

Lifers' Group Inc. Fast Facts: A THOUSAND PRISONERS ARE SLOWLY DYING IN MASSACHUSETTS PRISONS

BACKGROUND

As of January 1, 2019, there were 1084 prisoners serving Life Without Parole (LWOP) sentences in Massachusetts state prisons.ⁱ This number has increased 56% since 1999 and now amounts to one in seven state prisoners. Currently all LWOP prisoners are destined to die in prison after years of imprisonment without hope. No matter how clearly prisoners demonstrate whether they have changed and become rehabilitated, there is no possibility for release and no outcome other than death in prison. Commutations are a relic of the past with none since 1997.

This sentence is **mandatory** in Massachusetts for all those convicted of first degree murder. Some may assume that such sentences are reserved only for the "worst of the worst", but the reality is that it is often only a matter of who pleads out first. It is not uncommon for killers, aware of their risk, to plead out to a lesser sentence while a non-killing co-venturer, because of inexperience, ends up serving the LWOP sentence. Or, tragically, there are defendants who insist on a trial because they are innocent only to lose and end up with LWOP.ⁱⁱ Furthermore, under felony murder rules, for felonies involving a death, it is routine that co-conspirators who never killed or even had any intent to kill are sentenced to LWOP. These policies have resulted in 13.4% of all state prisoners in Massachusetts serving LWOP, the second highest percentage in the United States.ⁱⁱⁱ Denying all these prisoners any opportunity for parole deprives them of all hope and ignores their capacity to rehabilitate. Keeping these aging prisoners locked up is very costly, wasting precious resources that could better be used to further education and prevent crime.^{iv}

These mandatory LWOP sentences are without the substantial legal and procedural safeguards offered for death penalty sentences including death-certified attorneys, bifurcated juries and extensive post-conviction procedural safeguards. Approximately 70% of death penalty cases are reversed as the result of these constitutionally mandated protections whereas only 10% of LWOP cases are overturned.^v Since 2009, an average of 8 LWOP prisoners are dying in MA prisons every year.^{vi}

An Act to Reduce Mass Incarceration

(H3358, Rep. Livingstone and S826, Sen. Boncore)

These identical bills before the 2019-20 Legislative session would allow (but not guarantee) LWOP prisoners to be eligible for life-long parole after serving 25 years and would apply retroactively to include current LWOP prisoners.

ASSOCIATED FACTS

- ❖ MA prisoners are the oldest in the U.S. with 14.4% aged 55+ and an additional 33.1% aged 40-54 as of January 2018.^{vii}
- ❖ The percent of MA prisoners aged 50+ increased 7-fold between 1999 and 2019 and now make up 28% of state prisoners.^{viii}
- ❖ A major cause of aging MA prisoners is the large number of LWOP prisoners. Currently, 1 in 7 prisoners are serving LWOP and half already are aged 50 and older.^{ix}

(Please Turn Over)

- ❖ Criminal activity is age-dependent with peak levels for offenders in their twenties and declines rapidly after age forty. Because people age out of criminal activity it is counterproductive to continue to incarcerate older prisoners who have demonstrated that they no longer endanger public safety. Recidivism rates decrease precipitously after age 50, with those convicted of homicide having the lowest rates.^x
- ❖ It has been shown that it is the certainty of punishment and not the length of the sentence that deters crime. Neither LWOP nor the Death Penalty are effective crime deterrents.^{xi}
- ❖ Although LWOP prisoners have not been eligible for parole, of 453 Second Degree murderers released on parole since 2000 only 24 (5%) have committed new crimes, most of which are non-violent, non-serious offenses.^{xii}
- ❖ Increasing rates and lengths of incarceration do not reduce crime. The States that have reduced their prison populations the most are also seeing the lowest crime rates.^{xiii}
- ❖ Average annual costs of incarceration of MA prisoners now exceed \$80,500/prisoner.^{xiv}
- ❖ It is 2 to 3 times more expensive to house elderly prisoners than average prisoners.^{xv}
- ❖ Medical costs for prisoners are escalating, more than doubling in only four years (2016 - 2019) and now average \$20,000/year per prisoner in large part because of aging prisoners.^{xvi}
- ❖ The high costs of incarceration divert funds from critical public service needs, many of which help to reduce crime and improve public safety, including education, public health and local aid.^{xvii}

CONCLUSION:

It is time to abolish Life Without Parole in Massachusetts

ⁱ **DOC Population Trends, 2018** (DOC, Milford, MA, July 2019).

