANA

### LOUISIANA

**Dale Wayne Green** is serving LWOP for his role as middleman in a sale of \$20 worth of marijuana to an undercover deputy.

In September 1999, an undercover agent for the narcotics division of the Caddo Parish Sheriff's Office was driving around near Keithville, Louisiana, when he saw Green on the side of the road and stopped.<sup>1142</sup> Green reportedly asked the undercover agent if he was looking for anything, and when the agent responded that he was looking for weed, Green agreed to take him where he could buy some.<sup>1143</sup> Green eventually found a young man to sell the agent a bag of marijuana worth \$20. The agent paid Green \$10 for his assistance. The agent's vehicle was equipped with surveillance equipment, but the sound was not functioning and the surveillance video tape was of poor quality; the video does not capture the purchase of the marijuana.<sup>1144</sup> A day later, the agent identified Green, who was arrested in November 1999 after the undercover operation was completed.

Green was convicted of distribution of marijuana and sentenced to mandatory life without parole as a third-strike offender under Louisiana's multiple offender law. He had two prior convictions; he had pleaded guilty to attempted possession of cocaine in 1990 and to simple robbery in 1991.<sup>1145</sup> According to Green, when he pleaded guilty to these prior charges, he was never informed of the nature or elements of the crimes, or that these convictions could be used to enhance his sentence under the multiple offender law if he committed subsequent offenses.<sup>1146</sup> Green had no lawyer to represent him on appeal, and he unsuccessfully tried to raise the claims that he had been entrapped and that there was insufficient evidence to convict him. Green, who is Black, is 54 years old and has served 13 years in prison.

### LOUISIANA

**Terrance L. Mosley** was sentenced to LWOP for possession of marijuana with intent to distribute.

In August 2008, he was seated in the passenger seat of a parked car when a police officer searched the car, allegedly because it had duplicate license plates and was parked on the street, facing traffic.<sup>1147</sup> The officer found two bags of marijuana in the car that totaled 867 grams, or about two pounds.<sup>1148</sup> Mosley says he was trying

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When the undercover agent said that he was looking for weed, Green agreed to take him where he could buy some. Green found a young man to sell the agent a bag of marijuana worth \$20. The agent paid Green \$10 for his assistance.

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Terrance Mosley

to get a ride and did not know the marijuana was in the car, which he adamantly insists did not belong to him. The driver of the car received probation in exchange for pleading guilty and did not serve any time. Mosley was first sentenced to 25 years in prison, but was subsequently sentenced to life without parole as a third-strike offender. To adjudicate Mosley a habitual offender, the judge used a 12-year-old conviction for a nonviolent drug crime he had committed as a juvenile. Mosley, a former special education student who has an eighth-grade education, had only two priors: possession of cocaine with intent to distribute when he was age 17 and distribution of cocaine when he was 18.<sup>1149</sup> Mosley has served five years of his LWOP sentence and says that he feels “dead” and “lost in the system.”<sup>1150</sup> Calling his sentence “pure hell,” he says that it is “cruel and unusual punishment to think you will never be free before you die.”<sup>1151</sup> His fiancée continues to support him and visits him regularly. The father of five children, 36-year-old Mosley says, “I’d like to have my freedom back and be the best in society possible and father for my children.”<sup>1152</sup>

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## LOUISIANA

**Fate Vincent Winslow** was homeless when he acted as a go-between in the sale of two small bags of marijuana, worth \$10 in total, to an undercover police officer.<sup>1153</sup>

During an undercover investigation in Shreveport in September 2008, an undercover officer approached a white man named Mr. Perdue and Winslow, who is Black. The officer asked Winslow for two dime bags of marijuana worth \$10 each and promised a \$5 commission for Winslow, who says he accepted the offer in order to earn some money to get something to eat.<sup>1154</sup> Winslow says he bought two \$5 bags of marijuana from Perdue and sold them to the undercover officer as dime bags worth \$10 each.<sup>1155</sup> The undercover officer testified that he witnessed a hand-to-hand transaction between Winslow and Perdue and that he paid Winslow with a \$20 bill and a \$5 bill.<sup>1156</sup> When officers arrested Winslow, he only had the \$5 bill on him. Officers found the marked \$20 bill on Perdue (the white supplier), but did not arrest him.<sup>1157</sup>

According to Winslow, at trial, the 10 white jurors found him guilty of marijuana distribution, while the two black jurors found him not guilty (the state of Louisiana does not require a unanimous jury to convict and instead allows convictions by 10 out of 12 jurors). He was sentenced to mandatory life without parole as a fourth-strike offender. His prior convictions were for a simple burglary committed in 1984, when he was 17; simple burglary in 1994, when he was 27 (he was accused and convicted of opening an unlocked car door and rummaging inside without taking anything);<sup>1158</sup> and possession of cocaine in 2000, when he was 37 (an undercover officer tried to sell him cocaine, which he says he did not purchase).

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The officer asked Winslow for two dime bags of marijuana worth \$10 each and promised a \$5 commission for Winslow, who is Black. Officers found the marked \$20 bill used to buy the marijuana on the white supplier, but did not arrest him.

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Winslow is now 46 years old. He cannot afford an attorney and has filed his unsuccessful post-conviction appeals, written in pencil, himself. His mother died recently, and he has no friends or family outside prison with whom he is in contact. He spends time in the law library daily, “try[ing] to learn how to get out” and prays “every day all day...just living day by day waiting to die in prison.”<sup>1159</sup>

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LOUISIANA

## Travis Bourda is serving LWOP for possession of 130 grams of marijuana with intent to distribute.

Although no marijuana was found in his possession, the 29-year-old oil rigger was convicted at trial in October 2009. Bourda says he was represented by court-appointed counsel who filed no motions, failed to investigate, and made no objections at trial. The trial judge initially sentenced Bourda to eight years as a habitual offender because of his prior convictions for carnal knowledge of a juvenile a decade earlier when he was 19, and distribution of marijuana. After the prosecutor charged him as a third-strike habitual offender, the judge resentenced Bourda to 14 years and stated on the record that the life sentence sought by the prosecutor would be unconstitutionally excessive:

I believe a life sentence under the circumstances in these cases, a drug case, a carnal knowledge case, and another drug case would be an unconstitutional sentence.... I believe that fourteen years is more than enough considering the underlying charge was possession with intent to distribute marijuana, and that the amount of marijuana involved was not significant.<sup>1160</sup>

The prosecutor appealed the 14-year-sentence as illegally lenient, and the appellate court agreed and sentenced Bourda to life without parole.<sup>1161</sup>

Bourda, who calls himself “the most miserable person there is,” is a diagnosed schizophrenic who says he has received intermittent mental health care since he was 12.<sup>1162</sup> He talks with his mother and sister twice a week and has taken educational, religious, substance abuse, welding, and anger management classes in prison. Of his sentence, Bourda says, “Life without parole means you never going home, you never have a chance to show society you have truly change[d] and can be a productive member of society.”<sup>1163</sup> He adds, “It is a sense of hopelessness. Every day you wonder if you are ever going to make it home to your family and children.”<sup>1164</sup>

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The judge said, “I believe a life sentence under the circumstances would be an unconstitutional sentence considering the charge was possession with intent to distribute marijuana, and that the amount of marijuana involved was not significant.”

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## Anthony Kelly was sentenced to LWOP for possession of 32 grams of marijuana with intent to distribute in 1999, at age 25.

After a confidential informant made a controlled purchase of \$20 worth of marijuana from Gwen, a Kelly family neighbor, Kenner Police Department officers used a battering ram to forcibly enter and search her house, which was located across the street from the apartment where Kelly's mother and brother lived.<sup>1165</sup> At Gwen's house, police found a clear plastic bag containing 21 small nickel bags of marijuana in the toilet, as well as three partially smoked hand-rolled marijuana cigarettes in an ashtray.<sup>1166</sup> An additional 21 small bags of marijuana and a bag of loose marijuana were found in Gwen's purse.<sup>1167</sup> According to Kelly, at the time of the police search, he and his brother were at Gwen's house, helping bring in groceries after driving her to the grocery store.

Police arrested Gwen, her son, Kelly, and his two brothers. At trial, the lead detective claimed that she found Kelly and the neighbor's son trying to flush the marijuana baggies down the toilet.<sup>1168</sup> Kelly insists this is untrue, and both Gwen and her son testified that the detective found the marijuana after everyone had been handcuffed and brought to the living room. Gwen testified that the marijuana was hers, that she packaged the marijuana herself with no help from Kelly, and that Kelly did not know she was selling marijuana.<sup>1169</sup> Kelly was convicted, despite this testimony, by 10 out of 12 jurors.<sup>1170</sup> The lead police detective, a primary witness against Kelly, was later convicted of evidence tampering and malfeasance in office, and she was accused of taking drugs from the evidence room for her own use.

Kelly was originally sentenced to 15 years but was resentenced to a mandatory LWOP sentence as a third-strike felony offender based on two prior convictions, one for possession of cocaine with intent to distribute in 1995, when he was 21, and the other for simple possession of cocaine in 1993, when he was 19.<sup>1171</sup> Kelly had pleaded guilty to both charges and says he was never told that these convictions could be used to enhance a future felony sentence.<sup>1172</sup> He says that his sentence "feels like being buried alive."<sup>1173</sup> "Do I deserve to spend the rest of my life behind bars because I was in possession of 21 five-dollar bags of marijuana?" he asks.<sup>1174</sup> "This is my life story, I just want someone to hear a changed man cry."<sup>1175</sup>

Kelly, now 39, has served 13 years in prison. He says of prison, "It seems like it would get easier, but instead it gets harder every day."<sup>1176</sup> Kelly, who completed the ninth grade prior to his incarceration but was a special education student at a fifth-grade level, is currently studying for his GED. He has taken faith-based spiritual classes and courses in drug addiction and recovery and says that he has found God while in prison.



Anthony Kelly with his mother.

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“Do I deserve to spend the rest of my life behind bars because I was in possession of 21 five-dollar bags of marijuana?”

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When Kelly was arrested, his girlfriend was pregnant with his first child. His daughter is now 12 years old, and he says it is difficult being away from her. “She is my world,” he says. “I always sit and think about my daughter at night and wonder how did I fall short at providing for her.”<sup>1177</sup> His father and grandmother have died since he has been incarcerated, and his 73-year-old mother, with whom he is close, has cancer.



William Dufries

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OKLAHOMA

## William Dufries is serving LWOP for driving through Oklahoma with 67 pounds of marijuana in his RV.

From Atlanta, Georgia, Dufries was driving his RV through Oklahoma in February 2003 when an Oklahoma Highway Patrol trooper stopped him because he was driving eight miles over the speed limit and had a broken taillight.<sup>1178</sup> Marijuana was found in an ensuing search of his RV; according to court records, 67 pounds of marijuana were found. Dufries was convicted at trial of trafficking more than 25 pounds of marijuana. Dufries says that he became involved in transporting marijuana in order to pay his medical bills after he was diagnosed with lung cancer while uninsured. Dufries explains that it was “a bad decision to try to make some money to afford healthcare.”<sup>1179</sup>

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“My thinking was that no jury in their right mind would give a life-without-parole sentence for a nonviolent marijuana offense.” However, when the jurors convicted Dufries, they were unaware that the mandatory sentence in his case was life without parole.

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Dufries was sentenced to a mandatory LWOP sentence under Oklahoma’s habitual offender statute because of two prior convictions; in 1988, he pleaded guilty to conspiracy to distribute cocaine, and in 1996, he pleaded guilty to possession of marijuana with intent to distribute.<sup>1180</sup> According to Dufries, he rejected a plea deal of 40 years’ imprisonment because his public defender misinformed him that he would be eligible for parole after serving 36.4 years of the sentence, when in fact he would have been eligible for parole after only 13.3 years.<sup>1181</sup> Dufries says that his public defender also never explained that a life-without-parole sentence was a possibility when he decided to go to trial. He explains, “My thinking was that no jury in their right mind would give a life-without-parole sentence for a nonviolent marijuana offense.”<sup>1182</sup> However, when the jurors convicted Dufries, they were unaware that the statutory minimum sentence in his case was life without parole.

Dufries calls his sentence a “walking death sentence.” Referring to his understanding of James Holmes’s sentence for his mass shooting of moviegoers in Aurora, Colorado, Dufries told the ACLU, “It kills me that the kid who killed all those people in the movie theater is getting the same sentence I did. It doesn’t add up.”<sup>1183</sup> He adds, “Never going home for a nonviolent crime is just the worst. If I had killed someone or been a child predator, I could understand, but I just don’t—it is cruel, harsh and so wrong.”<sup>1184</sup>

Dufries has served 10 years in prison and is now 55. Dufries has completed the Faith

and Character Community Program, an intensive year-long character development program with a faith element, and he says that it has been extremely difficult to be surrounded by the violence he has witnessed in prison. Since he has been incarcerated, both of his parents have died, and his sister has fallen ill with cancer.<sup>1185</sup>

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OKLAHOMA

## Leland Dodd is serving LWOP for trying to buy 50 pounds of marijuana from an undercover officer.

Dodd believes he is the first prisoner to be sentenced to mandatory LWOP for a nonviolent drug crime under Oklahoma’s habitual offender law. He was sentenced to LWOP in 1991 for, as he puts it, “talking about buying some marijuana.”<sup>1186</sup>

Dodd is the father of three children, and prior to his incarceration he worked as a trim carpenter. He tried to buy 50 pounds of marijuana from an undercover police officer posing as a seller, and he was arrested before the sale was concluded. He was convicted in February 1991 of conspiracy to traffic in marijuana and possession of marijuana with intent to distribute. He was sentenced to a mandatory life-without-parole sentence because of his four prior drug felonies dating back to 1978, which included convictions for possession of marijuana with intent to distribute and possession of an unlicensed firearm he made from a kit he bought at a gun show.<sup>1187</sup> Under the sentencing guidelines, based on his prior offenses, his sentence would have been 13.5 years.

Now 59, Dodd has served 22 years of his sentence. Since his incarceration, he has divorced from his wife of 17 years. He told the ACLU, “I don’t see the point, I mean I don’t even smoke weed anymore. What’s the threat here? When I was on the street, I went fishing and I smoked joints...I wasn’t hurting anyone.”<sup>1188</sup>

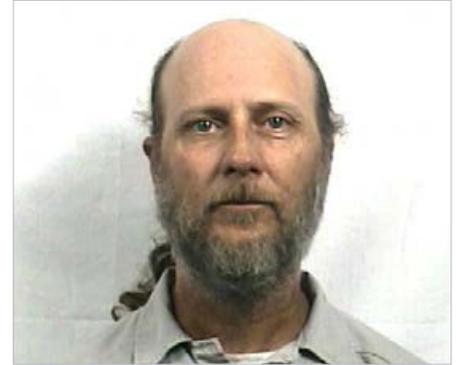
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LOUISIANA

## In February 2011, 35 year-old **Cornell Hood II** was sentenced to die in prison for attempting to possess marijuana with intent to distribute.<sup>1189</sup>

Prosecutors charged that two probation officers performing a warrantless “residence check” found less than two pounds of marijuana in the house Cornell shared with his mother and young son near Slidell, in the St. Tammany Parish of Louisiana.<sup>1190</sup>

Hood’s trial lasted only one day. Although the conviction would ordinarily carry a sentence of no more than 15 years, Hood was sentenced to life without parole under Louisiana’s habitual offender law because he had two prior convictions for



Leland Dodd

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“I don’t see the point, I mean I don’t even smoke weed anymore. What’s the threat here? When I was on the street, I went fishing and I smoked joints. I wasn’t hurting anyone.”

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possession of marijuana with intent to sell and one conviction for distribution of marijuana.<sup>1191</sup> Hood, who is Black, had never before served time in prison, as he had received a five-year suspended sentence and five years' probation for each of his prior convictions; he had been convicted of possession of marijuana with intent to distribute and distribution of marijuana on December 18, 2009, and he had pleaded guilty to possession of marijuana with intent to distribute five years earlier in February 2005. Hood's sentence was later vacated after the state agreed to strike his two December 2009 predicate convictions, and he was resentenced to 25 years in prison.



Paul Free with his mother, who died in December 2012.

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Free was sentenced to a mandatory minimum sentence of life without parole on account of two prior 20-year-old marijuana convictions.

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#### FEDERAL SYSTEM

**Paul E. Free** was arrested in 1994 for participating in a large marijuana conspiracy operated by another man who received a reduced sentence of only two-and-a-half years in exchange for testifying against 31 people, including Free.

Free was accused of conspiring with people he says he had never heard of, and also of transporting Mexican marijuana shipments from an Arizona park, though he says he had never set foot in Arizona during the previous 18 years. Two months after his arrest, Free graduated with a degree in biology from San Diego State University, and he continues to lament the lost job opportunities that were available to him at the time. According to Free, at the time of his arrest he was operating a language school under contract with the Catholic Church, and he was closing a lucrative deal with the Chinese government to sell them used steel and railroad rails.

After a trial during which Free recalls the judge fell asleep five times, Free was convicted of conspiracy to distribute and to possess with intent to distribute 1,756 kilograms of marijuana, in large part on the basis of cooperating co-conspirators who testified against him in exchange for reduced sentences.<sup>1192</sup> Free was held accountable for repeatedly transporting hundreds of pounds of marijuana to and from California.<sup>1193</sup> In 1995, Free was sentenced to a mandatory minimum sentence of LWOP on account of two prior 20-year-old marijuana convictions. Free had pleaded guilty in 1974 to possession with intent to distribute three pounds of marijuana, and in 1975 to conspiracy to distribute marijuana; the same marijuana led to both convictions. He says his attorney never told him he was facing a mandatory life term.

Now 63 years old, Free has been incarcerated for 18 years. He writes of his life prior to arrest, "I had a wonderful woman, 26 years old, who agreed to marry me and

start a family. Now, 18 years later, I have no children nor grandchildren.”<sup>1194</sup> He says it has been particularly difficult for him to be separated from family and friends. His mother died last December, and he says, “She cried many times when I spoke with her, saying, ‘I wish I could see you once before I die.’”<sup>1195</sup> Though they spoke on the phone at least two times a week, they had not seen each other in seven years due to her poor health and the geographic distance between them.

Free has taken many courses since entering the prison system, including classes in writing, American history, world history, legal research, electronics, and computers. He has taught GED classes and believes he had the highest percentage of successful graduates in the prison system. He says he derives special satisfaction from teaching older inmates to read. Free spends every day in the law library studying law and assists other inmates with their appeals. He reports he has succeeded in securing more than 100 years off the sentences of a few dozen prisoners, but he has failed to obtain any sentence reduction in his own case. He says, “I would tap dance out of here in a pink tutu and high heels if they would release me.”<sup>1196</sup>

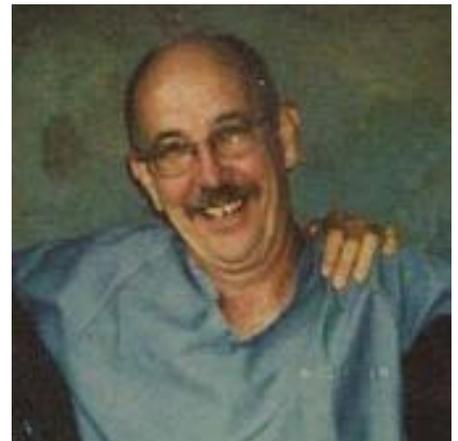
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#### FEDERAL SYSTEM

## John Knock, 66, is a first-time offender serving two LWOP sentences for a large marijuana conspiracy.

In the early- and mid-1980s, Knock worked with others to import hashish into Canada and marijuana into the United States. He says he withdrew from the organization in 1988 because he was concerned about U.S. drug enforcement activities and wanted to focus on his marriage. According to Knock, in 1993 one of his former associates attracted the attention of DEA agents, who constructed a massive marijuana conspiracy case through a reverse sting operation using a confidential informant and undercover agents. No marijuana was seized by the government, and the case was largely based on testimony from multiple co-conspirators who cooperated in exchange for reduced sentences. Knock was a fugitive until he was arrested in France in 1996 and later extradited to the United States. He was charged with operating, with co-conspirators, a drug organization that imported and distributed 790,000 pounds of marijuana and hashish from 1984 to 1993.<sup>1197</sup> Prosecutors characterized Knock as one of the world’s biggest smugglers of hashish and marijuana. At trial, he was convicted of conspiracy to import and possess with intent to distribute large quantities of marijuana, conspiracy to commit money laundering, and criminal forfeiture. Although Knock had no criminal record, he was sentenced to two life terms plus 20 years for money laundering.

Knock says, “I have been separated from my family for 17 years. I have watched our



John Knock

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“When a person goes to prison, the entire family pays the price. All do time of some sort.”

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son grow from three into a young man of 22 through telephone calls and prison visiting rooms. My life partner since 1974 is now my ex-wife.... When a person goes to prison, the entire family pays the price. All do time of some sort.”<sup>1198</sup> Knock’s ex-wife, son, two sisters, and brother all visit him regularly. Since 2003, he has mentored inmates, helping them adjust to incarceration and counseling them on how to use their time productively in prison. Known in prison as “the professor,” Knock also teaches and develops adult continuing education and construction classes for other prisoners.



Larry Duke with his daughter and grandson.

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A carpenter and inventor who continues to work on engineering problems in prison, Duke obtained a federal patent for a clean water-delivery system while serving his life sentence.

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#### FEDERAL SYSTEM

## Larry Ronald Duke, 66, has served 24 years of his two life-without-parole sentences for a large marijuana conspiracy.

Duke was convicted of conspiring to possess with the intent to distribute in excess of 1,000 kilograms of marijuana and attempted possession with the intent to distribute in excess of 1,000 kilograms of marijuana. In late 1989, Duke attempted to purchase, with co-conspirators, a large quantity of marijuana from a government informant who had a prior marijuana arrest.<sup>1199</sup> Undercover officers set up the sale and arrested Duke and his co-conspirators immediately after delivering 4,800 pounds of marijuana to them.<sup>1200</sup>

Duke is a decorated Vietnam War combat veteran who served two tours of duty in Vietnam with the Delta Company 1st Battalion, 7th Marine Regiment. He says he has been diagnosed with post-traumatic stress disorder due to his military service in Vietnam. Duke told the ACLU, “[W]hile I was there, I often thought I would probably die in a firefight in Viet Nam, and then later, I thought maybe I’d catch a streamer while sky-diving and crash and burn. Or perhaps, lose control of a car at a very high rate of speed, but never in my wildest dreams have I ever imagined I’d die in prison.”<sup>1201</sup>

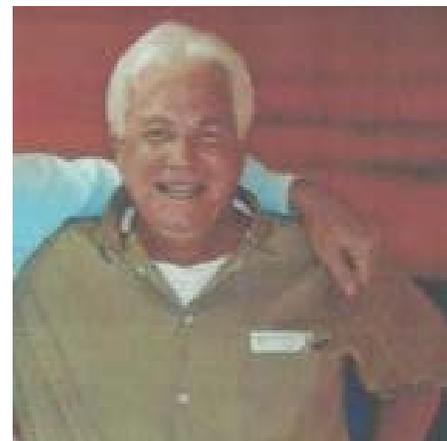
A carpenter and inventor who continues to work on engineering problems in prison, Duke obtained a federal patent for a clean water-delivery system while serving his life sentence. He has a wife, two children, two grandsons, and a large extended family who want him home. Incarcerated since 1989, Duke says that he fervently wishes that Congress will “opt to give some degree of hope of our having one more shot of Tequila, and one more slow dance with Sheila before we go.”<sup>1202</sup>

## William Dekle, 63, has served 22 years of his two mandatory terms of life without parole for conspiracy to import and possess large quantities of marijuana.

Born in Gainesville, Florida, Dekle grew up on a farm in New River and attended Lake City Community College. He also served in the Marines, from which he was honorably discharged. Dekle was an FAA-licensed pilot and flew planeloads of marijuana into the United States. He was convicted in 1981 and 1983 of marijuana smuggling. He skipped parole in 1987 and was finally convicted in 1990, at age 40, of conspiracy to import and possess more than 1,000 kilos of marijuana, for which he was sentenced to two mandatory sentences of life without parole despite the trial judge's characterization of the sentence as draconian.

Dekle told the ACLU that his sentence is “like being dead, but without the peace that comes with death.”<sup>1203</sup> He has served the majority of his sentence in high-security federal prisons, where he says he witnesses assaults as part of daily life and even homicides are not uncommon. He has taken more than 30 educational and vocational courses during his more than two decades in prison, and he counsels other prisoners. He suffers from a chronic knee injury and has a staggering gait. His wife, two daughters, and grandchildren know him as “Papa Billy” and are eager to support him if he were to be released from prison.

He says, “Since I’ve gone to prison, my children have graduated from high school. They have graduated from college. My children have had children of their own. My mother has passed away, my father has passed away. There are correctional officers and inmates here that were not born when I started this sentence. How much more do they want? Is my death here the only thing that will satisfy society?”<sup>1204</sup>



William Dekle

“How much more do they want? Is my death here the only thing that will satisfy society?”

## Charles Frederick “Fred” Cundiff, 67, is serving LWOP for importing marijuana.

Prior to his incarceration, Cundiff worked at a plant nursery, in construction, as a mortgage solicitor, and as a stereo store manager. He was sentenced to life without parole for conspiracy to import and distribute more than 1,000 kilos of marijuana and has been incarcerated since 1991.<sup>1205</sup> According to Cundiff, at sentencing, the



Charles Frederick Cundiff

trial judge stated that he would sentence Cundiff to 15 to 20 years, but if he did so, such a sentence would be reversed on appeal. Cundiff has served 22 years in prison and worked steadily for 12 years of his imprisonment, but he had to stop working due to his declining health. Now, he is seriously ill and requires a walker. He suffers from skin cancer, a dropped foot and shrunken leg due to severe arthritis and spinal surgery, disintegration of orbital bone due to chronic infection, and vision problems. He has three children, nine grandchildren, and six great-grandchildren. He is visited regularly by two friends from his youth. Of prison, Cundiff says, “If I should die and go to hell, it could be no worse.”<sup>1206</sup>



Craig Cesal with his daughter, Lauren, who was 14 years old when her father was incarcerated 11 years ago.

#### FEDERAL SYSTEM

## Craig Cesal, 54, is a first-time felony offender serving LWOP for conspiracy to possess with intent to distribute marijuana.

His only prior conviction was a misdemeanor for carrying a bottle of beer into a Bennigan’s bar when he was a college student in 1981, for which he paid a \$150 fine.

For more than 23 years, Cesal owned and operated a towing and truck repair business that provided services to police departments and sheriffs, car and truck rental companies, and trucking companies. His company retrieved trucks throughout the Midwest. Cesal’s clients also included a trucking company whose drivers trafficked marijuana.

According to Cesal, his Chicagoland, Illinois, company retrieved and repaired trucks operated by the Florida-based Sun Hill Trucking Company, whose drivers transported and distributed marijuana in addition to carrying the usual freight. Cesal explains that over the span of many years, drivers employed by Sun Hill would drop off semi-trailers at his shop for needed repairs after they were torn apart from smuggling contraband. Then, his company would return the truck to the rental company; sometimes the drivers would pay his company to retrieve the truck or trailer before repairing and returning it. For instance, on one occasion, his company retrieved a semi leased by Sun Hill that had been impounded at the United States-Mexico border, secured the truck’s release from DEA custody, made repairs to panels DEA agents ripped from the trailer in order to extract marijuana encased in its roof and walls, and returned the trailer to the leasing company. Cesal says that at no time did he think he was breaking the law.<sup>1207</sup>

Cesal was arrested in 2002 when he traveled to Georgia to retrieve a rented semi discarded at a recycling center by Sun Hill workers who had transported, offloaded, and departed with 2,667 pounds of marijuana from Mexico. Cesal was accused of conspiring with more than 20 co-conspirators, including the Sun Hill employees.

“I was never accused of buying, selling, possessing, or using marijuana—and I didn’t.”

Those who provided, received, bought, and sold the marijuana were arrested and prosecuted in Texas, Florida, North Carolina, and elsewhere. “I was never accused of buying, selling, possessing, or using marijuana—and I didn’t,” Cesal says.<sup>1208</sup> “I never had a stake in the success of any marijuana venture—my repairs were required whether or not the driver was busted.”<sup>1209</sup>

On the advice of his attorney, whom he says advised him he would get a sentence of seven years, Cesal pleaded guilty. He says he subsequently learned that under the terms of the plea agreement, he would have to testify in any grand jury, deposition, or trial requested by prosecutors. Cesal recalls prosecutors wanted him to testify against a number of people he did not know and two people he believed were innocent of the charges against them.<sup>1210</sup> According to Cesal, he was told that he would receive a life sentence if he refused to provide the expected testimony and that he could reduce the life sentence only through a series of incremental reductions by providing substantial assistance in the prosecution of others.<sup>1211</sup>

When he discovered the terms were not what he expected, Cesal recalls he announced he wanted to withdraw the plea agreement. The judge denied withdrawal.<sup>1212</sup> Because Cesal breached the plea agreement by refusing to testify falsely against others, he was sentenced to a mandatory LWOP sentence under the federal sentencing guidelines for his first felony conviction. He says, “I voted my conscience and breached the plea agreement. I do not believe my sentence should have been inextricably intertwined with my ability or inability to provide substantial assistance in the prosecution of others.”<sup>1213</sup>

Because Cesal’s plea agreement included a waiver of any appeal of his sentence, Cesal has been unable to challenge his sentence.<sup>1214</sup> All of Cesal’s eight co-defendants pleaded guilty in exchange for sentences ranging from 50 to 130 months. He says, “In my case, those who did traffic marijuana received little or no prison sentences and resumed their activities. They patronize a different repair station now.”<sup>1215</sup>

Cesal was 42 years old when he was arrested. He was married with two children, had held the same job for over 20 years, and had owned his home since 1983. Now 54, he has been incarcerated for 11 years. While in prison, he has earned his paralegal certificate through a correspondence course and works tirelessly as a jailhouse lawyer assisting other prisoners with their cases.<sup>1216</sup> He speaks weekly with his children, Lauren and Curtis, who were 14 and 10 years old, respectively, when he was incarcerated. Cesal is devastated that he has to “forever endure [his] life in prison,” and says, “I hope to die, sooner rather than later.”<sup>1217</sup>

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“In my case, those who did traffic marijuana received little or no prison sentences and resumed their activities. They patronize a different repair station now.”

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## LIFE WITHOUT PAROLE DUE TO CRACK/POWDER COCAINE SENTENCING DISPARITY

As part of the Anti-Drug Abuse Act of 1986, Congress ignored empirical evidence and created a 100-to-1 disparity between the amounts of crack and powder cocaine required to trigger certain mandatory minimum sentences, even though they are simply two forms of the same drug, and the only difference between them is that crack includes the addition of baking soda and heat. As a result of Congress's perceived differences in the harmfulness and dangerousness between crack and powder cocaine, sentences for offenses involving crack cocaine were made much longer than those for offenses involving the same amount of powder cocaine. Thus, for example, someone convicted of an offense involving just five grams of crack cocaine (the weight of two pennies) was subject to the same five-year mandatory minimum federal prison sentence as someone convicted of an offense involving 500 grams of powder cocaine. Not only was there no scientific basis to support the supposed differences between crack and powder cocaine that Congress had relied on in devising the 100-to-1 ratio, but the 100-to-1 ratio resulted in vast unwarranted racial disparities in the average length of sentences for comparable offenses because the majority of people arrested for crack offenses are Black. In fact, under the 100-to-1 regime, by 2004, Blacks served virtually as much time in prison for a nonviolent drug offense (58.7 months) as whites did for a violent offense (61.7 months).<sup>1218</sup>

In the past five years, the United States Sentencing Commission has made two adjustments to the federal Sentencing Guidelines that significantly reduced, though did not eliminate, the unfounded sentencing disparity between crack and powder cocaine offenses in the Guidelines. First, in 2007, the Sentencing Commission amended the Sentencing Guidelines by lowering the sentencing ranges for most crack cocaine offenses. Then, in 2010, in long overdue recognition of the unfairness of the sentencing disparity, Congress passed the Fair Sentencing Act (FSA), which reduced the disparity between the amounts of crack and powder cocaine required to trigger certain mandatory minimum sentences from 100-to-1 to 18-to-1. In 2011, the Sentencing Commission amended the Sentencing Guidelines to reflect the FSA and then voted to apply the new guidelines retroactively to individuals sentenced before the FSA was enacted.<sup>1219</sup> This decision created the

opportunity for more than 12,000 people sentenced for crack cocaine offenses under the 100-to-1 regime—85 percent of whom are African-Americans—to have their sentences reviewed and possibly reduced by a federal judge. In June 2012, the Supreme Court ruled that the FSA applies to people whose offenses pre-date the law but who were sentenced after its passage.

Unfortunately, despite Congress's and the Commission's determinations that the previous crack cocaine penalties under which thousands of defendants were sentenced were unfair, the ACLU documented a number of cases in which prisoners serving LWOP sentences have been unable to benefit from these sentencing adjustments. In some cases, this was because the sentences were controlled by statutory mandatory minimums determined by Congress prior to the passage of the FSA. Only Congress (not the Sentencing Commission) can amend or repeal these mandatory minimum sentences, and yet it did not do so when it passed the FSA. The FSA lowered the quantity of drugs that triggered the mandatory minimum but did not change the mandatory minimum sentences. In such cases, people cannot benefit from the retroactive Sentencing Guideline amendments because they remain subject to statutory mandatory minimums. For others, neither the FSA nor the Commission's adjustments resulted in a reduction of their sentencing ranges because they were convicted as participants in drug conspiracies regardless of the actual (and in some cases, minor) scope and level of their participation in the conspiracy. As such, they were held accountable for all the drugs possessed and distributed by the conspiracy. For these people, the amounts of drugs for which they were held responsible, and the enhancements applied to their sentences, renders review or reduction of their sentences impossible.<sup>1220</sup>

While the FSA was a step toward increased fairness, the 18-to-1 ratio continues to perpetuate the outdated and discredited assumptions about crack cocaine that gave rise to the unwarranted 100-to-1 disparity in the first place. In several cases documented by the ACLU, prisoners serving LWOP sentences would have already been eligible for release if the disparity between the amounts of crack and powder cocaine required to trigger certain mandatory minimum sentences were eliminated. Crack and powder cocaine are two forms of the same drug, and Congress should eliminate any disparity in the amount of either necessary to prompt mandatory minimum sentences.

## Douglas Ray Dunkins Jr. was sentenced to LWOP at age 26 for conspiracy to possess and distribute crack cocaine.<sup>1221</sup>

The trial court found that from ages 23 to 25, Dunkins manufactured and distributed crack cocaine for a Fort Worth, Texas-based drug conspiracy comprised of 15 co-conspirators. No drugs were ever seized in the case, and Dunkins was convicted largely on the basis of testimony from co-conspirators who received reduced sentences in exchange for their testimony.

Dunkins was sentenced to a mandatory sentence of life without parole; if had he been sentenced for an equal amount of powder cocaine instead of crack, he would have received a sentence of 20 years. At sentencing, Judge Terry R. Means told him, “[I]t does seem unfair that the guidelines bind me to give you a life sentence.... It troubles me to think that you at your age [are] going to have to spend the rest of your life in prison. It troubles me a lot.”<sup>1222</sup>

It was Dunkins’s first felony conviction. He had only one prior misdemeanor conviction for shoplifting from Kmart when he was 21 years old, for which he received one-year probation. “To have no release date is devastating, as a first-time nonviolent offender,” he says.<sup>1223</sup> “I can’t even remember being sentenced; I was in a total daze that they pulled a life sentence on me. I didn’t understand the sentence at the time. Two to three months later, I find out a life sentence is a life sentence. I’m surprised that I am still able to function.”<sup>1224</sup>

Dunkins, now 47, has been incarcerated for nearly 22 years. If the crack/powder cocaine disparity were eliminated, he would already have been released from prison. His three daughters, who were only one, five, and six years old when he was incarcerated, are now in their twenties; two are in medical school. He stays in touch with his daughters and mother weekly. He says of being separated from his daughters, “It’s devastating, horrible, not being around to see them graduate and go to school and day-to-day function as a family should. I missed their graduations.”<sup>1225</sup> He adds, “I missed out on a lot, with my family. I missed out on marriages, funerals.”<sup>1226</sup>

Dunkins says that his mom, Bonnie Dunkins, cries whenever she visits him. Bonnie, who has Stage 4 cancer, told the ACLU, “I ask God to help me to hold on. I just want to live, God’s will, to see him come home...I just pray and ask God to let me live to see him home.”<sup>1227</sup> She adds, “His father didn’t live to see him be released. Whatever my oncologist gives me, I don’t object. I’m just trying to hold on for my son. I love him. I just pray that I live to see that day that he walks through that door.”<sup>1228</sup>



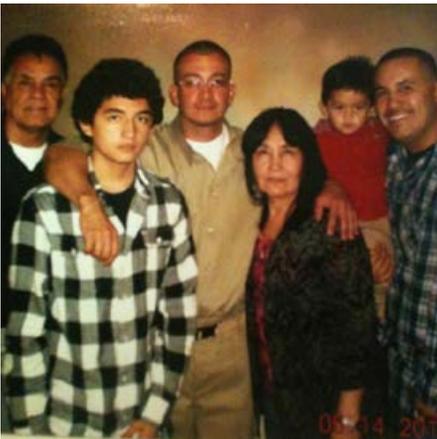
Douglas Ray Dunkins Jr. with his family. His daughters were one, five, and six when he was incarcerated. They are now 23, 25, and 27.

“It does seem unfair that the guidelines bind me to give you a life sentence. It troubles me to think that you at your age [are] going to have to spend the rest of your life in prison. It troubles me a lot.”

— Judge Terry R. Means

Bonnie remains extremely close with her son, who says he desperately wishes he could be released from prison to support her. “That’s my only son and he was such an inspiration and a big help to me when he was at home. We just did everything together, and I miss him. It’s been hard for me,” Bonnie says.<sup>1229</sup> “I just miss him so much. He’s my only son. I have three daughters, but no one takes the place of Douglas Ray Dunkins Jr.”<sup>1230</sup>

For nearly a decade, Dunkins has worked as a certified paralegal, assisting other inmates with their cases; he says he loves doing legal work. He has completed an array of educational and vocational programs while in prison and has held several prison jobs, including a position working in the prison’s food administration warehouse. He says that if he were released from prison, he would mentor youth to ensure they avoid making the mistakes he has made and work as a paralegal. “Given a second chance, I know that I would be much more productive,” he says.<sup>1231</sup> “Prison has opened my eyes to a lot of things in life in general. And it’s educated me.”<sup>1232</sup>



Jason Hernandez with his parents, brother, and teenage son, Estevan.

#### FEDERAL SYSTEM

**Jason Hernandez, 36, has been serving life without parole since age 21 for his role in a drug conspiracy starting when he was only 15.**

While growing up in McKinney, Texas, Hernandez says he consistently made honor roll and was never considered a troublemaker in school.<sup>1233</sup> After starting high school, however, he started associating with neighborhood drug dealers.<sup>1234</sup> According to Hernandez, at age 15 he began dealing marijuana joints and dime bags on the street corners of McKinney, following in his older brothers’ footsteps.<sup>1235</sup> Everyone he knew sold or used drugs, and he says, “At that time I saw nothing wrong with it. Everyone was doing it, hustling. It was a cool thing to do. You went from skateboarding to breakdancing to drug-dealing.”<sup>1236</sup> Hernandez says that by age 17, the amounts of marijuana he distributed had increased to quarter-pounds and pounds, and he started selling crack cocaine and methamphetamine, usually in amounts ranging from a quarter-ounce to an ounce. Eventually his friends assisted in storing and delivering the drugs.<sup>1237</sup>

About a month after he turned 21, Hernandez was arrested on federal drug charges. His two elder brothers and numerous friends were arrested and charged as co-conspirators. Three months later, in June 1998, he was convicted of conspiracy to possess with intent to distribute and conspiracy to distribute drugs, including crack cocaine; possession with intent to distribute crack cocaine; distribution near a school zone; and maintaining a house to store drugs.<sup>1238</sup> He was convicted of committing these crimes over a five-year period when he was between 15 and 20,

and the sentencing judge found him to have been a leader of the drug conspiracy from when he was only 16.

Hernandez had only one prior adult conviction—a misdemeanor for failing to pull over his car in a timely manner, for which he paid a fine—and two juvenile convictions for simple possession of a gun when he was 14 and 17 years old.<sup>1239</sup> Though he had been convicted as a juvenile of possessing a weapon, there were no allegations in his federal drug conspiracy trial regarding use or possession of any weapons.

Before sentencing Hernandez to LWOP, the district court judge stated that he disagreed with the crack/powder cocaine sentencing disparity and that he had written to Congress to change it.<sup>1240</sup> The judge also stated, through reference, that it was hard for him to sentence someone as young as Hernandez (who was 21 at the time of sentencing) to LWOP, but that under the mandatory federal sentencing guidelines he was unable to give a lower sentence.<sup>1241</sup> Later, the lead narcotics officer responsible for Hernandez’s arrest wrote a letter stating his opinion that although Hernandez should have been imprisoned for his involvement in drug-dealing, a life-without-parole sentence is too severe in his case.<sup>1242</sup>

Hernandez’s supplier, who was charged with distributing the same amount of cocaine as Hernandez but in powder form, was sentenced the same day to only 12 years in prison.<sup>1243</sup> The dramatic difference in their sentences was partly the result of the sentencing disparity between crack and powder cocaine offenses, which was 100-to-1 at the time of Hernandez’s sentencing. If the crack/powder cocaine sentencing disparity were eliminated, Hernandez would be eligible for release in four years.

