

ABOUT TIME:

How Long and Life Sentences
Fuel Mass Incarceration in Washington State

Executive Summary

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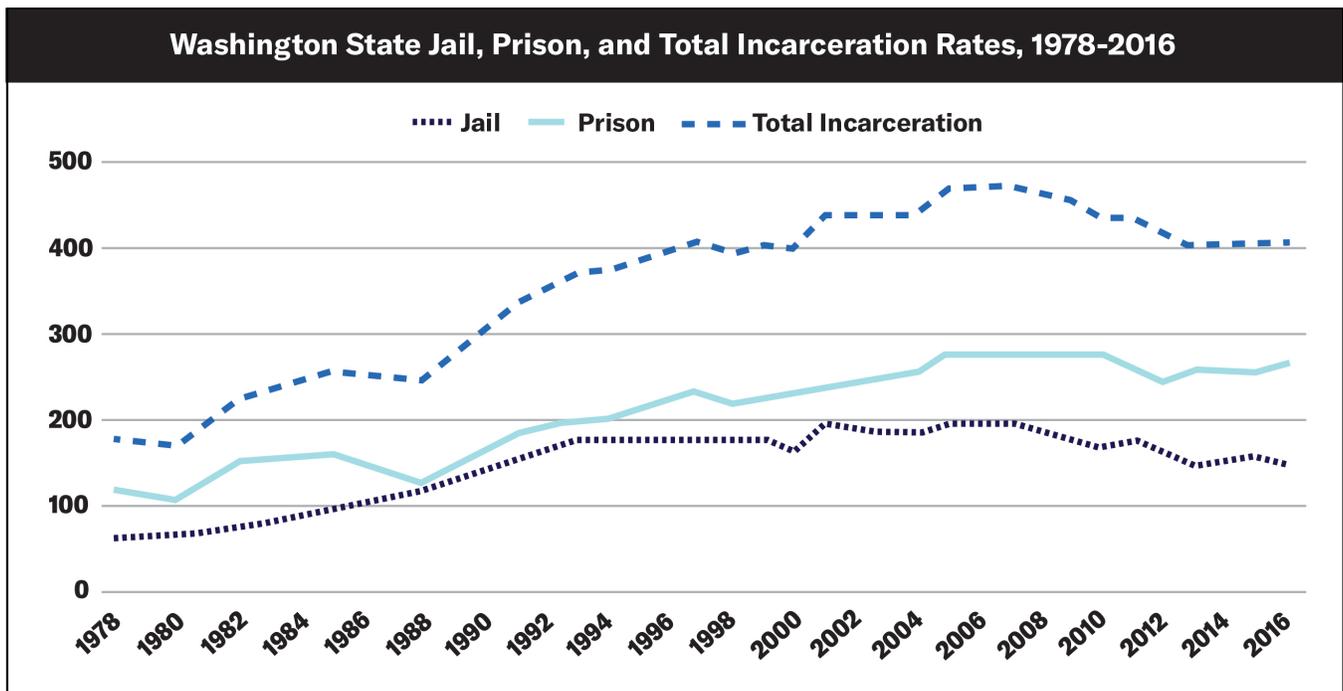
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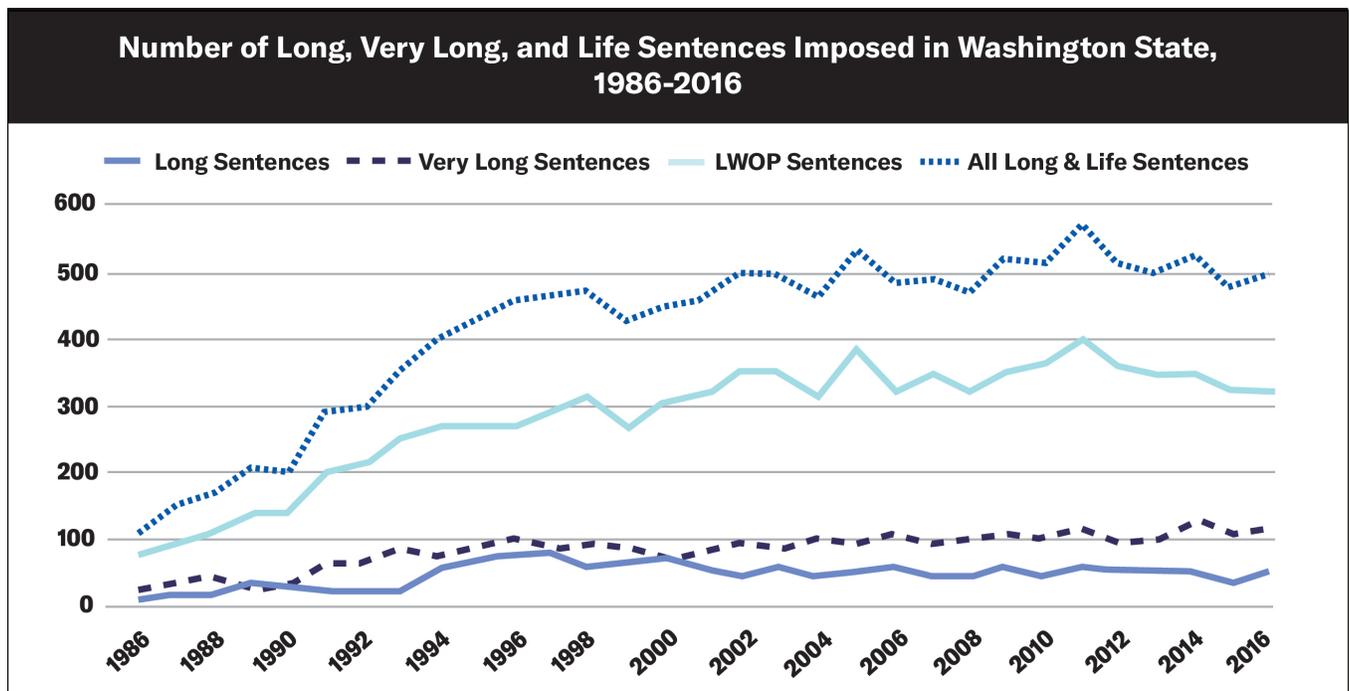
Across the country, incarceration rates have reached record levels. In Washington State, too, the imprisonment rate and the total incarceration rate (which also includes jail inmates) have more than doubled since 1978. As of 2016, Washington’s incarceration rate was more than three times higher than the average rate of the more than 30 Organization for Economic Co-operation and Development (OECD) countries. Washington’s prison population grew, even as crime rates fell precipitously, and the state’s prisons are now operating at capacity.¹ Moreover, Washington is one of only eight U.S. states in which the prison population grew throughout most of the 2010s.²



