REFORMING PAROLE FOR LIFE
SENTENCES WITH PAROLE

A Commission Presented to the
Sentencing Project
ABOUT THE INSTITUTE OF POLITICS CRIMINAL JUSTICE POLICY GROUP

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Executive Summary

The following report provides a breakdown of current life sentence with parole policies, and provides recommendations for reform. Reforms for life sentences with parole cannot simply amend parole requirements specific to life sentences, but must also address entrenched flaws within the parole system as a whole. As a result, this paper examines many aspects of state parole policies, including parole board makeup, parole hearing processes, factors affecting parole, and states with outlier parole policies. The report then moves to analyzing current reforms and advocacy movements, both on a state and national level, in order to ascertain what the atmosphere surrounding parole reform is.

Informed by the analysis on state parole policies and ongoing reforms, this proposal provides recommendations to reform parole for life sentences, broken down by parole requirements, responses to parole violations, transparency in parole decisions, parole board makeup, and reentry services/community engagement. Recommendations include the following:

Parole Requirements
- The parole board shall review the individual’s file at the conclusion of 10 years of the sentence, but can review it earlier as well, and every 2 years thereafter until the individual has been paroled.
- Full access to case information and counseling services for individuals during the parole process should be required.
- Expand the use of “good credit” or sentence reduction reward programs and access to them for individuals serving life sentences and to those who have committed violent crimes. Part of that expansion means more aggressive support of rehabilitation, counseling, work-release, and education programs during the incarceration period.

Reforming Parole Violations
- Failure to pay parole fees should not be considered a parole violation that is punishable by extension of parole or re-visititation to prison and that if there are parole fees, they be limited.
- Parole/jail, particularly as a response to low-level violations, should be capped, potentially at 15 days for the first jail sanction, 30 days for the second sanction, and up to 45 days for subsequent violations.
- Institute more procedural protections/hearing for assessing whether a parolee has committed a technical violation and whether jail is the appropriate response.
Transparency of Parole Boards
- Make parole board files public, but with certain sensitive information redacted on a standardized basis.
- Parole boards should publicize their decision-making guidelines, and require boards to include a written response of their reasoning if they choose not to follow the established guidelines.

Parole Board Makeup
- The parole board should annually publish demographic data of those serving on the board itself and the race, ethnicity, region of incarceration of prisoners who go before the board.
- Stricter qualifications for the board members as well as for the overall board composition, with the requirements Massachusetts has as a model.

Reentry Community Services
- Expand use of ancillary services, such as Massachusetts’ regional reentry centers, day reporting centers, case management services for individuals with substance abuse disorders.

Although feasibility in passing such widespread reforms as those listed above will vary state by state, this report urges state legislatures to implement these reforms to the best of their ability. Currently, the national attitude to criminal justice reform is more receptive than it has been in decades so state legislatures should capitalize on the momentum of the First Step Act passed by the U.S. Congress and take the next step to address parole for individuals serving life sentences at the state level.
I. **Recommendations**

A. **Parole Requirements**

The parole program should be restructured so that the system more clearly focuses on cultivating personal growth and providing stability for incarcerated persons. This report’s recommendations focus primarily on addressing the issues of transparency and high recidivism rates that currently plague our parole system.

Full access to case information and counseling services for incarcerated persons during the parole process should be mandated so that incarcerated persons have some sense of security during the parole process. This entails giving incarcerated persons complete access to case files, victim statements, and other court documents that may assist in their making a case for parole. We believe that making victim statements available would make the parole application process much fairer for incarcerated individuals, but we also understand that this particular recommendation may be less politically feasible than the others we have included in this section.

Furthermore, incarcerated persons should also have the right to any information about the steps they can take to expedite the parole process. Importantly, this would include explanations as to why a candidate may have had a previous request for parole denied as well as what changes the parole board would like to see from them in the future so that they may be granted parole. If an incarcerated person should require counsel up to two months prior to their parole hearing, they should be granted a meeting within 48 hours of their request. If incarcerated persons are fully supported throughout the parole process with access to case-specific information and the steps they can take to expedite the process, the parole process will flow much more efficiently, allowing officials to focus their energy on other issues with the parole system.
As will be discussed in this paper, one prevalent source of recidivism for parolees is the trend of falling back into the potentially destructive behaviors that put someone in the penal system in the first place. Therefore, we suggest a more proactive use of rehabilitation and counseling programs during the incarceration period. We suggest that prospective parolees that are known to have a history of substance abuse be rewarded for successfully completing a rehabilitation or counseling program in order for them to be eligible to receive parole.

Another program that would facilitate more successful reintegration during parole would be implementation of pre-release programs. These programs are useful for creating a supportive structural framework for reintegration to society. Additionally, we suggest the use of work release programs. In order to combat the difficulties associated with finding viable work, more structures should be implemented to support this specific goal. These could be coordinated by a given individual whose job it is to be a point of contact regarding any questions about finding work, paying taxes, and other topics generally related to re-entering the workforce. Furthermore, at the state level, a hired position(s) tasked with conducting an economic analysis of the state’s job market specifically aimed at which fields are looking to fill a gap of skilled or unskilled labor should be created. Every state is different in terms of what jobs are available, and given that parolees face significant limitations in what jobs they might be able to even apply for, such a position could clarify which markets are available and looking for new hires. With this information, each state’s prison could tailor their work release program to train future parolees for jobs in that specific market.

Completion of such programs could make potential parolees eligible for a reward system that lowers the amount of time that an individual would comparatively have to remain on parole. An example of this sort of sentence reduction as a reward for program completion exists in
Massachusetts, where HB 4012 allows prisoners who participate in recidivism-reduction programs to earn sentence-reduction credit, decreasing their original sentence up to 35%.\(^1\) In addition, Washington State Attorney General’s office supported the idea of not setting fixed minimum terms of sentence and utilizing a policy of saving one-third “good time” credit. For example, for a suggested minimum sentence of 20 years, a prisoner who exhibited good behavior could reduce that suggested minimum to 13 years and 4 months until they are considered for parole.\(^2\) California’s Proposition 57 has a similar “good conduct credit” program, where prisoners serving life sentences with the possibility of parole are also eligible to work towards an early release. California’s program also allows individuals to earn credits based on completion of education programs, rehabilitation programs, and “extraordinary conduct credits,” if they perform a heroic life saving act.\(^3\) These programs encourage the personal growth of prisoners and take into account the changes they make for themselves over time.

In order for good credit programs to be successful, there would need to be an expansion in the availability of such programs throughout different prisons nationally and a defined set of standards for each one to ensure that every potential parolee is provided the best resources possible to transition back into society. Importantly, this change would not guarantee that defendants would be released, but simply give them the opportunity for an earlier release. Though several states\(^4\) have instituted forms of good credit or reward programs, the majority have eligibility standards that exclude individuals serving life sentences. Thus, those exclusions should

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2 AGO 55-57 No. 77
3 Proposition 57: Credit-Earning for Inmates Frequently Asked Questions (FAQ). California Department of Corrections and Rehabilitation, May 2018
4 See section on Key States Breakdown under State Parole Policy Analysis
be removed in the states with preexisting good credit programs, and inclusive good credit programs should be established in states that lack them.

**B. Responses to Parole Violations**

Even after individuals are awarded parole, they risk incurring violations that result in fees, extended parole time, or even jail. A 2004 study of 41 states shows that nearly a fifth of people on parole from state prisons were imprisoned for technical violations of parole—such as failures to report in for office visits or curfew violations—that are not criminal offenses and do not include new criminal convictions.\(^5\) We propose three categories of reforms targeting responses to parole violations, seeking to: (1) allow more waivers for parole fees tied to violations, (2) decrease or cap extensions of parole/jail for violations, and (3) institute more procedural protections/hearings for assessing whether a parolee has committed a technical violation.

1. **Parole Fee Reform**

A recent bill from Pennsylvania, Senate Bill 14, aims to prevent a judge from extending the length of parole if someone is not able to pay the fees that are associated with parole or commits perceived dress code violations in the courtroom.\(^6\) This bill should act as a model in a state looking to shape a progressive set of parole policies, particularly regarding parole fees. Parole policies should be aimed at rehabilitation efforts, and not discriminate against those who may not be socioeconomically privileged. Failure to pay parole fees should thus be removed as a standard parole violation that could warrant recidivism.

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Additionally, there should be different options to support those on parole in paying their parole fees, if there are any at all. States should consider abolishing or removing parole supervision fees, as Governor Andrew Cuomo of New York State proposes. Moreover, parole fees should be kept at a minimum, with an especially low cap for offenders classified as indigent.