Hernandez told the ACLU, “I...believe that a sentence that will result in my death in prison, leave my child forever without a father, and my parents without a son, should be determined by a human being, a judge with his wisdom and experience—not a mathematical formula.”<sup>1244</sup> He likens his sentence to “living and dying at the same time.”<sup>1245</sup> He explains, “This life sentence...has given me the unique experience of looking at the world through the eyes of a dead man, you could say. Imagining all the things I would love to do, and things I would do differently if only I could get a second chance at life.”<sup>1246</sup>

Hernandez, who is Mexican-American, speaks weekly with his parents, brothers, and son. His 15-year-old son, Estevan, was only eight months old at the time of his father’s arrest. Hernandez says he is distraught that he has missed out on raising his son and guiding him through the pitfalls he himself faced as a boy. He explains, “Being raised without a father, I can just imagine what it does to him—your father is supposed to be there to teach you about life. He’s in the same neighborhood I was raised in. There you’ll see drug dealers, you’ll see prostitutes, you’ll hear gunshots. I know the possibilities of him doing drugs, selling drugs, coming to prison. I know that you take his father away, the possibilities increase greatly.”<sup>1247</sup>

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“This life sentence has given me the unique experience of looking at the world through the eyes of a dead man. Imagining all the things I would love to do, and things I would do differently if only I could get a second chance at life.”

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During his more than 15 years of incarceration, Hernandez reports he has never been written up for a disciplinary infraction. He has completed a number of college and vocational courses, including business management, paralegal studies, and welding. He also participates in a program called A Better Path, through which he speaks with troubled youth about seeking opportunities other than breaking the law and tells them about the hardships that his crimes and imprisonment have imposed on him and his family. Hernandez was also selected to serve in his prison's suicide watch companion program. He has maintained consistent employment throughout his incarceration and currently works as an orderly in the prison.

"My incarceration was necessary and has done me good," but "[I] feel there is nothing to be gained by keeping me in here till I die," he says.<sup>1248</sup> "[M]entally, my brain can't comprehend that no matter how old I get and regardless of whatever extraordinary changes I make in my character, it will account for nothing, for I am going to die in prison regardless. It just doesn't make sense."<sup>1249</sup>



Marcus Evans

#### FEDERAL SYSTEM

**Marcus Evans** has been imprisoned since age 21, serving mandatory life without parole for his role in a drug ring over the course of a single year, his first offense.

Evans grew up on the west side of Rockford, Illinois, and his father died when he was young. He graduated from high school and served as a medic in the U.S. Army for two years, returning to Rockford after receiving a general discharge.<sup>1250</sup> Evans worked at his stepfather's gas station and for a cleaning service.

According to prosecutors, Evans joined a large drug ring in Rockford in April 1992. The drug ring sold crack and powder cocaine out of various drug houses in Rockford and was highly organized, with several levels of management, including runners, lookouts, and supervisors. The members of the operation owned guns and carried them on a regular basis. Although he had participated in the conspiracy for only a year (until his arrest in 1993 at age 21), he was convicted as part of a much larger drug conspiracy case involving 20 defendants.<sup>1251</sup> He was convicted of conspiracy to possess powder and crack cocaine with intent to distribute, in part on the basis of the testimony of co-defendants who received sentences ranging from 60 to 132 months in exchange for their cooperation.<sup>1252</sup> Evans was held accountable for the entire amount of drugs sold by the conspiracy during his one-year involvement, and the judge accordingly attributed 40 kilograms of crack cocaine to him.<sup>1253</sup>

The judge enhanced Evans's offense level for sentencing purposes based on his supervisory role and possession of a gun. Evans's co-defendant was convicted of

using a firearm during and in relation to a drug offense, but there were no charges that the defendants committed any specific acts of violence as part of the case.

Although he had no criminal history, Evans was sentenced to mandatory life without parole in 1994, when he was 23 years old. Judge Philip Reinhard, the sentencing judge, told Evans that he “would not have faced the same penalty had this prosecution been brought in state court,”<sup>1254</sup> and said he thought the punishment was excessive:

I have been on the bench and participated in criminal cases in other capacities for almost 30 years, and a life sentence is generally reserved for someone who’s killed somebody else or severely injured somebody or tortured somebody or for a person who’s committed many violent acts.... It just seems to me that the consequences that you face are rather severe for a boy who’s 23 years old, graduated from high school, went into the military, got out of the military, and got involved in this organization for a period of one year and now faces a sentence for the rest of his life, unless the laws change. And I am concerned over that, but I have no choice in the matter.<sup>1255</sup>

Evans would have been sentenced to 20 years if crack and powder cocaine were sentenced equally. Judge Reinhard, a Republican appointee, emphasized that the sentence was the result of the Sentencing Guidelines and the sentencing disparity between crack and powder cocaine, which was 100-to-1 at the time, but he had no choice as the sentence was mandatory:

[Y]ou have received a sentence that has been set by the Sentencing Guidelines. These Guidelines are mandatory. They take the discretion...from me in this case under the facts once the Guidelines are calculated.... The United States Supreme Court has upheld life imprisonment for distribution of certain amounts of crack cocaine, [y]et I believe there is some validity to the fact that crack cocaine and powder cocaine should not have that great a disparity. In this case, for the amounts that you have been found to be responsible for, if crack and powder carried the same sentence, you would be facing a 20-year sentence. That still is a long sentence. It still is a great punishment, but there is a disparity. That’s what the law is. That’s what I’m obliged to follow.<sup>1256</sup>

Marcus is 41 years old and has been imprisoned for 20 years. He says that he has become a different person in the two decades he has been imprisoned. “From 21 to 41 who is the same person?” he asks. “I’ve grown up in prison. This is where I matured,” he said.<sup>1257</sup> “I’m no threat to society... [S]eeing me die in prison benefits who? I’m a loving, caring human being. I have family and friends who love me, and this needs to end for all of us.”<sup>1258</sup>

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“A life sentence seems rather severe for a boy who’s 23 years old, graduated from high school, went into the military, got out of the military, and got involved in this organization for a period of one year and now faces a sentence for the rest of his life, but I have no choice in the matter.”

— Judge Terry R. Means

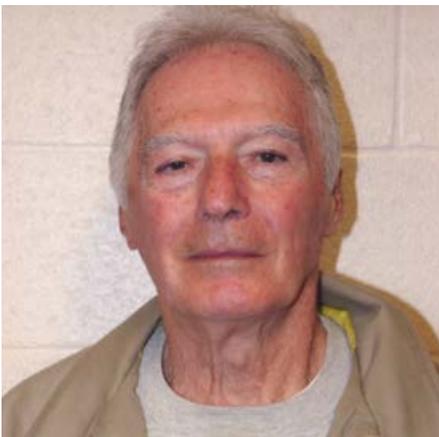
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## AGING AND ELDERLY NONVIOLENT PRISONERS

“I had just turned 36 years old when I was arrested in this case. I will turn 60 in July. I have seen firsthand all these guys that were my age and younger guys turn old in these prisons.... Our hair has turned gray, white, some of us have lost all our hair. We’re getting old and in another 15-20 years some, if not most of us, will be dead.”<sup>1259</sup>

—Kenneth Fragoso, 60, serving LWOP for cocaine conspiracy because of a drug transaction between two confidential informants

Due to extreme sentencing policies and the growing number of life, LWOP, and other death-in-prison sentences, the population of elderly prisoners in the United States is exploding, turning many correctional facilities in the United States into veritable nursing homes. A life-without-parole sentence means that prisoners will inevitably grow old and incapacitated in prison, even when they no longer pose sufficient safety threats to justify their continued incarceration. The ACLU’s June 2012 report, *At America’s Expense: The Mass Incarceration of the Elderly*, detailed the epidemic of aging prisoners in the United States due to LWOP and other long sentences and the staggering cost to taxpayers to warehouse aging and elderly prisoners, who are twice as expensive to incarcerate as the average prisoner.<sup>1260</sup>



Ignazio Giuliano, 78, in a recent photo. He has been incarcerated for 23 years.

### FEDERAL SYSTEM

## Ignazio “Nat” Giuliano, 78, has served more than two decades of a mandatory minimum LWOP sentence for conspiracy to distribute cocaine.

Born in Brooklyn and raised in Upstate New York, Giuliano worked in construction as a carpenter and painter. He later moved to Fort Lauderdale, where he raised his children and owned the Paddlewheel Queen, a paddleboat restaurant used for dinner cruises. He says he sought to obtain financing for the business through an additional investor, a former Pompano Beach nightclub owner who would later be declared the organizer, leader, and manager of the drug conspiracy for which Giuliano was later indicted.

Giuliano, then 55, was arrested in October 1990. He was one of 16 arrested as part of a large cocaine distribution conspiracy but only one of three to challenge the charges against him at trial. He was convicted of conspiracy to distribute and to possess with the intent to distribute more than five kilograms of cocaine.<sup>1261</sup> The leader of the conspiracy testified against Giuliano and two co-defendants in exchange for a reduced sentence and was released from prison after only serving three years. According to Giuliano, he also was convicted on the basis of the testimony of a co-conspirator who, in exchange for his testimony that Giuliano was his personal contact for the purchase of cocaine, was permitted to retain properties that would have otherwise been seized by the government.

Giuliano was sentenced to life without parole in 1991. His sentence was enhanced to mandatory LWOP because he was classified as a career criminal on account of his prior convictions. He had four priors from 1977 and 1978 for possessing five grams of marijuana, delivery of marijuana and cocaine, conspiracy to delivery marijuana, and conspiracy to distribute and possess marijuana.<sup>1262</sup> From 1978 until his arrest in October of 1990, he had no arrests.

According to Giuliano, the prosecutor had offered a plea deal of five years, but his defense attorney at the time did not make him aware of the offer.<sup>1263</sup> Also unbeknownst to him, his defense attorney had a personal and business relationship with the co-defendant who testified against him. Giuliano appealed his conviction and sentence, but it was denied because he filed it 70 days late. His habeas corpus motion based on ineffective assistance of counsel was rejected as time-barred as well.

Giuliano has spent 23 years in prison. His health is in decline. Over the past two years, he has had multiple operations and experienced a health scare during which his glucose level plummeted and he nearly died.<sup>1264</sup> He takes 13 medications on a daily basis, his hearing is severely diminished, his vision is deteriorating, and he suffers from a form of skin cancer that keeps him indoors.<sup>1265</sup> He also suffers from blood pressure issues that cause him to lose consciousness. He says, “I am an old man now. I made mistakes in my life, but I am not a threat to society, and I begrudge no one. My co-defendants have been home for years. All I am asking is to be afforded the dignity to spend the last few years of my life with my family, and to die outside of prison.”<sup>1266</sup>

Giuliano is from a large, close-knit family that is eager to be reunited with him. He speaks with his two sisters, son, and daughter every Sunday. He lost both of his parents while in prison and has not seen his children in years.<sup>1267</sup> He explains of his children, “They love me and they want to visit, but I just cannot bear the thought of them seeing me like this.”<sup>1268</sup> He has not met his grandchildren. His daughter, Karen, said, “He needs to be with his family,”<sup>1269</sup> and his son, Joseph, wishes his father could “spend his remaining years with his family so that we can take care of him.”<sup>1270</sup> His children and two sisters all want him to move in with them to live out his remaining days.

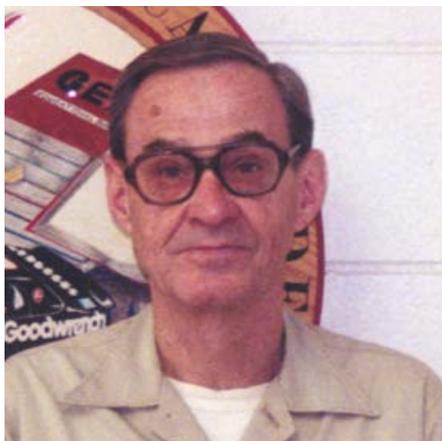
The clinical director at the prison wrote that Giuliano should be released to home confinement because he has “worsening health issues related to his age,” which “will continue to worsen as he ages.” The clinical director described him as gentlemanly; with calm demeanor, solid integrity, respect for others, and commitment to the welfare of his family; and called him a “model mentor for younger inmates on the importance of living an honorable life.” Giuliano says he has never had a disciplinary incident report filed against him.

Giuliano’s co-defendant who also went to trial, **Bill Westcott**, was also sentenced to life without parole. Now 80 years old, Westcott requires a walker to move around and has limited mobility. He is suffering from cancer, which has required radiation treatment, and expects that he cannot live through another round of chemotherapy.

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“I am an old man now. I am not a threat to society. My co-defendants have been home for years. All I am asking is to be afforded the dignity to spend the last few years of my life with my family, and to die outside of prison.”<sup>1271</sup>

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Robert Jonas in a photo taken in 2005. He is now 75 years old.

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Jonas has served 22 years in prison and is now 75. He has been written up for a single disciplinary infraction: keeping a cat in his cell. If released from prison, Jonas would “go home and adopt a few cats.”

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**Robert Jonas, 75, was convicted of conspiracy to possess, import, and distribute cocaine and marijuana in 1992 and sentenced to LWOP when he was 52 years old.**

Jonas had one prior conviction, for sale of one kilogram of cocaine in 1985, at age 46, for which he served five years in prison.

Jonas says he has struggled since 1963, when, at age 25, he was wrongly diagnosed with cancer. The misdiagnosis led to unnecessary surgeries and radiation treatment that has left him, in his words, “‘half-sick’ ever since.”<sup>1272</sup> After graduating from college in 1966, Jonas gradually descended into alcoholism. He began a career as an accountant and, after receiving treatment, quit drinking alcohol for good in December 1982.<sup>1273</sup>

Around this time, Jonas became involved in marijuana smuggling. In early 1991, under suspicion that Jonas and others were tied to the Cali drug cartel of Colombia, customs agents set up a reverse sting operation in which agents and two confidential informants transported 7,000 pounds of marijuana and 4,700 pounds of cocaine from Colombia to New Jersey in exchange for \$9 million.<sup>1274</sup> On May 30, 1991, Jonas and three other men who were also targeted were arrested after driving to the pre-arranged site for the drug sale at a Comfort Inn in Elizabeth, New Jersey.<sup>1275</sup> The court found that Jonas and one of his alleged co-conspirators, Eduardo Mantilla, were the ringleaders behind the largest cocaine and marijuana importation scheme in New Jersey history and sentenced both men to LWOP.<sup>1276</sup> At trial, Jonas asserted that he was a mere “go-between” in an international drug conspiracy.<sup>1277</sup> According to Jonas, he was a low-level employee, primarily keeping accounting records, and he never possessed a weapon or did his own drug deal.<sup>1278</sup> He has taken responsibility for helping to set up the deal, but said that “the crime could not have happened but for the government and their agents provocateurs.”<sup>1279</sup> According to Jonas, the confidential informants were paid \$400,000 and \$250,000, respectively, for their roles in the operation.<sup>1280</sup>

Jonas has served 22 years in prison and is now 75. In his spare time, he helps other prisoners with their studies and teaches accounting. Jonas says he enjoys reading, playing the trumpet, solving puzzles, and taming wild cats.<sup>1281</sup> He has been written up for a single disciplinary infraction: keeping a cat in his cell. If released from prison, Jonas would “go home and adopt a few cats.”<sup>1282</sup>

An aging Cuban fisherman with a seventh-grade education, **Leopoldo Hernandez-Miranda**, 74, is serving LWOP for a nonviolent marijuana offense.

Hernandez-Miranda was convicted of possession of marijuana with intent to distribute at age 55 after he and three others served as middlemen in shipping a truckload of marijuana.<sup>1283</sup> He was arrested on a fishing boat with more than a thousand pounds of the drug.<sup>1284</sup> Hernandez-Miranda had one prior conviction for a similar drug crime in 1986, for which he served three years in prison.<sup>1285</sup> According to Hernandez-Miranda, at sentencing the judge stated that he had no choice but to impose a life sentence because it was his second offense.<sup>1286</sup>

Hernandez-Miranda told the ACLU that he became involved in this crime because he was new to the Miami area and had struggled to find work. He recalls that he needed money badly to support his family. He said, “At the time of my crime, I was willing to take a chance, now that I know how a life sentence feels, I would never take a chance with my life.”<sup>1287</sup> Hernandez-Miranda said he was never informed that he faced a life sentence, and that had he known, he would have pleaded guilty in lieu of going to trial.<sup>1288</sup>

Hernandez-Miranda has served 19 years in prison and says he wishes for a chance to return home to his family. Before he was arrested, Hernandez-Miranda explained, he was “a family man” and spent most of his days with his wife, four children, and three grandchildren.<sup>1289</sup> He lives too far away for them to visit him, but he speaks on the phone to his children every other day.<sup>1290</sup> He says, “I am old and I am dying, I just want to spend my last years with my family.”<sup>1291</sup>



Leopoldo Hernandez-Miranda

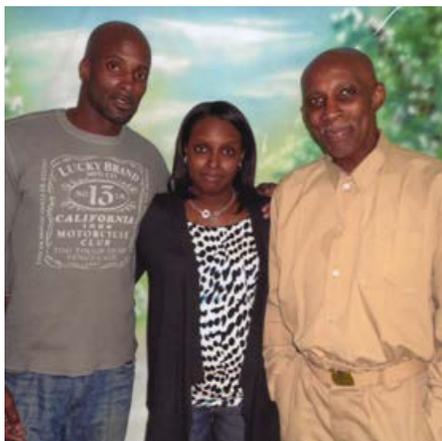
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“I am old and I am dying, I just want to spend my last years with my family.”

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## TERMINALLY ILL NONVIOLENT PRISONERS

### FEDERAL SYSTEM



David Lincoln Hyatt with his daughter and son. When Hyatt was sentenced to life without parole 20 years ago, his six children ranged in age from seven to 17.

“Once again I question whether the life sentence that I was required to pronounce makes good policy in the long run.”

—Judge David D. Dowd Jr.

**David Lincoln Hyatt** is serving LWOP for his first offense, a nonviolent drug conspiracy committed when he was 43 years old.<sup>1292</sup> Since his incarceration, he has been diagnosed with terminal prostate cancer. He is 63 years old and does not know how much longer he has to live.

Hyatt served in the U.S. Army, including three years in the Vietnam War. After being honorably discharged from the military in 1972, he worked with the New York City Transit Authority under the Comprehensive Employment and Training Act program for veterans. Soon after, he got married and completed three years of college courses in electrical engineering while working for the U.S. Postal Service. He left his job to follow his passion in the music industry, forming his own record label, Tavidash Records, in Miami, Florida.

In 1991, Hyatt traveled to Akron, Ohio, to meet with rap artists whom he was considering signing. On July 13, 1993, a day that was, according to him, “a big surprise and nightmare,” he was arrested for conspiracy to distribute cocaine.<sup>1293</sup> It was the first and only time he had ever been arrested.

The FBI claimed that Hyatt’s former studio manager was involved in a drug operation in Akron and that Hyatt was the boss of the operation.<sup>1294</sup> According to the trial court, Hyatt arranged for tractor-trailer loads of cocaine to be delivered to drug distributors in the United States, traveling between Miami and New York on a weekly basis.<sup>1295</sup> Despite FBI searches of his office, residence, and four additional apartments leased in his name, no drugs were ever uncovered.<sup>1296</sup> FBI agents did find two guns and documents regarding hundreds of thousands of dollars in cash deposits and expenditures exceeding his documented income.<sup>1297</sup> Hyatt told the ACLU that he owned the weapons because he became a certified weapons expert in the military,<sup>1298</sup> and that during his trial, the FBI agent who conducted the search testified that “he could not clearly state that the funds came from drugs or the record company” at which Hyatt worked.<sup>1299</sup> Hyatt says he was convicted on the basis of the testimony of jailhouse snitches who were promised reduced sentences in exchange for their testimony.<sup>1300</sup>

No drug amount was listed in the indictment. That determination was made by the judge, not the jury, and on the basis of the determined drug amount Hyatt received a mandatory LWOP sentence. Upon sentencing Hyatt, Judge David D. Dowd Jr. stated, “I think like almost every other District Court Judge in the United States, at times we have expressed frustration with the straightjacket the Guidelines represent, but clearly that’s a decision that’s way beyond the power of this Court to make.”<sup>1301</sup> In an August 2008 order, Judge Dowd further stated, “It is the Court’s recollection that he indicated, but for the Guideline, he would have imposed a sentence less than a life sentence.”<sup>1302</sup> Hyatt cannot obtain retroactive relief under the *Booker* and *Apprendi* Supreme Court rulings, though both cases would affect his sentence if they were applied retroactively.

In January 2010, Hyatt was diagnosed with terminal prostate cancer. Since the summer of 2011, Hyatt has been undergoing daily chemotherapy. His cancer is in Stage 4. When asked how long he had left to live, he said he tries not to think about it.<sup>1303</sup>

Hyatt applied for compassionate release in July 2012; he explained, “My situation is not that of a potential re-offender but rather a cancer patient, whose prognosis is poor and deserving of a reduction of sentence and compassionate release after considering all facts, which would give me the chance to be with my family again.”<sup>1304</sup> The judge who sentenced Hyatt to LWOP wrote a letter in support of his petition for compassionate release, questioning the merit of Hyatt’s sentence. In the letter, Judge Dowd referenced an opinion in a similar case in which he cited the fact that there are currently 2,454 inmates serving life sentences for drug offenses in federal prisons. Judge Dowd wrote, “Once again I question whether the life sentence that I was required to pronounce makes good policy in the long run.”<sup>1305</sup>

Hyatt told the ACLU that the most important thing he has realized since his incarceration is “how important you are to your kids and family and how their lives change forever once you are arrested and gone this long.”<sup>1306</sup> He has six children—three daughters and three sons—and speaks with them and his sisters weekly.<sup>1307</sup> His youngest child is 27 and his oldest is 37.<sup>1308</sup>

His family is eager to have him home. In a letter to the unit manager at Hyatt’s prison in November 2012, his sister June wrote that Hyatt has “grown remarkably” and that “[h]is writings and conversations during visits reveal someone who has matured, mentally, emotionally, and spiritually.”<sup>1309</sup> She said her family members are concerned about “how many more days that he has left to live” and they desperately want him “to live out these last days with the family that he has here in Florida” so that they can care for him in his final moments.<sup>1310</sup>

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Hyatt was diagnosed with Stage 4 terminal prostate cancer. “My situation is not that of a potential re-offender but rather a cancer patient whose prognosis is poor and deserving of a reduction of sentence, which would give me the chance to be with my family again.”

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Donnie Daniel

OKLAHOMA

**Donnie Daniel** is dying of end-stage liver disease, a terminal condition, and cannot receive a liver transplant because he is serving an LWOP sentence for 24 grams of methamphetamine found in the motel room of a woman with whom he had spent the night.

Daniel says he was addicted to drugs and started selling small amounts to support his habit.<sup>1311</sup> On October 6, 1989, he was convicted of unlawful delivery of methamphetamine, unlawful possession of methamphetamine with intent to distribute, and unlawful delivery of marijuana and methamphetamine. The charges stemmed from two drug sales over a period of six months. A friend of Daniel's, who, unbeknownst to him, was working as a confidential informant, set him up to sell an undercover officer a quarter-gram of methamphetamine on one occasion and, six months later, to sell another undercover officer a quarter-gram of methamphetamine and a quarter-ounce of marijuana.<sup>1312</sup> That same day, he was also convicted of knowingly concealing stolen property and receiving, possessing or concealing stolen property, offenses he committed in 1986, for which he had received a five-year deferred sentence.<sup>1313</sup> He accepted a plea deal and served several years in prison.

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Daniel was diagnosed with end-stage liver disease, but he does not qualify for a life-saving liver transplant. "I'll never give up my hopes and dreams of being free, to spend what little time I do have left with my loved ones."

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Upon his release from prison in 1991, Daniel began working at an oil field and says he spent his time taking care of his wife and young daughter.<sup>1314</sup> On November 29, 1995, when he was 33 years old, Daniel said, "My life and my families' lives changed in a way that I still have a hard time talking about."<sup>1315</sup> According to Daniel, that night he was at his sister's house and offered to drive a woman he had known all his life to her motel room. By the time they arrived it was late and Daniel decided to spend the night in the room. He recalls he woke up the next morning to the sound of a deputy sheriff kicking in the door to the room and yelling at him to get on the floor. The deputy was accompanied by another deputy and two probation officers, one of whom had put Daniel in prison in 1989. The officers had a warrant for the woman's arrest but quickly turned their attention to Daniel. Searching the room, the officers uncovered 24 grams of methamphetamine, 15 Valium pills, and marijuana.<sup>1316</sup>

On August 4, 1997, his daughter's birthday, a jury convicted Daniel of trafficking 24 grams of methamphetamine and two counts of possession of a controlled dangerous substance with intent to distribute.<sup>1317</sup> One of the possession-with-

intent-to-distribute counts was later reversed on appeal.<sup>1318</sup> He was sentenced to LWOP on the methamphetamine trafficking charge, life for the 15 Valium pills, and 10 years for the marijuana. When he heard the sentence, he said it felt like “my world had come to an end.”<sup>1319</sup> According to Daniel, the woman from the motel received six months on a probation violation.<sup>1320</sup>

In 2004, Daniel was diagnosed with chronic hepatitis B and hepatitis C marked with cirrhosis of the liver, stage 4 fibrosis, grade 4 inflammation, and end-stage liver disease.<sup>1321</sup> Daniel says he does not qualify for a life-saving liver transplant because he is incarcerated. He struggles with his health in prison, and says, “I’m not going to lie, I go through some pretty rough times dealing with my health issues and still trying to accept my appeals being final, but I also know that I’m not alone and there are others that are worse off than me.”<sup>1322</sup> He reports he was once placed in solitary confinement for 65 days for refusing to be placed in the medical unit due to his illness after having previously spent a year-and-a-half in the medical unit.<sup>1323</sup>

Daniel says his suffering has been compounded by being away from his family. He told the ACLU that his imprisonment has “really been hard due to my health and not being able to see my family” because of the Oklahoma Department of Corrections’ decision to send elderly inmates, a lot of whom are, according to Daniel, “pretty sick,” to a facility far from his home.<sup>1324</sup> He told the ACLU, “I’ll never give up my hopes and dreams of being free, to spend what little time I do have left with my loved ones.”<sup>1325</sup>

Now 50 years old, Daniel has been in prison for 16 years and says he has worked to better himself through participation in drug relapse intervention, anger management, clean and proud, and corrective thinking programs.<sup>1326</sup> Having entered prison with only an eighth-grade education, Daniel earned his GED in 2001.<sup>1327</sup> In his spare time, he says he works to “fight my illness, play dominos, and exercise as often as I can.”<sup>1328</sup> He reports he has been drug-free since his diagnosis in 2005.<sup>1329</sup> Daniel said of his sentence, “I’m no angel, but I still can’t see how they can put a person away for the rest of their life just because they were convicted of two or more drug felonies in the past and they happen to be in a place where drugs are present.”<sup>1330</sup>

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## VII. The Reality of Serving Life without Parole

Life without parole is essentially a sentence to die in prison: prisoners are not released. They are categorically ineligible for parole, and once their post-conviction appeals are exhausted, their only chance for release is rarely-granted commutation or clemency by the president or governor of their state or similarly infrequent compassionate release shortly before they die. Federal lifers are ineligible for “good time” credit or parole, which was abolished for anyone convicted in federal courts after November 1, 1987, so in the federal system, a life sentence means death in prison.<sup>1331</sup> Without a date on which they know they will be set free, prisoners wake up each day facing a lifetime of imprisonment with no hope of release. They grow old, fall ill, and eventually die behind bars.

Prisoners with whom the ACLU spoke or corresponded reported experiencing profound negative psychological impact from their sentences. In interviews with the ACLU, prisoners reported feelings of unremitting hopelessness, loneliness, anxiety, depression, fear, isolation from family and their community, and suicidal thoughts. Some have attempted suicide, and others expressed the wish for death so that their suffering would end. Many struggle to find purpose

or meaning in their lives. Prisoners described the anguish of being separated from family, being unable to be present to parent their children or support aging and ailing parents, missing funerals of parents and siblings who died during their incarceration, being forgotten by friends and family, and facing the prospect of growing old and dying in prison without any hope for release.

In *Graham v. Florida*, the U.S. Supreme Court noted, “The State does not execute the offender sentenced to life without parole, but the sentence alters the offender’s life by a forfeiture that is irrevocable. It deprives the convict of the most basic liberties without giving hope of restoration, except perhaps by executive clemency—the remote possibility does not mitigate the harshness of the sentence. [...] Life in prison without the possibility of parole gives no chance for fulfillment outside prison walls, no chance for reconciliation with society, no hope.”<sup>1332</sup>

The Nevada Supreme Court noted the hopelessness and finality of the sentence, finding that “All but the deadliest and most unsalvageable of prisoners have the right to appear before the board of parole to try and show that they have



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—The U.S. Supreme Court in *Graham v. Florida*

behaved well in prison confines and that their moral and spiritual betterment merits consideration of some adjustment of their sentences. Denial of this vital opportunity means denial of hope; it means that good behavior and character improvement are immaterial; it means that whatever the future might hold in store for the mind and spirit [of the prisoner], he will remain in prison for the rest of his days.”<sup>1333</sup>

The U.S. Court of Appeals for the Ninth Circuit found that a life-without-parole sentence “condemn[s] [the prisoner] to die in a living tomb, there to linger out what may be a long life...without any of its alleviation or rewards—debarred from all pleasant sights and sounds, and cut off from all earthly hope.”<sup>1334</sup>

## WHAT IT MEANS TO BE SENTENCED TO LIFE WITHOUT PAROLE

Over and over, prisoners serving life without parole for nonviolent crimes described their sentences as a form of living death. For example, Eduardo Toranzo, who has been incarcerated for 24 years, told the ACLU of his LWOP sentence for armed burglary, “It’s like you are a living dead person on a [life] support machine.”<sup>1335</sup> Thomas Tinghino, who is serving LWOP for armed burglary, told the ACLU, “Serving a life sentence is akin to being dead, without the one benefit of not having to suffer anymore.”<sup>1336</sup> Libert Roland, who is serving LWOP for possession of more than 28 grams of cocaine, said of his sentence:

It feels like you have been sentence[d] to death.... The pain never go[es] away. It feels like you have lost your purpose in life, your reason to live. It feels like someone or something is suffocating the life out of you slowly.... The pain and suffering will be there till the day you die. You feel the only relief you have left, the only hope, is to die [a] fast death. Because death cannot be worse than you feel now and the grief you have placed on your family.<sup>1337</sup>

Lloyd Wright, who was sentenced to LWOP for selling \$50 worth of crack within proximity of a school, also likened his

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—Libert Roland

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sentence to a form of death, explaining, “To me, to have life without parole is just like being dead. People forget about you. People grow old. Babies are born you may never see and hold. Places you will never go again. Things you would never do again. People will die and you will not be able to pay your last respects to [them].”<sup>1338</sup>

Jessie Traylor, who was sentenced to LWOP for possession of cocaine with intent to distribute and conspiracy to distribute five or more kilograms of cocaine, described his sentencing as “like being at your own funeral,” and he said his sentence was a mandate “to stop my life as if I was a cancerous tumor.”<sup>1339</sup> Leland Dodd, who has served 22 years of his LWOP sentence for attempting to buy 50 pounds of marijuana from an undercover officer, described his sentence as such: “You are dead. You don’t exist anymore.”<sup>1340</sup> He added, “I would be better off dead.”<sup>1341</sup> Ricky Minor told the ACLU of his LWOP sentence for attempting to manufacture methamphetamine after just over a gram of the drug and decongestant pills were found in his home, “Really it is the end of your life, it is over...I don’t have another chance at life.”<sup>1342</sup>

Others likened their sentence to a “slow death penalty,” in the words of Kevin Ott.<sup>1343</sup> Antawn Tyrone Bolden similarly said of his LWOP sentence for armed burglary, “It’s a slow death sentence...It is a terrible, horrifying feeling [to] know every day you wake up you [are] bound to die in prison or never see daylight. It’s unexplainable.”<sup>1344</sup> Raffaelous White said that when he was sentenced to LWOP for distributing two crack rocks, “I felt like my life was over and I was sentenced to a slow death.”<sup>1345</sup> He said his life in prison is

“a living nightmare, all my hope and dreams are fading away.”<sup>1346</sup> Darek Hayes, who is serving LWOP for possession of a firearm as a convicted felon following prior burglary convictions, said, “I felt like [the judge] should have just given me the death penalty. Because he basically ended my life for a victimless crime.”<sup>1347</sup>

Scott Walker explained, “You’ve been given a death sentence, but, to die of either illness, prison violence, or old age [in prison]. Its only difference is that there’s not a pre-determined date. There’s also the underlying feeling that you are dead to society and to a certain extent to your families’ lives.”<sup>1348</sup> Clinton Matthews, who is serving LWOP for drug conspiracy, told the ACLU, “This sentence is actually a sentence to a long and slow death watching my life go from a young man to an old man. It also involves watching loved ones pass away without being able to be there. It is not easy!”<sup>1349</sup> Kerry Orgeron, who is serving LWOP for purse-snatching, says his sentence means, “I will die without a chance to be human. It is more of a punishment than the death penalty.”<sup>1350</sup>

Some shared the pain and fear of knowing they will die in prison. Alonzo Jason, a 43-year-old diagnosed schizophrenic who is serving LWOP for attempted purse-snatching when he was off his medication more than 15 years ago, told the ACLU that being sentenced to LWOP is “like being in the bottom of a lake trap waiting to die with no chance of ever getting out alive...I’m so sorry and afraid of dying in this place.”<sup>1351</sup> Terrence Jackson, who is serving LWOP for trafficking cocaine that was found in another man’s home, said of his sentence, “To me, honestly, it’s like being diagnosed with the AIDS virus, a slow death, being mentally beat, wondering is it possible to get another chance or will I die on a hard metal bed with no family members to support you.”<sup>1352</sup>

Others described the particular pain of not having a release date. Louis Brady, who is serving LWOP for simple burglary for stealing microwaves, televisions, and bicycles, said that “I’ve did prison time before, but I had an out date. But not to have an out date, and [be] around inmates that have been here 20, 30, 40 years and hear how they are dying...All I can say, it’s not hell, but like walking on the hot coals to get there [to hell].”<sup>1353</sup> Bobby Wallace, who is serving LWOP for drug possession, told the ACLU that not having a release date is “[l]ike being blindfolded and being placed in a dark maze, then

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“It’s part of the requirement for normal human development and psychology to imagine that things will get better in the future. LWOP leads to a kind of despair, of ever having another life, because that just gets wiped out.”

—Dr. Terry Kupers

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being told, ‘Find your way out,’ but there is no way out. It is so much worse than that.”<sup>1354</sup>

## Hopelessness, Depression, and Suicidal Thoughts and Attempts

Imprisonment with no release date causes psychological trauma. Clinical research on the psychological consequences of LWOP and other death-in-prison sentences suggests that the mental health impact of LWOP sentences differs from parole-eligible sentences in which a prisoner has a release date that he or she is likely to reach during his or her lifetime.<sup>1355</sup> The Sentencing Project found that a higher percentage of LWOP prisoners suffered from mental illness—primarily serious depression—than parole-eligible prisoners with a life sentence. Studies on the mental health consequences of indefinite detention have found that the indefinite terms of detainees’ confinement causes them to develop feelings of hopelessness and helplessness that lead to depressive symptoms, chronic anxiety, despair, and suicidal ideation.<sup>1356</sup>

Dr. Terry Kupers, a psychiatrist who specializes in the mental health effects of incarceration and has more than four decades of clinical experience as a psychiatrist in prisons, told the ACLU that the despair caused by the lack of hope of being released reverberates through prisoners’ psychological lives. He said of the particular despair experienced by prisoners serving LWOP, “It’s part of the requirement for

normal human development and psychology to have a vision for yourself in the future so that you have a goal. So that you can imagine that things will get better in the future. It's the view of the future, and it's the hope that things will get better—there's always the hope that things will get better. But when you get LWOP, there's such a starkness to it, you are never going to get out of here. That leads to a kind of despair, the despair of ever having another life, because in prison with LWOP that just gets wiped out."<sup>1357</sup>

Dr. Kupers said that this despair exacerbates existing mental illness: "That despair plays out in whatever mental tendencies they have. People with a history of depression or are prone to depression or suicidal feelings will become suicidal. People who are prone to psychosis will become psychotic... When you've got someone who is schizophrenic and they have LWOP, then in general every aspect of their psychological life is going to be worse. They can't improve their rational thinking because they aren't getting out of there."<sup>1358</sup> Nearly one in five prisoners (18.4 percent) serving life sentences suffers from a mental illness, according to a study of Bureau of Justice Statistics data by The Sentencing Project.<sup>1359</sup> The high incidence of mental illness among lifers raises particular concern about the deleterious effect of LWOP and life sentences on these prisoners' mental health. Moreover, based on his work with suicidal prisoners, Dr. Kupers suspects that the suicide rate among prisoners sentenced to LWOP for low-level offenses is high, but to his knowledge, no clinical data exists to confirm his hypothesis.<sup>1360</sup>

Almost without exception, the prisoners serving LWOP with whom the ACLU spoke or corresponded reported experiencing profound despair and hopelessness. Some expressed the wish for death so that their suffering would end, and some reported contemplating or attempting suicide because of the hopelessness of their sentences.

Dicky Joe Jackson says that when he was sentenced, "I wished then and even more so now that they would've just killed me."<sup>1361</sup> He told the ACLU, "There's lots of nights in your prayers you ask to not wake up the next day.... There's no hope in here for us lifers and we become forgotten after a while."<sup>1362</sup> He added, "I wish it were over, even if it meant I were dead.... When I lie down at night I think it would be great not to wake up in the morning, then all this would be over."<sup>1363</sup>

Timothy Hartman, who is serving LWOP for armed burglary and has been incarcerated for 13 years, calls his sentence "a slow, painful death." He says, "As the years go on, it gets worse. You lose hope, the will to live."<sup>1364</sup> He told the ACLU that his sentence has driven him to such profound despair that he has considered suicide, explaining, "So many have no hope—it's turned [us] insane. Mentally, you break. You have to or else you cannot justify staying alive. It's pointless. You put a human being in a situation so bad, so evil, death is the *only* end."<sup>1365</sup>

Donald Lee Graham said of his sentence, "It's like you're nothing. Why should I want to live? I would rather [have] been sentenced to lethal injection, than suffer the way I am. If I did not care for my family I would ask to die, but I must keep my family together. I don't want them to suffer any more than they already are."<sup>1366</sup> He says that he struggles with suicidal feelings because of the hopelessness of his sentence: "It hurts, fighting myself each day to continue to allow the light of our Father [to] shine upon me."<sup>1367</sup>

Thomas Bryant Jr., a police officer who was sentenced to LWOP following a police corruption sting operation, told the ACLU that he has considered suicide because of the despair of his sentence. He says, "When you are laying down and wondering about your kids and your family and whether your wife will leave you, those are the times that you feel like your life is over and you're going to lose your life in prison and you think that I should just end it now."<sup>1368</sup>

Louis Scott White, who is serving LWOP for armed burglary, says that he is plagued by depression and suicidal thoughts because of his sentence, which he describes as "a slow, horrible, torturous death... I really truly [think] the world has forgot about us."<sup>1369</sup> He adds, "I want to cry every day, but I can't... [Life is] pure hell! I can't dream of a free life, only prison life."<sup>1370</sup> His loss of hope has led him to attempt suicide. He says, "I attempted suicide twice, so far. I may try again, once I get things in order."<sup>1371</sup> White has been held in solitary confinement because of his suicide attempts.

Ivan Anderson, who is serving LWOP for armed burglary of an unoccupied house, told the ACLU, "I've watched inmates hang themselves, wondering if that would be a better alternative than serving life myself."<sup>1372</sup> He says that he has struggled with depression and such profound loneliness that

he describes his incarceration as being inside a boat, “floating down the river of loneliness.”<sup>1373</sup> “It’s hard,” he adds, “but it’s what society sentenced me to.”<sup>1374</sup>

David Correa said, “I rather they just give me the needle and get it over [with], for what is a life sentence without parole if not an indeterminate death sentence? So let the government stop its charade of being kind and humane to us when all they are doing is warehousing us and just get their original intent over [with] and stop all the mental torture by keeping us alive in here without hope of ever going home.”<sup>1375</sup>

Sylvester Mead said, “The hopelessness will eat you alive if you can’t handle it.”<sup>1376</sup> Jimmy Cochran, who is serving LWOP for attempting suicide with a razorblade in his ex-girlfriend’s house, said his life in prison is “Pretty dismal. Destitute. Lonely.” He added, “A life sentence doesn’t go away. It’s there when you wake up in the morning. It’s definitely there when you go to sleep.”<sup>1377</sup>

Patrick Matthews, who is serving LWOP for stealing tools from a tool shed and a welding machine from a yard when he was 22 years old, says that he has considered suicide to end his suffering. “There [are] plenty of times [I] want to give up and end it,” he says. “Prison is *not* a place I want to be the rest of my life and won’t be, whether dead or alive...I could not live in here the rest of my life!”<sup>1378</sup>

## Isolation from Family

An LWOP sentence can shatter familial bonds, and, like other prisoners, prisoners serving LWOP are isolated from family and have severely limited contact with loved ones. LWOP and other long sentences have devastating emotional, social, and economic consequences for prisoners, their children, their spouses or partners, and their parents and extended family. The prospect of no reunification outside prison walls ends prisoners’ otherwise stable marriages. It limits the role they can play in their children’s lives, as they miss out on their children’s first steps, graduations, marriages, births of grandchildren, and day-to-day parenting. It causes prisoners guilt and constant worry about being unable to care for children and elderly or ill parents. In many cases, because of their sentences, prisoners serving LWOP are barred from attending the funerals of their parents and children,

compounding the grief they experience when a loved one dies. Some prisoners who have served more than a decade in prison told the ACLU that they are completely isolated and bereft of outside support or concern, as their family members have died off and they have not had a visitor or contact to call outside prison walls for years.

