

FORMAL REQUEST FOR COMPARISON STUDY OF CALIFORNIA PRISONERS SERVING LIFE SENTENCES WITHOUT PAROLE TO THOSE SERVING LIFE WITH PAROLE:

By

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PROPOSED AIMS:

1. Compare crimes/convictions between those serving life with parole to those serving life without sentences;
2. Compare in-custody behavior of those serving life without parole to those serving life with parole;
3. Compare the recidivism rates (in those states that allow those sentenced to life without parole to be released) to California prisoners paroled with life crimes.
4. Is LWOP practical? Is LWOP necessary?
5. Is LWOP disproportionately applied by race?
6. Does the theory of incorrigibility conflict with empirical evidence?
7. Do politics and special interests have too much sway in the California justice system?
8. Is there a wide and unjust series of discrepancies in the application of LWOP in California?
9. At what point is incarceration enough if the prisoner can demonstrate reformation?
10. To fill an unjustifiable void for the dearth of such studies that either support or debunk current penal practices and improve the efficiency and fairness of the state criminal justice system. To date, no such study has been conducted.

INTRODUCTION:

In the interest of California taxpayers, the educational system, specifically the California University System and the California justice system, this proposal is being presented by the men of the Progressive Programming Facility (PPF), in Los Angeles County, in effort to indisputably show that the sentence of life without the possibility of parole (LWOP) is a huge waste of taxpayer money, is ineffective as a deterrent, inconsistently applied, unnecessary and unjust. Furthermore, such a study will demonstrate that the sentence of LWOP, a product of political posturing and special interests, defies empirical studies conducted by various disciplines of behavioral developmentalists.

PRESENTERS:

The Progressive Programming Facility was established in 2001 by reform-minded prisoners, who happened to have been sentenced to LWOP, with the approval of open-minded prison administrators willing to go against the grain of the "punishment-only" model. The PPF was initiated as the Honor Program (www.prisonhonorprogram.org). Following the first year of implementation, a Los Angeles Times study found that weapons infractions decreased 88 percent, and violence and threatening behavior dropped 85 percent (1). Moreover, according to prison officials, during that same period taxpayers saved more than \$200,000 due to the lack of violence normally associated with maximum-security facilities.

As a result of the peaceful program taxpayers saved the exorbitant costs of hospitalizations and emergency overtime that regularly accompany violent incidents (2). In 2007 both Democrats and Republicans passed Senate Bill 299 (our proposal) to establish an Honor Program at every maximum-security prison throughout the state (3). (Governor Arnold Schwarzenegger vetoed Senate Bill 299, attaching a signing statement that CDC could do so without the force of law. To date, they have not.) As of March 19, 2013, the PPF houses 321 prisoners sentenced to LWOP (59.7 percent of the PPF population, a medium-security facility.)

LWOP HISTORY:

LWOP has a long history that stretches back to early 20th century America, but modern arguments for LWOP purport its purpose as for serial killers and those so mentally deranged that rehabilitation is physiologically impossible.

Much like California's Three Strikes law, the initial objective of the law widened as the law manifested. LWOP has become a common sentence for crimes that, arguably are less heinous than some of those sentenced to 25 years to life, but for some technical trigger, the special circumstance is applied, elevating the sentence to LWOP. In the poignant, critical words of Patricia J. Williams, on mandatory sentencing such as LWOP: "The thought of reducing all guilt or innocence, all probation or prison into a soulless system of automation has been thought of as unjust for centuries. To convict or sentence or execute someone based on resolutely mechanistic determinants is the very definition of unconscionable. Indeed, a system based on the word of law alone doesn't really need judges" (4).

ARGUMENT:

One of many problems with LWOP is that it completely prohibits a prisoner sentenced under its tentacles from being reviewed. The sentence of LWOP implies that the prisoner is incorrigible, yet any objective study on this class of prisoners will show the opposite. In fact, a recent study conducted by the University of California (UC) and UC Berkeley found that prisoners sentenced to LWOP were systematically being housed in maximum-security prisons, unnecessarily, wasting millions of dollars, when their long-observed behavior was consistent with lower custody designations. As a result of the study, all eligible LWOP prisoners were reclassified for the more cost-effective, lower custody designations. In rather interesting language, relevant to the terminal sentence in question here, the statisticians were very critical of the "mandatory minimums" used by the California Department of Corrections and Rehabilitation (CDCR) for the purpose of classification (5).

