

THE SECOND LOOK MOVEMENT AND REDUCING MASS INCARCERATION

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ABSTRACT

Mass incarceration in the United States has been driven largely by increasingly long sentences, particularly for individuals convicted of violent offenses. A major obstacle to reversing this trend is the widespread belief that these sentences cannot be revisited. While there has been a growing recognition across political and ideological lines that far too many people are imprisoned, efforts to reduce incarceration have often focused exclusively on those convicted of non-violent offenses. However, no effort to dismantle mass incarceration can succeed without addressing the nearly 50% of the prison population serving long sentences for serious crimes.

After forty years, some individuals once condemned to perpetual punishment are now being given a chance at release. A diverse group of legal professionals, policymakers, and activists is reviving, developing, and employing legal mechanisms to re-examine the sentences of those convicted of violent offenses. As a result, people who have served twenty, thirty, or even forty years in prison are beginning to regain their freedom. This emerging movement—what we identify as the “second look movement”—is still in its early stages, but it represents a fundamental shift in the fight against mass incarceration. While it has yet to dramatically reduce the prison population, the second look movement strengthens the broader movement to end mass incarceration by challenging the punitive ideology that has long justified extreme sentencing.

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INTRODUCTION

In recent years, there has been a burgeoning recognition across political and ideological lines that mass incarceration is a serious problem in the United States. Yet, no effort to dismantle mass incarceration will succeed if it does not address the half of the prison population convicted of serious offenses. Most of the people serving our longest sentences, including life without parole, committed serious harm. In the making of mass incarceration, perpetrators of violence were the bogeymen, the reason sentences for nearly every crime skewed higher. Since that time, they have been cast out and scarcely looked at again; their invisibility has made their human suffering apparently costless in the public consciousness.

The idea that there are people who, because of the nature of the crime they committed, are off limits or out of bounds when it comes to reconsidering their punishments is a major obstacle to ending the incarceration crisis in the United States. To unwind mass incarceration, the ideology that animates it must be contested. This

ideology treats people who commit serious offenses as unworthy of a second look. For a long time, efforts to challenge it failed.

Now, after forty years, there are signs of an evolution. Individuals condemned to perpetual punishment have, in some instances, had their sentences revisited. Various actors have begun creating and using legal mechanisms to reduce long and life sentences at scale, or at least give some categories of people convicted of serious offenses a second look. In some jurisdictions, people who have served twenty, thirty, even forty years are being released from custody in significant numbers. The work being done on this front is evidence of a paradigm-shifting movement: the “second look movement.” Because of its emergence, the broader movement to reduce our prison population is advancing; there is a fresh willingness to confront the ideology that birthed our carceral state.

The second look movement makes several important contributions to the overall effort to dismantle mass incarceration. It reveals the wisdom of revisiting people’s sentences once they have demonstrated their capacity to change. It illuminates and describes the ways individuals can transform their lives even under the difficult conditions of incarceration. And it helps return long-incarcerated people to society, where their presence and the lives they lead often expose fundamental flaws with our nation’s mass incarceration ideology.

By securing sentence reductions and releases for those serving long terms, second look advocates chip away at the idea that people who commit serious offenses cannot change or make amends. Their work reveals what is required to challenge the ideology of mass incarceration in America. They are not primarily using arguments about cost, not focusing on the “low-hanging fruit” of nonviolent offenses to the exclusion of harder cases, not shying away from the nature of the underlying offenses. Instead, they hold the harm perpetrated in the crime and the humanity of the person who inflicted that harm alongside one another, offering an alternative vision of punishment where accountability does not necessitate vengeance or lifetime incapacitation.

This Article consists of three parts. Part I sets out the evidence that mass incarceration will persist until we confront the sentences of individuals convicted of serious offenses. Drawing on the work of scholars and researchers who have documented this reality, it explores how, up to this point, the problems with perpetual punishment have largely been overlooked by system actors. Part II identifies a constellation of diverse and novel efforts to obtain sentencing relief for individuals who have been incarcerated for decades. It characterizes this array of work as the second look movement. Part III explores how the second look movement’s work provides a crucial pathway to destabilize the punitive ideology that has long ensured mass incarceration persists. This Article is the first to describe the second look movement and articulate how its emergence may signal a critical juncture in the struggle to end mass incarceration.

I. ANY MEANINGFUL EFFORT TO REDUCE MASS INCARCERATION MUST ACCOUNT FOR THOSE FACING THE LONGEST SENTENCES

A. *Harsh Sentencing Is Central to Mass Incarceration*

The story of our nation's mass incarceration crisis and its origins has been told, capably, by several excellent historians and legal scholars.¹ That story is often framed around the stark numbers that demonstrate America's embrace of an unparalleled carceral experiment over the past forty years. Approximately two million people are incarcerated in U.S. jails or prisons.² After having a comparatively low and stable incarceration rate for much of the twentieth century, beginning in the 1970s the incarceration rate in the U.S. rapidly became one of the highest in the world, below only Turkmenistan, Rwanda, Cuba, and El Salvador.³ We incarcerate people at a rate five to twelve times higher than other industrialized democracies.⁴ We are one of two countries with more than a million people behind bars. And we have a hundred thousand more people in prison than China, the nation with the second highest total count, though China's population is more than four times larger.⁵ After a decade of gradual decline—punctuated by a sharp 14% drop in 2020 due to COVID-related releases and reduced admissions—the U.S. prison population rose by 2% in 2022, showing that the recent downward trend remains fragile.⁶ Among those incarcerated for lengthy terms, there has been a 68% increase in people serving life without parole since 2003.⁷

1. See, e.g., MARIE GOTTSCHALK, *CAUGHT: THE PRISON STATE AND THE LOCKDOWN OF AMERICAN POLITICS* 1–2 (2015); JAMES FORMAN JR., *LOCKING UP OUR OWN: CRIME AND PUNISHMENT IN BLACK AMERICA* 9–13 (2017); JOHN F. PFAFF, *LOCKED IN: THE TRUE CAUSES OF MASS INCARCERATION—AND HOW TO ACHIEVE REAL REFORM* 1–4 (2017); MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 6–7 (rev. ed. 2012).

2. WENDY SAWYER & PETER WAGNER, PRISON POL'Y INITIATIVE, *MASS INCARCERATION: THE WHOLE PIE 2025* (2025), [hereinafter *THE WHOLE PIE 2025*] <https://www.prisonpolicy.org/reports/pie2025.html> [<https://perma.cc/DMJ5-V5GP>]. This number is down from 2.3 million in 2020. See WENDY SAWYER & PETER WAGNER, PRISON POL'Y INITIATIVE, *MASS INCARCERATION: THE WHOLE PIE 2020* (2020), <https://www.prisonpolicy.org/reports/pie2020.html> [<https://perma.cc/H7XE-X6RH>]. This number represented approximately 0.7% of our entire population. See Peter Wagner & Wanda Bertram, "What Percent of the U.S. is Incarcerated?" (*And Other Ways to Measure Mass Incarceration*), PRISON POL'Y INITIATIVE (Jan. 16, 2020), <https://www.prisonpolicy.org/blog/2020/01/16/percent-incarcerated/> [<https://perma.cc/3QRZ-33YD>].

3. *Highest to Lowest – Prison Population Rate*, WORLD PRISON BRIEF, https://www.prisonstudies.org/highest-to-lowest/prison_population_rate?field_region_taxonomy_tid=All [<https://perma.cc/RC7N-4JY3>] (last visited Oct. 3, 2025).

4. See James P. Lynch & William Alex Pridemore, *Crime in International Perspective*, in *CRIME AND PUBLIC POLICY* 5, 27 (J.Q. Wilson & J. Petersilia eds., 2011).

5. *Highest to Lowest – Prison Population Total*, WORLD PRISON BRIEF, https://www.prisonstudies.org/highest-to-lowest/prison-population-total?field_region_taxonomy_tid=All [<https://perma.cc/JNL5-DCX9>] (last visited Oct. 3, 2025); see also U.S. Census Bureau population clock, <https://www.census.gov/popclock/print.php?component=counter> [<https://perma.cc/45RH-29FG>] (last visited, Feb. 15, 2026) (showing China's population as 1,405,918,803 and the U.S.'s population as 342,620,143).

6. See ASHLEY NELLIS, THE SENT'G PROJECT, *MASS INCARCERATION TRENDS 1* (2024), <https://www.sentencingproject.org/app/uploads/2024/05/Mass-Incarceration-Trends.pdf> [<https://perma.cc/2YHQ-PRBA>].

7. See ASHLEY NELLIS & CELESTE BERRY, THE SENT'G PROJECT, *A MATTER OF LIFE: THE SCOPE AND IMPACT OF LIFE AND LONG IMPRISONMENT IN THE UNITED STATES 2* (2025), <https://www.sentencingproject.org/reports/a->

When looking at staggering raw numbers and international comparative figures,⁸ it is easy to overlook the uniquely punitive nature of our sentencing practices for those convicted of serious offenses.⁹ In most states, the upward trend in prison growth is largely driven by an increase in time served for crimes that inflict severe physical or psychological harm.¹⁰ This reflects that “the total number of prisoners behind bars is purely and simply a result of two factors: *the number of people put there and how long they stay.*”¹¹ One cannot talk about mass incarceration without talking about both factors. Under current sentencing practices, many people remain in prison for the maximum time allowed by law. As the incarceration rate in America has exploded since the 1970s, so too has the number of people serving lengthy sentences.¹² The average time served by the top 10% of longest-serving prisoners has risen sharply relative to the rest of the prison population.¹³ We do not simply lock up incomparably large numbers of people; for many, we also throw away the key.

Nearly 200,000 of the two million people incarcerated are serving life or “virtual” life sentences,¹⁴ meaning that without extraordinary reforms, they will die in

matter-of-life-the-scope-and-impact-of-life-and-long-term-imprisonment-in-the-united-states/ [https://perma.cc/B3SA-SR59].

8. See Alice Ristroph, *An Intellectual History of Mass Incarceration*, 60 B.C. L. REV. 1949, 1956 (2019) (“The U.S. incarceration rate is exceptional not only in terms of this country’s own history, but also in comparison to other developed nations.”).

9. This Article does not undertake the difficult task of defining “serious” and “violent” crimes. See, e.g., Alice Ristroph, *Criminal Law in the Shadow of Violence*, 62 ALA. L. REV. 571, 573 (2011) (“Relatively few jurisdictions—and even fewer scholars, perhaps—have offered a clear account of what makes a crime *violent*.”). It generally avoids the term “violent crime,” which can be particularly confusing and problematic. See, e.g., Eli Hager, *When “Violent Offenders” Commit Nonviolent Crimes*, THE MARSHALL PROJECT (Apr. 3, 2019, 6:00 AM), <https://www.themarshallproject.org/2019/04/03/when-violent-offenders-commit-nonviolent-crimes> [https://perma.cc/9LZU-YJW2] (“[M]any of the ‘violent offenders’ in U.S. prisons are there for crimes that not everyone would classify as violent.”).

10. See, e.g., *New Analysis Shows Jump in Share of State Prison Population Serving Sentences of 10+ Years*, COUNCIL ON CRIM. JUST. (July 20, 2022) <https://counciloncj.org/new-analysis-shows-jump-in-share-of-state-prison-population-serving-sentences-of-10-years> [https://perma.cc/LE7Q-97HH] (“At the end of 2019, 57% of people in prison had been sentenced to 10 years or more, up from 46% in 2005, the analysis shows. The average length of time actually served by this group also increased during that period, from 9.7 years to 15.5 years.”); LEIGH COURTNEY, SARAH EPPLER-EPSTEIN, ELIZABETH PELLETIER, RYAN KING & SERENA LEI, *URB. INST., A MATTER OF TIME: THE CAUSES AND CONSEQUENCES OF RISING TIME SERVED IN AMERICA’S PRISON* (2017), <https://apps.urban.org/features/long-prison-terms/trends.html> [https://perma.cc/82P8-BHBZ].

11. Todd R. Clear & James Austin, *Reducing Mass Incarceration: Implications of the Iron Law of Prison Populations*, 3 HARV. L. & POL’Y REV. 307, 308 (2009) (emphasis in original).

12. COURTNEY ET AL., *supra* note 10, at 1, 4 (“[T]he longest prison terms have been growing in both length and number.”).

13. See *id.* at 7 (“In most states, the average time served by the top 10 percent rose much more sharply relative to the rest of the prison population.”).

14. See NELLIS & BERRY, *supra* note 7, at 2, 5; see also ASHLEY NELLIS, THE SEN’G PROJECT, *NO END IN SIGHT: AMERICA’S ENDURING RELIANCE ON LIFE SENTENCES* 4 n.1, 11 n.14 (2021), <https://www.sentencingproject.org/reports/no-end-in-sight-americas-enduring-reliance-on-life-sentences/> [https://perma.cc/ML97-VT2D] (noting that more than 200,000 people are serving life sentences); ASHLEY NELLIS, THE SENT’G PROJECT, *STILL LIFE: AMERICA’S INCREASING USE OF LIFE AND LONG-TERM SENTENCES* 5 (2017) [hereinafter NELLIS, *STILL LIFE*], <https://www.sentencingproject.org/reports/still-life-americas-increasing-use-of-life-and->

prison. More than 56,000 people have been sentenced to life without parole, an especially harsh outcome on which the criminal legal system has come to rely reflexively in some jurisdictions.¹⁵ Around 4.7% of people incarcerated in the nation's prisons are serving life without parole; in Louisiana, that number approaches 15%.¹⁶ When looking at all types of life sentences, nearly 16% of people in prison are serving life.¹⁷

The role that extreme sentencing for serious offenses plays in mass incarceration warrants attention. A limited focus on ameliorating the plight of those convicted of lesser crimes is insufficient in the big picture of mass incarceration.¹⁸ One scholar observed that “even if every single . . . drug offender[] w[as] released tomorrow, the United States would still have the world's largest prison system.”¹⁹ Currently “9 in 10 people serving the longest prison terms were convicted of a violent offense.”²⁰ In fact, approximately 55% of prisoners nationwide were convicted of serious offenses.²¹ The most common of these is robbery.²²

Racial disparities pervade the American criminal justice system.²³ People of color are disproportionately impacted by harsh sentencing practices for more serious crimes.²⁴ Though the incarceration rate of Black people has decreased over the

long-term-sentences/ [https://perma.cc/PP56-LVNS] (noting that the number of people serving life sentences and those serving virtual life sentences of 50 years or more combined exceeds 200,00); THE WHOLE PIE 2025, *supra* note 2.

15. See NELLIS & BERRY, *supra* note 7, at 2. Some have referred to life without parole as a sentence of “death by incarceration.” See, e.g., Robert Johnson & Sonia Tabriz, *Death by Incarceration as a Cruel and Unusual Punishment When Applied to Juveniles: Extending Roper to Life Without Parole, Our Other Death Penalty*, 9 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 241, 242 (2009).

16. See NELLIS & BERRY, *supra* note 7, at 2, 5–6 (indicating that 56,245 out of the 1.2 million people in prison are serving life without parole, equating to 4.7%); Lea Skene, *Report: Number of people serving life in Louisiana dwarfs entire state prison population in 1970*, THE ADVOCATE (Feb. 21, 2020), https://www.theadvocate.com/baton_rouge/news/crime_police/article_31f0dc98-54cd-11ea-807c-b3a2c890a656.html [https://perma.cc/4JUR-5JE5].

17. See NELLIS & BERRY, *supra* note 7, at 2 (defining life sentences as life without parole, life with parole, and virtual life sentences (sentences longer than 50 years)).

18. An approach emphasizing nonviolent crimes “would have little to say about the majority of people currently serving time. Therefore, a reform movement, ethos, or package of proposals based on saving the ‘nonviolent’ individuals has serious limitations.” Benjamin Levin, *The Consensus Myth in Criminal Justice Reform*, 117 MICH. L. REV. 259, 312 (2018).

19. James Forman, Jr., *Racial Critiques of Mass Incarceration: Beyond the New Jim Crow*, 87 N.Y.U. L. REV. 21, 48 (2012) [hereinafter *Racial Critiques of Mass Incarceration*].

20. COURTNEY ET AL., *supra* note 10, at 46 (“Of people who entered prison in 2000 (in states that provided data), 84 percent of those still incarcerated 14 years later were there for a violent offense.”).

21. See John Pfaff, *Five Myths About Prisons*, WASH. POST (May 17, 2019), https://www.washingtonpost.com/outlook/five-myths/five-myths-about-prisons/2019/05/16/953304ea-7759-11e9-b3f5-5673edf2d127_story.html [https://perma.cc/KZF9-CL7R].

22. See FORMAN, *supra* note 1, at 230.

23. See, e.g., Wendy Sawyer, *Visualizing the Racial Disparities in Mass Incarceration*, PRISON POL'Y INITIATIVE (July 27, 2020), <https://www.prisonpolicy.org/blog/2020/07/27/disparities/> [https://perma.cc/EUD5-EMSY]; Mike Wessler, *Updated Charts Provide Insights on Racial Disparities, Correctional Control, Jail Suicides, and More*, PRISON POL'Y INITIATIVE (May 19, 2022), https://www.prisonpolicy.org/blog/2022/05/19/updated_charts/ [https://perma.cc/C624-YRPV].

24. See generally ALEXANDER, *supra* note 1, at 2–7 (discussing racial disparities in the criminal legal system).

past decade or two, potentially in response to drug sentencing reforms,²⁵ racial disparities remain and are more acute the more severe the punishment. In thirty-five of the forty-four states examined by the Urban Institute in a 2017 report, “racial disparities among people serving the longest 10 percent of prison terms are larger than disparities in the overall prison population.”²⁶ In Pennsylvania, for example, Black people make up 49% of the state prison population but 60% of those serving the longest prison terms.²⁷

A working understanding of what enables mass incarceration, though difficult to establish,²⁸ is helpful. Beyond the basic premise that we imprison many people and keep them incarcerated for long periods, mass incarceration both reflects and reinforces a deeper ideology about punishment in our society. That ideology has several central features: it fixes incarceration as the presumptive, if not exclusive, response to crime and harm;²⁹ it severely discounts the notion that people can change their behaviors and attitudes;³⁰ it sees one offense as a strong indicator that

25. See Keith Humphreys, *There's Been a Big Decline in the Black Incarceration Rate, and Almost Nobody's Paying Attention*, WASH. POST (Feb. 10, 2016), https://www.washingtonpost.com/news/wonk/wp/2016/02/10/almost-nobody-is-paying-attention-to-this-massive-change-in-criminal-justice/?utm_term=.aa759f7ab0c1 [<https://perma.cc/4GXP-6UF5>].

26. COURTNEY ET AL., *supra* note 10, at 10.

27. See *id.* (reporting that Black people make up forty-nine percent of the state prison population); Sharon Dolovich, *Exclusion and Control in the Carceral State*, 16 BERKELEY J. CRIM. L. 259, 316 n.198 (2011) (“Not only, therefore, are African Americans overrepresented among those in custody, but their representation increases with each heightening of penal severity. In other words, the more complete the exclusion a penalty represents and the more extreme the social rejection it signifies, the greater the odds that a person subject to it will be African American.”). The racial disparities seen today are hardly surprising given the conditions that gave rise to mass incarceration in the first place. A historical pattern of racist carceral policies set the backdrop. See also Heather Ann Thompson, *Why Mass Incarceration Matters: Rethinking Crisis, Decline, and Transformation in Postwar American History*, 97 J. AM. HIST. 703, 706–07 (2010) (“In the same way that rural African American spaces were criminalized at the end of the Civil War, resulting in the record imprisonment of black men that undermined African American communities in the Reconstruction and Jim Crow-era South, the criminalization of urban spaces of color, in both the South and North, during and after the 1960s civil rights era fundamentally altered the social and economic landscape of the late twentieth- and early twenty-first-century United States.”). For an excellent treatment of the nuanced social and political drivers of Black incarceration since the 1970s, see generally FORMAN, *supra* note 1. See generally KHALIL GIBRAN MUHAMMAD, *THE CONDEMNATION OF BLACKNESS: RACE, CRIME, AND THE MAKING OF MODERN URBAN AMERICA* (2010) (discussing the emergence of “[B]lack criminality” in modern urban American development).

28. Andrew D. Leipold, *Is Mass Incarceration Inevitable?*, 56 AM. CRIM. L. REV. 1579, 1581 (2019) (stating that “‘mass’ incarceration does not have a fixed meaning”).

29. See, e.g., FORMAN, *supra* note 1, at 145–46, 150, 232; Dolovich, *supra* note 27, at 268 (“In American society, it is taken for granted that social exclusion enforced by the state is the appropriate response to the commission of antisocial acts.”); see generally JUST. POL’Y INST., *FINDING DIRECTION: EXPANDING CRIMINAL JUSTICE OPTIONS BY CONSIDERING POLICIES OF OTHER NATIONS* (2011) (comparing the United States’ policies on punishing crime to other countries’ policies), <http://www.justicepolicy.org/uploads/justicepolicy/documents/sentencing.pdf> [<https://perma.cc/CL3R-VYEG>].