Libert Roland, who is serving LWOP for possession of more than 28 grams of cocaine, told the ACLU of being separated from his mother, sister, nieces, and nephews, “To remember some of the funny times, the sad times, you start to feel your eyes getting watery; sometimes you can stop the tears, but most of the time you cannot, and it hurts so badly to know you will never be there with them ever again.”<sup>1379</sup> His sister died of cancer after he was incarcerated. Roland explains, “I could not be there to tell her I love her when she needed to hear it. I could not be with my mother when she need[ed] a shoulder to cry on, to hold my mother...It just hurts you so deeply inside, and there is no way you [can] give back to them or show them your love by being in here.”<sup>1380</sup>

Darrell Smith, who was sentenced to LWOP at age 25 after police found 25 crack rocks in his home, told the ACLU, “I just want my mama. Yes, I’m a big mama’s baby. I’m her only child, so I just want my mama...just being away from my mom all these years has killed me, I live in darkness every day here.”<sup>1381</sup> Eric Robinson, a former cocaine addict who is serving LWOP for snatching a purse that contained an ID card and miscellaneous items but no money, says, “No pain has cut deeper, no sorrow has been more profound, than being away from my family.”<sup>1382</sup> Ricky Carthan, who has served more than 15 years of his LWOP sentence for possession of stolen junk metal, says of being separated from his mother and three children, “It is [the] most lonely feeling I [have] ever felt, only being around strangers.”<sup>1383</sup> Of being separated from family, Alonzo Jason said, “I guess if I had to describe it, it will be like waking up in the morning knowing that you got the wrong leg cut off at the hospital.”<sup>1384</sup>

Dicky Joe Jackson, a father of three who was incarcerated when his youngest son was only five years old and was married to his wife for 19 years until they divorced after he lost his last appeal, says he loves his family “beyond description.”<sup>1385</sup> He said that the monthly 300-minute limit on non-legal calls is not enough time to speak with his three children and three grandchildren, with whom he speaks

every two or three days. He told the ACLU, “That’s what’s so contradictory about this prison system; they say that family contacts are important, but they only give you five hours a month to talk to your people and they charge outrageous phone prices. And they limit you to only three times a week for visits. It’s terrible that the person that you spent the last 19 years of your life with can only give you a little peck on the lips and sit down across from you—you can’t hold her hand or put your arm around her. And then they ship you across the country to 11,071 miles away.”<sup>1386</sup>

## PRISON CONDITIONS

Prisoners condemned to die in prison generally are housed in maximum- and medium-security facilities with few privileges, far away from any relatives. They are often housed in overcrowded and dangerous prisons. They may be confined to small cells and crowded group cells, receive inadequate or subpar food and hygiene, and have limited access to fresh air and sunlight. Their day-to-day lives are marked by lack of privacy, shakedowns, lockdowns, full-body searches, and extensive and intrusive control over every aspect of their lives. They are sometimes held in solitary confinement and punitive isolation, and they may be confined to their cells for long periods during lockdowns. They witness—and constantly fear—violence, assault, sexual abuse, and rape. They are surrounded by fights and constant yelling from guards and other inmates. They confront the animosity of correctional staff, some of whom humiliate and mistreat them at times. They suffer delays in receiving medical care and necessary medication, and they often receive inadequate mental health care and drug treatment services. They work prison jobs that pay only 2 cents to \$1.15 an hour, and they have to pay exploitative telephone rates that can be 15 times higher than regular rates.<sup>1387</sup> They have limited access, if any, to computers, prison libraries, and useful legal resources.

## Violence

More than 75 percent (76.9 percent) of the prisoners surveyed by the ACLU reported that they had been assaulted or had witnessed other prisoners being assaulted, raped, or

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Prisoners serving LWOP are often housed in overcrowded and dangerous prisons, far away from any relatives. They may be confined to small cells and crowded group cells, receive subpar food and hygiene, and have limited access to fresh air and sunlight.

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killed in acts of prison violence while serving their sentences. Many reported witnessing stabbings and severe beatings, which they described as being part of everyday prison life; some reported witnessing murders and rapes. Some also reported witnessing prison guards assault inmates. Several were victims of stabbings, beatings, and sexual assaults themselves, and they complained of prison guards’ failures to protect them from attacks by other inmates. Many of the prisoners with whom the ACLU spoke or corresponded had never been convicted of a violent crime nor witnessed such violence before being incarcerated, and they reported being shocked and traumatized by the violence they have been exposed to in prison.

Ignazio Giuliano, who is 78 years old and has served 23 years of his LWOP sentence for a nonviolent drug crime, told the ACLU:

I witnessed some of the most brutal crimes. Once, I was waiting to use the phone when an inmate asked another inmate to get off the phone. He was told to get lost. He left and came back a few minutes later, grabbed the inmate by the back of his hair, and cut his throat; blood flew everywhere. One night, while I was sleeping a loud scream woke me up. An inmate who was sleeping in the bed next to mine was stabbed to death. Another time, I was eating lunch in the dining room when the door swung open and an inmate was chasing another inmate with

a knife. The inmate ran to my table and dove under it. The one with the knife belly-flopped on top of the table and stabbed the one under the table. The floor was covered with blood. The staff carried off the two inmates and everyone continued eating again like nothing happened. It was like a side show. Things like this go on all the time.<sup>1388</sup>

Paul Free, who has served 18 years of an LWOP sentence for nonviolent marijuana trafficking, said, “I have seen men with their throats cut, their bellies cut open with their guts hanging out...and I have seen men with knives stuck deep into their skulls and more. I have seen men stomped into vegetative states and with all their teeth kicked out. A man died in my arms.”<sup>1389</sup>

Jason Hernandez, who has served more than 15 years of an LWOP sentence for his involvement in a drug conspiracy starting when he was only 15 years old, and whose brother was stabbed to death while imprisoned for the same drug conspiracy, told the ACLU:

I was sent to Beaumont when I was 21 years old. I was the youngest person there...I saw people being stabbed and being raped. It was a shock to me, but it's prison; this is what goes on here. When my brother passed away, my whole life changed right there, and I realized this is not normal. People don't stab people. When you see something happen so much, when you see people stabbed constantly, you become desensitized to it. It changed me. I [had] never seen heroin till I got to prison. I [had] never seen a man die till I got to prison. I [had] never heard or seen people get raped till I got to prison. But it's normal in the environment of [federal prisons].<sup>1390</sup>

Jesse Webster told the ACLU, “I've seen guys get beat with bricks, get their heads smashed in. I've seen guys get slashed with razors across the face while watching TV. A lot of gruesome stuff...You see a lot, a lot of that stuff you don't even want to remember it.”<sup>1391</sup> Euka Wadlington told the ACLU that he has witnessed simple arguments over the television end in a prisoner's death and has seen “all types of

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“People get raped and killed in front of me. It's stressful; I'm at the most dangerous prison in South Carolina because of my sentence when I should be around nonviolent offenders.”

—Lloyd Wright

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violence from gang stabbings and killing to one-on-one fights that led to serious bodily harm or death.”<sup>1392</sup> Lloyd Wright, who is serving LWOP for selling \$50 worth of crack cocaine to an undercover officer within a half-mile of a school, said, “People get rape[d] and kill[ed] in front of me. It's stressful; I'm at the most dangerous prison in South Carolina because of my sentence when I should be around nonviolent offenders.”<sup>1393</sup> Anthony Jerome Jackson told the ACLU, “This one guy stab[bed] two guys. I think about that all the time. It could happen to me.”<sup>1394</sup>

## Solitary Confinement

Prisoners serving LWOP for nonviolent offenses reported being held in solitary confinement for periods ranging from a few days to 13 or 14 years at a time. In addition, they described being confined to six-by-eight-foot or six-by-twelve-foot cells for months at a time due to lockdowns. Sixty-three percent of prisoners surveyed by the ACLU reported being held in solitary confinement while serving their LWOP sentences. Twenty-nine percent of the prisoners who reported being held in solitary confinement said that they have been held in isolation for longer than one year at a time. Seventy-three percent of the prisoners who had spent time in solitary confinement reported having been held in isolation for longer than one month at a time.

Despite his bipolar disorder, for which he has been hospitalized at seven different mental health institutions, Timothy Tyler has been held in solitary confinement many times, primarily “for investigation.”<sup>1395</sup> He said, “They

can place you there for three months for no explainable reason.”<sup>1396</sup> Tyler has served nearly 21 years of his LWOP sentence, and he told the ACLU that he “lost [his] mind” after his first ten years in prison. After more than a decade in prison, he was transferred to the U.S. Medical Center for Federal Prisoners in Springfield, Missouri, for mental health treatment for a year, before he was returned to prison.<sup>1397</sup> Recently, Tyler was held in isolation due to an indefinite prison-wide lockdown following the murder of a prison guard. As a result of the stress of isolation and being deprived essential contact with his family, Tyler suffered a mental breakdown in March 2013, in which he was banging his head against the walls, singing at the top of his lungs while naked, and spreading feces on himself.

Vincent Carnell Hudson, who was sentenced to LWOP for a trace amount of cocaine invisible to the naked eye found in his pockets, was imprisoned at the Mississippi State Penitentiary at Parchman in October 2008 in good health; he was well enough to work in the cafeteria. In September 2009, he was placed in solitary confinement as a disciplinary action for having a cell phone in his possession. After his two- to three-week confinement, 61-year-old Hudson emerged frail, weak, and suffering from severe pneumonia. According to the Southeastern Christian Association, he complained that he could hardly walk, and for three weeks he was treated at the prison infirmary, where he coded twice. He was transferred to a hospital, where he was placed on a respirator, underwent dialysis, and required insertion of a feeding tube over the course of his four-week hospitalization. Following his return to the prison infirmary in December 2009, he was unable to walk, speak, see, or eat. He still had a tracheostomy and feeding tube inserted, and he was partially paralyzed and incontinent. In early 2010, his family reported that he appeared to be malnourished and dehydrated, and they feared for his life.

Dicky Joe Jackson was held in solitary for five months after he found a tool in a machine at work and turned it in; he says that because prison officials “didn’t believe a lifer would do that,” they held him in isolation while they investigated the claim.<sup>1398</sup> Jackson reports he has had a perfect disciplinary record over the 17 years he has been incarcerated. Jimmy Cochran, who is serving LWOP for attempting suicide in his ex-girlfriend’s house, reported that he has been in solitary

confinement for two years for witnessing an attempted murder in the prison and refusing to make a statement.<sup>1399</sup>

## Restricted Access to Drug Treatment, Vocational, and Educational Programs

“People going home get priority over everything. Lifers are put on the back burner for every program.”<sup>1400</sup>  
—Earl Crum, 54, who is serving LWOP for stealing \$34

As a matter of policy, some prisons categorically deny drug treatment, counseling, vocational and educational programs, and other rehabilitative services to prisoners who are sentenced to die in prison and are ineligible for parole.<sup>1401</sup> Other prisons limit LWOP prisoners’ access to such rehabilitative services on account of their sentences.<sup>1402</sup> Prisoners incarcerated in state prisons particularly confront few opportunities for education, meaningful work, or productive programs or activities. Many of the LWOP prisoners with whom the ACLU spoke or corresponded reported that other prisoners with release dates are prioritized for programming, which leaves lifers waiting for years to enroll in GED classes, enter much-needed intensive drug treatment, obtain prison jobs, or receive vocational training. Twenty-eight percent of prisoners surveyed by the ACLU reported being denied access to drug treatment, vocational, or educational programs in prison. This number varied substantially between jurisdictions. In Florida, more than half (51 percent) of prisoners surveyed reported having difficulty accessing rehabilitative programs in prison.

Among prisoners with whom the ACLU spoke or corresponded, the most common complaint was lack of access to drug treatment programs, particularly in the cases of prisoners sentenced to LWOP for drug offenses. Onrae Williams, who was sentenced to LWOP at age 23 for sale of 0.3 grams of crack cocaine, told the ACLU that although he has struggled with drug addiction and would like to participate in the drug treatment program offered at the South Carolina state prison where he is incarcerated, he is ineligible because he will never be paroled from prison.

## LIMITED JUDICIAL REVIEW OF DEATH-IN-PRISON SENTENCES

“I don’t understand how my constitutional rights are not retroactive.”<sup>1410</sup>

— Scott Walker, 41, who has served 16 years of a life-without-parole sentence after 500 grams of marijuana were seized from him

He said, “They don’t really allow you [to participate in] any programs here. I mean, even with this drug conviction, they don’t help me deal with the situation at hand. I mean, it’s supposed to be rehabilitation, but I feel they avoid the issue.... I still deal with the issues, as far as, I still deal with the issue of drugs.... I feel I need to get help for it.”<sup>1403</sup>

Prisoners serving life without parole in Florida state prisons reported that they are not prioritized for GED classes because of their sentences. For example, Antawn Tyrone Bolden, a 31-year-old high school dropout incarcerated in a Florida state prison, told the ACLU that he has tried to get his GED several times, but prison officials have told him that prisoners with sentences of five years or less have priority, and as a lifer he has been unable to enroll in the program.<sup>1404</sup> “They treat lifers like we are below earth,” he says.<sup>1405</sup>

Other prisoners reported being denied access to vocational programs, which particularly weighed on prisoners who have been incarcerated for years with no opportunities for self-improvement. Leland Dodd, who has served 22 years of his LWOP sentence for trying to buy 50 pounds of marijuana from an undercover officer, told the ACLU that because of the length of his sentence, he is ineligible for any of the vocational programs offered at Oklahoma State Reformatory or the Oklahoma Correctional Industries (OCI) jobs available to other prisoners.<sup>1406</sup> He said, “I can’t work at OCI, can’t take a vocational training course, I can’t improve my life, I can’t go to work and get a job because of my sentence. I’ve got too much time, I don’t qualify for none of the programs.”<sup>1407</sup> He says that he would love to take any of the classes: “Anything—just learn something. I got nothing to do with my time, I’d like to do something.”<sup>1408</sup> German Gonzalez, who is serving LWOP for armed burglary, said that his life in a Florida state prison is “a miserable existence that has no purpose because no rehabilitation program exist[s].”<sup>1409</sup>

LWOP and other death-in-prison sentences do not receive the same heightened judicial scrutiny and legal protections afforded to capital defendants.<sup>1411</sup> Additional precautions are taken in capital cases—at least in theory, though not always in practice—because of the gravity and permanency of the punishment, yet even with these protections the death penalty is irretrievably flawed, applied to the innocent, and plagued by significant problems. The quality of counsel in capital cases is more scrutinized, and the underlying legal and factual issues usually get closer review. Unlike death penalty cases, LWOP sentences receive no special consideration on appeal, which limits the possibility they will be reduced or reversed. In most states, a person sentenced to die in prison is not provided any court-appointed attorneys after their one automatic appeal is complete, usually within two years of the initial sentence; in contrast, most states, but not all, do provide attorneys to death-sentenced habeas petitioners. Appeals to the highest state court are not guaranteed in LWOP cases, as they often are in death penalty cases.<sup>1412</sup> Mandatory sentences are not permissible in death penalty cases,<sup>1413</sup> while mandatory LWOP sentences are not only common in most states and the federal system, but the mandatory nature of these sentences can also cause important factors in a case or about a defendant to be overlooked on appeal.<sup>1414</sup>

Accordingly, in LWOP cases there are fewer exonerations and reversals due to trial errors.<sup>1415</sup> The lack of heightened judicial review and legal protections in LWOP cases increases the likelihood that innocent people will be wrongly punished. While LWOP and other death-in-prison sentences are plainly not the same as capital punishment, they are severe in their own right, and some legal experts have recommended enhanced judicial scrutiny and procedural protections for sentences that result in the incarceration of defendants for the rest of their natural lives.<sup>1416</sup>

Because capital cases involve the ultimate sanction of death, capital defendants generally have the right to state-appointed counsel for their post-conviction appeals. Yet beyond the first appeal, people fighting their death sentences have no constitutional right to a lawyer, and the quality of available counsel can be as abysmal in these appeals as it is at the trial level.<sup>1417</sup> Because the death penalty is a grievous violation of human rights, independent offices have arisen to provide legal representation and lawyers have volunteered to take on capital cases *pro bono*. For defendants sentenced to LWOP, in most jurisdictions there is no right to counsel in any post-conviction proceedings, and the majority of the prisoners serving LWOP with whom the ACLU spoke or corresponded were unable to afford an attorney to represent

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**LWOP prisoners cannot have their sentences retroactively reviewed and reduced under Supreme Court decisions ruling that the way in which they were sentenced is unconstitutional, even though they would receive shorter prison terms if sentenced today rather than under previous sentencing regimes.**

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them in their post-conviction appeals.<sup>1418</sup> The ACLU reviewed post-conviction appeals handwritten by LWOP prisoners who struggled to get adequate access to prison legal libraries, are barely literate, plainly could not make sense of complicated caselaw and procedural rules, failed to comprehensibly explain the facts and legal issues in their case, or whose appeals were rejected on grounds that could have been successfully addressed by a competent lawyer.

Many prisoners whose cases the ACLU documented were unable to afford an attorney to assist them with their post-conviction appeals and said they were frustrated that

they have no right to a court-appointed lawyer for their post-conviction appeals. Leland Dodd told the ACLU, “The sentence I got, I don’t get a lawyer to handle my appeals. I get no appeals, I can’t afford justice!”<sup>1419</sup> Moreover, in many states there is no automatic right to records, such as police and prosecutor files, that might contain important evidence. Only a lawyer or an investigator can obtain these documents, and they generally require a fee.

There is low likelihood that an LWOP or other death-in-prison sentence will be reversed, in part due to the lack of competent counsel in such cases. The reversal rate for noncapital cases is estimated to be about 10 to 20 percent, far below the capital reversal rate of roughly 68 percent.<sup>1420</sup> Data also shows that about 80 percent of federal criminal appeals are denied or otherwise resolved against the prisoner.<sup>1421</sup> In the context of federal habeas corpus review for state-sentenced petitioners, a 1990 report prepared for the American Bar Association noted that the rate of habeas relief granted in prisoners’ favor in non-capital cases was estimated at only 7 percent or less, while the rate in capital cases where courts reached the merits of the habeas corpus petitions was more than 73 percent between 1976 and 1983 (however, the rate of habeas corpus relief decided in favor of death-sentenced prisoners has since dropped due to more recent limitations on prisoners’ access to habeas relief).<sup>1422</sup> One study of LWOP sentences concluded, “Given the failure rate of noncapital appeals, not to mention the infrequency with which they are filed, the vast majority of life-without-parole prisoners have almost no chance of having their sentences reversed.”<sup>1423</sup>

Opportunities for post-conviction appeals have been significantly reduced for all criminal defendants over the past three decades. In both capital and non-capital cases, prisoners also have a limited ability to raise claims of innocence. When new evidence of innocence emerges, prisoners in most states face strict time limits barring them from having their cases reopened. These time limits before which innocence claims must be filed range from 21 days to three years.<sup>1424</sup>

Because Congress has limited post-conviction legal challenges from prisoners, it is difficult—and in some cases impossible—to return to court to make the case for a sentence reduction. The Antiterrorism and Effective Death Penalty Act (AEDPA) of 1996, a strict federal statute, limits

prisoners from appealing their cases and challenging their convictions or sentences.<sup>1425</sup> AEDPA can bar prisoners from appealing even when new evidence of innocence emerges, from challenging serious errors of law, or from raising claims of ineffective assistance of counsel. As a result, criminal defendants who are later able to present evidence establishing their innocence that may not have been available at the time of trial, and that could have led to a different result if it had been presented, are left with no recourse. In addition, many defendants who have suffered serious constitutional violations, such as racially discriminatory jury selection or suppression of exculpatory evidence, have been left without federal judicial recourse.

Moreover, prisoners are also unable to have their sentences retroactively reviewed and reduced under Supreme Court decisions ruling that the way in which they were sentenced is unconstitutional, even though prisoners would be sentenced to shorter prison terms if sentenced today rather than under previous sentencing regimes.

For example, many prisoners have been barred from taking advantage of *United States v. Booker*, a 2005 Supreme Court ruling that struck down the mandatory nature of the sentencing guidelines used to incarcerate them, in some cases for the rest of their lives.<sup>1426</sup> In *Booker*, the Court ruled that the Sixth Amendment right to jury trial requires that, other than a prior conviction, only facts admitted by a defendant or proved beyond a reasonable doubt to a jury may be used to calculate a sentence, whether the defendant has pleaded guilty or been convicted at trial. The maximum sentence a judge may impose is a sentence based upon the facts admitted by the defendant or proved to a jury beyond a reasonable doubt. Prisoners have similarly been unable to have their sentences retroactively reviewed based on *Apprendi v. New Jersey*, a 2000 Supreme Court ruling giving jurors an enhanced role when their verdicts trigger the fixing of sentences.<sup>1427</sup> In *Apprendi*, the Court required that any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt, not decided by the judge.

In a number of the federal LWOP cases documented by the ACLU, each of the defendants' guideline ranges was based upon a quantity of drugs determined by the judge using a preponderance of the evidence standard and not by a

jury using the beyond a reasonable doubt standard. Their sentencing judges determined the quantity of drugs by adopting the quantities speculated during the trials by the government. However, because the decision in *Booker* was not retroactive, these defendants do not have a remedy for their constitutional violations. In these cases, if the constitutional law in *Booker* had been in effect during their sentencing, there is a great possibility that the juries could have found them each guilty of significantly lower quantities of drugs, thus resulting in shorter sentences.

In interviews and correspondence with the ACLU, prisoners consistently expressed their frustration with being denied access to the courts. For example, like many other federal prisoners, Michael Lloyd Cummings, a decorated Vietnam War veteran and drug addict caught with less than a gram of methamphetamine, lost his appeal and was denied further access to the courts by the Anti-Terrorism and Effective Death Penalty Act. He told the ACLU, "The hardest part is knowing that the courts have ruled that what took place at my trial is unconstitutional but doesn't apply to me because it's not retroactive. How can something be unconstitutional today but not yesterday?"<sup>1428</sup>

## VIRTUALLY NO CHANCE OF CLEMENCY OR COMPASSIONATE RELEASE

Because of the elimination or significant reduction of post-conviction appeals and procedures that could be used to reduce LWOP sentences, commutations—a form of executive clemency that empowers a governor or president to shorten sentences—are the sole means of leaving prison for many prisoners. For prisoners who are near the end of their lives and dying of terminal illnesses, compassionate release offers

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Only one federal prisoner serving LWOP has received a presidential commutation in the last 20 years.

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another possibility for leaving prison before their deaths. Unfortunately, U.S. presidents and state governors have virtually stopped granting clemency, and the Federal Bureau of Prisons has sharply limited compassionate release, leaving lifers who have exhausted their appeals with virtually no chance of being released from prison alive.

Over the past three decades, presidential grants of federal clemency have dropped even as prisoners' clemency requests have risen.<sup>1429</sup> Only one federal prisoner serving LWOP has received a presidential commutation in the last 20 years; the nonviolent drug offender's sentence was commuted by former President George W. Bush.<sup>1430</sup> President Barack Obama has granted clemency at a lower rate than that of any modern president, and he has commuted only one sentence since taking office.<sup>1431</sup> Most recently, he denied 1,500 commutation petitions on February 28, 2013. Given President Obama's commutation record, a commutation applicant's chance to have their federal sentence reduced is just under 1 in 5,000. During the presidencies of former Presidents Ronald Reagan and Bill Clinton, applicants for commutations had a 1 in 100 chance of success.<sup>1432</sup> Under former President George W. Bush, applicants had a 1 in 1,000 chance of having their sentences commuted.<sup>1433</sup>

State governors have been similarly reluctant to grant commutations, and in recent decades there has been a decline in commutations at the state level, while the number of people being sentenced has rapidly risen. The vast majority of governors have denied almost all clemency petitions submitted by prisoners for reduction of their sentences, granting only a handful of commutations in the past decade.<sup>1434</sup> In the past two decades, only a few governors have utilized their pardon power to grant dozens or even hundreds of pardons and commutations.<sup>1435</sup> In most states, the state governor holds the power to grant clemency to prisoners and generally has the option of seeking the advice of a pardon or parole board.<sup>1436</sup> In several states, only a parole or executive clemency board can grant clemency, and the governor is not involved; these states generally have the highest and most consistent clemency rates.<sup>1437</sup> In some states, the governor may grant clemency only after receiving a positive recommendation from a parole or clemency board, and some states require that the governor be a member of the parole or clemency board.<sup>1438</sup>

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## President Barack Obama has granted clemency at a lower rate than that of any modern president: he has commuted only one sentence since taking office.

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The Federal Bureau of Prisons (BOP) has sharply limited the grounds for compassionate release, and only a miniscule number of compassionate release requests are granted each year.<sup>1439</sup> Under the Department of Justice's "death-rattle rule," compassionate release requests are granted solely to terminally ill prisoners who have received a medical diagnosis of death within a year and are facing imminent death, or who are profoundly and irremediably incapacitated.<sup>1440</sup> Prisoners cannot seek compassionate release for extraordinary and compelling circumstances directly from the courts; only the BOP has the authority to file a motion with a court to request judicial consideration of early release. Research by Human Rights Watch and Families Against Mandatory Minimums has found that the BOP rarely does so; though more than 218,000 prisoners are housed in the federal prison system, in 2011, the BOP filed only 30 motions for early release.<sup>1441</sup> The annual average of prisoners who have received compassionate release has been fewer than two dozen since 1992.<sup>1442</sup>

After conducting a comprehensive review of BOP's compassionate release program, the Department of Justice Office of Inspector General (OIG) identified "multiple failures" and concluded that the program "has been poorly managed and implemented inconsistently" by BOP, "resulting in inmates who may be eligible candidates for release not being considered" and in "terminally ill inmates dying before their requests were decided."<sup>1443</sup> The OIG study also found that approximately 13 percent (28 of 208) of the inmates whose release requests had been approved by a prison warden and regional director died before their requests were even decided by the BOP director.<sup>1444</sup>

# VIII. The Financial Cost of Sentencing Nonviolent Offenders to Life without Parole

“We talk about the costs to incarcerate someone who’s not gonna hurt you again, who just hurts himself, you know, the nonviolent criminal... But let’s talk about the costs once we rehabilitate him and he’s good to go. We’re gonna still spend like 60 to 90 dollars a day, depending on what area of the country he’s in... It costs a lot—it’s like staying in a motel. So we’re going to put him up in the motel the rest of his life, feed him three meals a day... He gets any illness, I got to do the same level of care that you have for the public... Look at all the costs. I’m flowing out the seams... And so, it’s ridiculous. I mean, we should just have the [parole] hearings so we can just cut back the ones that you don’t need to do all that for... It’s just costs, costs, costs, costs... there’s no end to it... till death do us part.”<sup>1445</sup>

— Burl Cain, Warden, Louisiana State Penitentiary at Angola

“The public out there is trying to raise their kids and they’re paying to house us in prison for nonviolent offenses. It doesn’t make sense. You’re paying for these guys not to go to work, not to pay taxes, instead of them being productive citizens... The government is taking money from education to house nonviolent prisoners.”<sup>1446</sup>

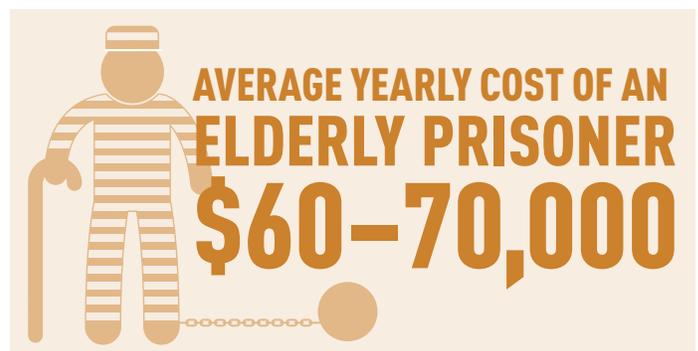
— William Dufries, 55, who has served 10 years of his life-without-parole sentence for trafficking marijuana and is imprisoned at a cost to Oklahoma taxpayers of \$18,467 per year

The ACLU estimates that the total fiscal cost-savings to taxpayers if state and federal sentencing statutes were revised to eliminate nonviolent offenses for eligibility for LWOP

would be at least **\$1.784 billion**. This figure is a Middle Estimate within a range from a Low Estimate of \$1.151 billion to a High Estimate of \$2.299 billion in taxpayer savings. This figure covers the cost of imprisoning the prisoners currently serving LWOP for nonviolent crimes; it does not take into account the cost of incarcerating people who will be sentenced to LWOP in the future.

This section of this report calculates three estimates of the total fiscal cost-savings to taxpayers if state and federal sentencing statutes were revised to eliminate nonviolent offenses for eligibility for life-without-parole sentences, denoted as the following: (1) Low Estimate, (2) Middle Estimate, and (3) High Estimate. For the reasons provided below, the Middle Estimate of \$1.784 billion is set forth as the best estimate of the total fiscal cost-savings of eliminating life without parole as a possible sentence for a nonviolent offense.

The ACLU’s economic analysis of the fiscal cost of LWOP sentencing laws and policies are conservative estimates. This data considers only the fiscal impact on state and federal corrections budgets and does not in any way account for additional costs incurred beyond the correctional system, such as reduction in labor force, reduction in tax revenue, increases in health care needs due to physical harm caused by incarceration, and underemployment in already economically-depressed neighborhoods. Furthermore,



no consideration is made for the indirect effects of these highly punitive sanctions, such as the impact upon family or communities, primarily because, in practice, such effects are extremely difficult to quantify or measure with accuracy or precision.

In a case affirming a 50-year sentence for a producer of child pornography who would be 96 years old when released from prison, Judge Richard Posner noted some of the additional downstream costs of incarcerating prisoners until they die, as well as the increasing costs to incarcerate prisoners as they age:

Federal imprisonment is expensive to the government; the average expense of maintaining a federal prisoner for a year is between \$25,000 and \$30,000, and the expense rises steeply with the prisoner's age because the medical component of a prisoner's expense will rise with his age, especially if he is still alive in his 70s (not to mention his 80s or 90s). It has been estimated that an elderly prisoner costs the prison system between \$60,000 and \$70,000 a year.... [I]f freed before they became elderly, and employed, they would have contributed to the Medicare and Medicaid programs through payroll taxes—which is a reminder of an additional social cost of imprisonment: the loss of whatever income the prisoner might lawfully have earned had he been free, income reflecting his contribution to society through lawful employment.<sup>1447</sup>

The cost of sentencing nonviolent offenders to LWOP accounts for a portion of ballooning federal and state costs to incarcerate too many prisoners for far too long. In a 2009 study, the Pew Center on the States estimated that total corrections spending has reached \$68 billion, an increase of 336 percent since 1986. In the past 20 years, state spending on prisons has increased at six times the rate of spending on higher education.<sup>1448</sup> In Michigan, the state government now spends more on corrections than on higher education.

At a time when budgets are tight and states are struggling to cut costs, paying to permanently incarcerate nonviolent offenders gobbles up scarce budgetary resources. Spending increasing amounts of money on imprisoning nonviolent offenders for the rest of their lives means less money for the

institutions that could help young people stay out of trouble, including education, drug treatment, job training, and community policing programs.

## METHODOLOGY

This report seeks to estimate the *total* amount of corrections expenditures that would be saved by taxpayers if state and federal sentencing statutes were revised to eliminate nonviolent offenses for eligibility for a life-without-parole sentence. Contrary to various forms of economic impact analyses that are required in most states in connection with the implementation of a new regulation or law,<sup>1449</sup> this report does not provide an estimate of the projected *annual* fiscal cost-savings over the next five years if a jurisdiction were to adopt the sentencing recommendations set forth in this report (i.e., were to revise sentencing statutes so as to eliminate nonviolent offenses for eligibility for life without parole).

Rather, this report seeks to estimate how much will be spent, in total, to incarcerate those individuals currently serving a life-without-parole sentence and compares this amount to how much we believe would have been spent, in the alternative, to incarcerate these individuals if life without parole had not been available as a possible sentence for a nonviolent offense. In other words, under a specific set of assumptions, it would be possible to calculate the *annual* fiscal cost-savings of eliminating life without parole as a possible sentence for all nonviolent offenses. In order to avoid making strong assumptions regarding the long-run dynamics of future prison growth, however, this report has chosen, instead, to estimate the *total* cost-savings to state and federal taxpayers if all prison inmates who are currently in state or federal prisons serving life-without-parole sentences had been sentenced under a sentencing regime in which nonviolent offenses were automatically ineligible for life without parole.

In particular, for each jurisdiction in our analysis, data was collected on the average age of admittance of all nonviolent offenders serving life without parole. These ages range from a low of 32 years in Florida to a high of 48 years in Illinois. Data was also collected on the average current age of all nonviolent offenders serving life without parole, with average

current ages ranging from a low of 45 years in Florida to a high of 54 years in Illinois. Using this data, it is possible to calculate, with the help of a life expectancy calculator created by the Social Security Administration, the additional life expectancy of an average adult male for any given date of birth.<sup>1450</sup> With this general population data, the average life expectancy of the prison population serving life without parole for a nonviolent offense was calculated for each jurisdiction considered in our analysis under the assumption that a sentence of twenty years reduces an inmate's life expectancy by an average of 16 years;<sup>1451</sup> specifically, the additional life expectancy was calculated as the intersection of years lived and decreasing life expectancy.

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**The total cost-savings to taxpayers if sentencing statutes were revised to eliminate nonviolent offenses for eligibility for LWOP sentences would be at least \$1.784 billion. This figure does not take into account the cost of incarcerating people who will be sentenced to LWOP in the future.**

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So, for example, the average age of admittance for the entire sample was 36; the average current age of the entire sample was 46. At age 46, the average life expectancy of a typical adult male in the United States is 82 years.<sup>1452</sup> Assuming that every twenty years spent in prison reduces life expectancy by 16 years, it is straightforward to show that the life expectancy of the entire sample is, therefore, equal to 61.5 years of age. In particular, the life expectancies calculated for the jurisdictions in our analysis range from a low of 59.9 years in Florida to a high of 67.2 years in Illinois—these estimates are consistent with findings presented in other research.<sup>1453</sup>

It is generally not disputed that the life expectancy of an incarcerated individual is lower than the life expectancy of a non-incarcerated individual in the general U.S. population. The brutal stress and anxiety of prison life, including separation from family, friends, and loved ones, severe physical confinement, limited access to proper healthcare, and the perpetual threat of victimization,<sup>1454</sup> in addition to the crushing reality that the remainder of one's life will be spent behind prison bars, serve to exacerbate the risk of physical and mental illness and dramatically accelerate the aging process.<sup>1455</sup> Specifically, in this report, consistent with a large number of social science studies, a prison inmate is classified as "aging" or "elderly" if he or she is 50 years of age or older.<sup>1456</sup>

To calculate the costs of incarceration, the preceding life expectancy calculations are combined with data on annual prison costs.<sup>1457</sup> In this report, data on the total state cost of prisons is primarily drawn from a recent study by the Vera Institute of Justice that found that the total taxpayer cost of prisons is often not fully reflected or recorded in a state's corrections budget. Indeed, in a number of states, such as Illinois or Missouri, the proportion of total state cost falling outside the state's corrections budgets is substantial (e.g., 32.5 percent and 25.9 percent in Illinois and Missouri, respectively).<sup>1458</sup> With respect to the forty states that participated in its study, the Vera Institute estimated that the true total taxpayer cost of prisons is approximately 14 percent higher than the cost reflected in those states' combined corrections budgets.<sup>1459</sup> Using the Vera Institute's estimates, the average annual cost per inmate used in the following analysis ranges from a low of \$17,285 per inmate in Alabama to a high of \$38,268 per inmate in Illinois.<sup>1460</sup>

The annual incarceration cost per inmate in the federal prison system, which was not examined in the Vera Institute study, is taken directly from annual financial statements disclosed by the Federal Bureau of Prisons, and is equal to \$28,893 per inmate.<sup>1461</sup>

Furthermore, the costs borne by the state taxpayer in connection with the incarceration of an *aging* or *elderly* prison population are substantially higher. The National Institute of Corrections, for instance, estimates the incarceration costs of an aging prisoner at *two times* the incarceration costs of a non-aging prisoner.<sup>1462</sup> The

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Our estimate assumes that the time served in *state* prison would have been 12 to 15 years and the time served in *federal* prison would have been 15 to 18 years. We subtracted the costs of these prison terms to arrive at our final figure.

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relatively high incarceration costs of aging or elderly prisoners, as defined in this report (i.e., at least 50 years of age), largely derive from increased staffing and healthcare needs. Specifically, there are at least three reasons why a disproportionate share of prison healthcare expenditures is devoted to the aging or elderly prison population. First and foremost, aging or elderly prisoners are relatively more likely to suffer from a variety of medical conditions that require direct contact with healthcare providers/professionals.<sup>1463</sup> Compared to younger prison inmates, older inmates tend to be in poorer health, especially with respect to chronic conditions, substance abuse, and psychological disorders.

Second, not only do aging or elderly prisoners come into contact with the prison healthcare system more frequently, but the cost of each individual contact is relatively high, not because the level of healthcare provided is superb—indeed, most prisons offer only a constitutionally minimally-acceptable level of healthcare, meaning only that a prison cannot show “deliberate indifference to serious medical needs of prisoners”<sup>1464</sup>—but, rather, because the prison environment is, by design, an extremely poor place to house and care for individuals who are elderly, ill, or otherwise disabled. Prison facilities, for example, typically do not have the appropriate systems in place to monitor chronic healthcare problems or to implement a wide array of useful preventative measures. Also, correctional healthcare staff members often lack the proper training and technical expertise to treat age-related illnesses, such as hearing loss, vision problems, arthritis, hypertension, and dementia. Likewise, many prison facilities are not architecturally

designed for prison inmates who require special services and devices, such as walkers, wheelchairs, and hearing or breathing aids.<sup>1465</sup>

Finally, as a consequence of ill-designed facilities and untrained healthcare staff, aging or elderly prisoners must often leave the physical confines of the prison facility to receive medical treatment. The government is obliged, in connection with the provision of such off-site medical treatment, to incur the resultant costs of transportation as well as the medical costs of the specialized treatment itself, in addition to the wages paid (often overtime pay) to those correctional officers who must accompany the aging or elderly prisoner at all times while outside the prison complex.<sup>1466</sup>

To complete the analysis, it is necessary to posit a set of counterfactual lengths of time-served based upon offense category and jurisdiction. These lengths represent the ACLU’s best guesses of the expected time served by a typical nonviolent offender if the state and federal sentencing statutes were revised to eliminate nonviolent offenses for eligibility for life without parole. There is, admittedly, some measure of uncertainty involved in doing so, and the three estimates provided below reflect varying assumptions made regarding the counterfactual length of time served. Moreover, note that a distinction is made between individuals who were sentenced under a habitual offender law and those who were not; specifically, for a given nonviolent offense category, the expected time served by an individual sentenced under a habitual offender law is *half* the length of the expected time served by an individual who was *not* sentenced to life without parole under a habitual offender law. In addition, the report assumes, for each separate category of nonviolent offense, that average prison sentences (and, in turn, expected average time served) in the federal prison system are slightly longer than those in the state prison system—an assumption supported by publicly available state and federal data regarding length of imprisonment by primary offense category.

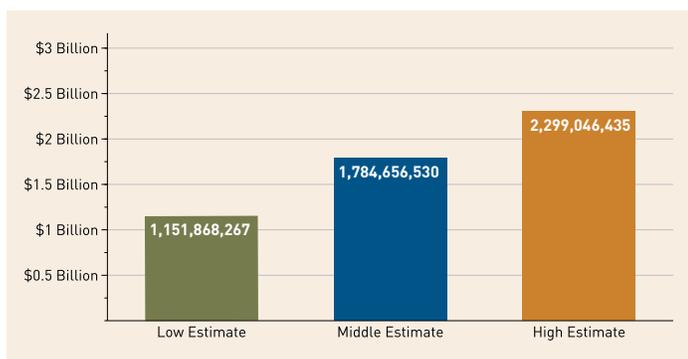
## FISCAL COST-SAVINGS ESTIMATES

This subsection calculates three estimates of the fiscal cost-savings to taxpayers if state and federal sentencing statutes were revised to eliminate nonviolent offenses for eligibility for life without parole, denoted as the following: (1) Low Estimate, (2) Middle Estimate, and (3) High Estimate.

