

ABOUT TIME:

How Long and Life Sentences Fuel Mass Incarceration in Washington State

A Report for ACLU of Washington

February 2020

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PART I: INTRODUCTION

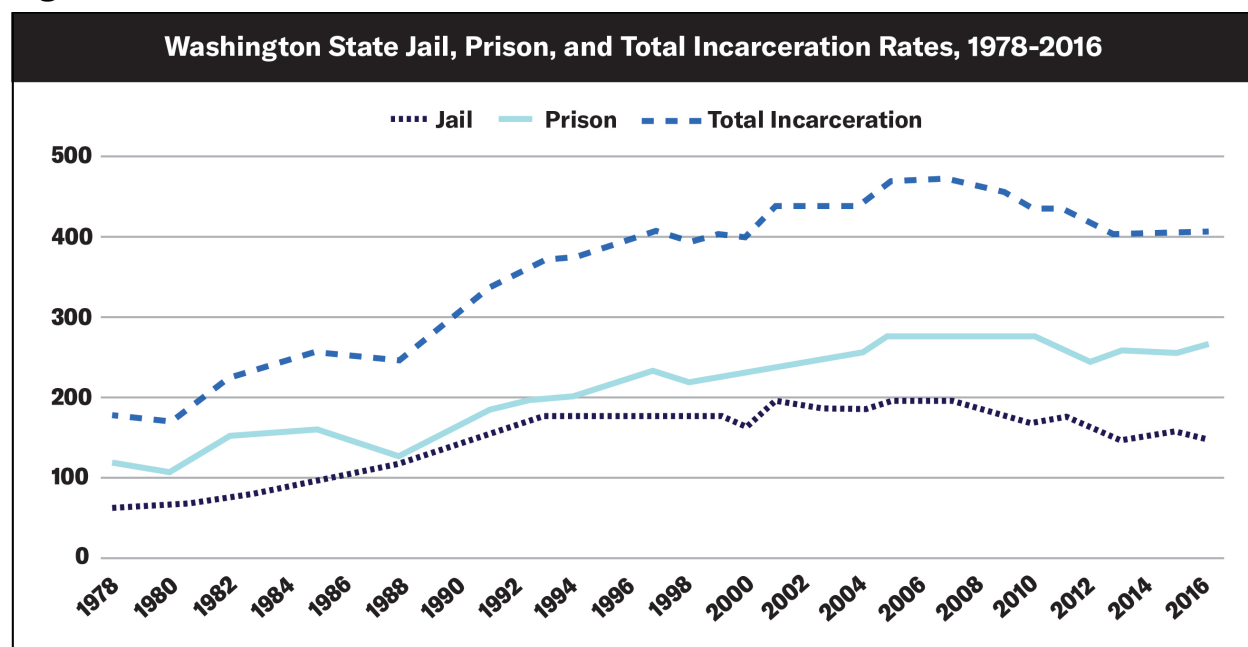
Washington's prison and jail populations have grown substantially, and the total incarceration rate has more than doubled, since the 1980s. By 2016, Washington's incarceration rate was more than three times higher than the average rate of the more than 30 Organization for Economic Co-operation and Development (OECD) countries.¹ The number of people living behind bars in Washington State is thus exceptional in both historical and comparative terms.

This report shows that the increase in incarceration in Washington State was not an inevitable response to rising crime rates. Rather, the growth of the state's prison population stems in large part from the proliferation of long and life sentences. The widespread imposition of long and life sentences sets Washington State apart from other democratic societies and is an inefficient and expensive way to protect public safety. This trend also raises important concerns about fairness and justice, including the disproportionate imposition of long and life sentences on black and Native people as well as on adolescents and young adults.

Rising levels of incarceration and the proliferation of long and life sentences are not unique to Washington State. The U.S. incarceration rate began an unprecedented ascent in the late 1970s. This trend continued through 2007, when 760 of every 100,000 U.S. residents – nearly 1 in 100 adults – lived behind bars.² The scale of confinement now sharply differentiates the United States from comparable countries, where incarceration rates range from a low of 41 in Japan to a high of 288 in Turkey.³ By 2016, the U.S. incarceration rate had fallen by 14 percent to reach 655 per 100,000 residents.⁴ Despite this modest decline, the United States remains home to the world's largest prison population.⁵

In Washington State, too, the incarceration rate is quite high relative to other democratic countries. From 1978 to 2016, the jail incarceration rate, the imprisonment rate, and the total incarceration rate more than doubled (see Figure 1). The size of the state's prison population nearly quadrupled in size during this time period, reaching 19,225 in September of 2019.⁶ Moreover, Washington is one of only eight U.S. states in which the prison population grew throughout most of the 2010s.⁷

Figure 1.

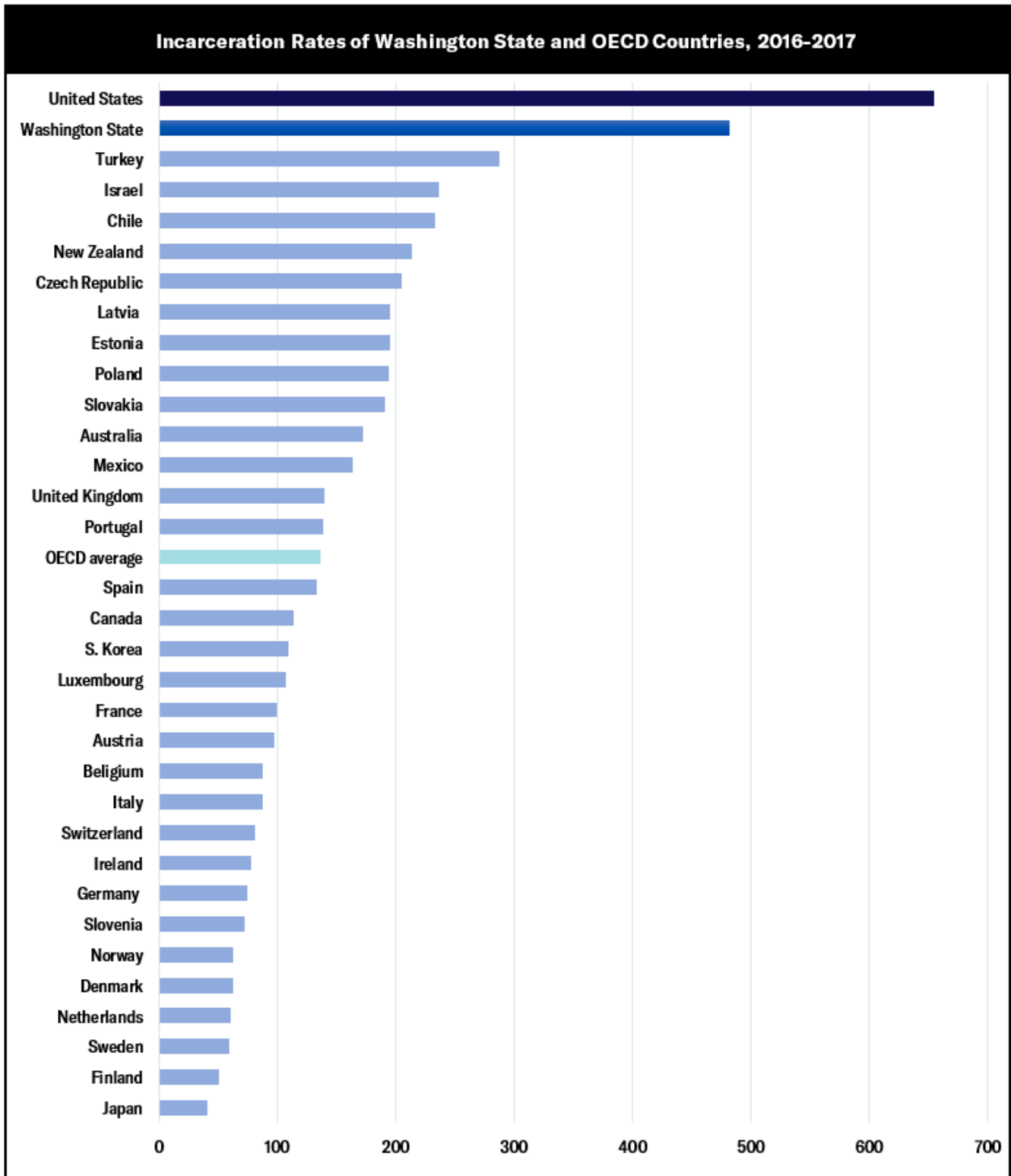


Sources: Data for all years other than 2016 taken from the Prison Policy Initiative (data retrieved May 7, 2019 from https://www.prisonpolicy.org/reports/jailsovertime_table_4.html); 2016 total incarceration data are taken from *The Bureau of Justice Statistics, Correctional Populations in the United 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.

By 2016, Washington's incarceration rate was more than three times higher than the average rate found in Organization for Economic Co-operation and Development (OECD) countries (see Figure 2).⁸ In fact, only seven countries in the world have higher incarceration rates than Washington State.⁹ The extensive use of prisons and jails in Washington is thus unprecedented in both historical and comparative terms. If people under community supervision are also included, the reach of the criminal justice system in Washington is even greater. In 2016, more than one in every 50 adult Washington residents was under some form of correctional supervision.¹⁰

Figure 2.



Source: Roy Walmsley, *World Prison Population List* (London: Institute for Criminal Policy Research, 2018, 12th edition). Rates are measured per 100,000 residents. The figures shown here for Washington State include people in local jails, state prisons, and federal prisons in the state.

This report shows that the proliferation of long and life sentences has been an important driver of the growth of Washington’s prison population. According to the “iron law of prison populations,” the number of people in prison is determined by two factors: the number of people admitted to prison and how long they stay behind bars.¹¹ In Washington State, parole has been largely abolished and the capacity of most prisoners to earn time off of their confinement sentence through the accumulation of “good time” credits has been curtailed.¹² As a result, length of stay is largely determined by prisoners’ sentences – and 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—life without parole—and 40 or more year) sentences have all grown significantly in recent decades.¹³ 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.¹⁴

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 prisoners will die behind bars. This trend is likely to persist¹⁵ and 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,¹⁶ and the state will need to spend significant additional monies to expand prison capacity in order to accommodate recent and expected growth. The Council of State Governments estimates that preventing future growth and prison construction could allow the state to avoid spending 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.¹⁷

The widespread imposition of long and life sentences in the United States and Washington State is unusual. In most democratic nations, sentences longer than ten years remain quite rare; in the United States, they have become commonplace.¹⁸ As Michael Tonry, a leading legal scholar whose work focuses on criminal sentencing, writes:

*In many countries, the maximum sentence that can be imposed for any single offense is 12, 15, or 20 years. LWOPs are unconstitutional in European countries.... In most other developed countries, a one- or two-year sentence is long and 25- or 200-year sentences are impossible and unimaginable.*¹⁹

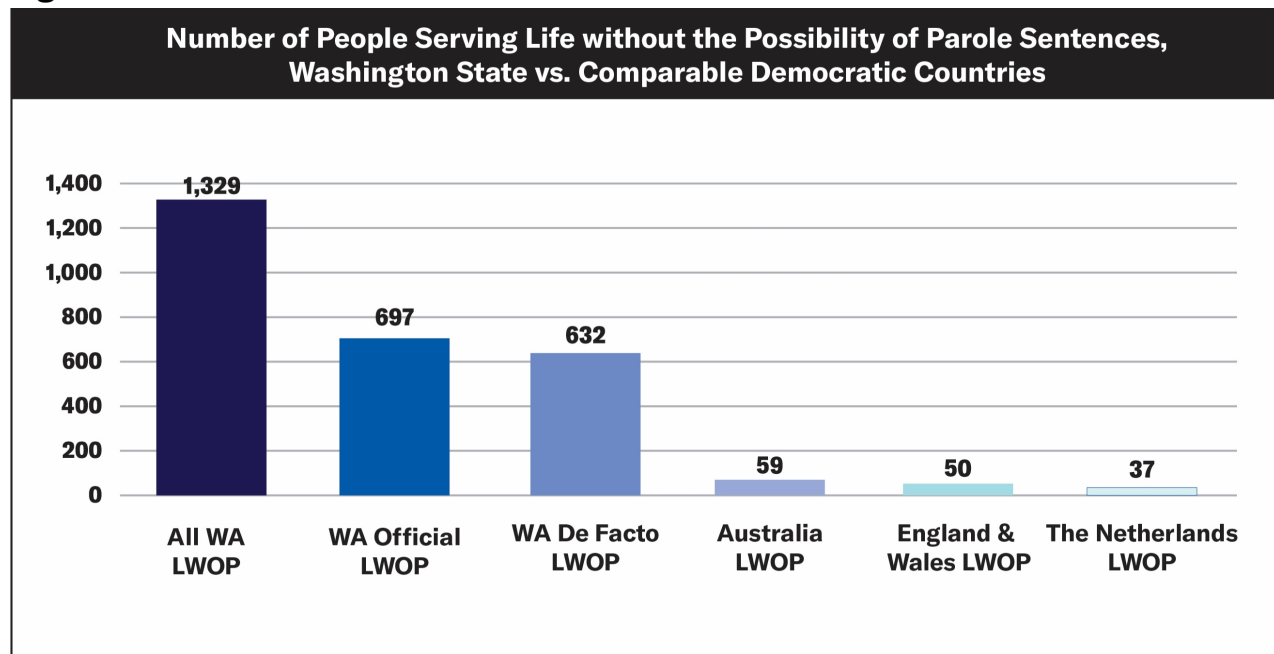
Life sentences, and especially life without the possibility of parole (LWOP) sentences, are now common in the United States but non-existent or very rare in most other

democratic countries. In fact, only twenty percent of the worlds’ countries even allow for the imposition of LWOPs; those that do allow them use them quite rarely.²⁰ This is because LWOP sentences presume at the time of sentencing that a defendant will *never* mature and can *never* be safely returned to their community. Because this presumption denies people the opportunity to demonstrate their maturation and transformation, LWOPs are considered to be a human rights violation by leading authorities.²¹ For this reason, some countries, including Germany, France and Italy, have declared LWOP sentences to be unconstitutional.²²

By contrast, 49 of the 50 U.S. states, including Washington, allow LWOP sentences to be imposed – and impose them frequently.²³ As of March 2019, Washington State prisons housed 697 people serving official LWOP sentences.²⁴ Data from 2015 indicate that another 632 people were serving “de facto” or “virtual” LWOP sentences at that time – sentences that are so long that those serving them are expected to die in prison.²⁵

As Figure 3 shows, the number of people serving LWOP sentences in Washington State is far greater than those found in other democratic countries with much larger populations. For example, LWOP does not exist in Canada, where the most severe criminal penalty is life *with* parole eligibility at twenty-five years.²⁶ 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.

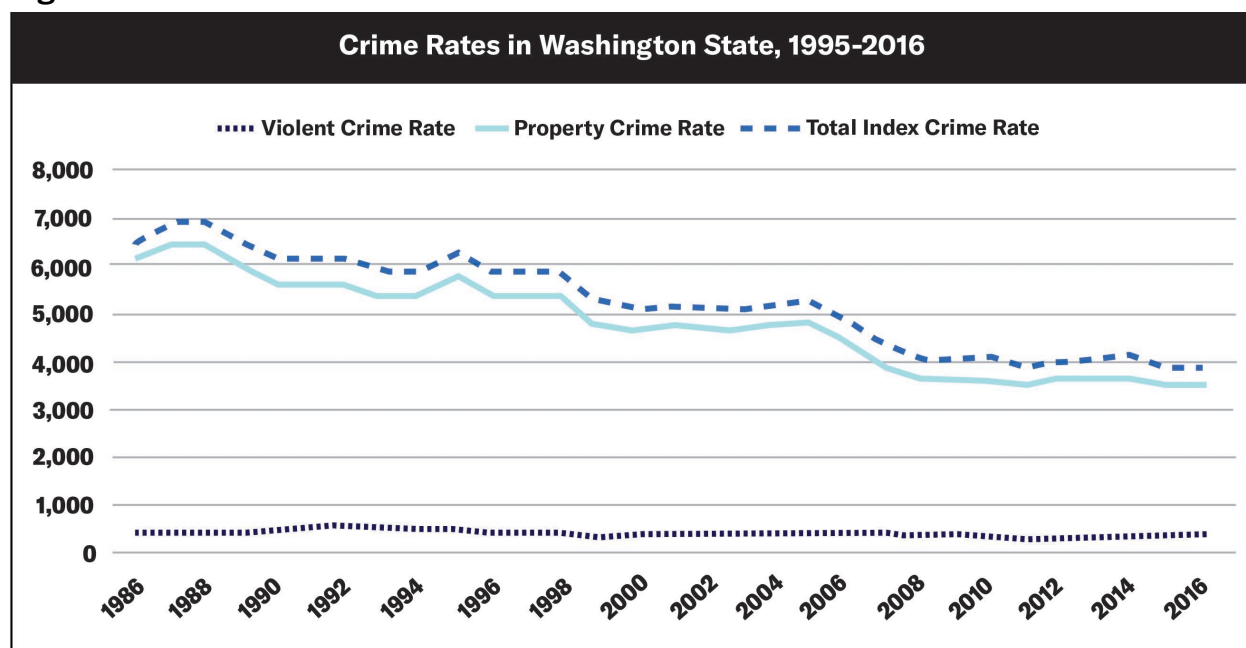
Figure 3.



Sources: Figures for Australia, England and Wales and The Netherlands are for 2010-2011 and are taken from Center for Law and Global Justice, University of San Francisco Law School, *Cruel and Unusual: U.S. Sentencing Practices in a Global Context*, 2012, p. 25. Washington State figures regarding official and virtual LWOPs are based on DOC data for March 31, 2019 and June 30, 2015 respectively.

The proliferation of long and life sentences in Washington State has not been a response to rising crime rates. In fact, Washington's crime rates have fallen steadily for decades. More specifically, the violent crime rate peaked in 1992, while the property crime rate reached its high point in 1988 (see Figure 4). As of 2016, the violent and property crime rates had fallen by 46 and 43 percent, respectively, since their apex several decades ago.²⁷

Figure 4.



Source: Crime rate 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).

Notes: Rates are calculated per 100,000 residents. These data include crimes classified by the FBI as index offenses (murder, rape, aggravated assault, robbery, arson, burglary, theft and motor vehicle theft) known to the police. The first four of these offenses are considered violent; the latter four are property crimes.

Despite this notable drop in crime rates, sentences have become lengthier and the number of long and life sentences imposed by Washington's Superior Courts more than quadrupled during this period.²⁸ In 2019, 41.5 percent of all people in Washington's prisons were serving a sentence of ten or more years, and 17 percent were serving a life sentence.²⁹

The routine imposition of long and life sentences is a short-sighted, ineffective, and inhumane approach to public safety. Comparative research shows that many countries that have far lower incarceration rates and rarely impose long and life sentences have enjoyed recent crime declines similar to that which has occurred in the United States. In fact, crime fell as much in countries without harsh criminal justice policies as in those with them.³⁰ Similarly, 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.³¹ For these and other reasons, the National Research Council recently concluded that “statutes mandating lengthy prison sentences cannot be justified on the basis of their effectiveness in preventing crime.”³²

This report focuses on the causes and consequences of the proliferation of long and life sentences in Washington, for several reasons. First, long and life sentences have an especially pronounced impact on the size of the prison population. Second, they are extremely costly. And third, long, and life sentences raise particularly important questions about efficacy, fairness, and justice. These concerns include the racially disparate imposition of long and life sentences; their imposition in cases involving adolescent and young adult defendants; the failure of the current policy regime to meet victim needs; the unnecessary and costly incarceration of growing numbers of elderly and physically frail prisoners; and the fact that the widespread imposition of very long and life sentences is an expensive yet inefficient way to protect public safety.

The sentencing trends described in this report are based on an analysis of state sentencing data provided by the Washington State Caseload Forecast Council. These data include all felony sentences issued by Washington State Superior Courts from January 1, 1986 through June 30, 2017. In order to avoid distorting findings pertaining to longitudinal trends, we do not include data from the first half of 2017 when describing trends over time. We focus on three categories of sentences: long sentences (10-19.99 years); very long sentences (20-39.99 years); and life sentences, which include life without the possibility of parole (LWOP) and virtual life sentences. Following the U.S. Sentencing Commission, we define virtual life sentences as those that impose forty or more years of prison time, meaning that those who are serving them can typically be expected to die behind bars.³³

Part II of this report provides a brief overview of changes to Washington State’s sentencing framework since 1984, when the Sentencing Reform Act (SRA) was enacted. One of the most important features of the SRA was the abolition of parole for most prisoners. Today, only prisoners who were a) sentenced prior to 1984; b)

In 2019,

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sentence**

sentenced to life without parole for an offense they committed prior to the age of 18; or c) sentenced under the Determinate Plus Sentencing statute have the opportunity to go before the Indeterminate Sentencing Review Board (ISRB) to make a case for their discretionary release (see Appendix B for more information about this statute). All other Washington State prisoners are denied the opportunity to be considered for release by the ISRB as a result of the SRA's near-abolition of parole. Relatedly, the SRA notably de-emphasized rehabilitation as a penal goal, emphasizing instead retribution (i.e. "just-desserts") and incapacitation (i.e. the physical separation of prisoners from the non-prison community).

In addition, the legislature has adopted a number of measures that enhance sentence length since the enactment of the SRA. Many of these measures increased the weighting of prior offenses in the calculation of offender scores, which has the effect of increasing recommended sentencing ranges. The legislature also enacted the nation's first "three-strikes" law and a variety of weapons enhancements in the 1990s. These and other legislative changes help explain why long and life sentences proliferated even as crime rates fell. At the same time, the legislature reduced opportunities for most prisoners to earn good time credits, which means that incarcerated people are serving a greater portion of their sentence behind bars than was previously the case.

Part III presents empirical data regarding the proliferation of long and life sentences in Washington State. These data show that average and maximum sentence lengths have increased substantially for all offense types. The findings also show that the number of long, very long, and life sentences imposed in 2016 was more than four times greater than in 1986. As noted previously, this notable increase in the imposition of long and life sentences occurred over decades characterized by dramatically falling crime rates.

Part IV assesses the specific impact of particular statutory changes on the proliferation of long and life sentences. These analyses show that key legislative developments, including the Persistent Offender Accountability Act (i.e., the three-strikes law), the Hard Time for Armed Crime Act (i.e., weapons enhancements), and especially changes to the rules that govern the calculation of offender scores contributed substantially to the growth of long and life sentences. These statutory changes also appear to have indirectly fueled this trend by enhancing prosecutorial leverage in plea negotiations, and by enabling the imposition of extraordinarily long sentences in cases in which defendants exercise their constitutional right to trial by

jury. The growth of this “trial penalty” is also an important driver of the growth of long and life sentences.

Part V offers a critique of the inefficacy and inhumanity of the proliferation of long and life sentences. Studies show that these policies are extraordinarily costly but provide little, if any, public safety benefit. The more sparing use of prisons, combined with enhanced crime prevention efforts, expanded rehabilitative programming in prisons, and the development of restorative justice based alternatives to incarceration are a more promising means of protecting public safety and meeting victim needs. This section also explores a number of concerns about fairness and justice raised by the increased imposition of long and life sentences, including their disproportionate impact on defendants of color and people who were children or young adults when they committed their crime.

Part VI describes the transformation and maturation of a number of people currently serving very long or life sentences in Washington State. These biographical accounts serve several purposes. First, they help to contextualize the very serious violence that occurred in these cases. Consistent with criminological research, these stories show that inter-personal violence does not occur in a vacuum or because people are “born evil.” Instead, the childhoods of people who are convicted of violent crimes are characterized by extreme poverty, trauma, family separation, and a lack of parental supervision. The existence of these circumstances does not mean that people should not be held accountable for harm they cause. But the existence of these circumstances does show that people who commit acts of serious violence are human beings who made poor decisions, typically at a young age, after having experienced significant trauma. These stories also powerfully challenge the presumption that people who commit serious crimes, including aggravated murder, are incapable of growth and maturation. In fact, in all of these cases (and many others), the people who committed serious harm have worked tirelessly to make amends and improve the lives of others. They do this despite the fact that these efforts will not enable them to earn time off of their sentence or lead to an opportunity to present a case for their release to a parole board. The stories presented in Part VI of this report thus underscore our shared responsibility for the prevention of violence and remind us of the possibility of redemption no matter the crime of conviction.

Finally, Part VII describes a number of policy reforms that have the potential to significantly reduce the number of long and life sentences imposed, to safely enhance release options for those currently serving such sentences, and to dramatically expand prisoners’ capacity to reduce their length of stay by engaging in rehabilitative programming. While the need for comprehensive sentencing reform is clear, we also

recommend that the legislature act in the short term to create meaningful release opportunities for prisoners who pose little danger to the public, bring state policy in line with recent research on brain development, reduce the number of older adults and elderly people who are living behind bars, encourage and reward prisoners' participation in rehabilitative programs, and enhance fairness and justice in Washington State.

PART II: WASHINGTON STATE SENTENCING LAW AND POLICY SINCE 1984

The policy structure that governs criminal sentencing in Washington State has undergone dramatic revision over the past four decades. This process began with the Sentencing Reform Act (SRA), which was enacted in 1984. The SRA demoted rehabilitation as a penal goal and elevated instead “just-desserts” (i.e. retribution) and the incapacitation (i.e. separation) of dangerous people as the primary goals of sentencing policy.³⁴

Consistent with this demotion of rehabilitation, the legislature abolished parole for those sentenced after the enactment of the SRA. Prior to 1984, sentences imposed for felonies in Washington were largely indeterminate, meaning that courts had a great deal of latitude in deciding whether to impose a prison sentence and in setting the number of years of confinement that were imposed. Most sentences were fairly open-ended: The Board of Prison Terms and Paroles decided whether and when to release a prisoner within the sentencing range determined by the judge. This approach reflected the view that many prisoners are capable of maturation and rehabilitation, and that the Parole Board rather than the sentencing judge was in the best position to determine when a prisoner was safe to release.³⁵

Throughout the 1970s, concern mounted that the state’s indeterminate sentencing framework yielded inconsistent outcomes that showed little relationship to the severity of the crime.³⁶ For some, the possibility that race and ethnicity influenced sentencing outcomes and parole decisions was also a concern. In addition, doubts about the efficacy of rehabilitative programs became widespread during this time.³⁷ As a result, many came to believe that criminal sentences should primarily reflect the severity of the crime, and seek principally to incapacitate and hold law-breakers accountable rather than encourage rehabilitation.³⁸ In Washington State, the idea that rehabilitation was a failed endeavor, and that punishment should be oriented instead toward consistency, retribution, and incapacitation, culminated in the passage of the Sentencing Reform Act.

The Sentencing Reform Act

In 1981, the Washington State Legislature adopted the Sentencing Reform Act (SRA). The SRA, in turn, established the Sentencing Guidelines Commission, which recommended a determinate sentencing system for adult felonies. The SRA took effect July 1, 1984 and abolished parole release for defendants sentenced after this date. The primary goal of the new sentencing system was to ensure that defendants who commit similar crimes and have similar criminal histories receive similar sentences.³⁹ Under the SRA, sentences are meant to be largely determined by the seriousness of the offense and by the defendant's criminal record (as measured by their offender score). The primary goal of the SRA, then, was to enhance fairness and predictability across similar cases.

This sentencing framework diminished judicial discretion and de-emphasized rehabilitation as a penal goal. In fact, under the SRA, "sentences intended to rehabilitate offenders were restricted to a defined class of first-time, nonviolent offenders."⁴⁰ Under the SRA, discretionary power shifted from judges to legislators, as the legislature classifies offenses by their perceived seriousness, sets the rules regarding the calculation of offender scores, and specifies sentencing ranges for various offense categories in determining penal outcomes. The SRA also enhanced the power of prosecutors whose charging decisions became more consequential for sentencing outcomes.⁴¹ Although the legislature did adopt prosecutorial guidelines regarding charging standards and plea bargains, these prosecutorial guidelines are advisory rather than mandatory.⁴²

The architects of the SRA did not originally seek to lengthen sentences, and under the SRA, prisoners retained the right to earn up to one-third off of their confinement sentence through good behavior in most cases. However, Section 3 of the SRA did make LWOP the automatic sentence for aggravated murder convictions unless the State choose to pursue, and the judge or jury imposed, a sentence of death. This provision is consistent with legislation enacted in 1977, but marked a dramatic change from past practice. Prior to 1975, prisoners serving life sentences were eligible for sentence review after twenty years minus one-third of that time if they earned good time credits.⁴³ In other words, prior to 1975, people in Washington State who were convicted of the most serious crimes were potentially eligible for release after serving a little over thirteen years in prison. By contrast, since 1975, only LWOP or death sentences are authorized in aggravated murder cases. (See Appendix C for

more information about the case characteristics that are meant to differentiate aggravated first degree murder from non-aggravated first degree murder). This policy shift was an important first step in the normalization and expansion of LWOP sentences in Washington State.