ⁱⁱ **Greineder D.** "Life" is a Death Sentence: Aging and Dying in Massachusetts Prisons. (Lifers' Group Inc., Norfolk, MA, January 2018). An average of 4 LWOP sentences are reversed every year, typically after 10-30 years.

ⁱⁱⁱ *Ibid.* and **DOC Population Trends, 2018** (note i); **Nellis A.** *Still Life: America's Increasing Use of Life and Long-Term Sentences* (Sentencing Project, May 2017).

^{iv} **Forman G** and **Widmer M.** *Getting Tough on Spending: An Examination of Correctional Expenditure in Massachusetts*, (MassINC, Boston, MA, May 2017); **Engel L** and **Atkisson J.** *Priorities and Public Safety: Reentry and the Rising Costs of Our Correctional System* (Boston Foundation, Boston, MA, 2009).

^v **Nellis A.** *Tinkering with Life: A Look at the Inappropriateness of Life Without Parole as an Alternative to the Death Penalty*, (U. of Miami Law Rev. 67:439-458 (2013) & The Sentencing Project)

^{vi} **Greineder D.** "Life" is a Death Sentence (note ii).

^{vii} **McKillop M & Boucher A.** *Aging Prison Populations Drive Up Costs* (Pew Charitable Trusts, Washington, DC, February 20, 2018).

^{viii} **Greineder D.** *Massachusetts Incarceration of the Elderly: Morally Questionable, Costly and Unnecessary for Public Safety.* *Journal of Prisoners on Prisons*, 27(1)17-54(2018) (Univ of Ottawa Press, Ottawa, Ont. Canada); and note i.

^{ix} *Ibid.* and **DOC Population Trends** (note i).

^x **ACLU.** *At America's Expense: The Mass Incarceration of the Elderly* (ACLU, New York, NY: June 2012); **Greineder D.** *Massachusetts Incarceration of the Elderly* (note viii); and **Durose MR, Cooper AD, & Snyder HN.** *Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010* (Bureau of Justice Statistics, No. 244205, Washington DC, April 2014).

^{xi} **Wright V.** *Deterrence in Criminal Justice: Evaluating Certainty vs. Severity of Punishment* (The Sentencing Project, Washington, DC, November 2019).

^{xii} **Greineder D.** *Recidivism of Massachusetts Life-Sentence Prisoners: Re-Offending at Minimal Rates* (Lifers' Group Inc. Norfolk MA, August 2019).

^{xiii} **Loth R.** *Fewer Prisoners, Lower Crime* (Boston Globe, 8/30/19, A9).

^{xiv} **Haas G.** *MA DOC Expenditures and Staffing Levels for Fiscal Year 2019* (Lifers' Group Inc. October 2019).

^{xv} **ACLU.** *At America's Expense* (note x); **Greineder D.** *Massachusetts Incarceration of the Elderly* (note viii).

^{xvi} Lifers' Group Fast Facts. *Medical Costs in the Massachusetts DOC.* (Lifers' Group Inc., Norfolk, MA, Aug 2019).

^{xvii} Between FY2011 and FY 2016 state expenditures for Corrections increased 34%/inmate but only 11% for education/student and 6% for local aid/resident while MassHealth spending/enrollee **decreased** by 6% (MassINC). Similar results were shown by the Boston Foundation in 2009. See references in note iv.