Specifically, on the basis of publicly available data on the length of imprisonment by offense category, this report assumes, in calculating the High Estimate, that the time served in *state* prison by a typical nonviolent offender is 10 years for a drug offense, 8 years for a property offense, and 9 years for all other nonviolent offense categories.<sup>1467</sup> Recall that these sentences are reduced by half if an individual is sentenced under a habitual offender law. Thus, the time served in state prison by a typical nonviolent offender sentenced under a habitual offender law is 5 years for a drug offense, 4 years for a property offense, and 4.5 years for all other nonviolent offenses. Likewise, this report assumes that the time served in *federal* prison by a typical nonviolent offender is 12 years for a drug offense, 10 years for a property offense, and 11 years for all other categories of nonviolent offenses.<sup>1468</sup>

The High Estimate represents, in our view, a plausible *upper* bound on the total fiscal cost-savings of eliminating life without parole as a possible sentence for nonviolent offenses, and is equal to **\$2.299 billion**.

**FIGURE 12**  
**Estimated fiscal cost-savings of eliminating LWOP for nonviolent offenders currently serving LWOP**



Source: ACLU fiscal impact analysis (2013)

To calculate the Low Estimate, by contrast, the average expected times served by state and federal prisoners for the categories of nonviolent offenses set forth above are all doubled. So, for instance, the Low Estimate assumes that the time served by a typical nonviolent offender sentenced to life without parole in *state* prison is 20 years for a drug offense, 16 years for a property offense, and 18 years for all other nonviolent offenses. Likewise, the Low Estimate assumes that the time served by a typical nonviolent offender sentenced to life without parole in *federal* prison is 24 years for a drug offense, 20 years for a property offense, and 22 years for all other nonviolent offenses. Again, given available data, these posited counterfactual lengths of time served based upon offense category and jurisdiction are high in all likelihood.

The Low Estimate represents, in our view, a plausible *lower* bound on the total fiscal cost-savings of eliminating life without parole as a possible sentence for nonviolent offenses, and is equal to **\$1.151 billion**.

Finally, to calculate the Middle Estimate, the expected average times served by state and federal prison inmates for the categories of nonviolent offenses set forth above in our discussion of the High Estimate are all increased by 50 percent (as opposed to 100 percent in our calculation of the Low Estimate). So, for example, the Middle Estimate assumes that the time served in *state* prison by a typical nonviolent offender sentenced to life without parole is 15 years for a drug offense, 12 years for a property offense, and 13.5 years for all other nonviolent offense categories. Likewise, the Middle Estimate assumes that the time served by a typical nonviolent offender in *federal* prison sentenced to life without parole is 18 years for a drug offense, 15 years for a property offense, and 16.5 years for all other categories of nonviolent offenses.

The Middle Estimate represents the ACLU's best estimate of the true total fiscal cost-savings to taxpayers of eliminating life without parole as a possible sentence for nonviolent offenses, and is equal to **\$1.784 billion**.

The Middle Estimate is depicted graphically in Figure 12, along with the Low and High Estimates for comparison.

Table 16 further reports the Low, Middle, and High Estimates by individual jurisdiction.

**TABLE 16**

**Estimated fiscal cost-saving of eliminating LWOP for nonviolent offenders currently serving LWOP, by jurisdiction**

Jurisdiction	Fiscal expenditures (in dollars)		
	Low	Middle	High
Alabama	94,931,152	114,994,720	128,835,680
Federal	706,894,080	1,222,164,608	1,645,405,696
Florida	133,815,296	153,620,992	172,611,968
Illinois	0	3,486,641	7,313,442
Louisiana	131,149,680	183,327,904	219,021,024
Mississippi	41,437,320	47,821,264	53,113,308
Missouri	605,933	661,808	717,683
Oklahoma	6,263,798	15,312,628	24,243,822
South Carolina	36,771,008	43,265,964	47,783,812
<b>Total</b>	<b>1,151,868,267</b>	<b>1,784,656,530</b>	<b>2,299,046,435</b>

Source: ACLU fiscal impact analysis (2013)

As expected, approximately two-thirds of the total estimated cost-savings inures to the federal prison system, with over \$1.2 billion in projected fiscal cost-savings under the Middle Estimate. The estimated cost-saving for a couple of the states is substantially smaller, although the estimates for Missouri, in particular, are notable in their own right insofar as these estimates demonstrate how much can be saved even over the expected lifetime of a *single* prison inmate serving life without parole for a nonviolent offense.

In a number of states, however, the estimated total fiscal cost-savings are quite large. For example, the Middle Estimate suggests that Louisiana would save \$180 million, in total, if its sentencing statutes were revised to eliminate nonviolent offenses for eligibility for life without parole. Although this is a large number, especially considering the fact that the general operating appropriations for “Corrections Services” in Louisiana for the fiscal year 2012-2013 was approximately \$450 million,<sup>1469</sup> it is a number that is intuitively plausible to the extent that our analysis shows that a single nonviolent offender currently serving life without parole in the Louisiana State prison system will cost the Louisiana taxpayers approximately half a million dollars, in total, over his or her expected lifespan.<sup>1470</sup>

# IX. Comparative International Practice and Fundamental Rights to Humane Treatment, Proportionate Sentence, and Rehabilitation

“**T**he American prison system, where the prisoner is condemned to serve this wretched sentence...is a system where the policies long ago shifted from the potential redemption and rehabilitation of the prisoner...These conditions demean the human dignity of the prisoner, but as they reflect the extent to which society will go in punishing its prisoners, they reflect us all....The issue of whether an individual should be sentenced to a sentence of life without the possibility of parole for a nonviolent offense is not one of justice but rather a question of whether our morality as a nation will allow us to accept this fate for any human being.”<sup>1471</sup>

—Eric Hicks, 43, who has served 21 years of two life sentences for racketeering and conspiracy to possess crack cocaine with intent to distribute. His only prior conviction was for unauthorized use of a motor vehicle when he was 18 years old.

Life-without-parole sentences for nonviolent crimes constitute disproportionately severe punishment that violates human rights. Such sentences violate fundamental rights to humane treatment, proportionate sentence, and rehabilitation. Human rights law and principles have long required proportionality between the seriousness of the offense and the severity of the sentence. Under human rights law, disproportionately severe sentences may constitute a form of cruel, inhuman, or degrading punishment. Unjust sentences can also constitute arbitrary deprivations of liberty in violation of the right to liberty and are inconsistent with respect for the inherent dignity of the individual. Human rights law also guarantees that offenders have a right to be rehabilitated and requires efforts to rehabilitate prisoners.

Moreover, the United States is far out of step with the rest of the world in its practice of sentencing individuals to life in prison without the possibility of parole for nonviolent crimes. The United States is among a minority of countries (20 percent) known to have LWOP sentences, while the vast

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The United States is virtually alone in its willingness to sentence people to die behind bars for nonviolent crimes.

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majority of countries that do provide for LWOP sentences place stringent restrictions on when they can be issued and limit their use to crimes of murder.<sup>1472</sup> Such sentences are rare in other countries and were recently ruled a violation of human rights in a decision by the European Court of Human Rights that would require an opportunity for review of the sentences of the 49 prisoners serving LWOP in the United Kingdom, all of whom were convicted of murder.<sup>1473</sup>

## OUT OF STEP WITH THE WORLD

The United States is virtually alone in its willingness to sentence people to die behind bars for nonviolent crimes. Nearly 100 countries have signed the Rome Statute, which requires that all life sentences be reviewed after 25 years, *even for the most heinous offenses*, such as war crimes and genocide. A few countries have even legally abolished LWOP, and a handful of European countries have no statutes that mention life imprisonment, let alone LWOP, even for the most serious,

violent crimes.<sup>1474</sup> According to a University of San Francisco School of Law study, the per capita number of prisoners serving LWOP sentences in the United States is 51 times that of Australia, 173 times that of the United Kingdom, and 29 times that of the Netherlands.<sup>1475</sup> Even China and Pakistan provide for a review of life sentences after 25 years' imprisonment.

Commitment to the principles of the fundamental rights to humane treatment, proportionate sentence, and rehabilitation has led a large number of states to *de jure* or *de facto* prohibit life-without-parole sentences. Croatia, Norway, Portugal, Slovenia, and Spain make no legislative provisions for life imprisonment at all.<sup>1476</sup> In Croatia, the most severe sanction is a sentence from 20 to 40 years, and conditional release may be granted after one-half or one-third of this exceptional sentence has been served. Three people were sentenced to such exceptionally long-term imprisonment between 1998 and 2001.<sup>1477</sup> In Norway, the most severe sanction is a determinate sentence of imprisonment for 21 years, and conditional release is possible after 12 years have been served.<sup>1478</sup> In Portugal, the maximum prison sentence is for 25 years, exceptionally for 30 years.<sup>1479</sup> Slovenian legislation provides for a maximum of 30 years, but such a sentence has never been imposed to date; prisoners serving more than 15 years may be conditionally released after three-quarters of the sentence has been served.<sup>1480</sup> In Spain the maximum sentence is imprisonment for 30 years. In Iceland, the legislation provides for life sentences, but no such sentence has been imposed since 1940.<sup>1481</sup> LWOP is also prohibited in the constitutions of a number of Latin American countries.<sup>1482</sup>

Moreover, constitutional courts in Germany, France, Italy, and Namibia have recognized that those subject to life

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The per capita number of prisoners serving LWOP sentences in the United States is 51 times that of Australia, 173 times that of the United Kingdom, and 29 times that of the Netherlands.

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sentences “have a fundamental right to be considered for release.”<sup>1483</sup> As a result of these deeply held principles, Mexico will not extradite persons to the United States if they will face whole-life imprisonment,<sup>1484</sup> and the European Union is currently debating extending its policy of non-extradition to the United States in cases where the death penalty may be imposed to include a guarantee against the imposition of LWOP sentences.<sup>1485</sup> The Rome Statute of the International Criminal Court (ICC) again serves as recent evidence of a global consensus against LWOP. Despite the fact the ICC prosecutes some of the world’s most dangerous offenders, the maximum sentence provided for in the Rome Statute is life imprisonment, and even that sentence must be reviewed after 25 years.<sup>1486</sup>

There also is a growing consensus in Europe against LWOP.<sup>1487</sup> The United Kingdom and the Netherlands are the only two countries in Europe that still sentence prisoners to LWOP. European Court of Human Rights decisions in the cases *Vinter and Others v. UK* (2013) and *Harkins and Edwards v. UK* (2012) confirmed that the trend in Europe is moving away from LWOP sentences. As of July 2013, there were only



49 prisoners serving LWOP in England and Wales, all for murder, but provisions for review of these sentences may be enacted following the *Vinter* decision ruling that they violate human rights.<sup>1488</sup> While most European states do prescribe some form of life imprisonment, offenders rarely end up serving the full sentences.<sup>1489</sup> For instance, in Sweden, Bulgaria, and Ukraine, prisoners serving LWOP sentences are able to petition for a pardon or clemency.<sup>1490</sup> Moreover, sentence appeals (by both the prosecution and the defense) are available in England, Australia, and most Continental systems.<sup>1491</sup>

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The United States is among a minority of countries—20 percent worldwide—known to have LWOP sentences. The vast majority of these countries place stringent restrictions on when LWOP sentences can be issued and limit their use to crimes of murder.

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The European Union has renounced life without parole, while also stating that “the present criminal policy in the EU Member States...is moving towards keeping imprisonment to an absolute minimum.”<sup>1492</sup> In addition, several foreign constitutions explicitly require governments to adopt measures that facilitate rehabilitation. The constitutions of Spain and Italy both specify that prison sentences should “be oriented towards the re-education and rehabilitation of offenders.”<sup>1493</sup> Similarly, the constitutional courts of Germany, France,<sup>1494</sup> Italy,<sup>1495</sup> and Namibia<sup>1496</sup> have stated that prisoners have a general right to rehabilitation as a result of their constitutional right to human dignity.<sup>1497</sup>

The German Federal Constitutional Court has condemned imposition of life imprisonment without any possibility for parole. According to the German Constitutional Court, the state “strikes at the very heart of human dignity if [it] treats the prisoner without regard to the development of

his personality and strips him of all hope of ever earning his freedom.... The prison institutions also have the duty in the case of prisoners sentenced to life imprisonment, to strive towards their resocialization, to preserve their ability to cope with life and to counteract the negative effects of incarceration and destructive personality changes that go with it.”<sup>1498</sup> The German Constitutional Court held that the state is obligated to consider “the particular situation of each prisoner in terms of his or her capacity for rehabilitation and resocialization and in the light of the principles of human dignity, the rule of law, and the social state.”<sup>1499</sup>

In a unanimous decision, the South African Constitutional Court held the following:

To attempt to justify any period of penal incarceration, let alone imprisonment for life as in the present case, without inquiring into the proportionality between the offence and the period of imprisonment, is to ignore, if not to deny, that which lies at the very heart of human dignity. Human beings are not commodities to which a price can be attached; they are creatures with inherent and infinite worth; they ought to be treated as ends in themselves, never merely as means to an end.<sup>1500</sup>

The South African Constitutional Court further elaborated, “Where the length of the sentence, which has been imposed because of its general deterrent effect on others, bears no relation to the gravity of the offense, the offender is being used essentially as a means to another end and the offender’s dignity is assailed. So too where the reformatory effect of the punishment is predominant and the offender sentenced to lengthy imprisonment, principally because he cannot be reformed in a shorter period, but the length of imprisonment bears no relationship to what the committed offence merits.”<sup>1501</sup>

## DISPROPORTIONATE SENTENCES VIOLATE INTERNATIONAL LAW

The U.S. Supreme Court held that a court may refer “to the laws of other countries and to international authorities as instructive for its interpretation of the Eighth Amendment’s prohibition of cruel and unusual punishments,”<sup>1502</sup> and, accordingly, it has repeatedly resorted to the use of international law in interpreting the scope of the Eighth Amendment’s prohibition of cruel and unusual punishment.<sup>1503</sup>

The imposition of LWOP sentences for nonviolent offenses violates fundamental international human rights laws and principles, including the right to humane treatment. International law, which forms part of the common law of the United States,<sup>1504</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>1505</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>1506</sup> Accordingly, the principle of proportionality has attained the status of a rule of customary international law.<sup>1507</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>1508</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>1509</sup> and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)<sup>1510</sup> prohibit “cruel, inhuman or degrading treatment or punishment.” The ICCPR further recognizes that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.<sup>1511</sup> The Universal Declaration of Human Rights similarly recognizes the “inherent dignity” of humans and prohibits cruel, inhuman, or degrading treatment or punishment.<sup>1512</sup>

The European Court of Human Rights (ECHR), the judicial

body that adjudicates compliance with the European Convention for the Protection of Human Rights, has recognized that LWOP sentences violate the prohibition on inhuman punishment and has found that prison sentences must bear “reasonable relationship of proportionality with what actually happened.”<sup>1513</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 Convention.<sup>1514</sup> The court ruled that life sentences with extremely limited or no possibilities for review and release violate Article 3 of the Convention, which prohibits inhuman or degrading treatment.<sup>1515</sup> According to the court, Article 3 requires that life sentences must 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 he or she is entitled to conditional release.<sup>1516</sup> The prisoners serving LWOP who brought the case had committed serious crimes: one had been convicted of murdering his wife; another of murdering his parents, his adoptive sister, and her children for financial gain; and the third of murdering four people.<sup>1517</sup> Even taking into account the seriousness of these crimes, the court ruled that there must be an opportunity for review of the prisoners’ 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>1518</sup>

The opinions of the European Court are widely respected, and the U.S. Supreme Court has cited them with approval.<sup>1519</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>1520</sup> and freedom from torture and cruel or degrading punishment is explicitly provided for in more than 81 constitutions.<sup>1521</sup> The international consensus on the principle of proportionality continues to grow, having constituted an important element of all sentencing reforms in the late twentieth century.<sup>1522</sup> This consensus was demonstrated most recently in the Rome Statute of the International Criminal Court, 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>1523</sup>

Preserving proportionality between the seriousness of the offense and the severity of the sentence is also recognized at the inter-governmental level in Europe and forms an integral component of all Western legal systems.<sup>1524</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>1525</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.” The European Court of Justice, responsible for the enforcement of European Union law in 27 countries in Europe, has noted that while “Member States are empowered to choose the penalties which seem appropriate to them[] [t]hey must [] exercise that power in accordance ... with the principle of proportionality.”<sup>1526</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>1527</sup> Legal norms in Finland and Sweden emphasize proportionality, as do sentencing guidelines in Canada, New Zealand, South Africa, and England.<sup>1528</sup> The Court of Appeal of England and Wales and the Canadian Supreme Court have both found that a sentence that fails

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## The European Court of Human Rights recently ruled that LWOP sentences violate human rights and that the 49 prisoners serving LWOP in the United Kingdom, all of whom were convicted of murder, must have an opportunity for review of their sentences.

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to take into consideration the seriousness and specific circumstances of the offense and the offender is a form of inhuman or degrading punishment.<sup>1529</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>1530</sup>

In *R. v. Offen (No.2)*, the Court of Appeal for 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>1531</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.” The court also considered that such a sentence could amount to a form of “inhuman or degrading ... punishment.”<sup>1532</sup>

Similarly, in *R. v. Smith*, the Canadian Supreme Court held that a mandatory seven-year-minimum sentence for

importing narcotics violated Section 12 of the Canadian Charter of Rights and Freedoms, which bans “cruel and unusual treatment or punishment.”<sup>1533</sup> The court reasoned that because such a mandatory penalty applied regardless of the drug type or quantity and the offender’s purposes or other characteristics, “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.<sup>1534</sup>

In *Smith*, the Canadian Supreme Court also set forth the test that should be employed by the Canadian courts in 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.<sup>1535</sup>

## RIGHT TO REHABILITATION UNDER INTERNATIONAL LAW

International law, including both explicit treaty provisions and customary international law, guarantees that offenders have a right to be rehabilitated. The first major human rights treaty ratified by the United States, the International Covenant on Civil and Political Rights (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>1536</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 penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.”<sup>1537</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>1538</sup> 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>1539</sup>

The U.N. Basic Rules for the Treatment of Prisoners (Basic Rules)<sup>1540</sup> and the U.N. Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules)<sup>1541</sup> also underscore the rehabilitative function of incarceration. The Basic Rules require states to provide “favorable conditions [] for the reintegration of the ex-prisoner into society under the best possible conditions.”<sup>1542</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.

Lastly, 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.

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>1543</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 judgments have reviewed national courts’ refusal to release on license or parole those sentenced to life imprisonment.<sup>1544</sup>

The ECHR held that 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>1545</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>1546</sup> The ECHR also has recognized “the legitimate aim of a policy of progressive social reintegration of persons sentenced to imprisonment” and it acknowledged “the merit of measures—such as temporary release—permitting the social reintegration of prisoners even where they have been convicted of violent crimes.”<sup>1547</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>1548</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>1549</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>1550</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>1551</sup>

## U.S. CONSTITUTIONAL LAW

The Eighth Amendment to the Constitution of the United States bans cruel and unusual punishment,<sup>1552</sup> which includes sentences that are grossly disproportionate to the offense committed.<sup>1553</sup> The determination of whether a punishment is cruel and unusual under the Eighth Amendment is no longer tied to the historical concept of what was “cruel and unusual” at the time of its adoption,<sup>1554</sup> but rather requires courts to examine “evolving standards of decency that mark the progress of a maturing society.”<sup>1555</sup>

Although the Supreme Court has imposed categorical bans on sentencing practices based on “mismatches between the culpability of a class of offenders and the severity of a penalty,”<sup>1556</sup> largely in the capital context but also including categorically striking down life-without-parole sentences for juvenile offenders convicted of non-homicide crimes and mandatory LWOP for juvenile offenders, the Court has generally eschewed Eighth Amendment protection for adult offenders facing harsh, noncapital sentences. However, recent decisions striking down juvenile LWOP sentences and emerging national consensus on the need for sentencing reform suggest that national “standards of decency” are evolving, and it is time the Supreme Court reviews the

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## Emerging national consensus on the need for sentencing reform and recent Supreme Court decisions ruling that juvenile offenders cannot receive LWOP for non-homicide offenses or mandatory LWOP sentences for any crime suggest that “standards of decency” are evolving.

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constitutionality of LWOP sentences for nonviolent offenses as well as mandatory LWOP sentences for adult offenders.

Rather than apply proportionality review in the context of noncapital offenses, the Supreme Court has chosen to defer to Congress and state legislatures’ determinations of appropriate sentencing legislation.<sup>1557</sup> Consequently, despite the Court’s recognition that “the Eighth Amendment is a restraint upon the exercise of legislative power,”<sup>1558</sup> it has failed to curb—indeed, it has enabled—the rise in LWOP and life sentences for nonviolent offenses.

For example, in a 1980 decision, *Rummel v. Estelle*, the Court upheld a mandatory life sentence for a defendant convicted of obtaining \$120 under false pretenses (for accepting payment in return for the promise to repair an air conditioner that was never repaired).<sup>1559</sup> His two previous offenses—fraudulent use of a credit card and passing a bad check—cost his victims a total of \$108.36.<sup>1560</sup> The Court held that “[h]aving twice imprisoned him for felonies, Texas was entitled to place upon Rummel the onus of one who is simply unable to bring his conduct within the social norms prescribed by the criminal law.”<sup>1561</sup>

Three years later, in *Solem v. Helm*, the Court struck down a life-without-parole sentence for a seventh felony conviction for passing a bad check for \$100, ruling that the sentence

issued pursuant to a South Dakota recidivist statute was unconstitutional under the Eighth Amendment.<sup>1562</sup> Recognizing that nonviolent crimes are less serious than violent crimes against persons, the Court used a three-prong proportionality analysis in which courts should consider: “(i) the gravity of the offense and the harshness of the penalty; (ii) the sentences imposed on other criminals in the same jurisdiction; and (iii) the sentences imposed for commission of the same crime in other jurisdictions.”<sup>1563</sup> Noting that prison sentences can be unconstitutional solely because of excessive length,<sup>1564</sup> the Court stated that the judiciary is competent to measure the gravity of a crime “on a relative scale,” and that common-sense determinations—for example, that “nonviolent crimes are less serious than crimes marked by violence or the threat of violence,”—could, at the very least, ensure that less serious crimes are not punished more severely than more serious crimes.<sup>1565</sup>

In 1991, in *Harmelin v. Michigan*, a plurality of the Supreme Court upheld a mandatory life sentence without the possibility for parole for a first-time offender convicted of possessing 672 grams of cocaine.<sup>1566</sup> The Court was unable to agree on a rationale for the ruling, with Justice Antonin Scalia concluding that no proportionality analysis should apply outside the capital punishment context, and Justice Anthony Kennedy arguing that the Eighth Amendment “forbids only extreme sentences that are ‘grossly disproportionate’ to the crime.”<sup>1567</sup>

After *Harmelin*, in order to invoke the Eighth Amendment to overturn a non-capital sentence, defendants generally have to demonstrate that their sentences are “grossly disproportionate.” In *Ewing v. California*, the Supreme Court upheld a mandatory sentence of 25 years to life for a defendant’s third conviction for grand theft for stealing three golf clubs, imposed under California’s Three Strikes law.<sup>1568</sup> The Court reaffirmed that the Eighth Amendment bars only grossly disproportionate sentences—which, apparently, did not include 25 years to life for shoplifting sports equipment—and made it clear that it would defer to legislative judgment, especially concerning recidivism statutes.<sup>1569</sup>

As a result of the Supreme Court’s near total rejection of meaningful proportionality review of non-capital sentences, federal and state courts have likewise shown extreme deference to legislatures when faced with Eighth Amendment

challenges to non-capital sentences.<sup>1570</sup> Courts engage in little or no analysis as to why a particular statutory sentence does not lead to an inference of gross proportionality, resulting in a “near-absolute presumption of validity in practice, if not in theory.”<sup>1571</sup>

However, the ACLU believes that *Harmelin* was wrongly decided and that there has long been a need to revisit its rejection of proportionality in sentencing in non-capital cases. The time may be ripe: the Supreme Court has declared recently that juvenile offenders cannot receive life without parole for non-homicide offenses<sup>1572</sup> or mandatory sentences of life without parole for any crime.<sup>1573</sup> These cases present an opening to argue more persuasively for an expansion of the proportionality jurisprudence to non-capital sentencing, and specifically that our “evolving standards of decency” dictate that certain sentences, starting with life without parole for nonviolent offenses and mandatory LWOP sentences for adult offenders, are unconstitutional.

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As sentencing reforms have been embraced on both sides of the political aisle, and as incredibly harsh drug laws are scaled back across the United States, including the decriminalization of certain drug-related conduct, imposing life-without-parole for drug and other nonviolent crimes no longer reflects—if it ever did—societal standards of decency.<sup>1574</sup> As Justice John Paul Stevens remarked in his concurrence in *Graham v. Florida*, ruling that LWOP for juvenile offenders convicted of non-homicide offenses violates the Eighth Amendment:

Society changes. Knowledge accumulates.  
We learn, sometimes, from our mistakes.  
Punishments that did not seem cruel and  
unusual at one time may, in the light of reason

and experience, be found cruel and unusual at a later time; unless we are to abandon the moral commitment embodied in the Eighth Amendment, proportionality review must never become effectively obsolete.<sup>1575</sup>

The Supreme Court should embrace the developments in the context of juvenile sentencing to revisit life-without-parole sentences for adult nonviolent offenders and mandatory LWOP sentences more broadly.<sup>1576</sup> Only then will the Supreme Court fulfill its role, as described by one legal scholar, as a “check on the excessive punishments that emerge from a democratic process that fail[] to give noncapital sentencing rational consideration.”<sup>1577</sup> The Court should make this move because of the harshness of the life-without-parole sentence, and because all defendants deserve individualized and proportionate sentencing, especially when their lives are at stake.<sup>1578</sup>

# x. Acknowledgments

This report was written and researched by Jennifer Turner, the ACLU's Human Rights Researcher. Will Bunting, the ACLU's Fiscal Policy Analyst, conducted the fiscal impact analysis and drafted the fiscal cost section of this report. Human Rights Program Legal Assistant Allison Frankel and legal intern Cate Hall provided invaluable research and drafting assistance. Paralegal Alex Stamm filed the records requests and analyzed the FOIA data received by the ACLU. Intern Rebecca Steinberg assisted with reviewing, coding, and analyzing prisoner survey responses, and legal intern Michelle Kornblit provided research assistance. The report was reviewed and edited by Vanita Gupta, Deputy Legal Director; Jamil Dakwar, Director of the Human Rights Program; Kara Dansky, Senior Counsel of the Center for Justice; Chloe Cockburn, Advocacy and Policy Counsel; Ezekiel Edwards, Director of the Criminal Law Reform Project; David Fathi, Director of the National Prison Project; and Denny LeBoeuf, Director of the Capital Punishment Project.

The ACLU thanks Families Against Mandatory Minimums, Crack Open the Door, the November Coalition, Professor David Zlotnick of Roger Williams University School of Law, Life for Pot, the Orleans Public Defenders, and inmate counsel substitutes whom the ACLU has chosen not to name to avoid retribution for their assistance with this research, for their assistance in identifying cases to research and profile in this report. Special thanks to Dr. Boyce Watkins and Maria Lloyd of Your Black World Network, and Charles and Randy Fisher of the Hip-Hop Summit Youth Council and P.O.G. Marketing & Media for their assistance in promoting this report. The ACLU extends its deepest gratitude to the many prisoners and their family members who agreed to share their stories for this report.

## ENDNOTES

1. “Life without parole” is the most common term for sentences of life without possibility of release; “natural life,” “true life,” or “whole life” are also used. Throughout this report, we interchangeably use “life without parole” and “LWOP” to refer to these sentences.
2. ACLU telephone interview with Dicky Joe Jackson, Forrest City Medium Federal Correctional Institution, Forrest City, Arkansas, Mar. 12, 2013.
3. Letter from Judge Michael R. Snipes, Criminal District Court #7, Dallas County Veterans Court, former federal prosecutor who tried Dicky Joe Jackson’s case, Jan. 30, 2013 (stating “I saw no indication that Mr. Jackson was violent, that he was any sort of large scale narcotics trafficker, or that he committed his crimes for any reason other than to get money to care for his gravely ill child.”).
4. J.A. 311, *quoted in* United States v. [name redacted at prisoner’s request], 435 Fed.Appx. 209 (4<sup>th</sup> Cir. June 17, 2011), (Davis, J., concurring).
5. ACLU interview with Burl Cain, Warden, Louisiana State Penitentiary, Angola, Louisiana, June 4, 2013.
6. Letter to the ACLU from Antawn Tyrone Bolden, Jefferson Correctional Institution, Monticello, Florida, Mar. 10, 2013; letter to the ACLU from Timothy Hartman, Charlotte Correctional Institution, Punta Gorda, Florida, July 17, 2013; letter to the ACLU from Louis Scott White, Holmes Correctional Institution, Bonifoy, Florida, July 23, 2013; letter to the ACLU from Thomas Tinghino, Suwannee Correctional Institution Annex, Live Oak, Florida, July 20, 2013; ACLU telephone interview with Tommy Bryant, Jesup Federal Correctional Institution, Jesup, Georgia, July 17, 2013; letter to the ACLU from Eduardo Toranzo, Cross City Correctional Institution, Cross City, Florida, July 20, 2013.
7. Letter to the ACLU from Leland Dodd, Oklahoma State Reformatory, Granite, Oklahoma, Mar. 8, 2013.
8. Letter to the ACLU from Libert Roland, Louisiana State Penitentiary, Angola, Louisiana, May 11, 2013.
9. *Furman v. Georgia*, 408 U.S. 238 (1972).
10. Only Alaska provides the possibility of parole for all life sentences. Alaska’s version of LWOP is a 99-year sentence without the possibility of parole.
11. ASHLEY NELLIS, THE SENTENCING PROJECT, *LIFE GOES ON: THE HISTORIC RISE IN LIFE SENTENCES IN AMERICA* 6 (2013).
12. *Id.* at 1, 6; ASHLEY NELLIS & RYAN S. KING, THE SENTENCING PROJECT, *NO EXIT: THE EXPANDING USE OF LIFE SENTENCES IN AMERICA* 10 (2009).
13. ASHLEY NELLIS, THE SENTENCING PROJECT, *THROWING AWAY THE KEY: THE EXPANSION OF LIFE WITHOUT PAROLE SENTENCES IN THE UNITED STATES*, 23 FED. SENT’G REP. 1, 27 (2010).
14. Marie Gottschalk, *No Way Out? Life Sentences and the Politics of Penal Reform*, in *LIFE WITHOUT PAROLE: AMERICA’S NEW DEATH PENALTY?* 229 (Charles J. Ogletree Jr. & Austin Sarat eds., 2012); *LIFE GOES ON: THE HISTORIC RISE IN LIFE SENTENCES IN AMERICA*, *supra* note 11.
15. UNIV. OF SAN FRANCISCO SCHOOL OF LAW CENTER FOR LAW AND GLOBAL JUSTICE, *CRUEL AND UNUSUAL: U.S. SENTENCING PRACTICES IN A GLOBAL CONTEXT* 8 (2012).
16. *See Vinter and Others v. The United Kingdom*, Application. Nos. 66069/09, 130/10, and 3896/10, Eur. Ct. H.R. (July 9, 2013); Owen Bowcott & Eric Allison, *Whole-life jail terms without review breach human rights – European court*, THE GUARDIAN, July 9, 2013, *available at* <http://www.theguardian.com/law/2013/jul/09/whole-life-jail-sentences-without-review-breach-human-rights>.
17. *CRUEL AND UNUSUAL*, *supra* note 15, at 8.
18. Attorney General Eric Holder, Remarks at the Annual Meeting of the American Bar Association’s House of Delegates, San Francisco, Aug. 12, 2013.
19. ACLU interview with Burl Cain, Warden, Louisiana State Penitentiary, Angola, Louisiana, June 4, 2013.
20. *Id.*
21. *Id.*
22. As discussed in section III(A) of this report, the ACLU would advocate for the elimination of de facto LWOP sentences for nonviolent offenses in addition to the elimination of formal LWOP sentences for nonviolent offenses.
23. The ACLU reiterates its concern about recent media investigations into the Office of the Pardon Attorney (OPA), which suggested that there are troubling racial disparities in the application of pardons and that OPA has withheld or misrepresented critical information from the President ([https://www.aclu.org/files/assets/opa\\_oversight\\_sign\\_on\\_5-21-12.pdf](https://www.aclu.org/files/assets/opa_oversight_sign_on_5-21-12.pdf)). A Congressional investigation into the activities of the OPA is needed to address these troubling allegations. At a minimum, in order to effectuate this recommendation, the Attorney General should immediately undertake an exhaustive examination of OPA and, if necessary, establish an independent body to develop criteria for commutations and make recommendations on particular clemency cases.
24. In many of the federal cases documented by the ACLU, defendants are unable to take advantage of Supreme Court jurisprudence such as *Apprendi v. New Jersey*, 530 U.S. 466 (2000); *Blakely v. Washington*, 542 U.S. 296 (2004); and *United States v. Booker*, 543 U.S. 220 (2005), that could result in a sentence reduction if retroactive review and application of these decisions were permitted.
25. “Second look” laws include provisions that authorize sentence reductions when extraordinary circumstances make the original term seem unreasonable or unjust as well as mechanisms that are available on a more routine basis to all or most similarly situated prisoners.
26. For example, in Georgia, Undreas Davis was sentenced in 2009 to 150 years without parole for three counts of theft by taking and 12 counts of financial identity fraud—for possessing stolen mail. He was sentenced as a career criminal because of three prior felony convictions for minor property crimes: uttering and publishing a false, forged, altered, or counterfeit instrument; making a false statement of a material fact in an application for a certificate of title; and receipt of stolen mail. In an unusual turn of events, Davis’s sentence ultimately was vacated and remanded for resentencing, not because of its harshness but because his prior convictions had been improperly considered as the basis for sentencing as a habitual offender. *Davis v. State*, No. A12A1423, 2012 WL 5951536 (Ga. Ct. App. Nov. 29, 2012); *Davis v. State*, No. A12A1423, 319 Ga. App. 501 (Ga. Ct. App. Dec. 14, 2012).

27. Sharon Dolovich, *Creating the Permanent Prisoner*, in LIFE WITHOUT PAROLE: AMERICA'S NEW DEATH PENALTY?, *supra* note 14.
28. *Id.* at 111, n.99, *citing* Keith Wattlely, Presentation at UCLA School of Law: Introduction to Life Sentences in California (Nov. 10, 2010); Jennifer Chaussee, *For Paroled Lifers, Release Dates May Come Only with the Courts*, CAPITOL WKLY., Jan. 13, 2011 (reporting that, according to one survey of 300 lifers in custody, only two had been granted release dates by the state parole board).
29. Alexander Cockburn, *Dead Souls*, THE NATION, Apr. 15, 2009.
30. STANFORD CRIMINAL JUSTICE CTR, STANFORD LAW SCHOOL, LIFE IN LIMBO: AN EXAMINATION OF PAROLE RELEASE FOR PRISONERS SERVING LIFE SENTENCES WITH THE POSSIBILITY OF PAROLE IN CALIFORNIA (2011).
31. Joseph E. Kennedy, *Monstrous Offenders and the Search for Solidarity Through Modern Punishment*, 51 HASTINGS L.J. 829, 830 (2000).
32. For example, Rhode Island creates a discretionary life sentence for a third offense involving carrying a firearm or dangerous substance (such as explosives) during a "crime of violence." R.I. GEN. LAWS ANN. § 11-47-3 (West 2012). The definition of "crime of violence" for these purposes includes crimes against the person such as murder and rape as well as offenses such as burglary, breaking and entering, and "any felony violation involving the illegal manufacture, sale, or delivery of a controlled substance." R.I. GEN. LAWS ANN. § 11-47-2(2) (West 2012). The federal Armed Career Criminal Act lists extortion as an enumerated example of a violent felony. In Minnesota, a person convicted of a third "violent crime" may receive an "aggravated durational departure" under the state's sentencing guidelines, including a life-without-parole sentence, if the offender is determined to be a public safety risk. The definition of "violent crime" in Minnesota includes certain drug-related crimes, such as use of drugs to facilitate a crime, and methamphetamine-related crimes involving children or "vulnerable adults." Possession of a firearm by certain felons, first-degree burglary (such as of a dwelling when a person is present), and any crime committed for the benefit of a gang also qualify as violent crimes in Minnesota. MINN. STAT. ANN. § 609.1095 (West 2013).
33. *E.g.*, 18 U.S.C.A. § 924(c)(1)(C)(ii) (West 2006), creating a mandatory life sentence for a second or subsequent conviction for using, carrying, or possessing a machine gun or firearm equipped with a silencer during and in relation to any "crime of violence" or "drug trafficking crime." For purposes of this provision, "crime of violence" means any felony that has as an element the use, attempt, or threat of force against the person or property of another or that by its nature involves a substantial risk that physical force against the person or property of another may be used. 18 U.S.C.A. § 924(c)(3) (West 2006).
34. *United States v. Bryant*, 310 F.3d 550, 554 (7<sup>th</sup> Cir. 2002).
35. *United States v. Sun Bear*, 307 F.3d 747, 753 (8<sup>th</sup> Cir. 2002), *abrogated by* *United States v. Williams*, 537 F.3d 969, 970-71 (8<sup>th</sup> Cir. 2008).
36. *United States v. Johnson*, 417 F.3d 990, 997 (8<sup>th</sup> Cir. 2005), *abrogated by* *United States v. Williams*, 537 F.3d at 970-71.
37. *United States v. Springfield*, 196 F.3d 1180, 1185 (10<sup>th</sup> Cir. 1999).
38. *Compare* *United States v. Fell*, 511 F.3d 1035 (10<sup>th</sup> Cir. 2007) (even after *James v. United States*, 550 U.S. 192 (2007), and even where statute requires an overt act, conspiracy to commit burglary not violent), *with* *United States v. Moore*, 108 F.3d 878 (8<sup>th</sup> Cir. 1997) (attempted burglary violent if statute requires proof of overt act).
39. *Compare* *United States v. Montgomery*, 402 F.3d 482 (5<sup>th</sup> Cir. 2005) (not violent), *with* *United States v. Sawyers*, 409 F.3d 732 (6<sup>th</sup> Cir. 2005) (violent).
40. *Compare* *United States v. Whitfield*, 907 F.2d 798 (8<sup>th</sup> Cir. 1990) (not violent), *with* *United States v. Hall*, 77 F.3d 398 (11<sup>th</sup> Cir. 1996) (violent).
41. *Compare* *United States v. Amos*, 501 F.3d 524 (6<sup>th</sup> Cir. 2007) (not violent), *with* *United States v. Bishop*, 453 F.3d 30 (1<sup>st</sup> Cir. 2006) (violent).
42. *Compare* *United States v. Sawyers*, 409 F.3d 732 (6<sup>th</sup> Cir. 2005) (statutory rape not categorically violent), *with* *United States v. Williams*, 120 F.3d 575 (5<sup>th</sup> Cir. 1997) (inducement of minor to commit sodomy violent), *and* *United States v. Thomas*, 231 Fed. Appx. 765 (9<sup>th</sup> Cir. 2007) (all rape violent).
43. *Compare* *United States v. Sanchez-Garcia*, 501 F.3d 1208 (10<sup>th</sup> Cir. 2007) (unauthorized use of a motor vehicle not a "violent felony" under 18 U.S.C. §16(b), which is very similar to ACCA's residual clause), *with* *United States v. Reliford*, 471 F.3d 913 (8<sup>th</sup> Cir. 2006) (automobile tampering violent under ACCA's residual clause), and *United States v. Galvan-Rodriguez*, 169 F.3d 217 (5<sup>th</sup> Cir. 1999) (*per curiam*) (unauthorized use of a motor vehicle a "violent felony" under §16(b)).
44. *See* Zimring and Johnson, *The Dark At The Top of the Stairs: Four Destructive Influences of Capital Punishment on American Criminal Justice* (Nov. 8, 2011) ("Life without possibility of parole as a distinctive sentencing frame found in legislation was a product of the 1970s.").
45. *See* Ashley Nellis, *Tinkering with Life: A Look at the Inappropriateness of Life Without Parole as an Alternative to the Death Penalty*, 67 U. MIAMI L. REV. 439 (2013) ("Alabama, Illinois, and Louisiana all adopted LWOP statutes in direct response to the Furman decision.").
46. American Law Institute, *Model Penal Code: Sentencing* 13 (Tentative Draft No. 2, Mar. 25, 2011), *available at* <http://www.ali.org/00021333/Model%20Penal%20Code%20TD%20No%20-%20online%20version.pdf>.
47. LIFE GOES ON: THE HISTORIC RISE IN LIFE SENTENCES IN AMERICA, *supra* note 11, at 1.
48. *Id.* at 5 (finding the number of prisoners serving LWOP was 49,081 as of 2012).
49. THROWING AWAY THE KEY, *supra* note 13.
50. Marie Gottschalk, *No Way Out? Life Sentences and the Politics of Penal Reform*, in LIFE WITHOUT PAROLE: AMERICA'S NEW DEATH PENALTY?, *supra* note 14, at 229; LIFE GOES ON: THE HISTORIC RISE IN LIFE SENTENCES IN AMERICA, *supra* note 11, at 6.
51. Only Alaska provides the possibility of parole for all life sentences. Alaska's version of LWOP is a 99-year sentence without the possibility of parole.
52. NO EXIT, *supra* note 12, at 10.
53. THROWING AWAY THE KEY, *supra* note 13, at 28.
54. Those states are Alabama, Arkansas, Delaware, Florida, Georgia, Illinois, Iowa, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, New Hampshire, New Jersey, New Mexico, North Carolina,

