

## A New Era of Sentencing Reform

by

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Many of the current sentencing and corrections policy reforms aim to correct overly harsh sentences for those convicted of nonviolent offenses. Amid mounting concerns about mass incarceration, in part rooted in fiscal concerns, states have begun to depopulate their prisons and reform sentencing laws that have driven the expansion of the prison population since the mid-1970s. In August 2013, Attorney General Holder delivered a substantial speech that has reinvigorated discussions on mass incarceration and created the potential to ease the overcrowded federal prison system.

National leadership of this sort can provide momentum for state reforms that ease harsh sentences for offenders who are better served in treatment or community-based alternative settings, or for shorter terms of incarceration. The Attorney General's speech represents a pivotal and long-awaited opportunity for criminal justice reforms across a wide spectrum of penalties.

Recent developments hold promise for a new criminal justice era that relies less on incarceration and more so on alternatives that promote public safety, reform offenders, heal victims, and stay within the boundaries of limited budgets. Addressing the overincarceration of drug offenders alone is a significant undertaking. The number of people in state prisons for a drug offense rose more than 550% in the past twenty years and half the people in federal prison are serving time for a drug offense.

Policies and practices around life sentences in America, though, remain largely unchallenged despite a sustained period of low crime. The violent crime rate is now close to half of what it was 20 years ago. One plausible explanation for the mismatch between falling crime and rising life sentences is that these sentences are excluded from serious consideration in sentencing reform discussions. Most of the dialogue regarding sentencing reform centers on nonviolent offenses.

Yet, it is not necessary to limit reforms to those convicted of nonviolent or minor offenses. In order to truly address our nation's prison problem, policymakers should also substantially revise policies affecting those serving long sentences, including life sentences with and without parole. There are important legal, moral, and fiscal/public safety reasons to do so. To date, the broad and increasing use of life sentences is rarely a part of crime policy discussions.

There are several key reasons to rethink our crime policies for life sentences. In many ways, Americans support the belief in second chances, but there is a reluctance to apply this perspective to those who commit crime, especially serious crime. However, many prisoners go on to demonstrate true personal reform,

and ability to contribute positively to society if given the chance.

There is also the high financial cost of incarcerating people for the rest of their lives, particularly given the low recidivism of life-sentenced prisoners. While there are cases where release of long-term prisoners is not realistic or prudent, a reliable mechanism should always be in place to review personal change and consider evidence of remorse, as well as to assess the cost of continued confinement, including paying mounting medical and housing costs for those who no longer pose a threat to public safety.

The Supreme Court's recent conclusions about the constitutionality of life sentences for youth are important. Many of the arguments presented to support parole review for this category of lifer could be applied to adult offenders as well. That is, adolescence is not the only period in which transformation and reform are possible and a meaningful opportunity for release does not have to be limited to those who commit crime in their youth. The capacity for change is inherent in most people given time and engagement in rehabilitative programming. In a system where all prisoners receive parole review, denial of parole is still an option for those who fail to show they have earned it, but the possibility of reducing unnecessary incarceration can emerge.

#### A More Sensible Response To Serious Crime:

Those who support eliminating LWOPP sentences on moral or practical grounds do not view the abolition of LWOPP as a guaranteed release from prison. A parole-eligible life sentence does not give prisoners the right to be released, merely the opportunity for review at a reasonable point in their sentence. Case-by-case review of a variety of pertinent factors, conducted by a professional parole board, will allow for the release of those prisoners who no longer need to be incarcerated and the continued incarceration of those who do.

LWOPP sentences are costly, shortsighted, and ignore the potential for transformative personal growth. The forty-nine states that allow LWOPP—and among these, the six states and the federal system with LWOPP-only sentences—should replace this structure with parole-eligible terms. An example may come from Canada, where all individuals serving life sentences are considered for parole after serving ten to twenty-five years.

Again, such a change would not necessarily mean that all parole-eligible individuals would be released at some point during their term. In the interest of public safety, many individuals sentenced to life will serve the remainder of their natural lives in prison. However, this reform would delegate that decision to those who could periodically review prison sentences and prisoner progress since entering prison, taking into account a person's prospects for a successful transition to the community.

Look to Other Countries for Guidance:

Many countries exist without the death penalty or LWOPP and are able to maintain public safety. These countries do not experience major crime spikes. According to a 2005 United Nations report, seven countries reported having a mandatory life sentence for murder; however, all of them reported mechanisms for releasing prisoners after a certain period of time. In 2005, the United Kingdom had only twenty-two prisoners serving LWOPP sentences. Most European countries do not have parole-ineligible life sentences. In these countries, it is recognized that no one should be declared beyond reform or redemption without first attempting to rehabilitate them. A comprehensive review after some term of years is considered appropriate because of the emphasis on human rights and human dignity. Perhaps we can learn from these countries how to develop a continuum of sanctions that encourages individual reform and protects the public at the same time.

Conclusion:

Life without parole is effectively a death sentence; to consider it as anything less severe is a mistake. Even though one's death may not occur for a few decades or more does not mean that government has not decided how and where the individual will die. When looked at from this view, LWOPP is not so different from the death penalty. Moreover, in both an execution and a life sentence without the possibility of parole, there is no hope for redemption or reform, despite the reality that many people turn away from their criminal pasts and go on to lead law-abiding lives where they could contribute in a positive way to society. Neither of these two sentences allow for this possibility, however, Both the death penalty and LWOPP are terminal sentences and guarantee that the prisoner will die in prison.

Ultimately, however, neither sentence is appropriate in a corrections system that has the ability to reform lives as ours does. Our society demands fair and just sentences that keep the public safe, apply a reasonable amount of punishment, and attempt to reform the offender so that he or she can be safely returned to the community. Neither the death penalty nor LWOPP accomplish these goals.

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