30. See M. Eve Hanan, *Incapacitating Errors: Sentencing and the Science of Change*, 97 DENV. L. REV. 151, 154 (2019) (identifying “a central assumption of American punishment” is “that many people who commit crimes are characterologically criminal and incapable of change”).

an individual will commit another;³¹ it pathologizes the causes of crime and positions the “criminal” outside the community;³² it trivializes the burden of incarceration, both in terms of time spent and living conditions,³³ as well as the impact on families who lose someone to incarceration;³⁴ it pits the rights of victims against the rights of offenders;³⁵ and it elevates the notion of individual choices and responsibility,³⁶ denying the validity of situational and social explanations of crime. In practice, this ideology has manifested in severe, inflexible, and often mandatory sentences (especially for people who recidivate, no matter how minor the offense).³⁷ It has also contributed to the weakening of both clemency and parole, reactive crime policies, and the widespread use of life sentences.³⁸ While rehabilitation best described the nation’s approach to punishment before mass incarceration,³⁹ the current system is characterized by “total incapacitation”⁴⁰ and retribution.⁴¹ It discards the traditional idea that the punishment should be proportional to the crime and be no harsher than necessary. Ultimately, the ideology of mass incarceration has successfully propagated the idea that our country is a safer and better place with millions of people in prison.

In any discussion about serious offenses, it is vital to recognize that the harms perpetrated are real. Violence can cause lifelong trauma to victims of crime and their loved ones. Lives lost to violence can never be replaced. Reports on the impacts of violence explore a wide range of resulting problems, including educational disruption, economic dislocation, and possible future criminal activity.⁴² But, these tragic realities should not serve as both the beginning and the end to an

31. See Dolovich, *supra* note 27, at 300 (“In the contemporary American penal system, it is assumed that everything there is to know about a given offender can be found in the mere fact of his criminal history.”).

32. See *id.* at 293–95.

33. See *id.* at 317–19.

34. See *id.* at 333.

35. MARIE GOTTSCHALK, *THE PRISON AND THE GALLOWS: THE POLITICS OF MASS INCARCERATION IN AMERICA* 77 (2006) [hereinafter *THE PRISON AND THE GALLOWS*].

36. See, e.g., Dolovich, *supra* note 27, at 264–65 (“The sustaining discourse of this penal system is a radically individualist one that locates the causes of crime exclusively in the free and conscious choice of the offenders themselves.”).

37. See Teo Armus, *A Black Man Serving a Life Sentence for Stealing Hedge Clippers is Granted Parole After Nearly 24 Years in Prison*, WASH. POST (Oct. 19, 2020), <https://www.washingtonpost.com/nation/2020/10/19/life-sentence-prison-reentry-bryant/> [https://perma.cc/D5CD-QAS2].

38. COURTNEY ET AL., *supra* note 10, at 30–31.

39. See, e.g., Jessica M. Eaglin, *Against Neorehabilitation*, 66 SMU L. REV. 189, 199 (2013).

40. Jonathan Simon, *Dignity and Risk: The Long Road from Graham v. Florida to Abolition of Life Without Parole*, in *LIFE WITHOUT PAROLE: AMERICA’S NEW DEATH PENALTY?* 282, 293 (Charles J. Ogletree, Jr. & Austin Sarat eds., 2012).

41. “Over the past 40 years or so, retribution has become a central feature of US penal policy, supplanting rehabilitation and even public safety as the chief aim.” Marie Gottschalk, *Sentenced to Life: Penal Reform and the Most Severe Sanctions*, 9 ANN. REV. L. & SOC. SCI. 353, 370 (2013) [hereinafter *Sentenced to Life*].

42. For an analysis of these impacts, see DANIELLE SERED, VERA INST. OF JUST., *ACCOUNTING FOR VIOLENCE: HOW TO INCREASE SAFETY AND BREAK OUR FAILED RELIANCE ON MASS INCARCERATION* (2017), <https://vera-institute.files.svcdn.com/production/downloads/publications/accounting-for-violence.pdf> [https://perma.cc/44T5-ZWMW].

analysis of harsh sentencing. As Reginald Dwayne Betts—who served time for a felony offense and whose mother was the victim of a rape—poignantly explored in an essay, “the pain [most violent crimes] cause is nearly always unresolved. And those who are convicted—many, maybe all—do far too much time in prison.”⁴³

Punishment was not always like it is today. The hyper-punitive approach that describes American incarceration is a significant historical departure. A hundred years ago, the longest punishments available (aside from the death penalty) reflected meaningful restraint in comparison to today’s dizzying regime.⁴⁴ In the early twentieth century, a “life” sentence in the federal system was fifteen years long—a policy shared by many states across the country.⁴⁵ The norm was indeterminate sentencing, which set a sentencing range but gave prison authorities the discretion to make a decision about whether to release someone based on their conduct and record of rehabilitation.⁴⁶ In Louisiana, a notoriously punitive jurisdiction known for having the country’s highest incarceration rate,⁴⁷ a “life” sentence typically meant ten years and six months.⁴⁸ From the 1920s until the 1970s, lifers were regularly released in accordance with the 10/6 policy if they maintained good conduct records.⁴⁹ With this approach, the U.S. incarceration rate remained impressively stable in the fifty-year period that preceded mass incarceration.⁵⁰

The current U.S. approach is not merely a historical anomaly; it is a geographical one, too. American policy stands alone from a comparative perspective.

The United States has the highest incarceration rate worldwide. It is home to 5% of the world’s population but a quarter of the world’s prisoners. Leaving aside Stalinist Russia, there are few historical examples of mass incarceration on such a colossal scale. Mass incarceration is even more striking if one parses the “astronomical” incarceration rate for African-Americans. The peculiar

43. Reginald Dwayne Betts, *Kamala Harris, Mass Incarceration and Me*, N.Y. TIMES MAG. (Oct. 20, 2020), <https://www.nytimes.com/2020/10/20/magazine/kamala-harris-crime-prison.html> [<https://perma.cc/TJ23-AMFC>].

44. It must be noted that lynchings and other acts of extrajudicial violence against Black people and other people of color were often perpetrated with the knowledge of the government. See EQUAL JUST. INITIATIVE, LYNCHING IN AMERICA: CONFRONTING THE LEGACY OF RACIAL TERROR 3 (3d ed. 2017) (“Lynchings were violent and public acts of torture that traumatized Black people throughout the country and were largely tolerated by state and federal officials.”). These acts of terror are not captured in official State policy but demonstrate that the restraint in sentencing policy referred to here was not applied to Black people suspected of some offenses.

45. GOTTSCHALK, *supra* note 1, at 170.

46. See MARC MAUER, RYAN S. KING & MALCOLM C. YOUNG, THE SENT’G PROJECT, THE MEANING OF “LIFE”: LONG PRISON SENTENCES IN CONTEXT 4 (2004).

47. See Emmett Sanders, *An Act of Regression: Louisiana takes a giant step backward in parole and sentencing reform*, Prison Policy Initiative (Aug. 21, 2024), https://www.prisonpolicy.org/blog/2024/08/21/louisiana_parole_reform/ [<https://perma.cc/43HR-QHPK>] (“Louisiana is already a world leader in incarceration. The Pelican State holds the dubious distinction of having the highest incarceration rate in the United States . . .”).

48. See, e.g., Jessica Schulberg, *When A Prison Sentence Of 10 Years And 6 Months Turns Into Forever*, HUFFINGTON POST (Dec. 30, 2021), https://www.huffpost.com/entry/life-sentence-10-years-6-months-louisiana-angola_n_61cb9263e4b042ab6f535e [<https://perma.cc/Q3CU-KNAS>].

49. See *Sentenced to Life*, *supra* note 41, at 354.

50. THE PRISON AND THE GALLOWS, *supra* note 35, at 2–4.

nature of mass incarceration further comes to light when comparing the United States not only to European countries, but also to the rest of the Western world: Canada, Australia, and New Zealand. America's incarceration rate is three to ten times higher than those of other modern Western democracies. In the words of David Garland, mass incarceration "is an unprecedented event in the history of the U.S. and, more generally, in the history of liberal democracy."⁵¹

The unprecedented American approach is not simply about the number of people we lock up; it is also about the severity of sentencing.⁵² While some other Western nations permit life sentences, they utilize such sentences rarely.⁵³ In several of these countries, it is unusual for anyone to receive a punishment harsher than twenty years.⁵⁴

Today, we are still feeling the effects of policy decisions from the 1970s onward that were designed to keep people in prison longer.⁵⁵ Unfortunately, these sentences reshaped norms, generating upward pressure on sentences across all offenses.⁵⁶ In particular, "[t]he law of murder has increasingly lost its capacity to limit punishment and is becoming an anchor of a system of over-punishment."⁵⁷ For all of these reasons, we find ourselves with not only the largest, but also the harshest system of punishment in the world.

B. Individuals Convicted of Serious Offenses Have Often Been Excluded from Sentencing Reforms

One of the most remarkable developments in American politics in the past decade and a half is the extent to which the problem of mass incarceration has penetrated public consciousness. "Today, mass incarceration rolls comfortably off the tongues of people of all ideological stripes."⁵⁸ Indeed, "[c]riminal justice reform is a contentious political issue, but there's one point on which pretty much everyone

51. Mugambi Jouet, *Mass Incarceration Paradigm Shift?: Convergence in an Age of Divergence*, 109 J. CRIM. L. & CRIMINOLOGY 703, 714 (2019) (citation omitted).

52. *See id.* at 719 ("An uncanny taste for repression appeared to be a dominant trait of American exceptionalism.").

53. *See* Vaidya Gullapalli, *Life Sentences And 'Draconian Power' In The United Kingdom*, THE APPEAL (Jan. 10, 2020), <https://theappeal.org/life-sentences-and-draconian-power-in-the-united-kingdom/> [<https://perma.cc/GXZ4-65N6>] (noting the prohibition of life sentences in Portugal and the rarity of such sentences in France and Germany).

54. *See* Marc Mauer, *A 20-Year Maximum for Prison Sentences*, 39 DEMOCRACY (2016), ("Sentences of more than 20 years are quite rare in many democratic nations.") <https://democracyjournal.org/magazine/39/a-20-year-maximum-for-prison-sentences/> [<https://perma.cc/HJB6-XXAU>].

55. *See* COURTNEY ET AL., *supra* note 10, at 30.

56. *See* GOTTSCHALK, *supra* note 1, at 171 ("Life sentences and other extraordinarily long sentences have important spillover effects. They set a 'reference price for crime' that makes other extreme but less severe punishments seem appropriate."); *see also* COURTNEY ET AL., *supra* note 10, at 31 (noting longer sentences normalized harsher penalties for all types of offenses).

57. Jonathan Simon, *How Should We Punish Murder?*, 94 MARQ. L. REV. 1241, 1246 (2011).

58. Devon W. Carbado, *Predatory Policing*, 85 UMKC L. REV. 545, 549 (2017).

agrees: America’s prison population is way too high.”⁵⁹ In 2015, prominent political leaders from both parties, many running for president at the time, wrote essays that the Brennan Center for Justice published as a collection on the topic.⁶⁰ Four years later, another group of lawmakers and activists from across the political spectrum similarly wrote, this time in a collection entitled “Ending Mass Incarceration: Ideas from Today’s Leaders.”⁶¹ It is difficult to imagine anything like this happening fifteen or twenty years ago. And, with some backsliding in rhetoric and consensus since some ostensible spikes in crime rates experienced during the pandemic, perhaps it will not happen again soon.⁶²

Although there appears to be something approaching a consensus that the United States’s overreliance on incarceration is counterproductive, the substance of that consensus only goes to a point. Once you reach the issue of serious crimes, the consensus does not hold.⁶³ For example, in deciding to release thousands of people from prisons and jails to ease crowding during the COVID-19 pandemic, California Governor Gavin Newsom—long known for being a serious advocate of criminal justice reform—told media, “I have no interest—and I want to make this crystal clear—in releasing violent criminals from our system.”⁶⁴ Arguably, the consensus cuts the other way, favoring punitive sentencing.⁶⁵ Those serving long

59. Leon Neyfakh, *Why Are So Many Americans in Prison?*, SLATE (Feb. 6, 2015), <https://slate.com/news-and-politics/2015/02/mass-incarceration-a-provocative-new-theory-for-why-so-many-americans-are-in-prison.html> [https://perma.cc/4JDW-FPD9]; see also Clare Foran, *What Can the U.S. Do About Mass Incarceration?*, THE ATLANTIC (Apr. 28, 2016), <https://www.theatlantic.com/politics/archive/2016/04/ending-mass-incarceration/475563/> [https://perma.cc/ASG4-P5DF] (“Democrats and Republicans alike agree that mass incarceration is a problem . . .”).

60. JOSEPH R. BIDEN, JR. ET AL., BRENNAN CTR. FOR JUST., SOLUTIONS: AMERICAN LEADERS SPEAK OUT ON CRIMINAL JUSTICE (Inimai Chettiar & Michael Waldman eds., 2015).

61. CORY BOOKER ET AL., BRENNAN CTR. FOR JUST., ENDING MASS INCARCERATION: IDEAS FROM TODAY’S LEADERS (Inimai Chettiar & Priya Raghavan eds., 2019).

62. See, e.g., Abdallah Fayyad, *2024 Cemented the Tough-on-Crime Comeback*, VOX (Dec. 30, 2024), <https://www.vox.com/policy/391644/tough-on-crime-laws-comeback-criminal-justice-reform> [https://perma.cc/J2AU-PHHZ]; Mirko Bagaric, Jennifer Svilar & Brienna Bagaric, *Continuing Principled Sentencing Reform and Winding Back Mass Incarceration Against the Backdrop of America’s Surge in Violent Crime*, 23 NEV. L.J. 411, 437 (2023) (observing in 2023 “the mood for a retreat from tough on crime policies is abating in the light of the surge in violent crime”).

63. Cf. Maggie Astor, *Left and Right Agree on Criminal Justice: They Were Both Wrong Before*, N.Y. TIMES (May 16, 2019), <https://www.nytimes.com/2019/05/16/us/politics/criminal-justice-system.html> [https://perma.cc/QM4W-2DSK] (noting differences between the Brennan Center publications from 2015 and 2019, including new “calls . . . for systemic change,” but omitting any mention of the need to reduce sentences for violent offenses to meaningfully address mass incarceration).

64. Don Thompson, *California Governor Cautious on Earlier Release of Inmates*, NBC BAY AREA (Mar. 24, 2020), <https://www.nbcbayarea.com/news/coronavirus/california-governor-cautious-on-earlier-release-of-inmates/2260558/> [https://perma.cc/HAK9-CK7R]; see also Sophia Bollag, *Gavin Newsom is Tacking Rightward on Crime—and He’s Not the Only One*, S.F. CHRON. (Mar. 19, 2024), <https://www.sfchronicle.com/politics/article/newsom-crime-california-19031249.php> [https://perma.cc/LK3M-VLGT] (discussing Newsom’s criminal justice-related advocacy work).

65. See Kamala Harris, *Shut the Revolving Door of Prison*, in SOLUTIONS: AMERICAN LEADERS SPEAK OUT ON CRIMINAL JUSTICE, *supra* note 60, at 37–39 (insisting that “certain offenses call for nothing less than long-term imprisonment”).

or life sentences for serious crimes have been at the wrong end of the funnel through which the movement to end mass incarceration has poured its efforts. For a variety of reasons, those aiming to unwind mass incarceration have typically prioritized the most easily achieved gains.⁶⁶ A prevailing strategy has been to focus on changing how the system treats “nonviolent” offenders. Those approaches may serve to harden the most punitive norms embedded in the system of mass incarceration.

A clear example of this dynamic is seen in the fight to correct the damage done by our nation’s War on Drugs.⁶⁷ Considering the substantial number of nonviolent offenders convicted of low-level drug possession offenses—and with broadening support for drug decriminalization and legalization—noteworthy progress has been made in reducing the number of people incarcerated for such offenses in the past two decades.⁶⁸ For example, at the federal level, President Obama signed the Fair Sentencing Act in 2010, which limited stiff mandatory minimum sentences for low-level crack offenses and reduced the notorious and racist sentencing disparity between crack and powder cocaine from a ratio of 100:1 to 18:1.⁶⁹ Five years after the Act was signed into law, the United States Sentencing Commission reported that the number of federal sentencings for crack cocaine was cut in half.⁷⁰ In 2018, President Trump signed the First Step Act, which, among other things, made the Fair Sentencing Act retroactive and limited mandatory minimums for drug offenses.⁷¹ More than three dozen states have also cut their prison populations,

66. See FORMAN, *supra* note 1, at 229–230 (“I have described mass incarceration as the result of a series of small decisions, made over time, by a disparate group of actors. If that is correct, mass incarceration will likely have to be undone in the same way. So it makes sense for advocates to start with the least culpable or threatening individuals. But criminal justice reform’s first step—relief for nonviolent drug offenders—could easily become its last.”).

67. See GOTTSCHALK, *supra* note 1, at 128 (“Since the mid-1990s, we have seen important shifts in drug enforcement policy as enthusiasm for the war on drugs has waned, and the push to provide alternatives to incarceration for drug offenders has gained momentum.”).

68. WENDY SAWYER & PETER WAGNER, PRISON POL’Y INITIATIVE, MASS INCARCERATION: THE WHOLE PIE 2024 (2024) [hereinafter THE WHOLE PIE 2024], <https://www.prisonpolicy.org/reports/pie2024.html> [<https://perma.cc/9448-KZ5D>] (“[T]he federal government and some states have taken an important step by reducing the number of people incarcerated for drug offenses”).

69. The law was conspicuously not drawn up to apply retroactively. See THE SENT’G PROJECT, FEDERAL CRACK COCAINE SENTENCING 1, 9 (2010), https://www.jstor.org/stable/pdf/resrep27326.pdf?refreqid=fastly-default%3Ace030e6de263b70da6f5beb27ad4af73&ab_segments=&initiator=&acceptTC=1 [<https://perma.cc/6RRF-W96D>] (“persons who committed a crack cocaine offense prior to the law’s enactment will not benefit from the reform, despite universal agreement that the old law was unwarranted”).

70. See U.S. SENT’G COMM’N, REPORT TO THE CONGRESS: IMPACT OF THE FAIR SENTENCING ACT OF 2010 11 (2015), https://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/drug-topics/201507_RtC_Fair-Sentencing-Act.pdf [<https://perma.cc/JJ8B-PQNZ>].

71. See Kara Gotsch, *One Year After the First Step Act: Mixed Outcomes*, THE SENT’G PROJECT (2019), <https://www.sentencingproject.org/publications/one-year-after-the-first-step-act/> [<https://perma.cc/G9NP-2ETY>].

at least slightly, from peak levels.⁷² And, shortly before leaving office, President Biden granted clemency to nearly 2,500 individuals convicted of nonviolent drug offenses.⁷³

One reality of reform success is that legislators and other decision-makers have often picked up nonviolent drug offenders as the incarcerated worth saving. In criminal justice reform's most salient moments, the support for revisiting our policies and practices with respect to this subgroup has been broad and bipartisan.⁷⁴ But drug offenders represent only 20% of prisoners, and only a subset are considered nonviolent.⁷⁵ The summoning of support for these prisoners did not generate momentum for those convicted of more serious offenses.⁷⁶ In voicing his support for drug sentencing reform, for example, President Obama himself declared that when it came to those convicted of more serious offenses, he had “no sympathy” and “no tolerance.”⁷⁷

Another example of the way in which progress for individuals convicted of nonviolent offenses led to a tradeoff dynamic with individuals convicted of serious offenses is in the justice reinvestment context. Initially pitched as a way to reduce burgeoning prison populations, preserve scarce state dollars, and reinvest funds in communities most in need of additional resources, justice reinvestment emerged as a popular response to the economic woes first brought on by the 2001 economic downturn and again by the 2008 Great Recession.⁷⁸ The reforms that receptive states ultimately adopted included: promoting alternatives to incarceration (treatment); funding more reentry services and supervision; and putting money into

72. NAZGOL GHANDNOOSH, THE SENT'G PROJECT, U.S. PRISON POPULATION TRENDS: MASSIVE BUILDUP AND MODEST DECLINE 1 (2019), <https://www.sentencingproject.org/wp-content/uploads/2019/09/U.S.-Prison-Population-Trends.pdf> [<https://perma.cc/Z2DL-VTFX>].

73. See Will Weissert, *Biden Sets Record by Commuting Sentences of Nearly 2,500 People Convicted on Nonviolent Drug Charges*, AP NEWS (Jan. 17, 2025), <https://apnews.com/article/biden-commutes-2500-nonviolent-drug-offenders-83174cd0602a0bf5d491aa60184f3568> [<https://perma.cc/F3U2-NMK4>].

74. See, e.g., Ted Cruz, *Reduce Federal Crimes and Give Judges Flexibility*, in SOLUTIONS: AMERICANS LEADERS SPEAK OUT ON CRIMINAL JUSTICE, *supra* note 60, at 34 (“Given the undeniable costs and dubious benefits of mass, long-term incarceration of nonviolent drug offenders, Congress should take steps to give judges more flexibility in sentencing those offenders.”).

75. Dara Lind, *Stop thinking nonviolent drug offenders are better than people who committed other crimes*, VOX (Aug. 18, 2015), <https://www.vox.com/2015/8/6/9101129/nonviolent-drug-prison> [<https://perma.cc/7NHT-8HAR>]; see also THE WHOLE PIE 2024, *supra* note 68 (noting one in five incarcerated people are incarcerated for a drug offense).