Sources: Data for all years other than 2016 taken from the Prison Policy Initiative (data retrieved May 7, 2019 from https://www.prisonpolicy.org/reports/jailovertime_table_4.html); 2016 total incarceration data are taken from The Bureau of Justice Statistics, Correctional Populations in the United States, 2016, Appendix Table A1. The 2016 imprisonment rate was calculated using Washington State Department of Corrections (DOC) data from July 2016 (retrieved on May 7, 2019 from <https://www.doc.wa.gov/docs/publications/reports/400-RE002-1806.pdf>); the jail incarceration rate was calculated by subtracting the imprisonment rate from the total incarceration rate. Notes: Rates are measured per 100,000 residents. The figures shown here include people in state prisons and local jails, but not federal prisons, in Washington State. (Figure 1 from the full report).

Maintaining such an expansive prison system is quite costly. In 2017, Washington spent more than \$1 billion (5 percent) of its general funds on corrections.³ Significant additional monies will be needed to expand prison capacity in order to accommodate expected growth unless something is done to reduce the size of the state’s prison population.⁴

This report shows that the proliferation of long and life sentences has been an important driver of the growth of Washington’s prison population. As a result of key shifts in state sentencing policy, many prisoners are spending longer and longer periods of time in prison, and a growing number of these people will die behind bars. As of 2019, 41.5 percent of all people in Washington’s prisons are serving a sentence of ten or more years, and 17 percent are serving a life sentence.⁵ Analysis of three decades of felony sentencing data reveals that these long and life sentences fueled the expansion of Washington’s prison population, which grew by 337 percent from 1980 and 2019.⁶ As of September 2019, 19,225 people were confined in Washington State prisons.⁷



Source: Authors’ analysis of Washington State Superior Court Sentencing data provided by the Washington State Caseload Forecast Council. (Figure 6 from the full report).