Charles Manson, convicted, arguably, of the worst case in California history, is frequently reviewed by the Board of Parole Hearings (BPH); though conventional wisdom dictates that he will never be paroled (6). Yet any fair-minded observer would find it curious that, no one sentenced to LWOP is privileged to approach the BPH, like Manson and his followers. In contrast, Manson's 69-year-old co-defendant, Bruce Davis, convicted of killing two people in that horrific series of "helter-skelter" murders was able to earn a grant of parole, twice, by experts on the BPH. Though Davis' rehabilitation efforts endured for 42 years, after 27 hearings, he did, in fact, prove he was rehabilitated (7). (Davis' parole grants were subsequently reversed by

Governors Arnold Schwarzenegger and Jerry Brown, respectively.)

Ironically, LWOP was originally enacted for persons such as Charles Manson, maniacal, incorrigible by his own mouth, and convicted of serial killing. A study, such as the one proposed here, would also reveal that in many crimes committed by the lifer with parole, the act(s) were worse than the act(s) committed by those sentenced to LWOP. In addition, many of those lifers with parole, and convicted of more egregious cases than those sentenced to LWOP, enter the prison system and continue to commit violent acts, and yet, as they age, mature and rehabilitate (which is consistent with developmentalists' findings), they are then found suitable by the BPH for parole and subsequently released.

This writer would proffer that to effectively deny and prohibit a class of people from even attempting to show rehabilitative effort contravenes every standard of decency and humanity, and grossly offends our American ideals of justice, self-determination and the potential for human reformation. Furthermore, the practice contradicts empirical evidence by contemporary developmentalists on plasticity, prefrontal cortex maturity and other facets of neuroscience, discussed below.

PRACTICALITY:

A 2008 study by The Sentencing Project found that during the 1990s, a period of historic declines in the crime rate nationwide, "there was no discernable correlation between incarceration rates and criminal offending." Between 1991 and 1998, "states with above average increases in the rate of incarceration experienced a 13 percent decrease in crime rates. States with below average increases in incarceration rates, however, experienced a greater decline (17 percent) in crime rates."

Moreover, during the aforementioned period, tough-on-crime Texas saw a 144 percent increase in incarceration rates and a 35 percent decrease in its crime rate. Yet New York experienced a crime rate decline of 43 percent, despite an incarceration rate of only 24 percent.

The Sentencing Project report also stated that, "While imprisonment may work at some level to reduce crime through deterrence and incapacitation, there is little evidence supporting deterrent effect of increasingly longer prison sentences" (8).

Eternal sentences mean that rehabilitated men and women, who are

specifically prohibited from showing they have changed every bit as much as other lifers, will not leave prison except in a cold, lifeless body bag.

California has the highest proportion of life sentences in the nation, relative to the population (20 percent), with 1 in 6 prisoners serving life sentences. Among California's 34,000 life sentences, nearly 11 percent are LWOP (9). Is LWOP practical? Is LWOP necessary?

RACIAL DISPARITIES:

On the issue of race, again, California has one of the worst disparities in the nation, particularly with the imposition of LWOP for juveniles. African American youth were sentenced to LWOP at over 18 times the rate of white youth. Latino youth were sentenced to LWOP at five times the rate of white youth, until the U.S. Supreme Court intervened in 2009 with a series of rulings that curtailed the practice of mandatory sentences for youth nationwide (10). A review by the U.S. Sentencing Commission found like disparities in the application of "three strikes." It found that African Americans constitute 29 percent of persons serving a felony sentence in prison, and 45 percent of those persons serving a three strike offense (11). Yet African Americans make up a mere 7 percent of the Golden State's population.

Race is important in the criminogenic context because, as behavioral scientists point out, race, like age, often factor in when trying to determine how external influences add perspective to the internal effects on a person or group of persons. For instance, the U.S. Department of Justice, the state department of corrections and the Vera Institute of Justice Center consider age 55 "old" in prison years, as opposed to their mainstream counterpart at 65, because studies show that prison tends to age people, particularly African Americans.