76. See *Racial Critiques of Mass Incarceration*, *supra* note 19, at 46 n.91 (“[D]espite my attempts to broaden the conversation [in a room full of civil rights and racial justice advocates], it remained rooted in the most comfortable place, with everyone condemning the War on Drugs and no one addressing the issue of violent crime.”).

77. FORMAN, *supra* note 1, at 230.

78. JAMES AUSTIN, ERIC CADORA, TODD R. CLEAR, KARA DANSKY, JUDITH GREENE, VANITA GUPTA, MARC MAUER, NICOLE PORTER, SUSAN TUCKER & MALCOLM C. YOUNG, ENDING MASS INCARCERATION: CHARTING A NEW JUSTICE REINVESTMENT 3 (2015), https://www.aclu.org/sites/default/files/assets/charting_a_new_justice_reinvestment_final.pdf [<https://perma.cc/9PQR-5Z2B>] (“Justice Reinvestment was developed as a public safety mechanism to downsize prison populations and budgets and re-allocate savings to leverage other public and private resources for reinvestment in minority communities disproportionately harmed by the system and culture of harsh punishment.”); Monica L. Bergeron, *Second Place Isn't Good Enough: Achieving True Reform Through Expanded Parole Eligibility*, 80 LA. L. REV. 109, 117–18 (2019) (describing popularity of justice reinvestment in light of the 2008 economic crisis).

police reform.⁷⁹ Some refer to the focal points of these reforms as “the three R’s—reentry, justice reinvestment, and recidivism,” which, for a time, “dominate[d] discussions of penal reform in Washington, DC and in many state capitals.”⁸⁰

It is fair to say, in some respects, that justice reinvestment enjoyed success. According to a 2018 report, “[s]ince 2007, 35 states have reformed their sentencing and corrections policies through the Justice Reinvestment Initiative, a public-private partnership that includes the U.S. Justice Department’s Bureau of Justice Assistance, The Pew Charitable Trusts . . . and other organizations.”⁸¹ Compared to the situation pre-adoption, these changes represented welcome developments. However, soberly evaluated, they did not meaningfully move the needle on mass incarceration.⁸² If unwinding mass incarceration was the primary goal, the reinvestment approach would go further, incorporating into its mission the plight of individuals serving the longest sentences for serious crimes.⁸³

The fulcrum of mass incarceration, long avoided or overlooked by earlier reforms, is “violent” crime.⁸⁴ It has been difficult to tackle this thorny but central issue, the consistent justification for punitive sentencing regimes for decades.⁸⁵ As

79. These reforms overlap considerably with the response to the War on Drugs. *See, e.g.*, Jessica M. Eaglin, *The Drug Court Paradigm*, 53 AM. CRIM. L. REV. 595, 603 (2016) (describing the rise of drug courts as an alternative to incarceration); David Cole, *Turning the Corner on Mass Incarceration?*, 9 OHIO ST. J. CRIM. L. 27, 32 (2011) (noting “states have shown increased interest in and directed increased resources toward reentry and reintegration programs”); Alex Kreit, *Drug Truce*, 77 OHIO ST. L.J. 1323, 1372 (2016) (noting the possibility of police reform and describing a “pilot program in which police officers divert certain low-level drug and prostitution offenders into treatment and services instead of arresting them”).

80. GOTTSCHALK, *supra* note 1, at 3.

81. PEW CHARITABLE TRS., 35 STATES REFORM CRIMINAL JUSTICE POLICIES THROUGH JUSTICE REINVESTMENT (2018), http://www.pewtrusts.org/-/media/assets/2018/07/pspp_reform_matrix.pdf [<https://perma.cc/WR35-AW88>].

82. GOTTSCHALK, *supra* note 1, at 1 (“reforms to reduce the number of people in jail and prison have been remarkably modest so far”). Gottschalk further notes that “the recidivism-reinvestment-reentry model of penal reform is not likely to result in a major retrenchment of the carceral state. Since the pernicious politics that gave birth to the carceral state remain fundamentally unchallenged, another burst of punitive law-and-order policymaking remains an imminent threat.” *Id.* at 19. *See also* AUSTIN et al., *supra* note 78, at 1, 3 (noting current reform efforts have been insufficient to bring sustained reductions in incarceration levels). The policy makers have made clear that the work excludes violent offenders. *See* PEW CTR. ON THE STATES, TIME SERVED THE HIGH COST, LOW RETURN OF LONGER PRISON TERMS 35 (2012), <http://www.pewtrusts.org/en/research-and-analysis/reports/2012/06/06/time-served-the-high-cost-low-return-of-longer-prison-terms> [<https://perma.cc/4FFK-TN3K>] (the emphasis on non-violent offenders overlooks the salience and scale of mass incarceration when including people convicted of violent offenses as well).

83. “States grappling with expanding prison populations will see their efforts to curb mass incarceration fall short unless reforms include those serving the longest prison terms.” COURTNEY ET AL., *supra* note 10, at 9. The same critique leveled here against justice reinvestment may apply, with slightly less force, to the “Smart on Crime” approach, which embraces the same priorities as justice reinvestment. *See* Ed Chung, *Smart on Crime: An Alternative to the Tough vs. Soft Debate*, CTR. FOR AM. PROGRESS (May 12, 2017), <https://www.americanprogress.org/issues/criminal-justice/news/2017/05/12/432238/smart-crime-alternative-tough-vs-soft-debate/> [<https://perma.cc/UR2K-PCKD>] (focusing on the same goals as justice reinvestment, including reentry, reducing recidivism, and decreasing punishment for nonviolent offenses).

84. *See* Hager, *supra* note 9; Ristroph, *supra* note 9, at 575.

85. “Violence stalks the criminal law. It lurks on the sidelines of most discussions of crime, and it sometimes pounces to claim center stage. Fear of crime, to a substantial degree, is fear of violence.” Ristroph, *supra* note 9,

a result, “[t]he beneficiaries of [] [most] reforms are most often those whom Marie Gottschalk calls the ‘non, non, nons’—‘nonviolent, nonserious, and nonsexual offenders.’ In other words, the beneficiaries appear to be only those who could not be imagined to pose any potential safety risk.”⁸⁶

It is difficult to point to any substantial change in front-end sentencing policy in recent years that has not been premised in part on the distinction between nonviolent and violent crime. Arizona’s Proposition 200, which passed in 1996, called for substance abuse treatment rather than prison for first- and second-time drug offenders but excluded individuals with a violent crime conviction or three or more prior drug possession convictions.⁸⁷ A similar proposition in California, Proposition 36, passed in 2000. It prohibited individuals with past violent felonies and those guilty of selling drugs illegally from choosing a community-based treatment option.⁸⁸ In 2010, the South Carolina legislature embraced the Omnibus Crime Reduction and Sentencing Reform Act, which reduced sentences for nonviolent offenders and reformed some probation and parole practices while simultaneously increasing sentences for certain violent crimes.⁸⁹ In 2017, Oklahoma ushered in the “The Parole of Aging Prisoners Act” to expand parole eligibility to inmates over fifty, but excluded individuals convicted of various serious offenses, meaning only one-quarter of the appropriately aged population could benefit.⁹⁰ Simply put, “almost all of the major criminal justice reforms passed in the last two decades explicitly exclude people accused and convicted of violent offenses.”⁹¹ Only recently have we begun to see a noticeable shift in the reach of such laws.⁹²

Emphasizing distinctions between those convicted of nonviolent offenses and violent offenses risks legitimizing the way in which the system treats people sentenced for serious offenses.⁹³ For some who do not wish to challenge mass incarceration’s ideology, that is the explicit goal: “the rhetoric and tactics used to push through reforms for lower-level offenses often explicitly involve imposing even

at 572; *see also id.* at 613 (“There is a widespread assumption that more policing, more prosecutions, and more punishment are the only measures that will effectively reduce violent crime. Proposals to reduce criminal sentences are countered with charges that leniency will unleash violence.”); *Racial Critiques of Mass Incarceration*, *supra* note 19, at 49 (“Since it is especially difficult to suspend moral judgment when the discussion turns to violent crime, progressives tend to avoid or change the subject.”).

86. Hanan, *supra* note 30, at 154.

87. *See* ARIZ. REV. STAT. ANN. § 13-901.01(2024); THE PRISON AND THE GALLOWS, *supra* note 35, at 258.

88. THE PRISON AND THE GALLOWS, *supra* note 35, at 258.

89. *See* Josh Gupta-Kagan, *The Intersection Between Young Adult Sentencing and Mass Incarceration*, 2018 WIS. L. REV. 669, 702 (2018).

90. *See* Bergeron, *supra* note 78, at 116.

91. ALEXI JONES, PRISON POL’Y INITIATIVE, REFORMS WITHOUT RESULTS: WHY STATES SHOULD STOP EXCLUDING VIOLENT OFFENSES FROM CRIMINAL JUSTICE REFORMS (2020), <https://www.prisonpolicy.org/reports/violence.html> [<https://perma.cc/D9HL-R8W5>].

92. *See infra* Part II.

93. THE PRISON AND THE GALLOWS, *supra* note 35, at 258 (“Many of these initiatives sanction throwing the book at drug dealers, recidivists, and violent offenders, thus reinforcing powerful stereotypes about crime and criminals that may help bolster the fundamental legitimacy of the carceral state.”).

harsher punishments on those convicted of violent crimes.”⁹⁴ This zero-sum thinking essentially telegraphs the following message: whatever consideration or mercy is given to the people convicted of nonviolent offenses can be rightfully withheld from the others. In short, the “larger group of violent offenders [is marked] as permanently out-of-bounds.”⁹⁵

Placing individuals convicted of serious offenses out of bounds exemplifies a punitive ideology aimed at the physical and conceptual exclusion of these people from society. It renders those serving the harshest sentences functionally invisible. The “permanent prisoner” is physically removed, isolated at a great distance from society.⁹⁶ Contact with the world is difficult, if not impossible. They are not just incapacitated, but they are also degraded. Our policies and correctional practices have made their suffering appear costless to society. It should be clear that at some point—the point that the length of incarceration exceeds any identifiable goal of punishment beyond pure retribution—we have crossed the line between punishment and torture.

The situation is disconcerting. As one commentator observes, “notwithstanding escalating lifer populations and the reality that life terms are draconian in nature and result, relatively few commentators focus on life sentences Even the American public seems little concerned over the potential that life sentences may be disproportionate and unnecessary.”⁹⁷ Professor Gottschalk has written that “[t]he prospects are bleak that the plight of lifers and the large number of other people serving extraordinarily long sentences will become a leading issue on the penal reform agenda any time soon.”⁹⁸ Ending mass incarceration requires the inclusion of these people, not only as a matter of numbers, but also because it challenges an enduring ideology of punitiveness that might flare up at any moment (and frequently does).⁹⁹

For a long time, politicians’ insistence on excluding people convicted of “violent crimes” from nearly every sentencing reform—along with their refusal to apply many reforms retroactively¹⁰⁰—made it seem as though the ideology of mass incarceration was unshakable. There was reason for despair: thousands upon

94. PFAFF, *supra* note 1, at 23.

95. FORMAN, *supra* note 1, at 230.

96. See generally Sharon Dolovich, *Creating the Permanent Prisoner*, in *LIFE WITHOUT PAROLE: AMERICA’S NEW DEATH PENALTY?* 96–99 (Charles J. Ogletree, Jr. & Austin Sarat eds., 2012) (discussing the concept of a permanent prisoner and how this operates in the American carceral system).

97. Melissa Hamilton, *Some Facts About Life: The Law, Theory, and Practice of Life Sentences*, 20 LEWIS & CLARK L. REV. 803, 805–06 (2016).

98. GOTTSCHALK, *supra* note 1, at 194.

99. *Id.* at 196–214 (describing the moral panic surrounding sex offenses); COURTNEY ET AL., *supra* note 10, at 9, 16.

100. See, e.g., Jeremy Haile, *Farewell, Fair Cruelty: An Argument for Retroactive Relief in Federal Sentencing*, 47 U. TOL. L. REV. 635, 636 (2016) (“Rarely, if ever, in the modern era, has Congress directly reduced statutory penalties for people serving time in federal prison.”).

thousands of teenagers and young adults sentenced in the 1980s and 1990s faced the prospect of dying behind bars in the coming decades.¹⁰¹ Yet, in recent years, some elected officials—often responding to the call of community activists and legal advocates—have confronted this reality and found ways to create change. Increasingly, decarceration efforts are recognizing the need to address the hundreds of thousands of people imprisoned for serious offenses and to challenge the ideology that justified their lengthy sentences. The work explored below reflects this shift and deserves close examination.¹⁰²

II. SECOND LOOK: A MOVEMENT TO RE-EXAMINE LENGTHY SENTENCES FOR SERIOUS OFFENSES

There are growing signs that both system actors and advocates are beginning to take aim at the punitive sentences driving mass incarceration. We cannot know yet the significance of these emerging efforts or how they might be shaped by, and shape, later events. But if mass incarceration is “the result of small, distinct steps, each of whose significance becomes more apparent over time, and only when considered in light of later events,” then it is possible that the work required to undo mass incarceration might look the same from a future vantage point.¹⁰³ The “quiet triumph of public policy” that has led to a 75% reduction in youth incarceration bears out this hope.¹⁰⁴ Given recent advances, it is an appropriate moment to distill what is happening, both to share observations that have not yet seeped fully into the scholarship and to create a real-time historical record so future reflections on this era accurately apprise its developments.¹⁰⁵

101. See generally KIDEUK KIM & BRYCE PETERSON, *URB. INST., AGING BEHIND BARS: TRENDS AND IMPLICATIONS OF GRAYING PRISONERS IN THE FEDERAL PRISON SYSTEM* (2014) (discussing the sentencing and health issues surrounding the aging prisoner population, particularly those who are aged 50 and older), <https://www.urban.org/sites/default/files/publication/33801/413222-Aging-Behind-Bars-Trends-and-Implications-of-Graying-Prisoners-in-the-Federal-Prison-System.PDF> [<https://perma.cc/Z3MV-NMHB>]; Jalila Jefferson-Bullock, *Quelling the Silver Tsunami: Compassionate Release of Elderly Offenders*, 79 OHIO ST. L.J. 937, 939 (2018) (“It is imperative, then, that any overhaul of criminal sentencing focuses on how to meaningfully address the graying of America’s prisons.”); Margaret Colgate Love & Cecelia Klingele, *First Thoughts About “Second Look” and Other Sentence Reduction Provisions of the Model Penal Code: Sentencing Revision*, 42 U. TOL. L. REV. 859, 860 (2011) (“[F]ront-end measures do not, however, address the situation of persons already in custody.”).

102. See FORMAN, *supra* note 1, at 237 (“[I]deas [that] would have been ridiculed as hopelessly naïve or softheaded as recently as a few years ago . . . now, for the first time in forty years, . . . are getting a hearing. The collective work ahead is to deepen and broaden these efforts, all the while ensuring that they don’t remain limited to the category of nonviolent offenders.”).

103. FORMAN, *supra* note 1, at 45.

104. See James Forman Jr., *What Happened When America Emptied Its Youth Prisons*, N.Y. TIMES MAG. (Jan 28, 2025) [hereinafter *Emptied Youth Prisons*], <https://www.nytimes.com/2025/01/28/magazine/juvenile-prison-crime-rates.html> [<https://perma.cc/UD2G-8ZE2>].

105. See Kevin R. Reitz, *Prison-Release Reform and American Decarceration*, 104 MINN. L. REV. 2741, 2742 (2020) (noting that prison release mechanisms “ha[ve] received little attention in contemporary analyses of mass incarceration”).

Although some leading thinkers, like Professor Gottschalk, identified early on the necessity of challenging harsh sentencing practices to substantially reduce the size of our prison populations,¹⁰⁶ it has taken some time for the movement more broadly to reach this critical juncture.¹⁰⁷ We should not overlook the advocates and organizations that have been faithfully building the informational and moral foundations needed to imbue the effort with some possibility of success.¹⁰⁸ It has been long said that individuals who are incarcerated lack both political influence and a constituency.¹⁰⁹ While that view captures truths about relative power, families of incarcerated people and formerly incarcerated people deserve recognition for working for decades to raise awareness and build political power. Organizations like FAMM (formerly known as Families Against Mandatory Minimums), Voice of The Experienced (VOTE), Free Hearts, Release Aging People from Prison (RAPP), California Coalition for Women Prisoners, Look 2 Justice, and informal groups of formerly incarcerated juvenile lifers and others responsible for some of the most exciting reforms described below, have been working for decades.¹¹⁰ They laid the groundwork.

There has been a subtle but crucial shift in momentum in favor of individuals serving long sentences for serious offenses. The voices of people incarcerated for two, three, four or more decades are beginning to reach our ears.¹¹¹ Some of those who expected to die in prison are being given a chance to come home. What is

106. Marie Gottschalk, *Dismantling the Carceral State: The Future of Penal Policy Reform*, 84 TEX. L. REV. 1693, 1693 (2006) (“Three features distinguish the U.S. carceral state: the sheer size of its prison and jail population; its reliance on harsh, degrading sanctions; and the persistence and centrality of the death penalty.”).

107. There has been a concerted and well-organized movement to fight the death penalty in the United States for several decades. The influence of that movement on America’s mass incarceration crisis has been the subject of some scholarship and debate. *See, e.g.*, THE PRISON AND THE GALLOWES, *supra* note 35, at 197–215.

108. One example is the ongoing influence of the anti-death penalty movement and the movement to end juvenile life without parole. *See infra* Part III.

109. *See* Sharon Dolovich, *Cruelty, Prison Conditions, and the Eighth Amendment*, 84 N.Y.U. L. REV. 881, 975 (2009) (“As a general matter, prisoners and their allies (family, friends, community) tend to be poor and without political resources. Prisoners’ disenfranchisement is captured most obviously in the realm of the ballot: In almost all states, incarcerated offenders cannot vote, and in many cases, people with felony convictions are unable to vote even after release. Prison inmates thus lack any political clout, and indeed are routinely scapegoated . . .”).

110. *See* Michelle Lewin & Nora Carroll, *Collaborating Across the Walls: A Community Approach to Parole Justice*, 20 CUNY L. REV. 249, 258 (2017) (“For decades, community organizations and many formerly incarcerated people have worked tirelessly to advocate for the decarceration of elders, fairer Parole Board practices, and legislative reform . . .”); *see also id.* at n.d1 (acknowledging RAPP); Shon Hopwood, *The Effort to Reform the Federal Criminal Justice System*, 128 YALE L.J. FORUM 791, 801 (2019) (acknowledging FAMM); Seema Tahir Saiffee, *Decarceration’s Inside Partners*, 91 FORDHAM L. REV. 53, 71 (2022) (acknowledging VOTE).

111. *See, e.g.*, Marcus Kondkar, Calvin Duncan, Alexander Stockton & Jesse Wegman, *They Know What They Did. They’d Like You to Know Who They’ve Become*, N.Y. TIMES (Aug. 1, 2023), <https://www.nytimes.com/2023/08/01/opinion/louisiana-angola-prison-mass-incarceration.html> [<https://perma.cc/X4ZK-3XBZ>]; THE VISITING ROOM PROJECT, <https://www.visitingroomproject.org/visiting-room> [<https://perma.cc/Q35F-Y8XB>] (last visited Oct. 7, 2025) (recorded video interviews of men serving life without parole sentences at Louisiana State Penitentiary); EAR HUSTLE, <https://www.earhustlesq.com/> [<https://perma.cc/V93J-M554>] (last visited Jan. 27, 2026) (successful podcast about prison life organized in part by prisoners). There has also been an encouraging rise in the publication of written work and legal scholarship by prisoners. *See* Terrell Carter &

most notable about this moment is the range of actors taking responsibility for dismantling our harsh sentencing regimes. It is not only formerly incarcerated people, the loved ones of people in prison, and defense attorneys, but also governors, lawmakers, district attorneys, and state court judges. They are promoting second look opportunities in courts, at parole boards, and through the exercise of clemency power. The term “second look” refers to mechanisms that reduce already-imposed sentences or otherwise enable the early release of prisoners.¹¹² These mechanisms include parole, court-based resentencings, commutations, and compassionate release.¹¹³ The progress these actors are making, however small numerically in the grand scheme, is beginning to deconstruct the most entrenched pathologies of mass incarceration. A second look movement has taken shape.¹¹⁴

A. Court-based Sentence Modifications

Courts, lawmakers, district attorneys, and defense lawyers aware of the need to reduce excessive sentences are increasingly looking to the courts as the appropriate venue to provide second looks based on extreme sentencing practices and unfair convictions from the past. Some state legislatures are passing new statutes to empower courts, prosecutors and/or defendants to bring petitions for resentencing on grounds not previously available in the law. In other instances, state supreme courts are holding prior sentences unconstitutional and ordering retroactive relief for those still serving them. And in local jurisdictions, prosecutors and defense attorneys are using existing post-conviction mechanisms to present resolutions to courts designed to redress longstanding, categorical harms.