Legislation seeking to change parole fees has been difficult to pass, both because parole fees make up a large portion of revenue used to maintain the criminal justice system in many states and because individuals have argued that parole fees may deter supervision violations. For example, in 2018 the proponents of Mississippi Senate Bill 2841 sought to institute automatic parole and parole supervision fee waivers for individuals who met the federal definition of poverty. The bill also sought to ensure that individuals would not be imprisoned, and that their parole would not be revoked, if they were found to be indigent/financially unable to make fee payments. Governor Phil Bryant of Mississippi, however, vetoed the bill after arguing that granting these waivers could cost the state corrections departments millions of dollars.

2. Cap on Extending Parole/Jail

There are currently 20 states that do not have any limitation on the length an inmate’s parole can be extended due to a parole violation, which can be as minor as committing a traffic violation. That is why parole/jail, particularly as a response to low-level violations, should be capped potentially at 15 days for the first jail sanction, 30 days for the second jail sanction, and up to 45 days for subsequent violations, in accordance with 2017 Louisiana Senate Bill 139.

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10 These violations, also known as “technical violations,” include issues like changing residence without permission, traveling without permission, failing to report to officers, not seeking employment within three months,
Pennsylvania currently has no caps on how long someone stays on probation or serves prison for violating it, but Senate Bill 14 seeks to cap it at 5 years. The bill would also reduce by three months the amount of prison time a parolee would face for failing to report to their parole officer or comply with a special condition of their release, or for using illegal drugs if they’re deemed to be addicted. The bill provides a model for how parole boards and state governments should approach parole violations. Mississippi also passed House Bill 387 in 2018, which ensures that judges send first-time parole violators to technical violation centers—where services for substance abuse disorders are provided—instead of jail.

In 2010, South Carolina passed SB 1154, a Sentencing Reform Act that authorized parole agents to use “administrative responses to violations” instead of pursuing jail time or fines. Examples of these responses included “fee exemptions, fee restructures, and conversions of fees into public-service employment hours.” This led to a 46% decrease in compliance revocations—revoking parole for parolees who violate conditions—between 2010 and 2017. Although South Carolina does have a limit on parole extensions, their policy is very conservative, and does not serve the purpose of what limitations are supposed to be for: integrating people back into society.

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as smoothly as possible. South Carolina has taken some measures addressing the extension of parole; we suggest the cap on parole extension be eliminated altogether if possible. However, if there is parole extension, it should not double parolees’ time on parole but instead be extended modestly with the intention that it is a necessity for the parolees’ reintegration into society.\footnote{Ibid.}

There should be stricter caps on the length with which parole can be extended due to violations of parole terms and conditions. For instance, an individual on parole should not be given an entirely new parole sentence when their original length had been set. Parole extension should be limited, and completely eliminated if possible, especially for small parole condition violation.

3. **Procedural Protections for Parole Violators**

Our third set of parole reforms focus on providing hearings and counsel for individuals who violate parole. New York’s 2019 Less is More Act—Senate Bill S1343A\footnote{NY State Senate. “NY State Senate Bill S1343A.” February 4, 2019, https://www.nysenate.gov/legislation/bills/2019/s1343/amendment/a.}—proposes that parole systems require a hearing for parolees accused of a technical violation before they can be jailed. Secondly, Connecticut Senate Bill 880, also known as “An Act Increasing Fairness and Transparency in the Criminal Justice System,” seeks to address the lack of representation in parole revocation hearings, and institutes a “a pilot program to provide representation to persons at parole revocation hearings.”\footnote{Connecticut General Assembly. “Connecticut General Assembly.” Accessed March 30, 2019, https://www.cga.ct.gov.} These procedural protections are important to ensure that reincarceration is truly the only option left and not simply the result of one’s financial status.
C. Transparency in Parole Decisions

Since many parole boards keep their deliberations and ultimate determinations secret, people applying for parole often do not have adequate opportunity to prepare for their parole hearings. In 18 states, parole applicants do not have access to their own parole files, often resulting in applicants not knowing why their requests are denied.\footnote{Washington Post. “How Parole Boards Keep Prisoners in the Dark and behind Bars.” Accessed March 2, 2019. https://www.washingtonpost.com/national/the-power-and-politics-of-parole-boards/2015/07/10/49c1844e-17f1-11e5-84d5-eb37ee8ea61_story.html.} Even if parole applicants do have access to their files, victim statements or letters of protest against their release are often kept from them, meaning that they have no means of knowing about or disputing untrue allegations.\footnote{Ibid.} Parole files are often treated as “state secrets,” angering both criminal justice reform groups and victims’ rights organizations.\footnote{Savannah Morning News. “Editorial: Georgia Legislature Has Opportunity on Parole Reform.” Accessed March 24, 2019. https://www.savannahnow.com/opinion/20190118/editorial-georgia-legislature-has-opportunity-on-parole-reform.} Thus, making parole board files public (with the exception of victims’ names and sensitive information such as medical records) would give parole applicants a fairer parole process, victims more information about the proceedings, and the public a more extensive view into the secretive deliberations of parole boards.

In cases where parole files are made public, it is similarly important to standardize the process for determining what information is redacted from those files. States should thus have clearly written guidelines for redactions. These guidelines should include the redaction of any victims’ names, victims’ family members’ names, or any other clearly identifying information, such as victims’ addresses and phone numbers. The names of the parole applicants’ family members and any information about the phone number or address of the parole applicant and the parole applicant’s family should also be redacted. Additionally, the default course of action
should be to redact any medical records; if a medical condition, such as a mental illness, is pertinent to the parole applicant’s request, parole case managers should note the illness in the application, and this information should not be redacted. Furthermore, an independent state government staff member, as part of the state’s department of justice, should resolve any disputes as to whether a piece of information should be redacted, in order to avoid parole board members attempting to redact information that would place them in a bad light.

Parole boards should also be required to set parole guidelines, publicize these decision-making guidelines, and explain their reasoning if they choose to deviate from the established guidelines. Of the 22 states that have parole guidelines, 19 of them allow deviations from these guidelines, and of these 19, only six of them require at least a yearly public report to an overseeing committee that details any deviations from the guidelines and explanations for them.22 This lack of transparency about how parole boards make their decisions makes it difficult for anyone to understand the parole application process, and thus makes it difficult for applicants to successfully prepare for their hearings. This lack of transparency also makes parole boards less accountable to the public, which is particularly important given the high number of politicians on parole boards.23 According to one writer for The Washington Post and the Marshall Project, “at least 18 states have one or more former elected officials on the board.”24 Dramatically increased transparency in guidelines helps the public understand parole board decisions and helps to hold boards accountable if they do not give parole applicants a fair hearing and decision.

24 Ibid.
Model guidelines would include not only parole eligibility criteria, but also the metrics used by boards to make their decisions. Most states have a computer risk and needs assessment system, such as Georgia’s Parole Decisions Guidelines System, that provides parole board members information on the parole applicant’s level of risk of recidivism, as well as interventions the parole applicant may need in order to prevent recidivism and aid in their reentry into society. These risk and needs assessment tools are not the sole determinants of whether an applicant will be granted parole, but parole board members employ the information from these tools in their decision-making process.\(^{25}\) However, recent research has found that one such software, COMPAS (Correctional Offender Management Profiling for Alternative Sanctions), is no more accurate in predicting the risk of recidivism than someone with no criminal justice experience given only the defendant’s age, sex, and criminal history.\(^{26}\) The accuracy of COMPAS is around 65%, meaning that there are many instances in which the risk of recidivism produced by these algorithms turns out to be inaccurate.\(^{27}\) In fact, though the accuracy of COMPAS is the same for both black and white defendants, the percentage of black defendants who are classified as high-risk but don’t end up reoffending is higher than that for white defendants, highlighting the tendency of a seemingly unbiased software to reinforce racial bias within the criminal justice system.\(^{28}\) One major problem lies in the fact that many of the algorithms used to generate these risk assessments are not publicized, and thus are not open to examination and scrutiny, since the companies that create

\(\footnote{27\text{ Ibid.}}\)
\(\footnote{28\text{ Ibid.}}\)
them often regard them as trade secrets. These companies should be required to release the algorithms these systems use to produce risk levels in order to increase transparency. In allowing both the public and parole applicants to examine these systems for factors assessed, fairness, accuracy, and potential biases, publication of these algorithms would open opportunities for improvements to these risk assessment tools and help create a more just parole process.

D. Parole Board Makeup

The parole board makeup should be diversified and the process streamlined, with the goal of increasing the amount of time spent reviewing each case as well as decreasing the amount of bias within the parole board. The most fundamental recommendation is a standardization of the parole board requirements across the nation. Currently, there are many different rules and guidelines with varied impacts on the parole system. To reform the parole system, there must be a federal standard monitored by a federal entity to hold the states accountable for any wrongdoing. Finally, there should be restrictions on the final decision-makers in granting parole.