The reason given is that African Americans are generally in poorer health than those similarly aged in society as a result of life-style issues such as excessive drug and alcohol use, long-standing economic disadvantages prior to incarceration and substandard health care. Once in prison the inherent stressful conditions contribute to what developmentalists call the allostatic load, the total, combined burden of physiological stresses that an individual lives with as they increase the risk of premature deterioration and chronic disease. Of course, these factors can raise the health risks of people across all sectors, but African Americans statistically have the highest prevalence

of premature deterioration and chronic disease (12). Based on these factors, developmentalists say incarceration shortens the life of prisoners, lifers or not, if they are serving a significant stretch of time (see more in LWOP: **THE SLOW DEATH** (13)).

Developmentalists say this unique, dying population is expanding, attributable to the large numbers who have aged in prison with life terms and mandatory minimum sentences with no parole, after having committed crimes in their youth. (It should be noted that the criminogenic risk of adults over 35 decreases steadily and significantly, and those over 50 represent the lowest risk.) Moreover, African Americans are disproportionately represented among older inmates: about 700 per 100,000 African American adults 55 and older are in prison nationwide, compared with 420 per 100,000 Latinos and 130 per 100,000 whites (14). Still, these rates of long-term incarceration are devastating to any ethnic group, causing generational, calamitous stunting.

Moreover, according to developmentalists, the primary reasons for the disparities, in every statistical measurement, is the persistent lower socioeconomic status of African Americans, which is tied to their history of disadvantage and discrimination in our society; including limited access to educational opportunities in their younger years; reduced employment opportunities and long periods of unemployment or under-employment throughout their lives; concentration in low-wage, sporadic service jobs, many with no benefits, or the option of saving and private pensions (15).

Of course, other racial groups suffer the same disadvantages, but not in the historic concentration of African Americans. These facts, and so many more, highlight the remarks by Patricia Williams, that mandatory sentences, with little or no judicial consideration of the factors in an individual's life that make a person unique, turns the judicial system into little more than a pulseless conveyer belt to a very slow and discriminating death sentence. Is LWOP applied disproportionately by race?

THE SCIENCE

The science supporting the need for such a study is extensive. In fact, the U.S. Supreme Court relied on modern science to limit the use of LWOP for juveniles and that science was the determining factor in Miller v. Alabama, et al. More to the point, traditional law dictates that we become adults (legally responsible) at age 18, but contemporary developmental

science contravenes tradition with the fact that complete human physiological developmental maturity doesn't occur until age 25. In fact, it should be noted that the typical age range of arrestees is between 16 to 29, concurrent with developmental findings.

More specifically, modern science has proven, with the use of functional magnetic resonance imaging (fMRI) and magnetic resonance imaging (MRI) devices that display the undeveloped prefrontal cortex in what developmentalists now term "emerging adulthood." This term refers to individuals between the ages of 18 to 25 (16). The fact that developmentalists have ascribed a new period of growth that goes beyond the hypothesis associated with common sense and tradition is significant. Indeed, this is the area of human behavioral studies that the U.S. Supreme Court relied on to redress the inhumane sentence of LWOP for juveniles. The problem is that the Court limited its application to those 18-years of age, contradicting contemporary findings and resorting to antiquated traditions that do not mesh with empirical reality. Should emerging adults benefit from the recent jurisprudence exercised to limit the use of LWOP for juveniles?

It is now indisputable that immaturity plays a role in the decisions of emerging adults. For instance, "MRI images reveal that as the brain matures, neuronal connections are pruned and gray matter diminishes in a back-to-front wave. A pruning occurs, the connections that remain are strengthened and reinforced, and the amount of white matter in the brain steadily increases."

More specifically, the first brain areas to mature are at the extreme front and back of the brain.... The last brain area to experience pruning and maturity is the prefrontal cortex. This is significant because the prefrontal cortex plays a critical role in many advanced or "executive" cognitive functions, such as a person's ability to reason, plan ahead, organize, solve problems and decide. And when does the prefrontal cortex reach full maturity? According to the MRI studies, not until the person reaches their mid-twenties. This suggests that a [person's] occasional impulsive or immature behavior is at least partly a reflection of a brain that still has a long ways to go to reach full maturity.... The result is [behavior that is] immature, impulsive, unpredictable -- or even risky (17).