These developments present courts with the opportunity to respond in a considered case-by-case manner to the broader crisis of extreme sentencing. In a recent annual address about the state of the judiciary, the Chief Judge of New York’s

Rachel López, *If Lived Experience Could Speak: A Method for Repairing Epistemic Violence in Law and the Legal Academy*, 109 MINN. L. REV. 1, 4 (2024) (describing the development of Participatory Law Scholarship).

112. Renagh O’Leary, *Compassionate Release and Decarceration in the States*, 107 IOWA L. REV. 621, 645 (2022) (“To maximize their potential as tools for decarceration, early release measures should seek to reduce the obstacles to release for people incarcerated for violent convictions. In other words, early release measures should be designed for the hardest cases. In evaluating early release measures, we should ask: how well does this legal mechanism work for people incarcerated for violent convictions? What changes are necessary to ensure that an early release measure reaches people incarcerated for violent convictions? This approach would align policy with demographic reality.”).

113. See, e.g., JORGE RENAUD, PRISON POL’Y INITIATIVE, EIGHT KEYS TO MERCY: HOW TO SHORTEN EXCESSIVE PRISON SENTENCES 4 (2018), <https://www.prisonpolicy.org/reports/longsentences.html> [<https://perma.cc/8W5Y-5YHU>]; Kathleen M. Ridolfi & Seth Gordon, *Gubernatorial Clemency Powers Justice or Mercy?*, CRIM. JUST. 26, 26–28 (2009) (defining commutations).

114. The characterization of the efforts identified below as a “movement” has thus far been articulated in only one report. See BECKY FELDMAN, THE SENT’G PROJECT, THE SECOND LOOK MOVEMENT: AN ASSESSMENT OF THE NATION’S SENTENCE REVIEW LAWS 4 (2024) (defining a second look mechanism as “[l]egislation authorizing judges to review sentences after a person has served a lengthy period of time”), <https://www.sentencingproject.org/reports/the-second-look-movement-a-review-of-the-nations-sentence-review-laws/> [<https://perma.cc/6GS6-Q66W>].

highest court, the New York Court of Appeals, underscored the importance of these efforts. One observer explained:

[Chief Judge] Wilson’s address was a profound, unprecedented, and welcome departure from the typical [State of the Judiciary in New York presentation] [T]he chief judge used the opportunity to issue a clarion call for judicial review of the massive sentences that have fueled the crisis of mass incarceration, exemplified by the almost 7,500 people serving life or long-term sentences in New York prisons.¹¹⁵

Of course, the crisis identified by Chief Judge Wilson is not limited to one jurisdiction. Neither is the response.

1. New Statutes¹¹⁶

i. Connecticut

Connecticut amended a sentence-modification law in 2021 to enable individuals who were convicted at a trial to petition a court to review their sentence, regardless of the sentence’s length, and without the consent of the prosecutor.¹¹⁷ The statute also allows individuals who pled guilty to a sentence of seven years or less to file such petitions.¹¹⁸ If the plea resulted in a sentence of more than seven years, then the state’s attorney must agree to seek review of the sentence.¹¹⁹ Under the law, courts can reduce sentences for “good cause,” which provides considerable discretion to the judge.¹²⁰ While this law and subsequent clarifications have significantly expanded the scope of second-look activity,¹²¹ the statute excludes all mandatory sentences from review. Nevertheless, anecdotal reports from defense attorneys suggest that the law is having a meaningful impact, leading to significant sentence reductions for eligible individuals.¹²²

115. Steve Zeidman, *All Inmates Deserve Their Second Look*, N.Y. DAILY NEWS (Feb. 11, 2025), <https://www.nydailynews.com/2025/02/11/all-inmates-deserve-their-second-look/> [https://perma.cc/9AV3-MXB9].

116. After this Article was submitted, the Delaware legislature passed Senate Substitute 1 for Senate Bill 10, and the governor signed it on July 14, 2025. This law appears to alter the sentence modification regime in a way that enables individuals who have served more than 25 years of long sentences to apply for a modification based on rehabilitation alone. *See* S. Substitute No. 1 for S.B. 10, 153d Gen. Assemb. (Del. 2025).

117. CONN. GEN. STAT. ANN. § 53a-39 (2021).

118. *See id.* at (a)–(b).

119. *See id.*

120. *See id.*

121. For example, a 2022 amendment clarified that the statute applied retroactively. *See* 2022 Conn. Acts 22-36 (Reg. Sess.).

122. *See* Ed Stannard, *A Connecticut Lawyer Has Gotten 522 Years Taken Off Prison Sentences. He’s Not Done.*, HARTFORD COURANT (July 25, 2022), <https://www.courant.com/2022/07/25/a-connecticut-lawyer-has-gotten-522-years-taken-off-prison-sentences-hes-not-done/> [https://perma.cc/EHF8-746N].

ii. California

California's legislature has enacted a number of reforms over the past decade that allow courts to revisit the sentences (and convictions) of people serving life without parole and other lengthy sentences. Among them, the California Racial Justice Act (RJA) (AB 2542), enacted in 2020,¹²³ is expected to have wide-reaching impacts since it prohibits the state from seeking convictions or imposing sentences based on race, ethnicity, or national origin.¹²⁴ It allows defendants to challenge racial discrimination at various stages of their case, including sentencing.¹²⁵ Initially, the RJA applied only prospectively to cases filed after January 1, 2021, but in 2022, the legislature expanded its scope with AB 256, making it retroactive in phases.¹²⁶ Individuals with prior convictions can now petition for relief if they can show racial bias affected their case, with priority given to those on death row.¹²⁷ The RJA and its retroactive application mark a major shift in California's efforts to address racial disparities in sentencing, providing new legal remedies for those harmed by past discrimination.

Additionally, Section 1170 of California's Penal Code, which allows courts to recall and resent a defendant within 120 days of sentencing or at any time upon recommendation from the Department of Corrections or the Board of Parole Hearings, was expanded in 2018 to include the district attorney of the sentencing county.¹²⁸ AB 2942 expanded this authority. It was championed by Santa Clara County district attorney Jeff Rosen in partnership with former San Francisco assistant district attorney Hillary Blout, after Rosen struggled to secure the release of a defendant in 2017 that his office had prosecuted, complaining the process required "legal gymnastics" and should be made easier.¹²⁹ In 2021, the California legislature created a County Resentencing Pilot Program to support and evaluate use of the law over a three-year-period.¹³⁰ A recent evaluation found the results of 1170

123. See 2020 Cal. Legis. Serv. (A.B. 2542) (West).

124. *But see* Colleen V. Chien, W. David Ball & William A. Sundstrom, *Proving Actionable Racial Disparity Under the California Racial Justice Act*, 75 U.C. L.J. 1, 4 (2023) ("But whereas many commentators predicted a flood of claims, there has only been a trickle. As of this writing, nearly three years after the enactment of the CRJA, there is only one published appellate decision pertaining to the sufficiency of statistical evidence required to make a CRJA claim.").

125. See 2020 Cal. Legis. Serv. (A.B. 2542) (West); CAL. PENAL CODE § 745(a)(4)(A) (West 2025).

126. See Assemb. B. 256 Analysis, 2022 Gen. Assemb., Reg. Sess. (Cal. 2022).

127. See CAL. PENAL CODE § 745(b) (West 2025); *id.* at (j)(2) (among incarcerated individuals, applying the law first to individuals on death row).

128. See CAL. PENAL CODE § 1170(d)(1) (renumbered § 1172 and amended by 2022 Cal. Legis. Serv. § 9 (A.B. 200)).

129. Kyle C. Barry, *A New Power for Prosecutors is on the Horizon—Reducing Harsh Sentences*, THE APPEAL (Sept. 7, 2018), <https://theappeal.org/a-new-power-for-prosecutors-is-on-the-horizon-reducing-harsh-sentences/> [<https://perma.cc/AN8Z-9GF8>].

130. LOIS M. DAVIS, LOUIS T. MARIANO, MELISSA M. LABRIOLA, SUSAN TURNER, ANDY BOGART, MATT STRAWN & LYNN A. KAROLY, RAND CORP., EVALUATION OF THE CALIFORNIA COUNTY RESENTENCING PILOT PROGRAM: YEAR 2 FINDINGS (Sep. 27, 2023), https://www.rand.org/pubs/research_reports/RRA2116-2.html [<https://perma.cc/HS5C-76GB>].

(d) resentencing “modest,”¹³¹ with over 87% of the 233 decided cases leading to resentencing and 174 individuals released.¹³² While notable, these outcomes stemmed from a review of 1,146 cases and came at a cost of \$28 million.¹³³ Given California has over 40,000 individuals serving long sentences—the largest in the country¹³⁴—the more cautious approach taken by most district attorneys will likely limit the law’s impact. Nevertheless, former District Attorney Chesa Boudin’s proactive use of the Act even before the pilot program rollout demonstrates its potential as a powerful resentencing tool. His office’s efforts are explored in more detail below.

iii. New York

In New York, the legislature passed the Domestic Violence Survivors Justice Act in 2019, allowing incarcerated domestic violence victims to petition to have their sentences reduced if there was a connection between the crimes they committed and the abuse to which they were subjected.¹³⁵ It expanded existing consideration for domestic abuse survivors to include offenses committed due to coercion by an abuser, as well as offenses committed against or at the behest of an abuser.¹³⁶ As of February 2024, The Sentencing Project reported that fifty-eight people had received relief under the Act.¹³⁷

iv. Oklahoma

In 2024, Oklahoma passed the Oklahoma Survivors’ Act, which requires sentencing reductions for individuals who can demonstrate that domestic violence or sexual abuse was a substantial contributing factor in their offense or criminal behavior.¹³⁸ The law also provides a mechanism for incarcerated survivors to petition for resentencing and potential release under the revised guidelines.¹³⁹ The law took effect on August 29, 2024.¹⁴⁰ While it is too early to know the impact of the

131. See *id.* (characterized the results as “modest” in a press release found at <https://www.rand.org/news/press/2025/02/california-prosecutor-initiated-resentencing-project.html> [<https://perma.cc/RVA6-SH6G>]).

132. *Id.* at 69.

133. *Id.* at vi–vii.

134. See NELLIS, STILL LIFE, *supra* note 14, at 10.

135. See N.Y. PENAL LAW § 60.12 (McKinney 2022); Jennifer Andrus, Taking Another Look: How the Domestic Violence Survivors Justice Act Works in Practice, NY STATE BAR ASSOC. (Feb. 26, 2024) https://nysba.org/taking-another-look-how-the-domestic-violence-survivors-justice-act-works-in-practice/?srsltid=AfmBOoqdQjyb0zwYrWFU3_DPeSVG4CP29a_AB8RavFrZcHP4alRjRcTE [<https://perma.cc/ZHB8-TC76>].

136. See Alice Samberg, *The Insufficiency of Battered Women’s Syndrome Evidence and the Need for Resentencing Legislation for Criminalized Survivors of Domestic Violence*, 25 NEV. L.J. 171, 190 (2024).

137. See FELDMAN, *supra* note 114, at 19.

138. See OKLA. STAT. ANN. Tit. 22, § 1090.4 (West 2025).

139. See OKLA. STAT. ANN. Tit. 22, § 1090.5 (West 2025).

140. See *id.* at n.1.

new law, as of February 2025 seven incarcerated women had filed for a sentence modification under the act and one of those seven had been released.¹⁴¹

v. Washington, D.C.

The Second Look Amendment Act (SLAA), passed in Washington, D.C. in 2021, expanded opportunities for individuals serving lengthy sentences to seek sentence reductions based on rehabilitation and maturity.¹⁴² The law builds on D.C.'s earlier Incarceration Reduction Amendment Act (IRAA) of 2016, which allowed individuals convicted of serious crimes before the age of eighteen to petition for resentencing after serving fifteen years.¹⁴³ The SLAA expanded eligibility to include those convicted of crimes before age twenty-five, recognizing that cognitive development continues into young adulthood.¹⁴⁴ Eligible individuals can petition the court for a sentence reduction after serving fifteen years, and judges are required to consider factors such as rehabilitation, maturity, and demonstrated growth.¹⁴⁵ Of the more than 500 people eligible for consideration under the Act, judges had ruled in around sixty-seven cases in the first year-and-a-half after the act passed, with forty-nine of those defendants granted release on supervised probation.¹⁴⁶

Also in 2021, the Council of the District of Columbia permanently enacted a law originally introduced in 2020 as an emergency response to COVID-19,¹⁴⁷ recognizing the need for mechanisms to reevaluate sentences for aging or seriously ill individuals.¹⁴⁸ The law allows courts to modify sentences for those who meet one of the following criteria: (i) individuals diagnosed with a terminal illness, (ii) elderly individuals, as defined by the statute, who suffer from a chronic or serious medical condition, or (iii) individuals with any other “extraordinary and compelling reason,” such as being the sole available caregiver for a child or a spouse.¹⁴⁹ By August 2022, the D.C. Compassionate Release Project had secured the release of fifteen individuals, seven of whom were serving life sentences.¹⁵⁰

141. Jordan Gerard, *Seven Women Say They Endured Domestic Violence, Then Prison. These Are Their Stories*, THE OKLAHOMAN (Feb. 6, 2025), <https://www.oklahoman.com/story/news/2025/02/06/oklahoma-survivors-act-seven-women-victims-abuse-file-resentencing/77746758007/> [<https://perma.cc/86UT-H4J6>].

142. *DC Council Passes Second Look Amendment Act of 2019*, DC CORR. INFO. COUNCIL (May 19, 2021), <https://cic.dc.gov/release/dc-council-passes-second-look-amendment-act-2019> [<https://perma.cc/82YM-6U7M>].

143. *See id.*; *see also* Cara H. Drinan, *Culpable Kids*, 12 TEX. A&M L. REV. 1373, 1387 n.117 (2025).

144. *See* D.C. CODE ANN. § 24-403.03 (West 2025).

145. *See id.*

146. *See* Sylvia A. Harvey, *After Decades in Prison, Should Adults Convicted as Teens Get a Second Chance? A Growing Number of State Laws Say Yes*, THE APPEAL (Feb. 6, 2023), <https://theappeal.org/second-look-sentencing-reform-cordell-miller/> [<https://perma.cc/PV33-RV8Z>].

147. 67 D.C. Reg. 4178 (Apr. 17, 2020).

148. *See* D.C. CODE ANN. § 24-403.04 (West 2025).

149. *Id.*

150. *Celebrate the Work in D.C. Compassionate Release*, NAT'L ASS'N OF CRIM. DEF. L. (Aug. 31, 2022), <https://www.nacdl.org/Content/DCCREvent> [<https://perma.cc/4DJW-HRQF>].

2. State Court Rulings

Many state constitutions contain Eighth Amendment analogs that provide broader protections than the U.S. Constitution. Following the U.S. Supreme Court's decisions in *Graham v. Florida*,¹⁵¹ *Miller v. Alabama*,¹⁵² and *Montgomery v. Louisiana*,¹⁵³ several state supreme courts have expanded the prohibition on mandatory life without parole (LWOP) for juveniles to include emerging adults under their state constitutions.¹⁵⁴ These rulings apply retroactively, allowing anyone who was below the age cutoff at the time of the offense to seek a modified sentence. States that have taken this approach include Massachusetts, Michigan, and Washington.

i. Massachusetts

In January 2024, the Massachusetts Supreme Judicial Court ruled in *Commonwealth v. Mattis* that sentencing individuals aged eighteen to twenty to life without the possibility of parole constitutes cruel and unusual punishment under the state constitution.¹⁵⁵ This landmark decision made Massachusetts the first state to categorically ban LWOP sentences for this age group, whether those sentences were mandatory or discretionary. The court recognized that late adolescents possess developmental characteristics similar to juveniles under eighteen, warranting comparable constitutional protections.¹⁵⁶ A recent media report indicates that the opinion made more than 120 individuals eligible for parole, though some have lodged complaints about the speed of the parole process.¹⁵⁷

151. *Graham v. Florida*, 560 U.S. 48, 74–75 (2010) (holding that the Eighth Amendment prohibits the imposition of life without parole sentences on juvenile offenders who were not convicted of a homicide offense).

152. *Miller v. Alabama*, 567 U.S. 460, 479 (2012) (holding that the Eighth Amendment prohibits the imposition of mandatory life without parole sentences for individuals under the age of eighteen at the time of their crimes).

153. *Montgomery v. Louisiana*, 577 U.S. 190, 208–09 (2016) (holding that the ruling in *Miller* was retroactively applicable to individuals whose convictions were final at the time *Miller* was decided).

154. Robert J. Smith, Zoë Robinson & Emily Hughes, *State Constitutionalism and the Crisis of Excessive Punishment*, 108 IOWA L. REV. 537, 575–76 (2023). A recent law review analysis of state courts found:

Very recently, several state courts have started to import the U.S. Supreme Court's categorical ban framework—a doctrine enriched by a deep commitment to enforcing constitutional liberty—when deciding cases under their respective state constitutions. This new approach reflects a growing openness to a more vigorous role for state judges in protecting against excessive punishment.

Id.

155. See *Commonwealth v. Mattis*, 224 N.E.3d 410, 428 (Mass. 2024).

156. *Id.* at 421 (“These structural and functional differences make emerging adults, like juveniles, ‘particularly vulnerable to risk-taking that can lead to poor outcomes.’”) (internal citation omitted). See *id.* at 428.

157. Sean Cotter, *7 youthful offenders convicted of murder who are suddenly eligible for parole say process is too slow*, BOS. GLOBE (Feb. 20, 2025), <https://www.bostonglobe.com/2025/02/19/metro/massachusetts-parole-lawsuit-youthful-offender-mattis/> [<https://perma.cc/M3RX-A4SW>] (“That decision, known as the Mattis decision, made more than 120 people who had already served at least 15 years suddenly due for parole hearings.”).

ii. Michigan

In 2022, the Michigan Supreme Court ruled in *People v. Parks* that mandatory LWOP sentences for eighteen-year-olds convicted of first-degree murder violate the state's constitutional prohibition against "cruel or unusual" punishment.¹⁵⁸ The court recognized that emerging adults share key developmental traits with juveniles under eighteen, including reduced impulse control, greater susceptibility to peer influence, and an increased capacity for change.¹⁵⁹ Relying on evolving neuroscience and precedent from the U.S. Supreme Court's juvenile sentencing cases, the Michigan justices determined that a categorical bar on mandatory LWOP for eighteen-year-olds was necessary to align sentencing with constitutional principles and rehabilitative justice.¹⁶⁰ In 2025, the Michigan Supreme Court made two important rulings: one held that *Parks* is retroactively applicable,¹⁶¹ and the other extended the *Parks* ruling to individuals aged nineteen and twenty.¹⁶²

iii. Washington State

In March 2021, the Washington Supreme Court ruled in *In re Personal Restraint of Monschke* that mandatory life without parole sentences for individuals aged eighteen to twenty violate the state's constitutional prohibition on cruel punishment.¹⁶³ This 5-4 decision made Washington the first state to extend protections against mandatory LWOP—previously limited to juveniles under eighteen—to emerging adults up to twenty-one. The court recognized that young adults share key developmental traits with younger adolescents, including ongoing neurological growth that affects judgment and impulse control, reducing culpability and increasing potential for rehabilitation.¹⁶⁴ While judges retain discretion to impose LWOP, the ruling eliminates its mandatory application for those under twenty-one.¹⁶⁵

iv. Felony Murder

Another area where state supreme courts have intervened in recent years to narrow overly broad statutory schemes is felony murder. Broadly speaking, felony

158. *People v. Parks*, 987 N.W.2d 161, 183 (Mich. 2022).

159. *See id.* at 178–79.

160. *See id.* at 166–76; 182–83.

161. *People v. Poole*, No. 166813, 2025 WL 978646, at *9 (Mich. Apr. 1, 2025).

162. *People v. Taylor*, No. 166428, 2025 WL 1085247, at *16 (Mich. Apr. 10, 2025).

163. *See In re Monschke*, 482 P.3d 276, 288 (Wash. 2021).

164. *See, e.g., id.* at 277, 284–86 (citing "[m]odern social science" as a basis for the ruling).

165. The Washington legislature has not addressed a perceived sentencing inequity that advocates have raised in light of *Monschke*: youth under 21 who have been convicted of lesser crimes than aggravated murder do not have the ability to seek sentence reductions. Some individuals who have been resentenced under *Monschke* are now serving shorter sentences than counterparts convicted of less serious offenses. *See* Kevin Light-Roth, 'They Can't Go Home Because They Didn't Commit Enough Crime', RANGE MEDIA (Feb. 25, 2025), <https://rangemedia.co/they-cant-go-home-because-they-didnt-commit-enough-crime/> [<https://perma.cc/PX5L-A9LE>].

murder is defined as a homicide that occurs during the commission or attempted commission of a felony, regardless of whether the defendant intended to kill. In *People v. Banks* (2015) and *People v. Clark* (2016), the California Supreme Court ruled that the prosecution must show the defendant was a “major participant” in the underlying felony and acted with “reckless indifference to human life” in order to sustain a felony murder conviction.¹⁶⁶ Courts in Pennsylvania¹⁶⁷ and Michigan¹⁶⁸ are also currently considering the constitutionality of their felony murder statutes.