Deconstructing Aggravated Murder

The legal history of aggravated first-degree murder – considered the most serious offense – is closely bound up with the death penalty in Washington State.⁴⁴ In 1975, the legislature abolished a long-standing statute that gave juries the right to decide between life and death sentences in first-degree murder cases. Later that year, the voters approved Initiative 316, which imposed an automatic, mandatory death penalty for aggravated first-degree murder.⁴⁵ This statute was over-turned in 1977 by the Washington State Supreme Court. In response, the legislature amended the statute to specify that either a sentence of death or life without the possibility of parole would be imposed upon conviction of aggravated first-degree murder.⁴⁶

This statute originally identified seven aggravating circumstances that ostensibly differentiate aggravated from non-aggravated first-degree murder. Today, RCW 10.95.020 identifies fourteen circumstances that, in theory, meaningfully distinguish aggravated first-degree homicide from non-aggravated first-degree homicide (see Appendix C for a complete list of these aggravating circumstances). This legal distinction is consequential: people convicted of non-aggravated first-degree murder could not receive a sentence of death and typically do not receive LWOP.⁴⁷ By contrast, those who are convicted of aggravated first-degree murder must receive one of these two sentences and can therefore expect to die in prison.⁴⁸ Furthermore, people serving LWOPs must spend the first five years of their sentence in close custody⁴⁹ and, in most facilities, are considered the lowest priority for programming.

The imposition of different sentences for aggravated and non-aggravated first-degree murder rests on the idea that the former is notably and consistently more heinous than the latter, and that people who are convicted of it are less redeemable than those convicted of non-aggravated homicide. This sentencing approach also assumes that the existence of any of the fourteen aggravating circumstances establishes that the defendant is inherently more culpable than those convicted of non-aggravated murder and therefore constitutes a permanent danger to society.

In fact, the legal distinction between aggravated and non-aggravated murder does not meaningfully differentiate the most severe offenses from those that are slightly less severe. For example, under the

Washington statute, a murder resulting from the discharge of the firearm from a motor vehicle (or from the immediate area of a motor vehicle that was used to transport the shooter or the firearm, or both) meets the legal definition of aggravated murder. Yet there is no reason to believe that shootings perpetrated by people in vehicles are inherently more serious than those that take place in a home, an office, or on a sidewalk. Nor does the statute enable prediction of whether a defendant is capable of maturation and transformation. Prosecutors have no means of determining at the time of charging which defendants will eventually mature and become safe to release and which will not.

Moreover, prosecutors exercise a great deal of discretion when deciding whether to charge a defendant with aggravated murder, and this discretion may be influenced by a wide array of circumstances other than severity of the crime or the culpability of the defendant. A few examples are illustrative.

On May 19, 1992, 14-year-old Jeremiah Bourgeois shot and killed Tecle Ghebremichale, 41 years old, who had previously testified against Bourgeois' older brother in juvenile court. Jeremiah became the second youngest person in the state to be convicted of aggravated murder and was sentenced to life without the possibility of parole. While incarcerated, Mr. Bourgeois earned a paralegal certificate, wrote legal briefs for other inmates, worked toward a bachelor's degree, and published in a variety of outlets, including The Ohio State Journal of Criminal Law. Clearly, Mr. Bourgeois is not the same person he was when he committed his crime at the age of 14, and there was no basis for the assumption implicit in his LWOP sentence that he was incapable of growth and transformation.⁵⁰

In 1985, 20-year-old Arthur Longworth was convicted of aggravated murder; he is currently serving life without the possibility of parole in Washington State for killing 25-year-old Cynthia Nelson. About the crime, he says, "It's a horror and... I don't forgive myself for it."⁵¹ Throughout his childhood, Art had been subjected to horrendous abuse at the hands of his parents as well as in the foster care and juvenile detention systems. By age 16, Art had been discharged from state custody and was living on the streets, as he was at the time of his crime. Now aged 54, Art has become a teacher, an activist, and an award-winning writer.

In both of these examples, growth and transformation have clearly occurred. Moreover, mitigating circumstances – extreme youth and a history of severe abuse in both the home and the foster care system – clearly existed, yet prosecutors nonetheless decided to pursue aggravated murder convictions and life without the possibility of parole sentences in these cases. Conversely, in some cases in which aggravating circumstances exist, prosecutors elect not to charge the defendant with aggravated murder.

For example, in 2014, 32-year-old Thomasdihn Bowman was convicted of first-degree homicide after killing 43-year-old wine steward, Yancy Noll, at an intersection in the Roosevelt neighborhood of Seattle.

According to prosecutors, Bowman shot Noll from his vehicle.⁵² RCW 10.95.020 identifies shooting from a motor vehicle as an aggravating circumstance when the killing meets the definition of first-degree homicide. Yet the prosecution sought, and the jury returned, a conviction for non-aggravated, first-degree murder, and Bowman received a 29-year prison sentence for this offense.⁵³ While 29 years is a very long sentence, it is not LWOP.

In 2015, Jose Gonzalez-Leos was also convicted of first-degree homicide for killing the mother of his ex-girlfriend, 46-year-old Nga Nguyen. In the charging documents, prosecutors alleged that Gonzalez-Leos committed first-degree homicide in the course of committing Burglary 1.⁵⁴ RCW 10.95.020 identifies first-degree homicide committed in the course of, furtherance of, or in immediate flight from a number of crimes, including burglary in the first degree, as an aggravated circumstance. Nevertheless, Gonzalez-Leos was charged with, and convicted of, (non-aggravated) first-degree murder. He received a 26 and one half-year sentence.⁵⁵

The point of these latter two examples is not that prosecutors inappropriately under-charged the defendants in these cases; attorneys may well have had valid reasons for charging these defendants with non-aggravated first-degree murder. Rather, the point is that similar reasons exist in a host of other cases, cases in which the defendants were nevertheless charged with, and convicted of, aggravated murder, and under present law cannot be considered for release.⁵⁶

Together, these examples demonstrate that although the state's aggravated murder statute draws a consequential line between those deemed worthy of consideration for release and those who are not, this line is largely arbitrary and does not reflect either the severity of the crime or the ability of the defendant to mature. The widespread imposition of LWOP sentences for aggravated murder as well as other crimes denies far too many the possibility of redemption and consideration of the possibility that they may someday be safe to release.

The Sentencing Guidelines Commission continues to advise the legislature regarding adjustments to the sentencing structure, and the legislature often modifies criminal sentences. In fact, the legislature has revised the Sentencing Reform Act every year since it was implemented. The near-abolition of parole meant that the legislature had much more control over how long prisoners spent behind bars.⁵⁷ While the SRA did not generally increase sentence length, the legislature subsequently enacted a myriad of statutes that did just that. According to the Sentencing Guidelines Commission, “these changes have taken numerous forms, but their cumulative effect has been to increase the severity of felony sentences in Washington.”⁵⁸ The result was

the creation of a system in which many more defendants receive long and life sentences, but relatively few prisoners have the opportunity to earn good time credits or demonstrate evidence of their maturation to a parole board. These statutory developments are described below.

The Persistent Offender Accountability Act: Three – or Two – Strikes and You’re Out

In 1993, Washington became the first state in the nation to adopt a “three strikes” law, under which courts must sentence “persistent offenders” to life in prison without the possibility of parole (LWOP).⁵⁹ The Persistent Offender Accountability Act (POAA) was adopted pursuant to Initiative 593, which was supported in 1992 by 76 percent of voters.⁶⁰ The law specifies that mandatory life sentences, without the possibility of parole or reduction by good time, are to be imposed upon a third conviction of offenses designated by the legislature as “most serious.”

The POAA thus defines a “persistent offender” as a person who has been convicted of any “most serious offense” and who has previously been convicted on at least two separate occasions, in any state, of an offense that under Washington law would be “most serious.”⁶¹ “Most serious offenses” include all Class A felonies and a number of Class B felonies. Criminal solicitation of, or criminal conspiracy to commit, a Class A felony, any Class B felony with a finding of sexual motivation not otherwise included, any felony with a deadly weapon finding, and any attempt to commit a strike offense also constitute “most serious offenses.”⁶²

In 1996, the Legislature expanded the definition of “persistent offender” to include “Two-Strike Sex Offenders” who also receive a mandatory LWOP sentence. Defendants with two separate convictions of specified sex offenses qualify as a persistent sex offender under this provision.⁶³ In 1997, the legislature broadened the list of offenses that qualify as strikes under the “Two Strikes” law. The specific offenses that trigger “Two Strikes” sentences are enumerated in the “persistent offender” definition in RCW 9.94A.030(38)(b). A defendant who is convicted of one of these offenses and has at least one previous conviction for one of these offenses must be sentenced to life in prison without the possibility of release.

Advocates of persistent offender laws generally argue that such measures will drastically reduce crime, either by incapacitating repeat offenders or by deterring those who might otherwise commit such crimes. However, research does not support these claims. For example, studies comparing crime trends in states that passed two and three strike laws with trends in states that did not do so find no statistically

significant difference attributable to the enactment of persistent offender laws. Instead, crime rates fell by similar margins in both groups of states.⁶⁴ More recent studies similarly find “no credible statistical evidence that passage of three strikes laws reduces crime by deterring potential criminals or incapacitating repeat offenders.”⁶⁵

While research shows that mandatory sentencing laws do not achieve their intended effects, it does provide ample evidence that such laws have a variety of unintended and negative consequences.⁶⁶ As Michael Tonry explains,

*There is no credible evidence that the enactment or implementation of such sentences has significant deterrent effects, but there is massive evidence, which has accumulated for two centuries, that mandatory minimums foster circumvention by judges, juries, and prosecutors; reduce accountability and transparency; produce injustices in many cases; and result in wide unwarranted disparities in the handling of similar cases.*⁶⁷

There is also evidence that the enactment of mandatory minimum sentences compels many defendants, including increasing numbers of people who are factually innocent, to plead guilty rather than risk the potentially extreme consequences of going to trial.⁶⁸ As one legal expert explains, the adoption of mandatory minimum and other tough sentencing laws creates a “prosecutor-dictated plea bargain system” characterized by “inordinate pressures to enter into plea bargains” that appears to have led a significant number of defendants to plead guilty to crimes they never actually committed.”⁶⁹ As illustrated in Part III of this report, harsh sentencing laws like the Persistent Offender Accountability Act may also be used to punish people, guilty and innocent alike, for exercising their constitutional right to a trial.

Auto-Decline: Sending Youth to Adult Court – and Prison

In 1994, the Washington State Legislature passed the Youth Violence Reduction Act. Under this legislation, 16 and 17 year old children charged with certain felonies are automatically “declined” in the juvenile system and sent to adult courts.⁷⁰ In 1997,

... about

1,300

**WASHINGTON
YOUTH**

**were convicted in the adult system
under the automatic decline law
between 1994 and 2012**

the legislature revised the automatic transfer criteria, adding a number of offenses that trigger the automatic transfer of 16 and 17 year old children to the adult courts and, if convicted, to state prisons.⁷¹

According to a study by the Washington State Institute for Public Policy (WSIPP), about 1,300 Washington youth were convicted in the adult system under the automatic decline law between 1994 and 2012. Using a number of different methods and analytic strategies, WSIPP researchers

analyzed how automatic decline affected youth recidivism rates. The results show that recidivism rates are *higher* for youth who are automatically transferred to the adult system than for otherwise similar youth who are retained in the juvenile system:

... we compared recidivism rates of youth who were automatically declined after the 1994 law with youth who would have been declined had the law existed prior to that time. We employed numerous tests, all of which demonstrate that recidivism is higher for youth who are automatically declined jurisdiction in the juvenile court. These findings are similar to other rigorous evaluations conducted nationally by other researchers.⁷²

Transferring youth to the adult system thus undermines public safety, according to WSIPP. At the same time, there is abundant evidence that incarcerating adolescents in general, and especially in adult prisons, is harmful to their well-being. For example, one study found that, “Compared with offenders confined in juvenile facilities, juveniles in adult prison are eight times more likely to commit suicide, five times more likely to be sexually assaulted, and almost twice as likely to be attacked with a weapon by inmates and beaten by staff.”⁷³ Auto-decline laws thus subject troubled adolescents to harsher conditions of confinement. This exacerbates the

already-high level of trauma with which these young people contend, and also undermines public safety.⁷⁴

In March of 2018, the Washington legislature enacted, and the Governor signed, Senate Bill 6160. This legislation removes five offenses from the list of crimes that automatically trigger youths' transfer to the adult courts, but also extends juvenile jurisdiction over children convicted of those crimes until they reach the age of 25.⁷⁵ Thus, while children convicted of these five offenses are no longer automatically transferred to the adult system, they are now likely to spend significantly longer behind bars for those offenses.⁷⁶ Because confinement in juvenile institutions has also been shown to be damaging to children, and because many will now spend more time behind bars, it is unlikely that this legislation will improve either the well-being of young adults or public safety.

The Hard Time for Armed Crime Act

In 1995, Washington voters approved Initiative 159, paving the way for the Hard Time for Armed Crime Act (HTACA). This Act requires that people convicted of a felony committed while armed with firearms and other weapons receive a sentence enhancement that adds time to the base sentence for the underlying offense. All felony offenses (other than firearm offenses) are eligible for a weapon finding and enhancement.

The length of the sentence enhancement depends upon the type of weapon(s) involved and the seriousness of the crime(s) committed. Under RCW 9.94A.533, the following enhancements may be imposed for each charge or count: Class A firearms – 60 months; Class B firearms – 36 months; Class C firearms – 18 months. Enhancements for other non-firearm weapons are as follows: Class A – 24 months; Class B – 12 months; Class C – 6 months.

Over the years, the legislature has enacted many other sentence enhancements as well. These are described in Appendix D. Sentence enhancements, including those imposed under HTACA, must be served consecutively and without time reductions for good behavior. (See Appendix E for a description of the statutory rules that govern whether sentences are to be served consecutively or concurrently.)

Like two- and three-strike laws, supporters promote sentence enhancements as a means of enhancing deterrence and incapacitation, thereby improving public safety. Yet a recent evaluation concluded that weapons enhancements are not a cost-effective means of reducing violent crime.⁷⁷ Moreover, long sentences do not deter more than

short ones, and mandatory sentences have not been shown to reduce crime or improve public safety.⁷⁸ Empirical research thus fails to provide support for the idea that weapons enhancements improve public safety. What is clear, however, is that these enhancements have added very significant amounts of confinement time to the sentences of some prisoners.

Changes to the Calculation of Offender Scores

Legislative changes to the rules governing the calculation of offender scores have led to an increase in those scores. As shown later in this report, the rise in offender scores has, in turn, contributed to the increase in average sentence length and to the proliferation of long and life sentences.

Under the SRA, (pre-enhancement) sentences are determined by two factors: the seriousness of the most serious current offense (as determined by the legislature) and defendants' "offender score." The offender score is based on the number and nature of defendants' prior convictions, each of which is weighted according to rules set by the legislature. In recent decades, the legislature has modified the rules that govern the calculation of offender scores on many occasions. All but one of these modifications increased the extent to which prior convictions enhance defendants' offender scores.

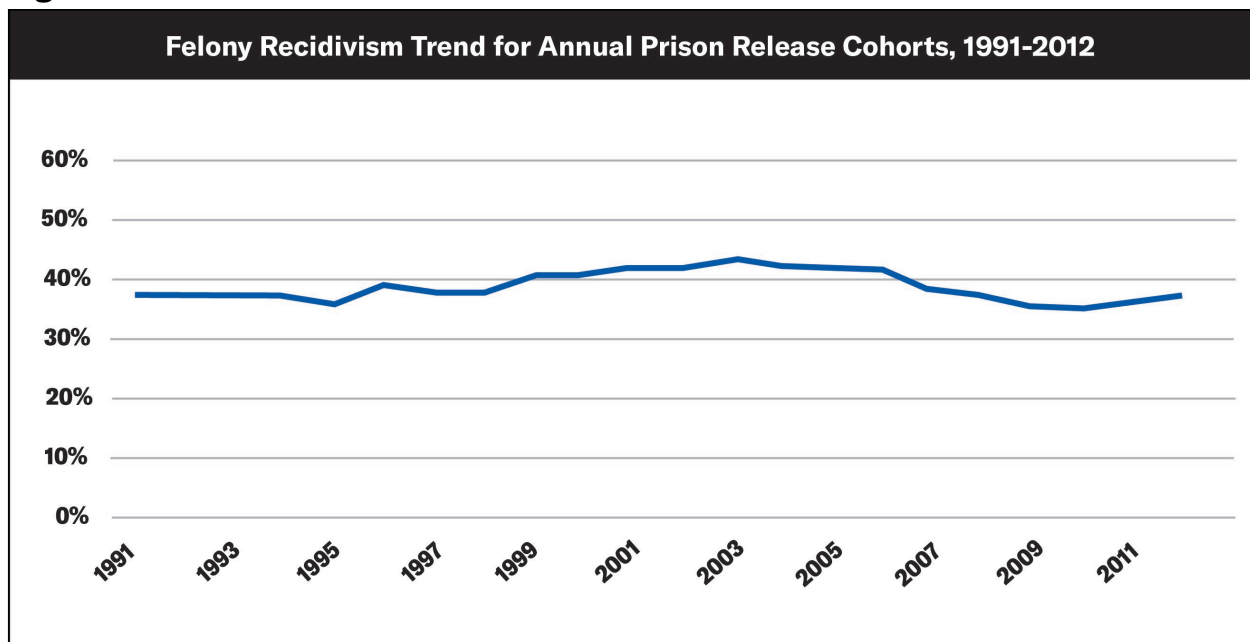
For example, in 1986, the legislature modified RCW 9.94A.525 to extend the period of time during which prior felony convictions count in the calculation of offender scores (i.e. the "wash period"). For Class A felonies, the wash period was eradicated entirely, meaning that prior convictions for Class A felonies are *always* included in the calculation of offender scores. For Class B felonies, the wash period was extended from five to ten years. Similarly, in 1999, the legislature increased the number of violent crimes that were to be triple-counted, and double-scored juvenile convictions for those offenses. Appendix F provides a list of changes to RCW 9.94A.525 that alter the weighting of prior convictions in the calculation of offender scores.

As shown in Part III of this report, average offender scores have increased notably as a result of these statutory reforms, and this trend contributed substantially to the proliferation of long and life sentences. The increase in average offender scores that has taken place does not stem from an inevitable or "natural" compounding of offender scores over time. While it is true that justice-involved peoples' offender scores will increase over the course of their system involvement, most people who are at one point in time justice-involved "age out" of criminal behavior, while other first-time offenders are just entering the system. The people who were sentenced in Superior Court in 1984, just after the SRA went into effect, would have included a

mixture of people, some of whom had no prior justice-involvement, some whom were in the middle of their crime-involved years, and others who were about to “age out” of crime. The same is true today.

Absent any notable increase in crime rates and recidivism, then, there is no reason to believe that the increase in offender scores documented in the next section is inevitable. In fact, crime rates have been falling precipitously (see Figure 4 above), and the recidivism rates of former prisoners have been stable (see Figure 5 below). For these reasons, it appears that the increase in defendants’ offender scores over time stems primarily from the legislative changes to the rules governing the calculation of offender scores described above and in Appendix F.

Figure 5.



Source: Data provided by Michael Hirsch, Research Associate, Washington State Institute for Public Policy (October 17, 2017).
Note: WSIPP includes new Washington State felony convictions that occur within three years of release in their recidivism data.

Restrictions on Earned Release Time

The Washington State Legislature has enacted a number of measures that enhance sentence length, contribute to the proliferation of long and life sentences, and ensure that most people serving long sentences are unable to meaningfully reduce their prison stay through good behavior and participation in rehabilitative programming. The policy rationale for this shift toward longer and life sentences is unclear, as research shows that long sentences do not deter more than short ones,⁷⁹ and that incapacitating middle aged and elderly people is an inefficient means of improving

public safety.⁸⁰ Moreover, the SRA's demotion of rehabilitation is incompatible with studies showing that many rehabilitative services do improve public safety,⁸¹ and that the possibility of early release reduces infractions and incentivizes participation in rehabilitative programs that reduce recidivism.⁸²

RCW 9.94A.728 provides that a prisoner's sentence may be reduced by "earned release time." This earned release time is allocated to prisoners for "good behavior" as determined by the relevant correctional agency. Prisoners may accumulate earned release time while serving a sentence and during their pre-sentence incarceration.

Under the Sentencing Reform Act, nearly all prisoners who avoided infractions and participated in rehabilitative programming were eligible to earn a one-third reduction in their confinement sentence.⁸³ This situation changed markedly in 2003, when the State Legislature passed ESSB 5990. This legislation did two things. First, it increased earned release time for good behavior for people who were convicted of certain non-violent offenses and who met other eligibility criteria. For these prisoners, the share of their sentence that could be reduced via good time credits rose from 33 percent to up to 50 percent. However, this legislation also reduced the capacity of most prisoners to earn release time. In particular, prisoners convicted of a serious violent offense or a Class A sex offense committed between July 1, 1990, and July 1, 2003, or who did not meet other eligibility criteria, were prohibited from earning release time in excess of fifteen percent. Prisoners committing these offenses on or after July 1, 2003 cannot earn release time credit in excess of ten percent. In addition, prisoners may not earn any release time for that portion of a sentence that results from any enhancements or a mandatory minimum sentence under RCW 9.94A.540.⁸⁴

As a result of these restrictions, WSIPP reports that just 20 percent of all Washington State prisoners were eligible to earn up to 50 percent off of their sentence through "good behavior" under this statute; the capacity of many of the remaining 80 percent of prisoners to reduce their sentence was significantly curtailed.

Importantly, the 20 percent of all released prisoners who were eligible to earn up to 50 percent earned release time were therefore released early had lower recidivism rates than similar others who spent more time in prison. According to WSIPP, the expansion of earned release time for this group of prisoners resulted in a net savings to Washington State taxpayers equivalent to more than \$7,000 per prisoner.⁸⁵ Nonetheless, the legislature allowed the temporary expansion of the capacity of roughly 20 percent of the state's inmates to earn time off of their sentence to lapse

after 2010. It also retained those portions of the law that restricted the capacity of other prisoners to earn time off of their sentence.⁸⁶

The abolition of parole, combined with these restrictions on earned release, amplifies the effects of increased sentence length, and mean that many people are spending far longer in prison than was the case a few decades ago.⁸⁷ These statutory changes also mean that state sentencing policy no longer encourages many prisoners to engage in rehabilitative programming or rewards those who do.

Despite the absence of evidence indicating that long and life sentences improve public safety, such sentences have proliferated in Washington State while opportunities to earn release time and be considered for release after serving long confinement terms have been curtailed. These policies are not supported by criminological research, which shows that long and life sentences are an expensive yet inefficient means of protecting public safety and that victim needs continue to go unmet even as more people are incarcerated for longer and longer periods of time. In the following section of the report, we describe these trends in greater detail and provide additional information about the people most affected by them.

III: THE PROLIFERATION OF LONG AND LIFE SENTENCES

The policy changes described above have had a notable impact on sentencing outcomes in Washington State. Average and maximum sentence lengths for felony defendants sentenced to prison increased notably, while the number of long, very long, and life sentences grew dramatically. As was shown in Part II of this report, many statutory changes contributed to these sentencing trends, which in turn increased state prison populations. These legislative initiatives also increased the number of older and elderly adults who live behind bars despite posing little risk to public safety.

Table 1 displays the change in average sentence length from 1986 to 2016 for felony defendants who were sentenced to prison by offense category.⁸⁸ As this table shows, the average prison sentence imposed for drug, property, public order, and violent offenses increased by 25, 48, 231, and 26 percent, respectively, from 1986 to 2016. For people convicted of drug offenses, this meant, on average, five additional months behind bars; for property, public order and violent offenses, this trend resulted in the imposition of an average of 11, 28 and 18 additional months of prison time, respectively.

Table 1.

Change in Average Sentence Length (in months) for Felony Defendants Sentenced to State Prison, by Offense Category, 1986-2016						
<i>Offense Type</i>	<i>Average Sentence 1986</i>	<i>Average Sentence 1996</i>	<i>Average Sentence 2006</i>	<i>Average Sentence 2016</i>	<i>Percent Increase 1986-2016</i>	<i>Absolute Increase 1986-2016</i>
Drug	21	31	23	26	25%	5
Property	22	34	29	33	48%	11
Public Order	12	34	37	40	231%	28
Violent	67	95	82	84	26%	18

Source: Authors' analysis of Washington State Superior Court Sentencing data provided by the Washington State Caseload Forecast Council.

Note: No one was sentenced to prison for a public order offense in 1986, 1987 or 1988; the figure shown here was the average sentence imposed for such offenses in 1989. Public order offenses mainly include weapons violations. See Appendix H for a list of the most common offenses that fall into these four offense categories.

The averages displayed in Table 1 mask a good deal of variation. The maximum sentence imposed in each offense category increased even more than the average sentence (see Table 2). In 1986, the maximum confinement sentence imposed for a violent crime was 999 months, more than twice as long as the average prisoner could expect to live behind bars. (A sentence of 480 months, or 40 years or more, is considered a virtual life sentence). The maximum prison sentence imposed for a violent crime increased to 1,200 months, or 100 years, in 2016. By 2006, and again in 2016, the maximum sentence for property and drug offenses also reached the virtual life sentence threshold of 480 months, or 40 years. The maximum sentence for people sentenced for a public order offenses also rose substantially in recent decades.

Table 2.

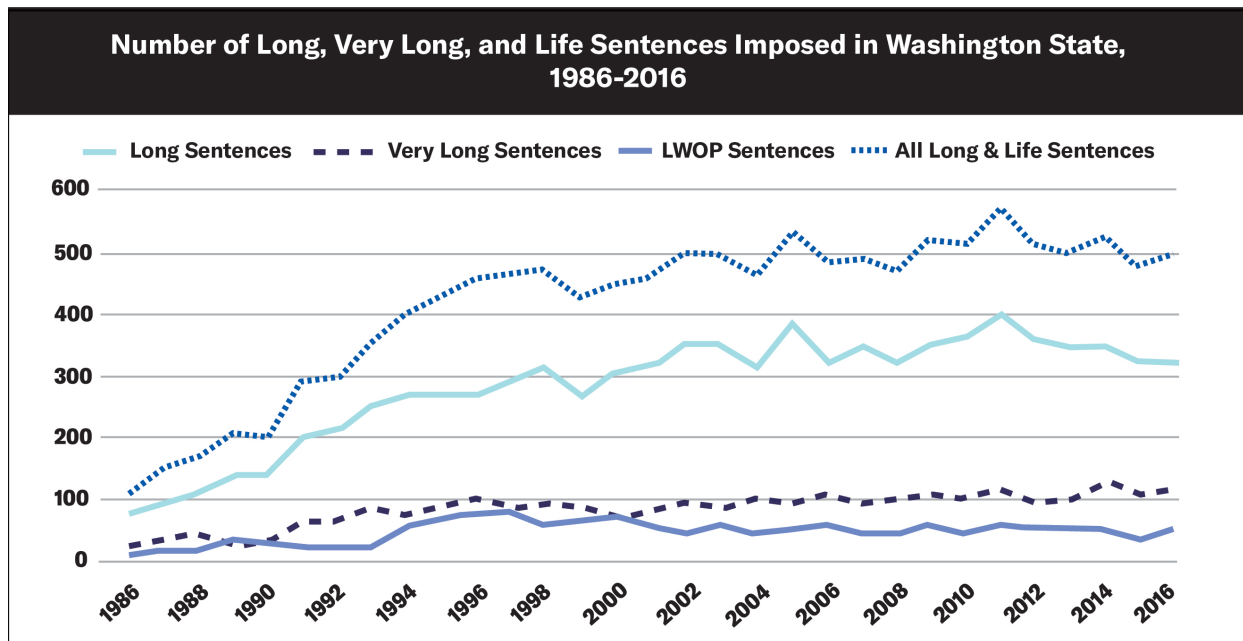
Change in Maximum Sentence Length for Felony Defendants Sentenced to State Prison (in Months), by Offense Category, 1986-2016						
	<i>Maximum Sentence 1986</i>	<i>Maximum Sentence 1996</i>	<i>Maximum Sentence 2006</i>	<i>Maximum Sentence 2016</i>	<i>Percent Increase 1986-2016</i>	<i>Absolute Increase 1986-2016</i>
Drug	67	288	204	480	616%	413
Property	120	480	480	480	300%	360
Public Order	12	186	387	174	1350%	162
Violent	999	1200	1034	1200	20%	201

Source: Authors' analysis of Washington State Superior Court Sentencing data provided by the Washington State Caseload Forecast Council.

Note: No one was sentenced to prison for a public order offense in 1986, 1987 or 1988; the figure shown for 1986 was the maximum sentence imposed for such offenses in 1989.