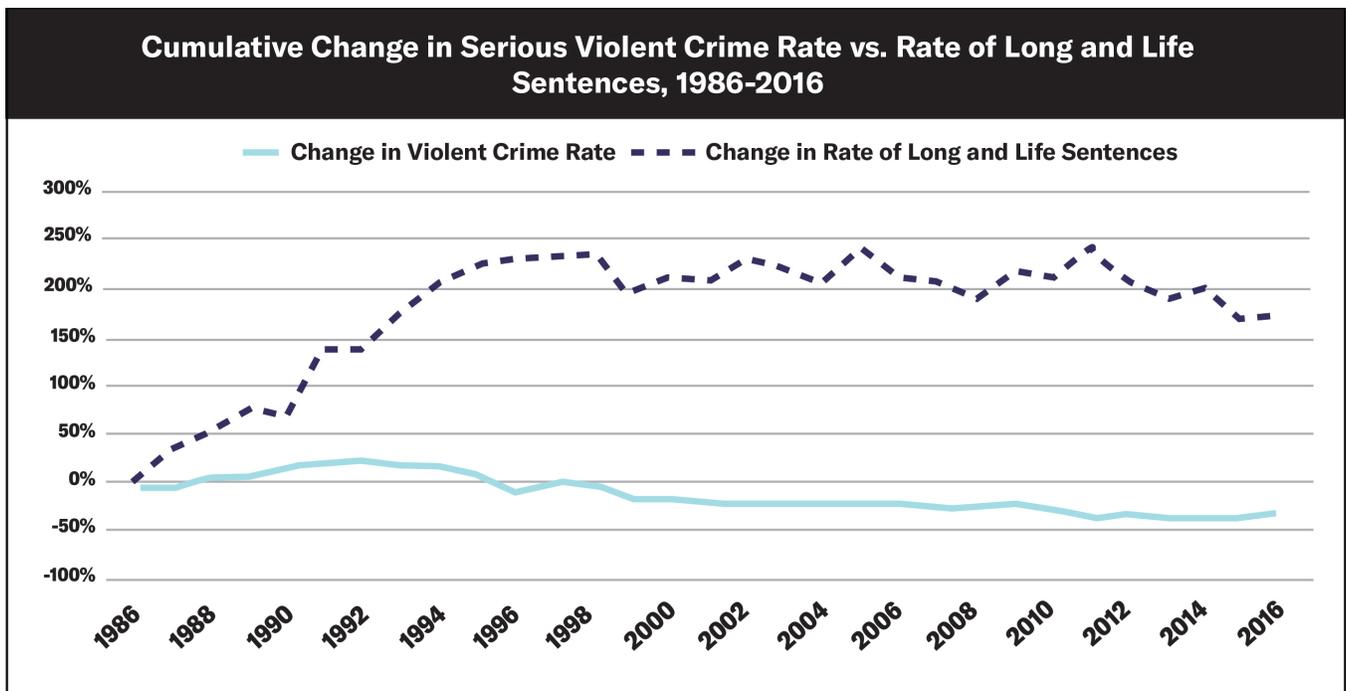
Note: LWOP sentences include both formal and virtual LWOPs.

The increase in the number of people serving life without the possibility of parole (LWOP) sentences has been especially dramatic. People who are sentenced to LWOP are presumed to be incapable of rehabilitation and have virtually no opportunity to show that they are safe to be released. The number of people serving LWOP sentences in Washington State is far greater than those found in other democratic countries with much larger populations.

Only 20 percent of the world’s countries authorize the imposition of LWOP sentences.⁸ For example, LWOP does not exist in Canada, where the most severe criminal penalty is life with parole eligibility at twenty-five years.⁹ While LWOP does exist in Australia, England and Wales, and the Netherlands, the number of people serving such sentences in those countries is dwarfed by the number serving them in Washington State.

Despite plummeting crime rates, Washington has been locking people up for longer and longer

The proliferation of long and life sentences in Washington State has not been a response to rising crime. In fact, Washington’s crime rates have fallen for decades while the imposition of long and life sentences increased notably. From 1986 through 2016, the violent crime rate fell by 31 percent. By contrast, the rate at which long and life sentences were imposed increased by 175 percent.



Source: Change in long and life sentences based on authors’ analysis of Washington State Superior Court Sentencing data provided by the Washington State Caseload Forecast Council. Crime data were taken from the FBI’s Uniform Crime Reports (UCR). Data for 1986-2014 were accessed via the UCR online data analysis tool, available at <http://www.ucrdatatool.gov/>. Data for 2015 and 2016 were accessed via UCR Annual Reports, available at <https://www.fbi.gov/services/cjis/ucr/publications> (see Table 5 for 2015 and Table 3 for 2016). (Figure 8 from the full report).