First, the demographics of the parole board should seek to mirror those of the incarcerated population. One of the pertinent issues with the New York parole board is the racial and class differences between incarcerated persons and the people on the board. The parole board tends to act more favorably to the white applicants seeking parole. Therefore, the parole board should mirror the racial and socioeconomic background of the people in prison, because people coming from similar racial and socioeconomic backgrounds would have a deeper cultural understanding

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of the people behind bars. Furthermore, the backgrounds of parole board members should reflect the certain regions of a state that see higher incarceration rates than other regions. States such as New York see high numbers of incarcerated people from urban areas of New York City, while the majority of parole board members come from suburban upstate New York.32

The parole board should also be required to annually publish demographic data of those serving on the board itself and the race, ethnicity and region of incarceration of individuals who go before the board. Disclosing the demographics of the parole board and the people at parole hearings provides the public with the tools to hold the parole board accountable for any bias in the process. Disclosure also creates a basis for future research on the criminal justice system.

Furthermore, there must be an increase in appointments of “reform-minded” parole board members. Members should want to see positive growth and improvements within the criminal justice system so that the inequities are addressed within the parole process. In Oklahoma, favorable parole board votes for nonviolent offenders increased significantly because of the appointment of one reform-minded member.33

The parole board commissioner positions also must be filled to capacity. Several state parole boards have vacancies, which overwhelms a smaller parole board with the work done by far more people. For example, in the state of New York, there are currently seven vacancies on the state’s 19-member parole board.34 Vacancies on the board must be filled in a timely manner, so that each case can be given the time and attention required to come to a fair decision. To execute this plan, states need to increase funding for parole boards and hire more staff to handle

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32 Ibid.
the large number of cases. The state should invest in funding to parole boards for further savings in the long run. Hiring more parole officers and increasing the number of people on the parole board will lead to less recidivism over time.\textsuperscript{35}

More than just filling positions blindly, however, the parole board members should have significant education and experience in the field. Parole boards should model their requirements on Massachusetts, where all board members must have a four-year bachelor’s degree and at least five years of experience in a related field. Furthermore, the list of nominees for each vacancy must come from a range of experiences, including psychiatry, adolescent development, and law.

Finally, the parole board’s decisions should be final, and should not go to the governor. Currently, three states (California, Maryland and Oklahoma) stipulate that the governor has to approve any recommendation from the parole board for individuals serving life sentences. In a previous section, we have described how the result of such a policy is an effective moratorium of parole requests by individuals serving life sentences.

E. Reentry Services/Community Engagement

Parole reform is not just limited to policies within prison walls. Because 95\% of the 2.2 million individuals incarcerated today will eventually be released, reentry services and community engagement policies are essential for a successful transition back to civilian life.\textsuperscript{36}

1. Reentry Services

Ancillary services, such as Massachusetts’ regional reentry centers (RRCs), help successfully reintegrate parolees into life post-incarceration.\textsuperscript{37} These centers provide substance

\textsuperscript{35} Damion Shade, “Gov. Stitt Can Save Oklahoma Millions.”
abuse treatment, financial planning assistance, and employment assistance to assist with a smooth transition and promote independence later on.\textsuperscript{38} However, Massachusetts’ model leaves room for improvement: Because these centers are often individually contracted — 180 RRCs are run by 103 separate providers — residents face inequitable access to resources depending on which center they are referred to.\textsuperscript{39} Addressing the flaws in Massachusetts’ model may inform improvements for existing reentry centers and the creation of new ones.

For incarcerated persons with substance abuse disorders, case management services—which allow parolees to access necessary resources—are crucial.\textsuperscript{40} Therapeutic communities (TC) are the most tested model for rehabilitation and serve as a structured, 24-hour environment for parolees.\textsuperscript{41} Dallas, Texas serves as a model for TC, where residents receive basic substance abuse treatment, life-skills training, drug education, and group counseling.\textsuperscript{42} Dallas TC participants had an over 50% reduction in arrests.\textsuperscript{43}

For individuals who have committed parole violations since release, day reporting centers are also an effective reform. These facilities require individuals to report daily either in person or by phone and may also include additional rehabilitation services, such as GED preparation, mental health treatment, anger management classes, and violence prevention.\textsuperscript{44} Day centers have been implemented in Salt Lake City, Utah where individuals who were discharged had fewer

\begin{itemize}
\item \textsuperscript{38} Ibid., 25.
\item \textsuperscript{39} Ibid., 2.
\item \textsuperscript{40} Center for Substance Abuse Treatment, “Substance Abuse Treatment for Adults in the Criminal Justice System: 10 Treatment for Offenders Under Community Supervision,” \textit{Treatment Improvement Protocol Series}, no. 44, 2005, https://www.ncbi.nlm.nih.gov/books/NBK64141/.
\item \textsuperscript{41} Ibid.
\item \textsuperscript{42} Ibid.
\item \textsuperscript{43} Ibid.
\item \textsuperscript{44} Ibid.
\end{itemize}
property crime offenses and fewer overall criminal charges, and engaged in less substance abuse.\textsuperscript{45}

2. Fair Employment Opportunities

Despite the employment assistance efforts of reentry centers, reentering citizens continue to face hiring discrimination. When a formerly incarcerated individual has to report on a job application that they have a criminal record, their chance of securing an interview drops by 50\%.\textsuperscript{46} “Ban-the-box” policies, which seek to remove the conviction history question from job applications, attempt to address this phenomenon and have been adopted by 34 states, over 150 cities and counties, and twelve states have also adopted these policies for private employers.\textsuperscript{47}

Moreover, these policies do improve employment prospects for formerly incarcerated individuals: after Washington, D.C. adopted ban-the-box, employment for individuals with criminal records increased by 33 percent.\textsuperscript{48} Pushing for the adoption of similar policies for both public and private employers in remaining states is crucial for ensuring equality of opportunity in employment post-release.

II. Overview of Life Sentence Population

A. Clarifications

The parole system, an important facet of the United States’ criminal justice system, offers the opportunity for incarcerated persons to be released before the end of their sentence, contingent on good behavior. First adopted in New York in 1907, the parole system was viewed as a

\textsuperscript{45} Ibid.
\textsuperscript{46} Equal Justice Initiative, “Reentry,” \url{https://eji.org/mass-incarceration/re-entry}.
\textsuperscript{47} Ibid., 1.
progressive creation that transformed the focus of prison from punishment to reform.\textsuperscript{49} However, in the late 1970s, when a peak of 72\% of prisoners were on parole, several crimes involving paroled persons cast a negative spotlight on the system.\textsuperscript{50} Many states responded by instituting minimum prison sentences for certain crimes, which has contributed to a rise in long-term/life incarceration. Today, in the United States, there are three main prison sentences that offer little to no hope of parole: life sentences without parole, virtual life sentences, and life sentences with the possibility of parole. Life without parole (LWOP) is the sentencing of death in prison, with absolutely no chance of parole. As a report by the ACLU Northern California branch notes, “no one sentenced to life without parole has ever been released on parole, in California or in any other state.”\textsuperscript{51} Virtual life sentences are very similar to life without parole. Virtual life sentences are sentences that last longer than the projected life of the person serving the penalty, such that the person is condemned to die in prison. Finally, life sentences with the possibility of parole offer individuals the opportunity to appeal for parole after a minimum number of years on their sentence are served. Currently, 30 states still have the death penalty, and 49 states have sentences of life without parole sentences; Alaska is the only state that does not sentence convicted prisoners to life without parole.\textsuperscript{52}

**B. Elderly Population**

Over the past decade, a growing concern in the realm of incarceration has been the increasing number of elderly people who are seeing their lives end behind bars. For the purposes of this paper, “elderly” will refer to incarcerated persons age 50 or older. From 1993 to

\textsuperscript{50} Ibid.
\textsuperscript{52} "Year That States Adopted Life Without Parole (LWOP) Sentencing." Millions Misspent: What Politicians Don't Say About the High Costs of the Death Penalty | Death Penalty Information Center.
2013, the number of elderly people increased from approximately 45,000 to 243,800, over a 500% increase in the span of two decades, demonstrating a stark upward trend towards senior citizens being left behind bars. Many of these elderly people are in prison for crimes committed in their twenties and thirties. Now, in their older years, there is a much lower chance of them being capable to return to their former exploits, especially given their physical limitations. This is exemplified in the substantially lower recidivism rate for the elderly as compared to all other age groups. Nationally, the recidivism rate within 3 years of an inmate’s release is 43.3%, whereas for the elderly, the rate is only 7% for those who are 50-64 years old, and even lower at 4% for those 65 and older. These are the lowest recidivism rates for any age group.