By contrast, the Colorado Supreme Court recently upheld its felony murder law against a state constitutional challenge.¹⁶⁹ Still, it is clear that the scope of felony murder liability has become a matter of growing concern among jurists grappling with lengthy sentences imposed on individuals for killings they neither committed nor intended.

3. Joint Resolutions Between the State and the Defense

In a 2019 opinion piece for *The New York Times*, Professor James Forman Jr. and Sarah Lustbader describe the vast swathes of people who will die in prison, unable to get a second look at their sentence because of the failure of parole, clemency, and other back-end relief mechanisms. In view of this mounting disaster, “[p]rosecutors can recognize their role in creating the crisis and work toward fixing it.”¹⁷⁰ With support from their local electorates, district attorneys in some of America’s largest jurisdictions are seeking ways to redress past harms carried out by their offices in the form of excessively long sentences.¹⁷¹ Given the power and

166. *People v. Banks*, 351 P.3d 330, 335 (Cal. 2015) (requiring major participation); *People v. Clark*, 372 P.3d 811, 882 (Cal. 2016) (requiring reckless indifference to human life).

167. Alicia Bannon, *Is a Life Sentence for ‘Felony Murder’ Unconstitutional?*, STATE CT. REP. (Oct. 18, 2024), <https://statecourtreport.org/our-work/analysis-opinion/life-sentence-felony-murder-unconstitutional> [<https://perma.cc/V3GP-9EEH>].

168. Rick Pluta, *Michigan Supreme Court to Hear Arguments About Felony Life Without Parole*, DETROIT PUB. RADIO (Apr. 1, 2025), <https://wdet.org/2025/04/01/michigan-supreme-court-to-hear-arguments-about-felony-life-without-parole/> [<https://perma.cc/T3FD-EYBQ>].

169. Kyle C. Barry, *Colorado Supreme Court Rejects Challenge to ‘Felony-Murder’ Rule*, STATE CT. REP. (June 18, 2024), <https://statecourtreport.org/our-work/analysis-opinion/colorado-supreme-court-rejects-challenge-felony-murder-rule> [<https://perma.cc/44RB-2LC9>].

170. James Forman Jr. & Sarah Lustbader, *Every D.A. in America Should Open a Sentence Review Unit*, N.Y. TIMES (Aug. 1, 2019), <https://www.nytimes.com/2019/08/01/opinion/mass-incarceration-prosecutors-sentencing.html> [<https://perma.cc/9AMU-DUSZ>].

171. See, e.g., Rebecca S. Goldstein, *Toplash: Progressive Prosecutors Under Attack from Above*, 61 AM. CRIM. L. REV. 1157, 1181–82 (2024) (“One result of the progressive turn in America’s urban areas is that those areas sometimes elect very progressive public officials, including district attorneys . . . [.] Progressive prosecutors’ jurisdictions now include tens of millions of Americans.”); Amanda Robert, *Redefining Justice: Revising Sentences: Prosecutors Are Working Toward the Release of the Longest-Serving Inmates*, 107 ABA J. 50, 52 (2021) (“Mosby’s office joined others—including the King County Prosecuting Attorney’s Office in Seattle and the Los Angeles County District Attorney’s Office—that have established sentence review units. The Brooklyn District Attorney’s Office in New York City, the San Francisco District Attorney’s Office and the Philadelphia District Attorney’s Office also focus on resentencing.”).

deference generally afforded to prosecutors, the efforts of DAs to employ new laws or change existing policies to seek lesser sentences have often proven successful, and proposed reforms show further promise.¹⁷²

i. Baltimore

In 2020, Baltimore City State’s Attorney Marilyn Mosby established a Sentencing Review Unit (SRU) within her office aimed at addressing the excessive sentencing practices of the office that disproportionately affected Black and Brown communities.¹⁷³ The SRU prioritized cases involving individuals who committed offenses as minors, recognizing that juveniles possess a unique capacity for change.¹⁷⁴ At the time of the SRU’s inception, Maryland had approximately 300 juvenile lifers, many of whom were effectively serving life without parole due to stringent parole processes.¹⁷⁵ By November 2022, the SRU’s work had resulted in fifty releases.¹⁷⁶

ii. Durham

Since taking office as Durham County District Attorney in 2019, Satana Deberry has shown a commitment to reviewing cases involving lengthy sentences for potential inequities, using Motions for Appropriate Relief (MARs)—legal requests to correct errors from previous proceedings—to reduce sentences in several cases.¹⁷⁷ Emphasizing her belief that a prosecutor’s role extends beyond securing convictions to ensuring justice, she has sought to rectify excessive sentences from the past and convictions won on the back of prosecutorial misconduct, including cases involving murder and rape convictions.¹⁷⁸ While her office does not keep

172. A great deal has been written in the past few years about the rise of “progressive prosecutors.” *E.g.*, Note, *The Paradox of “Progressive Prosecution”*, 132 HARV. L. REV. 748, 750 (2018) (noting that “[a]cross the country, voters are electing nontraditional prosecutors.”); *see generally* David Alan Sklansky, *The Changing Political Landscape for Elected Prosecutors*, 14 OHIO ST. J. CRIM. L. 647 (2017) (exploring questions addressing whether we have entered a new era of prosecutor elections).

173. *See* BALT. CITY STATE’S ATT’Y’S OFF., SENTENCING REVIEW UNIT FACTSHEET (2020), https://www.stattorney.org/images/SRU_-_Factsheet_224.pdf [<https://perma.cc/98K6-G8BR>].

174. Robert, *supra* note 171, at 56 (describing importance of juvenile lifer cases).

175. John Yang, *In Maryland, Many Juvenile Offenders Languish In Prison Without Parole*, PBS NEWS (Dec. 10, 2019), <https://www.pbs.org/newshour/show/in-maryland-many-juvenile-offenders-languish-in-prison-without-parole> [<https://perma.cc/F3AW-ZGHE>].

176. Alyssa Eng, *Maryland State Attorney Sentencing Review Unit Achieves New Milestone*, VANGUARD NEWS GRP. (Nov. 26, 2022), <https://davisvanguard.org/2022/11/maryland-state-attorney-sentencing-review-unit-achieves-new-milestone/> [<https://perma.cc/9MZL-2RBA>].

177. *See* Lena Geller & Michael Hewlett, *Prosecutorial Discretion*, THE ASSEMBLY (Feb. 7, 2024), <https://www.theassemblync.com/politics/satana-deberry-durham-attorney-general/> [<https://perma.cc/A7JZ-5PAZ>]; *see also* Christina Carrega, *This Law Gives Prosecutors Authority to Reduce Mass Incarceration*, CAP. B NEWS (Oct. 6, 2023), <https://capitalnews.org/prosecutor-resentencing-law/> [<https://perma.cc/3BKZ-PASY>].

178. *See* Geller & Hewlett, *supra* note 177 (“‘Some of the cases that we’re resentencing are from times in which we know there was prosecutorial misconduct,’ Deberry says. ‘This job is not about convicting people. It’s about getting to the truth.’”).

data on the number of cases it resolves using MARs, individual reports suggest Deberry is using MARs in cases involving serious offenses.¹⁷⁹ In addition, by May 2020, her office had used MARs to provide relief to at least fourteen individuals in response to the COVID-19 crisis.¹⁸⁰ At least ten additional people were released through COVID-based advocacy in the year that followed, and dozens of individuals have received justice through MARs since DA Deberry took office.¹⁸¹

iii. New Orleans¹⁸²

The District Attorney in Orleans Parish, Jason Williams, campaigned in part on a commitment to revisit the past harms perpetrated by the prosecutor's office.¹⁸³ New Orleans has been known for its marked history of mass incarceration, wrongful convictions, and prosecutorial misconduct, among other ailments that plague the criminal legal system.¹⁸⁴ Upon entering office, Williams launched a new Civil Rights Division to take on the task of past harm reduction.¹⁸⁵ To effectuate the office's goals, the division utilized the prosecutor's ability to enter into post-conviction plea agreements, waive procedural objections to post-conviction applications, and revisit discretionary enhancements to reexamine old cases.¹⁸⁶ Through its case-by-case approach, the division ultimately intervened in over 350 cases,¹⁸⁷ typically resulting in judicially-approved remedies that entailed sentence reductions.¹⁸⁸ These interventions—almost entirely in cases with life-without-parole or

179. See Virginia Bridges, 'It Made Me Feel Erased.' *NC Victims Outraged After Assailants Leave Prison Early*, NEWS & OBSERVER (May 10, 2022), <https://www.newsobserver.com/news/local/crime/article260887332.html> [<https://perma.cc/W33K-HAW2>].

180. See *Consenting to Relief to Remove Vulnerable People from Prison*, WILSON CTR. FOR SCI. AND JUST. (Apr. 23, 2020), <https://wcsj.law.duke.edu/news/consenting-to-relief-to-remove-vulnerable-people-from-prison/> [<https://perma.cc/YG2B-G3B5>].

181. Additional information on file with the Wilson Center. See *id.*

182. One of this Article's co-authors, Bidish Sarma, worked as an Assistant District Attorney in the Civil Rights Division of the Orleans Parish District Attorney's office from 2021 to 2024.

183. See Oliver Laughland, *Inside the division: how a small team of US prosecutors fight decades of shocking injustice*, THE GUARDIAN (May 6, 2022), <https://www.theguardian.com/us-news/2022/may/06/prosecutors-new-orleans-mass-incarceration> [<https://perma.cc/6SBB-477N>] ("The [election] result shook the political establishment of New Orleans and made Williams something of an exception among prosecutors in the US south: an outspoken Black reformer operating in the center of America's mass incarceration crisis.").

184. See, e.g., Ellen Yaroshesky, *New Orleans Prosecutorial Disclosure in Practice After Connick v. Thompson*, 25 GEO. J. LEGAL ETHICS 913, 920–22 (2012).

185. See Laughland, *supra* note 183.

186. See Piper French, *In Quest to Restart Executions, Louisiana is Restricting Prisoners' Ability to Challenge Convictions*, BOLTS (July 2, 2025), <https://boltsmag.org/louisiana-limiting-post-conviction-relief-murrill-landry/> [<https://perma.cc/XFG4-7MD3>].

187. See G. Ben Cohen, *The Promise of Progressive Prosecution*, 77 RUTGERS U. L. REV. 1, 23, 30, 38 (2024) (noting over 350 interventions by the Civil Rights Division).

188. See, e.g., Tatyana Tandanpolie, *Progressive New Orleans DA Wants to Address "Sins of the Past." Republicans are Trying to Stop Him*, SALON (Sept. 5, 2024), <https://www.salon.com/2024/09/05/progressive-new-orleans-da-wants-to-address-sins-of-the-past-are-trying-to-stop-him/> [<https://perma.cc/3TN6-HJ3T>].

life-equivalent sentences—brought about a notable reduction in the jurisdiction’s prison population.¹⁸⁹

iv. San Francisco

Former San Francisco District Attorney Chesa Boudin had set himself apart by committing to reviewing the sentences of many individuals serving a prison term out of his jurisdiction to determine whether their continued imprisonment served the interests of justice.¹⁹⁰ By July 2020, just six months into his tenure, reports showed that San Francisco had resentenced and released fifteen people under then-Penal Code 1170(d)—more than all other counties in California combined.¹⁹¹ Within two years, by May 2022, his office had resentenced seventy individuals.¹⁹² Boudin’s approach demonstrates that a district attorney willing to take stock of, and responsibility for, past actions of his office could make great use of the resentencing law, even without the dedicated funding later provided by the pilot program.

v. Observations About These Resolutions

While district attorneys who have taken less punitive approaches to charging and sentencing decisions have faced political headwinds in some jurisdictions,¹⁹³ it is notable that initiatives to reduce sentences for people who have already served decades in prison have often been key to their electoral platform and, once implemented, have rarely been the subject of public criticism.¹⁹⁴ In other words, it does not appear that second-look activity has been a notable source of public discontent.

189. The state’s high court eventually curtailed the law providing for post-conviction plea agreements in the absence of a judicial grant of post-conviction relief. *See State v. Lee*, 370 So. 3d 408, 410 (La. 2023). After a new governor took office in 2024, the state’s legislature passed a law that eliminated the power of District Attorneys to waive procedural bars in post-conviction proceedings, effectively closing the door on further local interventions. *See* 2024 La. Sess. Law Serv. H.B. 4 (West); Desiree Stennett, *How a New Law Limits Relief for Prisoners in Louisiana, Even If They are Innocent*, THE ADVOCATE (Aug. 1, 2024), https://www.nola.com/news/courts/post-conviction-relief-reform-louisiana/article_f363c5b2-4eaa-11ef-a2e5-5bb2ff3deae2.html [<https://perma.cc/J3VK-P2N9>]; French, *supra* note 186 (explaining how the governor and attorney general sought to disrupt the Orleans Parish District Attorney).

190. Mary McInerney, *USF Law Students Challenge Criminal Injustice*, UNIV. SAN FRANCISCO (Sept. 21, 2020), <https://www.usfca.edu/news/challenging-criminal-injustice> [<https://perma.cc/8LGE-FBU3>].

191. *See* David Greenwald, *San Francisco DA Looks to Resentence Incarcerated People Under New State Law*, VANGUARD NEWS GRP. (July 20, 2020), <https://www.davisvanguard.org/2020/07/san-francisco-da-looks-to-re-sentence-incarcerated-people-under-new-state-law/> [<https://perma.cc/6U8R-P5JG>].

192. Data for this claim is on file with the authors.

193. For a helpful discussion of this particular topic, *see* Benjamin Levin, *Prosecuting the Crisis*, 50 FORDHAM URB. L.J. 989, 999 (2023) (observing that “huge conversations about social policy are too easily sublimated into debates about criminal law enforcement”).

194. In Louisiana, the post-conviction work that was being done in New Orleans before the state legislature changed the relevant laws became the subject of some political attacks. As media reports explain, the criticism being levied there was not raised by individuals in the local jurisdiction, but instead by outsiders who have sought to undermine local autonomy. *See* Tandanpolie, *supra* note 188; French, *supra*, note 186. This is a prime

Considering that “the current media climate and the way that we consume information strike me as particularly susceptible to the crisis frame,” this relative quiet could be fairly interpreted as evidence of neutrality, if not tacit support.¹⁹⁵

In addition to efforts endorsed or initiated by prosecutors, novel defense-initiated efforts are also creating new possibilities for relief for individuals convicted of serious offenses. These efforts are reinvigorating already available legal mechanisms to initiate judicial proceedings that can prompt an assessment of whether the harsh sentence imposed many years ago remains appropriate. These retrospective judicial assessments provide an opportunity for the system to reconsider a punishment that, at the time of imposition, represented an “irrevocable judgment about that person’s value and place in society.”¹⁹⁶ While the cooperation of prosecutors—who retain extensive hard and soft power in the criminal legal system¹⁹⁷—is often key to making these resolutions possible, they originate with defense advocates, who take the lead on uncovering the injustice, building the case, and bringing it to the system’s attention.¹⁹⁸

A number of states have recently enacted legislation to provide greater discretion to courts to revisit sentences.¹⁹⁹ Some of these laws allow district attorneys to petition the court for reduced sentences in cases of defendants whose continued incarceration they have decided no longer serve the interests of justice or whose

example of what one scholar has described as the largely antidemocratic trend of “toplash.” See Goldstein, *supra* note 171, at 1189 (exploring the “weak democratic pedigree of some forms of state-level toplash”).

195. Levin, *supra* note 193, at 995.

196. *Graham v. Florida*, 560 U.S. 48, 74 (2010).

197. See, e.g., David Alan Sklansky, *The Nature and Function of Prosecutorial Power*, 106 J. CRIM. L. & CRIMINOLOGY 473, 480 (2016) (“The starting point for virtually every discussion of prosecutors in the United States is their tremendous clout.”).

198. Examples include the work of the Beyond Guilt project (a part of the Ohio Justice & Policy Center), which uses litigation tools to support prisoners who have taken responsibility for the crime of conviction, have served a substantial part of their lengthy sentence, and have a record of rehabilitation. The project makes creative use of a rule of civil procedure, Ohio Civil Rule 60(B) to reopen criminal cases in a habeas posture. Their successes include the cases of Carin Madden and Aura Morales. Franny Lazarus, Ohio State professor curates ‘Beyond Guilt’ exhibition, OHIO STATE NEWS (Oct. 05, 2022), <https://news.osu.edu/ohio-state-professor-curates-beyond-guilt-exhibition/>. Similarly, lawyers with the Southern Center for Human Rights in Georgia have filed extraordinary motions for new trial to give case-by-case judicial retroactive effect to nonretroactive changes the legislature has adopted and apply new scientific evidence to past cases. Successes include the cases of Sheila Denton and Danyel Smith. See The Human Rights Report: Annual Newsletter of the Southern Center for Human Rights, SOUTHERN CTR. FOR HUM. RTS., 13 (Apr. 2020) <https://www.schr.org/wp-content/uploads/2020/06/2020-Human-Rights-Report.pdf> [<https://perma.cc/NV5J-H95X>]; Georgia Supreme Court Vacates Trial Court’s Ruling, Finding that it Failed to Apply the Correct Legal Framework in Denying a New Trial in the Case of a Father Convicted of Killing His Infant Son on “Shaken Baby Syndrome” Theory, SOUTHERN CTR. FOR HUM. RTS. (Oct. 15, 2025) <https://www.schr.org/georgia-supreme-court-vacates-trial-courts-ruling-finding-that-it-failed-to-apply-the-correct-legal-framework-in-denying-a-new-trial-in-the-case-of-a-father-convicted-of-killing-his-infant-s/> [<https://perma.cc/WB7M-XJWK>].

199. These laws are often called Prosecutor-Initiated Resentencing laws. A non-profit organization called For the People has coordinated and led efforts to pass and utilize such laws. See Hillary Blout, Opinion, *Thousands of incarcerated people deserve to come home. Here’s how prosecutors can help.*, WASH. POST (Dec. 13, 2021), <https://www.washingtonpost.com/opinions/2021/12/13/prosecutor-initiated-resentencing-early-release-incarcerated-california/> [<https://perma.cc/R32Y-UNHX>].

sentences are unduly harsh by today's standards. In addition to California, mentioned above, these states include Illinois, Minnesota, Oregon, and Washington.²⁰⁰ While a smart policy measure, these reforms require DAs to take them up in order to actually reduce mass incarceration, and their implementation has been spotty.²⁰¹ A recent study concluded that "resentencing initiatives" in these jurisdictions "are at too early a stage to predict where on this line they are likely to settle. At the moment, numerous jurisdictions show a willingness to experiment with this idea, helped along by national advocacy groups and early success stories."²⁰² In short, while these reforms hold significant potential, their real-world impact is not guaranteed. Nevertheless, some district attorneys, including several mentioned above, have demonstrated that meaningful resentencing work can occur at a significant scale without new legislation.

B. Gubernatorial Clemency

Governors possess clemency and commutation authority, which they can use to modify lengthy sentences already imposed. "Executive clemency refers to the authority of a state leader to modify the terms of a court-ordered sentence or punitive measure. It can come in the form of a pardon, commutation, reprieve It is one of the oldest forms of government action."²⁰³

Governors consider multiple factors when granting commutations of sentence, particularly for individuals serving time for serious offenses.²⁰⁴ Key considerations include demonstrated rehabilitation, such as participation in educational or vocational programs and a positive disciplinary record, as well as whether the sentence is excessive or disproportionate compared to similar cases. Youthfulness at the time of the crime and evolving legal standards on culpability may also play a role, along with the amount of time served and whether the individual would now be parole-eligible under current laws. Governors assess the nature and circumstances of the offense, weighing the severity of the crime against the individual's risk to public safety. Support for release from correctional officials, legal advocates, victims, or victims' families can strengthen a petition, as can health or humanitarian considerations, such as terminal illness or advanced age. Additionally, governors may take into account racial or systemic inequities, particularly if sentencing laws have changed or new legal standards have emerged. Collectively, these factors are core

200. See FELDMAN, *supra* note 114, at 20–24.

201. See Kay L. Levine & Ronald F. Wright, *Between Cooperation and Conflict in Second Look Sentence Review*, 25 CARDOZO J. CONFLICT RESOL. 289, 294 (2023) (noting these mechanisms "[D]o[] not always produce quick or transformative results. Even when prosecutors and defense lawyers agree on the larger objectives of resentencing, they can get stuck on many details of implementation.").

202. See *id.* at 331.

203. Rachel E. Barkow & Mark Osler, *Clemency*, 7 ANN. REV. CRIMINOLOGY 311, 312–13 (2024).

204. For a thorough analysis of the way clemency functions see generally Daniel T. Kobil, *The Quality of Mercy Strained: Wrestling the Pardoning Power from the King*, 69 TEX. L. REV. 569 (1991).

to the idea of giving an individual a second look after they have served a significant amount of time in prison and demonstrated their capacity to grow and change.

For purposes of the second look movement, “in a relatively large number of states, including California, Illinois, Connecticut, Louisiana, Virginia, Arkansas, Alabama, and Oklahoma, governors have been granting an unprecedented number of commutations and pardons in recent years.”²⁰⁵ This is an important development; for a period of decades, “the clemency power has been significantly underutilized.”²⁰⁶ Some of the states leading the shift towards greater utilization of clemency powers are considered below in turn.