The proliferation of long and life sentences can be traced to three key policies

The proliferation of long and life sentences in Washington is a consequence of changes in policy and practice rather than of rising crime rates. A number of key sentencing policy changes explain why long and life sentences increased even as crime rates plummeted. These changes include:

- The adoption of the Persistent Offender Accountability Act in 1993 (sometimes referred to as the three-strikes law), which dramatically increased the imposition of life without the possibility of parole (LWOP) sentences.
- The enactment of the Hard Time for Armed Crime Act in 1995, which authorized the imposition of weapons enhancements; and
- Numerous incremental changes to the statutory rules governing the calculation of offender scores, all but one of which increased the weight of prior offenses and increased the standard sentencing range.

Faced with the threat of increasingly long and life sentences, fewer defendants exercise their constitutional right to trial, and those who dare pay a heavy price

The enactment of tough sentencing laws gave prosecutors more leverage in plea negotiations and facilitated an especially dramatic increase in the sentences imposed on defendants who exercise their constitutional right to a trial. In 1986 the average sentence imposed at trial was 64 months longer than the average sentence imposed via a plea deal in cases involving violent crime. By 2016, this “trial penalty” was 174 months (more than 14 years). This growth of the trial penalty has also led to a decline in the proportion of felony cases adjudicated at trial.

As a result of these and other policy changes, sentences have increased dramatically. In fact, average sentence length, maximum sentence length, and the number of long (10-20 year), very long (20-40 year) and life (LWOP and 40 or more year) sentences have all grown significantly in recent decades.¹⁰ This trend has persisted in recent years, even as crime rates continued to fall and many other states successfully reduced their prison populations. By contrast, in Washington, average sentence length for felony convictions that resulted in a prison sentence increased 12 percent from 2007 to 2017, and the prison population continued to expand.¹¹



Michelle Blair

Read Michelle’s story on page 62 of the report.

By abolishing parole and dramatically reducing “good time” credits, Washington fails to systematically recognize and reward rehabilitation

In addition to these changes in sentencing policy, the Sentencing Reform Act of 1984 largely abolished parole, and subsequent legislation reduced the capacity of most prisoners to earn time off of their confinement sentence through the accumulation of “good time” credits.¹² The result has been a rapidly growing prison population and a particular growth in the number of middle-aged and elderly people living behind bars. As a result of recent policy changes, relatively few of these prisoners will have a chance to demonstrate their rehabilitation to a parole board.



Anthony Wright

Read Anthony’s story on page 69 of the report.

The proliferation of long and life sentences leads to an increase in the incarceration of the elderly

The proliferation of long and life sentences has fueled a dramatic increase in the number of Washington State prisoners who are expected to die behind bars. By June of 2018, nearly one in five (18 percent) of all Washington State prisoners were over 50 years old; another 20 percent were between the ages of 40 and 50.¹³ The costs associated with the care of older prisoners are two to four times relative to younger prisoners. This trend also raises a number of important concerns about the humanity of incarcerating the elderly in circumstances that accelerate the aging process and undermine mental and physical health – particularly when the people who are confined have not had the opportunity to show that they are safe to release.

“The costs associated with the care of older prisoners are two to four times relative to younger prisoners.”

“...states that decreased their imprisonment rates the most have also enjoyed the largest drops in crime.”



Eugene Youngblood

Read Eugene’s story on page 71 of the report.

The widespread and continued imposition of long and life sentences will further increase the number of older prisoners in Washington unless concerted action is taken to reverse sentencing trends.

Long and life sentences show little to no return on public safety and are costly

The widespread imposition of long and life sentences has been very costly. Spending on corrections more than tripled between 1985 and 2017. In 2017, Washington spent more than \$1 billion (5 percent of its general funds) on corrections,¹⁴ and the state will need to spend significant additional monies to expand prison capacity in order to accommodate recent and expected growth.¹⁵