C. Race

The general racial disparities that exist throughout the criminal justice system are especially apparent in life imprisonment and parole decisions. Generally, Black people and Latinos are over-represented compared to racial demographics of the U.S. population. However, these demographics are heightened for those receiving life sentences, as in 2013 45% were Black, 24.2% Hispanic, 24.2% White, and 6% other ethnicities. A good example is of the Pennsylvania state prison population wherein blacks represent 11% of residents, 49% of prisoners, and 60% of those given life sentences. In addition, many scholars have argued that race affects one’s parole decision. In a study entitled, “The Role of Race and Ethnicity in Parole Decisions,” scholars found

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54 Ibid.
55 Ibid.
that black offenders spend a longer time awaiting parole, even taking into account factors such as institutional behavior, offense, and parole guidelines scores. While blacks and whites are equally likely to be given a parole hearing, blacks are 68% less likely to be given parole.\textsuperscript{58} Thus, the population of those receiving life sentences and its consequences on subsequent parole decisions can be greatly influenced by race.

**D. Gender**

Although women make up roughly 50% of America’s population, only 6.7% of federal prisoners are female.\textsuperscript{59} Within this small group, however, the share of women in prison, and of women in prison serving long sentences (more than 10 years), has been growing rapidly.\textsuperscript{60} Women are the fastest growing segment of the incarcerated population; their share has been increasing at nearly double the rate of men since 1985, and there are roughly 8 times as many incarcerated women as there were in 1980.\textsuperscript{61} Among incarcerated women, there is an overrepresentation of women of color: Black women make up 13% of the US population yet represent 30% of incarcerated females, and Latina women make up 11% of the US population yet represent 16% of incarcerated females.\textsuperscript{62}

**E. Socioeconomic Status**

\textsuperscript{62} Ibid.
Socioeconomic status is often a predictor of being sentenced to life with parole. The incarcerated population is disproportionately made up of those who are lower SES. This also cuts across distinct racial and gender lines, disproportionately affecting poor black men. Moreover, lower-income individuals are less likely to have their sentences shortened, more likely to have their sentences increased, and when sentences are reduced they receive the least reductions in sentences. Some states have implemented risk assessment tools to determine which individuals would be the best candidates for parole. The parole boards’ algorithms use proxies for SES, such as evaluating their employment status, among other characteristics as risk factors, which means some parole policies implicitly use an individual’s socioeconomic status as a reason to not grant them parole. SES seems to have its largest effect on parolee’s life after exiting prison. Socioeconomic conditions of where parolees were living were highly predictive of recidivism rates. Parole compliance often times includes fines, which lower SES prisoners may struggle to pay.

F. Crime of Conviction

Life sentences for state crimes are most commonly authorized for crimes like homicide, though a 2012 report by the ACLU shows that around 3,278 prisoners have also been serving life

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64 Ibid.
68 Ibid., 12.
sentences for drug, property, and nonviolent crimes in the United States. The most common type of federal crime for which individuals were given a life sentence, in contrast, is drug trafficking, followed by firearms offenses, murder, and extortion. Life sentences have been imposed more frequently since the 1980s, when states adopted mandatory minimum sentencing policies that required the imposition of life sentences for crimes like murder and for “serious habitual offenders” who had repeatedly engaged in more minor offenses. For example, California’s 1994 “three strikes” law or Proposition 18 imposed mandatory life sentences for offenders convicted of their third felony offense. This was revised in 2012 with Proposition 36, which mandated that the third felony conviction be serious/violent, but led many non-violent offenders to be sentenced to life in prison between 1994-2012.

G. Historical Growth of Life Sentences

Life sentences have existed in the United States since its founding, albeit informally. Most prominent prior to the 1970s were “indeterminate” life sentences, where an individual’s sentence was specified as a range of years — including a mandatory minimum — that left their release date uncertain. These systems tended to give broad discretion to parole boards and reflected a belief in the rehabilitory nature of prison stays. Other statutes and attitudes furthered the

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73 Nellis, “Throwing Away the Key,” 27.
growth of life sentences with or without parole throughout the 1970s and 1980s. In these decades, doubts about the rehabilitory nature of prisons emerged, and the theory of ‘prison as punishment proportional to the crime committed’ grew in popularity. The overall growth in the number of life sentences being served is also the product of mandatory sentencing requirements, the increasing length of sentences given, and the conditions of life sentences in certain states. In six states and the federal system, all life sentences imposed are parole-ineligible. LWOP sentences are also mandatory upon conviction of at least one specified offense in 27 states. Virtual life sentences, or sentences longer than the typical lifespan but not labeled as life sentences — for example, 90 years — are also increasingly more common. Taken together, these policy changes and the political environment they emerged from helped to broaden the use of life sentences over the past four decades. In 1980, 4.6% of individuals in prison were serving life sentences; as of 2013, that number had risen to 10.6%.

H. Psychological Impact

Research from 2013 shows a number of psychological effects of long-term incarceration, many of them related to expressing strong negative emotions and other maladaptive behaviors, such as substance abuse. The most salient of these features include an immense apathy towards the world and an extreme dependence on order and scheduling. In situations where the incarcerated individuals were serving life sentences, research showed that these effects became

79 Nellis, “Throwing Away the Key,” 28.
80 Nellis, “Throwing Away the Key,” 28.
81 Ibid, 27.
83 Ibid, 13.
even more pronounced than for other members of the imprisoned population. This pattern of psychological changes for incarcerated individuals with long-term sentences holds clear ramifications for society. Because of the pronouncedly maladaptive nature of these changes, and especially considering that they result directly from long-term habituation, the effects will interfere enormously with any efforts to reintegrate formerly incarcerated individuals into society. This means that the current sentencing system is in many ways setting these individuals up for failure (i.e., recidivism). Since they have become so accustomed to the rigorous, imposed order of the American prison system for so long, it is extremely difficult for them to reacclimate to society, allowing for a greater possibility of parole violations and ensuing recidivism. More recent studies have highlighted the heightened dangers of this phenomenon as a result of “increasingly harsh policies and conditions of confinement as well as the much discussed de-emphasis on rehabilitation as a goal of incarceration.”

I. Mental Health

Many incarcerated persons suffering from mental health issues present symptoms which often result in behavior deemed as punishable by prison systems. For example, in California, punishable offenses include self-mutilation (destruction of state property), using bed sheets to create a noose (misusing state property), and kicking cell doors and screaming during

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hallucinating states (creating a disturbance). Acknowledging how mentally ill individuals can be punished for their own suffering helps explain why they incur significantly higher disciplinary rates.

Because work and educational programs are largely available only to “healthy prisoners”, many mentally ill “lifers” are more likely to be “isolated in understaffed and often dangerously ineffective prison health wards.” When it comes to parole, not only does having a larger disciplinary record increase the likelihood of being denied release, having a mental illness itself can be weighed as a factor against a person’s chance for release. This leads to a direct relationship between having a mental illness and being more likely to be denied release. Additionally, poor mental health can worsen a person’s chance for parole due to qualitative concerns of parole boards. As Superintendent Vaughn said to Human Rights Watch, it’s seen as a risky chance to release a mentally ill person. In general, mentally ill people are seen as riskier choices due to a dearth of proper community services that can support them; thus, parole boards

90 Abramsky & Fellner. (citing Amended Summary Pursuant to F.R.E. 1006 of Documents Relevant to Testimony of Plaintiff Mitchell, Austin v. Wilkinson, 204 F. Supp. 2d 1024 (N.D. Ohio 2002) (No. 4:01-cv-71)). "Human Rights Watch does not know if he actually served this sentence."
16] 15 California Code of Regulations § 2281(c).
94 15 California Code of Regulations § 2281(c).
don’t see an effective plan for their release and continued treatment. Dr. Reginald Wilkinson, Director of the Ohio Department of Rehabilitation and Correction credits this reasoning as why mentally ill individuals serve more time before getting released on parole and are more likely to never get released and serve out their sentence first.

J. Access to Prison Services/Rehabilitation

While individuals are incarcerated, states offer a variety of programs and services aimed at rehabilitation. Most of these programs focus on preparing prisoners without life sentences for their release, but prisoners who are serving life sentences with parole can still benefit from programs designed to educate and improve mental health. The rehabilitation process uses counseling and therapy to combat widespread mental illness and substance abuse. One report from 1998 showed 75% of incarcerated persons had abused alcohol or drugs in their lifetime, and 16% of state prisoners (as well as 7% of federal incarcerated persons) reported having a mental condition. Alcohol and drug dependency rehabilitation programs are much more common in federal than state prisons; almost all federal prisons have substance abuse rehabilitation programs, but more than a quarter of states do not. Many programs dealing with both substance abuse and mental illness suffer from a lack of resources, which are still shrinking. Additionally, education, often through degree programs, is another important part of the rehabilitation process, as it dramatically reduces recidivism rates, which applies to either after prisoners are released or while they are out on parole. As with other rehabilitation programs, states offer a variety of education

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98 Ibid.
99 Treatment, 9 Treatment Issues Specific to Prisons.
100 “The Economic Impact of Prison Rehabilitation Programs.”
101 “Rehabilitate or Punish?”
102 Esperian, “The Effect of Prison Education Programs on Recidivism.”
programs. In Massachusetts, for example, some incarcerated persons can obtain bachelor’s
degrees through Boston University.\textsuperscript{103} Although a focus on recidivism demonstrates the
effectiveness of rehabilitation programs, it also ignores the potential benefits of the services for
people serving life sentences, and few studies have explored the effects of serving that population.