1. California

As of March 2024, Governor Gavin Newsom had issued 141 commutations to individuals in California prisons, including those convicted of serious offenses such as first-degree and second-degree murder, armed robbery, and kidnapping.²⁰⁷ Some recipients were serving life without parole, and others were juveniles or young adults at the time of their crimes.²⁰⁸ Regarding clemency, Newsom has stated that it serves as “an important part of the criminal justice system that can incentivize accountability and rehabilitation . . . and correct unjust results in the legal system.”²⁰⁹

2. Illinois

“In the first three years of his term, Pritzker commuted the sentences of 100 people,” including those for murder and armed robbery offenses.²¹⁰ Though the rate of commutations has drastically slowed since that time—in part due to backlash from

205. Mark Cebert & Aliza B. Kaplan, *Governor Kate Brown of Oregon’s Historic Use of Clemency: Using Clemency Exactly as It Was Intended*, 28 LEWIS & CLARK L. REV. 521, 541 (2024).

206. Ridolfi & Gordon, *supra* note 113, at 32.

207. Andrew Sheeler, *Gavin Newsom Grants Clemency to Dozens, Including One Sacramento-area Man Convicted of Murder*, SACRAMENTO BEE (Mar. 30, 2024), <https://www.sacbee.com/news/politics-government/capitol-alert/article287238865.html> [<https://perma.cc/H2ZC-PP2T>].

208. Joe Garcia, *He Confessed to a Killing at 21. Is It Time for California to Give Him a Second Chance?*, CAL MATTERS (July 30, 2025), <https://calmatters.org/justice/2025/07/life-without-parole/> [<https://perma.cc/VDG8-YTKP>] (“Gov. Gavin Newsom has commuted the sentences of 141 people since the beginning of his term in 2019, including 49 serving life without parole. Of those, 33 committed their crimes when they were 25 or younger, according to an analysis of executive clemency reports.”).

209. Brian Day, *California governor pardons five military veterans*, DESERT SUN (Nov. 11, 2024), <https://www.desertsun.com/story/news/nation/california/2024/11/11/happy-veterans-day-2024-gif-california-governor-pardons-five-military-veterans/76205124007/> [<https://perma.cc/H5H6-AVXG>] (quoting a statement from the governor’s office.).

210. Shawn Mulcahy, *How Political Games Hamstrung Illinois’ Parole Board—Trapping Thousands in Prison*, THE APPEAL (Dec. 12, 2024), <https://theappeal.org/pritzker-illinois-parole-pardons-board-prb/> [<https://perma.cc/DRB8-LLTC>]; Christy Gutowski, *Gov. J.B. Pritzker quietly grants clemency requests to Illinois prisoners amid coronavirus pandemic, including one released Thursday who had been serving life*, CHI. TRIB. (Apr. 9, 2020 7:10 PM CDT), <https://www.chicagotribune.com/2020/04/09/gov-jb-pritzker-quietly-grants-clemency-requests-to-illinois-prisoners-amid-coronavirus-pandemic-including-one-released-thursday-who-had-been-serving-life/> [<https://perma.cc/ZW6B-2VDH>].

conservative lawmakers²¹¹—his earlier actions saw tens of individuals serving long and life sentences have their sentences reduced.

3. Louisiana

By the end of his eight-year term, Louisiana Governor John Bel Edwards had commuted hundreds of sentences, primarily for individuals serving life without parole, who make up a disproportionately large share of the state's prison population.²¹² These commutations granted recipients eligibility for parole consideration, offering a pathway to potential release.²¹³ In his final year alone, he issued 123 commutations, largely converting life sentences for long-serving individuals convicted of murder into fixed terms of thirty-five to ninety-nine years following recommendations from his pardon board.²¹⁴

4. Oregon

During her tenure from 2015 to 2023, Oregon Governor Kate Brown issued over a thousand acts of clemency, granting more executive mercy than all of her predecessors in the past fifty years combined.²¹⁵ Specifically, she provided commutations to over 144 individuals convicted of serious crimes, including murder, who demonstrated exceptional rehabilitation.²¹⁶ Among those whose sentences she commuted were more than seventy individuals originally sentenced to life without parole or lengthy prison terms for crimes committed as juveniles, as well as all seventeen people who were on death row.²¹⁷ Her actions played a significant role in reducing Oregon's prison population, marking a historic shift during her time in office.²¹⁸ Explaining her use of clemency, Brown stated, “[w]e are a nation of second chances.”²¹⁹

211. See Mulcahy, *supra* note 210.

212. See, e.g., Cebert & Kaplan, *supra* note 205, at n.128; John Simerman & James Finn, *On way out, Gov. John Bel Edwards ramps up relief for life prisoners*, NEW ORLEANS ADVOC. (Dec. 30, 2023), https://www.nola.com/news/politics/gov-john-bel-edwards-ramps-up-relief-for-life-prisoners/article_820d615a-a727-11ee-9fa9-8b5a45caedc1.html [<https://perma.cc/BAZ4-UB8T>].

213. See Simerman & Finn, *supra* note 212; see also Lea Skene & Sam Karlin, *Gov. John Bel Edwards commuted 36 prison sentences in 2020. Here's the story of one freed inmate.*, THE ADVOC. (Jan. 18, 2021), https://www.theadvocate.com/baton_rouge/news/article_d22aeabe-56ac-11eb-9ddb-5349be769cc2.html [<https://perma.cc/A28Q-9GE8>].

214. See Simerman & Finn, *supra* note 212.

215. Amanda Waldroupe, *The story of one US governor's historic use of clemency: 'We are a nation of second chances'*, THE GUARDIAN (Sept. 28, 2022), <https://www.theguardian.com/us-news/2022/sep/28/oregon-governor-kate-brown-clemency> [<https://perma.cc/8R44-J3F5>].

216. See *id.*

217. See, e.g., Cebert & Kaplan, *supra* note 205, at 583–84.

218. See *id.* at 577, 580–83, 587.

219. Waldroupe, *supra* note 215.

5. New Jersey

In June 2024, Governor Phil Murphy issued an executive order establishing a structured process for considering certain categories of clemency petitions on an expedited basis, including the creation of an advisory board to review applications and provide recommendations.²²⁰ While each case would still be judged individually, the order prioritized applicants such as those serving sentences that reflect an excessive trial penalty, and survivors of domestic or sexual violence who were incarcerated for actions taken against their abusers.²²¹ In December 2024, Murphy granted three commutations to women convicted of murder under such circumstances; it remains to be seen, however, whether he will expand the use of commutations more broadly.²²²

6. Other Jurisdictions

Governors in Kansas, Michigan, Missouri, North Carolina and Tennessee have granted commutations of sentences for serious offenses in recent years, including the historic grant of capital clemency in North Carolina's history with Governor Roy Cooper's commutation of fifteen death sentences at the end of his second term.²²³

In the federal system, during his tenure, President Biden granted 4,245 acts of clemency, surpassing any president since the early twentieth century.²²⁴ While many of these clemencies addressed nonviolent drug offenses, Biden also commuted the sentences of thirty-seven federal death row inmates, significantly reducing the number of individuals facing capital punishment at the federal level.²²⁵ Notably, on January 19, 2025, he commuted the life sentence of Leonard Peltier, a Native American activist imprisoned for nearly fifty years for the 1975 killings of two FBI agents—a conviction surrounded by longstanding controversy and calls for clemency.²²⁶

220. *ICYMI: Governor Murphy Launches Historic Clemency Initiative*, N.J. OFF. PUB. DEF. (June 19, 2024), https://www.nj.gov/defender/media/press/20240619_ICYMI_Governor_Murphy_Launches_Historic_Clemency_Initiative.shtml [<https://perma.cc/7PB4-EF7Z>].

221. *See id.*

222. Matt Friedman, *New Jersey governor pardons nearly three dozen in first clemency act*, POLITICO (Dec. 16, 2024), <https://www.politico.com/news/2024/12/16/new-jersey-governor-pardons-00194524> [<https://perma.cc/9JBZ-E5LR>].

223. The Associated Press, *Outgoing North Carolina governor commutes 15 death row sentences*, NAT'L PUB. RADIO (Dec. 31, 2024), <https://www.npr.org/2024/12/31/g-s1-40663/north-carolina-governor-roy-cooper-commutes-death-row-sentences> [<https://perma.cc/4EMR-5FPA>]; Cebert & Kaplan, *supra* note 205, at 541 n.145.

224. *See* John Gramlich, *Biden granted more acts of clemency than any prior president*, PEW RSCH. CTR. (Feb. 7, 2025), <https://www.pewresearch.org/short-reads/2025/02/07/biden-granted-more-acts-of-clemency-than-any-prior-president/> [<https://perma.cc/SNN3-WAW5>].

225. *See id.*

226. *See* Chas Danner, *Everyone Biden Has Granted Presidential Pardons and Commutations*, INTELLIGENCER (Jan. 20, 2025), <https://nymag.com/intelligencer/article/joe-biden-clemency-list-pardons-commutations.html> [<https://perma.cc/9ZBT-N6TN>].

C. Parole, Medical and Compassionate Release

1. Parole

Parole has long served as a mechanism for conditional release, allowing incarcerated individuals to reintegrate into society while remaining under supervision.²²⁷ Designed as a tool for rehabilitation and public safety, parole reflects the belief that people can change and should be given an opportunity to demonstrate their readiness to return to society. However, over the past several decades, parole has been deeply influenced by tough-on-crime policies, leading to changes in who is appointed to parole boards, reduced grant rates, and the outright abolition of parole in some states. In the 1980s and 1990s, as public fears of crime fueled harsher sentencing laws, parole came under fire, with critics arguing that it undermined truth in sentencing and victim rights. As a result, many states restricted parole eligibility, imposed mandatory minimum sentences, or eliminated discretionary parole altogether.²²⁸

In recent years, amid growing recognition of overly punitive sentencing practices, particularly for youth, some states have expanded parole eligibility or implemented reforms aimed at increasing release rates. While many states continue to maintain low parole grant rates, reforms in places like California, Connecticut, and Illinois have sought to make parole a more meaningful avenue for release.

i. Emerging adults

One category of legislation gaining increasing attention is bills aimed at expanding parole eligibility for emerging adults. Nearly half of the individuals we incarcerated for the longest prison terms during the prison boom of the eighties, nineties, and early aughts were young people between the ages of fifteen and twenty-five.²²⁹ Along with state supreme court rulings spurred by the line of U.S. Supreme Court cases that called for eliminating mandatory life without parole sentences for people convicted of crimes committed as juveniles,²³⁰ a number of legislative bodies have been considering reforms that would extend to young adults beyond age eighteen.

California has expanded parole board opportunities for emerging adults over eighteen, acknowledging that cognitive development continues into the mid-twenties and that young adults should have meaningful opportunities for early release. SB 261 (2015) extended youth offender parole hearings to individuals convicted before age twenty-three, and AB 1308 (2017) further expanded eligibility to those

227. For descriptions of parole's purpose and how it functions, see, e.g., Hanan, *supra* note 30, at 194–97.

228. See, e.g., Laura Cohen, *Freedom's Road: Youth, Parole, and the Promise of Miller v. Alabama and Graham v. Florida*, 35 CARDOZO L. REV. 1031, 1067–68 (2014) (noting the abolition of indeterminate sentencing and parole in the federal system, and the rollback of parole in some state systems).

229. See COURTNEY ET AL., *supra* note 10, at 2, 5; Gupta-Kagan, *supra* note 89, at 678.

230. See *supra* Part II(A)(2).

convicted before age twenty-five, though people over eighteen sentenced to LWOP are excluded.²³¹

These laws allow the Board of Parole Hearings (BPH) to consider the reduced culpability of young adults at the time of their offense and assess their rehabilitation.²³² Additionally, SB 394 (2017) granted parole eligibility to individuals sentenced to life without parole for crimes committed before age eighteen, reinforcing the shift toward recognizing developmental differences in sentencing.²³³ These reforms ensure that emerging adults—who were historically excluded from juvenile sentencing protections—now have a greater chance to demonstrate growth and earn release through the parole process.²³⁴

Similarly, Connecticut and Illinois have enacted laws allowing parole consideration for individuals who committed crimes before turning twenty-one (with some restrictions).²³⁵ This was a particularly significant step for Illinois,²³⁶ which had abolished parole more than two decades ago.²³⁷ The reform signals a shift in the state's approach to sentencing, suggesting a willingness to reconsider its long-standing rejection of indeterminate sentences. Bills that would expand parole eligibility for emerging adults are currently pending in Missouri,²³⁸ Nebraska,²³⁹ Nevada,²⁴⁰ and Washington.²⁴¹

231. Laura S. Abrams, Kaylyn Canlione & D. Michael Applegarth, *Growing Up Behind Bars: Pathways to Desistance for Juvenile Lifers*, 103 MARQ. L. REV. 745, 750 (2020) (“In California, the legislative response to *Miller* has been quite robust, with the passage of several bills that create release opportunities for juvenile offenders.”).

232. CAL. PENAL CODE § 4801(c) (West 2025).

233. See CAL. PENAL CODE § 3051 (West 2020).

234. Ashley Nellis & Devyn Brown, THE SENT’G PROJECT, STILL CRUEL AND UNUSUAL: EXTREME SENTENCES FOR YOUTH AND EMERGING ADULTS 7–8 (Aug. 8, 2024), <https://www.sentencingproject.org/app/uploads/2024/09/Still-Cruel-and-Unusual-Extreme-Sentences-for-Youth-and-Emerging-Adults.pdf> [<https://perma.cc/BQ8V-PPC6>].

235. See Jaden Edison, *CT Legislature Broadens Parole Eligibility, Clashes On Juvenile Justice Reform*, CT MIRROR (June 7, 2023), <https://ctmirror.org/2023/06/07/ct-parole-eligibility-juvenile-justice-reform/> [<https://perma.cc/H9L3-82AD>]; ASHLEY NELLIS & NIKI MONAZZAM, THE SENT’G PROJECT, LEFT TO DIE IN PRISON: EMERGING ADULTS 25 AND YOUNGER SENTENCED TO LIFE WITHOUT PAROLE 10 (2023), <https://www.sentencingproject.org/app/uploads/2023/09/Left-to-Die-in-Prison-Emerging-Adults-25-and-Younger-Sentenced.pdf> [<https://perma.cc/2H7U-HUTT>] (“In 2019, the Illinois legislature enacted House Bill 531, which allows parole review at 10 or 20 years into a sentence for most crimes, exclusive of sentences to LWOP, if the individual was under 21 at the time of the offense.”).

236. See 730 ILL. COMP. STAT. ANN. 5/5-4.5-115 (West 2025).

237. Joseph Dole, *Disinfecting the Criminal Legal System of Punitive Deterrence*, 17 DEPAUL J. FOR SOC. JUST. 1, 7–8 (2023) (“More than half of the legislators in attendance were unaware that Illinois abolished parole in 1978 and that people today cannot earn discretionary parole.”).

238. See S.B. 582, 103d Gen. Assemb., Reg. Sess. (Mo. 2025).

239. See Legis. B. 215, 109th Gen. Assemb., 1st Sess. (Neb. 2025).

240. See Assemb. B. 91, 83d Gen. Assemb., Reg. Sess. (Nev. 2025).

241. See H.B. 1317, 2025 Gen. Assemb., Reg. Sess. (Wash. 2025).

ii. Aging and Elderly

In Louisiana, a 2021 law expanded parole eligibility to long-serving prisoners who are not serving life, once they have completed twenty years in prison and reached the age of forty-five.²⁴² They still must win the approval of the parole board to go free.²⁴³ Similar bills to expand parole eligibility for those who have served lengthy terms are currently pending in Illinois,²⁴⁴ Massachusetts,²⁴⁵ Missouri,²⁴⁶ New Hampshire,²⁴⁷ and Pennsylvania.²⁴⁸

iii. Prosecutorial Discretion in Parole Proceedings

In some jurisdictions, district attorneys have eased the path to parole for individuals serving lengthy or life-with-parole sentences by actively supporting or adopting a neutral stance toward parole applications. Brooklyn District Attorney Eric Gonzalez, for example, has successfully advocated for parole before New York's Parole Board for individuals serving long sentences.²⁴⁹ Upon taking office as DA of New York's second-largest county, Gonzalez departed from his predecessors' default opposition to parole applications.²⁵⁰ Instead, he implemented a policy of affirmatively consenting to parole for the 90% of defendants who entered plea agreements, "absent extraordinary circumstances and subject to their conduct during incarceration."²⁵¹ For those who went to trial, Gonzalez has committed to considering parole support for individuals sentenced to long terms before the age of twenty-four.²⁵² Other district attorneys have similarly abandoned blanket opposition to parole, and adopted other policies—including limiting participation at proceedings—and positions of neutrality.²⁵³

While the role prosecutors should play in parole decisions remains a subject of debate, their influence is undeniable. Prosecutorial opposition has long been a factor in low parole rates across the country. These alternative approaches illustrate

242. LA. STAT. ANN. § 15:574.4(A)(2) (2025). The 2021 law was known in the legislature as HB 145.

243. See Simerman & Finn, *supra* note 212.

244. See S.B. 86, 104th Gen. Assemb., Reg. Sess. (Ill. 2025).

245. See H.B. 2693, 194th Gen. Ct., Reg. Sess. (Mass. 2025).

246. See S.B. 438, 103d Gen. Assemb., Reg. Sess. (Mo. 2025).

247. See H.B. 638, 2025 Gen. Ct., Reg. Sess. (N.H. 2025).

248. See S.B. 136, 2025-2026 Gen. Assemb., Reg. Sess. (Pa. 2025).

249. See Tom Robbins, *Took a Plea? Brooklyn's District Attorney Will Support Your Parole*, THE MARSHALL PROJECT (Apr. 17, 2019), <https://www.themarshallproject.org/2019/04/17/took-a-plea-brooklyn-s-district-attorney-will-support-your-parole> [https://perma.cc/LH28-XHBS].

250. See *id.*

251. *Id.*

252. See *id.*

253. See E. Alex Murcia, *Prosecutors, Parole, and Evidence: Why Excluding Prosecutors from Parole Hearings Will Improve California's Parole Process*, 55 LOY. L.A. L. REV. 441, 444, 446 (2022) (discussing Los Angeles DA George Gascon's policies and finding "[a]fter reviewing the evidence, the Article concludes that substantial evidence supports the claim that prosecutors do not serve a beneficial role in the parole process").

that second-look opportunities can take various forms—including the choice by some prosecutors to simply step aside rather than obstruct the process.

2. Medical and Compassionate Release

It has long been seen as common sense to release from custody people with terminal medical conditions or other debilitations that ensure they will die in the near future and be unable to perpetrate further crime. Mechanisms providing for this sort of sentencing relief are referred to as medical or compassionate release. Remarkably, “49 states and Washington, D.C. provide for some form of compassionate release.”²⁵⁴ Yet “very few people are granted compassionate release from state prisons. On average, each state grants compassionate release to between four and seven people per year.”²⁵⁵ While largely stunted, the widespread graying of prison populations suggests that these mechanisms can and should play a meaningful role in decarceration efforts. A few jurisdictions appear to be taking the critical step of applying these mechanisms more broadly.

i. Federal

Federally, the First Step Act, passed in December of 2018, took steps to repair a broken compassionate release process for people seeking early release from prison based on extraordinary circumstances such as terminal illness and advanced age.²⁵⁶ Among other things, the Act provides incarcerated people the power to file a motion for compassionate release if they can demonstrate they have tried and failed to convince the Bureau of Prisons (BOP) to do so for them.²⁵⁷ Before passage of the First Step Act, a denial by the BOP was not appealable, and the BOP regularly exercised its gatekeeping role to prevent courts from considering compassionate release requests from individuals who met the criteria.²⁵⁸ With the Act in effect, advocates have begun to utilize it. In its first year, the Compassionate Release Clearinghouse (based at FAMM) placed more than 100 cases with pro bono attorneys, and since 2019, has secured the release of nearly 300 people from federal prison.²⁵⁹ In the spring of 2023, the Federal Sentencing Guidelines were

254. O’Leary, *supra* note 112, at 624.

255. *Id.*

256. *An Overview of the First Step Act*, FED. BUREAU OF PRISONS, <https://www.bop.gov/inmates/fsa/overview.jsp> [<https://perma.cc/PD6X-8S33>] (last visited Jan. 24, 2025).

257. *See* 18 U.S.C. § 3582(c)(1)(A).

258. The U.S. Department of Justice Office of the Inspector General evaluated the BOP’s compassionate release program in 2013. *See* U.S. DEP’T OF JUST., THE FEDERAL BUREAU OF PRISONS’ COMPASSIONATE RELEASE PROGRAM i (2013), <https://www.oversight.gov/sites/default/files/documents/reports/2017-12/e1306.pdf> [<https://perma.cc/2ZBJ-Q7WR>] (“[W]e found that the existing BOP compassionate release program has been poorly managed and implemented inconsistently, likely resulting in eligible inmates not being considered for release and in terminally ill inmates dying before their requests were decided.”).