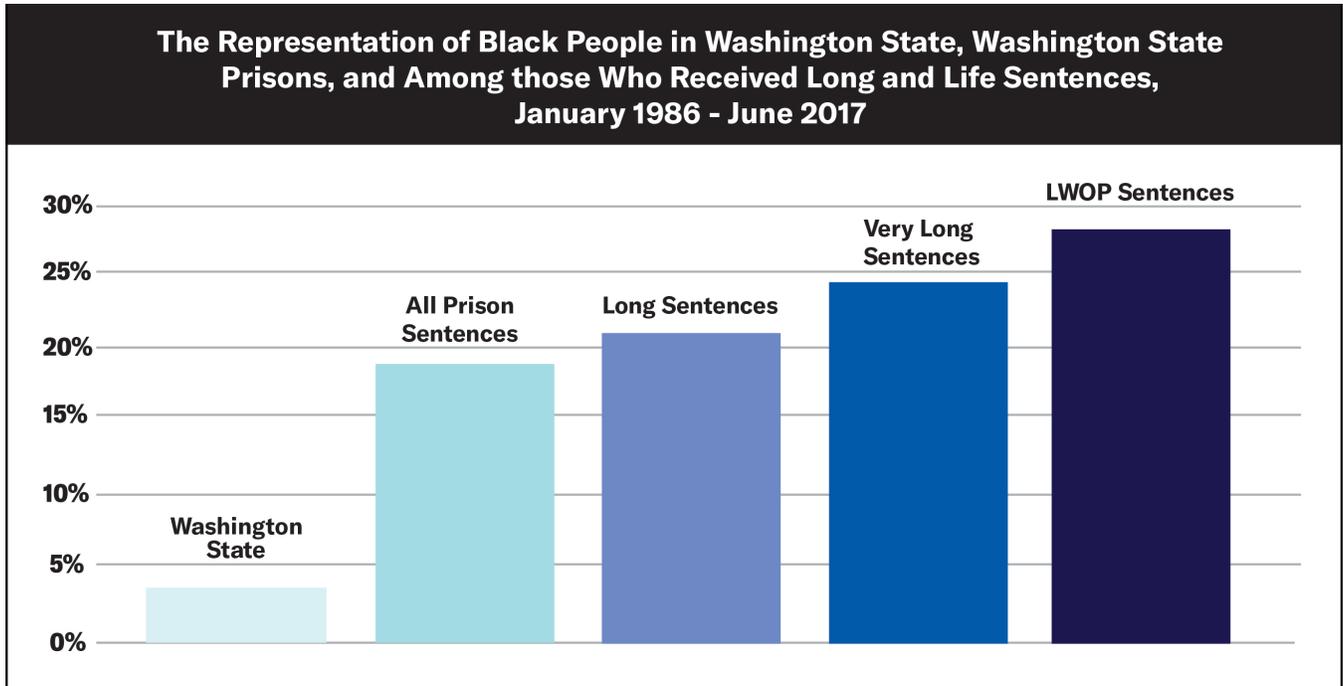
Moreover, high incarceration rates and long prison sentences are not necessary to protect public safety. According to the National Research Council, longer

prison sentences do not deter more than short ones, and “because recidivism rates decline markedly with age and prisoners necessarily age as they serve their prison sentence, lengthy prison sentences are an inefficient approach to preventing crime by incapacitation.”¹⁶ Studies of state-level variation within the United States show that prison populations can be reduced without imperiling public safety. In fact, states that decreased their imprisonment rates the most have also enjoyed the largest drops in crime.¹⁷ Long and life sentences are thus extraordinarily costly and provide little, if any, public safety benefit.

People of color are disproportionately affected by long and life sentences

The proliferation of long and life sentences also raises numerous concerns about justice and fairness. The adverse effects of high incarceration rates are disproportionately imposed on people and communities of color; these groups have been even more disproportionately affected by the increased imposition of long and life sentences in

Washington State. For example, an average of 3.5 percent of the state population identified as black through this time period, but 19 percent of those sentenced to prison, and 28 percent of those sentenced to life in prison, were black. As is shown in Part V of this report, the adverse effects of prison sentences, especially long and life sentences, affect not only those serving time but also prisoners’ families and communities.¹⁸



Source: Authors’ analysis of Washington State Superior Court Sentencing data provided by the Washington State Caseload Forecast Council. (Figure 9 from the full report).

Note: LWOP sentences include both formal and virtual LWOPs.

Brain science research questions the efficacy of long and life sentences for young people

The widespread imposition of long and life sentences on adolescents and young adults also raises concerns about fairness, particularly in light of recent research that shows that brain development is generally incomplete until people reach their mid-to-late 20s. Approximately one in three people sentenced to 20-40 years in prison in recent decades was 25 or younger at the time of their sentencing. Similarly, about one-fourth (27.9 and 24.1 percent, respectively) of all long and life sentences have been imposed on people who were 25 or younger at the time of sentencing. Yet recent neuroscientific research shows that areas of the brain involved in reasoning and self-control, such as the prefrontal cortex, are not fully developed until the mid-20s.¹⁹ The imposition of very long sentences on young adults, combined with the lack of educational and other rehabilitative programs, raise crucial questions about whether youth should be understood and treated as a mitigating circumstance.