When examining criminogenic roots, one must note the pattern of risk-taking that comes with emerging adulthood. Developmentalists call this behavior

"edgework," that is, occupations or recreational activities that accompany a high degree of risk: enlisting in the military (so they can "light the enemy up," a naturally occurring product of the invincibility fable -- a fallacy common with adolescents and emerging adults that nothing can harm them); extreme sports, street racing or perhaps skydiving. Then there are the destructive behaviors that others choose during this period: having unsafe sex, Russian roulette or drug abuse.

Others adopt addictive-adrenaline activities such as, gang-banging (18) (If they aren't pressured into this sub-fraternity at the threat of bodily harm or the barrel of a gun), robbing and accosting, all of which are listed in the Diagnostic and Statistical Manual of Mental Disorders, by the American Psychiatric Association, but not considered by judges in the administration of justice in sentencing for LWOP, and most other life sentences.

The truth is that delinquency, disobedience and risky behavior are a normal part of early development. Youth are certain to push the envelope: slamming doors in anger, defying parents, stealing, damaging property and injuring others. In fact, according to developmentalists, criminal behavior is prevalent with youth, with "arrest statistics in every nation reflect[ing] this, and confidential self-reports reveal that virtually every adolescent breaks the law at least once before age 20. Only about one-fourth of young law-breakers are caught, and most of those are warned and released" (19). (Except in low-income, urban areas where arrest records start in adolescence, due to school and police policies.) Yet the majority of those not caught eventually self-right.

Developmentalists categorize this inevitable period of delinquency as adolescence-limited offender (or one whose criminality is limited to the age of maturity) or the life-course-persistent offenders (those youth who turn into a career criminals (20), unless healthy intervention changes the youth's course, which is more likely in a licensed rehabilitation facility or through a consistent mentor, as opposed to prison, which tends to increase criminogenic thinking in youth, as apparent by the decades-long recidivism rates of penal institutions.

That stated, this writer is not suggesting that law breaking of any kind, particularly serious crimes, be condoned at any level; however, context is significant here because in today's system of penology judges are forced

to ignore individual circumstance (the humanity of a person) in lieu of a cold, inhumane conveyor belt of unnecessary perpetual incarceration that contravenes modern science. These perpetual sentences imply that the subject is incorrigible; yet empirical evidence emphatically says otherwise.

The areas of junk science that purported that criminogenic thinking was based in certain human DNA, or that the size of one's cranium limited or advanced any given species (phrenology) have been debunked wholesale. So what is it that makes a criminal tick? Developmentalists say criminogenic proclivities are learned or sometimes driven by sociopathic imaginations that manifest into antisocial behavior. The answer to these conditions? Rehabilitation. Specifically learning, or relearning; replacing adverse attitudes with cognition, propensities and behaviors that are conducive toward society. Developmentalists call this, "learning: A process that produces a relatively enduring change (emphasis added) in behavior or knowledge as a result of past experience" (21). However, in addition to general learning (as opposed to specialized learning), for most emerging adults the process of maturing (physiological brain development) is sufficient to produce changes that mesh with a civil society, and it is for this simple reason that criminogenic risks decrease with age. More specifically, as the frontal cortex matures it gains the ability to entertain dialectical thought, that is, according to developmentalists, the most advanced cognitive process, characterized by the ability to consider a thesis and its antithesis simultaneously and thus arrive at a synthesis. This thought process offers an ongoing awareness of pros and cons, advantages and disadvantages, possibilities and limitations, of which the undeveloped prefrontal cortex was unable to produce. In daily functioning, thus physiological development makes a significant difference in how one sees and operates in the world (22).

In fact, the evidence for human reformation, even in cases of physiological damage is extraordinary. Neuroscience has recently given developmentalists an explanation as to how a stroke victim, for instance, can lose cellular life to one area of the brain, and another part of the brain will adopt the lost function, despite not being inherently designed for that function. Developmentalists term these "physiological adaptations" localization,

lateralization, integration and plasticity; all of which make the brain capable of extraordinary physical changes (23). Changes so astounding that even some autistic children were able to literally "grow out" of their autistic condition (24).