The number of felony defendants sentenced to long, very long, and life sentences also increased dramatically during this period (see Figure 6, below). Specifically, *the number of long sentences – defined here as a prison term of ten to twenty years – more than quadrupled; the number of defendants who received a very long sentence of twenty to forty years increased more than fivefold; and the number of LWOP (official and virtual) sentences was nearly five times higher in 2016 than in 1986.* As Figure 6 makes evident, 2016 was not an aberrational year; the number of long and life sentences imposed that year was high because the frequency with which long and life sentences are imposed increased steadily over four decades.

Figure 6.

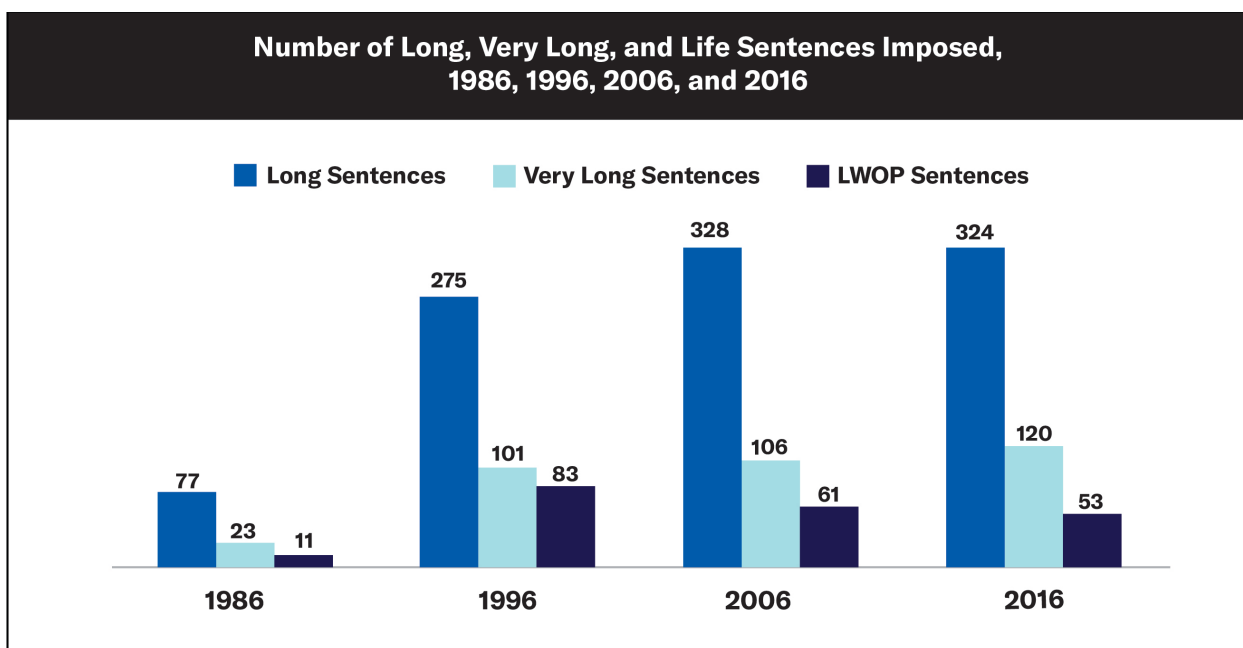


Source: Authors' analysis of Washington State Superior Court Sentencing data provided by the Washington State Caseload Forecast Council.

Note: LWOP sentences include both formal and virtual LWOPs.

Although the number of virtual and official LWOP sentences imposed peaked in the late 1990s, the number of people who received an LWOP sentence in 2016 was nonetheless more than four times higher than the number imposed in 1986 (see Figure 7).

Figure 7.

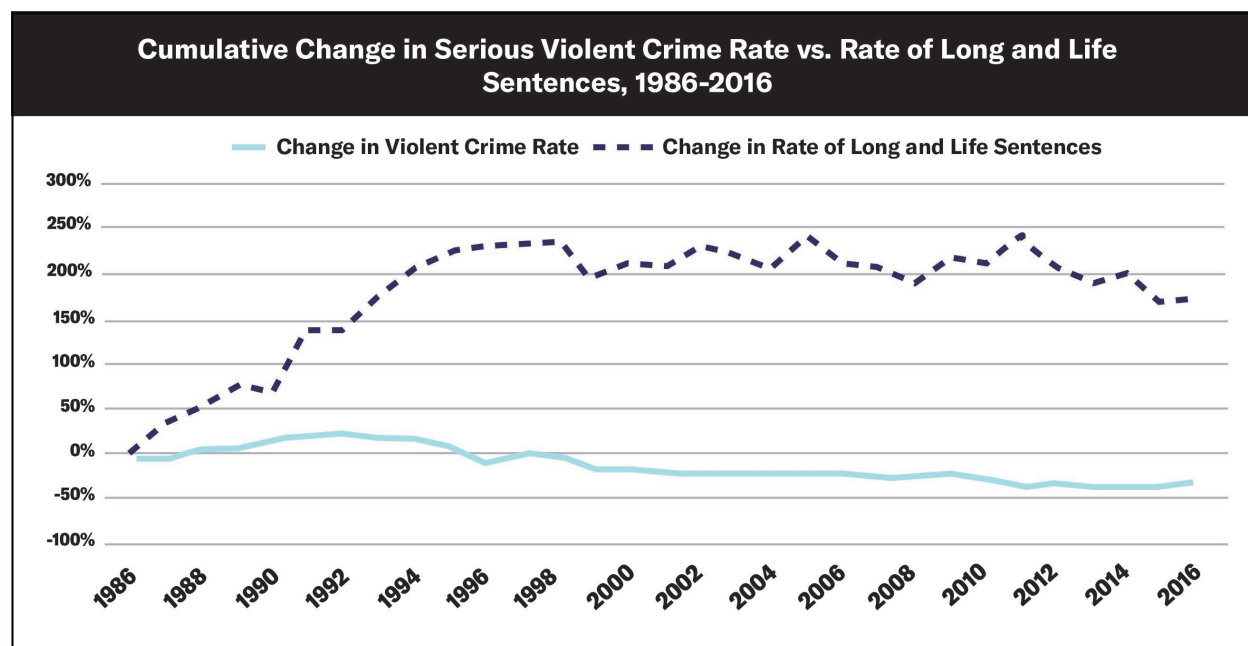


Source: Authors' analysis of Washington State Superior Court Sentencing data provided by the Washington State Caseload Forecast Council.

Note: LWOP sentences include both formal and virtual LWOPs.

Paradoxically, the dramatic uptick in long and life sentences occurred at a time when crime rates were declining steadily. Figure 8 compares the cumulative change in the number of long and life sentences with the cumulative change in the number of index (serious) violent crimes known to the police in Washington State from 1986 to 2016.⁸⁹ This figure shows that the increased imposition of long prison sentences was not a response to crime trends. Specifically, *while the violent crime rate was 31 percent lower in 2016 than in 1986, the rate at which long and life sentences were imposed was 174 percent higher in 2016 than in 1986.*

Figure 8.



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*. 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).

In short, the number of long, very long and life sentences grew dramatically in recent decades despite falling crime rates. This trend was thus the consequence of the policy shifts described previously, and raises a number of concerns about fairness, justice and efficacy. These concerns are described below.

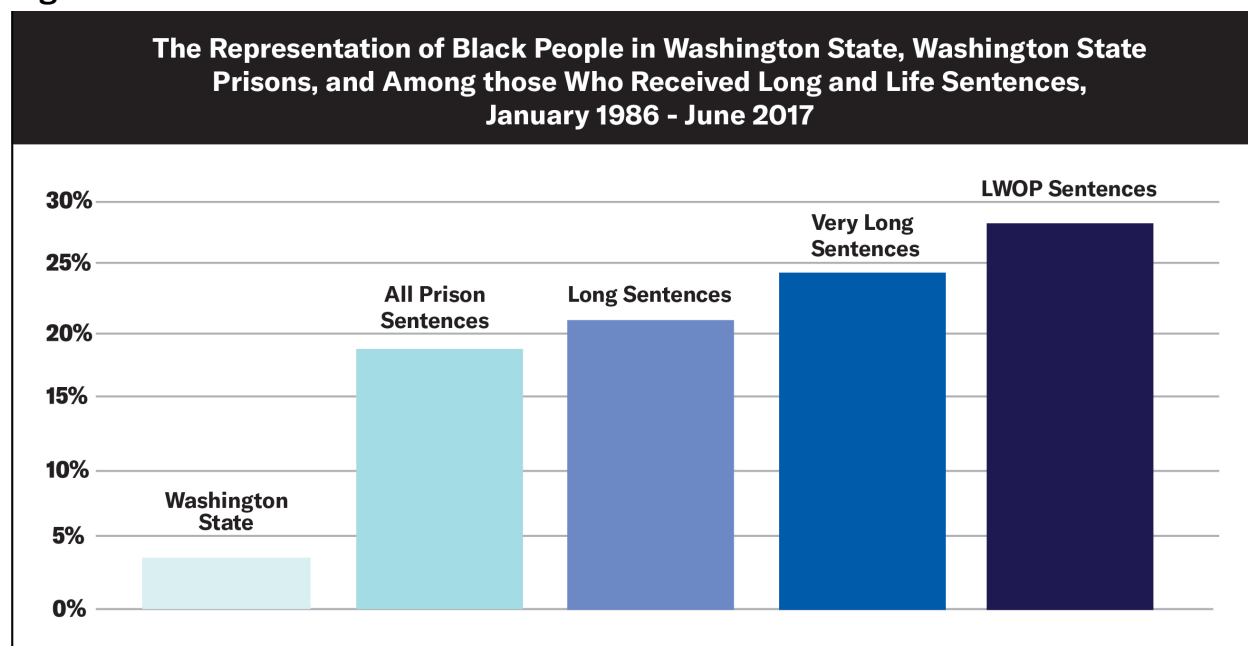
The Over-Representation of People of Color, Adolescents and Young Adults Among Those Serving Long and Life Sentences

Long and life sentences are disproportionately imposed on people of color, and in particular, on black and Native American defendants. People who are identified as white, Latinx, or Asian in state sentencing data are under-represented among those who receive long and life sentences relative to their representation in the state

population. By contrast, black and Native American people are notably over-represented among those receiving long or life sentences.

Just over one (1.2) percent of the state population identifies as Native American, but 2.4 percent of those receiving long sentences, 2.5 percent of those receiving very long sentences, and 1.9 percent of those receiving life sentences are identified in the sentencing data as Native American. The degree to which black people are over-represented among those with long and life sentences is also notable, and increases as sentence length grows: an average of 3.5% of the state population identified as black through this time period, but 19% of those sentenced to prison, and 28% of those sentenced to life in prison, were black (see Figure 9). As discussed 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.

Figure 9.



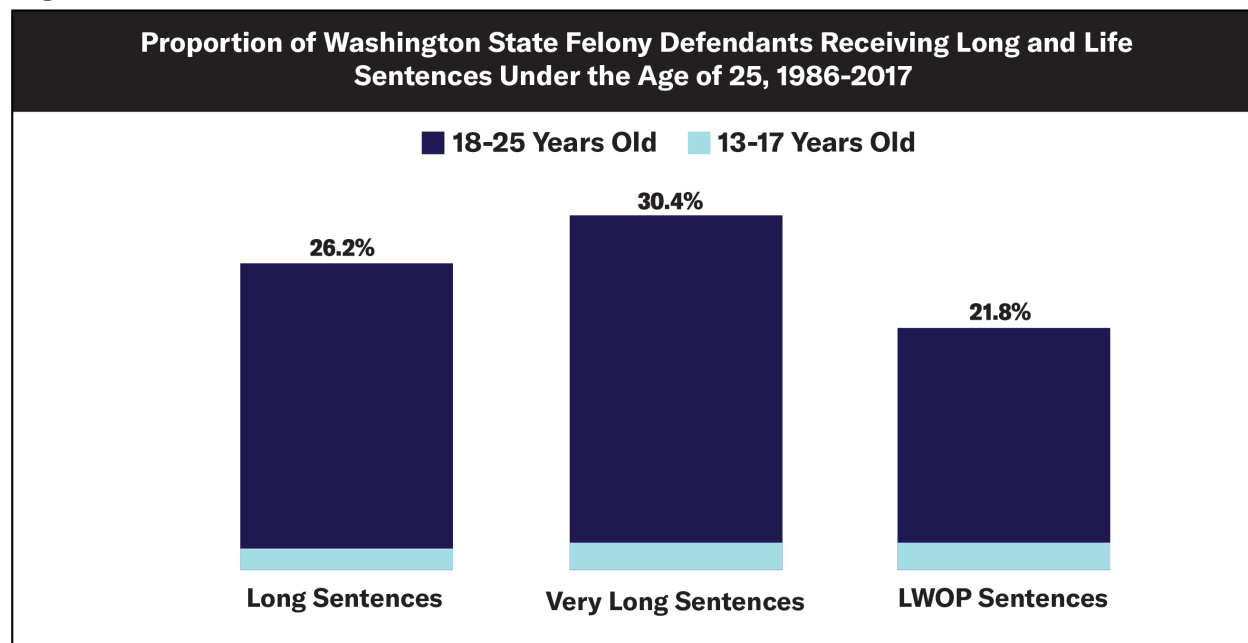
Source: Authors' analysis of Washington State Superior Court Sentencing data provided by the Washington State Caseload Forecast Council.

Note: LWOP sentences include both formal and virtual LWOPs.

The widespread imposition of long and life sentences on adolescents and young adults also raises concerns about fairness, particularly in light of recent research on brain development 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 aged 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 (see Figure 10). Because the data upon which these figures rest include information about the date of sentencing rather than the date of the underlying offense, and because there is often a substantial gap between the date on which a crime is committed and the date on which sentencing occurs, these figures underestimate the proportion of people sentenced to long and life sentences for crimes they committed while 25 or under.

Figure 10.



Source: Authors' analysis of Washington State Superior Court Sentencing data provided by the Washington State Caseload Forecast Council.

Note: LWOP sentences include both formal and virtual LWOPs. Data include the first six months of 2017.

The frequency with which long and life sentences are imposed on children and young adults in Washington State is in tension with recent studies on brain development and maturation. This body of research indicates that brain development is a gradual process, one that is not complete until people enter their mid to late 20s. This is especially true for young people who have experienced significant trauma, which is the case for the majority of people who come into contact with the criminal justice system at a young age.⁹⁰ More specifically, studies show that adolescents and young adults are more impulsive, present-oriented, susceptible to peer and other outside influences, sensitive to immediate rewards, and volatile in emotionally charged situations than older adults.⁹¹ Imposing long and life sentences on young people is in tension with this body of evidence, which suggests that maturation is likely to occur and that young adults are highly amenable to rehabilitative programming.

The proliferation of long and life sentences has also contributed importantly to the incarceration of the elderly. *In Washington State, as of December 2018, nearly one in five (18 percent) of all state prisoners were more than 50 years old.*⁹² *This trend has fueled a dramatic increase in the number of Washington State prisoners who are expected to die behind bars.* In 1999, Washington State prisons housed 359 prisoners who were serving an LWOP sentence.⁹³ By March 2019, that number had risen to 697. This figure does not include the other 632 prisoners who were serving virtual LWOP sentences – sentences that are so long that those serving them are expected to die in prison – as of June 2015.⁹⁴

As discussed in Part VI of this report, the incarceration of the elderly is an expensive and ineffective approach to public safety because the risk that someone will re-offend declines dramatically with age⁹⁵ and because imprisoning older people is quite costly.⁹⁶ 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 next section explores how and why long and life sentences proliferated in the context of dramatically falling crime rates.

PART IV: EXPLAINING THE PROLIFERATION OF LONG AND LIFE SENTENCES

The proliferation of long and life sentences in Washington State stems from a series of policy changes that have increased sentence length, expanded the circumstances under which LWOP sentences may be imposed, and enhanced prosecutorial leverage in the plea bargaining process. These policy changes were described in Part II. This section of the report quantifies the extent to which these policy changes contributed to the proliferation of long and life sentences in Washington State.

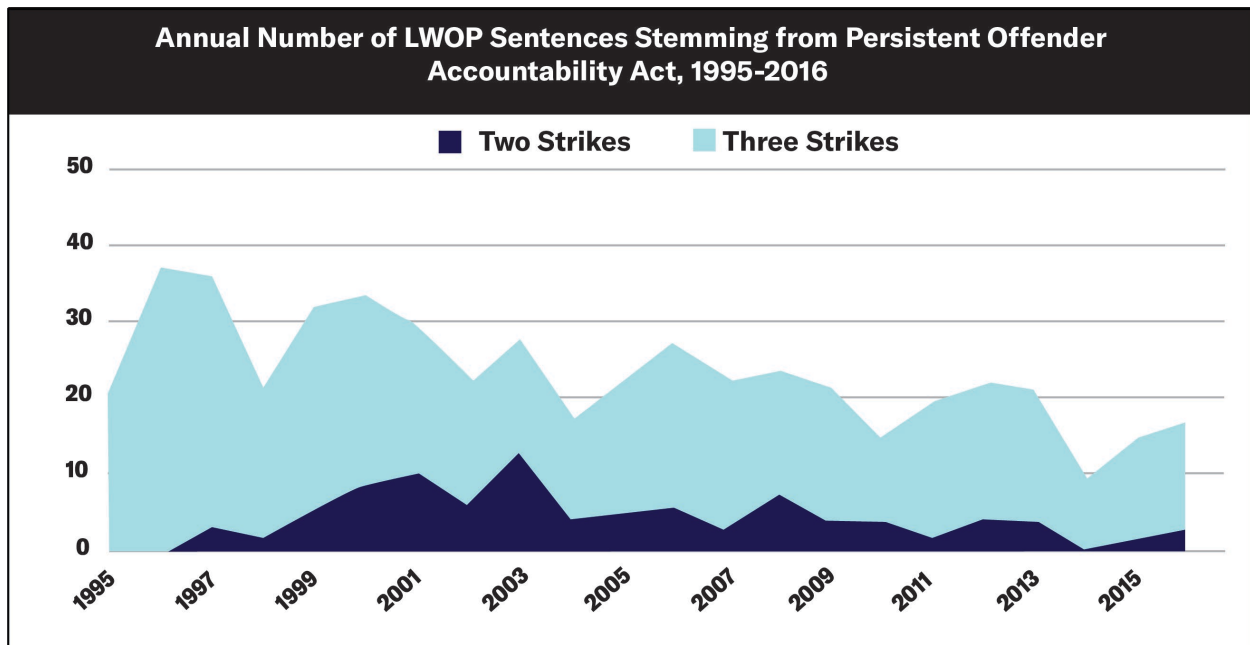
In brief, the evidence shows that changes to the rules regarding the calculation of offender scores have contributed most to the proliferation of long and life sentences. The Persistent Offender Accountability Act and the Hard Time for Armed Crime were also important drivers of this trend.⁹⁷ Together, these policies also fueled the growth of the “trial penalty.” This increase in the difference between the average sentence imposed at trial versus through the plea bargain process is also an important cause of the proliferation of long and life sentences, one that raises a number of ethical concerns. These developments are described below.

Three-Strikes and the Expansion of Life Without the Possibility of Parole

LWOP sentences had already increased prior to the enactment of the SRA as a result of legislation mandating that LWOP (or the death penalty) be imposed in cases involving aggravated murder.⁹⁸ This marked a notable change from pre-1975 practice: for much of the 20th century, *all* prisoners were potentially eligible to be considered for release after serving a little over 13 years behind bars. By the late 1970s, however, this was no longer the case: anyone convicted of aggravated first degree murder was required to be sentenced to death or life in prison without the possibility of release. As a result of this new legislation, the number of LWOP sentences ticked gradually upward through the 1980s and early 1990s. In 1986, 11 LWOPs were imposed for aggravated murder; by 1994, just prior to the passage of the three-strikes law, that number was 57.

The enactment of the Persistent Offender Accountability Act (POAA) in 1995 notably increased the number of official LWOP sentences imposed each year, particularly in the first decade after 1995 (see Figure 11). From 1995 through June of 2017, a total of 503 official LWOPs have been imposed as a result of a two- or three- strike conviction.

Figure 11.

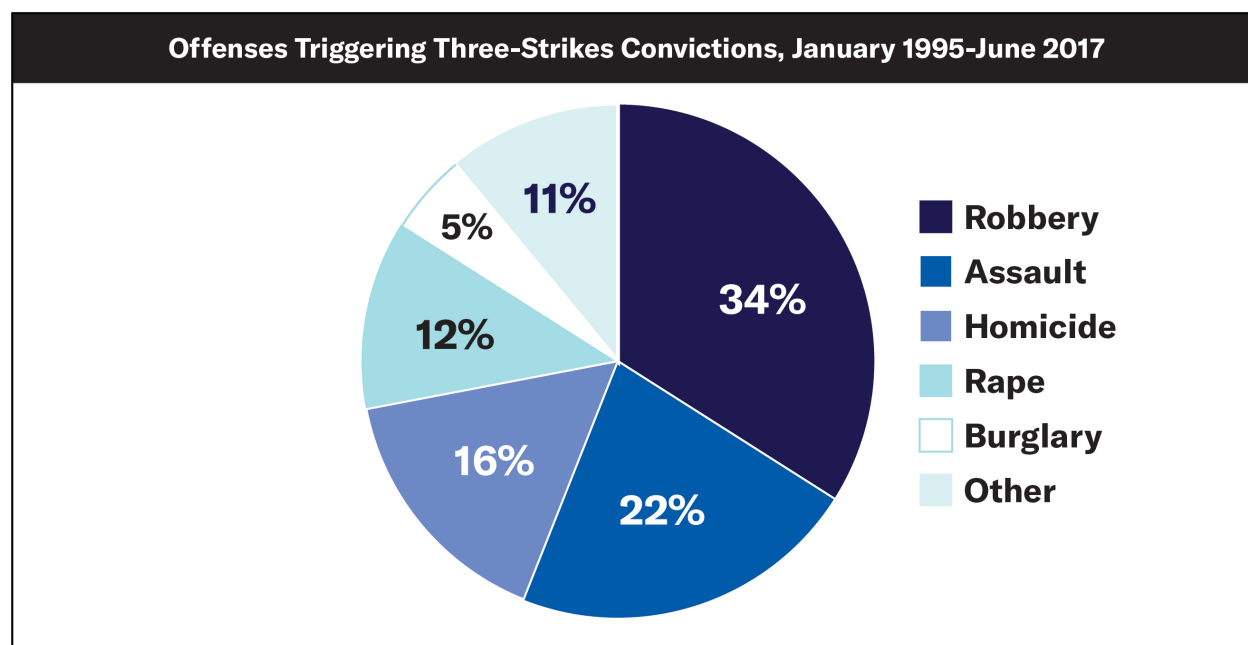


Source: Authors' analysis of Washington State Superior Court Sentencing data provided by the Washington State Caseload Forecast Council.

While the number of two- and three-strike convictions has diminished somewhat in recent years, this statute continues to contribute to the growth of the LWOP population in Washington State. From 1995 to June 2017, 70 percent of those who received a formal LWOP sentence (which do not include virtual life sentences of 40 or more years) were sentenced under the Persistent Offender and Accountability Act. If both formal and virtual life sentences are included in these calculations, we find that 38 percent of those who received a formal or virtual life sentence between 1995 and June 2017 were sentenced under this legislation.

The most serious offenses that result in a three-strikes conviction are identified in Figure 12. This figure shows that the majority (57%) of the convictions triggering a sentence of LWOP under the three strikes provision have involved robbery or assault.⁹⁹ Burglary, rape, and homicide triggered another 5 percent, 12 percent, and 16 percent, respectively.

Figure 12.



Source: Authors' analysis of Washington State Superior Court Sentencing data provided by the Washington State Caseload Forecast Council.

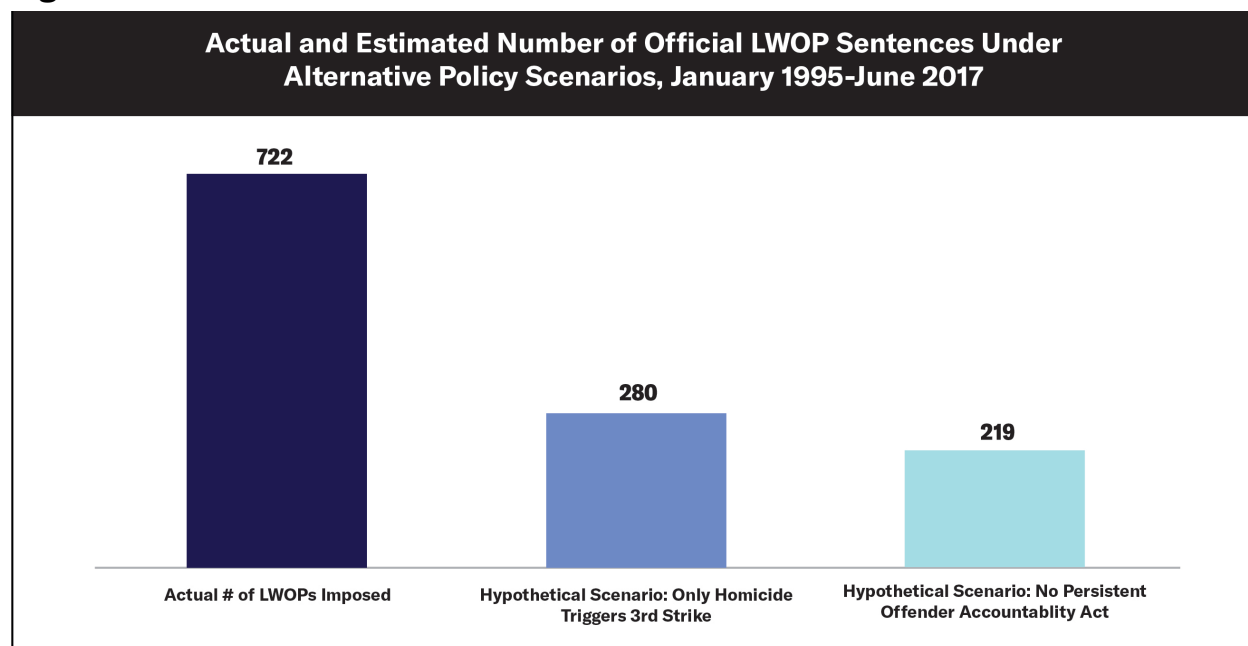
Note: Data include the first six months of 2017.

Figure 13 compares the number of official LWOPs that were actually imposed¹⁰⁰ with the estimated number that would have been imposed under two hypothetical policy scenarios: 1) if the POAA only applied when the third strike offense was homicide, and 2) if the POAA were not in effect at all. It is important to note that these analyses do not include the many virtual life sentences that have also been imposed in recent decades.

The counterfactual method used to generate these and the other estimates shown below is designed to isolate the impact of one causal factor (in this case, the enactment of the POAA) on a particular outcome (the number of formal LWOPs imposed), and assumes that all other dynamics remain constant. As Figure 13 reveals, the number of official LWOPs imposed would have been notably smaller if the POAA only allowed for the imposition of LWOPs if the third strike involved homicide. In this hypothetical scenario, 280 instead of 722 official LWOP sentences would have been imposed from

1995 through June of 2017. Of course, the number of official LWOPs would have even smaller if the POAA had not been enacted at all. In this scenario, there would have been 219 official LWOPs for aggravated murder only.

Figure 13.



Source: Authors' analysis of Washington State Superior Court Sentencing data provided by the Washington State Caseload Forecast Council.

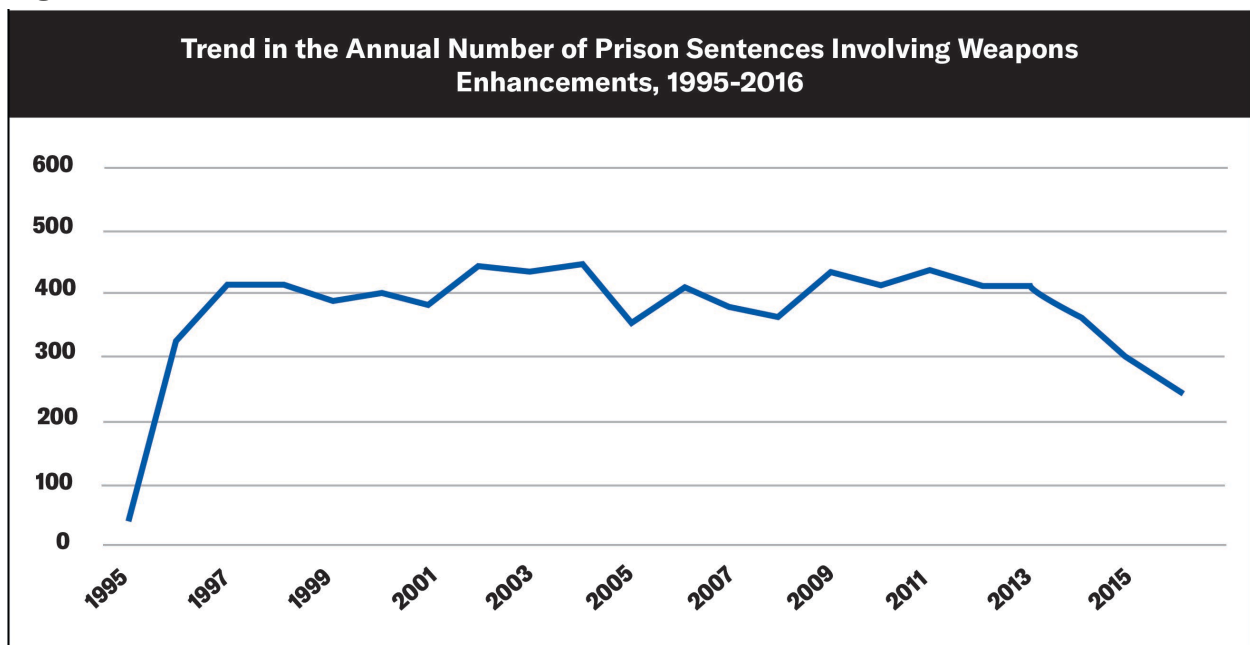
Note: Data include the first six months of 2017.