“... about one-fourth of all long and life sentences have been imposed on people who were 25 or younger at the time of sentencing.”



Christopher Blackwell

Read Chris’s story at page 60 of the report.

The current approach to public safety does not serve survivors well

Although sometimes justified in terms of victims’ needs and preferences, current criminal justice and sentencing policies do not serve violence survivors well. Most victims never get their “day in court,” either because they do not file a police report or because arrest and prosecution do not occur.²⁰ Furthermore, the majority of crime survivors do not receive the services they need even if they do report their victimization to authorities.²¹ Violence survivors who are poor and/or of color are especially unlikely to receive needed services.²²

In addition, although policies that allow for the imposition of long and life sentences are often said to be created in the interests of victims, this is misleading. A recent survey found that 61 percent of those who have experienced inter-personal violence favor shorter prison terms and enhanced spending on

rehabilitation and prevention; only 25 percent preferred sentences that keep people in prison as long as possible.²³ Similarly, significant majorities of violence survivors of all political orientations favor investing additional public safety dollars in education rather than in prisons and jails.²⁴ In fact, in California, crime victims are a leading force in the movement for criminal justice reform.²⁵

Moreover, people who experience violence and those who perpetrate it are not two distinct and unrelated groups of people. Instead, violence survivors are notably over-represented among arrestees, prisoners, and ex-prisoners.²⁶ Indeed, a history of violent victimization appears to be the norm in the biographies of those serving time, and this association persists when risk factors such as poverty are taken into account. For example, black Americans who have experienced four or more traumatic, violent events are more than four times more likely to be arrested, jailed, or imprisoned than those who have not experienced violent trauma, even after controlling for risk factors such as poverty.²⁷

“...61 percent of those who have experienced inter-personal violence favor shorter prison terms and enhanced spending on rehabilitation and prevention...”

Long and life sentences fail to interrupt the cycle of violence

The policies that fuel long and life sentences represent an ineffective, expensive, and inhumane approach to public safety. Long and life sentences quite frequently end up punishing the very people (i.e. crime survivors) they are ostensibly intended to protect. Long prison sentences also consume significant public dollars that could be reallocated to improve victim services and crime prevention efforts. Moreover, emerging evidence suggests that restorative justice alternatives to long-term incarceration better serve both survivors and those who have caused harm.²⁸

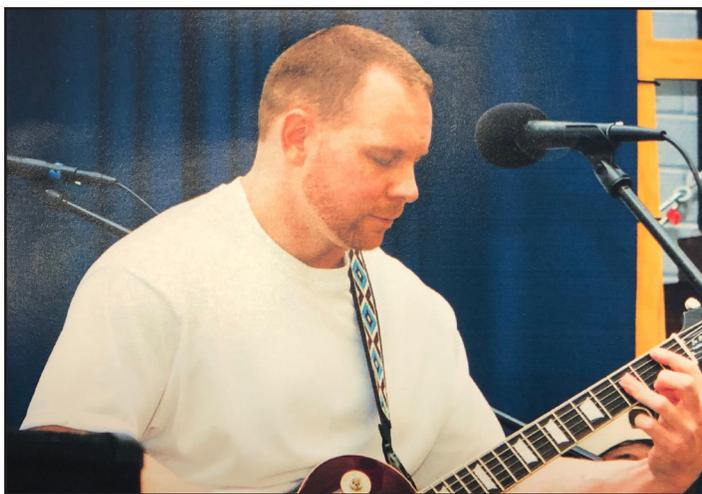
The more sparing use of prisons, combined with enhanced crime prevention efforts, substance abuse treatment, rehabilitative programming, and restorative justice alternatives, are far more promising. Moreover, the savings associated with reduced prison populations could be used to provide services for crime victims, buttress crime prevention programs, enhance community based substance abuse and mental health services, and improve the conditions of confinement.