\section*{III. State Parole Policy Analysis}

This section analyzes different factors in parole-granting decisions. The information presented
in this section informs the recommendations that were made in the first section. The section will
examine the following components of parole: Parole Board Makeup, Politics, Educational
Attainment, Racial Demographics, Parole Hearings, Legal Rights of Applicants, and Key States
Analysis.

\subsection*{A. Parole Board Makeup}

The existence and degree of stringency of requirements for serving on parole boards varies
widely by state. One of the most notable ways in which states differ in their policies is whether
they determine specific qualification guidelines for individual members. The map below
illustrates that of the 45 states that responded to a survey, 25 (56\%) have statutory requirements
for members, while 19 states and the US Parole Commission (44\%) did not.\textsuperscript{104} The states that
have statutory requirements most commonly require that parole members have attained a

\begin{small}
\begin{enumerate}
\itemsep -0.5em
\item \textsuperscript{103} “Education As A Way To Find Freedom In Prison.”
\end{enumerate}
\end{small}
designated educational degree level and/or have a specific number of years of professional experience in criminal justice or a related field.\textsuperscript{105}

Although many states lack specific criteria for individual members, many states have criteria for the overall makeup for the board, and these criteria often point to certain ideological goals of the boards, such as minimizing biases or maximizing diversity. For example, Wyoming, Michigan, and Texas are quite flexible in their requirements for individual members; however, Wyoming mandates that a maximum of four out of the seven parole board members can be of the same political party, and Michigan and Texas limit the number of members who can have a background in the Department of Corrections.\textsuperscript{106} In comparison, Massachusetts has relatively strict criteria both for the individual board members as well as for the overall board composition. The list of nominees for each vacancy must include an attorney approved by the Massachusetts State Bar, a psychiatrist in good standing with the American Psychological Association, a victim witness advocate, and a Massachusetts-certified psychologist. Additionally, Massachusetts requires that each member has a four-year bachelor’s

\textsuperscript{105} Ibid.

degree and at least five years of experience in a related field. In terms of the overall board composition, at least one person must have at least five years of experience and training in adolescent development and psychology; their nomination must involve the Massachusetts Chapter of the American Academy of Pediatrics, Inc., as well as several other psychology and psychiatric organizations. Lastly, no nominees are allowed to hold any salaried public office.\(^{107}\) In contrast, Georgia and Arkansas have no formal requirements for board composition.\(^ {108}\)

\textbf{a. Politics}

\begin{table}[h]
\centering
\begin{tabular}{|c|c|c|c|c|c|}
\hline
 & Governor & Legislative Body & Director/ Commissioner of Corrections & Civil Service & Fellow Board Members & Other & NA \\
\hline
Who has the authority to make an appointment? & 37 & 0 & 4 & 0 & - & 9 & 0 \\
\hline
Who confirms an appointment? & 3 & 31 & 2 & 2 & - & 5 & 4 \\
\hline
Who selects the Chairperson? & 32 & 0 & 5 & 0 & 5 & 3 & 0 \\
\hline
\end{tabular}
\caption{Board Member Appointment Process}
\end{table}

Although it appears that parole board appointments and confirmations occur largely outside the political process, politics can be quite influential in terms of coerced resignations of board members. To illustrate the appointment process, the above chart describes who has the authority to appoint members to the parole boards. As shown in Table 1, although the governors hold significant power in appointing people, most appointments must be confirmed either by one

\footnotesize{\textsuperscript{107} Ibid.}
or both of the state legislative bodies.\textsuperscript{110} However, individual politicians can hold significant sway in pressuring parole members to step down. This is sometimes the case after a person released on parole commits a highly publicized or particularly offensive crime; oftentimes, in such cases, parole board members are treated as scapegoats.\textsuperscript{111} Another kind of incident occurred in New Mexico when the governor removed a parole board member after they expressed the opinion that other board members were not giving individuals who were sentenced to life fair consideration of parole.\textsuperscript{112} Though parole board membership does not appear to be heavily saturated in political agendas, it is certainly not outside of its scope. Thus, political influence should not be dismissed.

\textbf{b. Educational Attainment}

While the educational requirements for parole board members vary by state, the educational distribution of members on the national level is high. In a national survey conducted in 2015, about 90\% of all parole board members carry a higher educational degree, with the remaining 10\% holding at least a high school diploma. Moreover, the majority of those who serve

\footnotesize{\textsuperscript{110} Ibid.}
on parole boards have prior experience in criminal justice, legal, or law enforcement work, as only 9% of members never held a job in these fields.113

Surprisingly, no correlation was found between the existence of statutory requirements for serving on a parole board and the overall educational achievement levels of board members in each state. In fact, the results of a national survey showed that states with statutory qualifications had a higher percentage of board members with law degrees and lower-level qualifications such as high school diplomas and bachelor’s degrees, while states without statutory qualifications had a higher percentage of board members with higher-level qualifications such as Master’s degrees and Ph.Ds15.

In the states that do not have formal requirements, the presence of a thorough appointment process requiring many stages and the approval of many parties (governor, legislative body, etc.) offers some level of accountability and assurance that those appointed to parole boards are well-qualified.114

c. Racial Demographics of Parole Boards

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113 Ibid.  
114 Ibid.
More research is necessary to determine racial demographics across different state parole boards. National statistics on racial distributions of parole boards are scarce, and few recent state-by-state statistics exist. Generally, parole boards have been criticized for lacking racial diversity in their membership. For example, a former parole board member in Ohio publicly lamented that most of the Ohio state parole board and staff were white, despite the diverse racial demographics of the state.\(^{115}\) In New York, of the board’s thirteen members in 2016, there was one black man twelve 12 other white board members.\(^{116}\) This is a stark contrast to the demographics of the state, where the population is 20% Latino, 17% Black, and 9% Asian.\(^{117}\) Given these examples, the lack of representative racial demographics on parole boards is an issue that requires more research on the national and state level.

**B. Parole Hearings**

Although parole is a vital process for individuals serving time, incarcerated persons often find the process of applying for and being granted parole confusing.\(^{118}\) Not only is there limited procedural literature available, but because laws regarding parole differ at the state level, there is not one national process for applying for parole. However, parole hearings are generally conducted by the Hearing Examiner of the United States Parole Commissioner, and the decision

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is made by the Commissioner of the United States Parole Commission.\textsuperscript{119} There are also components of the individual Parole processes that States have in common.

Once a hearing eligibility date is established, the incarcerated person’s “hearing eligibility” status is tracked and modified depending on their behavior.\textsuperscript{120} Second, an Institutional Parole Officer (IPO) interviews the incarcerated person, verifies their release plan (documents indicating where they will live/their plans for employment), and prepares case material for board review. These board files can contain a variety of materials, including “observations of guards, counselors, and other corrections personnel.”\textsuperscript{121} Third, a hearing is scheduled, up to a couple of months before initial parole eligibility, and victims and their families are notified.

Fourth, during the parole hearing, the incarcerated person will present his/her case to the hearing panel, which will deliberate and then grant a decision. Individuals are not entitled to counsel in many states, because the hearings are not adversarial.\textsuperscript{122} Moreover, according to the United States Department of Justice, the individuals generally allowed to attend parole hearings are victims, victim’s-next-of-kin, immediate family members, with the addition of a “support person” for either the victim or their family if needed.\textsuperscript{123} Some or all of these parole board hearings are closed to the public in 19 states.\textsuperscript{124}

Either before or after the hearing (depending on the state), should a request of parole be granted, the incarcerated person would then create a release plan that covers employment and


\textsuperscript{120} Griffin and Woodward, 112.


\textsuperscript{122} Griffin and Woodward, Routledge Handbook of Corrections in the United States, 40.

\textsuperscript{123} United States Department of Justice, “Parole Hearings.”

living arrangement details. However, if a parole request is denied, incarcerated persons have no due process right to parole; in 24 states, parole boards have no established obligation to explain the reasons behind their decisions.

a. Legal Rights of Applicants: Right to Counsel

Incarcerated individuals are not entitled to any form of legal counsel in most states. For example, the Georgia State Board of Pardons and Appeals notes, “[r]epresentation by an attorney is not required for any type of clemency consideration.” The decision of whether to employ an attorney is a personal decision of the offender or those acting on his or her behalf.” Even states that do ensure the provision of legal counsel to all people who want representation, like California, often only compensate parole attorneys a moderate amount—a maximum of $400 per case.