These alternative policy scenarios do not affect the number of people serving virtual life sentences of 40 or more years. As noted previously, DOC data shows that as of June 2015, Washington State prisons housed 632 people serving virtual LWOP sentences – sentences that are so long that those serving them are expected to die in prison.¹⁰¹ In 2016 and the first half of 2017, the courts sentenced another 50 people to virtual life sentences.

The Hard Time for Armed Crime Act and Increased Sentence Length

The Hard Time for Armed Crime Act (HTACA) also increased the number of long and life sentences imposed. As Figure 14 shows, the HTACA led to a dramatic uptick in the number of prison sentences that include additional time for weapons enhancements. Although the imposition of weapons enhancements has declined slightly in very recent years, they remain commonplace, and were imposed in 338 cases sentenced in 2016. (Sentencing enhancements stemming from other case characteristics have likely also increased average sentence length and contributed to the growth of long and life sentences, and are described in Appendix D. However, information about these enhancements is not included in the sentencing data provided by the Caseload Forecast Council, so the impact of these policy shifts cannot be empirically assessed).

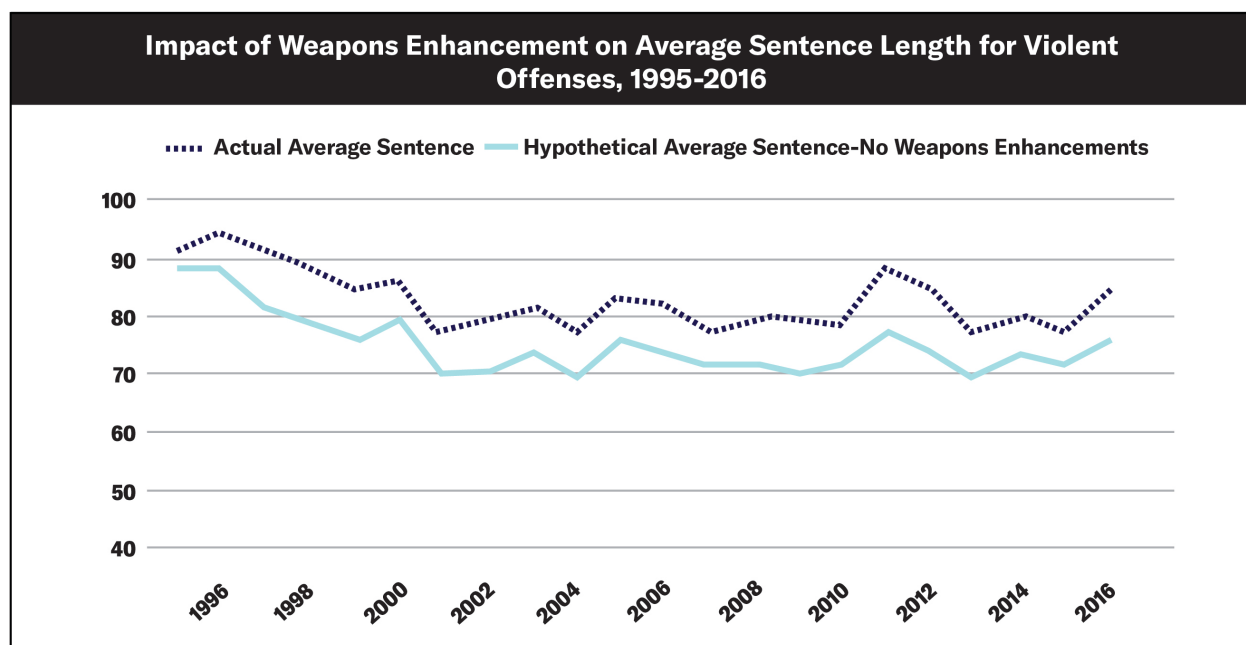
Figure 14.



Source: Authors' analysis of Washington State Superior Court Sentencing data provided by the Washington State Caseload Forecast Council.

A substantial majority (more than three in four) of those who received sentence enhancements were convicted of a violent crime. Figure 15 shows the contribution of prison sentences deriving from weapons enhancements to the average sentence imposed from 1995 to 2016 for violent offenses. This average additional penalty ranged from a low of three months in 1995 to a high of eleven months in 2012. On average, sentence enhancements added an additional eight months to the sentences imposed for this category of crimes each year.

Figure 15.



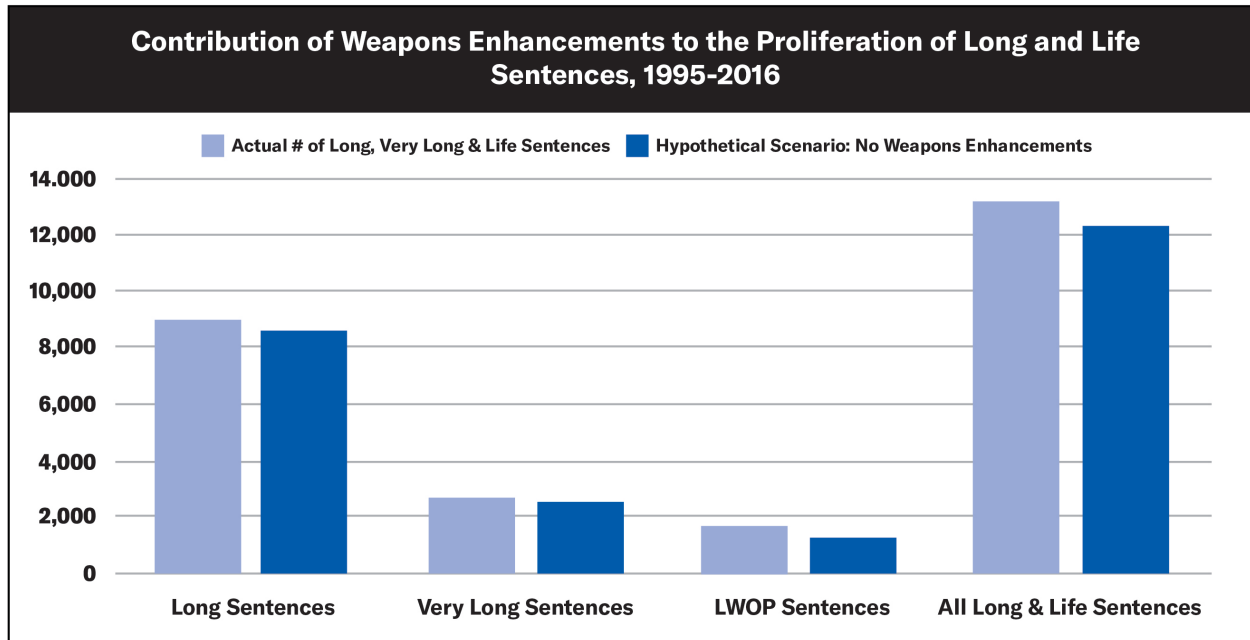
Source: Authors' analysis of Washington State Superior Court Sentencing data provided by the Washington State Caseload Forecast Council.

Note: Sentence lengths are measured in months.

There is significant variation within these averages. While most cases do not involve weapons enhancements, many do. From January 1995 to June 2017, 2,723 sentences were imposed that included at least sixty months (5 years) of additional confinement due to a weapons enhancement. In 2016, weapons enhancements were imposed in 338 cases; in 121 (36 percent) of these cases, the defendant received at least 60 months (five years) of additional confinement time as a result of these enhancements. Of these, nine defendants received twenty-five or more more years of additional prison time from weapons enhancements alone.

As Figure 16 shows, the imposition of additional prison time via weapons enhancements has had a notable impact on the number of long, very long, and life sentences imposed since 1995. In this figure, the hypothetical scenario is one in which weapons enhancements were not imposed and all else remains unchanged. The analysis shows that 954 fewer long and life sentences would have been imposed if weapons enhancements were unavailable and other patterns remained constant.

Figure 16.



Source: Authors' analysis of Washington State Superior Court Sentencing data provided by the Washington State Caseload Forecast Council.

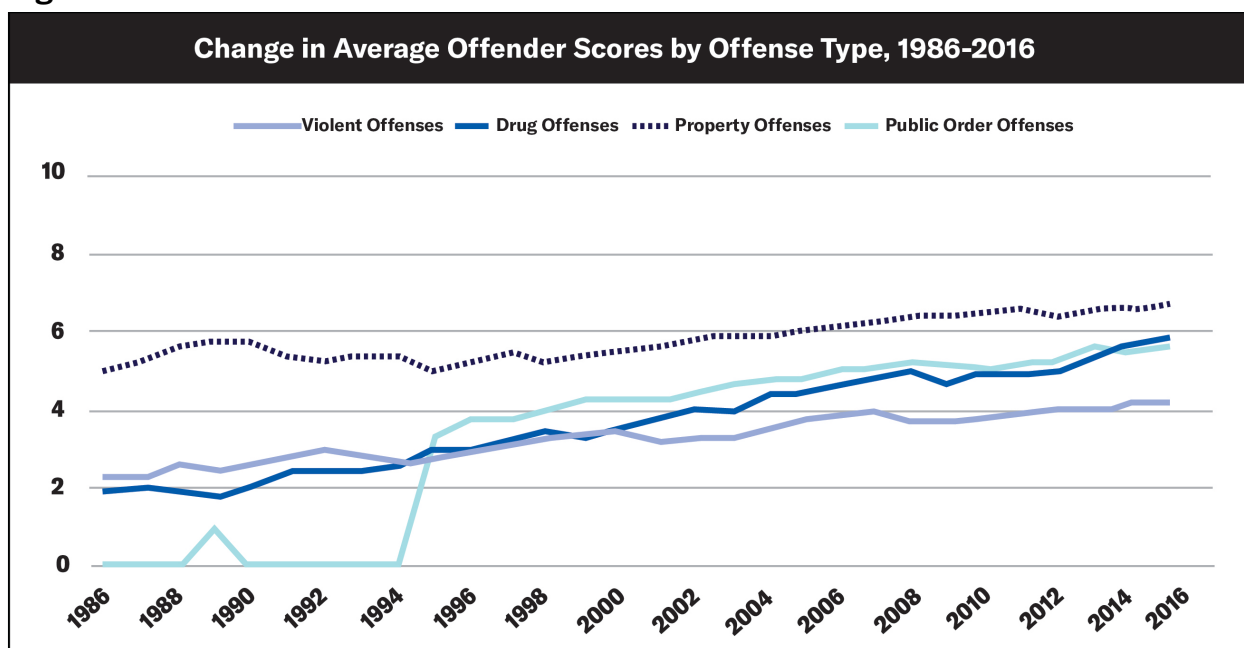
Note: LWOP sentences include both official and virtual LWOPs.

In short, sentences in some cases have been profoundly impacted by weapons enhancements, and their overall contribution to the number of long and life sentences has been notable. The increase in offender scores over this time period, discussed below, has been even more consequential.

Statutory Changes to the Calculation of Offender Scores

As Figure 17 shows, average offender scores increased across all offense categories. As discussed previously, this increase in average offender scores does not stem from an inevitable compounding of offender scores over time. Although justice-involved peoples' offender scores will increase over the course of continued involvement in the system, most people who are at one point in time justice-involved will "age out" of the system, while other first-time offenders are just entering the system. The people who were sentenced in Superior Court in 1984 after the SRA went into effect would have included a mix of people who had no prior justice-involvement, were in the middle of their crime-involved years, and were on the verge of "aging out" of crime. The same is true today.

Figure 17.

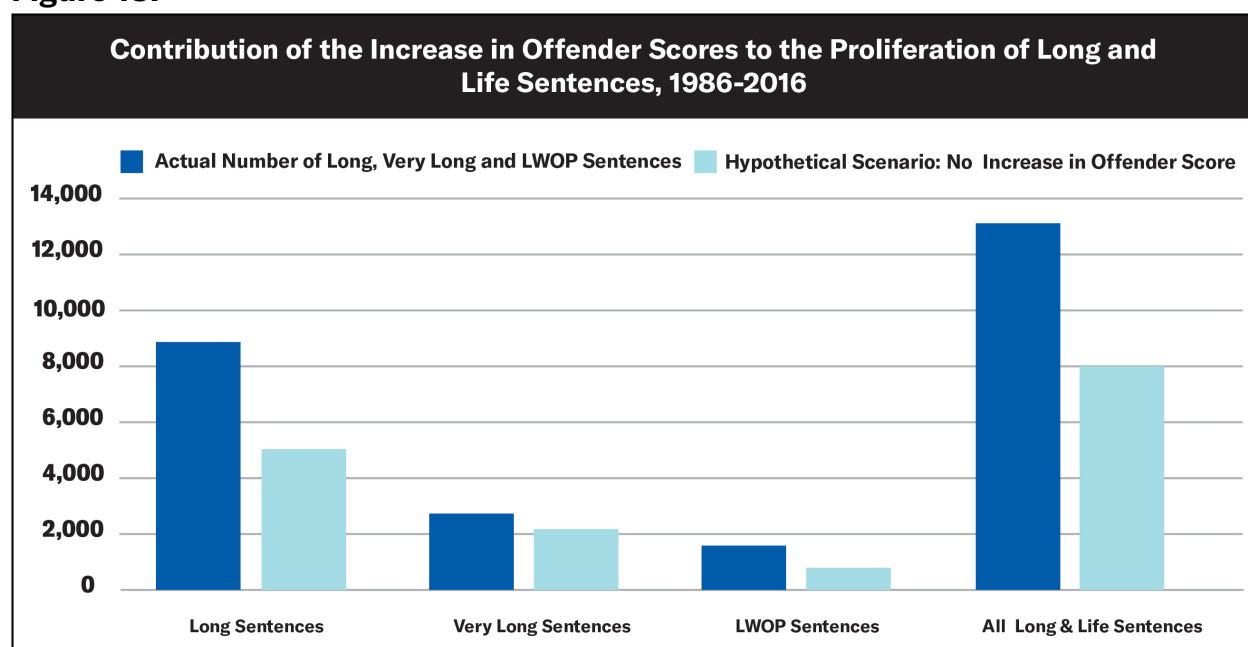


Source: Authors' analysis of Washington State Superior Court Sentencing data provided by the Washington State Caseload Forecast Council.

These increases in average offender score do not appear to stem from changes in criminal propensities either. If the increase in offender scores among people sentenced to prison revealed something about trends in criminal behavior, we would expect to see rising crime and/or recidivism rates among that same population. Instead, crime rates fell and recidivism rates were stable during this time period (see Figures 4 and 5). The fact that these measures of crime severity did not increase suggests that rising offender scores resulted mainly from the many statutory changes to rules that govern the calculation of offender scores described in Appendix F.

Figure 18 shows that the increase in offender scores contributed meaningfully to the proliferation of long and life sentences.¹⁰² Specifically, in the hypothetical scenario in which offender scores remained at their 1986 levels, the number of long (10-20 year) and life sentences would have been reduced by 44 and 47 percent, respectively. Because some of those who actually received a virtual life sentence (40 or more years) would have received a very long (20-40 year) sentence if offender scores did not increase, this category of sentences decreases somewhat less (by 17 percent) in this hypothetical scenario. Overall, though, *the number of long, very long, and LWOP sentences would have been reduced by 39 percent if offender scores had not increased during this period.*

Figure 18.



Source: Authors' analysis of Washington State Superior Court Sentencing data provided by the Washington State Caseload Forecast Council.

Note: LWOP sentences include both formal and virtual LWOPs.

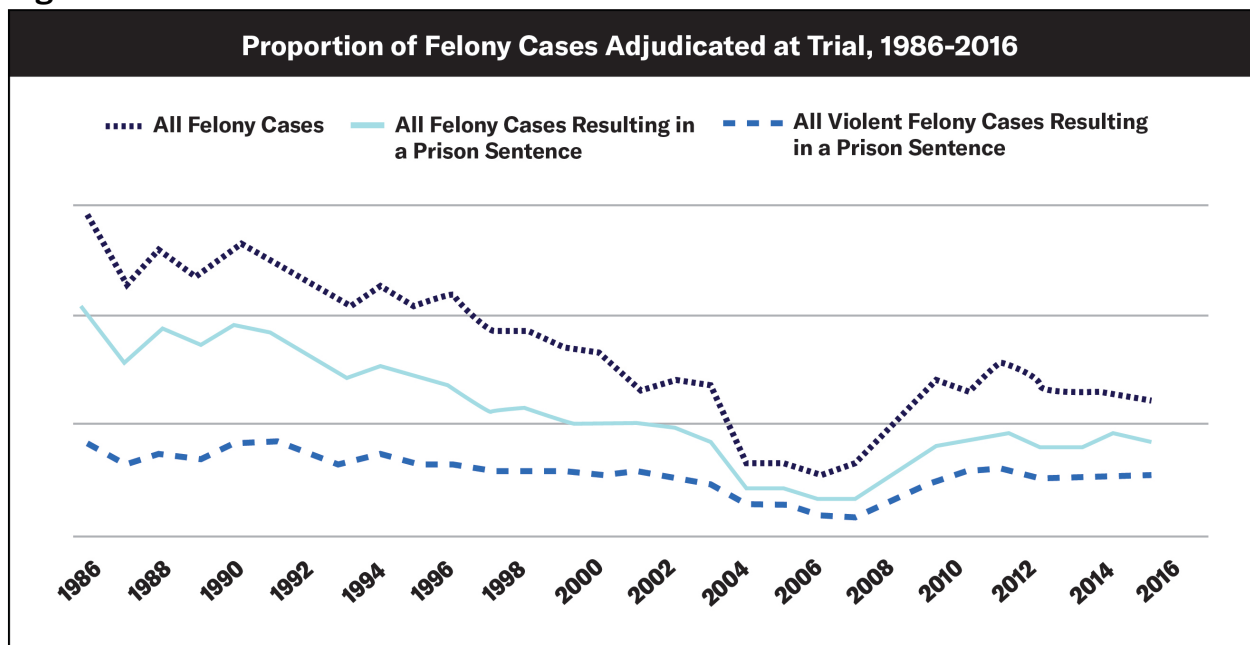
The Growth of the Trial Penalty

In addition to impacting sentencing outcomes, the Persistent Offender Accountability Act, the Hard Time For Armed Crime Act, and the statutory changes that govern the calculation of offender scores appear to have had important consequences for the criminal justice process. Many observers have noted that the enactment of mandatory minimum and other tough sentencing laws dramatically reduced the proportion of cases that go to trial.¹⁰³ Faced with the threat of increasingly long and life sentences, fewer defendants exercise their constitutional right to trial, and those who do face a

heavy price. In the federal system, for example, the share of cases adjudicated at trial plummeted from about 20 percent in the 1980s to 3 percent in recent years.¹⁰⁴

A similar shift has taken place at the state level,¹⁰⁵ including in Washington State. Figure 19 shows the share of all felony cases, all felony cases resulting in a prison sentence, and felony cases involving violent offenses that resulted in a prison sentence that have been adjudicated at trial from 1986-2016. As this figure shows, the proportion of all cases that were adjudicated at trial declined notably across all of these categories.

Figure 19.

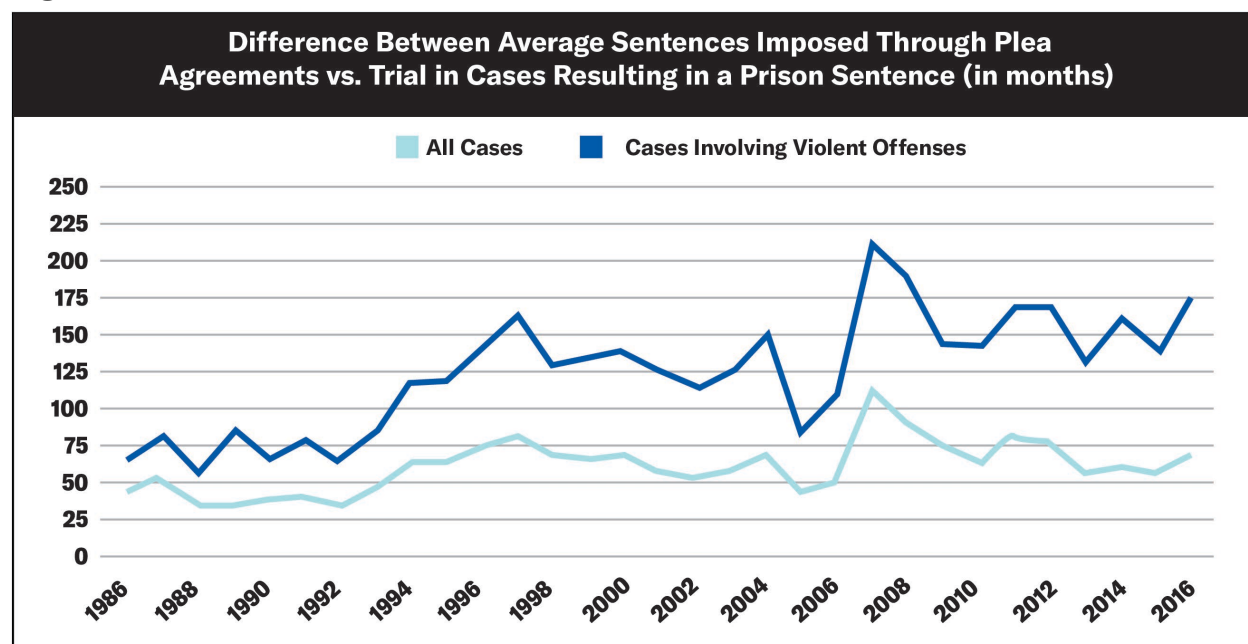


Source: Authors' analysis of Washington State Superior Court Sentencing data provided by the Washington State Caseload Forecast Council.

In this context, the difference between the average sentence imposed via plea agreements versus those imposed at trial grew notably. For example, for all felony cases that resulted in a prison sentence, the “trial penalty” in 1986 was 46 months. This means that on average, people who were convicted at trial received sentences that were 46 months longer than those who pled guilty. This gap peaked in 2007 at 113 months. By 2016, the “trial penalty” was 65 months, nearly five and one half years. The trial penalty is much larger in cases involving violent offenses. For this category of cases, the gap between the average prison sentence for violent crimes

adjudicated via a plea agreement versus trial was 64 months in 1986. By 2016, that gap had increased to 174 months, or fourteen and a half years, a 172 percent increase (see Figure 20).

Figure 20.



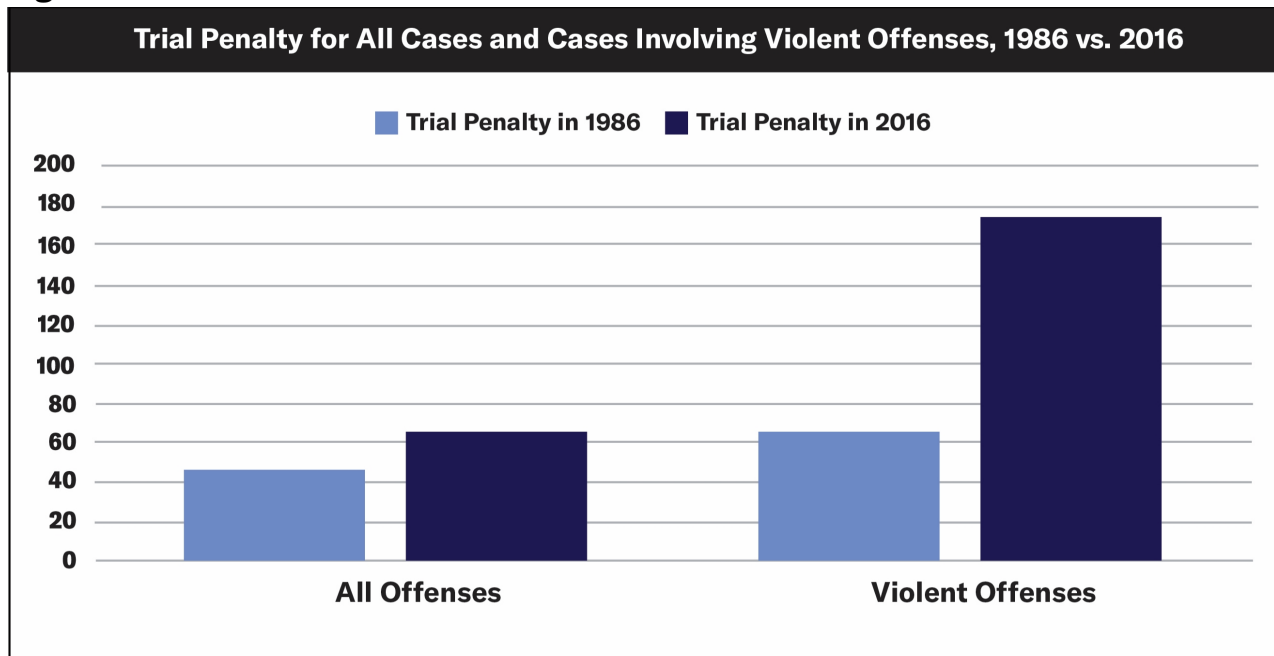
Source: Authors' analysis of Washington State Superior Court Sentencing data provided by the Washington State Caseload Forecast Council.

In short, it is clear that the gap between the sentences imposed via plea bargains and those imposed at trial grew substantially as the legislature enacted tough sentencing laws; this trend has been especially pronounced in cases involving violent crime. In 2016, on average, defendants charged with a violent offense who exercised their right to a trial could expect to receive a sentence that includes an additional fourteen and one-half years of confinement.

The trial penalty grew because average sentence length grew more dramatically in cases adjudicated at trial than in those resolved through a plea agreement from 1986 to 2016. Specifically, for cases involving all offense types, average sentence length for cases resolved through plea agreements increased by 11 percent, while those adjudicated at trial increased by 29 percent. For cases involving violent crimes, average sentence length for cases resolved through plea agreements increased by 30 percent, while those adjudicated at trial increased by 111 percent during this time period.

This illustrates an increase in the trial penalty, especially in cases involving violent offenses (see Figure 21).

Figure 21.



Source: Authors' analysis of Washington State Superior Court Sentencing data provided by the Washington State Caseload Forecast Council.
Note: These data are shown in months.

Table 3 provides more detailed, offense-specific information regarding the growth of the trial penalty. As this table shows, the trial penalty increased for serious violent offenses; its growth thus appears to be indicative of a widespread trend in which the penalties imposed at trial grew far more than the penalties imposed through plea bargains.

Table 3.