- Oklahoma, Oregon, South Carolina, Tennessee, Texas, Virginia, Washington, West Virginia, and Wyoming. *Id.* at 27.
55. THROWING AWAY THE KEY, *supra* note 13, at 27.
  56. See, e.g., *id.* at 28-29; STANFORD LAW SCHOOL, PROGRESS REPORT: THREE STRIKES REFORM (PROPOSITION 36) (2013), *available at* <https://www.law.stanford.edu/organizations/programs-and-centers/stanford-three-strikes-project/proposition-36-progress-report>; CAL. DEP'T OF CORRS. AND REHAB., LIFER PAROLEE RECIDIVISM REPORT (2013), *available at* [http://www.cdcr.ca.gov/adult\\_research\\_branch/Research\\_Documents/FINAL\\_06\\_07\\_Lifer\\_Parolee\\_Recidivism\\_1\\_14\\_13.pdf](http://www.cdcr.ca.gov/adult_research_branch/Research_Documents/FINAL_06_07_Lifer_Parolee_Recidivism_1_14_13.pdf); LIFE IN LIMBO, *supra* note 30.
  57. State v. Carter, 99-KA-779 (La. App. 4 Cir. 11/15/00); 773 So.2d 268.
  58. State v. White, 36,935-KA (La. App. 2 Cir. 6/6/03); 850 So.2d 751.
  59. Hudson v. State, 31 So.3d 1 (Miss. Ct. App. Feb. 10, 2009). On appeal, the Supreme Court of Mississippi reversed and rendered Vincent Carnell Hudson's conviction and sentence, finding that the evidence introduced against him at trial was insufficient to show that he was aware of the trace amount of cocaine in his pockets or that he consciously and intentionally possessed it. Hudson v. State, No. 2007-CT-02016-SCT (Miss. Mar. 25, 2010).
  60. State v. Surry, 37,448-KA (La. App. 2 Cir. 9/24/03); 855 So.2d 893.
  61. State ex. rel. Veal v. State, 2003-KH-0451 (La. 3/19/04); 869 So.2d 844.
  62. State v. Finch, 97-KA-2060 (La. App. 4 Cir. 2/24/99); 730 S.2d 1020.
  63. State v. Kelly, 01-KA-321 (La. App. 5 Cir. 10/17/01); 800 So.2d 978.
  64. State v. Bourda, KA 10-1553 (La. App. 3 Cir. 6/8/11); 70 So.3d 82.
  65. State v. Mosley, 08-KA-1318 (La. App. 5 Cir. 5/12/09); 13 So.3d 705.
  66. State v. Winslow, 45,414 (La. App. 2 Cir. 12/15/10); 55 So.3d 910, *writ denied*, 63 So. 3d 1033 (La. 6/17/11).
  67. State v. Green, 36,741-KA (La. App. 2 Cir. 5/5/03); 839 So.2d 970.
  68. Miles v. State, 864 So. 2d 963 (Miss. App. Nov. 4, 2003).
  69. State v. Carthan, 99-512 (La. App. 3 Cir. 12/8/99); 765 So.2d 357, *writ denied*, 778 So.2d 547 (La. 1/12/01), *reconsideration denied*, 788 So.2d 438 (La. 3/30/01).
  70. State v. Chester, 97-K-1001 (La. App. 1 Cir. 12/19/97).
  71. Young v. State, 86 So.3d 261 (Miss. App. 2011).
  72. Clay v. State, No. 2003-KA-00631-COA (Miss. Ct. App. Aug. 24, 2004).
  73. State v. Stack, 97-KA-1176 (La. App. 5 Cir. 4/15/98).
  74. State v. Matthews, 2010-KA-1040 (La. App. 1 Cir. 12/22/10).
  75. Kelly v. State, No. 2004-KA-01961-COA (Miss. Ct. App. Aug. 8, 2006).
  76. London v. State, No. 2009-KP-01982-COA (Miss. Ct. App. July 19, 2011).
  77. State v. Pettus, 10-KA-215 (La. App. 5 Cir. 6/24/11); 68 So.3d 21, *writ denied*, 76 So.3d 1176 (La. 12/2/11).
  78. State v. Caliste, 2010-KA-0650 (La. App. 1 Cir. 10/29/10).
  79. State v. Washington, 41,182-KA (La. App. 2. Cir. 9/1/06).
  80. State v. Jackson, 96-KA-2540 (La. App. 4 Cir. 11/26/97).
  81. State v. Cushinello, 01-KA-109 (La. App. 1 Cir. 7/30/01); 792 So.2d 926.
  82. State v. Nelson, 2010-0997 (La. App. 1 Cir. 10/22/10).
  83. ACLU telephone interview with Anthony Jerome Jackson, Lieber Correctional Institution, Ridgeville, South Carolina, Mar. 22, 2013; letter to the ACLU from Anthony Jerome Jackson, Lieber Correctional Institution, Ridgeville, South Carolina, Mar. 28, 2013; *Police Roundup*, MYRTLE BEACH ONLINE, Nov. 16, 2012.
  84. State v. Godbolt, 2006 KA 0609 (La. App. 1 Cir. 11/3/06); 950 So.2d 727.
  85. State v. Kyles, 2010-KA-1308 (La. App. 1 Cir. 2/11/11).
  86. State v. Fields, 411-743 "B" (Crim. Dist. Ct. Parish Orleans 3/20/00).
  87. State v. Jones, 2000-KA-2117 (La. App. 4 Cir. 6/21/00).
  88. State v. Washington, 338 S.C. 392 (S.C. Jan. 17, 2000).
  89. Ott v. State, No. F-97-588 (Okla. Crim. App. Sept. 23, 1998).
  90. LIFE GOES ON: THE HISTORIC RISE IN LIFE SENTENCES IN AMERICA, *supra* note 11, at 6.
  91. State v. Yarbrough (Okla. King County Ct., 1997).
  92. State v. Coleman, 403-657 "B" (Crim. Dist. Ct. Parish Orleans 1999).
  93. State v. Mosley, No. S-2010-755, 2011 OK CR20 (Okla. Crim. App. July 19, 2011).
  94. State v. Johnson, 114 So.3d 205 (Fla. 5<sup>th</sup> Dist. Ct. App. Oct. 12, 2012).
  95. State v. Williams, 669 S.E.2d 640 (S.C. App. 2008).
  96. State v. Byers, No. 2011-190694 (S.C. App. Mar. 27, 2013).
  97. State v. Gray, No. 91-816-CF-A-Z (Fla. 5<sup>th</sup> Cir. Ct. 1991).
  98. Mathis v. State, No. 92-6238 (Fla. Dist. Ct. App. Jan. 25, 1993).
  99. United States v. Arionus, Cr. 93-10 (S.D. Iowa Nov. 4, 1993).
  100. Minor v. United States, No. 4:10-cv-02325-RMG (D.S.C. Oct. 25, 2010).
  101. State v. Mead, 988 So.2d 740, 749 (La. App. 2 Cir. 7/23/08); State v. Mead, 16 So.3d 470, 472 (La. App. 2 Cir. 8/13/09).
  102. State v. Hayes; Mathis v. State, 859 So.2d 1265 (Fla. 4<sup>th</sup> Dist. Ct. App. Nov. 26, 2003); Morrow v. State, 956 So.2d 1043 (Fla. 5<sup>th</sup> Dist. Ct. App. Sept. 5, 2003).
  103. State v. Saltzman (Fla. Palm Beach County Ct., 2007).
  104. State v. Horne, No. 99-KA-2192 (La. App. 1 Cir. 9/22/00).
  105. Wade v. State, No. 93-02537 (Fla. 10<sup>th</sup> Cir. Ct. Oct. 21, 1998).
  106. State v. Giles (Fla. Polk County Ct., 1979).
  107. State v. Bates, 37,282 KA (La. App. 2 Cir. 10/16/13).
  108. Alaska provides for the possibility of a 99-year sentence for nonviolent offenses. Although 99 years would constitute a de facto LWOP sentence for virtually every prisoner who receives it, because a term of years is not, strictly speaking, an LWOP sentence, the ACLU has not included Alaska in the data in this report.
  109. Under U.S. Sentencing Guidelines § 4B1.1(a) (2011), "A defendant is a career offender if (1) the defendant was at least eighteen years old at the time the defendant committed the instant offense of conviction; (2) the instant offense of conviction is a felony that is either a crime of violence or a controlled substance offense; and (3) the defendant has at least two prior felony convictions of either a crime of violence or a controlled substance offense." The guidelines provide significantly enhanced offense levels for career offenders. If the defendant's offense level increased due to application of the table in USSG

- §4B1.1 or if the defendant had a criminal history category of less than category VI prior to application of the guideline, he or she is considered to have had his or her sentence enhanced as career offenders for the purposes of data collection by the United States Sentencing Commission. See United States Sentencing Commission, Report on the Continuing Impact of United States v. Booker on Federal Sentencing, Part C: Career Offenders at 1 (2012).
110. The average age at the time of the crime was 32.6, and the median age at the time of the crime was 32.
  111. Sourcebook of Criminal Justice Statistics Online, Table 6.0027.2009, *Sentence length and time served for first releases from State prison, 2009*, <http://www.albany.edu/sourcebook/pdf/t600272009.pdf>.
  112. See, e.g., Loïc Wacquant, *Class, Race & Hyperincarceration in Revanchist America*, DAEDALUS (2010); BRUCE WESTERN, PUNISHMENT AND INEQUALITY IN AMERICA 26-28 (2006).
  113. See, e.g., Sonja B. Starr & M. Marit Rehani, *Racial Disparity in Federal Criminal Charging and its Sentencing Consequences*, U OF MICHIGAN LAW & ECON, EMPIRICAL LEGAL STUDIES CENTER PAPER NO. 12-002 (2012) (“Black defendants face significantly more severe charges than whites even after controlling for criminal behavior (arrest offense, multiple-defendant case structure, and criminal history), observed defendant characteristics (e.g., age, education), defense counsel type, district, county economic characteristic, and crime rates... Black male federal defendants receive longer sentences than whites arrested for the same offenses and with the same prior records... much of that disparity appears to be driven by decisions at the initial charging stage, especially by prosecutors’ filing of ‘mandatory minimum’ charges, which, *ceteris paribus*, they do twice as often against black defendants”); Robert L. Carter, *Fourth Annual W. Haywood Burns Memorial Lecture, The Committee on Minorities and the Law*, 3 N.Y. CITY L. REV. 267 (2000), citing MARC MAUER, THE SENTENCING PROJECT, RACE TO INCARCERATE (1999). Studies show that Blacks and whites use drugs at comparable rates. See, e.g., U.S. DEP’T OF HEALTH AND HUMAN SERVICES, RESULTS FROM THE 2012 NATIONAL SURVEY ON DRUG USE AND HEALTH: SUMMARY OF NATIONAL FINDINGS 24 (2012); HUMAN RIGHTS WATCH, TARGETING BLACKS: DRUG LAW ENFORCEMENT AND RACE IN THE UNITED STATES 42 (2008). See also THE SENTENCING PROJECT, RACIAL DISPARITY IN SENTENCING: A REVIEW OF THE LITERATURE (2005) (Finding that young Black and Latino males tend to be sentenced more severely than comparably situated white males, and that “in general, the relevant studies have found that greater racial disparity exists in sentencing for less serious crimes, especially property crimes and drug offenses, as opposed to violent crimes”).
  114. U.S. SENTENCING COMM’N, REPORT ON THE CONTINUING IMPACT OF UNITED STATES V. BOOKER ON FEDERAL SENTENCING (Jan. 30, 2013).
  115. Although Blacks constitute only about 13 percent of the population, as of 2009, they constitute 28.3 percent of all lifers and 56.4 percent of those serving LWOP. In 13 states and the federal system, the percentage of Blacks serving life sentences is more than 60 percent. In Georgia and Louisiana, the proportion of Blacks serving LWOP sentences is as high as 73.9 and 73.3 percent, respectively. In the federal system, 71.3 percent of the 1,230 LWOP prisoners are Black. NO EXIT, *supra* note 12, at 11-15, 17, 20-23.
  116. See, e.g., Starr & Rehani, *supra* note 113; Marc Mauer, *Addressing Racial Disparities in Incarceration*, PRISON JOURNAL (2011).
  117. C. Spohn, *Thirty Years of Sentencing Reform: The Quest for a Racially Neutral Sentencing Process*, in CRIMINAL JUSTICE 427-501 (J. Horney, ed., U.S. DOJ 2000).
  118. See, e.g., D.C. Baldus & C. Woodworth, *Race Discrimination and the Legitimacy of Capital Punishment: Reflections on the Interaction of Fact and Perception*, 53 DEPAUL L.R. 1411-1495 (2004).
  119. See, e.g., Mauer, *supra* note 116.
  120. M. Crow & K. Johnson, *Race, Ethnicity, and Habitual-Offender Sentencing*, 19 CRIMINAL JUSTICE POLICY REVIEW 63-83 (2008).
  121. E. ANN CARSON & DANIELA GOLINELLI, U.S. DEP’T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, PRISONERS IN 2012 – ADVANCE COUNTS 1 (2013); TODD D. MINTON, U.S. DEP’T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, JAIL INMATES AT MIDYEAR 2012-STATISTICAL TABLES 1 (2013).
  122. MICHELLE NATIVIDAD RODRIGUEZ & MAURICE Emsellem, THE NATIONAL EMPLOYMENT LAW PROJECT, 65 MILLION “NEED NOT APPLY” THE CASE FOR REFORMING CRIMINAL BACKGROUND CHECKS FOR EMPLOYMENT (2011), available at [http://www.nelp.org/page/-/SCLP/2011/65\\_Million\\_Need\\_Not\\_Apply.pdf?nocdn=1](http://www.nelp.org/page/-/SCLP/2011/65_Million_Need_Not_Apply.pdf?nocdn=1).
  123. Todd R. Clear & James Austin, *Reducing Mass Incarceration: Implications of the Iron Law of Prison Populations*, 3 HARV. L. & POL’Y REV. (2009).
  124. JOHN PFAFF, THE CAUSES OF GROWTH IN PRISON ADMISSIONS AND POPULATIONS (2011).
  125. Some federal mandatory minimum sentences apply to other offenses, such as certain firearm, pornography, and economic crimes. For example, a person in possession of a gun who has three prior felony convictions is required to serve a mandatory 15-year term. 18 U.S.C. § 924(3)(1); § 2K2.1 (see also § 4B1.4).
  126. For example, in the federal system, possession of 10 grams of LSD, 50 grams of methamphetamine, or 280 grams of crack cocaine with intent to distribute results in a 10-year mandatory minimum sentence. The mandatory sentence for these drug amounts rises to 20 years if it is a second offense, and life-without-parole if it is a third offense. 21 U.S.C. §§ 841(a), 841(b)(1)(A); § 2D1.1.
  127. 21 U.S.C. §§ 841(a), 841(b)(1)(A); § 2D1.1.
  128. United States v. Booker, 543 U.S. 220 (2005).
  129. E.g., FLA. STAT. § 893.135(c) (2011) (establishing a 25-year mandatory minimum for possession or sale of 28 grams or more of heroin, morphine, or other opiates); LA. REV. STAT. ANN. § (B) (1) (2011) (establishing a mandatory minimum sentence of five years in prison for possession or distribution of certain drugs).
  130. ALA. CODE § 13A-12-231(3)(d) (1995).
  131. MISS. CODE ANN. § 41-29-139(f) (West 2011).
  132. Sourcebook of Criminal Justice Statistics Online, Table 6.0027.2009, *supra* note 111.
  133. Matt Groff, *Questions on the 1315 Chart* (Oct. 2012), available at <http://www.mattgroff.com/questions-on-the-1315-project-chart/>; Matt Groff, *Updating the 1315 Chart* (Oct. 2012), available at <http://www.mattgroff.com/updates-the-1315-chart/>.
  134. PAUL GUERINO ET AL., U.S. DEP’T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, PRISONERS IN 2010 28 tbl.16A (2011), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/p10.pdf>; CHRISTOPHER J. MUMOLA & ALLEN J. BECK, U.S. DEP’T OF JUSTICE, BUREAU OF

- JUSTICE STATISTICS, PRISONERS IN 1996 10 tbl.13 (1997), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/p96.pdf>.
135. GUERINO ET AL., *supra* note 134, at 28 tbl.16B; MUMOLA & BECK, *supra* note 134, at 11 tbl.14. .
  136. Andre M. Davis, *Mandatory Minimum Sentences Impede Justice*, BALTIMORE SUN, Dec. 8, 2011.
  137. Statement of the Honorable Judge Andre M. Davis, United States Circuit Judge, United States Court of Appeals for the Fourth Circuit, Public Hearing on Federal Sentencing Options after Booker, United States Sentencing Commission, Feb. 16, 2012.
  138. Judge Mark W. Bennett, *How Mandatory Minimums Forced Me to Send More Than 1,000 Nonviolent Drug Offenders to Federal Prison*, THE NATION, Oct. 24, 2012.
  139. *Id.*
  140. *Id.*
  141. *What the Experts Say*, FAMILIES AGAINST MANDATORY MINIMUMS (last visited Oct. 25, 2013), <http://www.famm.org/aboutsentencing/WhattheExpertsSay.aspx>.
  142. Attorney General Eric Holder, Remarks at the Annual Meeting of the American Bar Association's House of Delegates, San Francisco, Aug. 12, 2013.
  143. PEW CENTER ON THE STATES, TIME SERVED: THE HIGH COST, LOW RETURN OF LONGER PRISON TERMS 7 (2012), available at [http://www.pewstates.org/uploadedFiles/PCS\\_Assets/2012/Prison\\_Time\\_Served.pdf](http://www.pewstates.org/uploadedFiles/PCS_Assets/2012/Prison_Time_Served.pdf).
  144. Michael G. Turner et al., "Three Strikes and You're Out": A National Assessment, FED. PROBATION 16 (1995).
  145. Michael Vitiello, *Three Strikes: Can We Return to Rationality?*, 87 J. CRIM. L. & CRIMINOLOGY 395, 395-96 (1997).
  146. WASH. REV. CODE 9.92.090 (WEST 2012).
  147. Vitiello, *supra* note 145, at 400 n.25, 463-81.
  148. NEV. REV. STAT. § 207.010(b) (West 2009).
  149. Jessica Langdon, *Man sentenced to 50 years for cocaine possession*, WICHITA-FALLS TIMES RECORD NEWS, June 25, 2010. Possession of cocaine, a penalty group 1 substance, is a third-degree felony. See TEX. HEALTH & SAFETY CODE ANN. § 481.115 (West 2009). Third-degree felonies carry 2- to 10-year sentences; see TEX. PENAL CODE ANN. § 12.34 (West 2009).
  150. *E.g.*, NO EXIT, *supra* note 12, at 27.
  151. 21 U.S.C.A. §§ 860, 849, 861, 841(B)(1)(A) (WEST 2010); ALA. CODE §§ 13A-12-233, 13A-5-9(c)(4), 15-22-27.2 (2012); GA. CODE ANN. § 17-10-7(c) (West 2012); 730 ILL. COMP. STAT. ANN. 5/5-4.5-95, 5/3-3-3 (West 2012); IOWA CODE ANN. §§ 124.401D, 902.1 (West 2012); LA. REV. STAT. ANN. §§ 15:529.1(A)(3)(B), 15:529.1(A)(4)(B) (2012); MICH. COMP. LAWS ANN. § 333.7413(1) (West 2012); OKLA. STAT. ANN. TIT. 63, § 2-415(D)(3) (West 2012). The states in which all strikes can be nonviolent are Alabama, Georgia, Illinois, Iowa, Louisiana, Michigan, and Oklahoma. See also Charles J. Ogletree Jr. & Austin Sarat, *Introduction: Lives on the Line: From Capital Punishment to Life without Parole*, in LIFE WITHOUT PAROLE: AMERICA'S NEW DEATH PENALTY?, *supra* note 14, at 1, 4-5.
  152. *About 3 Strikes*, FAMILIES TO AMEND CALIFORNIA'S THREE STRIKES (last visited Oct. 25, 2013), available at <http://facts1.live.radicaldesigns.org/article.php?list=type&type=55>.
  153. Sentencing Reform Act of 1984, Pub. L. No. 98-471, 98 Stat. 1987 (1984).
  154. TIMOTHY A. HUGHES ET AL., U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, TRENDS IN STATE PAROLE, 1990-2000 1 (2001), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/tsp00.pdf>.
  155. PAULA M. DITTON & DORIS JAMES WILSON, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, TRUTH IN SENTENCING IN STATE PRISONS (1999).
  156. *Model Penal Code: Sentencing*, *supra* note 46.
  157. See, e.g., PUNISHMENT AND INEQUALITY IN AMERICA, *supra* note 112, at 43-45; TIME SERVED, *supra* note 143.
  158. TIME SERVED, *supra* note 143, at 2.
  159. *Id.* at 3.
  160. Data provided by the Louisiana Department of Corrections and Mississippi Department of Corrections in response to open records requests filed by the ACLU.
  161. State v. Barbosa, No. 01-CF-016324 (Fla. 13<sup>th</sup> Cir. Ct. Aug. 26, 2010).
  162. See Affidavit of Clarence Aaron in support of petition for commutation, Oct. 23, 2001; Affidavit of Clarence Aaron in support of petition for commutation, Nov. 15, 2007.
  163. See United States v. Chisholm et al., 73 F.3d 304 (1996).
  164. *Id.*
  165. *Id.*
  166. Letter from Linda Aaron-McNeil, submitted to the Pardon Attorney on Aug. 14, 2012.
  167. Order denying defendant's motion for resentencing, United States v. Aaron, No. 1:93-cr-000008-CB-C (S.D. Ala. Sept. 29, 2008).
  168. Dafna Linzer, *Clarence Aaron Was Denied Commutation, But Bush Team Wasn't Told All the Facts*, WASHINGTON POST, May 13, 2012.
  169. Dafna Linzer, *Head of Pardons Office Withheld Facts from White House in Key Case*, PROPUBLICA, Dec. 18, 2012; Dafna Linzer, *Pardon Attorney Torpedos Plea for Presidential Mercy*, PROPUBLICA, May 13, 2012.
  170. Debra J. Saunders, *Obama Must Reform Presidential Pardons*, SAN FRANCISCO CHRONICLE, May 27, 2012.
  171. See Affidavit of Clarence Aaron in support of petition for commutation, Oct. 23, 2001; Affidavit of Clarence Aaron in support of petition for commutation, Nov. 15, 2007.
  172. ACLU telephone interview with Sharanda Jones, Federal Medical Center Carswell, Fort Worth, Texas, Mar. 8, 2013.
  173. *Id.*
  174. United States v. Jones, No. 99-11299 (5<sup>th</sup> Cir. Feb. 16, 2001).
  175. *Id.*
  176. *Id.*
  177. *Id.*
  178. *Id.*
  179. *Id.*
  180. ACLU telephone interview with Sharanda Jones, *supra* note 172.
  181. *Id.*
  182. ACLU telephone interview with Brittany Byrd, attorney for Sharanda Jones, Dallas, Texas, Mar. 5, 2013; e-mail communication to the ACLU from Brittany Byrd, Mar. 12, 2013.
  183. E-mail communication from Sharanda Jones, Federal Medical Center Carswell, Fort Worth, Texas, Apr. 2, 2013.
  184. Letter from Clenesha Garland, Mar. 13, 2013.
  185. ACLU telephone interview with Sharanda Jones, *supra* note 172.

186. THE WAR ON DRUGS (Parallel Universe Documentary 2007), available at <http://www.youtube.com/watch?v=AfxmDDks0dc> (excerpt featuring Sharanda Jones).
187. ACLU telephone interview with Sharanda Jones, *supra* note 172.
188. Letter from Clenesha Garland, *supra* note 184.
189. Letter from Sharanda Jones, Federal Medical Center Carswell, Fort Worth, Texas, Mar. 14, 2013.
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191. *Id.*
192. United States v. Tolliver et al., 61 F.3d 1189 (5<sup>th</sup> Cir. 1995).
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209. ACLU telephone interview with Michael Fitzgerald Wilson, Victorville United States Penitentiary, Adelanto, California, Mar. 20, 2013.
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211. *Id.* at 13.
212. United States v. Webster, 151 F.3d 1034 (7<sup>th</sup> Cir. 1998).
213. Transcript of Record, Sentencing Hearing Before The Honorable James B. Zagel at 10, United States v. Webster, No. 95-CR-126-1 (N. D. Ill. Mar. 21, 1996).
214. *Id.* at 11.
215. *Id.* at 13.
216. *Id.*; United States v. Webster, 151 F.3d 1034 (7<sup>th</sup> Cir. 1998); Webster v. United States, No. 09-2308 (7<sup>th</sup> Cir. Dec. 19, 2011).
217. ACLU telephone interview with Jesse Webster, Greenville Federal Correctional Institution, Greenville, Illinois, June 11, 2013.
218. *Id.*
219. Letter to President Barack Obama from Hon. James B. Zagel of the United States District Court for the Northern District of Illinois in support of the application of Jesse Webster for commutation of sentence, June 12, 2013.
220. *Id.*
221. *Id.*
222. ACLU telephone interview with Jesse Webster, *supra* note 217.
223. United States v. Booker, 115 F.3d 442, 442 (7<sup>th</sup> Cir. 1997).
224. United States v. Booker, No. 3:93CR00062-01 (N.D. Ind., 1995).
225. United States v. Booker, No. 3:93CR62-1 (N.D. Ind., 1996).
226. United States v. Booker, No. 3:93-CR-62RM (N.D. Ind., 1997).
227. United States v. Booker, 115 F.3d 442 (7<sup>th</sup> Cir. 1997) (Evans, T., dissenting).
228. Letter to ACLU from Robert Booker, Schuylkill Federal Correctional Institution, Minersville, Pennsylvania, Mar. 21, 2013.
229. *Id.*
230. *Id.*
231. Robert Booker Petition for Commutation of Sentence at 7.
232. ACLU telephone interview with Robert Booker, Schuylkill Federal Correctional Institution, Minersville, Pennsylvania, Mar. 13, 2013.
233. Letter to ACLU from Robert Booker, *supra* note 228.
234. Letter to the ACLU from Teresa Griffin, Tallahassee Federal Correctional Institution, Tallahassee, Florida, July 2, 2013.
235. ACLU telephone interview with Teresa Griffin, Tallahassee Federal Correctional Institution, Tallahassee, Florida, July 2, 2013.
236. Letter to the ACLU from Teresa Griffin, *supra* note 234.
237. *Id.*
238. *Id.*
239. United States v. Griffin, 7 F.3d 1512, 1514 (10<sup>th</sup> Cir. 1993).
240. *Id.*
241. ACLU telephone interview with Teresa Griffin, *supra* note 235.
242. *Id.*
243. United States v. Griffin, 7 F.3d at 1514; United States v. Griffin, 48 F.3d 1147, 1148 (10<sup>th</sup> Cir. 1993); United States v. Angulo-Lopez, 7 F.3d 1506, 1508 (10<sup>th</sup> Cir. 1993).
244. United States v. Angulo-Lopez, 7 F.3d at 1511.
245. Ed Godfrey, *2 Ring Leaders Sentenced to Life Without Parole*, OKLAHOMAN, Oct. 29, 1992.
246. Ed Godfrey, *Texas Woman Gets Life Term in Drug Case*, NEWSOK.COM (Oct. 27, 1992, 12:00 AM), <http://newsok.com/texas-woman-gets-life-term-in-drug-case/article/2410559>.
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252. Letter to the ACLU from Teresa Griffin, *supra* note 249.
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254. *Thug Cop Redemption Author Turns Obstacles into Successes*, SAVANNAH TRIBUNE, Feb. 1, 2012.
255. *Id.*; ACLU telephone interview with Tommy Bryant, Jesup Federal Correctional Institution, Jesup, Georgia, July 17, 2013.
256. Letter to the ACLU from Tommy Bryant, Jesup Federal Correctional Institution, Jesup, Georgia, Mar. 28, 2013; Presentence Investigation Report, United States v. Bryant, No. CR497-00182-001 (S.D. Ga., Jan. 7, 1998).
257. Letter to the ACLU from Tommy Bryant, *supra* note 256..
258. ACLU telephone interview with Tommy Bryant, *supra* note 255; Presentence Investigation Report, United States v. Bryant, *supra* note 256.
259. Presentence Investigation Report, United States v. Bryant, *supra* note 256.
260. Letter to the ACLU from Tommy Bryant, *supra* note 256.
261. ACLU telephone interview with Tommy Bryant, *supra* note 255.

262. Presentence Investigation Report, *United States v. Bryant*, *supra* note 256.
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264. *Id.*
265. *Id.*
266. *Id.*
267. Ben Schmitt, *Officers get their day in court, Testimony gets under way*, SAVANNAH MORNING NEWS (Nov. 18, 1997), available at <http://savannahnow.com/stories/111897/NWScoptrial.html>.
268. ACLU telephone interview with Tommy Bryant, *supra* note 255.
269. *Id.*
270. Letter to the ACLU from Tommy Bryant, *supra* note 256.
271. *Id.*
272. *Id.*
273. *Thug Cop Redemption Author Turns Obstacles into Successes*, *supra* note 254.
274. Letter to the ACLU from Tommy Bryant, *supra* note 256.
275. *Id.*
276. *Id.*
277. Indictment, *United States v. McDonald et al.* (W.D. Tenn., Nov. 21, 1994); *United States v. McDonald et al.*, 173 F.3d 430, 1999 WL 149658 (6th Cir. 1999), *cert. denied*, 528 U.S. 873 (1999).
278. *United States v. McDonald et al.*, 173 F.3d 430.
279. *See id.*
280. *Id.*
281. ACLU telephone interview with Alice Marie Johnson, Federal Medical Center Carswell, Fort Worth, Texas, Apr. 16, 2013.
282. *Id.*
283. Letter to the ACLU from Alice Marie Johnson, Federal Medical Center Carswell, Fort Worth, Texas, Apr. 3, 2013.
284. ACLU telephone interview with Tretessa Johnson, Phoenix, Arizona, May 13, 2013.
285. *Id.*
286. *Id.*
287. Petition for Commutation of Sentence, Alice Marie Johnson.
288. Letter to the ACLU from Alice Marie Johnson, *supra* note 283.
289. Initial Brief of Appellant at 6, *Ortiz v. Florida*, No. 02-5081 (Fla. 13<sup>th</sup> Cir. Ct. 2003).
290. *Id.* at 9.
291. Transcript of Record at 19, *Florida v. Barbosa*, No. 01-CF-016324 (Fla. 13<sup>th</sup> Cir. Ct. Aug. 26, 2010).
292. *Adams v. Department of Corrections*, No. 8:07-CV-1880-T-27EAJ at 7 (M.D. Fla. 2011).
293. Initial Brief of Appellant at 9, *Ortiz v. Florida*, No. 02-5081.
294. *Id.* at 7.
295. *Id.* at 13.
296. *Id.* at 7.
297. Motion to Correct Illegal Sentence at 13, *Ortiz v. Florida* No. 01CF-16324 (Fla. 13<sup>th</sup> Cir. Ct. May 11, 2012.)
298. *Id.*
299. Letter to the ACLU from Roberto Ortiz, Sumter Correctional Institution, Bushnell, Florida, Mar. 26, 2013; Transcript of Record at 20, *Florida v. Barbosa*, No. 01-CF-016324 (Fla. 13<sup>th</sup> Cir. Ct. Aug. 26, 2010).
300. Letter to the ACLU from Roberto Ortiz, *supra* note 299.
301. *Id.*
302. Letter to the ACLU from Roberto Ortiz, Sumter Correctional Institution, Bushnell, Florida, July 31, 2013.
303. Letter to the ACLU from Roberto Ortiz, *supra* note 299.
304. *Id.*
305. E-mail communication to the ACLU from [name withheld at correction officer's request], Florida, Aug. 10, 2013.
306. Letter to the ACLU from Roberto Ortiz, *supra* note 299.
307. Letter to the ACLU from Roberto Ortiz, *supra* note 302.
308. *Id.*
309. Letter to the ACLU from Roberto Ortiz, Sumter Correctional Institution, Bushnell, Florida, Aug. 14, 2013.
310. Letter to the ACLU from Roberto Ortiz, *supra* note 302.
311. Letter to the ACLU from Roberto Ortiz, *supra* note 299.
312. Indictment, *United States v. Douglas et al.*, 4:92-CR-141-Y (N.D. Tex. Aug. 26, 1992).
313. *United States v. Fike et al.*, 82 F.3d 1315 (5<sup>th</sup> Cir. 1996); Sentencing Transcript, *United States v. Douglas*, 4:92-CR-141-Y (N.D. Texas Aug. 30, 1993)..
314. Sentencing Transcript at 5, *United States v. Douglas*, 4:92-CR-141-Y.
315. *Id.* at 15.
316. ACLU telephone interview with Altonio O'Shea Douglas, El Reno Federal Correctional Institution, El Reno, Oklahoma, July 1, 2013.
317. *Id.*
318. Fox 4 News Broadcast, Dallas Fort Worth, Nov. 21, 1996.
319. Letter to the ACLU from Altonio O'Shea Douglas, El Reno Federal Correctional Institution, El Reno, Oklahoma, Mar. 11, 2009.
320. ACLU telephone interview with Altonio O'Shea Douglas, *supra* note 316.
321. *Id.*
322. *Id.*
323. *United States v. Morales et al.*, 861 F.2d 396 (3<sup>rd</sup> Cir. 1988).
324. *Id.*
325. Presentence Investigation Report, *United States v. Viera*, No. GCR 89-01018-08 (N.D. Fla. Jan. 22, 1990).
326. *Id.*
327. *Id.*; *United States v. Viera*, No. 1:89-cr-01018-MP-GRJ-1 (11<sup>th</sup> Cir. 2013).
328. Letter to the ACLU from Luis Lazaro Viera, Coleman Medium Federal Correctional Institution, Coleman, Florida, Mar. 10, 2013.
329. *Id.*
330. Presentence Investigation Report at 7-8, *United States v. Martinez*, No. 91 CR 53-2 (N.D. Ill. Mar. 27, 1992).
331. Sentencing Transcript at 46-50, *United States v. Martinez*, No. 91-Cr-53 (N.D. Ill. Apr. 23, 1992).
332. ACLU telephone interview with Rudy Martinez, United States Penitentiary McCreary, Pine Knot, Kentucky, Mar. 5, 2013.
333. Sentencing Transcript at 45, *United States v. Martinez*, No. 91-Cr-53.
334. Bruce Rubenstein, *No Way Out*, MINNEAPOLIS ST. PAUL MAGAZINE, May 1, 2012.
335. Presentence Investigation Report at 2, 10, *United States v. Martinez*, No. 91 CR 53-2.
336. Letter dated Dec. 20, 2005, *quoted in* Rubenstein, *supra* note 334.
337. Rubenstein, *supra* note 334.
338. Sentencing Transcript at 78, 80, *United States v. Martinez*, No. 91-Cr-53.
339. *Id.* at 70, 78-80.

340. *MacNeil/Lehrer NewsHour* broadcast, Sept. 1, 1992.
341. Letter from Judge Milton I. Shadur to Bruce Rubenstein dated Dec. 5, 2010, *quoted in* Rubenstein, *supra* note 334.
342. *Id.*
343. E-mail communication from Rudy Martinez, United States Penitentiary McCreary, Pine Knot, Kentucky, Mar. 4, 2013.
344. ACLU telephone interview with Rudy Martinez, *supra* note 332.
345. E-mail communication from Rudy Martinez, *supra* note 343.
346. Dane Schiller, *Love Led Grandmother to Drug Smugglers, Prison*, HOUSTON CHRONICLE, June 16, 2009.
347. Dane Schiller, *Drug Crime Sends First-Time Offender Grandmom to Prison for Life*, HOUSTON CHRONICLE, May 9, 2012.
348. Dane Schiller, *Love Led Grandmother to Drug Smugglers, Prison*, *supra* note 346.
349. *United States v. Martorano*, 866 F.2d 62 (3<sup>rd</sup> Cir. 1989); *United States v. Martorano*, 782 F.2d 1032 (3<sup>rd</sup> Cir. 1986).
350. Alex Pickett, *Second Life*, CREATIVE LOAFING TAMPA, July 11, 2007.
351. Letter to the ACLU from George Martorano, Coleman Medium Federal Correctional Institution, Coleman, Florida, Feb. 5, 2013.
352. *Id.*
353. Kitty Caparella, *He's Hoping to Write his Way out of Prison*, PHILADELPHIA DAILY NEWS, Dec. 5, 1995.
354. Rockford Public Schools, Pupil Permanent Record for Reynolds Wintersmith Jr.
355. Annie Sweeney, *Supporters Seek Freedom for Convict Serving Life Sentence for First-Time Conviction*, CHICAGO TRIBUNE, Oct. 2, 2011.
356. Presentence Investigation Report, *United States v. Wintersmith*, at 15, line 608.
357. Rockford Public Schools, Pupil Permanent Record for Reynolds Wintersmith Jr.
358. *United States v. Edwards et al.*, 105 F.3d 1179 (7<sup>th</sup> Cir. 1997).
359. Wintersmith received sentencing enhancements for possessing a firearm and for being a leader in the conspiracy. Sentencing Transcript, *United States v. Edwards et al.*, No. 93-cr-20024-18 (N.D. Ill Nov. 23, 1994).
360. Judgment and Conviction Order, *United States v. Edwards et al.*, 93-cr-20024-18.
361. Sentencing Transcript, *United States v. Edwards et al.*, No. 93-cr-20024-18.
362. *Id.*
363. *Id.*
364. Petition for Commutation of Reynolds Wintersmith at 1.
365. Letter to President Barack Obama from Chonte' Neely, Jan. 22, 2012.
366. Blog, *Justice for Wintersmith*, available at <http://justiceforwintersmith.blogspot.com/>.
367. Letter to President Obama from Reynolds Wintersmith Jr., Feb. 23, 2012.
368. Brief of Appellant at 9, *Allen v. United States*, No. 98-3174 (11<sup>th</sup> Cir. Dec. 24, 1998).
369. *Id.*
370. *See Id.*
371. *See Id.* at 10.
372. *Id.* at 11.
373. *Id.*
374. *Id.* at 12.
375. *Id.* at 14.
376. *Id.* at 18.
377. Letter to the ACLU from Donald Allen, Marianna Federal Correctional Institution, Marianna, Florida, June 1, 2013.
378. Notice of Potential Attorney Representation Conflict, *United States v. Allen*, No. 5:98CR6/LAC (N.D. Fla.).
379. *United States v. Allen*, No. 5:98CR00006-002 (N.D. Fla. Aug. 21, 1998).
380. Letter to the ACLU from Donald Allen, Marianna Federal Correctional Institution, Marianna, Florida, June 1, 2013.
381. *United States v. Allen*, No. 5:98CR00006-002.
382. *See* Brief of Appellant at 5, *United States v. Allen*, No. 98-3174 (11<sup>th</sup> Cir. Dec. 24, 1998).
383. Letter to the ACLU from Donald Allen, Marianna Federal Correctional Institution, Marianna, Florida, June 1, 2013.
384. *Id.*
385. *Id.*
386. *Id.*
387. *Id.*
388. ACLU telephone interview with Pinkney Clowers III, Coleman Medium Federal Correctional Institution, Coleman, Florida, June 15, 2013.
389. *United States v. Boyd*, 131 F. 3d 951, 954 (11<sup>th</sup> Cir. 1997).
390. *Id.*
391. *Id.*
392. The conspiracy to distribute crack cocaine charge was subsequently vacated. *United States v. Boyd*, 131 F. 3d at 954.
393. Letter to the ACLU from Pinkney Clowers III, Coleman Medium Federal Correctional Institution, Coleman, Florida, June 1, 2013.
394. *United States v. Clowers*, No. 5:92-cr-00082-CAR-CHW-2 (11<sup>th</sup> Cir. July 31, 2102).
395. ACLU telephone interview with Pinkney Clowers III, Coleman Medium Federal Correctional Institution, Coleman, Florida, June 15, 2013.
396. *Id.*
397. Letter to the ACLU from Pinkney Clowers III, *supra* note 393.
398. *Id.*
399. *Id.*
400. *Id.*
401. *Id.*
402. *Id.*
403. *Id.*
404. *Id.*
405. Letter to the ACLU from Ira Bernard Parker, Marion Correctional Institution, Lowell, Florida, Mar. 20, 2013.
406. *Id.*
407. *Id.*
408. *Id.*
409. *Id.*
410. *Id.*
411. *Id.*
412. *Id.*
413. *Id.*
414. *Id.*
415. *United States v. Booker*, 543 U.S. 220 (2005).
416. ALA. CODE § 13A-12-231(2)(D); 231(3)(D) (1995).
417. MISS. CODE ANN. § 41-29-139(F) (West 2011).
418. These four state offenses were consolidated to two charges for sentencing. Presentence Investigation Report, *United States v. George*.