A few states guarantee counsel only for certain types of parole hearings. For example, in Massachusetts, individuals are given legal representation for “preliminary parole revocation hearings...[and] final parole revocation hearings.” A preliminary parole hearing is held if a parolee is accused of violating the terms of their parole, while a final parole revocation hearing is held to determine whether or not the condition of parole was actually violated. In this final parole hearing, judges also determine if parole status should be revoked, and whether release into the

community would be a proper remedy for the situation.\textsuperscript{132} Individuals are also entitled to counsel if they can provide documentation or medical records to the judge, which show that they suffer from a psychiatric, mental, or physical disability.\textsuperscript{133}

In contrast, on a federal level, individuals are allowed to ask for a “representative” to aid them during the parole hearing.\textsuperscript{134} Given that the representative is approved by the Hearing Examiner, he/she would be allowed to enter the room and make a brief statement on the applicant’s behalf. Otherwise, the applicant must waive their right to representation.\textsuperscript{135} According to the Department of Justice, individuals are also entitled to hear the reason for the decision at the time which it is made.\textsuperscript{136}

\section*{C. Key States Breakdown of Parole Eligibility Policies}

In 47 states, the parole board ultimately decides whether people should be released, even though their authority is restricted by in-state laws that limit parole to certain types of offense. Those laws regarding parole tend to vary greatly from state to state. This section will look at three key states in particular where the governor plays a unique role in commuting sentences and granting parole: California, Maryland, and Oklahoma. Finally, we will broadly examine the manner in which different parole policies are written and executed with a more punitive vs. rehabilitative intent and what the ramifications of that difference is.

In Maryland, eligibility for parole for those serving life sentences varies across three different categories. First, under § 7-301: Eligibility for Parole, it states, “an inmate who has been sentenced to life imprisonment is not eligible for parole consideration until the inmate has served

\begin{thebibliography}{99}
\bibitem{132} Massachusetts Parole Board, “120 CMR 303.00,” 120 CMR 303.00.
\bibitem{133} PLAP (Prisoner Legal Assistance Project) at Harvard Law School, “Representation at Hearings ∼ PLSMA.”
\bibitem{135} United States Department of Justice.
\bibitem{136} Ibid.
\end{thebibliography}
15 years.” However, there are two exceptions that are listed under paragraph 2 and 3. In paragraph 2, it states that an individual who has been sentenced to life “as a result of a proceeding under § 2-303 or § 2-304 of the Criminal Law Article,” is not eligible for parole until they have served at least 25 years of their sentence. Those eligible for parole are granted parole by the Maryland Board of Review and with the approval of the Secretary. The decision is then transmitted to the Governor who has the final say in granting parole within 180 days.

In Oklahoma, any individual who had committed a crime after July 1, 1998, is eligible for parole once they have served ⅓ of their sentence. Before July 1, 1998, there are four qualifications to be considered for parole: (1) the individual has completed ⅓ of their sentence; (2) the individual is at least 60 years old and has served 50% of their sentence; (3) the individual has served 85% of their sentence that is imposed in schedule A, B, C, D, D-1, S-1, S-2, or S-3 of Section 6; or (4) the individual has completed 75% of their sentence that is imposed in any other schedule. Individuals sentenced to life due to a violent offense require approval of the governor to be granted parole. The individual must make a request to the governor for commuting, pardon, or parole consideration. When the governor approves that request, the Pardon and Parole Board meet to draft a recommendation to the governor. This process takes into consideration the individual’s previous criminal history and statements from victims. Then, a finished application is sent to the governor who then has 30 days to decide whether to grant parole or not.

In California, individuals “serving indeterminate life sentences, such as 15 years to life or

138 Ibid.
139 Ibid.
141 Ibid.
25 years to life, become eligible for parole consideration once they have served within a year of their Minimum Eligible Parole Date (MEP).”\textsuperscript{142} Anyone who meets this qualification is entitled to a hearing before a panel. If the panel finds them suitable and grants parole, the decision is subject to review by full Board. Absent action by the full Board, a grant of parole becomes final 120 days after the hearing and goes to the Governor for their review.\textsuperscript{143} The governor then has the ability to review and reverse the decision to grant parole. The governor makes their decision based on a recommendation from the board.\textsuperscript{144}

After analyzing the policies regarding parole for individuals serving life sentences, all three states have one component to their process in common: the governor decides the fate of an individual \textit{solely} on the recommendation of the parole board. There is no input from the prospective parolee, no opportunity for them to be present and to answer any questions, and no opportunity to speak on their behalf to the person who has the final say in granting parole. The governor is given great discretionary power in granting parole. For example, for the last 20 years, no Maryland governor has permitted the release of someone who committed a crime as a juvenile and received a life sentence.\textsuperscript{145} Former California governor Jerry Brown only reversed 17% of grants of parole in 2011-2012 while his predecessor Arnold Schwarzenegger denied 60% of grants of parole brought to his desk. In 2015 in Oklahoma, only 6% of those released from prison were paroled — though many individuals are eligible for parole, very few are granted it.\textsuperscript{146} The

Oklahoma Justice Reform Task Force claims this low parole grant rate was “due to a combination of low approval rates by the Pardon and Parole Board and the fact that many offenders waive their hearings due to a lack of confidence in the hearing process.”\textsuperscript{147} In 2016, the Pardon and Parole Board considered 4,000 eligible people for parole and recommended only 28. Of those 28, Governor Mary Fallin only approved 6 for parole.\textsuperscript{148} Governors grant very few parole requests. However, parole boards are also responsible for low numbers requests being granted by not recommending many to the governor.

Parole boards have few restrictions on how to make their determinations, so whole states rarely fall into the simplified binary of punitive vs. rehabilitative determinations that tends to divide criminal law. Punitive determinations focus more on retribution for crimes committed and separating perpetrators from society for the goal of public safety, while rehabilitative determinations focus on giving individuals the resources and skills they need to reintegrate into society, therefore decreasing the rate of recidivism. Whether parole boards choose to implement punitive or rehabilitative policies depends heavily on the board members’ stances, and can vary by individual case. Many states use data-based “scoring tools,” to recommend how long an individual should serve before parole.\textsuperscript{149} However, parole boards are not obligated to act in accordance with the tools’ determination.\textsuperscript{150} Furthermore, because incarcerated persons do not have due process rights in parole hearings, and parole files are public in only 17 states (in 22

\textsuperscript{150} Ibid.
states the files are completely secret), neither the courts nor the public have much power to review the boards’ decisions.\(^{151}\)

Optics can also come into play when parole boards are deciding between punishment or rehabilitation. Many current or former politicians serve on state parole boards, making those board members more likely to consider public attitudes towards people up for parole.\(^ {152}\) Massachusetts provides one example where optics determined parole board policies. In 2010, a board unanimously voted to release a man on parole, who then later killed a police officer.\(^ {153}\) Every board member was forced to resign.\(^ {154}\) Choices about whether to be punitive or rehabilitative often reflect more reactionary public opinion, rather than data-based determinations.

Victim input can also play into parole decisions, indicating a more punitive framework for determinations. A total of 33 states allow survivor input in parole hearings, with 17 states mandating it.\(^ {155}\) With a 2008 survey showing 40% of parole boards consider victims’ input “very influential,” victim statements can play a key role in parole hearings.\(^ {156}\) These victim statements are almost never available to people up for parole, because even in the states where prisoners can access their files, victim statements are still kept confidential.\(^ {157}\) According to Barbara Levine, a prison rights advocate and a member of Michigan’s Criminal Justice Policy Commission, “Someone can be kept in prison indefinitely and could never have a clue that the victim is saying

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\(^{151}\) Ibid.  
\(^{152}\) Ibid.  
\(^{153}\) Ibid.  
\(^{154}\) Ibid.  
\(^{157}\) Ibid.
something that may be untrue.”\textsuperscript{158} Thus, state parole boards often take into account subjective information that may work against prisoners’ petitions.

Even if parole boards do use data-based tools to help them in their votes, it is possible to change those tools to be more punitive or rehabilitative. For example, in 2017, the state of Georgia updated Parole Decisions Guideline System (PDGS), making it more punitive than before.\textsuperscript{159} According to a press release, with the PDGS, “the offender's risk to reoffend is determined by weighted factors concerning the offender's criminal and social history that the [parole] Board has found to have value in predicting the probability of further criminal behavior.”\textsuperscript{160} The updated system “raise[d] the crime severity level of certain conviction types,” and takes into account prior arrests instead of prior convictions, which, they say, “through research has proven to be a better statistical predictor of future criminal behavior.”\textsuperscript{161} Both measures will ostensibly make it more difficult for some people to be released, as their crimes may be reclassified as more severe, or their risk to reoffend may be increased if their number of prior arrests is higher than their number of prior convictions.

\textbf{IV. Current Parole Reform Efforts}

\textbf{A. Passed State Reforms}

Successful parole reforms at the state level have been most focused on four principal areas: 1) rehabilitative programs in prison, 2) responses to parole violations, 3) making parole boards more objective, and 4) altering the response to parole violations. We analyze each in turn below.