259. *Second Chances*, FAMM, <https://famm.org/our-work/compassionate-release/#clearinghouse> [<https://perma.cc/G2DJ-2UM3>] (last visited Feb. 25, 2026).

amended to allow for early release under certain conditions, including certain illnesses such as COVID-19.²⁶⁰

ii. Colorado

In 2021, Colorado reformed its compassionate release laws through Senate Bill 21-146, which expanded access to Special Needs Parole for individuals with serious medical conditions or other significant needs.²⁶¹ The bill introduced inmate-initiated requests, allowing incarcerated individuals to ask the Department of Corrections to assess their eligibility for early release and ensuring that qualified candidates are considered without unnecessary delays.²⁶² Additionally, the law required the parole board to take into account factors such as the inmate's age and the DOC's ability to provide adequate medical and behavioral health treatment when reviewing applications.²⁶³ These changes aimed to create a more responsive and humane system for granting compassionate release, particularly for aging and seriously ill individuals who no longer pose a public safety risk.²⁶⁴ Since 2021, the parole board has steadily conducted reviews: of the fifty-seven cases reviewed by the board in 2023, twenty-seven resulted in parole and a further two were awaiting approval pending an approved parole plan.²⁶⁵

iii. Illinois

Prior to 2022, compassionate release in Illinois was attainable solely through executive clemency. The enactment of the Joe Coleman Medical Release Act, effective January 1 of that year, introduced a statutory mechanism for early release of incarcerated individuals diagnosed with a terminal illness—defined as an irreversible and incurable condition likely to result in death within eighteen months—or those who are medically incapacitated, defined as unable to perform more than one daily activity without assistance.²⁶⁶ Approved applicants are released on mandatory supervised release for five years, discharging any remaining sentence.²⁶⁷ Despite the act's intentions, implementation has faced challenges. As of mid-2023,

260. U.S. SENT'G COMM'N, 2023 AMENDMENTS IN BRIEF 3 (Nov. 1, 2023), https://www.ussc.gov/sites/default/files/pdf/amendment-process/amendments-in-brief/AIB_814.pdf [<https://perma.cc/PXD6-22R3>].

261. COLO. REV. STAT. ANN. § 17-22.5-403.5 (West 2025).

262. *See id.* §§ 17-22.5-403.5(1)(a), (3)(a).

263. *See id.* § 17-22.5-403.5(4)(b).

264. *See* Julie B. Cramer, *Releasing Compassion in the States*, 76 ALA. L. REV. 285, 319 (2024); *see also* FAMM COMPASSIONATE RELEASE COLO., SPECIAL NEEDS PAROLE 4 (Mar. 2022), https://famm.org/wp-content/uploads/2018/06/Colorado_Final.pdf [<https://perma.cc/T7JR-8CSW>].

265. COLO. STATE BD. OF PAROLE, ANNUAL REPORT: FY 2023 10 (Dec. 2023), <https://drive.google.com/file/d/1IECW4bOBPmp-PfmahHZwzk16JYc13sQ4/view> [<https://perma.cc/P4L7-WCYD>].

266. Medical Release Act, Pub. Act No. 102-0494 (2021) (creating a new statutory provision at 730 ILL. COMP. STAT. ANN. 5/3-3-14 (West 2025)).

267. 730 ILL. COMP. STAT. ANN. 5/3-3-14(g) (West 2025).

the Illinois Prisoner Review Board had approved only fifty-two out of 146 applications, prompting concerns about the denial rate.²⁶⁸

iv. California

In October 2022, the California legislature approved and the governor signed AB 960, a law aimed at broadening access to compassionate release for incarcerated individuals.²⁶⁹ According to California Department of Corrections and Rehabilitation (CDCR) data, in 2023 compassionate release was considered for approximately 105 people, with about seventy-five receiving a recommendation for release and around fifty ultimately granted release by superior courts.²⁷⁰ This marked roughly double the number of releases compared to each of the two preceding years.²⁷¹ The increase appears to stem from changes that took effect under AB 960, which expanded medical eligibility criteria, required CDCR to recommend release regardless of custody factors, and created a statutory presumption requiring superior courts to approve release for those meeting the medical criteria unless they pose an unreasonable risk of committing certain serious or violent offenses.²⁷²

D. A Second Look Movement is Emerging

As of this writing, there were more than fifty second look bills and thirty compassionate release bills pending in state houses around the country.²⁷³ The wide range of developments documented here reveal disparate but meaningful efforts to unwind harsh sentences imposed on individuals convicted of serious offenses. While locally focused and driven, with tailored goals and tactics, they should be understood as part of the same broader project: a second look movement. Their shared objectives illuminate an important possibility for the movement to end mass incarceration. Although it is premature to suggest that people who have committed serious offenses have taken center stage in the public policy discussion about mass incarceration, there is no doubt their fate is a topic we must address. There are clear and concrete examples of what it means to intervene. Many

268. See Carlos Ballesteros, Shannon Heffernan & Amy Qin, *Dying and Disabled Illinois Prisoners Kept Behind Bars, Despite New Medical Release Law*, INJUSTICE WATCH (Aug. 30, 2023), <https://www.injusticewatch.org/criminal-courts/parole-and-clemency/2023/illinois-medical-release-law-failing/> [<https://perma.cc/7VRD-CXZT>].

269. See CAL. PENAL CODE § 1172.2 (West 2025).

270. PRISON L. OFF., COMPASSIONATE RELEASE AND MEDICAL PAROLE FOR PEOPLE IN CDCR PRISONS 4, <https://perma.cc/ULE2-GF5X> (last updated Jan. 2024).

271. See *id.*

272. CAL. PENAL CODE § 1172.2 (West 2025); see, e.g., Piper French, *California Passes Bill to Expand Prison Releases for Terminally Ill People*, BOLTS (Sept. 2, 2022), <https://boltsmag.org/california-legislature-passes-bill-to-expand-prison-releases-for-terminally-ill-people/> [<https://perma.cc/BZR8-CRFW>].

273. See Daniel Landsman, *Pending Second Chances Legislation*, https://docs.google.com/spreadsheets/d/13a-FuNUNGaphzq-GsAd8E54veaZhU_nWkmh2gxy-iCs/edit?gid=1402999483#gid=1402999483 [<https://perma.cc/Q9YL-YYTY>] (FAMM, Google Drive) (last modified Apr. 17, 2025).

important second look policies, laws, and strategies have taken root and garnered support. Their long-term and big-picture implications could contribute to deconstructing mass incarceration.

III. WHAT SECOND LOOK EFFORTS OFFER THE MOVEMENT TO END MASS INCARCERATION

Efforts to address the unjust sentences of individuals serving decades in prison share a common foundation: the recognition that their continued punishment exceeds what justice requires. Central to this work is making visible the lives and personal trajectories of those subjected to extreme sentencing. Second-look relief challenges the ideology of mass incarceration in three key ways: (1) by changing the point in time at which we determine the appropriate sentence; (2) by affirming that people have the capacity to change; and (3) by demonstrating the benefits of reuniting individuals with their communities. Second-look mechanisms create opportunities to reassess past sentencing decisions and rethink the relationship between long-term imprisonment and public safety.

A. The Second Look Movement Means Punishment is Reconsidered Over Time

Recent developments around juvenile life without parole have strengthened second look efforts by reinforcing the idea that decisions about continued punishment should be made only after time allows for a better understanding of a person's growth and readiness to reenter society.²⁷⁴ This line of cases acknowledges that when a sentencer meets a defendant at sixteen or seventeen years old, it is very difficult to know who that teenager might become by the time they are thirty or forty, and whether they are, in the words of the Supreme Court, irreparably corrupt.²⁷⁵ Admitting that one may not know how long a person "needs" to be incarcerated until the public's interest in safety and retribution is satisfied undercuts the ideology of mass incarceration that hinges on "throwing away the key," often through harsh mandatory sentences and truth-in-sentencing measures.²⁷⁶

Though the juvenile life without parole caselaw rests in part on scientific claims used to distinguish juveniles from adults, these same claims inevitably point to the need for more consideration of young adults, whose brains are also still

274. See Sarah French Russell, *Review for Release: Juvenile Offenders, State Parole Practices, and the Eighth Amendment*, 89 IND. L.J. 373, 396 (2014) (observing that "states have simply made juvenile offenders eligible for parole under existing parole board systems" but emphasizing the need to revisit those standards upon which those systems rely).

275. *Miller v. Alabama*, 567 U.S. 460, 479–80 (noting "the great difficulty . . . of distinguishing at this early age between 'the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption'") (internal quotation omitted).

276. *State v. Lyle*, 854 N.W.2d 378, 399 (Iowa 2014) ("[A]ttempting to mete out a given punishment to a juvenile for retributive purposes irrespective of an individualized analysis of the juvenile's categorically diminished culpability is an irrational exercise.").

developing.²⁷⁷ In response, some states have begun to enact second look relief mechanisms that pierce the eighteen-year age barrier and provide young people up to the age of twenty-five with expanded parole consideration, as described in Part II.²⁷⁸ Such reforms crack open the door to a far larger group of people in our prisons; a very large percentage of criminal offending occurs before the age of twenty-five. What's more, these claims are supported by our own intuition based on personal experience of being young and making rash or pressured decisions. Put simply, the idea that young people typically change over time is a truth that the wider society is geared to believe from personal experience. There is no reason that, at least as an intuitive matter, we would limit this capacity to change to young people.²⁷⁹ The trick of mass incarceration has been to distinguish "us" from "them," and make us forget that what is true of people outside prison is also true of people inside.

One expert underscores how the revolution in harsh juvenile sentencing is influencing the adult system:

The stories that are beginning to be told in individual cases about children growing up in prison have the potential to have a broader impact on sentencing and corrections policies in the future. As we hear stories about individuals who have spent 30 or 40 years in prison and have undergone remarkable rehabilitation, we might begin to question not only whether juvenile offenders should be sentenced to a lifetime in prison, but also whether adult offenders should be incarcerated for life with no chance for a second look.²⁸⁰

Juvenile life without parole is an example of a useful incrementalism in the battle to unwind mass incarceration, where the advancement of one group's interests teaches us to think differently about offending more broadly. Told well, the stories of growth challenge the wisdom that a sentencer "should be empowered in any case at the time of the initial sentencing to decide that someone should spend the rest of his or her life in prison."²⁸¹

The idea that we should put off the decision about how long to send someone to prison until we have more information weakens the grip of mass incarceration by bringing people who have committed serious offenses back into the realm of consideration—just at a later point in time. What the relatively swift paradigm shift

277. See, e.g., Gupta-Kagan, *supra* note 89, at 671 ("These basic principles apply to young adult offenders . . . because neurological and psychological development continues past age 18 and into the mid-20s. . . . The law's present treatment of young adults the same as older adults, therefore, exists in tension with the developmental evidence.").

278. See *supra* Part II (describing the youthful offender parole laws in California, Illinois, and Washington, D.C.).

279. See Hanan, *supra* note 30, at 156.

280. Sarah French Russell, A "Second Look" at Lifetime Incarceration: Narratives of Rehabilitation and Juvenile Offenders, 31 QUINNIPIAC L. REV. 489, 515 (2013).

281. *Id.* at 492.

from young people who commit serious crimes as deviant “super-predators”²⁸² to people deserving of understanding and individualized consideration reveals is “U.S. public opinion on criminal justice is fickle and highly malleable in the face of specific events and political manipulation.”²⁸³ The rejection of mandatory minimums for certain offenses committed by juveniles in states like Iowa²⁸⁴ and Oregon,²⁸⁵ and special parole consideration for young adults over eighteen in states like California and Illinois,²⁸⁶ reflect a growing uncertainty that we can never know at the time of sentencing who deserves perpetual punishment and who does not.

B. The Second Look Movement Acknowledges That People Can Change

By focusing advocacy efforts on the person who has already served decades in prison rather than the person who recently committed a crime, second look relief offers the movement to end mass incarceration a way of deconstructing the “bogeyman”²⁸⁷ that occupies cultural imaginations of crime. By documenting and raising up to a DA, judge, or parole board actual stories of people serving extreme punishments who ought to be considered for early release, the second look movement described in Part II necessarily highlights those people’s long and steady departure from the path that led them to the crime.²⁸⁸

As impenetrable as the political dialogue around those serving long and life sentences feels today, it was not so long ago when American penal policy embraced the notion that people could change over time. In *The Prison and the Gallows*, Professor Marie Gottschalk details the underlying political causes of the massive expansion of the carceral state, focusing on the social movements and political

282. See, e.g., Steven A. Drizin & Greg Luloff, *Are Juvenile Courts a Breeding Ground for Wrongful Convictions?*, 34 N. KY. L. REV. 257, 265 (2007) (“‘Adult time for adult crimes’ became the rallying cry for politicians across the country, leading to changes in the law in almost every jurisdiction between 1992 and 1999.”); *Racial Critiques of Mass Incarceration*, *supra* note 19, at 232 (“the former federal drug czar William Bennett and colleagues were warning that ‘America is now home to thickening ranks of juvenile ‘super-predators’ – radically impulsive, brutally remorseless youngsters, including ever more preteenage boys, who murder, assault, rob, burglarize, deal deadly drugs, join gun-toting gangs, and create serious communal disorders.’”).

283. THE PRISON AND THE GALLOWES, *supra* note 35, at 256.

284. *State v. Lyle*, 854 N.W.2d 378, 399 (Iowa 2014) (holding that all mandatory minimum sentences of imprisonment for youthful offenders violate the Iowa Constitution’s provision against cruel and unusual punishment).

285. *State v. Link*, 441 P.3d 664, 665 (Or. Ct. App. 2019) (holding that “a court cannot impose the state’s most severe penalties on a juvenile offender without regard for the unique qualities of youth that might make imposition of that sentence inappropriate”).

286. See *supra* notes 266, 269.

287. FORMAN, *supra* note 1, at 221.

288. It is safe to say that of the thousands of people who have been incarcerated for more than twenty years, few could now be considered to have any remaining bent towards committing crime. Evidence for this is located not only in the recidivism scholarship, see J.J. Prescott, Benjamin Pyle & Sonja B. Starr, *Understanding Violent-Crime Recidivism*, 95 NOTRE DAME L. REV. 1643, 1647 (2020) (finding “the vast majority of individuals released after serving a sentence for homicide are not dangerous”), but also in the wealth of stories of people who have come home and are making valuable contributions in their communities. See also *infra* Part III.C. (citing to Ungers studies and the Pennsylvania juvenile lifers studies).

developments that undergirded it. One of the necessary preconditions Gottschalk describes was the efforts of the prisoners' rights movement from the 1950s through the 1980s to "redefine the moral, political, economic, and legal status of defendants and offenders."²⁸⁹ Prison issues became a major public concern when large-scale unrest in the 1960s and 1970s and a vibrant prisoners' rights movement propelled it into mainstream consciousness.²⁹⁰ The American public understood it had a responsibility to those in prison, and was concerned for their welfare. Even in the aftermath of the Attica uprising, public sympathy for prisoners was considerable, and led to calls to reduce the prison population.²⁹¹

But the prisoner movement's unique success integrating prison activism into other social movements of the day had unintended adverse consequences. Women and other victims of violent crime sought to wrest the status of victim²⁹² away from those in the prison reform movement who would characterize law-breaking as a response to, and evidence of, race and class-based oppression. As time went on and the revolutionary image of the prisoners' movement became identified in the public's mind with groups like the Weathermen and the Black Panthers, public support for the prisoners' movement waned, "thus creating an important vacuum that the right successfully filled with its law-and-order campaign."²⁹³ Since the portrait of the "prisoner" was already present in the political consciousness, the conservative law-and-order movement, rising in prominence by playing on public concerns over crime, was able to pin him there and cast him in a monstrous and dehumanizing light—aided by the stories and grievances of a burgeoning crime victims' movement.²⁹⁴

As the ideology of mass incarceration took root, those who committed crimes came to be described primarily in pathological terms: "criminals" were characterized as fundamentally corrupt, and skepticism of their capacity for remorse or reform encouraged.²⁹⁵ President Nixon described the root cause of crime as "insufficient curbs on the appetites or impulses that naturally impel individuals

289. THE PRISON AND THE GALLOWS, *supra* note 35, at 165. Ironically, it was the rehabilitative ideal of the 1930s and 1940s that ushered new ideas and experts into prisons through literature and greater access to the prison library, courtesy of the state, and, in turn, helped politicize life behind bars. *See id.* at 182–83.

290. Note, *Striking the Right Balance: Toward A Better Understanding of Prison Strikes*, 132 HARV. L. REV. 1490, 1498–1500 (2019).

291. THE PRISON AND THE GALLOWS, *supra* note 35, at 181. Black Muslims organizing behind bars catapulted prisons into view, using litigation to bring the inhumane conditions in many prisons to the attention of media and the public and engaging civil rights activists, the black power movement, and eventually, the New Left. *See id.* at 175. This support from outside groups made the difference between the success and the failure of prison activism during this period, and the U.S. prisoners' movement "came to be seen at home and abroad as a vanguard of a worldwide liberation movement for oppressed people, especially people of color." *See id.* at 176, 178.

292. *Id.*

293. *Id.* at 182.

294. *See generally id.* at 182; *see also* Jessica Jackson, *Clemency, Pardons, and Reform: When People Released Return to Prison*, 16 U. ST. THOMAS L.J. 373, 383 (2020) ("the mainstream victims' rights push has predominantly been defined by its carcerality and punitiveness").

295. *See* Stephen J. Schulhofer, *The Trouble with Trials; the Trouble with Us*, 105 YALE L.J. 825, 852 (1995) (describing the tough-on-crime "view of the criminal offender [as] [] someone hostile to civilized values, devoid of human sensibilities, utterly 'other'").

towards criminal activities.”²⁹⁶ Any notion that we should also pay attention to the culpability or rehabilitation of those who committed criminal acts was not simply ignored, but, in many instances, mocked.²⁹⁷ By the 1980s, the rehabilitative ideal was being thoroughly rejected, and people facing prison time were essentially reduced in the public eye to a mugshot. “[E]lected officials, police chiefs, journalists, and everyday citizens increasingly heaped shame and scorn upon lawbreakers. This hostile, unforgiving mindset wasn’t born in the crack era, but it was then that it became entrenched, influencing even to this day how we think about drugs, violence, and punishment.”²⁹⁸

Examples of the pathologizing of crime abound in media and popular culture over the last forty years: from the “juvenile super-predators” of the 1990s,²⁹⁹ whose youth was understood as an aggravating fact, not a mitigating one,³⁰⁰ to the “sexual predators” that made registries and lifetime civil commitment common features of our system of perpetual punishment,³⁰¹ to the “serial killers” beloved by television networks for their endless true-crime appeal.³⁰² The notion of the criminal mind has been a key component of American pro-carceral ideology, absolving the wider society of any role in creating the conditions that cause crime or any responsibility to provide rehabilitative conditions for those who commit it.³⁰³ The longest serving in our prisons bear the brunt of these persistent attitudes.³⁰⁴

As the success of mitigation in anti-death penalty efforts has demonstrated, the extent to which we identify with a defendant is a key predictor of how harshly we punish them.³⁰⁵ The absence of the voices of those who were arrested or convicted from the debates about criminal justice policy is a key reason the system became so punitive.³⁰⁶ In an earlier time, the public had frequent opportunities to interact with those who were incarcerated; it was not until the post-war period that prisoners began to be erased from the public landscape. After decades of not seeing the

296. NANCY E. MARION, *A HISTORY OF FEDERAL CRIME CONTROL INITIATIVES, 1960–1993* 70 (1994).

297. *See id.*

298. FORMAN, *supra* note 1, at 156–57.

299. In 1996, “the former federal drug czar William Bennett and colleagues were warning that ‘America is now home to thickening ranks of juvenile ‘super-predators’ – radically impulsive, brutally remorseless youngsters, including ever more preteenage boys, who murder, assault, rob, burglarize, deal deadly drugs, join gun-toting gangs, and create serious communal disorders.’” *Id.* at 232.

300. *See* Lara Bazelon, Note, *Exploding the Superpredator Myth: Why Infancy is the Preadolescent’s Best Defense in Juvenile Court*, 75 N.Y.U. L. REV. 159, 165 (2000).

301. *See* Aya Gruber, *Rape, Feminism, and the War on Crime*, 84 WASH. L. REV. 581, 641–42 (2009).

302. *See* Scott Bonn, *Why We Are Drawn to True Crime Shows*, TIME (Jan. 8, 2016), <https://time.com/4172673/true-crime-allure/> [<https://perma.cc/UHG6-3BLQ>] (“In the extreme, the tales of murder depicted in true crime TV shows involve the gruesome and notorious exploits of serial killers such as the late Jeffrey Dahmer, Ted Bundy, John Wayne Gacy (The Killer Clown), Richard Ramirez (The Night Stalker) or David Berkowitz (Son of Sam). The morbid stories of these prolific killers have become popular culture legends.”).

303. *See, e.g.*, Dolovich, *supra* note 27, at 300 (“At the heart of this construction is a notion of criminality as congenital, as both deliberate and compulsive, and as inevitably scary and dangerous.”).

304. GOTTSCHALK, *supra* note 1, at 194.

305. *See id.* at 274.

306. *See* FORMAN, *supra* note 1, at 46.

people serving our longest sentences, we too easily conclude that there is no cost to throwing away the key.