Increase in Trial Penalty for Specific Violent Offenses, 1986-88 vs. 2014-16			
	<i>Increase in Average Sentence: Trial</i>	<i>Increase in Average Sentence: Plea</i>	<i>Increase in Average Trial Penalty</i>
Homicide 1	177 (51%)	38 (12%)	139 (383%)
Homicide 2	140 (71%)	66 (41%)	74 (205%)
Rape 1	174 (176%)	88 (131%)	85 (274%)
Rape 2	120 (299%)	98 (286%)	22 (372%)
Assault 1	219 (179%)	57 (54%)	161 (992%)
Assault 2	48 (163%)	13 (69%)	28 (469%)
Robbery 1	91 (115%)	9 (14%)	82 (480%)
Robbery 2	22 (89%)	7 (31%)	15 (532%)

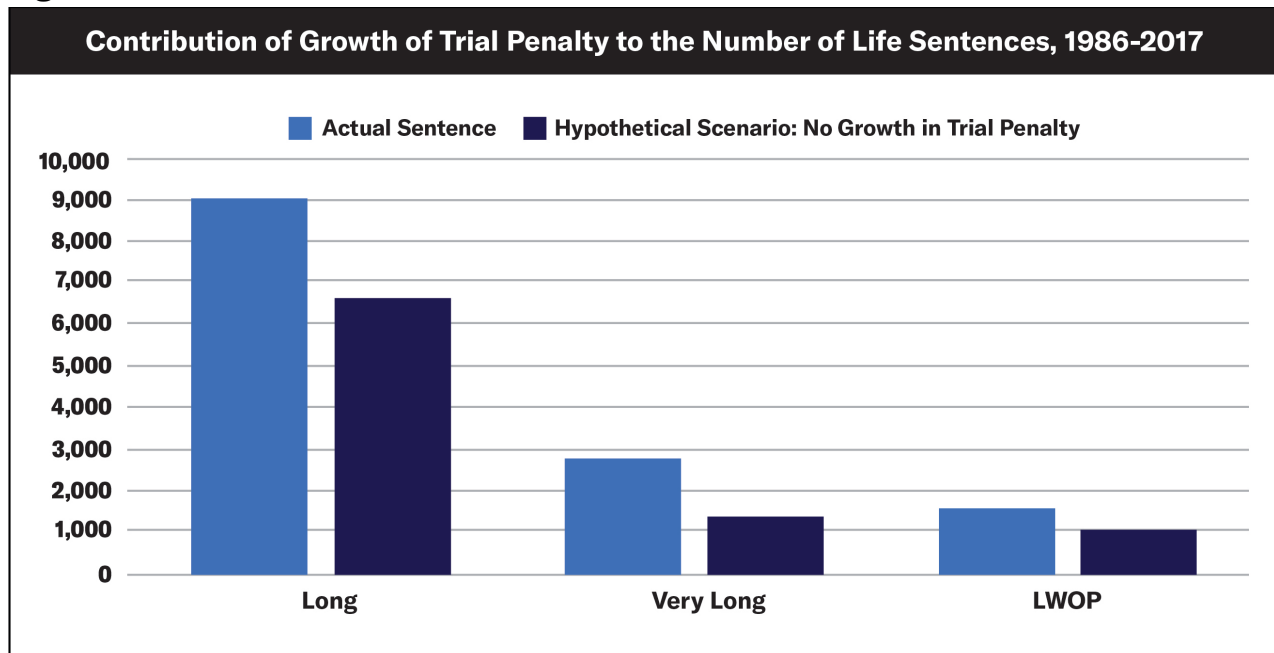
Source: Authors' analysis of Washington State Superior Court Sentencing data provided by the Washington State Caseload Forecast Council.
Note: Changes in average sentence length and trial penalty are shown in months. The data upon which the calculations presented here are shown in Appendix I, Table I1.

The gap between the average sentence imposed through plea bargains and the average sentence imposed at trial may reflect, in part, the fact that people with higher offender scores are facing longer sentences and thus have a greater incentive to go to trial. To control for this potential selection bias, the data presented in Table I2 in Appendix I show the average sentence imposed in 1986-88 versus those imposed in 2015-17 for specific offenses and specific offender scores. As this table shows, the difference between the average sentence imposed at trial and through plea deals for specific offenses in cases involving identical offender scores also grew over time in the majority of instances.

The evidence thus indicates that the gap between sentences imposed at trial and those reached through plea deals has grown substantially. Below, Figure 22 shows that the growth of the trial penalty had a notable impact on the number of long, very long, and LWOP sentences imposed. Specifically, the figure shows how many of these sentences would have been avoided if the trial penalty remained at its 1986 level and all else

remained unchanged. The results show that holding the trial penalty constant would reduce the number of long, very long and LWOP sentences by 27 percent, 47 percent, and 33 percent, respectively.

Figure 22.



Source: Authors' analysis of Washington State Superior Court Sentencing data provided by the Washington State Caseload Forecast Council.
Note: LWOP sentences include both formal and virtual LWOPs. Data include the first six months of 2017.

Summary

A number of policy changes fueled the proliferation of long and life sentences in Washington State. These policy changes include the Persistent Offender Accountability Act, the Hard Time for Armed Crime Act, and myriad changes to the rules that govern the calculation of offender scores. These policy changes directly increased the imposition of long and life sentences. They also enhanced prosecutorial leverage in plea negotiations. In this context, the trial penalty – that is, the difference between average sentences imposed via plea bargains and those imposed at trial – grew substantially, particularly in cases involving violent crimes.

Table 4 summarizes the results of the counter-factual analyses presented above, and compares how reversing each of these policy shifts would impact the imposition of long, very long, and life sentences (assuming all else remained constant). As this table shows, reversing the increase in the average offender score and the growth of the trial penalty would most substantially reduce long and life sentences. Removing weapons enhancements would also have had a notable impact, while repealing the Persistent

Offender Accountability Act would significantly reduce the number of LWOP sentences imposed.

Table 4.

Comparison of Impact of Various Policy Changes on Proliferation of Long and Life Sentences, 1986-2015				
	<i>Impact on Number of Long Sentences</i>	<i>Impact on Number of Very Long Sentences</i>	<i>Impact on LWOP Sentences</i>	<i>Impact on All Long and Life Sentences</i>
No Increase in Offender Score	-44% (-3,877)	-17% (-456)	-47.1% (-735)	-39% (-5,068)
No Increase in Trial Penalty	-26.9% (-2,279)	-47.2% (1,199)	-32.7% (-493)	-32% (-4,181)
No Weapons Enhancements	-6.1% (-447)	-8.3% (-181)	-25% (-326)	-8.8% (-954)
No Persistent Offender Accountability Act	Unknown	Unknown	-69.7% (-503)	Unknown

Source: Authors' analysis of Washington State Superior Court Sentencing data provided by the Washington State Caseload Forecast Council.

Note: LWOP sentences include both official and virtual LWOPs.

In sum, the proliferation of long and life sentences in Washington State over the past four decades does not stem from increases in crime or recidivism rates. Instead, *the adoption of a range of changes to sentencing policies enabled the imposition of much longer sentences and increased the gap between the sentences imposed at trial and those imposed via plea agreements.* The next section of this report shows that reliance on long and life sentences is an ineffective and costly way of protecting public safety. It also explores the fiscal, social, and human costs associated with the proliferation of long and life sentences.

PART V: THE FISCAL AND HUMAN COSTS OF LONG AND LIFE SENTENCES IN WASHINGTON

Research shows that long and life prison sentences are a costly and ineffective means of protecting public safety. The more sparing use of prisons, combined with enhanced crime prevention efforts, expanded and improved rehabilitative programming in prisons, and the development and expansion of restorative justice alternatives are far more promising. Reducing the prison population could also benefit crime survivors and help prevent crime, as the savings associated with reduced prison populations could be used to provide services for victims, buttress crime prevention programs, enhance community-based substance abuse and mental health services, expand rehabilitative programming, and improve the conditions of confinement for those who remain behind bars.

This section of the report describes the evidence that supports these claims. It also explores a number of concerns about justice and fairness raised by the increased imposition of long and life sentences. These include the racially disparate impact of long and life sentences, their incompatibility with emerging brain science, and their contribution to the costly, inefficient, and inhumane incarceration of the elderly.

A Costly and Ineffective Approach to Public Safety

Maintaining a large prison system is tremendously expensive. In 2016, Washington State spent over one billion dollars on corrections alone.¹⁰⁶ The prison system is currently operating over capacity,¹⁰⁷ and Washington State is one of a handful of states in which prison populations have continued to grow since 2011 despite falling crime rates.¹⁰⁸

Current projections indicate that Washington will need to spend significant additional monies to expand prison capacity in order to accommodate recent and expected growth. The Council of State Governments estimates that preventing future growth and additional prison construction could allow the state to avoid spending 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.¹⁰⁹

Across the country, many states have undertaken efforts to reduce their prison populations. In many cases, these efforts have concentrated on reducing penalties for low-level offenses, mainly drug possession and theft.¹¹⁰ Yet avoiding the costs associated with prison expansion will also require reconsidering the frequent imposition of long and very long sentences, which have a disproportionately large impact on prison populations.¹¹¹ As the authors of a recent study explained, “States grappling with expanding prison populations must include those serving the longest prison terms in their efforts to curb mass incarceration.”¹¹²

Thoughtfully reducing the number of people serving long and life sentences would not pose a significant threat to public safety because lengthy and life-long prison sentences are not an effective means of achieving it. As the National Research Council recently concluded,

*There is little convincing evidence that mandatory minimum sentencing, truth-in sentencing, or life without possibility of parole laws had significant crime reduction effects. But there is substantial evidence that they shifted sentencing power from judges to prosecutors; provoked widespread circumvention; exacerbated racial disparities in imprisonment; and made sentences much longer, prison populations much larger, and incarceration rates much higher.*¹¹³

Comparative research shows that many countries that do not routinely impose long and life sentences have enjoyed recent crime declines similar to that which has occurred in the United States: crime fell as much in countries that did not implement harsh criminal justice policies as in those that have done so.¹¹⁴

Similarly, studies of state-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.¹¹⁵ For example, between 1994 and 2012, New York State experienced the largest drop (24 percent) in imprisonment rates and also enjoyed the most substantial decline in the crime rate (54 percent) among the 50 U.S. states. The state with the next largest decline in imprisonment rates (15 percent) was New Jersey, where crime rates fell by an impressive 50 percent, the second biggest drop in the country.¹¹⁶ More generally, the ten states with the largest declines in imprisonment rates between 2009 and 2014 experienced a 16 percent drop in the overall crime rate, while those whose prison populations grew the most experienced a 13 percent decline in crime rates.¹¹⁷ These data show that policymakers can reduce prison populations without endangering the public.

Some opponents of criminal justice reform argue that long sentences protect society by deterring would-be criminals and by physically separating (i.e. incapacitating) people who have been convicted of a crime from those who have not. However, according to

“...lengthy prison sentences are ineffective as a crime control measure” because long prison sentences do not deter more than short ones

the National Research Council, research provides little support for these claims. With respect to deterrence, “the evidence base demonstrates that lengthy prison sentences are ineffective as a crime control measure” because long prison sentences do not deter more than short ones.¹¹⁸ This is because “the certainty of apprehension and not the severity of the legal consequences ensuing from apprehension is the more effective deterrent.”¹¹⁹

Using long and life sentences to incapacitate is also an inefficient means of protecting the public because recidivism rates decline markedly with age.¹²⁰ Young people commit most crimes, with rates peaking in the teenage years followed by rapid declines. Studies show that the offending trajectories of *all* groups decline sharply with age.¹²¹ Even those with the most extensive criminal records desist from crime at relatively early ages, most commonly by their thirties.¹²² As two prominent criminologists conclude, “crime declines with age even for active offenders.”¹²³

For these reasons, the National Research Council recently concluded that “statutes mandating lengthy prison sentences cannot be justified on the basis of their effectiveness in preventing crime.”¹²⁴ Its fuller explication of this finding reads as follows:

*The deterrent value of long sentences is minimal, as the decision to commit a crime is more likely influenced by the certainty and swiftness of punishment than by the severity of the criminal sanction. Research on criminal careers shows that recidivism rates decline markedly with age. Prisoners serving long sentences necessarily age as they serve their time and their risk of re-offending declines over time. Accordingly, unless sentencing judges can specifically target very high-rate or extremely dangerous offenders, imposing long prison sentences is an inefficient way to prevent crime. Finally, the evidence is clear that long prison sentences incur substantial costs to state and federal budgets and will likely add significant future costs as the prison population ages.*¹²⁵

As the National Research Council notes, the proliferation of long and life sentences

is not just ineffective; it is also an important cause of the aging of the prison population. According to the Bureau of Justice Statistics, the number of U.S. prisoners aged 55 or older increased by 400 percent from 1993 to 2013.¹²⁶ As a result of this trend, one in ten U.S. prisoners was aged 55 or older in 2013.

In Washington State, nearly 1 in 5 prisoners (18 percent) are 50 or more years old.¹²⁷ The increased and on-going imposition of long and life sentences, combined with the accumulation of prisoners with life sentences behind bars, suggest that these figures are likely to continue to climb in the future.

The aging of the prison population has important fiscal implications. Research shows that the cost of incarcerating older people is approximately twice that of incarcerating the non-elderly, mainly due to the expense associated with the provision of medical care in secured environments.¹²⁸ As noted previously, the fact that recidivism declines markedly with age, and that the vast majority of people over 50 pose very little risk to the public, means that the incarceration of large numbers of older prisoners is a poor use of taxpayer dollars.

Public dollars currently spent on incarceration, and especially on long-term incarceration, could be reallocated to prioritize crime prevention in ways that would enhance public safety and improve the quality of life of many Washington residents. For example, increasing access to high-quality, early education programs improves educational outcomes and reduces subsequent criminal justice involvement.¹²⁹ Nevertheless, the U.S. Department of Education has acknowledged that “Children in countries as diverse as Mexico, France and Singapore have a better chance of receiving preschool education than do children in the United States.”¹³⁰ WSIPP has evaluated a number of prevention and correctional programs in terms of their costs and benefits, and identified numerous other non-confinement public safety interventions that are highly cost effective. These include employment training/job assistance in the community and outpatient drug treatment.¹³¹ Within prison settings, substance abuse treatment, education (both K-12 and post-secondary), and vocational training are also cost-effective means of reducing recidivism.

Reliance on long and life prison sentences is an expensive and inefficient way of protecting public safety; a variety of prevention and treatment programs represent a far better investment. But the proliferation of long and life sentences in Washington State is not only inefficient and ineffective; it also raises important questions about justice and fairness. These concerns are discussed below.

Racial Disproportionality in Long and Life Sentences

Recent scholarship shows that the very high rates of incarceration found across the United States and in Washington State have a variety of negative effects on individuals, families, and communities. People and communities of color have disproportionately suffered these adverse effects. Collectively, these effects undermine economic well-being, mental and physical health, and family bonds in communities that are disproportionately affected by high levels of criminal justice involvement.

Nationally, the black imprisonment rate is five times higher than the white imprisonment rate; Latinx and Native American people are also notably over-represented in prisons.¹³² Some racial disparities are even more pronounced in the Washington State prison population than is the case nationally. For example, in 2014, the black imprisonment rate (1,272 per 100,000 residents) was 5.7 times higher than the white imprisonment rate (224 per 100,000) in Washington.¹³³ If jail inmates and federal prisoners are included along with state prisoners, the black incarceration rate (2,372 per 100,000 residents) is six times higher than the white rate (392), and the incarceration rate for Native Americans (1,427) is 3.6 times higher than the white incarceration rate in Washington.¹³⁴

The negative effects of incarceration imposed by Washington's criminal legal system have been disproportionately imposed on people of color. These adverse effects include reduced employment and earnings, worsened mental and physical health, exacerbated housing instability, and increased debt.¹³⁵ Long and life sentences create especially significant hardship, as people serving long and life sentences are exposed to the pains of imprisonment for extended periods of time. This takes an especially large toll on their physical and mental well-being and their ability to sustain relations with families and communities.¹³⁶

Moreover, incarceration's adverse effects extend beyond incarcerated and formerly incarcerated people. For example, the children, partners, and relatives of the incarcerated experience a number of hardships, including diminished mental well-being, increased stress, and reduced income.¹³⁷ As the National Research Council concludes, "Incarceration is strongly correlated with negative social and economic outcomes for former prisoners and their families. Men with a criminal record often experience reduced earnings and employment after prison. Fathers' incarceration and family hardship, including housing insecurity and behavioral problems in children, are strongly related."¹³⁸ Moreover, recent research indicates that

widespread incarceration has had especially adverse effects on the health and well-being of black communities.¹³⁹ Long and life sentences exacerbate these effects.

Racial disparities in the prison population are starkest among those serving the longest prison terms. Black people comprise

3.5%

of the state population, but

19%

of those sentenced to prison and

28%

of those sentenced to life without the possibility of parole

High incarceration rates also impact the poor neighborhoods and communities from which the incarcerated are overwhelmingly drawn, exacerbating poverty, hardship, marginality, and inequality. As the National Research Council recently concluded,

A growing proportion of people in the United States—especially from poorer and minority communities—has been increasingly marginalized in civic and political life. These developments are creating a distinct political and legal universe for whole categories of people. These “partial citizens” or “internal exiles” are now routinely denied a range of rights and access to many public benefits. These consequences pose a significant risk to achievement of the nation’s aspirations for democratic self-government and social and racial justice.¹⁴⁰

Nationally, racial disparities in the prison population are starkest among those serving the longest prison terms.¹⁴¹ This is also true in Washington State. As shown in Part III of this report, black people comprise 3.5 percent of the state population, but 19 percent of those sentenced to prison and 28 percent of the defendants sentenced to life without the possibility of parole since 1986. Native Americans are also notably over-represented among those who receive long and life sentences relative to their representation in the state population.

Racial disproportionality in long and life sentences raises important concerns about justice and fairness. Although it is true that most of the people who receive long sentences in Washington State were convicted of a violent offense, it is also clear that high rates of violence in poor and disproportionately minority communities stem from

persistent poverty, inequality, and racial segregation. As the National Research Council explains,

*Those who are incarcerated in U.S. prisons come largely from the most disadvantaged segments of the population. They comprise mainly minority men under age 40, poorly educated, often carrying additional deficits of drug and alcohol addiction, mental and physical illness, and a lack of work preparation or experience. Their criminal responsibility is real, but it is embedded in a context of social and economic disadvantage.*¹⁴²

In addition, numerous studies have found that racial bias influences case processing and sentencing outcomes in Washington State in ways that worsen racial disparities.¹⁴³ For example, a study of probation officers' assessments of youth found that black youth receive more negative attributional assessments about the causes of their offenses than white youth, and these characterizations lead to more punitive sentence recommendations.¹⁴⁴ In the adult system, defendants of color are held on bail at higher rates than other defendants even after taking relevant case characteristics into account.¹⁴⁵ Researchers have also found that prosecutors are significantly less likely to file charges against white defendants than they are against defendants of color, and that this finding persists after legally relevant factors are taken into account. This study also showed that prosecutors recommended longer confinement sentences for black defendants (after legal factors were held constant) and were 75 percent less likely to recommend alternative sentences for black defendants than for otherwise similar white defendants.¹⁴⁶

Similarly, across the state, defendants of color are significantly less likely than similarly situated white defendants to receive sentences that fall below the standard range.¹⁴⁷ Black felony drug defendants were 62 percent more likely to be sentenced to prison than otherwise similar white defendants.¹⁴⁸ Studies also indicate that black defendants in capital trials are more than four times as likely as non-black defendants to be sentenced to death in Washington State.¹⁴⁹ Moreover, Latinx defendants are assessed higher fees and fines, after controlling for other relevant factors, than non-Latinx defendants.¹⁵⁰

In sum, people of color, and especially black people, are notably over-represented among those serving long and life sentences. While the data analyzed here do not enable analysis of the causes of this over-representation, the research literature suggests that it stems from a combination of the concentration of poverty and

disadvantage in communities of color, which fuels violence, as well as widespread racial bias in the operation of the criminal justice system. These studies further show that disparities in violence, incarceration, and long and life sentences worsen community well-being in the neighborhoods from which prisoners tend to be drawn, reproducing inequality and perpetuating an unfortunate cycle. The racially disparate imposition of long and life sentences thus raises important concerns about justice and fairness — as does the the imposition of such sentences on adolescents and young adults of all demographic backgrounds.

Youth and the Imposition of Long and Life Sentences

One in four of those sentenced to 10-20 years to life in prison without the possibility of parole, and one in three of those sentenced to 20-40 years, were

25

or younger at the time of their sentencing

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 people reach their mid- or late 20s.¹⁵¹ As researchers at the Harvard Kennedy School of Government explain, “Neurological research over the last two decades has found that brain development continues into early adulthood (mid-20s or beyond) and that adolescents are particularly prone to risky behavior, a proclivity that naturally declines with maturity.”¹⁵² Specifically, research shows that adolescents and young adults are prone to be more impulsive, more sensitive to immediate

rewards, less future-oriented, more volatile in emotionally charged settings, and highly susceptible to peer and other outside influences.¹⁵³ These tendencies are especially pronounced among young adults who have experienced trauma, which is the case for the vast majority of justice-involved youth.¹⁵⁴

This body of research confirms common sense understandings of how young people differ from older adults. In a series of important rulings, the Supreme Court recognized the importance of brain development and affirmed the idea that youth should be understood and treated as a mitigating circumstance.¹⁵⁵ For example, in *Montgomery vs. Louisiana* (2016), the Court ruled that LWOP sentences may only be imposed on juveniles whose offenses are indicative of “irreparable corruption,” a standard that Justice Scalia argued may lead to the eventual elimination of LWOP sentences in cases involving juveniles.¹⁵⁶

The body of research on which this and other similar rulings rest calls into question the fairness of treating adolescents and young adults as though they are just as culpable as older adults. In Washington State, about one in four of those sentenced to ten to twenty years or to life in prison without the possibility of parole, and one in three of those sentenced to twenty to forty years, were 25 or younger at the time of their sentencing. Sentencing adolescents and young adults to long and especially life sentences is in tension with evidence that young prisoners have diminished capacity due to incomplete brain development. It is also incompatible with evidence that young adults are likely to benefit from educational and other rehabilitative programming. The tension between young people's capacity for growth and development and the paucity of rehabilitative programming is especially pronounced in Washington and other states that send juveniles to adult prisons and have notably curtailed rehabilitative programming in prisons.

In short, the long-term incarceration of young people, most of whom have experienced significant deprivation and trauma, combined with limited opportunities to engage in rehabilitative programming in prison, is in tension with a substantial body of research that demonstrates that youth is best understood as a mitigating circumstance, and that most young people benefit enormously from education and other rehabilitative programming.¹⁵⁷

The Neglect of Crime Survivors

Long prison sentences do little to mitigate the adverse effects of violent victimization, are not favored by most crime survivors, and often end up punishing people who are themselves victims of abuse, crime, and violence. 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 enjoy their "day in court," either because they do not file a police report or because arrest and prosecution do not occur.¹⁵⁸ Furthermore, the majority of crime survivors do not receive the services they need even if they do report their victimization to authorities.¹⁵⁹ Violence survivors who are poor and/or of color are especially unlikely to receive needed services following victimization.¹⁶⁰

61%

of those who have experienced inter-personal violence favor *shorter* terms and enhanced spending on rehabilitation and prevention; only

25%

preferred sentences that keep people in prison as long as possible

Although policies that allow for the imposition of long and life sentences are often said to reflect victims' preferences, 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.¹⁶¹ Similarly, significant majorities of violence survivors of all political orientations favor investing

additional public safety dollars in education rather than in prisons and jails.¹⁶² In fact, in California, crime victims are a leading force in the movement for criminal justice reform.¹⁶³

Moreover, although people who experience violence and those who perpetrate it are often assumed to be two distinct and unrelated groups of people, this is not the case. Instead, violence survivors are notably over-represented among arrestees, prisoners, and ex-prisoners.¹⁶⁴ 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.¹⁶⁵

Long and life sentences thus 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.

Restorative Justice Alternatives to Long-Term Incarceration

Programs based on restorative justice principles “involve, to the extent possible, those who have a stake in a specific offense to collectively identify and address harms, needs and obligations, in order to heal and put things as right as possible.”¹⁶⁶ When given

the option, many crime survivors choose to participate in restorative justice programs rather than pursue conventional prosecution for a variety of reasons: to learn why the responsible party committed the crime, to communicate to the responsible party the impact of the crime, and to increase the chances that the responsible party will not re-offend.¹⁶⁷

Studies of restorative justice programs indicate that all involved parties report high levels of satisfaction with those processes.¹⁶⁸ For any given mediation, the victim and the responsible party tend to report the similar levels of satisfaction, regardless of the type of offense or the agreed upon restitution.¹⁶⁹ In addition, research assessing the impact of restorative justice conferencing on post-traumatic stress symptoms (“PTSS”) associated with robbery and burglary found that restorative justice practices reduce the traumatic impact of crime. Specifically, participants in restorative conferences reported a more than 40 percent reduction in PTSS immediately and six months after completion.¹⁷⁰

Victim satisfaction with restorative justice alternatives stems, in part, from increased feelings of safety and security. For example, one study found that victims who participated in mediation reported feeling safer than they had not only before the mediation, but also before the offense, whereas victims who went through traditional court processes reported that the experience had substantially *lessened* their sense of safety.¹⁷¹ Victim satisfaction also appears to reflect the positive impact of restorative justice processes on perceptions of fairness. A study of burglary victims in Minneapolis, for example, found that 80 percent of victims who went through victim-offender mediation experienced the criminal justice system as fair, compared with only 38 percent who had participated in standard court processes.¹⁷²

Furthermore, many studies find that restorative justice programs reduce recidivism. A recent and exhaustive meta-analysis, for example, found that restorative justice conferences cause a “modest but highly cost-effective reduction in the frequency of repeat offending by the consenting incarcerated/formerly incarcerated individuals randomly assigned to participate in such a conference.”¹⁷³ Another recent meta-analysis found that restorative justice programs generated a 34 percent reduction in recidivism.¹⁷⁴ Although less is known about diversion programs based on restorative justice principles, an evaluation of a restorative program that was designed to divert defendants from prisons and jails found that recidivism rates were significantly lower for program participants than for comparison groups who received confinement sentences.¹⁷⁵

Insofar as people who are convicted of violent crimes have often been a victim of violence,

RESTORATIVE JUSTICE

practices provide a means of addressing the trauma that often underlies criminal wrongdoing

Although many restorative justice programs do not include cases that involve violence, research suggests that restorative justice mediation may be most effective in such cases. For example, one Canadian study found no significant results for individuals convicted of low-level offenses, but did report a 38 percent reduction in recidivism for people who committed violent crimes and went through a restorative justice process.¹⁷⁶ Another study found a direct and positive correlation between the long-term success of the restorative justice program

and the seriousness of the offense.¹⁷⁷ The implication of these findings is that restorative justice programs may have the *most* potential to improve victim healing and reduce recidivism if cases that involve inter-personal violence are included.¹⁷⁸

Studies thus show that restorative justice interventions can reduce violence and facilitate victim healing from violent trauma. Insofar as people who are convicted of violent crimes have often been a victim of violence, restorative justice practices provide a means of addressing the trauma that often underlies criminal wrongdoing. Restorative justice processes provide a promising means of addressing the harm caused by inter-personal violence without exacerbating it.

Summary

The widespread imposition of long and life prison sentences represent an expensive and ineffective approach to public safety, one that has led to on-going prison expansion in Washington State. Absent a concerted shift in sentencing policy, this trend is likely to persist and the costly construction of a new prison will likely be required to accommodate the continued growth of the prison population.

Fortunately, research suggests that reducing reliance on long and life sentences and creating release options for long-term prisoners does not pose a significant threat to public safety. Moreover, a number of investments in education and health have been shown to improve public safety. Shifting policy in this manner could also benefit crime survivors and help prevent crime, as the savings associated with reduced prison

populations could be used to provide much-needed services for victims (including those who choose not to report their crime or whose assailants are not arrested), buttress crime prevention programs, enhance community-based substance abuse and mental health services, expand rehabilitative and restorative justice programming, and improve the conditions of confinement.

PART VI: STORIES OF TRANSFORMATION

The evidence presented thus far shows that long and life sentences have proliferated in Washington State not because crime has increased, but rather because the legislature enacted a series of statutory changes that expand the circumstances in which such sentences may be imposed. As has been discussed, these policies are costly. They are also an ineffective means of protecting public safety, fail to respond to the majority of survivors' needs and preferences, and raise a number of concerns about efficacy, fairness, and justice.

Below, we present the stories of a number of people serving long or life sentences in Washington State. These stories 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.¹⁷⁹ In fact, most people who end up serving time were previously a victim of or witness to violence – and often both.¹⁸⁰ Many people living 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 shared 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.

A second theme that emerges from these stories involves the importance of the policy shifts described in this report for the outcomes of these cases as well as for the process by which they were adjudicated. 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 rejected a plea deal that would have entailed a 15-year sentence only to be sentenced to over one hundred years behind bars. The actual or implied threat of extraordinarily long sentences casts a long shadow over the justice process.

These stories also 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."¹⁸¹ A recent study by the California Department of Corrections and Rehabilitation reached similar conclusions.¹⁸² 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, mature and become safe to release even when the conditions of confinement are less than ideal.

Finally, in all of the cases described below, 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 maturation are thus in tension with the experiences of many prisoners, who do in fact mature and seek to make amends, as well as with human rights norms and exceptionally low rates of recidivism among people sentenced to long and life sentences.*

Christopher Blackwell

Chris was born in Oregon in 1981 and lived with both parents for a short time. However, his mother left to escape his alcoholic father's abuse when he was quite young. After regularly experiencing physical and emotional abuse at the hands of his father, Chris joined his mother in the Hilltop neighborhood of Tacoma at the age of six, where he spent most of his childhood. Unfortunately, Chris's plight did not get easier after he moved in with his mother. In Tacoma, Chris was abused by his aunt, cousins, and mother's boyfriend; he was also surrounded by family members who sold drugs and regularly got drunk, high, or both. Because his mother worked two jobs to make ends meet, Chris was on his own and largely unsupervised from a very young age. By fourth grade, Chris was spending his time with older kids who had dropped out of school and were smoking marijuana. He changed schools regularly but attended only sporadically. He was held back in fourth grade due to poor attendance, discipline issues, and academic difficulties.