Stories of Transformation

This report also includes summaries of the biographies of a number of people serving long or life sentences in Washington State. These stories, along with a large body of research, show how inter-personal violence grows out of harmful social conditions that traumatize and destabilize young people. Research indicates that most ex-prisoners grow up in environments characterized by poverty, abuse, hardship, and the absence of adult supervision.²⁹ In fact, most people who end up serving time were previously a victim of or witness to violence – and often both.³⁰

Many people in these circumstances receive long or even life sentences at a young age without ever having had an opportunity to identify and develop an alternative life trajectory outside of prison. These research findings do not imply that people who commit violence should not be held accountable for the harm they caused, but they do suggest that responsibility is best understood as collective rather than located in the individual characteristics of those who, at one point in their lives, commit violence. They also suggest that investments in child, family, and community well-being are not only social welfare investments; they are also investments in public safety.

“...emerging evidence suggests that restorative justice alternatives to long-term incarceration better serve both survivors and those who have caused harm.”



Ray Williams

Read Ray’s story at page 66 of the report.

A second theme that emerges from these stories involves the justice implications of recent policy shifts. In one case, for example, the defendant declined to go to trial solely because the risk of doing so was too great. In another, the defendant exercised his right to trial after rejecting a 15-year plea deal, ultimately leading to a sentence of over one hundred years behind bars. The actual or implied threat of extraordinarily long sentences casts a long shadow over the justice process.

Third, these stories help explain one of the most persistent and enduring research findings in criminology: people who commit unusually serious crimes and serve many years in prison but are eventually released have remarkably low rates of recidivism. For example, a 2011 study of released prisoners who had served life with the possibility of parole sentences found that “... the incidence of commission of serious crimes by recently released lifers has been minuscule.”³¹ A recent study by the California

Department of Corrections and Rehabilitation reached similar conclusions.³² Extraordinarily low levels of recidivism among released lifers reflect the fact that the vast majority of people sentenced to prison, including people convicted of a serious violent crime, age out of crime, even when the conditions of confinement are less than ideal.

Finally, these stories reveal that many of those who committed serious harm years ago work tirelessly to make amends and improve the lives of others, despite the fact that they will not be able to earn much or any time off of their sentence. Policies that deny people the opportunity to demonstrate their growth and rehabilitation are thus in tension with the experiences of many prisoners, who do in fact mature, as well as with human rights norms and evidence of exceptionally low rates of recidivism among people sentenced to long and life sentences.



Jeff Foxx

Read Jeff's story at page 64 of the report.

“...the vast majority of people sentenced to prison, including people convicted of a serious violent crime, age out of crime...”

Policy Recommendations

These recommendations were developed in consultation with numerous experts and stakeholders, including currently incarcerated individuals as well as prisoner and survivor advocacy organizations. These recommendations are not an exhaustive list of all potentially helpful reforms, but rather highlight those that would specifically address the growth of long and life sentences.

Ultimately, comprehensive sentencing reform that reinstates rehabilitation as a significant purpose of punishment, places caps on maximum sentence length, and reverses prior sentencing policy changes that increased sentencing ranges is needed in order to reduce the number of people serving long and life sentences in Washington State and to facilitate a more productive allocation of public safety resources.

The rules structuring prisoners' capacity to earn release time should also be changed. When the SRA was first enacted, nearly all prisoners were eligible to earn up to one-third of their confinement sentence off through good time credits. Today, many prisoners are able to earn just ten or fifteen percent of the time off of their base sentence, and some cannot earn any time off of their sentence at all. These restrictions discourage participation in rehabilitative programming that has been shown to reduce infractions and recidivism.

Policy Recommendations

The legislature should take the following steps in order to reduce the number of people serving long and life sentences and to encourage participation in rehabilitative programming that has been shown to reduce prison infractions and criminal recidivism:

- **Implement a universal or age-based post-conviction review process with a presumption of release.** For extremely long and life sentences, release eligibility should occur within 15 years after the conviction. This recommendation is based on the Model Penal Code produced by the American Law Institute.³³ Consistent with the American Law Institute’s recommendations, these processes should not deny eligibility for review based on the nature of the conviction offense. For more specifics, see Part VII of the report.
- **Lift restrictions to prisoners’ capacity to earn release time** such that all prisoners are eligible to earn release time equivalent of up to one-third of their confinement sentence by successfully participating in effective rehabilitative programming. This reform should be accompanied by increased investment in rehabilitative and educational programming for all prisoners.
- **Restructure and expand the Indeterminate Sentence Review Board (ISRB)** to increase racial equity and ensure the presence of a diverse array of backgrounds and perspectives, and to expand capacity and re-orient the review process to focus on the viability of release rather than the nature and impact of the crime. Consistent with the American Law Institute’s recommendations, there should be a meaningful presumption of release at first eligibility, such that the majority of prisoners are released at that time.
- **Any use of risk assessment tools by parole boards should be carefully considered.** If used, risk assessment tools should be validated on local populations and their connection to – and implications for – racial and socio-economic inequality should be closely evaluated. The ethics of including static risk factors over which people have no control (such as whether a person lived as a child with both parents) should also be carefully considered. The ALI recommends, “As a first step, states should open their risk assessment tools to vigorous, public challenges of the tools’ statistical underpinnings, as well as their application to individual offenders. We also recommend that each parole board scrutinize their risk assessment tool through the lens of race, identifying how each factor differentially affects racial minorities.”³⁴
- **Decision-making tools should be structured, policy-driven, and transparent.** Prisoners eligible for release should have the right to legal representation and must have the opportunity to access and challenge the validity of any risk assessment tools utilized.