Plasticity allows for the material growth of a particular part of the brain as a result of the person adopting and practicing a new activity, such as playing a musical instrument, juggling or musing over a crossword puzzle (25). It is for these reasons that developmentalists are convinced that every normal human being can change, particularly if there is a will to do so, incentive (vitally important), a conducive environment and the tools necessary for such change.

CROSS STATE / NATION COMPARISON:

With nearly 42,000 prisoners sentenced to LWOP across the nation, America stands unique in its penchant for eternally locking up its citizens. Other countries such as Japan, Mexico, Italy and Peru find the practice unconscionable (26). Norway, Canada and a host of other countries limit incarceration to thirty years. Oregon has a provision that allows persons convicted of aggravated murder, the state's most serious offense, to be reviewed after 20 years, for what is called a "rehabilitation hearing." The purpose of the hearing is to determine if the prisoner is on a path to rehabilitation and if so, the prisoner may work toward release. Otherwise, they remain incarcerated (26). Not only is this approach more pragmatic, but the simple fact that LWOP prisoners are eventually reviewed adds an element of humanity to the equation.

California prisoners sentenced to LWOP can request a review through the executive level, for instance by commutation to the governor's office, but not until the 30th year of incarceration, and there is no provision mandating a response. Given the shallow reasoning governors Schwarzenegger and Brown used to reverse the grants of parole in Bruce Davis' case, many observers believe the process at the governor's level is so entrenched in politics, commutation is not a realistic option.

This writer believes the sentence of LWOP is completely unnecessary, because like Manson and others, any life sentence with the possibility of parole can be stretched into a perpetual term. The humanity in this approach is that the individual is reviewed at some point, and consistently thereafter.

Otherwise how does society really know if one is incorrigible? Apparently, they got it wrong with Bruce Davis, according to the experts that granted him parole (not the politicians who reversed his grants). Until 1982, California allowed prisoners sentenced to LWOP to be reviewed by the BPH after 12 years. The practice was discontinued through an administrative rule change. In 1992 the administrative rule change was codified through Assembly Bill 97, amendments 44 and 45, which eliminated any review by the BPH for those sentenced to LWOP.

Nothing could be more unjust than to be eternally labeled incorrigible, and then wholly prohibited from showing otherwise. Marc Mauer of the Sentencing Project said it best, "Society must question whether the broadscale imposition of such penalties has resulted in the use of life imprisonment in ways that too often represent ineffective and inhumane public policy" (28). Shreveport, Louisiana, representative Patrick Williams said, similarly: "Releasing offenders who are deemed to be no longer a threat to society is not being soft on crime, it is being responsible with taxpayers' dollars" (29).

Do we really need LWOP in California? Does the theory of incorrigibility conflict with proven science?

THE POLITICAL SPECIAL INTERESTS OF LWOP

Crime Victims United (CVU), funded almost entirely by the California Correctional Peace Officers Association (CCPOA), helped sponsor the expansion of California's special circumstance laws in 1990 (30).

During a February 2010 address in Los Angeles, California, U.S. Supreme Court Justice Anthony M. Kennedy expressed his disgust of the politicizing of prisons in California, stating that U.S. sentencing is eight times longer than in European courts (31). A few days later, in New York, Justice Kennedy was more specific in his criticisms of the co-mingling of California politics and justice, calling the tactics of the CCPOA in pushing controversial laws like three strikes, "sick" (32).

Do politics and special interests have too much sway in California justice?

SENTENCING DISPARITIES:

The problem with politics and justice beholden to special interests is that justice gets so obviously tainted that, like three strikes, which the CCPOA also help fund into enactment (33), sentencing becomes a nonsensical mishmash of results that, to the prisoner, end up more of a luck of the draw

than any consistent formula that behavioralists recommend to sustain any reasonable deterrent effect, no matter how slight.

Like three strikes, for which common thieves were being sentenced to more time than those convicted of murder, the current LWOP laws in California offer the same type of admix of injustice. For example, Sarah Dutra was convicted of poisoning her boss with a horse tranquilizer, and was sentenced to 25 years (34) and yet PPF prisoner DeAngelo McVay, convicted of kidnap for ransom, after having killed no one, was sentenced to LWOP. Moreover, according to prison officials, his rehabilitation efforts have been extraordinary.