At age 12, Chris stole a car, was involved in a high-speed chase with the police, and subsequently spent a year in juvenile detention. Upon his release, most of his criminal activity was aimed at generating money so that he could purchase drugs and alcohol. As a result of this activity, he was in and out of juvenile detention throughout his adolescence, where he was frequently assaulted and spent significant time in segregation. He also felt unsafe in his home and neighborhood, and began carrying a gun at age 13. Eventually, he spent time in a “boot camp” program where, to his surprise, he thrived as a result of the structure, the sense of camaraderie, and the realization that he could live a different kind of life than the one he had been living in Tacoma.

The experience led Chris to attempt to join the military at age 18. Despite the active support of some of the drill sergeants who got to know him, Chris was unable to join the Army, Navy, or Marines as a result of his criminal record. Instead, Chris moved into a hotel and became a mid-level drug dealer upon his release. After racking up several non-violent charges, Chris participated in several robberies. In one of these, Chris and his friends decided to rob a rival drug dealer whom they believed to be unprotected. Upon arriving at the intended victim’s house, they discovered that a party was underway. In this context, Chris committed the crimes of Robbery I and Burglary I, during which he “shot Joshua May and caused his death.”¹⁸³ Chris pled guilty to first degree murder; had he gone to trial he may have faced a 60 year sentence. He is now serving a sentence of 549 months, or 45 years.



Now 38 years old, Chris recognizes the pain and suffering his actions caused, and seeks through his daily activities to make amends. Toward this end, Chris is active in a number of programs, including the Concerned Lifer’s Organization, HEAL (Healing Education and Accountability for Liberation), Alternatives to Violence, various anger management programs, Understanding Family Violence, Smart Recovery (a substance abuse program), the Freedom Project, Bridges To Life (a restorative justice program), the Inside/Out Dad Program (a parenting class), and more. A high school dropout, Chris never thought he would pursue a college degree. Nonetheless, he recently earned his Associate of Arts degree through University Beyond Bars and is now working on his Bachelor’s degree. Chris is also an

accomplished artist who creates unique, Native-American inspired crafts which he often donates to UBB and to tribal elders in Native American communities.

As a person who has been the beneficiary of other prisoners making an investment in him, Chris has a passion for “paying it forward.” Chris devotes much time and energy to mentoring his 18-year-old goddaughter, Aryanna. Chris has known Aryanna’s father for years and decided to step in and help support Aryanna after her father developed a substance abuse problem and became less available to Aryanna. Although Chris’ incarceration limits his ability to support her, he has focused on making sure that Aryanna knows that she is loved and cared for, and that no matter what she is facing, Chris will always be there to talk and lend his emotional support. He also works hard to provide financial support, including helping her pay for a car and attend college.

Aryanna is deeply thankful for Chris’s support, and says about Chris: “Any time I need him he is there for me.” She has found his advice and encouragement to be invaluable, and reports that Chris is one of the only people that truly understands how she feels about virtually everything. Based on her many experiences and interactions with Chris, Aryanna reports that “Chris is one of the best people I know.” Knowing what it is like not to have a supportive father, Chris finds great comfort in knowing he is helping Aryanna feel loved and navigating the challenges of life.

Absent a change in policy, Chris is unlikely to be released from prison until he is quite elderly, despite his evident maturation and dedication to mentorship and service.

Michelle Blair

Michelle Blair grew up in Pierce County and suffered physical, sexual, and emotional abuse from various family members and other individuals from the time she was five years old. She ran away from her abusive home at the age of 12 and was in and out of foster care, struggling with drug addiction. From the ages of 12 to 14, she was trafficked for sex, and abused and sexually assaulted by many men. Michelle failed the fifth grade and decided to not return to school. While alternating between foster care placements and the streets, she felt “alone, abandoned, angry, lonely, and hungry.” She was convicted of and served time for two felonies before she was fifteen years old. Then, in 1988, at the age of 16, Michelle was charged as an adult and pled guilty to first-degree robbery in Pierce County. This would be her first strike, despite

the fact that the “three strikes law” was not yet in place. She was originally sent to the women’s prison (WCCW), but was abused while there and was subsequently sent to a youth facility, Echo Glen.



Once released, Michelle struggled with domestic violence and ended up on the streets again, selling both drugs and her body. In 1997, she pled guilty to second-degree robbery in Spokane, and served one year and one day as a result of a plea bargain. She continued to struggle with addiction, selling drugs in order to feed her habit, and came in contact with the law several times over the

years. In 2012, Michelle was found guilty of first-degree robbery. She opted to take this third strike to trial, declining a plea bargain that would have given her a 25-year sentence. After being found guilty at trial, Michelle is now serving a life sentence without the possibility of parole (LWOP).

Over the past seven years, Michelle earned her GED, but because she is serving an LWOP sentence she is ineligible for many education and self-improvement opportunities. When she requested access to these programs, she reports that was told she was “taking up space,” and was denied access. She explains the frustration of not being able to take some of the self-help classes to which she sought access: “I am still alive, I am still here, I am still human. I am not dead.” She has completed all of the classes she is allowed to take, including domestic violence, team building, and restorative justice courses, a total of 44 courses. Michelle also participates in weekly peer support programs, mentoring newly arrived prisoners and sharing her story “with the hope that they can see the light at the end of the tunnel.”

Michelle did secure permission to take a series of dog grooming classes and earn training certificates to care for dogs. If she is ever released from prison, Michelle would love to work at a dog kennel and eventually open her own mobile dog grooming business. Michelle is also involved with a bible study group and has experienced a positive spiritual transformation. While she struggled when she first arrived in prison, she has since committed herself to having a positive impact on the lives of her peers and on the world in general. She hopes to be able to leave prison to spend time

with her daughter and two grandchildren, join a church community, and start her own business.

Michelle was looking forward to relief in her case when SB 5288 was passed and signed into law in April 2019. This law removed second degree robbery from the list of strike-able offenses. Michelle was devastated when she learned that the legislation would not be retroactive. Upon hearing the news, Michelle reported that “I had no hope and experienced a period of deep depression. I couldn’t see a reason to continue living.” Nonetheless, Michelle remains committed to her transformation.

Jeff Foxx

Jeff Foxx, the youngest of four children, was born in Seattle to a single mother in 1974. His mother struggled with paranoid schizophrenia, and when Jeff was three or four years old she moved to Yakima alone. As a result, Jeff and his three sisters were placed in what was to become the first of a series of foster homes. Initially, Jeff and his siblings were housed together, but over time, the children were separated. Sadly, Jeff experienced both physical and sexual abuse in more than one of his foster homes. Jeff began having trouble focusing in school and had to repeat fifth grade.

At age 12, Jeff moved into his fifth foster home in Seattle’s Central District. Around the same time, his father was murdered. Drugs and gangs dominated the neighborhood in which Jeff now lived, and he had to be very careful navigating the area. He faced a good deal of pressure to join a gang, but was able to resist this pressure. By seventh grade, however, Jeff was unable to focus on his schoolwork despite his enrollment in advanced classes. Still, at the start of high school, Jeff worked, played sports, and dreamt of living with his sisters someday.

Eventually, he did move in with his oldest sister, but the situation was not as he had hoped. Jeff then moved in with another sister who was caring for his mother. During this time, a series of father and older brother figures that Jeff trusted left the area, and this triggered Jeff’s long-standing sense of abandonment. Around this time, Jeff met a friend of a friend who was a drug dealer. Jeff needed money, and when offered the chance, began selling drugs. As street life consumed more of his time and energy, Jeff quit sports and was eventually expelled from high school for poor attendance.

By the time he was 17, Jeff was quite anxious about how he would survive after aging out of the foster care system. He had no plan for supporting himself legally. Instead, he became highly involved in selling drugs, and had no vision for his future outside of this world. Around this time, Jeff was robbed and shot at several times, and he began to carry a gun for his protection. Shortly after Jeff turned 18, friends reported that some of the people who sold drugs for him were planning to rob him, and he began to fear for his life. In the context of these tensions, 18-year-old Jeff shot and killed four people whom he believed were plotting to harm him. He was convicted of aggravated murder in 1993 and was sentenced to life without the possibility of parole.

Now 45 years old, Jeff struggles daily with the consequences of his past actions, which he describes as “gruesome,” and dedicates his life to attempting to make amends. Jeff does not feel that just spending time beyond bars is a meaningful way to make amends. He therefore mentors young men wherever he can. Over the years, he has also been highly involved in his church community and a variety of other prison-based programs, including the Alternatives to Violence Project, Non-Violent Communication, Men of Compassion (which serves ailing and terminally ill prisoners), HEAL (Healing Education and Accountability for Liberation), the Concerned Lifer’s Organization, the Black Prisoner’s Caucus, and many others. Jeff also serves as a trained facilitator for Roots of Success (an environmental literacy program). He earned his GED while at Walla Walla and his Associate of Arts degree through University Beyond Bars, for which he now serves on the prison advisory committee. Jeff also works as a graphic designer for Correctional Industries.



Those who know Jeff best report that he is a thoughtful, engaged, compassionate, and gentle man who consistently looks for opportunities to be of service and struggles with guilt and remorse regarding his past actions. He devotes much of his time to his family, including his wife Michelle and his 23 year-old step-daughter, Mekiala.

Michelle and Jeff have been married for over ten years. Throughout this time, Michelle says, “Jeff has always been there for Mekiala and me. He is loving, loyal, and very patient. He has such a drive to not only continue changing his life but also

to becoming a better person and making sure the next young man does the same.” According to Michelle, when she lost her job just after they were married, Jeff stepped in and helped her with the bills; when she is feeling down, he is always there to lift her up. Despite the challenges of having an incarcerated spouse, she feels strongly that their shared faith will get them through anything that comes their way. Mekiala similarly reports that she and Jeff have a strong bond that cannot be broken; she is able to talk to Jeff about any and all challenges, and finds that Jeff is an excellent listener and a constant source of support.

Jeff was 18 years old – a legal adult – at the time he committed his crime. As a result, Jeff will not ever have the opportunity to go before the Indeterminate Sentencing Review Board to be considered for release absent any change in policy, despite his remarkable growth, kindness, and commitment to non-violence.

Ray Williams

Born in 1980, Ray lived with his mother until he was two years old, then with his grandparents until he was six. He recalls the years he spent on his grandparents’ farm as the happiest time of his life; he enjoyed learning to read and helping out on the farm. His mother returned for him when he was six years old, after which time he lived with his mother, her boyfriend, and a new stepbrother in a trailer in Yelm. In this new environment, Ray witnessed the abuse of his mother by her boyfriend on a daily basis, including a stabbing triggered by her failure to make dinner according to her boyfriend’s specifications. Ray also experienced emotional and physical abuse at the hands of both his mother and her boyfriend, and found himself in and out of school as his mother repeatedly left, and returned to, her abusive partner.

Ray ran away from home for the first time at the age of nine, but was returned to his mother shortly thereafter by Child Protective Services (CPS). Although the family was required to participate in counseling, Ray recalls that no meaningful change occurred at home, and the abuse continued. At 13, he ran away from home for good and began living life alone on the streets of Olympia. After Ray returned to school, however, CPS became involved in his life once again, placing him in a series of homes. In one of these, Ray was abused by the biological son of his foster parents, who, among other things, forced him to inhale gasoline.

As a teenager, Ray cycled through group homes, juvenile detention, and the streets. He felt safer being homeless than in group homes or juvenile detention facilities, so stayed on the streets as much as possible, supporting himself by panhandling. At the age of 16, Ray broke into a house and stole a gun. He was arrested and charged with Burglary I, waived into adult court, and sentenced to 36 months in an adult prison at the age of 17. This conviction was counted as his first strike.



Ray was released from Clallam Bay state prison in 1997 and lived for a short time in a homeless shelter in Port Angeles. By age 21, Ray had rebounded: he owned a window washing and pressure cleaning business, a house, a boat, and a truck, and had a girlfriend and a young son, Hunter. His luck changed, however, in 2003, when he discovered his girlfriend in bed with another man at a friend's house. In the heat of the moment, Ray assaulted (but did not seriously injure) the man in question. Because the event took place in a home that was not his own, Ray was again charged with Burglary 1. He reports that he pled guilty to this crime because he was told that if he did not he could be charged with endangerment of a child (his son was present at the time of the assault). He was convicted and was sentenced to 48 months in prison. This was his second strike.

While in prison, Ray earned as much time as he could off of his sentence in the hopes of being reunited with his son. But upon his release from prison, he was, in his words, “a hot mess.” Compelled to provide an address to which he could be released, Ray went to live with his mother, where things did not go well. In this context, his mental health deteriorated. His long-standing substance abuse issues worsened and he turned to methamphetamine. Alarmed by his deteriorating mental state, suicidal thoughts, and anger, Ray presented himself to health care professionals and requested assistance. After being evaluated, the facility determined that Ray did not need to be treated or institutionalized. Ray was unable to secure the mental health services he felt he needed.

Soon, Ray was homeless again and living in his car. His substance abuse had become severe. Ray observed that an acquaintance, a middle-aged man, frequently had teenage girls in his apartment. Ray soon learned that this man was using drugs as a

lure and was engaged in a variety of illegal activities involving the young women. Enraged, Ray went to the apartment with a gun, and ultimately shot the man in the lower leg, injuring him.

Representing himself, Ray pled guilty to Assault 2. This was his third strike. Ray was sentenced to life in prison without the possibility of parole in 2008. Absent the three-strikes law, the longest sentence that could have been imposed for Assault II would have been 120 months, or ten years.

Ray reports that the first few years of his incarceration were a haze: he focused mainly on staying out of trouble, learned to play guitar, and working as a screen printer for Correctional Industries. After the shop was closed, Ray helped start the Sustainable Practices Lab, in which prisoners repaired bikes and furniture and made signs for state institutions and non-profit organizations. At Walla Walla, Ray was invited to serve in a leadership role for a new program, Redemption, which he did. He was later transferred to Clallam Bay, where he initiated and served as a facilitator for Redemption.

In 2016, Ray interceded to prevent a prisoner from killing a correctional officer, which he downplays as just part of his commitment to do the right thing. Eventually, staff recognized Ray's role in ending the assault and transferred Ray to Washington State Reformatory, where programs are more readily available. Today, Ray works in WSR's welding shop, has produced an album, and is pursuing his Associates degree through University Beyond Bars. Ray is also a leader of the Redemption program, an active member of the Concerned Lifers Organization, has helped facilitate non-violent communication, and is a founding member of the State Raised Working Group, which works with state and community organizations to increase the life chances of foster youth.

Despite his maturation, dedication to diffusing conflict, and insight regarding his past challenges, Ray can expect to spend the rest of his life behind bars absent a change in state sentencing policy.

Anthony Wright

Born in 1972, Anthony Wright was raised by both parents in the Los Angeles area. Although his family was a loving one, the neighborhood in which they lived was inundated with drug and gang activity. By the age of 10, neighborhood gang members routinely asked Anthony where he was from so that they could identify the gang to which they assumed he must belong. For protection, Anthony began to affiliate with his neighborhood gang and soon became preoccupied with rivalries with other gangs. By the age of 15, he was sent to juvenile detention for committing “malicious mischief.” Undaunted, he grew up admiring successful drug dealers and sought to be one himself. His assumption, based on his surroundings and observations, was that he was unlikely to survive into adulthood.



Anthony spent his adolescence in and out of juvenile detention, which he now describes as a “school for criminals.” His early adult years looked much the same until, in 1992, he discovered that he could make more money selling drugs in Spokane than in Los Angeles. He continued selling drugs in both locales; he was also a father to several children and

had started a number of legitimate businesses. Eventually, Anthony was set up for a robbery by an acquaintance who also sold drugs. Afterward, Anthony and two friends went to confront the robbers in their house in Spokane. Waiting outside, Anthony saw the man who had robbed him through a window and attempted to shoot him. His co-defendants also shot into the house, and one of the bullets tragically killed a three-year old child who was, unbeknownst to Anthony and his co-conspirators, inside.

Anthony was devastated when he learned of the child’s death, after which, he reports, he “went into denial” and stayed that way through the trial and into the early years of his incarceration. Upon his arrest, Anthony was offered a sentence of 180 months (15 years) if he pled guilty to being an accomplice to Murder 1 or 2, conditional on his willingness to testify against his co-defendants.¹⁸⁴ He declined to do so. At trial, he was convicted of one count of first-degree murder, one count of attempted first-degree murder, and six counts of first-degree assault. He received a sentence of 1,660

months, or 138 years, and now confronts on a daily basis the fact that he will likely die behind bars.

Anthony also struggles daily with the guilt he feels for helping to create a situation in which a three-year old lost her life. Although it has become clear that Anthony did not kill her, he takes responsibility for organizing the retaliatory effort that resulted in her death. As he puts it, “I ruined many lives. Because of my actions, Pasheen’s brother and sister have grown up without her. She never got the chance to attend school, drive her first car, make life decisions, just be who she wanted to be. I think of that every day, and every time I think of my kids.”

Although Anthony knows there is no way to compensate for the loss of the life of a child, he seeks to make amends in any way he can. Following his mother’s advice to “bloom where you are planted,” Anthony works every day to help other incarcerated people discover and develop their potential. He works closely with prisoners seeking to leave the gang life, helping them navigate that complex and often dangerous process. And he is involved with a variety of programs, including Alternatives to Violence, HEAL (Healing Education for Accountability and Education) and Men of Compassion, in an effort to reduce violence both inside and outside the prison and serve those in need. He also serves as a facilitator for Alternatives to Violence.

Anthony was also one of University Beyond Bars’ (UBB) first four students and is a founding member of the Prisoner Advisory Committee. He earned his Associate of Arts degree in December 2011 and is now working on his Bachelor’s degree. On behalf of UBB, Anthony facilitates the College Prep Math courses and tutors students in all levels of math, from pre-algebra to calculus. He continues to serve on UBB’s Advisory Committee, and reports that UBB has helped him realize how important a role he can play in helping others realize their worth.

One young man whom Anthony mentored during the formative years of age 18-26 says about Anthony, “Anthony was patient, and challenged me in ways that promoted growth and development despite the sometimes arrogant, sometimes impulsive young man I was.... Anthony Wright taught me that being a mentor is more than just directing younger men in the way they should go. It is putting rubber to the road and hitting the pavement right alongside with them, because their triumph is your triumph. I’m almost 30 now, nearly done with my sentence, but Anthony Wright has been right by my side, if not physically then certainly in spirit, every step of the way.”

Despite his remarkable maturation, kindness, and advanced skills, Anthony will not have the opportunity to be considered for release absent any change in policy.

Eugene Youngblood

Eugene Youngblood was born in 1973 to a single young woman who had recently moved to Los Angeles in the hopes of becoming a movie star. Instead, his mother was arrested and incarcerated when Eugene was an infant. Although his father lived nearby, Eugene's paternal grandmother became his caretaker and he rarely saw his father. His grandmother worked hard to ensure that Eugene was busy with activities after school and did not interact with the gang members who dominated the neighborhood. However, his grandmother died when he was just 10 years old, and Eugene subsequently moved in with an aunt who struggled with substance abuse and did not pay close attention to his wellbeing or whereabouts.



By the age of 11, Eugene was spending more and more time with the local gang, members of which sometimes looked after and fed him. By 13, Eugene was actively involved with the gang to which he now felt indebted. By age 14, he had dropped out of school and was delivering cocaine for the gang. His drug dealing activities took him back and forth between California and Washington over a period of years. At the age of 18, Eugene was living in Tacoma when he was asked by friends to confront some rivals with

whom they had a conflict. He agreed to do so, although he has long maintained that he was not present when the confrontation actually took place. During this confrontation, two young men, 18-year old Tyrone Darcheville and 16-year old Arthur Lewis Randall Jr., were shot and killed.

Eugene was charged in Kitsap County with two counts of murder in the first degree, to which he pled not guilty. During his first trial, Eugene's co-defendant was found guilty, but the jury could not reach a verdict regarding Eugene. In a second trial, Eugene and another co-defendant were both found guilty, although a juror at the time noted that it was much more difficult for the jury to reach this conclusion regarding

Eugene.¹⁸⁵ Eugene was convicted of two counts of first-degree murder as well as conspiracy to commit murder, and received a 780-month (65 year) sentence.

During the early years of his incarceration, Eugene remained loyal to the gang and, accordingly, racked up an estimated 70 infractions before his 25th birthday. Today, Eugene recognizes that he caused much harm during this time, and although he has always maintained that he was not present when the two victims were killed, he acknowledges that he had previously engaged in violence. Eugene now actively rejects the “gang code” that he accepted in his youth, and spends much of his time and energy engaging young gang members and supporting those who are attempting to exit gang life. He also works hard to change prison culture such that redemption, responsibility, and participation in positive programs – not toughness or the willingness to commit violence – are the basis of respect. He is a leader in the Black Prisoner’s Caucus, which works to break the cycle of poverty, violence, and incarceration, and the Concerned Lifer’s Organization, and has participated in numerous programs, including the Redemption Program, HEAL (Healing Education for Accountability and Liberation), and more. He is now a master trainer for the Roots of Success program, an environmental literacy program that emphasizes job readiness and re-entry skills.

In keeping with his goals and priorities, Eugene recently befriended a young man, Travis Turner, who, at the time identified as a white supremacist. Despite their obvious differences, Eugene recognized that he and Travis had something important in common: they had both been taught to hate another group and accepted this ideology without question. Eugene nonetheless reached out to Travis, and eventually became a role model and mentor for Travis. Eugene helped facilitate Travis’ exit from gang life and his efforts to address his substance abuse. Inspired by Eugene’s example, Travis has become involved in the Concerned Lifer’s Organization, Toastmaster’s, Non-Violent Communication, University Beyond Bars, debate team, and more. On Eugene’s advice, Travis also enrolled in HEAL which, he reports, “has allowed me to open up about my past and allow healing to take place, stop running, stop burying my past.... I feel so much better.”

Today, Eugene and Travis provide important leadership and support for other men attempting to change prison culture, and recently co-facilitated a group of men working through the Redemption curriculum. About Eugene, Travis recently wrote, “I was changed by a black man, a man who the state says will spend the rest of his life in prison. A man who truly cares what I am doing, how I am doing, feeling, what I am working on, what I am reading, what events to go to get some knowledge, some

information to be more successful... He truly cares for my wellbeing. I don't believe I ever had that before."

Despite his remarkable growth, leadership capacity, and dedication to mentoring others, Eugene will not have the opportunity to go before the Indeterminate Sentencing Review Board to be considered for release absent any change in state sentencing policy.¹⁸⁶

PART VII: REDUCING LONG AND LIFE SENTENCES AND THE NUMBER OF PEOPLE SERVING THEM

This report shows that the number of long and life sentences imposed in Washington State has grown dramatically in recent decades. This development is not a function of crime trends: in 2016, the violent crime rate was more than 30 percent lower than in 1986, but the rate at which long and life sentences are imposed was more 174 percent higher (see Figure 9). Nor is it a consequence of rising recidivism, as rates of repeat offending have been stable (see Figure 5).

Instead, a number of policy developments – including the statutory authorization of LWOP sentences, the Persistent Offender Accountability Act, the Hard Time for Armed Crime Act, and myriad changes to the calculation of offender scores that increase the weight of prior convictions – have fueled the growth of long and life sentences and mass incarceration. Research shows that such policies also enhance prosecutorial leverage in plea negotiations, and therefore likely explain both the increase in average sentence length and the sizable growth of the trial penalty. At the same time, truth-in-sentencing policies and related restrictions on the capacity of many prisoners to earn time off their sentence means that most prisoners are spending a larger proportion of their (increasingly long) sentence behind bars.

Below, we recommend that the number of people serving long and life sentences be dramatically reduced. We begin by explaining why this is important, then describe a number of options for reducing the number of people who are compelled to live behind bars for extensive periods of time in Washington State.

The Need for Reform: Practical and Ethical Considerations

Research shows that the policy developments that have fueled the proliferation of long and life sentences are an ineffective means of ensuring public safety, have had a variety of adverse effects, and raise important concerns about fairness and justice (see Part V of this report). The widespread imposition of long and life sentences is an ineffective and inefficient means of protecting public safety because long sentences

do not deter more than short ones and because recidivism declines markedly with age. It is also a costly approach, one that consumes significant tax dollars that might otherwise be spent on evidence-based crime prevention programs and victim services, including restorative justice alternatives. Indeed, under current policies, most crime survivors remain unable to access the services and resources they need, even as millions of dollars are spent each year to incarcerate older adults who pose little threat to public safety. As the National Research Council concludes, “the case for reducing long sentences is compelling.”¹⁸⁷

Moreover, the costs associated with the widespread imposition of long and life sentences will increase notably over time if steps are not taken to address the situation. 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 50.¹⁸⁸ Researchers have concluded that these “prison boomers” are “important to consider as a distinct group from other incarcerated people because they experience rates of chronic illness and disability more typical of people chronologically much older. Consequently, most research in the area indicates that corrections departments in many U.S. states and many European countries consider incarcerated people ‘older’ or ‘aging’ beginning around age 55.”¹⁸⁹ The costs associated with the care of these older prisoners are two to four times greater relative to younger prisoners. 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 enable the release of people who have served substantial time behind bars and are safe to release, and to prevent the frequent imposition of long and life sentences moving forward.

According to the Council of State Governments, preventing future prison population growth could allow Washington State to avoid spending up to \$291 million that would otherwise be needed to accommodate forecasted growth.¹⁹⁰ Although diversion of some people convicted of drug and property offenses may help prevent prison population growth to some degree, *experts agree that meaningful and sustainable reductions in prison populations will only occur if fewer long and life sentences are imposed in the future and mechanisms are created to enable those currently serving such sentences to demonstrate that they are safe to be released to the community.*¹⁹¹ Moreover, most elderly prisoners were convicted of comparatively serious offenses decades prior; tinkering with the policies governing the most minor offenses will not notably reduce the number of older people living behind bars.

Implementing reforms that will meaningfully reduce the number of long and life sentences is also important for ethical reasons. These ethical concerns underlie diverse theories of punishment. Retributive theories of punishment hold that penalties should serve the purpose of moral accountability rather than achieve particular ends. By contrast, consequentialist approaches treat punishment as a means to achieve certain ends, namely, protection of society. In theory, this protection can occur through rehabilitation, deterrence, or incapacitation. Some penal scholars blend retributive and consequentialist goals. This approach has been called “limited retributivism” or “modified just deserts.”¹⁹² The Model Penal Code calls it “utilitarianism within limits of proportionality.”¹⁹³ From this perspective, prison sentences are justified only to incapacitate dangerous people and punish those who have committed such serious crimes that lesser sanctions would be “disproportionately lenient.”¹⁹⁴ Importantly, from this perspective, sentences that are longer than is necessary to incapacitate and signal the severity of the crime are unjustified.

Interestingly, both retributivists and consequentialists agree that two fundamental principles should govern penal policy.¹⁹⁵ The first is the principle of proportionality, namely, the idea that the penalties imposed should reflect the severity of the criminal conduct that occurred and the culpability of the person who engaged in it. Under this principle, the crime of homicide should be punished more severely than the crime of burglary, which should in turn carry a more severe penalty than theft. However, the principle of proportionality does not require any specific penalties for particular crimes. For example, under the principle of proportionality, neither the death penalty nor life without the possibility of parole sentences are necessary to achieve proportionality in cases involving homicide. Instead, according to the principle of proportionality, what matters is that the penalties imposed in homicide cases reflect the idea that this crime is more serious than offenses such as larceny.

The second principle upon which both retributivists and consequentialists agree is the principle of parsimony. According to this principle, punishment should never be more severe than is necessary to achieve retributive or public safety goals. This belief is based on the idea that the intentional infliction of suffering on other human beings (which incarceration necessarily entails) should be avoided as much as possible. For this reason, sentences should reflect only what is necessary to achieve valid penal goals – and no more.

In recent years, the principle of proportionality has been reinterpreted to mean that penalties for serious crimes should be as severe as possible, while the principle of parsimony has been largely forgotten. Sentences that require people to spend the majority of their years behind bars have come to seem normal, even necessary for justice. However, these beliefs are incompatible with widely accepted penal norms and practices, especially the principle of parsimony. In fact, the United States and Washington State are now global outliers among democratic societies. Reducing the number of long and life sentences imposed, and expanding avenues for post-conviction review, will help bring Washington State in line with democratic norms and reduce the human and fiscal costs associated with the incarceration of the elderly.