\textsuperscript{158} Ibid.
\textsuperscript{160} Ibid.
\textsuperscript{161} Ibid.
**a. Rehabilitative Programs in Prison**

Several recent parole reforms have focused on reforming rehabilitation programs in prison. In Idaho, completion of an in-prison rehabilitation program is a requirement to be granted parole.\(^{162}\) Recent reforms that expanded access to core rehabilitation programs and removed unpopular programs and restrictive participation requirements have led to increased readiness amongst people being considered for parole and have reduced unnecessary administrative delays in the parole process.\(^{163}\) California implemented a system which allows individuals who participate in rehabilitation programs (such as schooling and self-help programs) to earn credits towards reducing their sentences, and thus enables individuals to qualify for parole sooner.\(^{164}\)

**b. Responses to Parole Violations**

In terms of making it easier for non-violent offenders to obtain shorter parole terms, many states focus on reducing parole revocation for minor infractions while on parole. Texas, for example, has implemented more intermediary punishments for minor parole violations as opposed to revoking parole immediately.\(^{165}\) Missouri has implemented complementary reforms for low level offenders that reduce total parole supervision sentence length for every infraction-free month of supervision.\(^{166}\) There were no differences in recidivism levels for those who were

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\(^{163}\) Ibid.


a part of the program versus those who were not, meaning that public safety was not jeopardized because those who were discharged earlier were no more likely to reoffend.\textsuperscript{167}

c. Increasing Objectivity of Parole Decisions

In terms of making parole boards more objective, some states have implemented reforms related to parole board composition. New York recently enacted a requirement that the state parole board must mirror the racial and ethnic makeup of the state’s prison population.\textsuperscript{168} In September 2018, Michigan Legislature passed a law which requires the development of “objective, evidence-based”\textsuperscript{169} guidelines for parole board decisions. The bill specifically calls on the Department of Corrections to consider a list of factors in developing these guidelines, such as original offense, program performance, institutional conduct, prior criminal record, statistical risk screening, and age, and to justify any deviations from guidelines in writing. It also provides a list of eleven “substantial and compelling objective reasons” that may be cited if boards seek to depart from guidelines; for example, individuals may be denied parole if there is a “pattern of ongoing behavior while incarcerated” that indicates a parolee “would be a substantial risk to public safety,” like major misconducts or additional criminal convictions.\textsuperscript{170}

d. Parole Violation Reform

States have implemented multiple reforms to address the severity of punishment for parole violations, the definition of parole violations, and specifically fees associated with parole. South Carolina’s Sentencing Reform Act, passed in 2010, authorized and incentivized parole agents to

\textsuperscript{167} Ibid.
\textsuperscript{168} Ibid.
\textsuperscript{170} Ibid.
use “administrative responses to violations” instead of pursuing jail time or fines.171 Examples of these responses included “fee exemptions, fee restructures, and conversions of fees into public-service employment hours.”172 In 2007, Louisiana approved legislation which set a 90-day limit on jail and prison terms for first-time parole violators. This aided in capping the amount of time that individuals can spend in prison for a parole violation. Although passed state reforms have led to significant progress, several proposed policies could further advance parole violation reform.173

B. Proposed State Reforms

While many states still have not passed parole reform, some have proposed bills and launched advocacy efforts aimed at reforming the system. Proposed reforms fall under the following categories: 1) increasing rehabilitation, 2) reforming parole for nonviolent and elderly individuals, and 3) increasing the openness of parole hearings (although many of these reforms only apply to nonviolent offenses, making them very limited in their impact). However, many proposed reforms also allow for victim input, indicating a more punitive turn.

a. Rehabilitative Programs in Prison

The Florida First Step Act is one example of a more rehabilitative program; however, it excludes certain violent offenses and would be largely inaccessible for individuals serving life with parole sentences. If passed, the law would allow individuals to earn time off their sentence by participating in the Prison Entrepreneurship Program.174 The goal of this program would be to

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give currently incarcerated persons more skills, and the Department of Corrections would decide how much time off their sentence participating individuals can earn. While not directly related to parole, the bill would allow individuals, though not those serving life sentences, to be eligible for parole sooner, and would give them more marketable skills to utilize once they are on parole.

b. Parole for Nonviolent and Elderly Individuals

Two New York bills aim to increase the rate of release for nonviolent and elderly incarcerated persons. First, 2019 Senate Bill S497 requires the Board of Parole to release individuals unless they can provide a “clearly articulated current public safety reason,” to deny parole. This bill aims to isolate parole boards from political pressure to deny parole to individuals who committed serious crimes up to 25 years ago, but are currently “thoroughly rehabilitated with excellent prison records.” Moreover, the bill provides that if parole is denied, “release shall be presumed at subsequent hearings absent a preponderance of evidence” that an individual presents a public safety risk, placing the burden on the board to show that an individual will pose a security risk.

A second New York bill, S2144, seeks to decrease the number of elderly people in prison, who tend to “present the lowest risk of recidivism of any other class of inmates.” The bill permits the Board of Parole to “evaluate all inmates over the age of 55 who have served at least 15 years in prison for possible parole release” even if “he or she has not completed his or her minimum sentence and to have the discretion to grant such release.”

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175 Ibid.
177 Ibid.
178 Ibid.
180 Ibid.
c. Increasing Objectivity of Parole Decisions

Several other proposed state reforms aim to increase the objectivity and transparency of the parole decision process. Various Georgia state officials, such as Rep. Jesse Petrea and the District Attorney of Chatham County, have pushed to declassify incarcerated persons’ disciplinary records, which are currently classified as “state secrets.” Another proposed reform in Georgia would make parole hearings more open, but only when requested by victims. While these reforms represent moves towards more openness, they also represent more punitive attitudes by many states. Similar to the Georgia bill, a South Carolina bill would allow victims to request a parole hearing for individuals convicted of non-violent and non-sex crimes who would otherwise be automatically up for parole, slowing down the process and keeping potential parolees in prison for longer. Finally, 2019 Oklahoma House Bill 2273, sponsored by Senator Darcy Jech and Rep. John West, seeks to increase parole transparency by requiring Parole Boards to “state on the record the reason for denial of an application for parole and suggest a course of remediation for the inmate.”

Senate Bill 121 from Maryland, also seeks to reduce the role of state governors in parole decisions, establishing that “inmates serving a term of life imprisonment may be paroled without the governor's approval after serving 30 years under certain circumstances.” Maryland is one of three states (along with California and Oklahoma) that require a governor’s signature to parole

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182 Ibid.
people with life sentences, which problematically subjects parole decisions to the political pressures which governors face to refuse parole to appear more punitive.

**d. Parole Violation Reform**

There are multiple states across the country that have taken the lead in reforming parole policies. Although many of these pertain to non-violent crimes, they can act as models for reforms that can impact violent offenders and those facing life sentences. As mentioned previously, Pennsylvania Senate Bill 14 aims to prevent a judge from extending the length of parole if someone is not able to pay the fees that are associated with parole. In addition, the bill caps the amount of time that someone can stay on probation or serve prison for violating probation (Pennsylvania currently has no such caps). Wyoming has also considered parole violation punishment reductions. A bill currently in the Wyoming House chamber would allow judges and supervision officers to use forms of punishment other than prison time for parole violations.\(^{186}\) If implemented, this bill would stop people from returning directly to prison, hopefully reducing the state’s massive prison population.\(^{187}\)

In addition, New York senators introduced the “Less is More: Community Supervision Revocation Act.” This bill would eliminate a punishment of jail time for most technical violations of parole, and for those violations that can result in jail time, it would cap the time at 30 days. It also supports the use of speedy “recognizance hearings” in local criminal courts prior to

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\(^{187}\) Ibid.
incarceration. Additionally, it proposes “earned time credits,” which would reduce the amount of required community service hours for parolees who went 30 days without any violations.\textsuperscript{188}

C. Proposed Federal Reforms

Many are calling upon the federal government to take steps towards decriminalizing certain actions of parolees.\textsuperscript{189} The Brennan Center for Justice, a think tank centered at NYU, has proposed several federal reforms to challenge the ongoing epidemic of mass incarceration. The Brennan Center suggests that the federal government provide states with financial incentives to reduce imprisonment and crime over the course of a 10-year period, with states being required to reduce prison populations by 7\% every three years without increasing crime rates in order to be eligible to receive such federal grants. The Center also recommends passing laws to increase parole eligibility and using punishment other than re-incarceration for technical parole violations.\textsuperscript{190}

Recent federal legislation has also dealt with issues related to parole. For example, the First Step Act eliminates the option of life without parole for people who have been committed for three or more prior drug offenses.\textsuperscript{191} Additionally, in 2017, Senator Chuck Grassley brought up a bill, known as the Sentencing Reform and Corrections Act of 2017, which includes proposals to increase opportunities for parole for juveniles.\textsuperscript{192}

D. Life Sentences for Juveniles


\textsuperscript{190} Chettiar, Inimai, and Lauren-Brooke Eisen. \textit{The Reverse Mass Incarceration Act}. 2015.