Furthermore, Omaima Nelson chopped up and dismembered her husband in 1991, and was sentenced to life with parole (35). Mark Jernigan stabbed the mother of his girlfriend 78 times in 1986 and was also sentenced to life with the possibility of parole (36). Veronica Paz plead guilty to luring her ex-boyfriend to his death and was also sentenced with the opportunity to rehabilitate (her actions of lying-in-wait fall into the same category of special circumstances that led to this writer's LWOP sentence, though his actual circumstances were described during trial as nothing less than "ambiguous")(37).

Then, there's the case of Raymond E. Godlewski, who hired Gene Flack to kill his father. Flack subsequently hired Michael Brown to assist with the murder plot by driving Flack to the victim's residence. Flack knocked on the door, and when the victim answered, Flack shot him in the head. Incredibly, Flack was not charged with lying-in-wait, a special circumstance, nor for hiring Brown; only with murder for financial gain in the first degree. A jury found Flack guilty of second-degree murder, along with the financial gain allegation. Second-degree murder carries 15 years to life with the possibility of parole (38).

Travielle Craig, 18-years-old during the time of his commitment offense, was sentenced to LWOP after he hit and killed a man with his fist (the man died months later from pneumonia) and for allegedly asking for the man's wallet (39), and Kenneth E. Hartman, also 18-years-of-age during his life-crime, where he was sentenced to LWOP after he beat a man to death in a drunken-stupor and then threw the man's wallet on a nearby roof for spite (the technical trigger of "robbery" that made him eligible for the eternal sentence)(40).

The discrepancies here at the PPF, and presumably throughout the state, speak to the need for the proposed study. All of the prisoners named above are PPF participants with extraordinary prison records, according to prison officials, and yet, like the thousands of others sentenced to LWOP, the unjustifiable wall blocking their efforts to demonstrate rehabilitation is cold and formidable. In light of these facts, is there a wide and unjust series of discrepancies in the application of LWOP in California?

THE COSTS:

California has built 23 new prisons in 25 years, contributing to the 2011/2012 \$15 billion dollar deficit. As a result, the K-12 school budget was cut, the university system experienced a series of devastating tuition hikes, and vital social services were slashed across the board. California's lifer population has increased 12 percent in 20 years, representing one-fifth of the population. Life sentences have increased the number of older prisoners to 20,000, representing a significant added annual cost of \$138,000, as compared to \$50,000 annually for younger prisoners (both estimates are nearly the highest in the nation) (41).

Costly maladies such as hearing loss, diminished vision, arthritis and hypertension are common among older prisoners. They are also more likely to require frequent dental and periodontal work. Their need for wheelchairs, walkers, hearing and breathing aids is greater than their counterparts in free society, as well as that of their younger peers in prison. The physical and mental infirmities of older prisoners also result in five times as many visits to outside health facilities per year than their free world counterparts. Additional costs in time and transportation by correctional staff are added to any treatment received outside of the prison grounds. Because of these special medical needs, the National Institute of Corrections reported that prisons spend approximately two to three times more to incarcerate their geriatric populations than their younger prisoners, with the average annual cost estimated at about \$70,000 (42). However, all costs associated with California prisoners are inflated, in comparison to other states.

California's prison mental health system has spent exceedingly more on anti-psychotic, anti-depressant drugs than other states with large prison populations, according to the Associated Press. The Golden State spends \$1 of every \$5 on these drugs, nearly 20 percent of the \$144.5 million spent on prison pharmaceuticals in 2012 went for anti-psychotic drugs (43).

Older adults use 34 percent of all prescription medications in the U.S. (44).

What's interesting here is that again, relying on old traditions, penal structures, from dungeons to prison cells, have traditionally been black or dark gray. The purpose of the dull coloring is to depress the miscreant; make him ponder his deeds and reform. In modern times society recognizes the harm depression causes and to stave off that harm we offer anti-psychotic medications, but the walls are still every bit as depressing. Tradition also held that if a man was left alone in a solitary cell, to muse on his mischief, he might reform himself. However, we have become a nation so entrenched with incarcerating, that double-celling inmates into cramped spaces designed for one person has been the trend, further contradicting the original purpose of penal institutions.