Policy Options for Reducing Long and Life Sentences

Lawmakers can influence time served in prison and reduce prison populations in two ways. First, they can modify the sentences that are imposed. In addition, they may change policies pertaining to post-conviction review and release decision-making. Policies that shorten sentences are sometimes called “front-end” reforms, while those that affect post-conviction release decisions are called “back-end” reforms. Both types of reforms can significantly reduce the amount of time people spend in prison, and should be enacted in order to lower the number of people serving long and life sentences in Washington.

These approaches – and the advantages and challenges associated with each – are identified below. Specifically, we describe various kinds of “front-end” reforms, ranging from piecemeal to comprehensive sentencing reform, and a variety of “back-end” reforms that could (to varying degrees) reduce the number of people serving long and life sentences. We conclude by offering several recommendations for reducing the number of people serving long and life sentences in the near term.

Front-End Reforms

Piecemeal Sentencing Reform

This report shows that the proliferation of long and life sentences has resulted from a series of policy changes that lengthened sentences while also limiting parole eligibility and reducing the capacity of most prisoners to earn time off of their confinement sentence. One option for redressing this would be to sequentially repeal each of the policies that have fueled the proliferation of long and life sentences. Specifically, the legislature could repeal the statutory requirement that LWOP be

imposed in cases involving aggravated murder, the Persistent Offender Accountability Act, the Hard Time for Armed Crime Act, restrictions on the capacity of prisoners to earn good time credits, and/or statutory changes to the rules that increase the weighting of prior convictions in the calculation of offender scores. Although some of these measures (namely, the Persistent Offender Accountability Act and Hard Time for Armed Crime) were the result of ballot initiative processes, Washington law allows the legislature to amend or repeal initiated statutes after two years of their enactment.¹⁹⁶

The central challenge associated with this kind of piecemeal approach is that each repeal would likely generate a difficult and protracted political debate. Because this would likely be a prolonged process, meaningful change would take years and quite possibly decades to achieve, and additional prison construction would be difficult to avoid. Meanwhile, older prisoners serving long and life sentences who pose no threat to public safety would languish behind bars.

Comprehensive Sentencing Reform

Alternatively, the legislature could reduce the number of long and life sentences imposed through the enactment of comprehensive (rather than piecemeal) sentencing reform. In particular, a comprehensive reform measure could overhaul sentencing policy in order to reverse the inflation of prior convictions in the calculation of offender scores and place a meaningful limit on the maximum allowable sentence. Many experts now recommend capping the maximum sentence length at twenty years; such policies could be accompanied by the creation of mechanisms to evaluate the safety risk of people nearing the end of their term and, *in rare instances*, to extend the period of incarceration if such people are determined to pose a grave threat to public safety.¹⁹⁷ Many countries have similar policies, and these countries generally have far lower crime rates than those found in the United States.¹⁹⁸

One advantage of this kind of comprehensive sentencing approach is that it would allow policymakers to also reconsider the philosophy underlying the Sentencing Reform Act, and in particular, the state's de-prioritization of rehabilitation. While some social scientists concluded in the 1970s that rehabilitative programming was ineffective, the research upon which this conclusion was based was retracted in 1979, well before the SRA was enacted.¹⁹⁹ Moreover, more recent research shows that a number of well-executed, prison-based programs notably reduce recidivism. As the National Research Council concludes, some prison-based rehabilitative programs

“can be effective in neutralizing or even reversing the otherwise criminogenic effects of incarceration.”²⁰⁰ And as noted previously, WSIPP has also identified a number of correctional interventions that are highly cost effective. These include substance abuse treatment, education (both K-12 and post-secondary), and vocational training. Some community-based prevention programs, including employment training/job assistance in the community and outpatient drug treatment, are also cost-effective.²⁰¹ Increasing access to high-quality, early education programs also improves educational outcomes and reduces criminal justice contact.²⁰²

In short, well-executed preventative and rehabilitative programs can reduce recidivism, and are a better investment in public safety than long-term incarceration. In addition, allowing prisoners to earn time off of their sentence by completing rehabilitative programs improves morale in prisons and both encourages and rewards prisoners’ involvement in programming that reduces repeat offending. This claim is supported by research showing that restrictions on the capacity of prisoners to earn time off of their confinement sentence increase both infractions and recidivism. Based on these findings, researchers concluded that “The hope of an early parole release incentivizes inmates to invest in their own rehabilitation, and when such incentives are removed investment falls and recidivism rises.”²⁰³

Comprehensive sentencing reform would thus provide an opportunity to reduce reliance on long and life sentences as the state’s primary public safety strategy, while also reinstating rehabilitation as a fundamental priority. For these reasons, the legislature should enact comprehensive sentencing reform that reverses the inflation of prior convictions in the calculation of offender scores, places a meaningful limit on the maximum allowable sentence, and reinstates rehabilitation as the primary purpose of punishment. However, as the National Research Council recently noted, “If the policy reforms designed to reduce long prison sentences were prospective and applied only to new convictions, then prison populations would decline only slowly.”²⁰⁴ For these reasons, back-end reforms are also important – and may be more feasible in the near term.

Back-End Reforms

Currently, the release options available to prisoners are woefully inadequate: people serving long and life sentences have few opportunities to be considered for release prior to completing their confinement sentence. In theory, prisoners who are severely incapacitated due to age or physical disability may be eligible for Emergency Medical Placement (EMP) outside of prison.²⁰⁵ However, the number of releases generated

through this program has been quite small. Between January 2012 and December 2015, only 37 of the 159 cases considered were approved for EMP.²⁰⁶ This process thus does not appear to provide a meaningful opportunity for release for most prisoners.

Prisoners may also petition the Washington State Clemency and Pardons Board to request commutation of their sentence (i.e., clemency). The grounds for evaluation of such petitions is unclear: the relevant law says only that the petitioner should demonstrate why his or her circumstances are “extraordinary” but does not specify what constitutes extraordinary circumstances.²⁰⁷ The Board grants a hearing regarding roughly one-fourth of the petitions it receives.²⁰⁸ For early release to occur, a petitioner must be granted a hearing, the Board must recommend commutation, and the Governor must accept this recommendation.

This happens quite rarely. From 2013 to 2017, for example, the Board recommended and the Governor granted clemency in just 22 cases, an average of fewer than five cases per year.²⁰⁹ To put this number in context: 41.5 percent of all prisoners – nearly 8,000 people – are currently serving a sentence of ten years or more.²¹⁰ Thus, even if the Clemency and Pardons Board were somehow able to double, triple, or even quadruple the number of cases it hears, the clemency process will not provide a meaningful opportunity to notably reduce the number of prisoners serving long and life sentences.

Below, we describe three types of “back-end” reforms that have the potential to more meaningfully reduce the number of prisoners serving long and life sentences.

Expand Parole Eligibility to All Prisoners Who Have Served 15 Years in Prison

In light of the limited nature of existing opportunities to be considered for release, some urge that eligibility for parole review be expanded to include all prisoners who have served a certain number of years behind bars. In particular, the American Law Institute (ALI), a non-governmental organization comprised of judges, lawyers, and legal academics, approved the first-ever revisions to the historic Model Penal Code in 2015. The update took more than 15 years to complete and yielded a comprehensive 700-page report. The revised Model Penal Code calls for state legislatures to enact a “second look” provision, that is, to create a mechanism to reexamine a person’s sentence after 15 years no matter the crime of conviction or the length of the original sentence. The ALI offered numerous rationales for this proposal, including the fact

that the proliferation of long and life sentences have fueled an unprecedented rise in incarceration rates; that clemency has proven to be of extremely limited utility; and the idea that second-look processes can take place in a relative calm atmosphere in which the focus is on what the prisoner has accomplished during their incarceration rather than on the crime itself.²¹¹

Expand Parole Eligibility Based on Age of the Petitioner and Time Served

A modified version of this approach would expand parole eligibility based on the age of the petitioner and the amount of time served. This approach is supported by research showing that a) brain development is not complete until people are in their mid to late twenties; and b) that recidivism declines markedly with age. An age-based review system would focus on people convicted of crimes that occurred while they were under the age of twenty-six (or twenty-eight), and people who are fifty (or fifty-five) years or older, and have served a minimum confinement term of fifteen years. For example, people sentenced for crimes committed while they were adolescents or young adults and who had served fifteen or more years in prison would be eligible for post-sentence review. Similarly, people aged fifty or older who had served fifteen or more years would be eligible to be considered for release.

One advantage of this age-based approach is that it would build on recent policy changes. In 2012, the U.S. Supreme Court ruled in *Miller v. Alabama* that because youth are less mature, more impulsive, and more capable of reform, children are entitled to “some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.”²¹² Motivated by the same logic, the Washington State Legislature passed the Second Chance Bill (SB 5064) in 2014. This legislation granted prisoners who were sentenced for crimes they committed before their eighteenth birthday the right to petition the ISRB for early release after serving twenty years of confinement provided that the prisoner has not been convicted of any crimes since their eighteenth birthday and has not had a major infraction in the twelve months prior to filing the petition. Prisoners who meet these criteria but were convicted of aggravated murder can petition to the ISRB for early release after serving twenty-five years in confinement.

Lawmakers could easily modify this legislation to reflect abundant scientific evidence that brain development is not complete until people are in their mid to late twenties.²¹³ For example, lawmakers could redefine the statutory definition of “developmental period” to include the time between conception and the twenty-sixth

(rather than eighteenth) birthday. If so modified, existing legislation would create an opportunity for eligible prisoners (i.e. those who were sentenced for a crime they committed prior to their twenty-sixth birthday and had served at least fifteen or twenty years) to petition to be considered for release before the entire confinement sentence had been served. At the same time, lawmakers could grant older prisoners who have served substantial amounts of time behind bars the right to petition the ISRB to be considered for release. Based on criminological research regarding declining rates of recidivism among older adults, a threshold age of fifty would be appropriate.²¹⁴

Both of these “back-end” approaches – expansion of parole to all prisoners or on the basis of age and time served – offer several advantages. In particular, the expansion of parole eligibility could logically be paired with the reinstatement of rehabilitation as a central purpose of punishment. As noted previously, this would mean reinvesting in effective correctional programming such as higher education and vocational training, which have been shown to reduce both infractions and recidivism.²¹⁵

However, the efficacy and impact of these back-end reforms depend entirely on the adoption of review practices that assess and reward rehabilitation and provide a meaningful opportunity for discretionary release. Across the country, people serving sentences of life with the possibility of parole are spending far more time behind bars than was the case several decades ago, and many die while still in prison. This decline in release rates in states with parole is occurring despite numerous studies showing that released lifers have extraordinarily 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, and as compared to the larger inmate population, recidivism risk... is minimal.”²¹⁶ A recent study by the California Department of Corrections and Rehabilitation reached similar conclusions.²¹⁷

Despite evidence of extremely low recidivism rates among older, released lifers, parole release rates have declined sharply in recent years, particularly for people serving long and life sentences.²¹⁸ Research identifies a number of factors that have reduced parole release rates and increased the amount of time people serving life *with* the possibility of parole sentences are spending in prison. These include: parole boards’ tendency to focus on the original offense rather than what the petitioner has accomplished since their conviction; legislative changes that extend the amount of time people must wait for subsequent hearings after being denied parole;

gubernatorial appointments to parole boards that are intended to reduce parole grants; and the narrowing of petitioner's rights in the parole process.²¹⁹

Legal experts have identified a number of “best practices” that would help to remedy these and other problems that plague many parole systems around the country.²²⁰ Some of these recommendations include:

- For extremely long and life sentences, release eligibility should occur no later than 15 years after the conviction. This recommendation is based on the Model Penal Code produced by the American Law Institute.²²¹ The implication of this recommendation is that LWOP sentences should be replaced with life *with* the possibility of parole sentences.
- There should be a meaningful presumption of release at first eligibility for review, such that the majority of prisoners are released at that time. This recommendation is predicated on the view that prison sentences longer than fifteen years are not required to achieve “modified just deserts.” As a result, prison stays that are longer than fifteen years can only be justified if necessary to incapacitate clearly dangerous people.
- 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.”²²²
- 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.

- *Perhaps most importantly, parole boards should focus on whether rehabilitation and maturation has occurred and assess future risk rather than focus on the original crime.* For this reason, victim input should be limited to informed insights about the future risk potential of the inmate and comments about conditions of release. Victims should not be asked to make recommendations to grant or deny parole unless they have information or knowledge about the petitioner's behavior in prison.²²³

Currently, in Washington, the Institutional Sentencing Review Board (ISRB) makes decisions regarding discretionary release for three groups of prisoners: 1) Those who were sentenced prior to 1984; 2) Prisoners sentenced to life without parole for an offense they committed prior to the age of 18; and 3) People sentenced under the Determinate Plus Sentencing statute. The ISRB currently utilizes a number of practices and procedures that are inconsistent with the recommendations enumerated above in reviewing the petitions of one or more of these groups. For example:

- Current ISRB policy invites victims to make recommendations regarding release and provide input on a number of topics that have to do with the crime rather than the defendants' behavior during her or his incarceration or whether they are safe to release.²²⁴ As noted above, experts recommend that victim input be limited to future risk potential and conditions of release *because the point of the parole review process should be to evaluate the risk release would pose to the community rather than the nature and impact of the crime itself.*²²⁵ However, under current policy in Washington State, victims are specifically invited to describe the impact of the crime, share photographs or videotapes of deceased victims, and state their preferences regarding whether the prisoner should be granted discretionary release. This focus on the nature and impact of the crime in the parole process is incompatible with the idea that release decisions should be based only on evidence regarding the prisoner's conduct since their conviction and the safety implications of their potential release. It is also arguably in tension with the presumption of release, to which people sentenced to LWOP for crimes they committed before their 18th birthday are legally entitled.²²⁶
- As noted above, risk assessment tools raise a number of important ethical questions and practical problems.²²⁷ In particular, many legal scholars contend that punishing people more severely because they have fixed characteristics

and early childhood experiences over which they had no control is inherently unjust. Moreover, many risk measures – such as whether a person lived with both biological parents in their youth – are highly correlated with race and class; consideration of such factors will reproduce racial and class-based inequities in punishment. Finally, most risk assessment tools that are characterized as having moderate predictive capacities actually produce significant numbers of false positive predictions.

- As noted previously, the ALI recommends that risk assessment tools be used only when the public is able to access and assess them.²²⁸ However, information about the risk assessment tools used by the Washington State Department of Corrections is not available on its website. This lack of transparency regarding the risk assessment tools used by Washington DOC makes it difficult to assess its statistical underpinnings, individual applications, and implications for race and class inequality.
- Moreover, the problem of false positives appears to be substantial in Washington. Recent data provided by WSIPP show that actual violent recidivism rates (which measure the rate of return to DOC custody for a conviction of a violent crime in the three years following release from prison) fluctuated from 9 to 12 percent from 1991 to 2012 and showed no clear increase over time. During this period, however, violent felony risk scores steadily increased from 76 to 94. This increase in risk scores in the absence of an actual increase in violent recidivism suggests that the problem of false positives is a significant one in Washington State.²²⁹

In sum, the expansion of parole eligibility would provide a mechanism by which prisoners who have served substantial amounts of time behind bars would be considered for release. However, the impact and viability of these “back-end” options depend in part on the revision of the discretionary release review process, as discussed above. In particular, and consistent with the recommendations of the American Law Institute, the process would need to be revamped to focus exclusively on the viability of release rather than the nature and impact of the crime itself.

Expand All Prisoners’ Opportunities to Earn Release Time

An alternative “back-end” option that does not require an expansion of parole eligibility would involve significantly expanding prisoners’ eligibility to earn

reductions in their confinement sentences. 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.

Existing restrictions on the capacity of prisoners to earn release time could be lifted such that *all* prisoners were eligible to earn release time equivalent to up to one-third or one-half of their confinement sentence. An important advantage of this approach is that it would prioritize making cost-effective rehabilitative and educational programming available and encourage prisoners to participate in such programs. As noted previously, research suggests that doing so would reduce infractions as well as recidivism.²³⁰ It could also reduce the uncertainty associated with dependence on a parole/release review process that may not achieve meaningful results.

On the other hand, an important disadvantage of this approach is that many virtual lifers would still be ineligible for release even if they were able to earn up to 50 percent off of their confinement sentence. Recall Anthony Wright, whose story is told in Part VI of this report, and who is currently serving a sentence of more than 130 years (after declining a plea deal that would have entailed a fifteen-year sentence). Even a dramatic expansion of eligibility to earn release time may not be of particular utility to Anthony or many others serving virtual life sentences. Similarly, it is unclear whether this approach could have any impact on those serving official or formal LWOP sentences.

Policy Recommendations

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

In the long term, comprehensive sentencing reform that reinstates rehabilitation as the primary purpose of punishment, places caps on maximum sentence length, and reverses prior sentencing policy changes that increased the weight of prior convictions and otherwise 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.

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

- **Implement a universal or age-based post-conviction review process with a presumption of release. Consistent with the American Law Institute's recommendations, these processes should not deny eligibility for review based on the nature of the conviction offense.**
 - As discussed above, an age-based approach would:
 - Modify the Second Chance Bill (SB 5064) to grant *all* prisoners who were sentenced for crimes they committed before their *twenty-sixth* birthday the right to petition the ISRB for release after serving fifteen years of confinement provided that the prisoner has not been convicted of any additional crimes and has not had a major infraction in the twelve months prior to filing the petition; and
 - Provide *all* prisoners 50 years or older who have served fifteen or more years behind bars the right to petition the ISRB to be considered for release provided that the prisoner has not been convicted of any additional crimes and has not had a major infraction in the twelve months prior to filing the petition.
 - A universal post-conviction review process would make all prisoners who have served at least fifteen years of confinement time eligible for post-conviction review provided that the prisoner has not been convicted of any additional crimes and has not had a major infraction in the twelve months prior to filing the petition. Consistent with the recommendations of the American Law Institute, no one would be denied eligibility for review based on the crime of conviction.
- **Lift restrictions to prisoners' capacity to earn release time** such that all prisoners are eligible to earn release time equivalent to 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 prisoners.

- **Restructure and expand the ISRB** to increase racial equity, ensure the presence of a diverse array of backgrounds and perspectives, and 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.
- **Expand investments in non-confinement-based crime prevention strategies such as early childhood education, mental health care and substance abuse treatment, as well as 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 improve the safety and well-being of all Washington State residents.

APPENDICES

Appendix A. Trends in Prison Admissions and Sentences

The size of prison populations is determined by both trends in prison admissions and length of stay. As noted in the body of this report, average sentence length has increased appreciably. Prison sentences for new crimes have also increased. Specifically, state sentencing data indicate that the annual number of prison sentences for new crimes more than doubled between 1990 and 2015, from 4,210 to 8,834 (despite falling crime rates).²³¹

That fact prison sentences for new crimes increased so much despite falling crime rates suggests that the system response to crime and arrests changed. Researchers often decompose the criminal justice process into its constituent parts in order to assess the causes of prison expansion.²³² Table A1 focuses on the decision-making points that precede prison admission. Specifically, this table describes trends in the crime rate, the share of reported felony crimes that resulted in arrest (i.e., the arrest-to-crime ratio), the share of felony arrests that triggered a felony filing (the filing-to-arrest ratio), and the share of felony filings that resulted in a prison sentence.

These findings show that that the system response to crime has intensified notably since 1995. As crime rates fell, the share of reported violent crimes that resulted in an arrest, and the share of violent crime arrests that resulted in a felony filing, increased notably from 1995-2015. In addition, the proportion of property crime arrests that triggered a felony filing, and the share of property filings that resulted in a prison sentence, rose substantially. The share of drug arrests that resulted in a felony filing also grew. Together, these changes help explain why the number of prison sentences have increased notably even as crime rates plunged.

Table A1. Changes in Criminal Case Processing Outcomes in Washington State, 1995-2015				
	1995	2005	2015	Percent Change, 1995-2015
Violent Crime				
<i>Crime Rate</i>	484	346	289	-40%
<i>Arrest to Crime Ratio</i>	.32	.36	.39	23%
<i>Filing to Arrest Ratio</i>	.77	1.32	1.30	69%
<i>Admission to Filing Ratio</i>	.30	.30	.29	-3%
Property Crime				
<i>Crime Rate</i>	5,786	4,890	3,517	-39%
<i>Arrest to Crime Ratio</i>	.14	.12	.14	.6%
<i>Filing to Arrest Ratio</i>	.23	.34	.33	44%
<i>Admission to Filing Ratio</i>	.14	.29	.29	100%
Drug Offenses				
<i>Arrests</i>	14,653	24,893	10,494	-28%
<i>Filing to Arrest Ratio</i>	.73	.58	.97	32%
<i>Admission to Filing Ratio</i>	.20	.22	.17	-15%

Sources: Crime and arrest figures taken from the Uniform Crime Reporting Statistics – UCR data online available at <https://www.ucrdatatool.gov/>; felony filing. Prison sentence data taken from the Washington Statistical Analysis Center's online tool, available at <https://sac.ofm.wa.gov/data>

Notes: Crime rates are calculated per 100,000 residents. Drug arrest figures are absolute numbers.

Appendix B. Determinate Sentencing Plus

During the 2001 Second Special Session, the Legislature enacted 3ESSB 6151 – The Management of Sex Offenders in the Civil Commitment and Criminal Justice Systems. The resulting “non-persistent sex offender” system is also called “determinate-plus,” but it is actually an indeterminate sentence. An offender must be sentenced to an indeterminate term if he or she is *not* a persistent offender, but:

- is sentenced for any of the “two strike” offenses listed in RCW 9.94A.030(38)(b); or
- is sentenced for any sex offense, except failure to register, and has a prior conviction for a “two-strike” offense.

This sentencing rule does not apply to offenders seventeen years old or younger at the time of the offense and who have been convicted of Rape of a Child in the First Degree, Rape of a Child in the Second Degree or Child Molestation in the First Degree.

A “determinate-plus” sentence must contain a minimum term of confinement that falls within the standard range, according to the seriousness level of the offense and the defendants’ offender score, and a maximum term equaling the statutory maximum sentence for the offense. The minimum term may also constitute an exceptional sentence as provided by RCW 9.94A.535. A “determinate-plus” offender is eligible for earned release pursuant to RCW 9.94A.728 and is given the opportunity to receive sex offender treatment while incarcerated. Between 1989 and 2008, determinate-plus sentences were more frequently imposed than two- and three-strike sentences combined.

Some determinate-plus offenders are eligible for the Special Sex Offender Sentencing Alternative as provided in RCW 9.94A.670. All sentences under this provision must be served in prison, regardless of the sentence length. Offenders given determinate-plus sentences fall under the purview of the Indeterminate Sentence Review Board through the maximum term of the sentence. Those released from prison will be supervised by the Department of Corrections and will remain on community custody through the maximum term of the sentence.

Appendix C. Aggravating Circumstances as Defined Under RCW 10.95.020

RCW 10.95.020 defines aggravated murder as follows:

A person is guilty of aggravated first degree murder, a class A felony, if he or she commits first degree murder as defined by RCW 9A.32.030(1)(a), as now or hereafter amended, and one or more of the following aggravating circumstances exist:

(1) The victim was a law enforcement officer, corrections officer, or firefighter who was performing his or her official duties at the time of the act resulting in death and the victim was known or reasonably should have been known by the person to be such at the time of the killing;

(2) At the time of the act resulting in the death, the person was serving a term of imprisonment, had escaped, or was on authorized or unauthorized leave in or from a state facility or program for the incarceration or treatment of persons adjudicated guilty of crimes;

(3) At the time of the act resulting in death, the person was in custody in a county or county-city jail as a consequence of having been adjudicated guilty of a felony;

(4) The person committed the murder pursuant to an agreement that he or she would receive money or any other thing of value for committing the murder;

(5) The person solicited another person to commit the murder and had paid or had agreed to pay money or any other thing of value for committing the murder;

(6) The person committed the murder to obtain or maintain his or her membership or to advance his or her position in the hierarchy of an organization, association, or identifiable group;

(7) The murder was committed during the course of or as a result of a shooting where the discharge of the firearm, as defined in RCW 9.41.010, is either from a motor vehicle or from the immediate area of a motor vehicle that was used to transport the shooter or the firearm, or both, to the scene of the discharge;

(8) The victim was:

(a) A judge; juror or former juror; prospective, current, or former witness in an adjudicative proceeding; prosecuting attorney; deputy prosecuting attorney; defense attorney; a member of the indeterminate sentence review board; or a probation or parole officer; and

(b) The murder was related to the exercise of official duties performed or to be performed by the victim;

(9) The person committed the murder to conceal the commission of a crime or to protect or conceal the identity of any person committing a crime, including, but specifically not limited to, any attempt to avoid prosecution as a persistent offender as defined in RCW 9.94A.030;

(10) There was more than one victim and the murders were part of a common scheme or plan or the result of a single act of the person;

(11) The murder was committed in the course of, in furtherance of, or in immediate flight from one of the following crimes:

- (a) Robbery in the first or second degree;
- (b) Rape in the first or second degree;
- (c) Burglary in the first or second degree or residential burglary;
- (d) Kidnapping in the first degree; or
- (e) Arson in the first degree;

(12) The victim was regularly employed or self-employed as a news reporter and the murder was committed to obstruct or hinder the investigative, research, or reporting activities of the victim;

(13) At the time the person committed the murder, there existed a court order, issued in this or any other state, which prohibited the person from either contacting the victim, molesting the victim, or disturbing the peace of the victim, and the person had knowledge of the existence of that order;

(14) At the time the person committed the murder, the person and the victim were "family or household members" as that term is defined in RCW 10.99.020(1), and the person had previously engaged in a pattern or practice of three or more of the following crimes committed upon the victim within a five-year period, regardless of whether a conviction resulted:

- (a) Harassment as defined in RCW 9A.46.020; or
- (b) Any criminal assault.

Appendix D. Other Felony Sentencing Enhancements

As discussed in the body of this report, the legislature has enacted significant sentencing enhancements for crimes committed by persons in possession of a weapon. It has also adopted a number of other sentencing enhancement provisions. Sentencing enhancements other than those pertaining to weapons are described below. The information that appears below was taken from the 2016 Washington State Adult Sentencing Guidelines Manual.

Vehicular Homicide While Under the Influence of Intoxicating Liquor or Any Drug (RCW 9.94A.533(7))

- Enhancement duration of 24 months for each prior offense under RCW 46.61.5055 in a person's criminal history.
- These prior offenses used to enhance a sentence do not count towards the offender's score.
- The enhancement portion is subject to earned release time.
- The enhancement portion of the sentence shall be served in total confinement and shall run consecutive to all other sentencing provisions, including other impaired driving enhancements, for all offenses sentenced under this chapter.

Attempting to Elude a Police Vehicle (RCW 9.94A.533(11))

- Applies when the attempt to elude a police vehicle results in the threat of physical injury or harm to one or more persons other than the defendant or the pursuing law enforcement officer.
- Enhancement duration is 12 months and 1 day in addition to the presumptive sentence.
- In order to obtain the enhancement, the State must file a special allegation and a judge or jury must find that it occurred beyond a reasonable doubt.

Minor Child (RCW 9.94A.533(13))

- Applies to the following traffic offenses:
 - Vehicular Homicide While Under the Influence of Intoxicating Liquor or Any Drug;
 - Vehicular Assault While Under the Influence of Intoxicating Liquor or Any Drug;
 - Any Felony Driving Under the Influence; or
 - Felony Physical Control Under the Influence.
 - 12-month enhancement for each child passenger under 16 in the defendant's vehicle.

- Shall be served in total confinement and shall run consecutively to all other sentencing provisions.
- If the minor child enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion representing the enhancement may not be reduced.

Drug-Related Enhancements

Certain drug offenses are subject to enhancements when the offense takes place in a protected zone, in the presence of a child, or in a correctional facility.

Protected Zone (RCW 9.94A.533(6))

- Applies if an offender is sentenced for committing certain drug offenses committed in a protected zone:
 - Schools or school buses;
 - 1,000 feet of a school bus route or a school ground perimeter;
 - Public parks;
 - Public transit vehicles or public transit stops;
 - Civic centers designated as a drug-free zone by the governing authority or 1,000 feet of the perimeter of the facility, if the local governing authority specifically designates the 1,000 foot perimeter;
 - In a public housing project designated by a local governing authority as a drug-free zone.
- Enhancement duration of 24 months is added to the presumptive sentence and the maximum imprisonment and fine are doubled (RCW 69.50.406 offenses are excluded).

Presence of a Child (RCW 9.94A.533(6))

- Convicted of manufacture of methamphetamine or of the possession of ephedrine or pseudoephedrine with intent to manufacture; and
- There was a special allegation proven that a person under the age of 18 years old was present in or upon the premises.
- Enhancement duration is 24 months to the presumptive sentence.