Unsurprisingly, “[t]he invisibility of millions of people behind bars has made it extremely difficult to alter the negative portrait that members of the general public have in their heads of people who have been convicted of a crime. They are simply prisoners and criminals.”³⁰⁷ The longer these men and women serve, the more invisible they become. It is the very permanence of their banishment from our midst that makes their existence of those serving our harshest punishments the easiest to ignore.

Once the state prosecutes and incarcerates a person who has caused serious harm in community; once the news stories (if any) have died down; once the prosecuted individual is locked behind the state’s barbed wire, concrete and steel cages, then the forgetting begins. Most people—unless they have a loved one locked up, are a victim or survivor of crime, have experienced incarceration, or are somehow involved in either a professional or political way in the criminal legal machination—have no idea about the inner workings of prison systems, parole and commutation policies, or the overall lasting impact of systems of confinement on marginalized communities.³⁰⁸

Our failure to talk about our longest-serving prisoners, the crimes they have been convicted of and the journey they have taken since, cedes ground to the ideology that keeps them perpetually imprisoned.

At a time when the bogeyman portrait continues to prevent sentencing reforms for serious offenses, the second look movement offers a way to begin destabilizing this picture by bringing the lives of these long-incarcerated individuals into view,³⁰⁹ and in doing so, demonstrates that people convicted of all sorts of offenses have within them the ability to change and grow. “Coming face to face with someone after he or she has served a lengthy period of time in prison might begin to make more tangible the real meaning of prison time.”³¹⁰

Rather than framing solutions to the problem of the carceral state primarily in “neutral,” scientific, and nonpartisan language,³¹¹ then, activists and experts ought to give politicians and the general public the evidence to substantiate a truth they once believed about incarcerated people: they, like us, have an immense capacity to change. Despite the often-inhumane conditions of prisons, they are replete with examples of the capacity of human beings to change and grow. When those stories are told to decision-makers with the power to shorten sentences, in all the rich complexity that any close examination of a human life requires, they call into

307. GOTTSCHALK, *supra* note 1, at 274.

308. NATALIE HOLBROOK, ENDING PERPETUAL PUNISHMENT: THE CASE FOR COMMUTATIONS FOR PEOPLE IN MICHIGAN PRISONS 5 (2018).

309. THE PRISON AND THE GALLOWS, *supra* note 35, at 255–56.

310. Russell, *supra* note 280, at 492.

311. See GOTTSCHALK, *supra* note 1, at 18.

question whether our decision to permanently punish them (and implicitly, others like them) was ever justified. Gottschalk reminds us that the political dialogue around crime and punishment is not as fixed as we might think. The stories and lived experiences of those individuals the second look movement is representing are resources to help move people toward a more forgiving mindset, rather than things to be avoided.³¹²

It is often difficult to gather and record these stories in a comprehensive way. The way that corrections operate, “what happens in prison stays mostly in prison, making it harder to draw connections in the public mind between justice on the inside and justice on the outside.”³¹³ But experts and activists are increasingly finding ways to include first-person narratives in their examinations of imprisoned populations.³¹⁴ In Louisiana, Professor Marcus Kondkar at Loyola University New Orleans has video-recorded life-history interviews with over a hundred men sentenced to life without parole at the Louisiana State Penitentiary.³¹⁵ These rare and moving interviews, which constitute the largest-known collection of first-person testimonials from people serving life without parole in the country, housed in a digital archive online called the Visiting Room Project, enable individuals who have spent twenty years or more in prison to tell their stories.

Hearing directly from individuals sentenced to life without parole sheds light on their experiences and challenges deeply ingrained cultural assumptions about who commits serious crimes. Consider Frank Green, who candidly shares about his time working in the Angola hospice program,³¹⁶ where specially trained volunteers provide end-of-life care to terminally-ill prisoners:

So I just pick him [a patient] up out the bed, put him in the wheelchair, bring him to the bathroom, help him bathe him up, tease him, mess with him . . . me seeing this here firsthand . . . [and being] able to help a person, I just felt different³¹⁷

Or Walter Goodwin, who is asked by Professor Kondkar to describe what he would see, hear, and smell if he was standing outside Walter’s childhood home and looking out into the neighborhood:

312. Cf. *Graham v. Florida*, 560 U.S. 48, 75 (2010) (emphasizing the values of “maturity and rehabilitation”).

313. GOTTSCHALK, *supra* note 1, at 274.

314. The Abolitionist Law Center sent questionnaires to approximately 100 people serving life without parole sentences in Pennsylvania to include their voices in a 2018 report. See generally QUINN COZZENS & BRET GROTE, *A WAY OUT: ABOLISHING DEATH BY INCARCERATION IN PENNSYLVANIA* (2018). The Washington ACLU’s 2020 report on long and life sentences includes a number of stories of currently incarcerated people. See KATHERINE BECKETT & HEATER D. EVANS, *ABOUT TIME: HOW LONG AND LIFE SENTENCES FUEL MASS INCARCERATION IN WASHINGTON STATE* 59–71 (ACLU of Washington, 2020).

315. The authors of this Article played a role in developing and launching The Visiting Room Project.

316. See ‘*Serving Life*’: *Facing Death, Inmates Find Humanity*, NPR (Oct. 19, 2011), <https://www.npr.org/2011/10/19/141505983/serving-life-prisoners-find-humanity-in-face-of-death> [<https://perma.cc/YRH3-EVfV>].

317. See Interview by The Visiting Room Project with Frank Green, https://www.visitingroomproject.org/visiting-room/frank_green [<https://perma.cc/KS5A-7VRU>] (interview and transcript on file with the authors).

We moved to the 6th Ward, it was a neighborhood full of children. It was just beaucoup children, and the way that the street is, the sidewalk sits here but all the houses sit so far off the sidewalk. I would say that's my most vivid memory. And in relationship to that, I also remember what crack cocaine did my neighborhood. It did what seven Katrinas couldn't do and it made it a ghost town.³¹⁸

In another interview, Terrence Guy, who works as a cook at the prison and loves his craft, responds with some reluctance to the question of his most popular dish: "I'm told that my double chocolate cake is awesome. This is something they always request. I always try to encourage [them] to [get] something else because I like showing some variety but everyone loves that cake. That double chocolate cake."³¹⁹

The Visiting Room Project, like the renowned podcast *Ear Hustle*,³²⁰ gives the public an opportunity to hear from the people who have long been made invisible. The stories that emerge from these interviews—memories of freedom, regrets, the missing of funerals for loved ones, coping strategies to make sense of a sentence to die in prison, aspirations, friendships and relationships found and lost—compel us to confront what it means to send someone away for such long periods of time. Most strikingly, the men who gave interviews for The Visiting Room Project are seen for who they are today: engaged, thoughtful, productive people who want to live their lives free again. As one interviewee in The Visiting Room Project, Arthur Carter, put it, "[i]f I have to die here, I appreciate this opportunity to be able to let my voice be heard."³²¹

C. The Second Look Movement Demonstrates the Benefits of Reuniting Individuals with their Communities

Individuals released through second look mechanisms often become tremendous assets to the movement to end mass incarceration. Being able to point to actual people who were once destined to die in prison and are now living their lives on the outside holds considerable power to transform cultural attitudes about punishment, while bringing a palpable sense of urgency to our current predicament. Once we come face-to-face with these men and women in the free world, the thought of continuing to incarcerate them for decades after they have ceased to be any threat to public safety begins to look less like justice and more like cruelty.

318. See Interview by The Visiting Room Project with Walter Goodwin, https://www.visitingroomproject.org/visiting-room/walter_goodwin [<https://perma.cc/2KBF-FPWE>] (interview and transcript on file with the authors).

319. See Interview by The Visiting Room Project with Terrence Guy, https://www.visitingroomproject.org/visiting-room/terrence_guy [<https://perma.cc/TLT3-TMHE>] (interview and transcript on file with the authors).

320. *About*, *EAR HUSTLE*, <https://www.earhustlesq.com/about> [<https://perma.cc/RH9B-RGSS>] (last visited Oct. 19, 2020) ("Ear Hustle launched in 2017 as the first podcast created and produced in prison, featuring stories of the daily realities of life inside California's San Quentin State Prison, shared by those living it.").

321. See Interview by The Visiting Room Project with Arthur Carter, https://www.visitingroomproject.org/visiting-room/arthur_carter [<https://perma.cc/763Y-EFCT>] (interview and transcript on file with the authors).

Relying on recidivism data and interviews conducted with 110 individuals formerly sentenced to life without parole in California, a recent report by Human Rights Watch documents the positive contributions these individuals are making to their families and communities since coming home.³²² The report “contends that LWOP sentences are counterproductive to public safety because they deprive communities of the unique and valuable contributions individuals with the sentence can make,” and calls on the California state government to abolish them.³²³

There are increasing opportunities to document the releases of people convicted of serious offenses in the aftermath of juvenile life without parole reforms. In many states, the line of U.S. Supreme Court cases has led to the abolition of the punishment altogether.³²⁴ A study by researchers in Philadelphia has tracked the release of nearly 200 former juvenile lifers, and an expansion of that study will include in-depth interviews about their reentry and life after prison.³²⁵ Journalists and researchers are undertaking similar studies in Michigan and Louisiana.³²⁶

There are other, at times more unforeseeable, releases of people convicted of serious offenses in significant numbers to examine, like “the Ungers” in Maryland. This group of around 200 people (nicknamed “the Ungers” for the case that led to their release) had served more than thirty years in prison when they were granted new trials on account of an improper jury instruction.³²⁷ More than 80% of “the Ungers” were convicted of murder and 16% were convicted for rape; they were incarcerated for an average of thirty-nine years.³²⁸ Their unexpected release spurred widespread interest and media coverage, including an attractively-presented longform article,³²⁹ a short documentary,³³⁰ and a five-years-on retrospective report.³³¹ In his in-depth article for *The Huffington Post*, journalist Jason Fagone describes one member of “the Ungers” group, a man named Hasan:

322. See AMANDA LEAVELL, HUM. RTS. WATCH, “I JUST WANT TO GIVE BACK”: THE REINTEGRATION OF PEOPLE SENTENCED TO LIFE WITHOUT PAROLE 4, 12 (2023).

323. *Id.* at 4.

324. See JOSH ROVNER, THE SENT’G PROJECT, JUVENILE LIFE WITHOUT PAROLE: AN OVERVIEW 1 (2023).

325. See TARIKA DAFTARY-KAPUR & TINA M. ZOTTOLI, RESENTENCING OF JUVENILE LIFERS: THE PHILADELPHIA EXPERIENCE 4–5 (2020); Tierney K. Huppert, Natalia Covan-Rodriguez, Tristin Faust & Tarika Daftary-Kapur, *Incarcerated as a child, reentering as an adult: The unique reentry experiences and needs of juvenile lifers*, J. CRIM. JUST., Sep. – Oct. 2025, at 8 (describing expansion of the project).

326. SAFE & JUST MICH., FACT SHEET: JUVENILE LIFE WITHOUT PAROLE 1 (2023), <https://safeandjustmi.org/wp-content/uploads/2023/09/JLWOP-Fact-Sheet.pdf> [<https://perma.cc/GPA6-NJQM>] (describing studies in Michigan); Dr. Christian L. Bolden, *Research, Humanity, and New Possibilities Beyond the Carceral Space*, JUSTSOUTH MONTHLY (Jesuit Soc. Rsch. Inst.), January 2026 (describing studies in Louisiana).

327. Michael Millemann, Jennifer E. Chapman & Samuel P. Feder, *Releasing Older Prisoners Convicted of Violent Crimes: The Unger Story*, 21 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 185, 185–87 (2021).

328. JUST. POL’Y INST., THE UNGERS, 5 YEARS AND COUNTING: A CASE STUDY IN SAFELY REDUCING LONG PRISON TERMS AND SAVING TAXPAYER DOLLARS 10 (2018) [hereinafter THE UNGERS, 5 YEARS AND COUNTING], https://justicepolicy.org/wp-content/uploads/2021/06/Unger_Fact_Sheet.pdf [<https://perma.cc/MYT8-9ZKD>].

329. See Jason Fagone, *Meet the Ungers*, HUFFPOST (May 2016), <https://highline.huffingtonpost.com/articles/en/meet-the-ungers/> [<https://perma.cc/8FM8-KKQF>].

330. See ABELL FOUNDATION, *The Ungers: A Matter of Time* (YouTube, Mar. 5, 2019), <https://www.youtube.com/watch?v=E3-oAK-61IU&feature=youtu.be> [<https://perma.cc/JZE4-LTET>].

331. See THE UNGERS, 5 YEARS AND COUNTING, *supra* note 328.

Now 57, Hasan has achieved a lot in the short time he has been out: a steady job with the city of Baltimore, a car, a marriage to a registered nurse named Annette, a business plan for a youth mentoring nonprofit. He functions as a constant positive presence in the group, a connector and a joker.³³²

Fagone later describes the efforts of the lone woman in the group, Etta Myers, to connect with the kids at her church.

Myers said she watches children's shows because there are a lot of precocious kids at her church and she wants to understand them better. She's astonished by her great-niece Chloe, who is 3 years old. "She had a little bump on her head. And I said, 'How did you bump your head, Chloe?' And she said, 'Well, I don't think we have time for that, that's really irrelevant right now.' And I said, 'Who says irrelevant at 3 years old?'"³³³

At the time of Fagone's writing, of the 143 "Ungers" who had been released, not a single one had been convicted of anything more serious than a minor traffic offense.³³⁴ Five years later, this finding held almost perfectly steady.³³⁵ The story of "the Ungers," both as individuals and as a collective, demonstrates that we can safely release people who have committed serious, violent offenses. Yet it is not the lack of recidivism that shines through in the coverage of "the Ungers" so much as the small but significant details of how they have made their communities richer since their release.

Almost fifteen years ago, Professor Gottschalk emphasized that "[e]xperts and activists need to figure out how to make prisons . . . and the lives they mark more visible to the wider society."³³⁶ Many are heeding this call, not only to bring attention to those incarcerated, but also those who have been granted early release. A growing number of reports,³³⁷ books,³³⁸ documentaries,³³⁹ media stories³⁴⁰ and

332. See Fagone, *supra* note 329.

333. See *id.*

334. *Id.*

335. See THE UNGERS, 5 YEARS AND COUNTING *supra* note 328, at 17.

336. THE PRISON AND THE GALLOWS, *supra* note 35, at 255.

337. See generally COURTNEY ET AL., *supra* note 10; HOLBROOK, *supra* note 308, at 8; FELICITY ROSE, JASMINE SANKOFA & ALISON SILVEIRA, TURNING THE PAGE, OKLAHOMA'S CRIMINAL JUSTICE REFORM STORY 11–12 (Sept. 2022) <https://turningthepage.fwd.us/> [<https://perma.cc/SEU4-CGZ9>] (covering the successes of Oklahoma's bipartisan movement for criminal justice reform, which involved reducing the prison population by more than 20% and using the cost savings to fund local mental health and substance use treatment).

338. See Carolyn Forché, *A Poet and Ex-Con Writes About Life After Prison*, N.Y. TIMES (Oct. 15, 2019), <https://www.nytimes.com/2019/10/15/books/review/felon-poems-reginald-dwayne-betts.html> [<https://perma.cc/T28J-S62U>] (about a book published by Reginald Dwayne Betts).

339. Devin Dubon, *Yes, There is Life after Prison, New Documentary Reveals*, MIAMI HERALD (Apr. 8, 2019), <https://www.miamiherald.com/entertainment/movies-news-reviews/article228986499.html> [<https://perma.cc/7MY5-5MKY>].

340. See, e.g., Katie Rose Quandt, *John Pace and His Friends Expected to Die in Prison*, THE NATION (Nov. 16, 2018), <https://www.thenation.com/article/archive/jlwop-parole-sentenced-prison/> [<https://perma.cc/SQE9-P5LPJ>]; Maura Ewing & Samantha Melamed, *A Prison Lifer Comes Home*, THE ATLANTIC (Sept. 15, 2019), <https://www.theatlantic.com/politics/archive/2019/09/juvenile-lifer-comes-home-prison/596845/> [<https://perma.cc/ZJZ4-XQ7R>]; Grace Toohey, *The 'Power of Second Chances': How This 37-Year-Old, Once in Prison, is*

digital presentations³⁴¹ are being released into the public sphere highlighting not simply the negligible recidivism rates of people released from prison after serving decades for serious offenses—though these are compelling³⁴²—but the fullness of their presence in the families, workplaces, schools and communities to which they returned.³⁴³

Increasingly, there is a sense that reversing mass incarceration will require a moral reckoning of sorts with the attitudes and actions we have taken towards those who commit serious offenses.³⁴⁴ The profound change required to return prison populations to pre-1970 levels will necessitate a recognition that “people serving time for violent crimes are capable of transformation and are worthy of compassion, support, advocacy, and a meaningful opportunity to return to their families and communities.”³⁴⁵ The stories of men and women who have endured our most severe punishments and are now living among us bring a sense of societal responsibility to the conversation about perpetual punishment that their invisibility behind prison walls once prevented. Even in relatively small numbers, their release offers a vital resource to the movement to end mass incarceration: a way to upend the notion that the retributive model is costless to our society. When they reenter our communities, they become known to us again—as neighbors, grandparents, members of the workforce, etc.—and we are forced to reckon with the notion that we had once banished them to die behind bars. Their public presence helps society grasp the moral weight of the punishments being carried out in our name.³⁴⁶ They make our task to find a way out of mass incarceration feel more urgent.

CONCLUSION - A WAY OUT OF PERMANENT PUNISHMENT

“Sometimes scholars of American political development are guilty of over-emphasizing how entrenched policy paths are,” warns Marie Gottschalk.³⁴⁷ “As a consequence, they neglect critical junctures when politics no longer ‘proceeds according to existing political arrangements and ideological commitments’ and instead veers off in a new direction that fundamentally changes the governing rules.”³⁴⁸ The growing movement for second-look relief represents such a potential

Now an LSU Grad, THE ADVOCATE (May 10, 2019), https://www.theadvocate.com/baton_rouge/news/crime_police/article_03c590ae-72a9-11e9-8d2b-4b78d19fcd5b.html [<https://perma.cc/7UF4-HHYF>].

341. See, e.g., Fagone, *supra* note 329.

342. See, e.g., Prescott et al., *supra* note 288; DAFTARY-KAPUR & ZOTTOLI, *supra* note 325.

343. See, e.g., Oliver Laughland, *An Extraordinary Story of Forgiveness: From Life Without Parole to Finding Grace*, THE GUARDIAN (Aug. 8, 2022), <https://www.theguardian.com/us-news/2022/aug/08/life-without-parole-prison-angola-louisiana-visiting-room> [<https://perma.cc/VD9A-8ZFA>] (sharing how the father of a murder victim said of the perpetrator, who was recently released, “I feel like I got a son I can count on too. I feel Charles will be there for me. What Sean would have done, I think Charles would do it for me.”).

344. See *Racial Critiques of Mass Incarceration*, *supra* note 19, at 45–52; GOTTSCHALK, *supra* note 1, at 18.

345. Lewin & Carroll, *supra* note 110, at 257–58.

346. See, e.g., Russell, *supra* note 274, at 492.

347. THE PRISON AND THE GALLOWS, *supra* note 35, at 238.

348. *Id.*; see also *Emptied Youth Prisons*, *supra* note 104.

turning point, challenging long-standing ideological commitments to mass incarceration. Currently at the leading edge of criminal justice reform, it focuses on those serving lengthy sentences for serious crimes—an issue traditionally sidelined in mainstream reform discourse. While it remains uncertain whether this movement will drive lasting expansions of resentencing laws, parole, clemency, and compassionate release, such measures are essential to addressing the humanitarian crisis unfolding in the nation's aging prison population. What is clear, however, is that second-look relief offers a critical framework for dismantling the pro-carceral ideologies that created this crisis in the first place.

Second look efforts, when successful, expose the moral fallout of our society's forty-year experiment with permanent incarceration and urge a return to proportional and responsive sentencing practices. First, by showing that we make sounder judgments about how long someone should stay in prison by waiting until they have served a portion of their sentence and demonstrated their capacity to change; second, by making visible the ways individuals can transform their lives behind bars; and third, by ensuring more of those individuals return to the free world, where their presence and contributions help lay bare the societal cost of the retributive model.

For a long while, it has seemed as though attitudes favoring harsh sentencing practices in the U.S. will never soften, at least for those who have committed the most serious crimes. Many activists have assumed that the only way to change penal policies governing this condemned population is to focus on adjacent issues, like cost.³⁴⁹ But the initial successes of the second look movement challenge this assumption. The arguments for a second-look are not grounded in cost, or the pursuit of “low-hanging fruit,” but in the journeys that individuals convicted of serious offenses have taken from the time of the crime to the person they are decades later. Rather than shying away from the stories of the convicted, second look proponents are trying to make the full breadth of incarcerated lives known. As they succeed in their nascent efforts to get people serving long sentences second-looks and even releases, they challenge the notion that these individuals ever deserved perpetual punishment in the first place. In doing so, they chip away at the ideology of extreme sentencing regimes, and show us what is required to undo mass incarceration in America.

349. See GOTTSCHALK, *supra* note 1, at 17.