419. Sentencing Transcript at 13, *United States v. George* (N.D. Fla. May 5, 1997).
420. *Id.* at 11-12.
421. Savory McCuff, who was originally sentenced to 180 months, later had his sentence reduced to 108 months after the government's cooperation motion was granted in exchange for his testimony in George's trial. Likewise, Alonzo Knight's sentence of 204 months was reduced to 162 months, Zachary Butler's life sentence was reduced to 120 months, and Donald Hal's sentence of 240 months was reduced to 234 months.
422. Dickey was initially sentenced to 320 months, but upon a post-sentencing motion to reduce filed by the government, he was resentenced to 150 months. He was released from prison in 2007.
423. ACLU telephone interview with Stephanie George, Federal Correctional Institution Tallahassee, Tallahassee, June 25, 2013.
424. *Id.*
425. *Id.*
426. *Id.*
427. Letter from Kendra Dickey, Nov. 15, 2012.
428. Letter from William George, Nov. 22, 2012.
429. Memorandum in Support of the Petition of Stephanie Yvette George for Commutation of Sentence at 12.
430. Minor's prior convictions were for assault and trespass (1991); sale of marijuana (1992); possession of marijuana with intent to distribute (1992); possession of cocaine and resisting arrest without violence (1996); sale and delivery of a controlled substance (1999); battery and breach of peace (2000); possession of methamphetamine (2000); and battery on a law enforcement officer and resisting arrest without violence (2000). The 2000 conviction for battery on a law enforcement officer was for pushing a deputy who was attempting to arrest him.
431. Families against Mandatory Minimums, *Federal Profiles: Ricky Minor*.
432. ACLU telephone interview with Ricky Minor, Williamsburg Federal Correctional Institution, Salters, South Carolina, Mar. 6, 2013.
433. *Id.*
434. *Id.*
435. *Minor v. United States*, No. 4:10-cv-02325-RMG (D.S.C. Oct. 25, 2010).
436. Sentencing transcript, *United States v. Minor*.
437. ACLU telephone interview with Judy Minor, Niceville, Florida, Mar. 5, 2013.
438. ACLU telephone interview with Ricky Minor, *supra* note 432.
439. *Id.*
440. ACLU telephone interview with Heather Minor, Niceville, Florida, Mar. 7, 2013.
441. *Id.*
442. ACLU telephone interview with Ricky Minor, *supra* note 432.
443. *Id.*
444. ACLU telephone interview with Judy Minor, *supra* note 437.
445. ACLU telephone interview with Dicky Joe Jackson, Forrest City Medium Federal Correctional Institution, Forrest City, Arkansas, Mar. 12, 2013.
446. *Id.*
447. *United States v. Jackson et al.*, No. 96-10598 (5<sup>th</sup> Cir. Apr. 15, 1997).
448. ACLU telephone interview with Cole Jackson, Plano, Texas, Mar. 13, 2013.
449. ACLU telephone interview with Dicky Joe Jackson, *supra* note 445.
450. *Id.*
451. Letter to the ACLU from Dicky Joe Jackson, Forrest City Medium Federal Correctional Institution, Forrest City, Arkansas, Mar. 7, 2013.
452. Letter to April Anderson from Judge Michael R. Snipes, Criminal District Court #7, Dallas County Veterans Court, Jan. 30, 2013.
453. Letter to the ACLU from Timothy Tyler, Canaan United States Penitentiary, Waymart, Pennsylvania, Mar. 4, 2013.
454. Sentencing transcript at 50, *United States v. Tyler*, No. 92-226-CR-T-23A, (M.D. Fl, July 19, 1994).
455. Letter to the ACLU from Timothy Tyler, *supra* note 453.
456. *Id.*
457. *Id.*
458. *Id.*
459. *Id.*
460. ACLU telephone interview with Carrie Tyler-Stoafar, Las Vegas, Nevada, Mar. 15, 2013.
461. *Id.*
462. John Tierney, *Life without Parole: Four Inmates' Stories*, N.Y. TIMES, Dec. 12, 2012.
463. Presentence Investigation Report at 31, *United States v. Walker*, No. 0754 4:96CR40094-00` (S.D. Ill, June 18, 1998).
464. Brief in Support of Petition of Scott Walker at 4 *in* Scott Walker Petition for Commutation of Sentence.
465. Presentence Investigation Report at 31, *United States v. Walker*, No. 0754 4:96CR40094-00
466. *Id.* at 32.
467. *Id.* at 33.
468. *Id.*
469. *United States v. Walker*, No. 99-2645 and 99-1933 (7<sup>th</sup> Cir. 2000).
470. Presentence Investigation Report at 25, *United States v. Walker*, No. 0754 4:96CR40094-001.
471. *United States v. Walker*, No. 99-2645 and 99-1933.
472. Sentencing Transcript at 151, *United States v. Scott Walker*, Cr. 96-CR-40094 (S.D. Ill Apr. 9, 1999).
473. *Id.* at 155.
474. Letter to President Barack Obama from J. Phil Gilbert, U.S. District Judge (Feb. 28, 2011) *in* Scott Walker Petition for Commutation of Sentence.
475. *Gilbert Steps Down as Chief Judge*, SOUTHERN ILLINOISAN, Oct. 8, 2000, at 9A.
476. Attachment E, Prison Disciplinary Records *in* Scott Walker Petition for Commutation of Sentence.
477. Attachment F, Educational/Vocational Records, Certificates, and Awards *in* Scott Walker Petition for Commutation of Sentence.
478. Attachment I, Family and Friend Support Letters *in* Scott Walker Petition for Commutation of Sentence.
479. ACLU telephone interview with Scott Walker, Greenville Federal Correctional Institution, Greenville, Illinois, Mar. 7, 2013.
480. Brief in Support of Petition of Scott Walker at 9 *in* Scott Walker Petition for Commutation of Sentence.
481. *Quoted in* Professor David M. Zlotnick, Federal Sentencing Study, Profiles, Judge J. Phil Gilbert.
482. Brief in Support of Petition of Scott Walker at 2 *in* Scott Walker Petition for Commutation of Sentence.
483. These prior convictions were for the following small amounts of drugs: marijuana (1.75 and 5.25 grams), hashish (3 grams),

- and amphetamines (valued at \$25). Professor David M. Zlotnick, Federal Sentencing Study, Profiles, Judge Ronald E. Longstaff.
484. Professor David M. Zlotnick, Federal Sentencing Study, Profiles, Judge Ronald E. Longstaff.
485. Letter to the ACLU from Robert J. Riley, Pollock United States Penitentiary Satellite Camp, Pollock, Louisiana, Mar. 18, 2013.
486. Professor David M. Zlotnick, Federal Sentencing Study, Profiles, Judge Ronald E. Longstaff.
487. Sentencing Transcript at 54-55, *United States v. Arionus*, Cr. 93-10 (S.D. Iowa Nov. 4, 1993).
488. *Id.* at 55.
489. David M. Zlotnick, *The Future of Federal Sentencing Policy: Learning Lessons from Republican Judicial Appointees in the Guidelines Era*, 79 U. COLO. L. REV. 1 (2007).
490. Letter to Roger C. Adams, Pardon Attorney, from Judge Ronald E. Longstaff at 1, Feb. 27, 2002.
491. Sentencing Transcript at 45, *United States v. Arionus*, Cr. 93-10.
492. *Id.* at 44-47.
493. Letter to the ACLU from Robert J. Riley, *supra* note 485.
494. *United States v. Harvey*, 946 F.2d 1375 (8<sup>th</sup> Cir. 1991).
495. Harvey was convicted of California state charges in 1984, at the age of 19, for maintaining a place for the sale of cocaine, and also in 1987, at age 22, for possession of cocaine with the intent to distribute.
496. Sentencing transcript at 14, *United States v. Harvey* (W.D. Mo. 1990); *see also United States v. Harvey*, 946 F.2d 1375, 1377 (8<sup>th</sup> Cir. 1991).
497. *See United States v. Harvey*, 946 F.2d 1375, 1377 (8<sup>th</sup> Cir. 1991) (“Chief Judge Sachs was troubled by the necessity of imposing a sentence of life imprisonment without release on Harvey, who was 24 years old at the time. He observed that ‘the prior drug offenses, although felonies, were not serious enough to merit imprisonment and appear to be only technically within the statutory punishment plan’.... The Court also viewed Harvey’s immaturity of judgment [as] a consideration...[and] recommended that Harvey be given executive clemency after serving fifteen years.... We agree with this recommendation. As the Supreme Court noted in *Harmelin*, 111 S. Ct. at 2702, executive clemency is one of the “flexible techniques” for modifying sentences. The existence of these techniques is one reason for the Supreme Court’s holding that the type of sentence imposed in this case does not violate the Eighth Amendment. We instruct counsel for the United States to deliver a copy of the sentencing transcript and of this opinion to those persons within the Department of Justice whose responsibility it is to consider requests for executive clemency.”).
498. Under the Fair Sentencing Act, a person convicted of 50 grams of crack with one or more prior drug convictions would be subject to a 10-year mandatory minimum sentence under 21 U.S.C. § 841(b)(1)(B). While it is likely that a higher guidelines sentence would apply to Harvey’s case under the career offender guidelines (*see* USSG 4B1.1), sentencing judges now have discretion to impose a below-guidelines sentence where circumstances warrant it. Based on the record in Harvey’s case, it is more than likely that Judge Sachs, freed from the constraints of a mandatory minimum, would have imposed the 15-year sentence he originally considered appropriate in the case.
499. Letter to the ACLU from Kenneth George Harvey Jr., Beaumont United States Penitentiary Satellite Camp, Beaumont, Texas, Apr. 17, 2013.
500. *Id.*
501. Petition for Commutation of Sentence of Kenneth George Harvey, Mar. 2010.
502. ACLU telephone interview with Kenneth George Harvey Jr., Beaumont United States Penitentiary Satellite Camp, Beaumont, Texas, Apr. 26, 2013.
503. *Id.*
504. Robinson was convicted of conspiring to distribute and possess with intent to distribute cocaine base. *United States v. Robinson*, 110 F.3d 1320 (8<sup>th</sup> Cir. 1997).
505. *Id.*
506. *Id.* (J. Heaney, concurring).
507. Joy Powell, *Crack Sentence Harsher than Most Killers*, OMAHA WORLD-HERALD, Mar. 2, 1996, at 1, 1996 WL 6007723 (quoting Judge Strom at the sentencing hearing).
508. *Id.*
509. *Id.*
510. *United States v. Robinson*, 110 F.3d 1320 (8<sup>th</sup> Cir. 1997) (J. Heaney, concurring).
511. Letter to the ACLU from Clarence Robinson, Lewisburg United States Penitentiary, Lewisburg, Pennsylvania, Mar. 7, 2013.
512. *Id.*
513. *Chester v. Haynes*, No. CV211-026, 2011 WL 8186752 at \*1 (M.D. Ga. July 25, 2011).
514. Sentencing Transcript at 3, *United States v. Chester*, No. 92-122-CR-T-25B (M.D. Fla. Feb. 11, 1994).
515. Sherman Chester, *Federal Profiles: Sherman Chester*, FAMILIES AGAINST MANDATORY MINIMUMS.
516. Letter to the ACLU from Sherman Dionne Chester, Jesup Federal Correctional Institution, Jesup, Georgia, Apr. 14, 2013.
517. *Chester v. Haynes*, No. CV211-026, 2011 WL 8186752 at \*1; letter to the ACLU from Sherman Dionne Chester, Jesup Federal Correctional Institution, Jesup, Georgia, Apr. 14, 2013.
518. *Id.*
519. *Federal Profiles: Sherman Chester*, *supra* note 515.
520. Sentencing Transcript, *United States v. Chester*, No. 92-122-CR-T-25B.
521. *Federal Profiles: Sherman Chester*, *supra* note 515.
522. Sentencing Transcript at 12, *United States v. Chester*, No. 92-122-CR-T-25B.
523. *Id.* at 15.
524. Letter to the ACLU from Sherman Dionne Chester, *supra* note 516; *Federal Profiles: Sherman Chester*, *supra* note 515.
525. Letter to the ACLU from Sherman Dionne Chester, *supra* note 516.
526. Sherman Chester Inmate Skills Development Plan, Apr. 4, 2013.
527. Letter to the ACLU from Sherman Dionne Chester, *supra* note 516.
528. *Id.*
529. *United States v. Darden*, 149 F.3d 1171, 1998 WL 340400 (4<sup>th</sup> Cir. June 16, 1998).
530. *Id.*
531. *Id.*

532. *Id.*
533. *State v. Darden*, 612 A.2d 339 (Md. Ct. Spec. App. Sept. 9, 1992).
534. *United States v. Darden*, 149 F.3d 1171.
535. Sentencing transcript, *United States v. Darden* (D. Md. 1996).
536. Letter to the ACLU from Ricky Darden, Otisville Federal Correctional Institution, Otisville, New York, Mar. 11, 2013.
537. *Id.*
538. *United States v.* [name redacted at prisoner's request], No. 10-4199 (4<sup>th</sup> Cir. June 17, 2011).
539. *Id.*
540. *Id.*
541. J.A. 311, *quoted in* *United States v.* [name redacted at prisoner's request], No. 10-4199 (Davis, J., concurring).
542. *United States v.* [name redacted at prisoner's request], No. 10-4199.
543. *Id.* (Davis, J., concurring).
544. ACLU telephone interview with [name withheld at interviewee's request], Mar. 14, 2013.
545. *State v. Mead*, 36,131-KA (La. App. 2 Cir. 8/14/02); 823 So.2d 1045.
546. *Id.*
547. *Id.*; *State v. Mead*, 42,674-KA (La. App. 2 Cir. 11/14/07); 988 So.2d 740; *State v. Mead*, 42,674-KA (La. App. 2 Cir. 7/23/08); 988 So.2d 740, 749; *State v. Mead*, 44,447-KA (La. App. 2 Cir. 8/13/09); 16 So.3d 470, 472.
548. *Id.*
549. *Id.*
550. Mead also had a conviction for armed robbery in 1979, committed when he was 17 years old, which was not considered for the purposes of sentencing under Louisiana's multiple offender law because more than 10 years had passed since the conviction. *State v. Mead*, 64371 (La. 11/12/1979); 377 So.2d 79.
551. *State v. Mead*, 823 So.2d 1045.
552. *State v. Mead*, 988 So.2d 740.
553. *Id.*
554. *Id.* at 749; *State v. Mead*, 16 So.3d at 472.
555. *State v. Mead*, 40,406-KA (La. App. 2 Cir. 4/19/06); 927 So.2d 1259.
556. *Id.*
557. Letter to the ACLU from Sylvester Mead, Louisiana State Penitentiary, Angola, Louisiana, Mar. 5, 2013.
558. *Id.*
559. *Id.*
560. *Id.*
561. *Id.*
562. LA. REV. STAT. ANN. § 15:529.1(A)(3)(b).
563. LA. REV. STAT. ANN. § 15:529.1(A)(4)(a).
564. FLA. STAT. ANN. § 775.084.
565. *Id.*
566. ALA. CODE § 13A-5-9.
567. *Id.*
568. ALA. CODE § 13A-12-233.
569. MISS. CODE ANN. § 99-19-83.
570. *Young v. State*, 86 So.3d 261 (Miss. Ct. App. 2011).
571. For instance, Mark Kee Brown was sentenced to LWOP as a habitual offender for felony escape from a detention center while awaiting trial because of prior convictions for burglary of an unoccupied dwelling, two convictions for possession of a controlled substance, and felony escape. The prosecutor asked to charge Brown as a habitual offender based on the claim that burglary of a dwelling constitutes a "crime of violence." The district court agreed, and the circuit court upheld Brown's LWOP sentence. *Brown v. State*, 102 So.3d 1130 (Miss. Ct. App. 2011).
572. *Lyles v. State*, 12 So.3d 532 (Miss. Ct. App. 2009).
573. S.C. CODE. ANN. § 17-25-45.
574. S.C. CODE. ANN. § 16-11-390.
575. S.C. CODE. ANN. § 16-11-380.
576. S.C. CODE. ANN. § 44-53-370(e)(2)(e).
577. S.C. CODE. ANN. § 44-53-375(C)(5).
578. S.C. CODE. ANN. § 17-25-45.
579. *Id.*
580. OKLA. ST. ANN. tit. 63, § 2-415(D).
581. *Id.*
582. 21 U.S.C. §§ 841(b)(1)(A), 851.
583. 18 U.S.C. § 3559(c)(1).
584. A "serious drug offense" includes "an offense under state law that, had the offense been prosecuted in a court of the United States, would have been punishable under section 401(b)(1)(A) or 408 of the Controlled Substances Act (21 U.S.C. § 841(b)(1)(A), 848) or section 1010(b)(1)(A) of the Controlled Substances Import and Export Act (21 U.S.C. § 960(b)(1)(A))." 18 U.S.C. § 3559(c)(2)(H).
585. 18 U.S.C. § 3559(c)(2)(F)(i)-(ii).
586. 18 U.S.C. § 3559(c)(2)(H).
587. 18 U.S.C. § 924(e).
588. U.S. SENTENCING GUIDELINES MANUAL § 4B1.1; § 2K2.1; ch. 4.
589. Letter to the ACLU from Kevin Ott, Oklahoma State Penitentiary, Granite, Oklahoma, Mar. 10, 2013.
590. *Ott v. State*, No. F-97-588 (Okla. Crim. App. Sept. 23, 1998).
591. *Id.*
592. *Id.*
593. Letter to the ACLU from Kevin Ott, *supra* note 589.
594. ACLU telephone interview with Betty Chism, Norman, Oklahoma, Mar. 11, 2013.
595. *Id.*
596. *Id.*
597. Letter to the ACLU from Kevin Ott, *supra* note 589.
598. *Id.*
599. ACLU telephone interview with Kevin Ott, Oklahoma State Penitentiary, Granite, Oklahoma, Mar. 8, 2013.
600. *State v. Williams*, 669 S.E.2d 640 (S.C. Ct. App. 2008).
601. *Id.*
602. Letter to the ACLU from Onrae Williams, Lee Correctional Institution, Bishopville, South Carolina, Mar. 18, 2013.
603. *State v. Williams*, 669 S.E.2d 640.
604. *Id.*
605. *Id.*
606. *Id.*
607. S.C. CODE. ANN. § 17-25-45.
608. ACLU telephone interview with Onrae Williams, Lee Correctional Institution, Bishopville, South Carolina, Mar. 5, 2013.
609. Glenn Smith, *Young Man Strikes Out for Life under Tough Law*, CHARLESTON POST AND COURIER, Jan. 31, 2007.
610. *Id.*
611. *Id.*

612. ACLU telephone interview with Onrae Williams, *supra* note 608.
613. *Id.*
614. Tracy Vreeland, *Man Gets Life Sentence for Burglary*, WPDE NEWSCHANNEL 15, Nov. 15, 2012.
615. ACLU telephone interview with Anthony Jerome Jackson, Lieber Correctional Institution, Ridgeville, South Carolina, Mar. 22, 2013; letter to the ACLU from Anthony Jerome Jackson, Lieber Correctional Institution, Ridgeville, South Carolina, Mar. 28, 2013.
616. Letter to the ACLU from Anthony Jerome Jackson, *supra* note 615.
617. *Police Roundup*, MYRTLE BEACH ONLINE, Nov. 16, 2012.
618. Letter to the ACLU from Anthony Jerome Jackson, *supra* note 615.
619. ACLU telephone interview with Anthony Jerome Jackson; letter to the ACLU from Anthony Jerome Jackson, *supra* note 615.
620. Letter to the ACLU from Anthony Jerome Jackson, *supra* note 615.
621. *Miles v. State*, 864 So.2d 963 (Miss. Ct. App. 2003).
622. *Id.*
623. *Id.*
624. *Id.*
625. *Id.*
626. *Young v. State*, 86 So.3d 261 (Miss. Ct. App. 2011).
627. *Id.*
628. *Id.*
629. *Id.*
630. Letter to the ACLU from Robert Mathis, Dade Correctional Institution, Florida City, Florida, May 14, 2013.
631. *Id.*
632. *Id.*
633. Letter to Robert Mathis from Robert Trogolo, Assistant Public Defender, July 26, 1989.
634. *Id.*
635. Letter to the ACLU from Robert Lee Mathis, Dade Correctional Institution, Florida City, Florida, May 14, 2013 (citing July 31, 1989, Order Adjudging Defendant Incompetent to Stand Trial).
636. *Id.* (citing Mar. 6, 1990, Written Order Determining Competency).
637. Letter to the ACLU from Robert Lee Mathis, *supra* note 630.
638. *Mathis v. State*, No. 92-6238 (Fla. Ct. App. Jan. 25, 1993).
639. Letter to the ACLU from Robert Mathis, Dade Correctional Institution, Florida City, Florida, May 14, 2013.
640. *Id.*
641. *Id.*
642. *Id.*
643. *Id.*
644. *Id.*
645. *Id.*
646. *Id.*
647. *State v. Mosley*, No. S-2010-755, 2011 OK CR20 (Okla. Crim. App. July 19, 2011).
648. *Id.*
649. Letter to the ACLU from Daniel Gene Mosley, Oklahoma State Reformatory, Granite, Oklahoma, July 4, 2013.
650. Pre-Sentence Investigation, Daniel Gene Mosley, Cleveland County Court, Feb. 27, 2010.
651. ACLU telephone interview with Daniel Gene Mosley, Oklahoma State Reformatory, Granite, Oklahoma, June 12, 2013.
652. Letter to the ACLU from Daniel Gene Mosley, *supra* note 649.
653. ACLU telephone interview with Daniel Gene Mosley, *supra* note 651.
654. *Id.*
655. ACLU telephone interview with Christina Borg, Palm Beach County, Florida, July 30, 2013.
656. Letter to the Palm Beach County Court from Toni Minnick, Sept. 24, 2008; letter to the ACLU from Lance Saltzman, Okeechobee Correctional Institution, Okeechobee, Florida, July 21, 2013.
657. Rule 3.992 (a) Criminal Punishment Code Score sheet, Lance Saltzman, No. 2006CF010427A.
658. Letter to the ACLU from Lance Saltzman, *supra* note 656.
659. *Id.*
660. Transcript of Record at 155, 167, *State v. Lance Saltzman*, No. 06-8164CFAMB (Fla. Palm Beach County Ct., Oct. 12, 2009) *in* Initial Brief on Ineffective Assistance of Appellate Counsel at 15, *Saltzman v. State*, No. 4D07-1143 (Fla. 4th Dist. Ct. July 2011); letter to the ACLU from Lance Saltzman, *supra* note 656; ACLU telephone interview with Christina Borg, *supra* note 655.
661. ACLU telephone interview with Christina Borg, *supra* note 655.
662. Transcript of Record at 155, 167, *State v. Saltzman*, No. 06-8164CFAMB *in* Initial Brief on Ineffective Assistance of Appellate Counsel at 15, *Saltzman v. State*, No. 4D07-1143; letter to the ACLU from Lance Saltzman; *supra* note 656; ACLU telephone interview with Christina Borg, *supra* note 655.
663. ACLU telephone interview with Christina Borg, *supra* note 655.
664. Letter to the ACLU from Lance Saltzman, *supra* note 656.
665. Initial Brief on Ineffective Assistance of Appellate Counsel at 2, *Saltzman v. State of Florida*, No. 4D07-1143 (Fla. 4th Dist. Ct. July 2011).
666. Rule 3.850 Motion at 5, *Saltzman v. State*, No. 06-8164CF-AXX (Fla. 15<sup>th</sup> Cir. Ct. Nov. 24, 2009).
667. ACLU telephone interview with Christina Borg, *supra* note 655.
668. Rule 3.850 Motion, *Saltzman v. State*, No. 06-8164CF-AXX; letter to the ACLU from Lance Saltzman, *supra* note 656; ACLU telephone interview with Christina Borg, *supra* note 655.
669. ACLU telephone interview with Christina Borg, *supra* note 655.
670. Rule 3.850 Motion at 28-29, *Saltzman v. State*, No. 06-8164CF-AXX.
671. ACLU telephone interview with Christina Borg, *supra* note 655.
672. *Id.*
673. Affidavit of Tony Minnick, *State of Florida v. Lance Saltzman*, No. 06-8164CFAMB (Fla. Palm Beach County Ct., Oct. 12, 2009).
674. Letter to the Palm Beach County Court from Toni Minnick, Sept. 24, 2008.
675. ACLU telephone interview with Christina Borg, *supra* note 655.
676. *Id.*
677. Letter to the ACLU from Lance Saltzman, *supra* note 656.
678. *Id.*
679. Letter to the ACLU from Kawan Stack, Louisiana State Penitentiary, Angola, Louisiana, May 2, 2013.
680. *Id.*
681. *State v. Stack*, 97-KA-1176 (La. App. 5 Cir. 4/15/98).
682. *Id.*
683. Letter to the ACLU from Kawan Stack, *supra* note 679.
684. *State v. Stack*, 97-KA-1176.
685. Sentencing Transcript, *State v. Stack*, 97-68 (24<sup>th</sup> Judicial Dist. Ct. Jefferson Parish 5/30/97).

686. Transcript of Multiple Offender Bill Hearing, *State v. Stack*, No. 97-68 (24<sup>th</sup> Judicial Dist. Ct. Jefferson Parish 11/7/97).
687. Letter to the ACLU from Kawan Stack, *supra* note 679.
688. *Id.*
689. *Id.*
690. *Id.*
691. *State v. Carthan*, 99-512 (La. App. 3 Cir. 12/8/99); 765 So.2d 357, writ denied 778 So.2d 547 (La. 2001), reconsideration denied 788 So.2d 438 (La. 2001).
692. *Id.*
693. *Id.*
694. *State v. Carthan*, 2000-KO-0359 (La. 1/12/01); 778 S.2d 547.
695. *State v. Carthan*, 765 So.2d 357.
696. *Id.*
697. *Id.*
698. *State in the Interest of R.C., R.C. and J.C.*, No. 99-2004 (La. App. 3 Cir. 6/20/00).
699. Letter to the ACLU from Ricky Carthan, Louisiana State Penitentiary, Angola, Louisiana, Apr. 2, 2013.
700. *Carthan v. Cain*, No. 2:04-cv-1625 (W.D. La. Mar. 15, 2005).
701. *State v. Washington*, 41,182-KA (La. App. 2 Cir. 9/1/06).
702. *Washington v. Warden*, No. 09-cv-0864 (W.D. La. July 12, 2012).
703. *Id.*
704. *State v. Washington*, 41,182-KA.
705. Letter to the ACLU from Ronald Lee Washington, Louisiana State Penitentiary, Angola, Louisiana, Apr. 29, 2013.
706. *State v. Washington*, 41,182-KA.
707. *Id.*
708. Letter to the ACLU from Ronald Lee Washington, *supra* note 705.
709. *Id.*
710. *Id.*
711. *State v. Carter*, No. 99-KA-779 (La. App. 4 Cir. 11/15/00), 773 So.2d 268.
712. *Id.*
713. *Id.*
714. *Id.*
715. *Id.*
716. *Id.*
717. *Id.*
718. *Id.*
719. *Id.*
720. Letter to the ACLU from Paul Carter, Louisiana State Penitentiary, Angola, Louisiana, Apr. 23, 2013.
721. *Id.*
722. *State v. Matthews*, No. 2010-KA-1040 (La. App. 1 Cir. 10/22/10).
723. *Id.*
724. Letter to the ACLU from Patrick Matthews, Louisiana State Penitentiary, Angola, Louisiana, Apr. 23, 2013.
725. *Id.*
726. *State v. Matthews*, No. 2010-KA-1040 (J. McClendon, concurring).
727. ACLU interview with Catherine Matthews, Baton Rouge, Louisiana, June 3, 2013.
728. *Id.*
729. Letter to the ACLU from Patrick Matthews, *supra* note 724.
730. *Id.*
731. *State v. Jackson*, No. 96-KA-2540 (La. App. 4 Cir. 11/26/97).
732. Letter to the ACLU from Timothy Jackson, Louisiana State Penitentiary, Angola, Louisiana, Apr. 23, 2013.
733. *State v. Jackson*, No. 96-KA-2540.
734. *Id.*; Letter to the ACLU from Timothy Jackson, *supra* note 732.
735. *State v. Jackson*, No. 96-KA-2540.
736. *Id.*
737. *State Ex Rel Jackson v. State*, 1999-KH-2705 (La. 3/31/00) (J. Johnson, dissenting).
738. Cindy Chang, *Tough Sentencing Laws Keep Louisiana's Prisons Full*, TIMES-PICAYUNE, May 16, 2012.
739. ACLU interview with Loretta Lumar, Baton Rouge, Louisiana, June 3, 2013.
740. Letter to the ACLU from Timothy Jackson, Louisiana State Penitentiary, Angola, Louisiana, Apr. 23, 2013.
741. ACLU interview with Loretta Lumar, *supra* note 739.
742. *Id.*
743. Letter to the ACLU from Timothy Jackson, *supra* note 740.
744. *Id.*
745. ACLU interview with Loretta Lumar, *supra* note 739.
746. ACLU telephone interview with Larry Yarbrough, Oklahoma State Reformatory, Granite, Oklahoma, Mar. 13, 2013.
747. Paul Monies, *Board Recommends Leniency for Drug Dealer Sentenced to Life without Parole*, OKLAHOMAN, Aug. 18, 2011.
748. OKLA. STAT. tit. 63 § 2-415(D)(3).
749. Three members of the Pardon and Parole Board voted to commute to time served, two voted to reduce Yarbrough's sentence to 20 years, and one voted to commute his sentence to 42 years. Paul Monies, *Board Recommends Leniency for Drug Dealer Sentenced to Life without Parole*, OKLAHOMAN, Aug. 18, 2011; Anthony Papa, *How 3 Joints and an Ounce of Coke Got an Oklahoma Grandfather Life Without Parole*, ALTERNET, Aug. 15, 2011.
750. Letter to the ACLU from Larry Yarbrough, Oklahoma State Reformatory, Granite, Oklahoma, Mar. 20, 2013.
751. *Id.*
752. *State v. Wright*, No. 2011-UP-363 (S.C. Ct. App. June 30, 2011).
753. *Id.*
754. Letter to the ACLU from Lloyd Wright, Lee Correctional Institution, Bishopville, South Carolina, Mar. 20, 2013.
755. *State v. Wright*, No. 2011-UP-363.
756. Letter to the ACLU from Lloyd Wright, *supra* note 754.
757. *Id.*
758. *Id.*
759. *Id.*
760. *Id.*
761. *Id.*
762. *Id.*
763. *Id.*
764. *Id.*
765. *Id.*
766. *Id.*
767. *Id.*
768. *Id.*
769. *Id.*
770. *Id.*
771. *State v. Godbolt*, 2006 KA 0609 (La. App. 1 Cir. 11/3/06); 950 So.2d 727; *Godbolt v. Cain*, No. 2:2010cv01870 (E.D. La. Feb. 1, 2011).
772. *State v. Godbolt*, 950 So.2d 727.

773. *Id.*
774. *Id.*
775. *Id.*; Godbolt v. Cain, No. 2:2010cv01870.
776. Godbolt v. Cain, No. 2:2010cv01870.
777. State v. Chester, 97-K-1001 (La. App. 1 Cir. 12/19/97).
778. *Id.*
779. *Id.*
780. *Id.*
781. *Id.*
782. State v. Chester, No. 95-1428 (La. App. 1 Cir. 3/27/97); 698 So.2d 1065; *see id.*
783. State v. Chester, No. 97-K-1001 (La. App. 1 Cir. 12/19/97).
784. Letter to the ACLU from Charles Alford, Louisiana State Penitentiary, Angola, Louisiana, Apr. 22, 2013.
785. *Id.*
786. *Id.*
787. State v. Jones, 08-KA-306 (La. App. 5 Cir. 10/28/08); 998 So.2d 173; State v. Jones, 08-Ka-466 (La. App. 5 Cir. 10/28/08), 998 So.2d 178.
788. State v. Jones, 998 So.2d 173.
789. State v. Jones, 998 So.2d 178.
790. State v. Jones, 09-KA-788 (La. App. 5 Cir. 4/13/10); 35 So.3d 1162.
791. State v. Jones, 88-KA-0361 (La. App. 4 Cir. 11/10/88); 535 So.2d 3.
792. Letter to the ACLU from Stanley Carnell Veal, Louisiana State Penitentiary, Angola, Louisiana, Apr. 29, 2013.
793. *Id.*
794. *Id.*
795. *Id.*
796. *Id.*
797. Clay v. State, No. 2003-KA-00631-COA (Miss. Ct. App. Aug. 24, 2004).
798. *Id.*
799. *Id.*
800. Kelly v. State, No. 2004-KA-01961-COA (Miss. Ct. App. Aug. 8, 2006).
801. *Id.*; letter to the ACLU from James Curtis Kelly, Wilkinson County Correctional Facility, Woodville, Mississippi, Mar. 20, 2013.
802. Kelly v. State, No. 2004-KA-01961-COA.
803. *Id.*
804. *Id.*
805. Letter to the ACLU from James Curtis Kelly, *supra* note 801.
806. Hudson v. State, 31 So.3d 1 (Miss. Ct. App. Feb. 10, 2009).
807. *Id.*
808. *Id.*
809. *Id.*
810. *Id.*
811. Hudson v. State, No. 2007-CT-02016-SCT (Miss. Mar. 25, 2010).
812. State v. Kyles, 2010-KA-1308 (La. App. 1 Cir. 2/11/11).
813. *Id.*
814. *Id.*; letter to the ACLU from Ronald Kyles, Louisiana State Penitentiary, Angola, Louisiana, Apr. 24, 2013.
815. State v. Kyles, 2010-KA-1308.
816. *Id.*
817. Letter to the ACLU from Ronald Kyles, *supra* note 814.
818. *Id.*
819. *Id.*
820. State v. Washington, No. 25050 (S.C. Jan. 17, 2000).
821. *Id.*
822. *Id.*
823. *Id.*
824. State v. Byers, No. 2011-190694 (S.C. Ct. App. Mar. 27, 2013).
825. *Id.*
826. *South Carolina Man Gets Life Sentence for \$10 Crack Deal*, ASSOCIATED PRESS, Apr. 21, 2011.
827. *Id.*; *Gaffney Man Gets Life Sentence for \$10 Crack Deal*, WSPA-TV NEWS CHANNEL 7, Apr. 20, 2011.
828. London v. State, No. 2009-KP-01982-COA (Miss. Ct. App. July 19, 2011).
829. *Id.*
830. *Id.*
831. Cynthia Bullion, *12<sup>th</sup> conviction comes with life sentence*, DESOTO TIMES-TRIBUNE, Nov. 4, 2009, available at <http://www.desototimes.com/articles/2009/11/04/news/local/doc4af226c5d8b41585166642.txt>.
832. Rob Landreth, *Westminster Man Sentenced to Life in Prison under Three Strikes Law*, WSPA CHANNEL 7, Aug. 16, 2012.
833. Nikie Mayo, *Oconee Man Convicted of Burglary Gets Life without Parole*, INDEPENDENT MAIL (South Carolina), Aug. 16, 2012; Press Release, Office of the Solicitor, 10<sup>th</sup> Judicial Circuit, State of South Carolina, *Career Burglar Receives Life without Parole Sentence*, Aug. 16, 2012.
834. Letter to the ACLU from Alfonse Danner aka Tony Johnson, Sumter Correctional Institution, Bushnell, Florida, July 22, 2013.
835. *Id.*
836. Certificate of Release or Discharge from Active Duty of Alfonse Danner, U.S. Navy.
837. *Id.*
838. Letter to the ACLU from Alfonse Danner aka Tony Johnson, *supra* note 834.
839. Letter to the ACLU from Alfonse Danner aka Tony Johnson, Sumter Correctional Institution, Bushnell, Florida, July 26, 2013.
840. *Id.*
841. *Id.*
842. Criminal Report Affidavit, Alfonse Danner aka Tony Johnson, Case No. 95-13964.
843. Letter to the ACLU from Alfonse Danner aka Tony Johnson, *supra* note 839.
844. Criminal Report Affidavit, Alfonse Danner aka Tony Johnson, Case No. 95-13964.
845. Letter to the ACLU from Alfonse Danner aka Tony Johnson, *supra* note 839.
846. *Id.*
847. Letter to the ACLU from Alfonse Danner aka Tony Johnson, *supra* note 834.
848. Letter to the ACLU from Alfonse Danner aka Tony Johnson, *supra* note 839.
849. Letter to the ACLU from Alfonse Danner aka Tony Johnson, *supra* note 834.
850. *Id.*
851. *Id.*
852. *Id.*
853. *Id.*
854. Letter to the ACLU from Alfonse Danner aka Tony Johnson, *supra* note 839.

855. Letter to the ACLU from Ivan Vincent Anderson, Holmes Correctional Institution, Bonifay, Florida, July 17, 2013.
856. *Id.*
857. *Id.*
858. Anderson v. State, No. 4D07-1788 (Fla. 4th DCA May 14, 2008).
859. Letter to the ACLU from Ivan Vincent Anderson, Holmes Correctional Institution, Bonifay, Florida, July 17, 2013.
860. *Id.*
861. Anderson v. State, No. 4D07-1788.
862. *Id.*
863. Sentencing Transcript, State v. Anderson (Fla. Palm Beach County Ct. Apr. 27, 2007).
864. *Id.*
865. *Id.*
866. Letter to the ACLU from Ivan Vincent Anderson, *supra* note 859.
867. *Id.*
868. *Id.*
869. *Id.*
870. Fields v. Cain, No. 05-0074, 2007 WL 458208 (E.D. La. Feb. 8, 2007), *certificate of appealability denied*, No. 07-30241 (5<sup>th</sup> Cir. Oct. 4, 2007).
871. See Transcript of Hearing on Motions, State v. Fields, No. 411-743 “B” (Crim. Dist. Ct. Parish Orleans 2000).
872. State v. Fields, No. 411-743 “B” (Crim. Dist. Ct. Parish Orleans Mar. 20, 2000).
873. State v. Fields, No. 411-743 “B” (Crim. Dist. Ct. Parish Orleans Apr. 6, 2000).
874. Fields v. Cain, No. 05-0074.
875. Fields v. Cain, No. 12-2143, 2012 WL 6674032 (E.D. La. Dec. 10, 2012); Fields v. Cain, No. 12-2143, 2012 WL 6673777 (E.D. La. Dec. 20, 2012).
876. Letter to the ACLU from Leroy Fields, Louisiana State Penitentiary, Angola, Louisiana, May 28, 2013.
877. *Id.*
878. *Id.*
879. *Id.*
880. *Id.*
881. *Id.*
882. State v. Jones, 2000-KA-2117 (La. App. 4 Cir. 2000).
883. Letter to the ACLU from Rev. Aaron Jones, Louisiana State Penitentiary, Angola, Louisiana, Apr. 24, 2013.
884. State v. Jones, No. 2000-KA-2117.
885. *Id.*
886. *Id.*
887. Letter to the ACLU from Rev. Aaron Jones, *supra* note 883.
888. *Id.*
889. Johnson v. Cain, No. 05-30600 (La. App. 5 Cir. 11/20/07).
890. Letter to the ACLU from Darrell Johnson, Louisiana State Penitentiary, Angola, Louisiana, Apr. 25, 2013.
891. *Id.*
892. *Id.*
893. Arrest Report No. ECS010ARR019018, Escambia County Sheriff’s Office (Aug. 26, 2010).
894. *Id.*
895. *Id.*
896. Amended Motion for Postconviction Relief at 4, State v. Montgomery, No.:10-CF-3866 (Fla. Escambia County Ct. Sept. 10, 2013).
897. *Id.*
898. Arrest Report No. ECS010ARR019018, *supra* note 893.
899. *Id.*
900. *Id.*
901. *Id.*
902. Letter to the ACLU from John Montgomery, Santa Rosa Correctional Institution, Milton, Florida, July 25, 2013.
903. *Id.*
904. *Id.*
905. Motion to Appoint Mental Health Evaluators at 36, State v. Montgomery, No. 2010-CF-003866A (Fla. Escambia County Ct. Mar. 17, 2011).
906. *Id.*
907. Letter to the ACLU from John Montgomery, *supra* note 902.
908. *Id.*
909. *Id.*
910. *Id.*
911. *Id.*
912. *Id.*
913. *Id.*
914. *Id.*
915. *Id.*
916. *Id.*
917. *Id.*
918. *Id.*
919. *Id.*
920. *Id.*
921. Letter to the ACLU from Kenneth Penton, Gulf Correctional Institution, Wewahitchka, Florida, July 26, 2013.
922. *Id.*
923. Penton v. Crews, No. 3:12cv176/RV/CJK, 2013 WL 2389831 at \*1 (N.D. Fla. May 30, 2013).
924. *Id.*
925. *Id.*
926. Letter to the ACLU from Kenneth Penton, *supra* note 921.
927. *Id.*
928. State v. Penton, No. 2000 MM 027590 A (Fla. Escambia County Ct. 2000).
929. State v. Penton, No. 2001 CF 002081 (Fla. Escambia County Ct. 2001).
930. State v. Penton, No. 2004 CF 003547 A (Fla. Escambia County Ct. 2005).
931. State v. Penton, No. 2004 CF 003267 A (Fla. Escambia County Ct. 2004).
932. State v. Penton, No. 2005 CF 000558 A (Fla. Escambia County Ct. 2005); State v. Penton, No. 2005 CF 001616 A (Fla. Escambia County Ct. 2005).
933. Letter to the ACLU from Kenneth Penton, *supra* note 921.
934. *Id.*
935. *Id.*
936. *Id.*
937. *Id.*
938. *Burglary conviction means life term for Port St. Lucie felon*, TCPALM.COM, June 18, 2009.
939. Letter to the ACLU from Joel Daigle, Wakulla Correctional Institution, Crawfordville, Florida, July 17, 2013.
940. Will Greenlee, *Suspect arrested in Port St. Lucie burglary*, TCPALM.COM, May 1, 2008.
941. Letter to the ACLU from Joel Daigle, *supra* note 939.