Policy Recommendations

- **Parole boards should focus on whether rehabilitation and maturation has occurred and assess future risk rather than focusing on the original crime.**
- **Expand investments in non-confinement based crime prevention strategies such as early childhood education, mental health care and substance abuse treatment, as well as in victim services for marginalized survivors.**

Enactment of these policy changes would represent a significant step toward a more just criminal legal system and would provide cost savings that could be used to better serve and truly improve the safety and well-being of all Washington State residents.

ENDNOTES

- 1 The Washington State Department of Corrections reports that Washington prisons were operating at 99.7 percent capacity as of September 30, 2019. *Facts about Individuals in Confinement*. Fact Card. Olympia, WA: Washington State Department of Corrections, September 30, 2019. <https://www.doc.wa.gov/docs/publications/reports/100-QA001.pdf>.
- 2 Prison populations have fallen in 38 states, been stable in four, and increased in eight since 2011. Washington's seven percent increase in its prison population from 2011 – 2017 was, in relative terms, the fourth largest in the country. See Nazgol Ghandnoosh. *Can We Wait 75 Years to Cut the Prison Population in Half?*. Washington, D.C.: The Sentencing Project, 2018. <https://www.sentencingproject.org/publications/can-wait-75-years-cut-prison-population-half/>, 3.
- 3 See Table 32 in *State Expenditure Report Fiscal Years 2016-18*. Washington, D.C.: National Association of State Budget Officers, 2018. <https://www.nasbo.org/reports-data/state-expenditure-report>, 62.
- 4 *Justice Reinvestment in Washington: Analysis and Policy Framework*. New York, NY: Council of State Governments Justice Center, January 14, 2015. <https://csgjusticecenter.org/wp-content/uploads/2015/01/JusticeReinvestmentinWashington.pdf>.
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- 9 See Canada Federal Statutes, Criminal Code (R.S.C., 1985, c. C-46) § 745, "Sentence of Life Imprisonment," <https://laws-lois.justice.gc.ca/eng/acts/C-46/section-745.html>.
- 10 The share of reported crimes and arrests that result in a felony filing and prison admission also increased notably (see Appendix A).
- 11 Calculations based on data accessed through the Washington State Statistical Analysis Center's *Criminal Justice Data Book*, available at <http://wa-state-ofm.us/CrimeStatsOnline/index.cfm>.
- 12 E.K. Drake, R. Barnoski, and S. Aos. *Increased Earned Release from Prison: Impacts of a 2003 Law on Recidivism and Crime Costs, Revised*. Olympia, WA: Washington State Institute for Public Policy, 2009. https://www.wsipp.wa.gov/ReportFile/1039/Wsipp_Increased-Earned-Release-From-Prison-Impacts-of-a-2003-Law-on-Recidivism-and-Crime-Costs-Revised_Full-Report.pdf.
- 13 *Inmate Population by Age*. Olympia, WA: Washington State Department of Corrections, June 30, 2018. <https://www.doc.wa.gov/corrections/incarceration/prisons/default.htm#prison-pop-age>.
- 14 *State Expenditure Report 2016-2018*, National Association of State Budget Officers.

- 15 The Council of State Governments estimates that preventing future growth and prison construction could allow the state to avoid up to \$291 million, including \$193 million in construction costs and \$98 million in operating costs, that would otherwise be needed to accommodate forecasted growth. See *Justice Reinvestment in Washington: Analysis and Policy Framework*. New York, NY: Council of State Governments Justice Center, January 14, 2015. <https://csgjusticecenter.org/wp-content/uploads/2015/01/JusticeReinvestmentinWashington.pdf>.
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