This writer believes that with modern science advanced as it is, society must again re-think what it wants from the practice of imprisonment. Does society want to depress or heal those it incarcerates? Does society want to addict millions of prisoners to anti-psychotic drugs, who were not anti-psychotic-drug users prior to incarceration? Does society want to reform its prisoners or just eternally punish them, even when it has been proven that there is no further benefit to incarceration? Even when over-incarceration causes harm to the prisoners? Programs for release of older prisoners have been successfully initiated in 16 other states, along with the Federal prison system (45).

Soaring healthcare costs are one reason some states are considering geriatric release. A 1998 study found that only 3.2 percent of prisoners 55 and older returned to prison within a year or release, compared to 45 percent of those 18 to 29 years, consistent with developmentalists' studies. A 2004 analysis of those sentenced in the Federal system revealed that the recidivism rate among prisoners older than 50 was 9.5 percent, compared with 5.5 percent among those younger than 21 (46).

In September of 2011, the Stanford Criminal Justice Center conducted a study on the recidivism of released "lifers" and found the same results: lifers do not come back (47). "Time makes a difference," says Governor Jerry Brown, in support of releasing reformed lifers. Some of the more politically inclined might dismiss Brown's view, considering it liberal. However, a decades-old jailer, Sheriff Leroy Baca also expressed the same conclusion,

"Lifers are the safest bet for release" (48).

Unfortunately, people sentenced to LWOP are not included in this assessment, they are considered already dead. At what point is incarceration enough if the prisoner can demonstrate rehabilitation?

LWOP: THE SLOW DEATH

On the topic of whether lengthy prison terms are lethal, Evelyn Patterson, assistant professor of Sociology at Vanderbilt University says that "... studies on prison morbidity suggest that prisoners are at risk for more diseases before, during and after interaction with the criminal justice system.... I looked at parolees in New York and examined the relationship between the length of time they served in prison and their life expectancy.... The study indicated that, on average, every year in prison was accompanied by a two-year reduction in life expectancy. Moreover, while the risk of death declines over time once a person is released, it takes approximately two-thirds of the length of time served for someone to eliminate the life expectancy deficit" (49).

As this writer described in "Making Sense Out of Life Without the Possibility of Parole," "[t]he diet alone is mortal. Almost everything is served from a can, or is otherwise processed, which translates into high-sodium meals laden with PCBs (polychlorinated biphenyl: any of several compounds that are poisonous environmental pollutants which tend to accumulate in animal tissue) certain to kill over consistent and prolonged consumption" (50).

Quoting again from this writer, "Local prison policies also cause prisoners' health to decline and health care costs to balloon. Pruno, otherwise known as prisoner-manufactured alcohol, is a popular substance among addicted imbibers. Pruno is easily made from fruit, but can be composed of anything which can cause fermentation: rice, potatoes, corn, you name it" (51). For the sake of "security," fruit is all but forbidden, though only a small minority of "wine manufacturers" exist. Such policies counter the medical wisdom of health experts such as Dr. David Katz, MD, who recommends men over forty consume at least ten servings of fresh fruit daily (52).

There are times when policy and environment converge malignantly. In April of 2013 J. Clark Kelso, the court-administrator appointed by the U.S. Supreme Court, ordered CDCR to transfer over 3,000 prisoners due to

a long-standing, long-ignored valley fever outbreak. CDCR is already under pressure to release 10,000 prisoners after it was learned that prisoners were dying needlessly in alarming numbers due to negligence, and it was brought to light that California has the highest suicide rate in the nation. Kelso limited his order of transfer to Filipinos and African Americans, the most vulnerable to the air-borne ailment, but recommended that Pleasant Valley and Avenal state prisons be closed entirely. While moving the most vulnerable prisoners seems reasonable, Dr. John Gagliani, a valley fever research expert says prison officials have done little to curb high infection rates in both prisons. Kelso reported that 62 prisoners from throughout the state died between 2006 and January of 2013; 70 percent of them African American (53).

Stress is by far the most prevalent health risk. Stress is widely defined by behaviorists as "negative emotional state occurring in response to events that are perceived as taxing or exceeding a person's resources or ability to cope." Stress adds to and accelerates the "wear and tear" occurring in deleterious stages: the alarm stage initiates a variety of internal physical chemicals and responses in attempt to meet the demands of the stress-producing event; namely catecholamines (of the adrenaline group) that can cause hypertension, panic attacks and other harm. The second stage, the resistance stage, causes the body to resist or adjust to the continuing situation, by diminishing the alarm stage, but prolonging its physiological arousal above normal levels. The exhaustive stage initiates if the stress-producing event endures, awakening the alarm stage, this time irreversibly. As the body's energy reserves deplete, adaptation breaks down, the person becomes exhausted, and may experience physical disorders that could lead to death.