942. Nicole Daigle, *I would just like to share my story*, PRISONTALK.COM, Aug. 15, 2009.
943. *Id.*
944. *Id.*
945. Letter to the ACLU from Joel Daigle, *supra* note 939.
946. *Id.*
947. Quoted in Nicole Daigle, *I would just like to share my story*, *supra* note 942.
948. Letter to the ACLU from Joel Daigle, *supra* note 939.
949. State v. Finch, 97-KA-2060 (La. App. 4 Cir. 2/24/99); 730 S.2d 1020.
950. *Id.*
951. *Id.*
952. *Id.*; Transcript of Plea of Guilty and Sentencing, State v. Finch, No. 390-132 (Crim. Dist. Ct. Parish Orleans La. 7/30/97).
953. State v. Finch, 730 S.2d 1020 (J. Byrnes, dissenting).
954. State v. Finch, 730 S.2d 1020.
955. *Id.*; Transcript of Plea of Guilty and Sentencing, State v. Finch, No. 390-132.
956. State v. Finch, S.2d 1020.
957. *Id.* (J. Byrnes, dissenting).
958. Letter to the ACLU from Rayvell Finch, Louisiana State Penitentiary, Angola, Louisiana, Apr. 23, 2013.
959. State v. Coleman, No. 403-657 “B” (Crim. Dist. Ct. Parish Orleans 1999).
960. *Id.*
961. Transcript of Hearing on Motions, State v. Coleman, No. 403-657 “B” (Crim. Dist. Ct. Parish Orleans 5/14/99).
962. State v. Coleman, No. 403-657 “B” (Crim. Dist. Ct. Parish Orleans 1999).
963. Transcript of Hearing on Motions, State v. Coleman, No. 403-657 “B”.
964. Letter to the ACLU from Donnel Coleman, Louisiana State Penitentiary, Angola, Louisiana, May 5, 2013.
965. *Id.*
966. *Id.*
967. Horne v. Cain, No. 09-5509, 2010 WL 1332977 (E.D. La. Feb. 24, 2010).
968. State v. Horne, 99-KA-2192 (La. App. 1 Cir. 9/22/00); 768 So.2d 228.
969. Letter to the ACLU from Leone Horne, Louisiana State Penitentiary, Angola, Louisiana, Apr. 24, 2013.
970. *Id.*; ACLU telephone interview with Sheila Horne, Baton Rouge, Louisiana, May 13, 2013.
971. Letter to the ACLU from Leone Horne, *supra* note 969.
972. Letter to the ACLU from Rufus White, Louisiana State Penitentiary, Angola, Louisiana, May 1, 2013.
973. State v. White. 36,935-Ka (La. App. 2 Cir. 6/6/03); 850 So.2d 751.
974. *Id.*
975. *Id.*
976. *Id.*
977. *Id.*
978. Letter to the ACLU from Rufus White, *supra* note 972.
979. *Id.*
980. ACLU interview with Eisibe Sneed, Shreveport, Louisiana, Apr. 25, 2013.
981. ACLU interview with Eisibe Sneed, Baton Rouge, Louisiana, June 2, 2013.
982. ACLU interview with Eisibe Sneed, *supra* note 980..
983. Letter to the ACLU from Thomas Wade, Walton Correctional Institution, DeFuniak Springs, Florida, July 16, 2013.
984. *Id.*
985. *Id.*
986. Transcript of Record at 38 *in* Petition for Writ of Habeas Corpus at 15, Wade v. State, No. 93-02537 (Fla. 10<sup>th</sup> Cir. Ct. Oct. 21, 1998).
987. Petition for Writ of Habeas Corpus at 17, Wade v. State, No. 93-02537.
988. Transcript of Record at 40-41 *in* Petition for Writ of Habeas Corpus at 17, Wade v. State, No. 93-02537.
989. *Id.* at 41.
990. *Id.* at 47-48.
991. *Id.* at 62.
992. Petition for Writ of Habeas Corpus at 22, Wade v. State, No. 93-02537.
993. Transcript of Record at 62 *in* Petition for Writ of Habeas Corpus at 18, Wade v. State, No. 93-02537.
994. Petition for Writ of Habeas Corpus at 6, Wade v. State, No. 93-02537.
995. Letter to the ACLU from Thomas Wade, *supra* note 983.
996. Petition for Writ of Habeas Corpus at 2, 23, Wade v. State, No. 93-02537 (Fla. 10<sup>th</sup> Cir. Ct. Oct. 21, 1998).
997. Wade had also initially been charged with possession of a firearm by a convicted felon, two counts of battery of a law enforcement officer, one count of resisting an officer with violence, and one count of resisting an officer without violence. The prosecution did not proceed with these charges. Petition for Writ of Habeas Corpus at 2, 23, Wade v. State, No. 93-02537 (Fla. 10<sup>th</sup> Cir. Ct. Oct. 21, 1998).
998. Letter to the ACLU from Thomas Wade, *supra* note 983.
999. *Id.*
1000. *Id.*
1001. *Id.*
1002. *Id.*
1003. ACLU telephone interview with Maurice Jordan, Florida, July 30, 2013.
1004. State v. Lewis, 42,365-KA (La. App. 2 Cir. 9/19/07).
1005. *Id.*
1006. *Id.*
1007. *Id.*
1008. *Id.*
1009. Letter to the ACLU from Quierza Lewis, Louisiana State Penitentiary, Angola, Louisiana, Apr. 25, 2013.
1010. *Id.*
1011. ACLU interview with DeLoice Lewis, Baton Rouge, Louisiana, June 2, 2013.
1012. *Id.*
1013. ACLU interview with Willie Combs, Baton Rouge, Louisiana, June 2, 2013.
1014. *Id.*
1015. Surry v. Warden, No. 06-cv-0971 (W.D. La. Feb. 23, 2009).
1016. *Id.*
1017. *Id.*
1018. State v. Surry, 37,448-KA (La. App. 2 Cir. 9/24/03).
1019. *Id.*
1020. *Id.*; State v. Surry, 41,909-KH (La. App. 2 Cir. 10/26/06).
1021. Surry v. Warden, No. 06-cv-0971 (W.D. La. Feb. 23, 2009).

1022. ACLU interview with Sarlower Surry, Baton Rouge, Louisiana, June 2, 2013.
1023. *Id.*
1024. ACLU interview with Cashawna Tilman, Baton Rouge, Louisiana, June 2, 2013.
1025. *Id.*
1026. Affidavit for Warrant to Arrest, State v. Gray, No. 0-90-09-0652 (Fla 5<sup>th</sup> Cir. Ct. 1991); letter to the ACLU from Walter Gray, Marion Correctional Institution, Lowell, Florida, Mar. 13, 2013.
1027. Letter to the ACLU from Walter Gray, *supra* note 1026.
1028. Letter from Jim Warford, Superintendent, Marion County Public Schools, to Walter Gray, Jan. 29, 2003 (confirming that “Howard Academy...was closed as a school and turned into a community/district resource center” on or around September 1990); affidavit of O.B. Samuel Junior, Aug. 18, 1992 (stating that “to the best of my knowledge, that on September 7, 1990, the Howard Academy Community Center located at 306 N.W. 7<sup>th</sup> Avenue, Ocala, Florida, was not a public or private elementary, middle or secondary school”).
1029. Letter to the ACLU from Walter Gray, *supra* note 1026.
1030. Transcript of Record at 35, State v. Gray, No. 91-816-CF-A-Z (Fla. 5<sup>th</sup> Cir. Ct. Dec. 11, 1991).
1031. *Id.* at 36.
1032. *Id.* at 38-39.
1033. Letter to the ACLU from Walter Gray, *supra* note 1026.
1034. *Id.*
1035. *Id.*
1036. *Id.*
1037. *Id.*
1038. Letter to the ACLU from Samuel Morris Gibson Jr., Dade Correctional Institution, Florida City, Florida, July 18, 2013.
1039. *Id.*
1040. *Id.*
1041. Letter to the ACLU from Tyrone Taylor, Apalachee Correctional Institution, Sneads, Florida, July 29, 2013.
1042. Information for I. Robbery 812.13, II. Aggravated Battery, State v. Taylor, No. 82-23365 (Fla. 11<sup>th</sup> Cir. Ct. Nov. 7, 1983).
1043. *Id.*; letter to the ACLU from Tyrone Taylor, *supra* note 1041.
1044. Sentencing Transcript at 353, State v. Taylor, Nos. CF88-4730A1-XX, CF88-3199A1-XX (Fla. 10<sup>th</sup> Cir. Ct. 1989).
1045. Taylor v. State, 749 So.2d 533 (Fla. 2<sup>nd</sup> Dist. Ct. App. Dec. 29, 1999).
1046. *Id.*
1047. Sentencing Transcript at 356, State v. Taylor, Nos. CF88-4730A1-XX, CF88-3199A1-XX.
1048. Letter to the ACLU from Tyrone Taylor, *supra* note 1041.
1049. *Id.*
1050. *Id.*
1051. *Id.*
1052. *Id.*
1053. *Id.*
1054. State v. Pettus, 10-KA-215 (La. App. Cir. 5/24/11); 68 So.3d 21, *writ denied*, 11-1325 (La. 12/2/11); 76 So.3d. 1176.
1055. *Id.*
1056. *Id.*
1057. *Id.*
1058. *Id.*
1059. *Id.*
1060. State v. Pettus, 10-KA-777 (La. App. 5 Cir. 5/24/11); 68 So.3d 28.
1061. State v. Caliste, No. 2010-KA-0650 (La. App. 1<sup>st</sup> Cir. Oct. 29, 2010).
1062. *Id.*
1063. State v. Pettus, 68 So.3d 28; State v. Caliste, 2010-KA-0650 (La. App. 1 Cir. 10/29/10); 56 So.3d 464.
1064. State v. Hinkel, 2010-KA-1151 (La. App. 1 Cir. 2/11/11); 57 So.3d 609.
1065. State v. Caliste, 56 So.3d 464.
1066. State v. Hinkel, 57 So.3d 609.
1067. State v. Nicholas, 97-KA-1991 (La. App. 4 Cir. 4/28/99); 735 So.2d 790.
1068. *Id.*
1069. *Id.*
1070. *Id.*
1071. *Id.*
1072. *Id.*
1073. *Id.*
1074. State v. Barnes, 01-KA-489 (La. App. 5 Cir. Oct. 17, 2001); 800 So.2d 973.
1075. *Id.*
1076. *Id.*
1077. *Id.*; State v. Barnes, 00-1389 (La. App. 5 Cir. Jan. 30, 2001); 786 So.2d 985.
1078. State v. Barnes, 01-KA-489 (La. App. 5 Cir. Oct. 17, 2001); 800 So.2d 973.
1079. State v. Barnes, 01-KA-489 (La. App. 5 Cir. Oct. 17, 2001); 800 So.2d 973.
1080. State v. Cushinello, 01-KA-109 (La. App. 1 Cir. July 30, 2001); 792 So.2d 926.
1081. *Id.*
1082. *Id.*
1083. *Id.*
1084. *Id.*
1085. State v. Bates, 37,282 KA (La. App. 2 Cir. 10/16/03); 859 So.2d 841.
1086. *Id.*
1087. *Id.*
1088. *Id.*
1089. *Id.*
1090. *Id.*
1091. *Conviction Stemming from Police Chase Could Mean Life Sentence*, ASSOCIATED PRESS, Feb. 6, 2002.
1092. State v. Bates, 859 So.2d 841.
1093. *Id.*
1094. *Id.*
1095. United States v. Graham, 622 F.3d 445, 447 (6<sup>th</sup> Cir. 2010), *cert. denied*, 131 S. Ct. 2962 (2011).
1096. *Id.*
1097. *Id.*
1098. *Id.*
1099. *Id.*
1100. *Id.*
1101. *Id.*
1102. At age 19, Graham was convicted of two counts of cocaine trafficking under Ohio law and served two consecutive six-month terms in prison. United States v. Graham, 622 F.3d at 455.

1103. *Id.* at 465-470 (Merrit, G., dissenting) (footnotes and internal citations omitted).
1104. Letter to the ACLU from Donald Graham, United States Penitentiary-Canaan, Waymart, Pennsylvania, Mar. 11, 2013.
1105. *Id.*
1106. *Id.*
1107. *Id.*
1108. *Id.*
1109. *Id.*
1110. United States v. Speal, No. 6:97CR10051-002 (D. Kan. Nov. 12, 1997).
1111. United States v. Speal, 166 F.3d 350 (10<sup>th</sup> Cir. 1998); United States v. Benson, No. 97-1151-01, 02 (D. Kan. 1997).
1112. Letter to the ACLU from Steven Speal, Jesup Federal Correctional Institution, Jesup, Georgia, Apr. 22, 2013.
1113. *Id.*
1114. *Id.*
1115. Presentence Investigation Report at 51, United States v. Speal.
1116. *Id.* at 52.
1117. *Id.*
1118. *Id.* at 53.
1119. Letter to the ACLU from Steven Speal, *supra* note 1112.
1120. ACLU telephone interview with Steven Speal, Jesup, Georgia, Mar. 25, 2013.
1121. ACLU telephone interview with Mary McMillan, May 7, 2013.
1122. *Id.*
1123. *Id.*
1124. *Id.*
1125. Letter to the ACLU from Steven Speal, *supra* note 1112.
1126. ACLU telephone interview with Steven Speal, *supra* note 1120.
1127. Letter to the ACLU from Steven Speal, *supra* note 1112.
1128. ACLU telephone interview with Steven Speal, *supra* note 1120.
1129. Letter to the ACLU from Steven Speal, *supra* note 1112.
1130. United States v. Wadlington, 233 F.3d 1067 (8<sup>th</sup> Cir. 2000).
1131. *See id.*
1132. *Id.*
1133. ACLU telephone interview with Euka Wadlington, Greenville Federal Correctional Institution, Greenville, Illinois, May 10, 2013.
1134. Wadlington v. United States, 428 F.3d 779 (8<sup>th</sup> Cir. 2005).
1135. Letter to the ACLU from Euka Wadlington, Greenville Federal Correctional Institution, Greenville, Illinois, May 14, 2013.
1136. *See* Wadlington v. United States, 428 F.3d 779.
1137. *Id.*
1138. United States v. Wadlington, 233 F.3d 1067.
1139. ACLU telephone interview with Euka Wadlington, *supra* note 1133; letter to the ACLU from Euka Wadlington, *supra* note 1135.
1140. Letter to the ACLU from Euka Wadlington, *supra* note 1135.
1141. *Id.*
1142. State v. Green, 36,741-KA (La. App. 2 Cir. 3/5/03); 839 So.2d 970.
1143. *Id.*
1144. *Id.*
1145. *Id.*
1146. *Id.*
1147. State v. Mosley, 08-KA-1318 (La. App. 5 Cir. 5/12/09); 13 So.3d 705.
1148. State v. Mosley, 13 So.3d 705.
1149. Mosley had pleaded guilty in February 1996 to possessing cocaine with intent to distribute when he was 17 years old and in June 1997 to distribution of cocaine. State v. Mosley, 13 So.3d 705.
1150. Letter to the ACLU from Terrance Mosley, Louisiana State Penitentiary, Angola, Louisiana, May 6, 2013.
1151. *Id.*
1152. *Id.*
1153. State v. Winslow, 45,414 (La. App. 2 Cir. 12/15/10); 55 So.3d 910, *writ denied* 11-0192 (La. 6/17/11); 63 So. 3d 1033.
1154. Letter to the ACLU from Fate Vincent Winslow, Louisiana State Penitentiary, Angola, Louisiana, May 16, 2013.
1155. *Id.*
1156. Transcript of Record at 181, State v. Winslow, 55 So.3d 910.
1157. State v. Winslow, 55 So.3d 910.
1158. State v. Winslow, 29888-Ka (La. App. 2 Cir. 10/17/97).
1159. Letter to the ACLU from Fate Vincent Winslow, *supra* note 1154.
1160. State v. Bourda, KA 10-1553 (La. App. 3 Cir. 6/8/11); 70 So.3d 82.
1161. State v. Bourda, 70 So.3d 82.
1162. Letter to the ACLU from Travis Bourda, Louisiana State Penitentiary, Angola, Louisiana, Apr. 26, 2013.
1163. *Id.*
1164. *Id.*
1165. State v. Kelly, 01-KA-321 (La. App. 5 Cir. 10/17/01); 800 So.2d 978.
1166. *Id.*
1167. *Id.*
1168. *Id.*
1169. *Id.*
1170. *Id.*
1171. *Id.*
1172. *Id.*
1173. Letter to the ACLU from Anthony Kelly, Louisiana State Penitentiary, Angola, Louisiana, Apr. 18, 2013.
1174. *Id.*
1175. *Id.*
1176. *Id.*
1177. *Id.*
1178. ACLU telephone interview with William Dufries, Oklahoma State Reformatory, Granite, Oklahoma, Mar. 8, 2013; Dufries v. State, No. F-2004-199 (Okla. Crim. App. Apr. 13, 2006).
1179. Letter to the ACLU from William Dufries, Oklahoma State Reformatory, Granite, Oklahoma, Mar. 12, 2013.
1180. Dufries v. State, No. F-2004-199.
1181. ACLU telephone interview with William Dufries, *supra* note 1178; letter to the ACLU from William Dufries, *supra* note 1179.
1182. ACLU telephone interview with William Dufries, *supra* note 1178.
1183. *Id.*
1184. Letter to the ACLU from William Dufries, *supra* note 1179.
1185. ACLU telephone interview with William Dufries, *supra* note 1178.
1186. *Id.*
1187. Dodd was sentenced to life without parole on the conspiracy to traffic marijuana count and to life for the possession with intent to distribute count. Dodd v. State, No. F-91-708, 879 P.2d 822 (Okla. Crim. App. July 29, 1994).

1188. ACLU telephone interview with Leland Dodd, Oklahoma State Reformatory, Granite, Oklahoma, Mar. 8, 2013.
1189. The sentence of life imprisonment without the possibility of parole was subsequently vacated and Hood was resentenced to 25 years after the state agreed to strike two predicate convictions. *State v. Hood*, 2012-KA-0006 (La. App 1 Cir. 6/8/12).
1190. *State v. Hood*, 2012-KA-0006; Ramon Antonio Vargas, *Fourth Marijuana Conviction Gets Slidell Man Life in Prison*, *TIMES-PICAYUNE*, May 5, 2011.
1191. *Id.*
1192. *See United States v. Gaitan-Acevedo et al.*, 148 F.3d 577 (6th Cir. 1998).
1193. *Id.*
1194. Letter to the ACLU from Paul E. Free, Atwater United States Penitentiary, Atwater, California, Mar. 9, 2013.
1195. *Id.*
1196. *Id.*
1197. Indictment, *United States v. Knock et al.*, Case No. 1:94-cr-1009 (N.D. Fla. Mar. 9, 1994); Judgment, *United States v. Knock et al.* (N.D. Fla. Jan. 31, 2001); *Knock v. United States*, Case No. 08-11966-D (11<sup>th</sup> Cir. 2003).
1198. Letter to the ACLU from John Knock, Allenwood United States Penitentiary, Allenwood, Pennsylvania, Mar. 13, 2013.
1199. *United States v. Duke*, 954 F.2d 668 (11<sup>th</sup> Cir. 1992).
1200. *Id.*
1201. E-mail communication from Larry Ronald Duke, Jesup Federal Correctional Institution, Jesup, Georgia, Apr. 27, 2013.
1202. *Id.*
1203. Letter to the ACLU from William Dekle, Big Sandy United States Penitentiary, Inez, Kentucky, Mar. 26, 2013.
1204. *Id.*
1205. *United States v. Cundiff et al.*, No. 91-03069-06/RV (N.D. Fla.), *affirmed* 16 F.3d 1231 (11<sup>th</sup> Cir. 1994).
1206. Letter to the ACLU from Charles Cundiff, Coleman Medium Federal Correctional Institution, Coleman, Florida, Mar. 26, 2013.
1207. Letter to the ACLU from Craig Cesal, Greenville Federal Correctional Institution, Greenville, Illinois, Apr. 3, 2013.
1208. E-mail communication from Craig Cesal, Greenville Federal Correctional Institution, Greenville, Illinois, Apr. 27, 2013.
1209. Letter to the ACLU from Craig Cesal, *supra* note 1207.
1210. *Id.*
1211. *Id.*
1212. *See United States v. Cesal*, 391 F.3d 1173 (11<sup>th</sup> Cir. 2004).
1213. Letter to the ACLU from Craig Cesal, *supra* note 1207.
1214. *United States v. Cesal*, 391 F.3d 1173.
1215. Letter to the ACLU from Craig Cesal, *supra* note 1207.
1216. ACLU telephone interview with Craig Cesal, Greenville Federal Correctional Institution, Greenville, Illinois, May 9, 2013.
1217. Letter to the ACLU from Craig Cesal, *supra* note 1207.
1218. U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, COMPENDIUM OF FEDERAL JUSTICE STATISTICS 2003, TABLE 7.16 at 112 *available at* <http://bjs.ojp.usdoj.gov/content/pub/pdf/cfjs03.pdf>.
1219. Congress gave the Commission authority to make its amendments retroactive in 28 U.S.C. § 994(u).
1220. For example, the 2011 retroactive guideline adjustment only benefited those crack cocaine offenders who were convicted of less than 8.4 kilograms, just as an earlier retroactive guideline adjustment reducing the sentencing ranges for crack cocaine by two levels that took effect in 2008 only benefited those crack cocaine offenders who were convicted of less than 4.5 kilograms.
1221. Dunkins was also convicted of use of a firearm during a drug trafficking offense, but this count was subsequently vacated.
1222. Sentencing transcript at 8-9, *United States v. Dunkins*, No. 4:92-CR-010-Y (N.D. Tex. Jan. 20, 1993).
1223. ACLU telephone interview with Douglas Ray Dunkins Jr., El Reno Federal Correctional Institution, El Reno, Oklahoma, Apr. 19, 2013.
1224. *Id.*
1225. *Id.*
1226. *Id.*
1227. ACLU telephone interview with Bonnie Dunkins, Fort Worth, Texas, Apr. 25, 2013.
1228. *Id.*
1229. *Id.*
1230. *Id.*
1231. ACLU telephone interview with Douglas Ray Dunkins Jr., El Reno Federal Correctional Institution, El Reno, Oklahoma, Mar. 20, 2013.
1232. *Id.*
1233. Jason Hernandez Petition for Commutation at 4.
1234. Jason Hernandez Petition for Commutation at 2.
1235. Jason Hernandez Petition for Commutation at 1.
1236. ACLU telephone interview with Jason Hernandez, El Reno Federal Correctional Institution, El Reno, Oklahoma, July 5, 2013.
1237. Jason Hernandez Petition for Commutation at 2.
1238. Jason Hernandez Petition for Commutation at 2.
1239. Letter to the ACLU from Jason Hernandez, El Reno Federal Correctional Institution, El Reno, Oklahoma, Mar. 7, 2013; Additional Factors in Support of Petition for Commutation at 2.
1240. Sentencing Transcript at 6, *United States v. Hernandez*, No. 4:98cr14 (2) (E.D. Tex. Feb. 22, 1999).
1241. Sentencing Transcript at 12, *United States v. Holmes*, No. 4:98cr14 (1) (E.D. Tex. Feb. 22, 1999); Sentencing Transcript at 12, *United States v. Hernandez*, No. 4:98cr14 (2).
1242. Letter from Paul Cogwell.
1243. *Chapa v. United States*, No. Civ.A 4:06CV7 (E.D. Tex. May 15, 2006). *See also* Jason Hernandez Petition for Commutation at 3.
1244. E-mail communication from Jason Hernandez, El Reno Federal Correctional Institution, El Reno, Oklahoma, July 3, 2013.
1245. ACLU telephone interview with Jason Hernandez, El Reno Federal Correctional Institution, El Reno, Oklahoma, July 5, 2013.
1246. E-mail communication from Jason Hernandez, *supra* note 1244.
1247. ACLU telephone interview with Jason Hernandez, *supra* note 1245.
1248. Letter to the ACLU from Jason Hernandez, El Reno Federal Correctional Institution, El Reno, Oklahoma, Mar. 7, 2013.
1249. E-mail communication from Jason Hernandez, *supra* note 1244.
1250. Professor David M. Zlotnik, Federal Sentencing Study, Profiles, Judge Philip Reinhard.
1251. *Id.*
1252. *Id.*
1253. *United States v. Edwards et al.*, 105 F.3d 1179 (7<sup>th</sup> Cir. 1997).
1254. Sentencing Transcript at 149, *United States v. Evans*, No. 93 CR 20024-09 (N.D. Ill. Oct. 14, 1994).
1255. *Id.* at 150.

1256. *Id.* at 148-49.
1257. Letter to the ACLU from Marcus Evans, Terre Haute United States Penitentiary, Terre Haute, Indiana, Mar. 13, 2013.
1258. *Id.*
1259. Letter to the ACLU from Kenneth Fragoso, Beaumont United States Penitentiary, Beaumont, Texas, June 26, 2013.
1260. AMERICAN CIVIL LIBERTIES UNION, AT AMERICA'S EXPENSE: THE MASS INCARCERATION OF THE ELDERLY (2012), available at <http://www.aclu.org/criminal-law-reform/report-americas-expense-mass-incarceration-elderly>.
1261. United States v. Giuliano, 11 F.3d 165 (11<sup>th</sup> Cir. 1993); Giuliano v. Warden, No. 6:10-cv-02485-MBS (D.S.C. Nov. 8, 2010).
1262. Pre-sentence Investigation Report, United States v. Giuliano.
1263. ACLU telephone interview with Ignazio Giuliano, Williamsburg Federal Correctional Institution, Salters, South Carolina, Dec. 3, 2012.
1264. Letter to the ACLU from Ignazio Giuliano, Williamsburg Federal Correctional Institution, Salters, South Carolina, Mar. 8, 2013.
1265. Letter to the ACLU from Ignazio Giuliano, *supra* note 1262.
1266. *Id.*
1267. *Id.*
1268. ACLU telephone interview with Ignazio Giuliano, Williamsburg Federal Correctional Institution, Salters, South Carolina, Mar. 21, 2012.
1269. Letter from Karen DeConna, Feb. 23, 2008 in Ignazio Giuliano, Petition for Commutation of Sentence, Dec. 20, 2007.
1270. Letter from Joseph Giuliano *in id.*
1271. Letter to the ACLU from Ignazio Giuliano, Williamsburg Federal Correctional Institution, Salters, South Carolina, Dec. 3, 2012.
1272. Letter to the ACLU from Robert Jonas, Jesup Federal Correctional Institution, Jesup, Georgia, May 20, 2013.
1273. *Id.*
1274. *Seven Held Without Bail in Drug Bust*, PHILADELPHIA INQUIRER, June 7, 1991; letter to the ACLU from Robert Jonas, *supra* note 1272.
1275. Mantilla v. United States, 302 F.3d 182, 183 (3<sup>rd</sup> Cir. 2002).
1276. Lane Kelley, *Broward Men Get Life in Smuggling Scheme*, SUN SENTINEL, Oct. 25, 1992.
1277. *Id.*
1278. Letter to the ACLU from Robert Jonas, *supra* note 1272.
1279. *Id.*
1280. *Id.*
1281. *Id.*
1282. *Id.*
1283. United States v. Hernandez-Miranda, 78 F.3d 512 (11<sup>th</sup> Cir. Mar. 26, 1996).
1284. *Id.*
1285. Letter to the ACLU from Leopoldo Hernandez-Miranda, Butner Federal Medical Center, Butner, North Carolina, Apr. 12, 2013.
1286. *Id.*
1287. *Id.*
1288. *Id.*
1289. *Id.*
1290. *Id.*
1291. *Id.*
1292. United States v. Hyatt, No. 5:93CR237 (N.D. Ohio, Jan. 26, 1994).
1293. David Hyatt, *The Wall*, THE NOVEMBER COALITION, available at [http://november.org/thewall/thewall/hyatt\\_david.html](http://november.org/thewall/thewall/hyatt_david.html).
1294. Letter to the ACLU from David Hyatt, Butner Federal Medical Center Butner, North Carolina, Mar. 8, 2013; David Hyatt, *The Wall*, *supra* note 1293.
1295. Letter from U.S. Dep't of Justice, Federal Bureau of Prisons to David Hyatt regarding his request for a reduction in sentence, Sept. 30, 2012.
1296. David Hyatt, *The Wall*, *supra* note 1293.
1297. Letter from U.S. Dep't of Justice, Federal Bureau of Prisons to David Hyatt, *supra* note 1295.
1298. Letter to Craig Apker, Warden of Butner Federal Medical Center, from David Hyatt regarding reconsideration for compassionate release, Oct. 6, 2012.
1299. Memorandum to Denise Simons, Executive Assistant of Butner Federal Medical Center, from David Hyatt regarding Reconsideration for Reduction in Sentence, Nov. 26, 2012.
1300. Letter to the ACLU from David Hyatt, *supra* note 1294.
1301. Hyatt v. United States, No. 593: CR 237 (N.D. Ohio, Aug. 7, 2008).
1302. *Id.*
1303. ACLU telephone interview with David Hyatt, Butner Federal Medical Center, Butner, North Carolina, Mar. 22, 2013.
1304. Letter to Craig Apker, *supra* note 1298.
1305. Letter from Judge David Dowd Jr. to David Hyatt, U.S. District Court, N.D. Ohio, Akron, Ohio, June 24, 2011.
1306. Letter from June Elaine Hyatt to Butner Federal Medical Center Unit Manager, Butner Federal Medical Center, Butner, North Carolina, Nov. 8, 2012.
1307. Letter to the ACLU from David Hyatt, *supra* note 1294.
1308. ACLU telephone interview with David Hyatt, *supra* note 1303.
1309. Letter from June Elaine Hyatt, *supra* note 1306.
1310. *Id.*
1311. Letter to the ACLU from Donnie Daniel, Oklahoma State Penitentiary, Granite, Oklahoma, Mar. 13, 2013.
1312. *Id.*
1313. *Id.*
1314. *Id.*
1315. *Id.*
1316. *Id.*
1317. Daniel v. Franklin, No. CIV-12-309-M, 2012 WL 1565784 at \*1 (W.D. Okla. Mar. 27, 2012).
1318. *Id.* citing Daniel v. State, No. F-1997-1101 (Okla. Crim. App. Mar. 19, 1999).
1319. Letter to the ACLU from Donnie Daniel, Oklahoma State Penitentiary, Granite, Oklahoma, Apr. 5, 2013.
1320. Letter to the ACLU from Donnie Daniel, *supra* note 1311.
1321. *Id.*
1322. Letter to the ACLU from Donnie Daniel, *supra* note 1319.
1323. *Id.*
1324. *Id.*
1325. *Id.*
1326. *Id.*
1327. *Id.*
1328. *Id.*
1329. Letter to the ACLU from Donnie Daniel, *supra* note 1311.
1330. Letter to the ACLU from Donnie Daniel, *supra* note 1319.
1331. 18 U.S.C. § 3624(b) (2009) (permitting federal prisoners serving sentences longer than one year to earn up to 54 days of "good

- time” credit at the end of each year of the prisoner’s term of imprisonment for good behavior, but limiting such credit to “a prisoner who is serving a term of imprisonment of more than [one] year other than a term of imprisonment for the duration of the prisoner’s life”).
1332. *Graham v. Florida*, 130 S. Ct. 2011, 2027 (2010).
1333. *Naovarath v. State*, 779 P.2d 944 (Nev. 1989).
1334. *Norris v. Morgan*, 622 F.3d 1276, 1291 (9<sup>th</sup> Cir. 2010) (citation omitted) (internal quotation marks omitted).
1335. Letter to the ACLU from Eduardo Toranzo, Cross City Correctional Institution, Cross City, Florida, July 20, 2013.
1336. Letter to the ACLU from Thomas Tinghino, Siwammee Correctional Institution Annex, Live Oak, Florida, July 20, 2013.
1337. Letter to the ACLU from Libert Roland, Louisiana State Penitentiary, Angola, Louisiana, May 11, 2013.
1338. Letter to the ACLU from Lloyd Wright, Lee Correctional Institution, Bishopville, South Carolina, Mar. 20, 2013.
1339. Letter to the ACLU from Jessie Traylor, Terre Haute United States Penitentiary, Terre Haute, Indiana, Mar. 25, 2013.
1340. Letter to the ACLU from Leland Dodd, Oklahoma State Reformatory, Granite, Oklahoma, Mar. 8, 2013.
1341. *Id.*
1342. ACLU telephone interview with Ricky Minor, Williamsburg Federal Correctional Institution, Salters, South Carolina, Mar. 6, 2013.
1343. ACLU telephone interview with Kevin Ott, Oklahoma State Reformatory, Granite, Oklahoma, Mar. 8, 2013.
1344. Letter to the ACLU from Antawn Tyrone Bolden, Jefferson Correctional Institution, Monticello, Florida, Mar. 10, 2013.
1345. Letter to the ACLU from Raffaelous White, Louisiana State Penitentiary, Angola, Louisiana, Apr. 26, 2013.
1346. *Id.*
1347. Letter to the ACLU from Darek Hayes, Louisiana State Penitentiary, Angola, Louisiana, Apr. 26, 2013.
1348. Letter to the ACLU from Scott Walker, Greenville Federal Correctional Institution, Greenville, Illinois, Mar. 5, 2013.
1349. Letter to the ACLU from Clinton Matthews, Petersburg Federal Correctional Complex, Petersburg, Virginia, Apr. 16, 2013.
1350. Letter to the ACLU from Kerry Orgeron, Louisiana State Penitentiary, Angola, Louisiana, May 2, 2013.
1351. Letter to the ACLU from Alonzo Jason, Louisiana State Penitentiary, Angola, Louisiana, May 30, 2013.
1352. Letter to the ACLU from Terrence Jackson, Walton Correctional Institution, DeFuniak Springs, Florida, May 14, 2013.
1353. Letter to the ACLU from Louis Brady, Louisiana State Penitentiary, Angola, Louisiana, May 3, 2013.
1354. Letter to the ACLU from Bobby Wallace, Louisiana State Penitentiary, Angola, Louisiana, Apr. 24, 2013.
1355. *See, e.g.*, Robert Johnson and Sandra McGunigall-Smith, *Life, or Something Like It: Pains of Imprisonment among Life-Sentence Prisoners*, paper presented at American Society of Criminology conference (Nov. 2006); M. E. Leigey, *Life While Serving Life: Examining the Correctional Experiences of Older Inmates Serving a Life without Parole Sentence* (2007) (unpublished doctoral dissertation, University of Delaware, Newark); Glenn Abraham, *Prisoners Serving Sentences of Life Without Parole: A Qualitative Study and Survey*, University of Kentucky Doctoral Dissertations Paper 814 (2011); Sandra McGunigall-Smith, *Men of a Thousand Days: Death-Sentenced Inmates at Utah State Prison* (2004) (unpublished doctoral dissertation, University of Wales, Bangor); Robert Johnson and Sandra McGunigall-Smith, *Life without Parole, America’s Other Death Penalty: Notes on Life under Sentence of Death by Incarceration*, PRISON JOURNALS (2008); S. COHEN AND L. TAYLOR, PSYCHOLOGICAL SURVIVAL: THE EXPERIENCE OF LONG-TERM IMPRISONMENT (Pelican Books, 1972); Y. Jewkes, *Loss, Liminality and the Life Sentence: Managing Identity through a Disrupted Lifecourse*, in THE EFFECTS OF IMPRISONMENT 366-388 (A. Lieblien & S. Maruna, eds., Willan Publishing, 2005); R. Johnson and A. Dobranska, *Mature Coping Among Life-Sentence Prisoners: An Exploratory Study of Adjustment Dynamics*, 30 CORR. COMPENDIUM 6, 8-9, 36-38 (2005).
1356. *See, e.g.*, I. Robbins et al., *The Psychiatric Problems of Detainees under the 2001 Anti-Terrorism Crime and Security Act*, 29 PSYCHIATRIC BULLETIN 407, 408 (2005) (helplessness and hopelessness are “integral aspect[s] of indefinite detention”); K. Robjant et al., *Mental health implications of detaining asylum seekers: systematic review*, 194 BR JOURNAL PSYCH 306, 309 (2009); Z. Steel and D. Silove, *The mental health implications of detaining asylum seekers*, 175 MEDICAL J OF AUSTRALIA 596 (2001); C. Pourgourides, *A second exile: the mental health implications of detention of asylum seekers in the UK*, 21 PSYCHIATRIC BULL. 673, 674 (1997); PHYSICIANS FOR HUMAN RIGHTS, PUNISHMENT BEFORE JUSTICE: INDEFINITE DETENTION IN THE US (2011).
1357. ACLU telephone interview with Dr. Terry Kupers, Oakland, California, Aug. 8, 2013.
1358. *Id.*
1359. U.S. DEP’T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, MENTAL HEALTH AND TREATMENT OF INMATES AND PROBATIONERS (1999); MARC MAUER, RYAN S. KING, & MALCOLM C. YOUNG, THE SENTENCING PROJECT, THE MEANING OF “LIFE”: LONG PRISON SENTENCES IN CONTEXT 15 (2004).
1360. ACLU telephone interview with Dr. Terry Kupers, *supra* note 1357.
1361. Letter to the ACLU from Dicky Joe Jackson, Forrest City Medium Federal Correctional Institution, Forrest City, Arkansas, Mar. 7, 2013.
1362. *Id.*
1363. ACLU telephone interview with Dicky Joe Jackson, Forrest City Medium Federal Correctional Institution, Forrest City, Arkansas, Mar. 12, 2013.
1364. Letter to the ACLU from Timothy Hartman, Charlotte Correctional Institution, Punta Gorda, Florida, July 17, 2013.
1365. *Id.*
1366. Letter to the ACLU from Donald Graham, Canaan United States Penitentiary, Waymart, Pennsylvania, Mar. 11, 2013.
1367. *Id.*
1368. ACLU telephone interview with Tommy Bryant, Jesup Federal Correctional Institution, Jesup, Georgia, July 17, 2013.
1369. Letter to the ACLU from Louis Scott White, Holmes Correctional Institution, Bonifoy, Florida, July 23, 2013.
1370. *Id.*
1371. *Id.*
1372. Letter to the ACLU from Ivan Vincent Anderson, Holmes Correctional Institution, Bonifay, Florida, July 17, 2013.
1373. *Id.*
1374. *Id.*

1375. E-mail communication from David Correa, Coleman Medium Federal Correctional Institution, Coleman, Florida, Apr. 16, 2013.
1376. Letter to the ACLU from Sylvester Mead, Louisiana State Penitentiary, Angola, Louisiana, Mar. 5, 2013.
1377. Letter to the ACLU from Jimmy Cochran, Suwannee Correctional Institution, Live Oak, Florida, Mar. 8, 2013.
1378. Letter to the ACLU from Patrick Matthews, Louisiana State Penitentiary, Angola, Louisiana, Apr. 23, 2013.
1379. Letter to the ACLU from Libert Roland, Louisiana State Penitentiary, Angola, Louisiana, May 11, 2013.
1380. *Id.*
1381. Letter to the ACLU from Darrell Smith, Louisiana State Penitentiary, Angola, Louisiana, Apr. 25, 2013.
1382. Letter to the ACLU from Eric Robinson, Louisiana State Penitentiary, Angola, Louisiana, Apr. 29, 2013.
1383. Letter to the ACLU from Ricky Carthan, Louisiana State Penitentiary, Angola, Louisiana, Apr. 2, 2013.
1384. Letter to the ACLU from Alonzo Jason, Louisiana State Penitentiary, Angola, Louisiana, May 30, 2013.
1385. ACLU telephone interview with Dicky Joe Jackson, *supra* note 1363.
1386. *Id.*
1387. *Prison Labor*, PRISON POLICY INITIATIVE, <http://www.prisonpolicy.org/prisonindex/prisonlabor.html> (last visited Oct. 3, 2013), (Noting that as of 2001, the average minimum wage for prisoners paid by states for non-industry work was 93 cents; the lowest reported wage for prisoners in the private industry was 16 cents); *Work Programs*, FED. BUREAU OF PRISONS, [http://www.bop.gov/inmate\\_programs/work\\_prgms.jsp](http://www.bop.gov/inmate_programs/work_prgms.jsp) (last visited Sept. 30, 2013), (Noting that inmates working in Federal Prison Industries (FPI) factories make 23 cents to \$1.15 per hour; the Inmate Financial Responsibility Program requires inmates to pay 50 percent of their earnings to satisfy court-ordered fines, victim restitution, child support, and other monetary judgments, as well as a Cost of Incarceration Fee assessed to some inmates); UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE, BUREAU OF PRISONS, IMPROVED EVALUATIONS AND INCREASED COORDINATION COULD IMPROVE CELL PHONE DETECTION 13 (Sept. 2011), (Finding that as of 2011, the cost of a 15-minute phone call in a federal Bureau of Prisons facility was 90 cents for local direct dial/debit card calls, between 95 cents and \$5.70 for local collect calls, \$3.45 for long distance direct dial/debit card calls, and \$8.45 for long distance/collect calls. Many state departments of corrections charged similarly high rates, e.g., as of 2011, Mississippi charged \$2.85 for local collect calls and \$14.55 for long distance calls; the New Jersey Department of Corrections charged \$4.95 across the board, regardless of the type of call or distance.). In August 2013, out of recognition of the exorbitant prices of interstate long-distance calls from correctional facilities, the Federal Communications Commission passed reforms dramatically lowering the cost of long-distance phone calls from federal prisons. These regulations call for a rate cap of 21 cents per minute for debit and pre-paid calls and 25 cents per minute for collect calls. While prior to the reforms prisoners faced rates of more than \$17 for a 15-minute phone call, the cost of a 15-minute call is now capped at \$3.75. Press Release, Federal Communications Commission, *FCC Bars High Rates for Long Distance Phone Calls in Jails and Prisons Nationwide* (Aug. 9, 2013).
1388. Letter to the ACLU from Ignatzio Giuliano, Williamsburg Federal Correctional Institution, Salters, South Carolina, Mar. 6, 2013.
1389. Letter to the ACLU from Paul Free, Atwater United States Penitentiary, Atwater, California, Mar. 9, 2013.
1390. ACLU telephone interview with Jason Hernandez, El Reno Federal Correctional Institution, El Reno, Oklahoma, July 5, 2013.
1391. ACLU telephone interview with Jesse Webster, Greenville Federal Correctional Institution, Greenville, Illinois, June 11, 2013.
1392. Letter to the ACLU from Euka Wadlington, Greenville Federal Correctional Institution, Greenville, Illinois, July 9, 2013.
1393. Letter to the ACLU from Lloyd Wright, Lee Correctional Institution, Bishopville, South Carolina, Mar. 20, 2013.
1394. Letter to the ACLU from Anthony Jerome Jackson, Lieber Correctional Institution, Ridgeville, South Carolina, Mar. 28, 2013.
1395. Letter to the ACLU from Timothy Tyler, Canaan United States Penitentiary, Waymart, Pennsylvania, Mar. 4, 2013.
1396. *Id.*
1397. *Id.*
1398. Letter to the ACLU from Dicky Joe Jackson, Forrest City Medium Federal Correctional Institution, Forrest City, Arkansas, Mar. 7, 2013.
1399. Letter to the ACLU from Jimmy Cochran, Suwannee Correctional Institution, Live Oak, Florida, Mar. 8, 2013.
1400. Letter to the ACLU from Earl Crum, Louisiana State Penitentiary, Angola, Louisiana, May 13, 2013.
1401. *See, e.g.*, Glenn J. Abraham, *Prisoners Serving Sentences of Life Without Parole: A Qualitative Study and Survey* 54 (2011) (University of Kentucky Doctoral Dissertation) (“Eligibility to enroll in academic or vocational education programs is tied to length of sentence in some states with those inmates who are not within some set number of years of their release date being ineligible.”); HUMAN RIGHTS WATCH, *THE REST OF THEIR LIVES* 67-72 (2005).
1402. *Id.*
1403. ACLU telephone interview with Onrae Williams, Lee Correctional Institution, Bishopville, South Carolina, Mar. 5, 2013.
1404. Letter to the ACLU from Antawn Tyrone Bolden, Jefferson Correctional Institution, Monticello, Florida, Mar. 10, 2013.
1405. *Id.*
1406. ACLU telephone interview with Leland Dodd, Oklahoma State Reformatory, Granite, Oklahoma, Mar. 8, 2013.
1407. *Id.*
1408. *Id.*
1409. Letter to the ACLU from German Gonzalez, Hamilton Correctional Institution, Jasper, Florida, May 2, 2013.
1410. ACLU telephone interview with Scott Walker, Greenville Federal Correctional Institution, Greenville, Illinois, Mar. 11, 2013.
1411. *See, e.g.*, Jessica S. Henry, *Death-in-Prison Sentences: Overutilized and Underscrutinized*, in *LIFE WITHOUT PAROLE: AMERICA’S NEW DEATH PENALTY?*, *supra* note 14; *Tinkering with Life*, *supra* note 45.
1412. *See, e.g.*, Rachel E. Barkow, *Life without Parole and the Hope for Real Sentencing Reform*, in *LIFE WITHOUT PAROLE: AMERICA’S NEW DEATH PENALTY?*, *supra* note 14, at 206.