In a series of recent U.S. Supreme Court cases, the Court has partly relied on adolescent brain science to ban capital punishment for juveniles, ban life without parole for non-homicide juvenile offenders, ban mandatory life without parole for juvenile offenders, and to apply the previous decision retroactively by allowing the resentencing of individuals who faced mandatory life sentences as juvenile offenders.\(^{193}\)

In *Roper v. Simmons* (2005), the Supreme Court banned the use of the death penalty for juveniles.\(^{194}\) In *Graham v. Florida* (2011), the Supreme Court outlawed life without parole for juveniles not convicted of homicide.\(^{195}\) *Miller v. Alabama* and *Jackson v. Hobbs*, decided in 2012, expanded this decision by outlawing mandatory life without parole sentences for juveniles, even in homicide cases, as they violate the Eighth Amendment.\(^{196}\) In light of this ruling, judges must now consider the individual circumstances of each juvenile’s charge before sentencing them to life without parole.\(^{197}\) This applied specifically to 28 states whose existing statutes mandated automatic life without parole sentencing for individuals who purportedly committed homicide before the age of 18. *Montgomery v. Louisiana*, decided in 2016, applied the *Miller* ruling retroactively, requiring individuals who had been automatically sentenced to life without parole as a juvenile to be resentenced.\(^{198}\)

However, the response to these Supreme Court decisions by individual states has been mixed. Twenty-nine states still allow the possibility of life without parole sentencing for

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194 Ibid.
198 Ibid. 
juveniles, but three of these states (Pennsylvania, Michigan, and Louisiana) account for about two-thirds of such sentences.\textsuperscript{199} Much of the new legislation that states have passed in order to bring their statutes into compliance with these decisions have done little to help incarcerated individuals who have already been sentenced.\textsuperscript{200} For example, many states that have technically brought their sentencing practices into accordance still require incarcerated individuals to serve substantial portions of their preexisting sentences before a parole review even becomes possible. In states such as Delaware, North Carolina, and Washington, this mandatory minimum time served is generally 25 years. For others, such as Nebraska and Texas, it can be as much as 40 years.\textsuperscript{201} Other states that have begun resentencing individuals originally sentenced to life without parole as juveniles have also found creative ways to avoid implementing these rulings. In Michigan, for example, as of August 2017, nearly two-thirds of the 360 individuals serving juvenile life without parole sentences have been ‘resentenced’ to the same sentence.\textsuperscript{202} These resentencing decisions may be largely due to the discriminatory criteria used for resentencing. In Michigan, parole boards and resentencing administrators often consider an individual’s participation in rehabilitative programs when determining their release or resentencing.\textsuperscript{203} However, individuals serving life without parole sentences are often categorically barred from serving in these programs. States like Michigan may therefore be strategically avoiding enforcement of these Supreme Court decisions by using unjust metrics to resentence individuals.\textsuperscript{204}

\begin{itemize}
\item \textsuperscript{199} Ibid.
\item \textsuperscript{200} Rovner, Joshua. “Slow to Act,” 3.
\item \textsuperscript{201} Ibid, 2.
\item \textsuperscript{204} Ibid.
\end{itemize}
These violations have prompted lawsuits about unjust parole hearings for juveniles sentenced to life without parole in states such as Iowa, Michigan, and North Carolina.\textsuperscript{205} In other states with more progressive procedures, lawmakers have attempted to create special protections for individuals who received life without parole sentences as juveniles. Massachusetts and Connecticut, for example, provide funding for attorneys to represent juvenile lifers before parole boards.\textsuperscript{206} In California, juvenile lifers eligible for parole attend Youth Offender Hearings, a special type of parole hearing where parole boards give greater attention to the growth and increased maturity of individuals during their time served as well as a juvenile’s diminished culpability compared to adults.\textsuperscript{207} Measures such as these work to prevent parole boards from strategically upholding now-unconstitutional mandatory juvenile life without parole sentences.

In the future, however, the resentencing requirement won under \textit{Montgomery v. Louisiana} may be scaled back. \textit{Mathena v. Malvo}, which the Supreme Court has decided to hear in its upcoming docket, contests this mandatory re-sentencing for juveniles, and a more conservative Court may overturn these recent precedents.\textsuperscript{208}

\section{E. Interest Group-Led Reforms}

Numerous interest groups have proposed a range of other parole reforms. Two recommendations made by the Prison Policy Initiative in its report are particularly creative in addressing problems of transparency that incarcerated persons deal with when applying for parole. The first recommendation states that “[e]arned-time programs, which frequently have long

\begin{footnotesize}
\begin{enumerate}
\item Schwartzapfel, Beth. “When Parole Boards Trump the Supreme Court,” \textit{The Marshall Project}, May 9, 2016, \url{https://www.themarshallproject.org/2016/05/19/when-parole-boards-trump-the-supreme-court}.
\item Ibid.
\item State of California Board of Parole Hearings. “Youth Offender Hearings.” \textit{California Department of Corrections & Rehabilitation}, \url{https://www.cdc.ca.gov/BOPH/youth_offender_hearings_overview.html}.
\end{enumerate}
\end{footnotesize}
waitlists, should be expanded to meet demand, and prisons should make it easier for incarcerated people to accrue and maintain good time credit.”

Essentially, by expanding the credit system, incarcerated persons would have greater assurance that good behavior would result in an earlier release, and thus, they would have a greater incentive to maintain proper conduct. In addition to this recommendation, the Prison Policy Initiative goes on to suggest in its report that “[s]tate lawmakers should institute presumptive parole to increase the number of people granted parole and make parole decisions more predictable and transparent.”

Similar to mandatory sentences, this recommendation suggests that states implement a “mandatory parole” system. Implementation of such a system would result in incarcerated persons having a clearer understanding of how and when they can apply and be granted parole. However, these recommendations only address one aspect of the parole process.

One of the issues formerly incarcerated persons face when they are released from prison is the challenge of becoming re-acclimated to society while navigating the strict restrictions of their parole. Violating even a minor offense often results in being sent back to prison. The Prison Policy Initiative suggests that the best way to address this issue would be to “[e]liminate returns to incarceration for technical violations.” This initiative aims to take pressure off of parolees while repainting the parole process as one meant to aid, not punish, the paroled person. The Prison Policy Initiative goes on to suggest that States “[l]imit the length of time an individual can be on parole,” noting that “[t]he majority of reoffending occurs in the first few years after release, but after this period continuing supervision has diminishing returns.”

The parole system is intended

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209 Ibid.
210 Ibid.
212 Ibid.
to support paroled persons navigating society, but once an adjustment is made, there is no longer a great need for supervision. Overall, the recommendations made by the Prison Policy Initiative aim to reduce the prison population while lowering the recidivism rate for paroled persons.

Other proposed parole reforms aim to change the factors by which individuals are assessed for parole, especially for the elderly in prison. The most common factor that determines an individual’s likelihood of receiving parole is the nature of the offense for which the the individual was convicted. However, the Releasing Aging People in Prison (RAPP) Campaign points to this factor as being a key reason as to why elderly people, traditionally held in prison for longer sentences due to crimes committed in their youth, are routinely denied parole. Over the last decade, the prison population of people aged 55 and older has quadrupled, one such example being in New York state, where elderly people represent 17% of the overall prison population.213 While some aging people are seen as presenting a higher risk of reoffending due to the nature of their original conviction, “aging people convicted of murder present the lowest risk of re-convictions of any prison population” and more generally, among those convicted of all categories of crimes, “people aged 50 and older present the lowest risk of committing a new crime.”214 To combat this, RAPP proposes that the determinations for the minimum sentence should replace crime severity as the primary factor and institute a reevaluation based upon risk of reoffending.215 Going further, organizations like Initiate Justice have proposed creating a separate parole board for elderly prisoners who committed crimes in their youth, a program that was adopted in California.216 Under this program, however, reform is still needed in order to expand credit-

214 Ibid, 6.
215 Ibid.
earning opportunities to decrease individuals’ sentences. The development of a federal Elderly Parole program would function to decrease the growth of elderly people in prison through a more equitable pathway to parole.

**Conclusion**

This report provides a comprehensive overview of current life sentence with parole policies as well as recommendations to reform such policies in the areas of requirements, violations, transparency and makeup of parole boards, and reentry community services. Such recommendations are based on an analysis of state parole policy mixed with ongoing reform efforts. Moreover, by examining a sweeping array of background demographics ranging from race to gender to mental health, this report based its recommendation on a specific understanding of the reality and challenges of the life sentence prison population. Though this paper marks only a first step in terms of policy reform for life sentence with parole, its findings demonstrate a critical need for reform. In particular, the vast discrepancies between state policies as well as evolving standards suggest a lack of consensus on one of the most crucial topics for criminal justice.
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