If a stressor is prolonged, continued high levels of internal chemicals, such as corticosteroids can weaken important body system, lowering immunity and increasing susceptibility to physical illnesses. There is mounting evidence that chronic stress can lead to increased vulnerability to acute and chronic diseases, including cardiovascular disease, and even premature death. Chronic stress can also lead to depression, immune compromises, and psychological problems (54).

Behaviorists have linked stress with negative effects on life span through particular DNA strands called telomeres. The DNA that a person's

genes are composed of are entwined in 46 chromosomes, each ending with a telomere, a stretch of DNA that protects the chromosome like the plastic tip on a shoelace. A study conducted by Brigham and Women's Hospital in Boston found, among a sample of 5,243 nurses nationwide, that those who experienced certain stresses had shorter telomeres. Carol Greider, a molecular biologist at John Hopkins University, a pioneer of telomere research says, "When the telomere gets very, very short, there are consequences; noting the increased risk of age-related ailments." Furthermore, a German study found that people who live sedentary lives are at risk for shortened telomeres (55).

In light of the 1971 Stanford Prison Experiment where twenty-four college students were randomly assigned to act as prison guards or prisoners, the two week experiment was abruptly ended after just six days when those acting as prison guards became abusive. As Stanford University psychologist Philip Zimbardo recalls (2005), "Within a few days, [those] assigned to the guard role became abusive...." (56) Putting it succinctly, prisons are inherently stressful places. It is for this reason that prison guards are allowed eight weeks of vacation time a year.

For prisoners, exercise is a healthy way to counter the constant stress of prisons. Behaviorists say that exercise at every stage of life protects against illnesses; reducing blood pressure, strengthening the heart and lungs, and off-setting depression. However, frequent lockdowns make regular exercise challenging, to say the least. When prisoners cannot exercise on the yard, cramped cells designed for one, but occupied by two, make it nearly impossible to supplement exercise yard. By contrast, sitting for long hours correlates with almost every unhealthy condition, especially heart disease and diabetes, both of which carry additional health hazards beyond the disease itself (57). Do lengthy sentences diminish the health and life span of prisoners?

CONCLUSION:

"By creating a justice system based on offense rather than actual risk, you're going to end up sweeping more people into the system who don't need to be there. It looks to us like it's more a public relations measure than a public safety measure," says Tracy Velazquez of the Public Policy Institute (58).

Quoting from John E. Dannenburg of Prison Legal News, "Fewer than 1 percent of paroled California murderers have returned to prison for committing new offenses -- a figure that contrasts sharply with the 70 percent recidivism rate for other released state prisoners"(59).

James Austin, a leading figure in the criminologist profession, says that "a growing body of science shows that the prison-only approaches may feel good initially -- and be safe politically -- but an over-reliance on incarceration ultimately can make matters worse. In other words, there is limited scientific evidence that longer prison terms reduce recidivism or crime rates" (60). Moreover, sentences that defy the decency of humanity, and make prisoners all but ghosts of society, in a netherworld hinging on life or death, pushing the prisoner to the latter by conditions that offend empirical approaches of contemporary behaviorists are warped.

The American Civil Liberties Union, American Friends Service Committee and Amnesty International have all openly denounced life without the possibility of parole or expressed concerns about it. The Sentencing Project listed three major recommendations for sentencing reform in America: Eliminate life without the possibility of parole as costly, short-sighted and a punishment that ignores the potential for growth and transformation. All life sentences should be made parole eligible, with periodic reviews like that of Manson's.

In agreeing with the findings of the criminologists at Universities of California Berkeley, Davis, Irvine and UCLA, Matthew Cate, then secretary of CDCR, says, "If the science says we can move inmates in lower-level settings safely, then that helps us with realignment because we're able to more fully utilize our lower-level prisons. I know that's what the science says. Should we just rely on the science when it is convenient?"

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