1413. *Woodson v. North Carolina*, 428 U.S. 280 (1976).
1414. *Id.*; *Tinkering with Life*, *supra* note 45.
1415. While the exact number of exonerated individuals who were sentenced to LWOP is not known, experts have estimated that it is lower than in death penalty cases. Since 1973, there have been 142 exonerated death row prisoners. *See Tinkering with Life*, *supra* note 45, at 449-50; *Innocence and the Death Penalty*, DEATH PENALTY INFO. CENTER.
1416. *See, e.g.*, Jessica S. Henry, *Death-in-Prison Sentences: Overutilized and Underscrutinized*, in *LIFE WITHOUT PAROLE: AMERICA'S NEW DEATH PENALTY?*, *supra* note 14; *Tinkering with Life*, *supra* note 45.
1417. *See Murray v. Giarratano*, 492 U.S. 1 (1989).
1418. While the U.S. Supreme Court has recognized a defendant's Sixth Amendment right to counsel in criminal cases, *see Gideon v. Wainwright*, 372 U.S. 355 (1963), it has not recognized that right in post-conviction proceedings, *see Murray v. Giarratano*, 492 U.S. 1 (1989).
1419. Letter to the ACLU from Leland Dodd, *supra* note 1406.
1420. Jessica S. Henry, *Death-in-Prison Sentences: Overutilized and Underscrutinized*, in *LIFE WITHOUT PAROLE: AMERICA'S NEW DEATH PENALTY?*, *supra* note 14, at 77; *see also* Michael Heise, *Federal Criminal Appeals: A Brief Empirical Perspective*, 93 *MARQUETTE L. REV.* 832 (2009); Marc M. Arkin, *Rethinking the Constitutional Right to a Criminal Appeal*, 39 *UCLA L. REV.* 503, 516 (1992); James S. Liebman, *The Overproduction of Death*, 100 *COLUMBIA L. REV.* 2053 at n.90 (2000).
1421. *Id.*
1422. *Background Report on Death Penalty Habeas Corpus Issues Prepared for the American Bar Association Criminal Justice Section's Task Force on Death Penalty Habeas Corpus*, 40 *AMERICAN UNIVERSITY L. REV.* 53, 109 (1990), *cited in* Jessica S. Henry, *Death-in-Prison Sentences: Overutilized and Underscrutinized*, in *LIFE WITHOUT PAROLE: AMERICA'S NEW DEATH PENALTY?*, *supra* note 14, at 77.
1423. Note, *A Matter of Life and Death: The Effect of Life-Without-Parole Statutes on Capital Punishment*, 119 *HAR. L. REV.* 1838 (2006).
1424. Brandon L. Garrett, *Claiming Innocence*, 92 *MINN. L. REV.* 1629, 1671-72 (2008); *Tinkering with Life*, *supra* note 45, at 450.
1425. *See* Antiterrorism and Effective Death Penalty Act, Pub. L. No. 104-132, § 104, 110 Stat. 1214, 1217 (1996) (barring second and successive post-conviction federal habeas petitions, and creating a one-year statute of limitations for original federal habeas petitions).
1426. *United States v. Booker*, 543 U.S. 220 (2005).
1427. *Apprendi v. New Jersey*, 530 U.S. 466 (2000).
1428. Letter to the ACLU from Michael Lloyd Cummings, Terre Haute United States Penitentiary, Terre Haute, Indiana, Mar. 10, 2013.
1429. *See, e.g.*, Molly M. Gill, *Clemency for Lifers: The Only Road Out is the Road Not Taken*, 23 *FED. SENT. R.* 21 (Oct. 2010); Margaret Colgate Love, *RELIEF FROM THE COLLATERAL CONSEQUENCES OF A CRIMINAL CONVICTION: A STATE-BY-STATE RESOURCE GUIDE* (2006); Office of the Pardon Attorney, U.S. Dep't of Justice, *Presidential Clemency Actions by Administration: 1945 to Present*, JUSTICE.GOV, [http://www.justice.gov/pardon/actions\\_administration.htm](http://www.justice.gov/pardon/actions_administration.htm) (last visited Oct. 30, 2013).
1430. The commutation was granted to Reed Prior, a nonviolent drug offender and addict who was sentenced to LWOP because of three prior state convictions for drug offenses, none of which involved prison time. *See* Office of the Pardon Attorney, U.S. Dep't of Justice, *Commutations Granted by George W. Bush* (showing the commutation of Prior's sentence); Office of the Pardon Attorney, U.S. Dep't of Justice, *Commutations Granted by George H.W. Bush* (showing no commutations to lifers); and Office of the Pardon Attorney, U.S. Dep't of Justice, *Commutations Granted by President Clinton* (showing no commutations to lifers, though former President Bill Clinton did commute the sentences of several federal prisoners facing the death penalty).
1431. Moreover, President Barack Obama uses the pardon power—which restores offenders' rights, and is distinct from commutations to reduce a prisoner's prison term—at a lower rate than any other modern president did. President Obama has granted only 39 pardons as of the writing of this report, representing about 2.8 percent of those who petitioned; former President Ronald Reagan pardoned 33 percent of those who petitioned, and former President George W. Bush pardoned 3 percent. President Obama has pardoned 1 in 35 applicants; at this same point in their presidencies, former President Reagan had pardoned 1 of every 3 pardon applicants, former President George H.W. Bush had pardoned 1 in 16, former President Clinton had pardoned 1 in 8, and former President George W. Bush had pardoned 1 in 33. Dafna Linzer, *Obama Has Granted Clemency More Rarely Than Any Modern President*, *PROPUBLICA*, Nov. 2, 2012; Cora Currier, *Despite New Pardons, Obama's Clemency Rate is Still Lowest in Recent History*, *PROPUBLICA*, Mar. 5, 2013.
1432. Linzer, *supra* note 1431.
1433. *Id.*
1434. *See, e.g.*, Daniel T. Kobil, *Should Mercy Have a Place in Clemency Decisions?* in *FORGIVENESS, MERCY, AND CLEMENCY* at 36, 37 (Austin Sarat & Nasser Hussain eds., 2007) (citing a survey of commutations from 1995 to 2003 showing a decline at the state level); Molly M. Gill, *Clemency for Lifers: The Only Road Out is the Road Not Taken*, 23 *FED. SENT. REP.* 21 (Oct. 2010); Rachel E. Barkow, *The Politics of Forgiveness: Reconceptualizing Clemency*, 21 *FED. SENT. REP.* 153, 155-56 (2009).
1435. Barkow, *supra* note 1434, at 155-56 (2009); Molly M. Gill, *Clemency for Lifers: The Only Road Out is the Road Not Taken*, 23 *FED. SENT. R.* 21 (Oct. 2010).
1436. Gill, *supra* note 1435.
1437. *Id.*
1438. *Id.*
1439. HUMAN RIGHTS WATCH & FAMILIES AGAINST MANDATORY MINIMUMS, *THE ANSWER IS NO: TOO LITTLE COMPASSIONATE RELEASE IN US FEDERAL PRISONS*, Nov. 30, 2012, *available at* <http://www.hrw.org/reports/2012/11/30/answer-no>; Mary Price, *A Case for Compassion*, 21 *FED. SENT. REP.* 170, 171 (Feb. 2009).
1440. Gill, *supra* note 1435; Price, *supra* note 1439.
1441. *THE ANSWER IS NO: TOO LITTLE COMPASSIONATE RELEASE IN US FEDERAL PRISONS*, *supra* note 1439.
1442. *Id.*
1443. U.S. Dep't of Justice, Office of the Inspector General, *The Federal Bureau of Prisons' Compassionate Release Program*, Apr. 2013.
1444. *Id.*

1445. ACLU interview with Burl Cain, Warden, Louisiana State Penitentiary, Angola, Louisiana, June 4, 2013.
1446. ACLU telephone interview with William Dufries, Oklahoma State Reformatory, Granite, Oklahoma, Mar. 22 2013.
1447. *United States v. Craig*, No. 12-1262 (7th Cir. Dec. 18, 2012) (Posner, J., concurring).
1448. Adam Gopnik, *The Caging of America*, *NEW YORKER*, Jan. 30, 2012.
1449. See JASON A. SCHWARTZ, INST. FOR POLICY INTEGRITY, 52 EXPERIMENTS WITH REGULATORY REVIEW: THE POLITICAL AND ECONOMIC INPUTS INTO STATE RULEMAKING 87 (2010), available at [http://policyintegrity.org/files/publications/52\\_Experiments\\_with\\_Regulatory\\_Review.pdf](http://policyintegrity.org/files/publications/52_Experiments_with_Regulatory_Review.pdf) (noting that “45 states require some form of economic impact analysis” when considering the implementation of new regulations); see also ACLU, SMART REFORM IS POSSIBLE: STATES REDUCING INCARCERATION RATES AND COSTS WHILE PROTECTING COMMUNITIES (Aug. 2011).
1450. See *Life Expectancy Calculator*, SSA.GOV, <http://www.ssa.gov/cgi-bin/longevity.cgi>.
1451. See generally IRA J. SILVERMAN & MANUEL VEGA, CORRECTIONS: A COMPREHENSIVE VIEW (1996).
1452. See *Life Expectancy Calculator*, *supra* note 1450.
1453. See, e.g., U.S. SENTENCING COMMISSION PRELIMINARY QUARTERLY DATA REPORT A-8 (2012) (stating that the life expectancy for a person in the general prison population is 64 years of age), available at [http://www.ussc.gov/Data\\_and\\_Statistics/Federal\\_Sentencing\\_Statistics/Quarterly\\_Sentencing\\_Updates/USSC\\_2012\\_3rd\\_Quarter\\_Report.pdf](http://www.ussc.gov/Data_and_Statistics/Federal_Sentencing_Statistics/Quarterly_Sentencing_Updates/USSC_2012_3rd_Quarter_Report.pdf); see also *United States v. Taveras*, 436 F. Supp. 2d 493, 500 (E.D.N.Y. 2006) (Life expectancy within federal prison is considerably shortened); II EOR 72, Feld, *Symposium on Youth and the Law*, 22 ND J L ETHIC PUB. POL. 9, 63, n.231 (2008); *United States v. Nelson*, 491 F.3d 344, 349-50 (7th Cir. 2012) (acknowledging the decreased life expectancy for incarcerated individuals based on United States Sentencing Commission data); Elizabeth Arias, Ctr. for Disease Control, *U.S. Life Tables, 2003*, 54 NAT’L VITAL STATISTICS REP. 14, at 3 (Apr. 19, 2006), available at [http://www.cdc.gov/nchs/data/nvsr/nvsr54/nvsr54\\_14.pdf](http://www.cdc.gov/nchs/data/nvsr/nvsr54/nvsr54_14.pdf).
1454. See, e.g., John J. Kerbs & Jennifer M. Jolley, *A Commentary on Age Segregation for Older Prisoners: Philosophical and Pragmatic Considerations for Correctional Systems*, 34 CRIM. JUSTICE REV. 124-127 (2009) (finding, in a study of 65 male prisoners age 50 or older, that 10.8 percent reported physical attacks and assaults without weapons, 1.5 percent reported physical attacks and assaults with weapons, 6.2 percent reported being robbed, and 1.5 percent reported being raped).
1455. See, e.g., *U.S. v. Nelson*, 491 F.3d 344, 349-50 (7th Cir. 2012) (acknowledging decreased life expectancies for incarcerated individuals based on U.S. Sentencing Commission data); *U.S. v. Taveras*, 436 F. Supp. 2d 493, 500 (E.D.N.Y. 2006) (stating that life expectancy within federal prisons is considerably shortened); see also Arias, *supra* note 1453.
1456. See, e.g., RONALD H. ADAY, AGING PRISONERS: CRISIS IN AMERICAN CORRECTIONS 16-17 (2003). The combination of physical and mental declines renders aging or elderly inmates 10 to 11.5 years older physiologically, on average, than their comparable non-incarcerated age cohorts. See JEREMY L. WILLIAMS, S. LEGISLATIVE CONFERENCE, THE AGING INMATE POPULATION: SOUTHERN STATES OUTLOOK 1-2 (2006), available at [http://www.slcatlanta.org/Publications/HSPS/aging\\_inmates\\_2006\\_lo.pdf](http://www.slcatlanta.org/Publications/HSPS/aging_inmates_2006_lo.pdf); see also JOANN B. MORTON, U.S. DEP’T OF JUSTICE, NAT’L INST. OF CORR., AN ADMINISTRATIVE OVERVIEW OF THE OLDER INMATE 4 (1992), available at <http://static.nicic.gov/Library/010937.pdf>.
1457. Note that our analysis assumes that the annual prison cost per inmate remains constant over time. The average age of the total number of nonviolent offenders serving a life-without parole sentence is 46. Recalling that the average age of admittance was 36, a life expectancy of 61.5 years implies that the majority of costs incurred lie in the future. Thus, to the extent that incarceration costs continue to increase as a function of time, constant incarceration costs is a conservative assumption.
1458. According to the Vera study, the largest prison costs outside of the corrections department were underfunded contributions to retiree health care for corrections employees (\$1.9 billion), states’ contributions to retiree health care on behalf of their corrections department (\$837 million), employee benefits (\$613 million), states’ contributions to pensions on behalf of their corrections department (\$598 million), capital outlays (\$485 million), health and hospital care for the prison population (\$335 million), and underfunded pension contributions for corrections employees (\$304 million). See VERA INST. OF JUSTICE, THE PRICE OF PRISONS: WHAT INCARCERATION COSTS TAXPAYERS 6, 8 (2012), available at <http://www.vera.org/download?file=3495/the-price-of-prisons-updated.pdf>.
1459. In particular, the total price to taxpayers was \$39 billion—\$5.4 billion more than the \$33.5 billion reflected in the states’ combined corrections budgets. See *id.*
1460. The average annual costs per inmate for the remaining states are as follows: Florida (\$20,553), Louisiana (\$17,486), Missouri (\$22,350), and Oklahoma (\$18,467). See *id.* Mississippi and South Carolina did not participate in the Vera Institute study. To calculate the relevant prison costs for these two states, the report relies on official, publicly available state government sources. In particular, the average annual cost per inmate in Mississippi is \$18,162. See JOINT LEGISLATIVE COMMITTEE ON PERFORMANCE EVALUATION AND EXPENDITURE REVIEW (PEER), MISSISSIPPI DEP’T OF CORR’S FY 2012 COST PER INMATE DAY (2012), available at <http://www.peer.state.ms.us/reports/rpt565.pdf>. Similarly, the average annual cost per inmate in South Carolina is \$17,343. SOUTH CAROLINA DEP’T OF CORR., STATISTICAL REPORTS, COST PER INMATE FISCAL YEARS 1988-2012 (2012), available at <http://www.doc.sc.gov/research/BudgetAndExpenditures/PerInmateCost1988-2012.pdf>.
1461. U.S. DEP’T OF JUSTICE OFFICE OF INSPECTOR GENERAL AUDIT DIVISION, FED. BUREAU OF PRISONS ANNUAL FINANCIAL STATEMENTS FISCAL YEAR 2011 (2012).
1462. See B. JAYE ANNO ET AL., U.S. DEP’T OF JUSTICE, NAT’L INST. OF CORR., CORRECTIONAL HEALTH CARE: ADDRESSING THE NEEDS OF ELDERLY, CHRONICALLY ILL, AND TERMINALLY ILL INMATES 10 (2004), available at <http://static.nicic.gov/Library/018735.pdf>.
1463. According to a Bureau of Justice Statistics study, for example, approximately 48 percent of prisoners age 45 or older reported some kind of medical problem (excluding physical injury), compared to only 24 percent of prisoners age 24 or younger. See LAURA M. MARUSCHAK & ALLEN BECK, U.S. DEP’T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, MEDICAL PROBLEMS OF INMATES, 1997 3 tbl.2 (2006), available at <http://www.bjs.gov/content/pub/pdf/mpj97.pdf>.

1464. *Estelle v. Gamble*, 429 U.S. 97, 104 (1976) (recognizing a prisoner’s Eighth Amendment right to adequate medical care); *see also* *Farmer v. Brennan*, 511 U.S. 825, 847 (1994) (stating that to establish “deliberate indifference,” a prisoner must prove that the defendant was aware of a substantial risk to the prisoner’s health and that the defendant subsequently disregarded that risk).
1465. *See* Cynthia Massie Mara, *Expansion of Long-Term Care in the Prison System: An Aging Inmate Population Poses Policy and Programmatic Questions*, 14 J. AGING & SOC. POL’Y 54-55 (2002) (“Buildings may be scattered throughout the prison complex, requiring inmates to walk a distance to access healthcare, meals, and additional services and activities. Architectural impediments such as steps, narrow doorways, and absence of grab bars and handrails can present problems for inmates needing long term care.”).
1466. External medical treatment is expensive and can represent a significant proportion of a state prison system’s total healthcare budget. North Carolina, for example, spent \$18.1 million on external healthcare costs for all prisoners age 50 or older, with these external healthcare expenditures constituting 72 percent of all healthcare costs spent on aging prisoners and accounting for 34 percent of the total external healthcare costs incurred by the state prison system more broadly. *See* CHARLOTTE PRICE, N.C. DEP’T OF CORR., DIV. OF PRISONS, AGING INMATE POPULATION: 2007 ADDENDUM REPORT 16 (2007). Similarly, aging prisoners in Florida account for 34 percent of the total costs to the state of all outsourced healthcare services although aging prisoners comprise only 18 percent of the total prison population. *See* FLA. CORR. MED. AUTH., REPORT ON ELDERLY AND AGING INMATES IN THE FLORIDA DEPARTMENT OF CORRECTIONS 8 (2005).
1467. *See, e.g.*, THOMAS P. BONCZAR, BUREAU OF JUSTICE STATISTICS, NATIONAL CORRECTIONS REPORTING PROGRAM: SENTENCE LENGTH OF STATE PRISONERS, BY OFFENSE, ADMISSION TYPE, SEX, AND RACE (2011), *available at* <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=2056>.
1468. *See, e.g.*, U.S. SENTENCING COMMISSION FINAL QUARTERLY DATA REPORT, FISCAL YEAR 2012 (2012), *available at* [http://www.ussc.gov/Data\\_and\\_Statistics/Federal\\_Sentencing\\_Statistics/Quarterly\\_Sentencing\\_Updates/USSC\\_2012\\_Quarter\\_Report\\_Final.pdf](http://www.ussc.gov/Data_and_Statistics/Federal_Sentencing_Statistics/Quarterly_Sentencing_Updates/USSC_2012_Quarter_Report_Final.pdf).
1469. *See* STATE BUDGET, FISCAL YEAR 2012-2013 29 (2013), *available at* [http://doa.louisiana.gov/opb/pub/FY13/StateBudget\\_FY13.pdf](http://doa.louisiana.gov/opb/pub/FY13/StateBudget_FY13.pdf).
1470. Note that this estimated cost includes the counterfactual lengths of time served based upon offense category and jurisdiction and would, of course, be even higher in magnitude were this not taken into account, or, alternatively, if the *actual* average time served for nonviolent offenses, in the absence of life-without-parole, is lower than that counterfactually assumed in our analysis.
1471. Letter to the ACLU from Eric Hicks, Schuylkill Federal Correctional Institution, Minersville, Pennsylvania, Mar. 22, 2013.
1472. CRUEL AND UNUSUAL, *supra* note 15, at 8.
1473. *See* *Vinter and Others v. The United Kingdom*, App. Nos. 66069/09, 130/10, and 3896/10, Eur. Ct. H.R. (July 9, 2013).
1474. Catherine Appleton & Bent Grover, *The Pros and Cons of Life Without Parole*, 47 BRITISH J. CRIMINOLOGY 597, 608 (2007).
1475. CRUEL AND UNUSUAL, *supra* note 15, at 8.
1476. Presentations of Recommendations Rec(2003)22 and Rec(2003)23 at the *ad hoc* Conference of Directors of Prison Administration and Probation Service organized by the Council of Europe, Rome (Nov. 25-27, 2004), *cited in* *Léger v. France*, Application No. 19324/02, Eur. Ct. H.R. ¶ 47 (2006).
1477. *Id.*
1478. *Id.*
1479. *Id.*
1480. *Id.*
1481. *Id.*
1482. Appleton & Grover, *supra* note 1474, at 610.
1483. *Id.*
1484. *Id.* at 608.
1485. *Id.* at 608.
1486. *Id.* at 608.
1487. Dirk van Zyl Smit, *Outlawing Irreducible Life Sentences: Europe on the Brink?*, 23 FED. SENTENCING REV. 39 (2010).
1488. Bowcott & Allison, *supra* note 16.
1489. Appleton & Grover, *supra* note 1474, at 601.
1490. *Id.*
1491. R.S. Frase, *Comparative Perspectives on Sentencing Policy and Research* 14 in SENTENCING AND SANCTIONS IN WESTERN COUNTRIES, (M. Tonry & R. Frase eds., Oxford University Press, 2001)..
1492. Memorandum from European Union on E.U. Policy on the Death Penalty (Feb. 25, 2000), *available at* <http://www.eurunion.org/legislat/deathpenalty/eumemorandum.htm>.
1493. *See* Dirk van Zyl Smit, TAKING LIFE IMPRISONMENT SERIOUSLY IN NATIONAL AND INTERNATIONAL LAW 5, 13 (2002).
1494. Conseil Constitutionnel [CC] [Constitutional Court] decision No. 93-334 DC, Jan. 20, 1994, J.O. 1380 (Fr.).
1495. Corte cost. Sentaza, 27 settembre 1987, n. 274, Foro it, 1, 2333 (It.).
1496. *S. v. Tcoeib* 1996 (1) S.A.C.R. 390 (NmS).
1497. *Id.* at 213.
1498. Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court] June 21, 1977, 45 ENTSCHIEDUNGEN DES BUNDESVERFASSUNGSGERICHTS [BVerfGE] 187, 245 (Ger.), *reprinted in* Donald P. Kommers, THE CONSTITUTIONAL JURISPRUDENCE OF THE FEDERAL REPUBLIC OF GERMANY 306 (2d ed. 1997).
1499. *Id.* at 14 (quoting BVerfG June 5, 1973, 35 BVerfGE 202 (235-36)).
1500. *S. v. Dodo*, 2001 (3) SA 382 (CC) 303 (S. Afr.).
1501. *Id.*
1502. *Roper v. Simmons*, 125 S.Ct. 1183, 1198 (2005). *See also* *Atkins v. Virginia*, 536 U.S. 304, 317 (2002) (examining international community’s rejection of death penalty for persons with mental retardation); *Stanford v. Kentucky*, 492 U.S. 361, 370 n.1(1989) (Scalia, J.) (stating that “the practices of other nations, particularly other democracies, can be relevant to determining whether a practice uniform among our people is not merely an historical accident, but rather so implicit in the concept of ordered liberty that it occupies a place not merely in our mores, but, text permitting, in our Constitution as well”); *Thompson v. Oklahoma*, 487 U.S. 815, 830 (1988) (Stevens, J., concurring) (noting global rejection of the death penalty for youth age sixteen or younger); *Trop v. Dulles*, 356 U.S. 86, 102 (1958)

- (finding “virtual unanimity” within international community that denationalization constituted cruel and unusual punishment).
1503. For example, in *Thompson v. Oklahoma*, Justice John Paul Stevens, writing for the majority, found it appropriate to look to the opinions and practices of “other nations that share our Anglo-American heritage” and “leading members of the Western European community” as aids to the proper interpretation of the Eighth Amendment. *Thompson v. Oklahoma*, 487 U.S. 815, 830-31 (1988). Similarly, in *Atkins v. Virginia*, the majority held it appropriate to examine the opinions of “the world community” to support its conclusion that execution of persons with mental retardation would offend the standards of decency required by the Eighth Amendment. *Atkins v. Virginia*, 536 U.S. 304, 316 n.21 (2002). Most recently, in *Roper v. Simmons*, the Court devoted an entire chapter of its opinion to discussion of the U.N. Convention on the Rights of the Child, other international treaties and instruments on children’s rights as well as foreign practice on the death penalty to determine that the application of the juvenile death penalty in the United States violated the Eighth Amendment. *Roper v. Simmons*, 543 U.S. 551 (2005).
1504. *The Paquete Habana*, 175 U.S. 677, 700 (1900); *The Nereide*, 13 U.S. (9 Cranch) 388, 423 (1815).
1505. *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)).
1506. Dirk van Zyl Smit & Andrew Ashworth, *Disproportionate Sentences as Human Rights Violations*, 67 MOD LAW REV 541 (2004).
1507. 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 (citing *The Paquete Habana*, 175 U.S. at 686).
1508. *See generally* Leena Kurki, *International Standards for Sentencing Policy and Research in SENTENCING AND SANCTIONS IN WESTERN COUNTRIES*, *supra* note 1491, at 331; *see also* R v. Dodo, CCT 1/01 [2001] ¶¶ 37-39.
1509. International Covenant on Civil and Political Rights preamble, arts. 7, 9, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976, ratified by the United States 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.”).
1510. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment preamble, art. 16, *opened for signature* Dec. 10, 1984, 1465 U.N.T.S. 85.
1511. *Id.*
1512. 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.”).
1513. *Weeks v. United Kingdom*, 10 Eur. Ct. H.R. 293 ¶ 47 (1988). In *Weeks*, the petitioner argued that 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* Kurki, *supra* note 1508, 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.”).
1514. *Vinter and Others v. The United Kingdom*, Application Nos. 66069/09, 130/10, and 3896/10, Eur. Ct. H.R. (July 9, 2013).
1515. *Id.* ¶ 107.
1516. *Id.* ¶ 119.
1517. *Id.* ¶¶ 15-32.
1518. *Id.* ¶ 112.
1519. *See, e.g.*, *Lawrence v. Texas*, 539 U.S. 558, 573, 576 (2003).
1520. Ruth Kannai, *Preserving Proportionality in Sentencing: Constitutional or Criminal Issue 2-3*.
1521. 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 Zyl Smit, *supra* note 1506, at 543.
1522. Kannai, *supra* note 1520, at 3.
1523. The Rome Statute of the International Criminal Court art. 81(2) (a), July 17, 1998, U.N. Doc. A/CONF.183/9; *see also id.*, art. 78(1), at 53 (“[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, 48<sup>th</sup> Sess., 3217<sup>th</sup> mtg., U.N. Doc. S/RES/827 (1993) and The Statute of the International Criminal Tribunal for Rwanda arts. 24(2) and 23 (2), U.N. SCOR, 49<sup>th</sup> Sess., 3453<sup>d</sup> 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”).

1524. *See generally* R.S. Frase, *Comparative Perspectives on Sentencing Policy and Research*, in SENTENCING AND SANCTIONS IN WESTERN COUNTRIES, *supra* note 1491, at 259, 261.
1525. Council of Europe, Consistency in Sentencing: Recommendations to Member States and Explanatory Memorandum. Rec. No. (92) 17.
1526. JCase C-213/99, Jose Teodoro de Andrade v. Director da Alfandega de Leixoes, intervener: Ministerio Publico, 2000 E.C.R. 11104.
1527. 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.).
1528. Andrew von Hirsch & Andrew Ashworth, *Proportionate Sentencing: Exploring the Principles*, OXFORD UNIV. PRESS, 1 (2005).
1529. *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.
1530. *Forrester Bowe and another v. The Queen*, 1 W.L.R 1623.
1531. *R. v. Offen* (No.2), 1 W.L.R 253.
1532. *Id.* at 277.
1533. *R. v. Smith*, 1 S.C.R. 1045.
1534. *Id.* ¶ 66.
1535. *Id.* ¶ 56.
1536. 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.”
1537. ICCPR, *supra* note 1509, art. 10(3).
1538. Human Rights Comm., 44<sup>th</sup> Sess., General Comment 21 (Article 10), ¶ 10, U.N. Doc. HRI/GEN/1/Rev.1 (1994).
1539. *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).
1540. Basic Principles for the Treatment of Prisoners, G.A. Res. 111, U.N. GAOR, 45<sup>th</sup> Sess., Supp. No. 49A, U.N. Doc. A/45/49, at 200 (Dec. 14, 1990), available at [http://www.unhchr.ch/html/menu3/b/h\\_comp35.htm](http://www.unhchr.ch/html/menu3/b/h_comp35.htm).
1541. Standard Minimum Rules for the Treatment of Prisoners, E.S.C. Res. 663 C I (XXIV), U.N. Doc. A/CONF/611, Annex 1, 24 U.N. ESCOR Supp. No. 1, at 11, U.N. Doc. E/3048 (1957), amended by E.S.C. Res. 2076, 62 U.N. ESCOR Supp. No. 1, U.N. Doc. E/5988, at 35 (1977), available at <http://www.uncjin.org/Standards/UNRules.pdf>.
1542. Basic Principles for the Treatment of Prisoners, *supra* note 1540, Principle 5.
1543. 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).
1544. *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).
1545. *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.”
1546. *Weeks v. the United Kingdom*, Application No. 9787/82. The ECHR held in *Weeks v. United Kingdom* ((1982) 4 E.H.R.R. 252) 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.
1547. *See Mastromatteo v. Italy* [GC], Application No. 37703/99, ¶ 72, ECHR 2002-VIII, Oct. 24, 2002).
1548. American Convention on Human Rights art. 5(6), July 18, 1978, 1144 U.N.T.S. 123.

1549. Under Article 18 of the Vienna Convention of the Law of Treatises, 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).
1550. 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) (1999), *citing* United Nations Standard Minimum Rule 65 to support this contention.
1551. Report on the Situation of Human Rights in Guatemala, Inter-Am. Ct. H.R., OEA/Ser.L/V/II.111, Doc. 21 rev. Chapter VIII (2001).
1552. U.S. Const. amend. VIII. The Eighth Amendment became applicable to the states through the Fourteenth Amendment in 1962. *See* *Robinson v. California*, 370 U.S. 660, 666-67 (1962).
1553. *See* *Weems v. United States*, 217 U.S. 349, 366-67 (1910); *Solem v. Helm*, 463 U.S. 277 (1983). *But see* *Ewing v. California*, 538 U.S. 11 (2002) (rejecting the claim that a 25-year mandatory minimum sentence for stealing golf clubs imposed under California’s three-strikes law is grossly disproportionate under the Eighth Amendment).
1554. *See* *Trop v. Dulles*, 356 U.S. 86, 101 (1958) (opinion of Warren, C. J.).
1555. *Id.* (concluding that “The Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society”).
1556. *See* *Miller v. Alabama*, 132 S. Ct. 2455, 2463 (2012).
1557. Kevin White, *Construing the Outer Limits of Sentencing Authority: A Proposed Bright-Line Rule for Noncapital Proportionality Review*, 2011 B.Y.U. L. REV. 567, 568 (2011); *See also* James J. Brennan, *The Supreme Court’s Excessive Deference to Legislative Bodies Under Eighth Amendment Sentencing Review*, 94 J. CRIM. L. & CRIMINOLOGY 551, 552 (2004).
1558. *Gregg v. Georgia*, 428 U.S. 153, 174 (1976).
1559. *Rummel v. Estelle*, 445 U.S. 263, 265-66 (1980).
1560. *Id.* at 286 (Powell, J., dissenting).
1561. *Id.* at 284.
1562. *Solem v. Helm*, 463 U.S. 277, 280, 292-93, 299-300 (1983).
1563. *Id.* at 292.
1564. *Id.* at 287.
1565. *Id.* at 292-293.
1566. *Harmelin v. Michigan*, 501 U.S. 957 (1991).
1567. *See id.* at 994 (Scalia, J., plurality opinion); *id.* at 1009 (Kennedy, J., concurring in part and concurring in the judgment).
1568. *Ewing v. California*, 538 U.S. 11, 18, 30-31 (2003).
1569. *Id.* at 30 (finding that “To be sure, Ewing’s sentence is a long one. But it reflects a rational legislative judgment, entitled to deference, that offenders who have committed serious or violent felonies and who continue to commit felonies must be incapacitated. The State of California ‘was entitled to place upon [Ewing] the onus of one who is simply unable to bring his conduct within the social norms prescribed by the criminal law of the State.’ Ewing’s is not ‘the rare case in which a threshold comparison of the crime committed and the sentence imposed leads to an inference of gross disproportionality’” (internal citations omitted)).
1570. For example, in *United States v. Scott*, a defendant’s prior felony drug convictions for crimes committed when he was a juvenile, but for which he was convicted as an adult, were used to enhance his sentence for drug conspiracy to a mandatory life sentence without possibility of parole. The Eighth Circuit Court of Appeals affirmed this sentence, devoting only one short paragraph of an eight-page opinion to a proportionality analysis of 21 U.S.C. § 841. Without any meaningful analysis of even the factors laid out in *Harmelin*, the court stated in a conclusory manner, “[Defendant’s] case is not the rare case in which a threshold comparison of the crime committed and the sentence imposed leads to an inference of gross disproportionality.” *United States v. Scott*, 610 F.3d 1009, 1018 (8th Cir. 2010) (quoting *Harmelin*, 501 U.S. at 1005) (Kennedy, J. concurring in part and concurring in the judgment). *See also* *United States v. Ousley*, No. 11-2760 (7<sup>th</sup> Cir. Oct. 22, 2012) (rejecting an Eighth Amendment challenge to an LWOP sentence); *United States v. Graham*, No. 08-5993 (6<sup>th</sup> Cir. Sept. 22, 2010) (rejecting an Eighth Amendment challenge to an LWOP sentence).
1571. *See* Kevin White, *Construing the Outer Limits of Sentencing Authority: A Proposed Bright-Line Rule for Noncapital Proportionality Review*, 2011 B.Y.U. L. REV. 567, 581 (2011).
1572. *Graham v. Florida*, 130 S. Ct. 2011, 2034 (2010).
1573. *Miller v. Alabama*, 132 S. Ct. 2455 (2012).
1574. The Supreme Court has embraced this idea in the context of juvenile sentencing and, in fact, applied its test for evaluating capital sentences to reviewing life without parole, stating: “The Court first considers ‘objective indicia of society’s standards, as expressed in legislative enactments and state practice’ to determine whether there is a national consensus against the sentencing practice at issue. Next, guided by ‘the standards elaborated by controlling precedents and by the Court’s own understanding and interpretation of the Eighth Amendment’s text, history, meaning, and purpose,’ the Court must determine in the exercise of its own independent judgment whether the punishment in question violates the Constitution.” *Graham v. Florida*, 130 S. Ct. 2011, 2022 (2010).
1575. *Graham*, 130 S. Ct. at 2036 (Stevens, J. concurring).
1576. *See, e.g.*, Alison Siegler and Barry Sullivan, “*Death is Different No Longer*”: *Graham v. Florida and the Future of Eighth Amendment Challenges to Noncapital Sentences*, 2010 SUP. CT. REV. 327, 350, 352; William W. Berry, *The Mandate of Miller*, 51 AM. CRIM. L. REV. (forthcoming 2013) (manuscript at 12); Michael M. O’Hear, *Not Just Kid Stuff? Extending Graham and Miller to Adults*, MO. L. REV. (forthcoming 2013) (manuscript at 2-3).
1577. Rachel E. Barkow, *The Court of Life and Death: The Two Tracks of Constitutional Sentencing Law and the Case for Uniformity*, 107 MICH. L. REV. 1145, 1166-67 (2009).
1578. *See* Berry, *supra* note 1576, at 12. (“one can conceptualize *Graham* and *Miller* not as exceptions to the death-is-different rule, but instead as an extension of the death-is-different principle to death-in-custody sentences, which are slow and extended forms of capital punishment.”).



**A**cross the country, thousands of people are serving life sentences without the possibility of parole for nonviolent crimes. These sentences are grotesquely out of proportion to the conduct they seek to punish, destroy the lives of convicted people and their families, and misdirect millions of dollars away from more productive interventions such as education, job training, and more readily available drug treatment and mental health resources.

“A Living Death” documents the thousands of lives ruined and families destroyed by sentencing people to die behind bars for nonviolent offenses and analyzes the laws that led to these harsh sentences. It reveals the staggering racial disparity in life-without-parole sentencing for nonviolent crimes. It also includes a detailed fiscal analysis, tallying the \$1.784 billion cost to taxpayers to keep the 3,278 prisoners currently serving life without parole for nonviolent offenses incarcerated for the rest of their lives.

This report contains the in-depth stories of 110 individual prisoners waiting to die behind bars for nonviolent offenses, as well as accounts from the prisoners’ parents, children, and spouses who have been punished emotionally and economically by their loved ones’ permanent absence. These profiles cover the prisoners’ lives before and after their sentencing, the circumstances of their nonviolent crimes, and the terrible reality of their sentences.

Those currently sentenced to die in prison for a nonviolent offense must see relief. It is time to end such extreme sentences and reevaluate our sentencing schemes so that our justice system holds people accountable while being smart, fair, and humane.