Correctional Facility (RCW 9.94A.533(5))

- If an offender or accomplice committed certain violations of the VUCSA statute while in county or state correctional facility, an enhancement must be added to the presumptive range.
- 18-month enhancement for offenses under RCW 69.50.401(2)(a) or (b), 69.50.410:
 - Manufacture, Possess w/Intent to Deliver Heroin or Cocaine;

- Manufacture, Deliver, Possess with Intent to Deliver Schedule I or II Narcotics (Except Heroin or Cocaine) or Flunitrazepam from Schedule IV;
- Selling for Profit (Controlled or Counterfeit) Any Controlled Substance; Deliver or Possess with Intent to Deliver Methamphetamine;
- Manufacture of Methamphetamine; Manufacture, Deliver, Possess with Intent to Deliver Amphetamine.
- 15-month enhancement for offenses under RCW 69.50.401(c), (d) or (e):
 - Manufacture, Deliver, Possess with Intent to Deliver Schedule III-V Narcotics or Schedule I-V Nonnarcotic (Except Marijuana, Amphetamine, Methamphetamine or Flunitrazepam);
 - Manufacture, Deliver, Possess with Intent to Deliver Marijuana;
- 12-month enhancement for offenses under RCW 69.50.4013:
 - Possession of Controlled Substance that is either Heroin or Narcotics from Schedule I or II or Flunitrazepam from Schedule IV;
 - Possession of Phencyclidine (PCP);
 - Possession of a Controlled Substance that is a Narcotic from Schedule III-V or Nonnarcotic from Schedule I-V (Except Phencyclidine).

Sex Offense Enhancements

Sexual Conduct in Return for a Fee (RCW 9.94A.533(9))

- Rape of a Child or Child Molestation in exchange for a fee with the victim if committed after July 22, 2007.
- Duration of enhancement is 12 months.
- Anticipatory offenses receive the same enhancement as if completed.

Sexual Motivation (RCW 9.94A.533(8))

- This enhancement is applicable to any felony offense committed after July 1, 2006.
- Anticipatory offenses receive same enhancement as if completed.
- Enhancement duration:
 - Class A = 24 mos.;
 - Class B = 18 mos.;
 - Class C = 12 mos.
- Prior sexual motivation enhancements: if the offender has any prior sexual motivation enhancements after July 1, 2006, the subsequent sexual motivation enhancement duration is doubled.
- Enhancement served in total confinement.

- If the addition of a sexual motivation enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.
- Sex offense enhancements run consecutively to all other sentencing provisions.

Law Enforcement Enhancement

Applies in cases of assault of a law enforcement officer or other employee of a law enforcement agency (RCW 9.94A.533(12)).

- Any person found guilty of assaulting a law enforcement officer, or other employee of a law enforcement agency who was performing his or her duties at the time of the assault
- Duration of enhancement is 12 months.
- In order to obtain the enhancement, the State must file a special allegation and a judge or jury must find that it occurred beyond a reasonable doubt.

Criminal Street Gang-Related Enhancement

Applies in cases involving felony offenses involving the compensation, threatening, or solicitation of a minor in order to involve that minor in the commission of a felony offense (RCW 9.94A.533(10)).

- This enhancement increases the standard range sentence for the underlying crime.
- When the State files a special allegation and proves that a felony offense involved the compensation, threatening, or solicitation of a minor in order to involve that minor in the commission of the felony offense, the standard range for that felony is determined by multiplying the grid range by 125%. RCW 9.94A.533(10)(a).
- The enhancement does not apply to any criminal street gang-related felony for which involving a minor in the commission of the felony is already an element of the offense. RCW 9.94A.533(10)(b).
- This enhancement is unavailable in the event that the prosecution gives notice that it will seek an exceptional sentence based on an aggravating factor under RCW 9.94A.535.

Robbery of a Pharmacy Enhancement

The robbery of a pharmacy special enhancement applies to convictions for first- or second-degree robbery where a special allegation is pleaded and proven beyond a reasonable doubt that the defendant committed a robbery of a pharmacy. This enhancement adds an additional 12 months to the standard range (RCW 9.94A.533(14)).

Appendix E. Consecutive vs. Concurrent Sentences

RCW 9.94A.589 sets forth the rules regarding consecutive and concurrent sentences. Generally, sentences for multiple offenses set at one sentencing hearing are served concurrently unless there are two or more separate serious violent offenses or weapon offenses. In those cases, the sentences are served consecutively, unless an exceptional sentence is entered. (RCW 9.94A.589(1)(a)). The exceptions to this general rule are as follows:²³³

Offenses that Constitute Same Criminal Conduct

If the court enters a finding that some or all of the current offenses required the same criminal intent, were committed at the same time and place, and involved the same victim, the offenses are treated as one offense (RCW 9.94A.589(1)(a)). A departure from this rule requires an exceptional sentence (RCW 9.94A.535).

Multiple Serious Violent Offenses

In the case of two or more serious violent offenses arising from separate and distinct criminal conduct, the sentences for these serious violent offenses are served consecutively to each other and concurrently with any other sentences imposed for current offenses (RCW 9.94A.589(1)(b)). A departure from this rule requires an exceptional sentence (RCW 9.94A.535).

Certain Firearm-Related

In the case of a defendant convicted of Unlawful Possession of a Firearm in the First or Second Degree and for one or both of the crimes of Theft of a Firearm or Possession of a Stolen Firearm, the sentences for these crimes are served consecutively for each conviction of the felony crimes listed and for each firearm unlawfully possessed (RCW 9.94A.589(1)(c)). A departure from this rule requires an exceptional sentence (RCW 9.94A.535).

Felony DUI/Felony APC

All sentences imposed under RCW 46.61.502(6), RCW 46.61.504(6) and RCW 46.61.5055(4) are served consecutively to any sentences imposed under RCW 46.20.740 and RCW 46.20.750 (RCW 9.94A.589(1)(d)). Additionally, under RCW 46.20.740 and RCW 46.20.750, any sentences imposed under RCW 46.20.740 and RCW 46.20.750 shall be served consecutively to each other, as well as consecutively to RCW 46.61.502(6), RCW 46.61.504(6) or RCW 46.61.5055(4). Under RCW 46.20.750, any sentences imposed under RCW 46.20.750 shall be served consecutively

with any sentence imposed under RCW 46.61.520(1)(a) or RCW 46.61.522(1)(b). However, this is not codified under RCW 9.94A.589.

Weapon Enhancements

In the case of a defendant receiving a deadly weapon enhancement for offenses committed after July 23, 1995, the deadly weapon enhancement portion of the standard range is served consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements (RCW 9.94A.533). A departure from this rule requires an exceptional sentence (RCW 9.94A.535).

Felony Committed While Offender Was Under Sentence for Another Felony

Whenever a current offense is committed while the defendant is under sentence for a previous felony and the defendant was also sentenced for another term of imprisonment, the latter term may not begin until expiration 11 Part of Initiative 159. Effective for offenses committed after July 23, 1995 (RCW 9.41.040(6)) of all prior terms (RCW 9.94A.589(2)). A departure from this rule requires an exceptional sentence (RCW 9.94A.535).

Felonies Committed While Offender Was Not Under Sentence for Another Felony

This rule applies when defendants face multiple charges or have multiple convictions from different jurisdictions. Subject to the above policies, whenever a person is sentenced under a felony that was committed while the person was not under sentence for a felony, the sentence runs concurrently with felony sentences previously imposed by any court in this or another state or by a federal court, unless the court pronouncing the subsequent sentence expressly orders that they be served consecutively (RCW 9.94A.589(3)).

Probation Revocation

Whenever any person granted probation under RCW 9.95.210 or RCW 9.92.060, or both, has a probationary sentence revoked and a prison sentence imposed, this sentence runs consecutively to any sentence imposed, unless the court pronouncing the subsequent sentence expressly orders that they be served concurrently (RCW 9.94A.589(4)). This rule applies when pre-Sentencing Reform Act case probation is revoked and a defendant is also sentenced on a conviction for a crime committed after June 30, 1984, the inception date of the SRA.

Serving Total Confinement with Consecutive Sentences

In the case of consecutive sentences, all periods of total confinement must be served before any periods of partial confinement, community service, community supervision

or any other requirement or condition of a sentence (RCW 9.94A.589(5)). This rule applies to defendants who have not completed their sentence requirements from a previous conviction and are sentenced to total confinement on a new offense. A departure from this rule requires an exceptional sentence (RCW 9.94A.535).

Appendix F. Summary of Changes to Weighting of Prior Convictions in Offender Score Calculations

Table F1: Summary of Changes to Calculation of Offender Scores (RCW 9.94A525)		
Year	Substantive Focus	Impact on Offender Scores
1988	Vehicular Assault	Double-scored prior convictions for vehicular assault.
1989	Drug Offenses	Triple-scored prior drug convictions.
1992	Escape from Community Placement or Supervision	Classified as Level II offense. Prior escape convictions count in the offender score.
1992	Assault of a Child	Created new crimes for Assault of a Child (AOC): First Degree is Level XII offense and a serious violent offense; Second Degree is a Level IX offense and is a violent offense; Third Degree is a Level III offense and is a crime against a person. Created a 20-year minimum sentence for AOC I.
1995	Violent Offenses	If present offense is Murder 1 or 2, Assault 1, AOC 1, Kidnap 1, Homicide by Abuse and Rape 1, prior adult or juvenile convictions for these offenses are triple scored; if prior convictions are other violent crimes, they are double scored.
1995	Juvenile Serious Violent Crime	Counted prior juvenile convictions for serious violent crime in calculation of adult offender score.
1997	Juvenile Offenders	Struck provision counting juvenile offenses committed only if the defendant was 15 or older at the time of the offense; all juvenile crimes now included in the offender score. Struck provision counting multiple juvenile offenses pled or sentenced on the same date as one offense (violent offenses were excluded from this provision).
1999	Serious Violent Offenses	Expanded triple-scoring to include all serious violent felonies; also double scored juvenile convictions for serious violent felonies.
2002	Drug Offenses	Reverted to single-scoring for drug convictions unless they were violent drug crimes or the defendant has a prior sex or serious violent conviction.
2006	DUI	Classified 5 th felony DUI conviction in a 10-year period as a Class C felony. Prior DUI convictions occurring within 5 years of date of release (including from treatment) of date of conviction score. DUI prior offenses include Reckless Driving or Negligent Driving in the First Degree if either offense was amended from a DUI charge.
2006	Failure to Register – Sex Offenses	Defines second FTR as a sex offense subject to triple-scoring.
2007	DUI	Allocated one point for each adult and ½ point for each juvenile prior conviction for operation of a vessel while under the influence of intoxicating liquor or any drug.
2007	Auto Theft	Triple scored felony offenses involving vehicles; misdemeanor vehicle prowling counts as a point.
2010	Domestic Violence	Double-scored DV violation of no contact order, felony harassment DV, felony talking, Burglary 1 (DV), Kidnap 1 or 2 (DV), unlawful imprisonment DV, Robbery 1 or 2 DV, Assault 1, 2, or 3 DV, or Arson 1 or 2 DV. Added 1 point for juvenile felony DV convictions and 1 point for misdemeanor adult Assault 4 DV, court order violations (DV), misdemeanor harassment or stalking DV.
2011	Domestic Violence	Extended wash period to ten years for repeat DV offenses (now count in offender score). Wash period for Class C felonies extended from 5 to 10 years.
2013	DUI	Eradicated wash period for misdemeanor traffic offenses that count toward offender score.
2017	Domestic Violence	Makes third misdemeanor assault IV (DV) conviction a felony; double scored select prior adult DV convictions.

Appendix G. Sentencing Trends for All Washington State Felony Defendants, 1986-2015

As noted in the body of this report, average confinement sentence length has increased among Washington State felony defendants sentenced to prison and among all felony defendants (some of whom are sentenced to jail or probation). As shown in the body of this report, the average sentence length of felony defendants sentenced to prison has increased notably. Table G1 shows the degree to which average sentence length increased among *all* felony defendants.

Table G1. Change in Average Sentence Length for all Felony Defendants (in Months), by Offense Category, 1986-2016				
	Average Sentence 1986	Average Sentence 2016	Percent Increase	Absolute Increase
Drug	4	9	125%	5
Property	5	15	200%	10
Public Order	6	24	300%	18
Violent	32	42	31%	10

Appendix H. Most Common Offenses in Each Offense Category

Table H1. Most Common Offenses in Each Offense Category, 1986-2015	
Offense Category	Most Common Offenses
Drug Offenses	Drug Possession, Drug Delivery, Drug Manufacturing
Property Offenses	Burglary 1, Burglary 2, Residential Burglary, Theft 1, Theft 2, Other Theft, Arson 1, Arson 2
Public Order Offenses	Weapons violations (e.g., Delivery of Firearms to Ineligible Person, Unlawful Possession of a Firearm, Possession of a Stolen Firearm)
Violent Offenses	Aggravated Murder, Homicide 1, Homicide 2, Other Homicide, Assault 1, Assault 2, Assault 3, Other Assault, Manslaughter 1, Manslaughter 2, Rape 1, Rape 2, Rape 3, Robbery 1, Robbery 2

Appendix I. Change in Trial Penalty Over Time

Table I1. Data Used in Calculations Shown in Table 3: Increase in Average Sentences				
		Trial	Plea	Trial Penalty
Homicide 1	1986-88 Average Sentence (months)	344	308	36
	2015-17 Average Sentence (months)	521	346	175
	Change in Average Sentence (months)	177	38	139
	Percent Increase in Sentence	51%	12%	383%
Homicide 2	1986-88 Average Sentence (months)	196	160	36
	2015-17 Average Sentence (months)	336	226	110
	Change in Average Sentence (months)	140	66	74
	Percent Increase in Sentence	71%	41%	205%
Rape 1	1986-88 Average Sentence (months)	99	68	31
	2015-17 Average Sentence (months)	272	156	116
	Change in Average Sentence (months)	174	88	85
	Percent Increase in Sentence	176%	131%	274%
Rape 2	1986-88 Average Sentence (months)	40	34	6
	2015-17 Average Sentence (months)	159	132	28
	Change in Average Sentence (months)	120	98	22
	Percent Increase in Sentence	299%	286%	372%
Assault 1	1986-88 Average Sentence (months)	122	106	16
	2015-17 Average Sentence (months)	341	163	178
	Change in Average Sentence (months)	219	57	161
	Percent Increase in Sentence	179%	54%	998%
Assault 2	1986-88 Average Sentence (months)	26	20	6
	2015-17 Average Sentence (months)	67	33	34
	Change in Average Sentence (months)	42	13	28
	Percent Increase in Sentence	163%	69%	467%
Robbery 1	1986-88 Average Sentence (months)	79	62	17
	2015-17 Average Sentence (months)	171	71	100
	Change in Average Sentence (months)	91	9	82
	Percent Increase in Sentence	115%	14%	480%
Robbery 2	1986-88 Average Sentence (months)	25	22	3
	2015-17 Average Sentence (months)	47	29	18
	Change in Average Sentence (months)	22	7	16
	Percent Increase in Sentence	89%	31%	532%

Table I2. Change in Trial Penalty by Specific Offense and Offender Score, 1986-1988 vs. 2015-2017

	Offender Score	Average Sentence: Trial		Average Sentence: Plea		Trial Penalty		N
		Change in Months	Percent Change	Change in Months	Percent Change	Change in Months	Percent Change	
Homicide 1	0	129	42%	30	11%	98	4,923%	108
Homicide 2	0	156	101%	61	46%	95	4,740%	148
Rape 1	0	26	42%	62	147%	-36	-1,784%	172
	3	18	20%	3	3%	15	746%	111
	9	49	14%	106	56%	-58	2,884%	67
Rape 2	0	63	241%	61	279%	1.4	83%	137
	3	46	69%	56	122%	-10	-519%	54
Robbery 1	0	-6	-14%	-5	-12%	-2	-65%	310
	1	-16	-31%	-5	-11%	-11	-545%	124
	2	13	22%	-2	-4%	15	758%	188
	3	-12	-17%	-9	-15%	-3	-137%	122
	4	12	17%	-2	-3%	14	709%	117
	5	8	11%	-7	-10%	15	810%	72
	6	17	15%	-14	-15%	31	1,547%	93
	7	186	141%	-9	-8%	195	9,749%	59
	8	-1	-1%	-6	-4%	5	209%	56
	9	76	41%	0	0%	77	3,827%	136
Robbery 2	2	0	-2%	1	5%	-1	294%	181
	6	-10	-23%	1	2%	-10	-494%	58
	9	-4	-6%	-2	-3%	-2	-71%	85
Assault 1	0	96	132%	49	71%	47	2,376%	90
Assault 2	0	14	61%	11	56%	3	164%	272
	1	-7.6	-29%	2	10%	-9	-461%	153
	2	17	74%	1	7%	16	818%	338
	3	26	153%	1	7%	25	1,122%	209
	4	-6	-20%	2	8%	-8	-393%	189
	5	-10	-26%	-2	-7%	-8	-388%	88
	6	76	152%	8	21%	68	3,407%	79

Note: Categories of offense type and offender score presented here include cases 1986-1988 and 2015-2017 for years in which there were 50 or more cases and at least one case adjudicated by plea and at least one case was adjudicated by trial for both time periods.

ENDNOTES

¹ The 35 member-countries of the Organization for Economic Co-operation and Development (OECD) include those with the most advanced economies as well as a number of countries with important emerging economies. For more information, see <http://www.oecd.org/about/>.

² *One in 100: Behind Bars in America*. Philadelphia, PA: The PEW Charitable Trusts, February 2008. <https://www.pewtrusts.org/en/research-and-analysis/reports/2008/02/28/one-in-100-behind-bars-in-america-2008>. Total incarceration rates include people confined in local jails as well as state and federal prisons.

³ The comparison group here includes OECD member states. Incarceration rates taken from Roy Walmsley. *World Population List, 12th Edition*. World Prison Brief. London: Institute for Prison Policy Research, September 2018. https://www.prisonstudies.org/sites/default/files/resources/downloads/wppl_12.pdf. Rates are calculated per 100,000 residents.

⁴ Walmsley, *World Population List, 12th Edition*.

⁵ Walmsley, *World Population List, 12th Edition*.

⁶ *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>. According to the DOC, 16,705 of the state's imprisoned population were living in state prisons, 647 were in work release facilities, 43 were in in-state rented prison beds, and 1,721 were in (non-prison) rented beds in Washington State as of September 2019.

⁷ 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.

⁸ The 35 member-countries of the Organization for Economic Co-operation and Development (OECD) include those with the most advanced economies as well as a number of countries with important emerging economies. For more information, see <http://www.oecd.org/about/>.

⁹ Washington State and federal prisoners as well as jail inmates are included in the calculations that result in these rankings (when federal prisoners confined in Washington State are included, the state's incarceration rate rises from 410 to 482 per 100,000 residents for 2015). If federal prisoners are excluded from the calculation of Washington State's total incarceration rate, seven additional countries now have higher incarceration rates than Washington State.

International data are for 2016-17 and were taken from Walmsley, *World Population List*, 12th Edition.

¹⁰ Mary Cowhig, and Danielle Kaeble. *Correctional Populations in the United States, 2016*. Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, April 2018.

<https://www.bjs.gov/content/pub/pdf/cpus16.pdf>. Correctional supervision includes incarceration or various forms of community supervision such as probation and post-release supervision.

¹¹ Todd Clear, and James Austin. “Reducing Mass Incarceration: Implications of the Iron Law of Prison Populations.” *Harvard Law & Policy Review* 3, no. 2 (Summer 2009): 307–24.

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 The share of reported crimes and arrests that result in a felony filing and prison admission also increased notably (see Appendix A).

¹⁴ Calculations based on data accessed through the Washington State Statistical Analysis Center, *Criminal Justice Data Book*, available at <http://wa-state-ofm.us/CrimeStatsOnline/index.cfm>.

¹⁵ Experts predict that the number of people housed in the state’s prisons and work release facilities will increase 2.2 percent by 2021. Washington Caseload Forecasting Council, Adult Inmate Forecast, December 2018. Downloaded from: https://www.cfc.wa.gov/CriminalJustice_ADU_INM.htm.

¹⁶ *State Expenditure Report, Fiscal Years 2016-2018*, 62 and 64.

¹⁷ *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>.

¹⁸ Michael Tonry. *Sentencing Fragments: Penal Reform in America, 1975-2025*. New York, NY: Oxford University Press, 2016. Also see Jorge Renaud. *Eight Keys to Mercy: How to Shorten Excessive Prison Sentences*. London: Prison Policy Initiative, November 2018. <https://www.prisonpolicy.org/reports/longsentences.html>, showing that the number of state prisoners who had been behind bars for at least ten years tripled from 1999 and 2015. By 2015, one in six state prisoners had been locked up for ten or more years.

¹⁹ Tonry, *Sentencing Fragments*, 27 and 29.

²⁰ Soo-Ryun Kwon, Amanda Solter, and Dana Marie Isaac. *Cruel and Unusual: U.S. Sentencing Practices in a Global Context*. San Francisco, CA: University of San Francisco School of Law’s Center for Law and Global Justice, May 2012. <https://www.usfca.edu/sites/default/files/law/cruel-and-unusual.pdf>, 25.

²¹ Kwon, Solter, and Isaac, “Cruel and Unusual.”

²² Catherine Appleton, and Bent Grøver. “The Pros and Cons of Life Without Parole.” *The British Journal of Criminology* 47, no. 4 (July 2007): 597–615.

²³ Mark Mauer, and Ashley Nellis. *The Meaning of Life: The Case for Abolishing Life Sentences*. New York: The New Press, 2019.

²⁴ Calculations based on data from *Facts about Individuals in Confinement*, Washington State Department of Corrections.

²⁵ Department of Corrections data provided by *Data Analytics*; on file with the authors. These figures are for 2015; the current number is likely notably higher, as the courts imposed another 50 virtual life sentences in 2016 and the first half of 2017 and presumably more since that time. These figures also do not include the many other prisoners who are serving life sentences *with* the possibility of parole. As of 2019, 13 percent of Washington State prisoners have a maximum sentence of life in prison with the possibility of release. Also see *Facts about Individuals in Confinement*, Washington State Department of Corrections.

²⁶ 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>.

²⁷ The FBI’s Uniform Crime Report crime data include crimes known to the police. For more information, see *The Nation’s Two Crime Measures: Uniform Crime Report 2017*. Washington, D.C.: U.S. Department of Justice, Federal Bureau of Investigation, Fall 2018. <https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/topic-pages/nations-two-crime-measures>.

²⁸ See Figure 7 of this report. The criminal justice system’s response to criminal behavior has intensified in other ways as well. In particular, felony arrests have become more likely to trigger a felony filing and prison admission than was previously the case (see Appendix A).

²⁹ *Facts about Individuals in Confinement*, Washington State Department of Corrections. These figures include those serving life with and without parole.

³⁰ Anthony Doob, and Cheryl Marie Webster. “Countering Punitiveness: Understanding Stability in Canada’s Imprisonment.” *Law & Society Review* 40, no. 2 (June 2006): 325–67; Michael Tonry, and David P. Farrington. “Punishment and Crime Across Time and Space.” *Crime and Justice* 33 (2005): 1–39. Franklin E. Zimring. *The Great American Crime Decline*. New York: Oxford University Press, 2007.

³¹ *Prisons and Crime: A Complex Link*. Washington D.C.: Public Safety Performance Project, PEW Charitable Trust, 2014. https://www.pewtrusts.org/~media/assets/2014/09/pspp_crime_webgraphic.pdf?la=it. See also Magnus Lofstrom, and Steven Raphael. “Prison Downsizing and Public Safety: Evidence from California.” *Criminology and Public Policy* 15, no. 2 (2016): 349–65.; Magnus Lofstrom, and Steven Raphael. “Incarceration and Crime: Evidence from California’s Public Safety Realignment Reform.” *The ANNALS of the American Academy of Political and Social Science* 664, no. 1 (March 1, 2016): 196–220.; Jody Sundt, Emily J Salisbury, and Mark G Harmon. “Is Downsizing Prisons Dangerous?” *Criminology & Public Policy* 15, no. 2 (2016): 315–41.

³² National Research Council. *The Growth of Incarceration in the United States: Exploring Causes and Consequences*. Edited by Jeremy Travis, Bruce Western, and Steve Redburn. Washington, D.C.: The National Academies Press, 2014. <https://doi.org/10.17226/18613>, 155-6.

³³ The U.S. Sentencing Commission uses a threshold of 470 months for identifying virtual life sentences. This threshold is based on analysis of the average number of years between admission and death for inmates sentenced to life in prison. Schmitt, Glenn R., and Hyun J. Konfrst. *Life Sentences in the Federal Justice System*. Washington, D.C.: United States Sentencing Commission, February 2015. https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/miscellaneous/20150226_Life_Sentences.pdf, endnote 52. For ease of translation, we used a 480 month (40 year) threshold to identify virtual life sentences.

³⁴ David Boerner, and Roxanne Lieb. "Sentencing Reform in the Other Washington." *Crime and Justice* 28 (2001): 71-136.

³⁵ Boerner and Lieb, "Sentencing Reform in the Other Washington."

³⁶ Boerner and Lieb, "Sentencing Reform in the Other Washington," 73-74.

³⁷ National Research Council, *The Growth of Incarceration in the United States*.

³⁸ Political support for incapacitation rather than rehabilitation did not wane even after the author of the primary study used to discredit rehabilitative programs retracted his previous assertion that rehabilitative programs failed to reduce recidivism. See Robert Martinson. "New Findings, New Views: A Note of Caution Regarding Sentencing Reform." *Hofstra Law Review* 7, no. 2 (Winter 1979). <https://scholarlycommons.law.hofstra.edu/hlr/vol7/iss2/1>.

³⁹ Boerner and Lieb, "Sentencing Reform in the Other Washington."

⁴⁰ Boerner and Lieb, "Sentencing Reform in the Other Washington," 84.

⁴¹ Boerner and Lieb, "Sentencing Reform in the Other Washington." More generally, see Emily Bazelon. *Charged: The New Movement to Transform American Prosecution and End Mass Incarceration*. New York: Penguin Random House, 2019.

⁴² Boerner and Lieb, "Sentencing Reform in the Other Washington."

⁴³ Under Senate Bill 62 (enacted in 1951), "the Board of Prison Terms and Paroles is hereby granted authority to parole any person sentenced to the penitentiary or the reformatory, under a mandatory life sentence, who has been continuously confined therein for a period of twenty consecutive years less earned good time." This measure was overturned by Initiative 316 (1975), which mandated that the death penalty be the sentence for aggravated murder convictions, or if the death penalty is unavailable, then LWOP sentences must be imposed.

⁴⁴ *Sentenced to Death: A Report on Washington Supreme Court Rulings in Capital Cases*. Seattle, WA: American Civil Liberties Union of Washington State, February 2001. <https://www.aclu-wa.org/docs/sentenced-death-report-washington-supreme-court-rulings-capital-cases>.

⁴⁵ "Death Penalty--Aggravated Murder," Washington Laws 1975-76, 2nd Exec. Session. Washington Criminal Code § 9A.32 RCW Chapter 9 (1975), p. 18. <http://leg.wa.gov/CodeReviser/documents/sessionlaw/1976pam1.pdf>.

⁴⁶ *Sentenced to Death*, ACLU of Washington.

⁴⁷ A minority of people convicted of non-aggravated first-degree homicide do receive LWOP. This can happen either as a result of a “third-strike” conviction under the Persistent Offender Accountability Act or as a result of the imposition of consecutive sentences and/or weapons enhancements that result in a virtual LWOP sentence.

⁴⁸ On October 11, 2018, the Washington State Supreme Court invalidated Washington’s death penalty statute in its ruling in *State of Washington v. Gregory* (427 P.3d 621 (2018)). As a result, although the death penalty statute remains on the books as of the summer of 2019, aggravated murder convictions cannot result in a sentence of death and must result in the imposition of an LWOP sentence.

⁴⁹ Close custody is a security classification that falls between maximum and medium security. See <https://www.doc.wa.gov/information/definitions.htm>.

⁵⁰ Mr. Bourgeois was released from prison in November of 2019 after serving approximately 27 years in prison.

⁵¹ Liz Jones. “Time Served: Do Prison Lifers Deserve Another Chance?” Seattle, WA: *KUOW 94.9 FM*, April 16, 2012. <http://www3.kuow.org/program.php?id=26496>.

⁵² Sara Jean Green. “Bowman Guilty of 1st-Degree Murder in Wine Steward’s Slaying.” *Seattle Times*. December 11, 2014. <http://blogs.seattletimes.com/today/2014/12/bowman-guilty-of-1st-degree-murder-in-wine-stewards-slaying/>.

⁵³ Sara Jean Green. “Judge Unmoved by Shooter; Gives Bowman 29 Year Sentence.” *Seattle Times*. January 2, 2015. <https://www.seattletimes.com/seattle-news/judge-unmoved-by-shooter-gives-bowman-29-year-sentence/>.

⁵⁴ These records were accessed and reviewed through the King County Electronic Records System on April 27, 2018. <https://www.kingcounty.gov/courts/clerk/access-records/ECR-online.aspx>.

⁵⁵ Jennifer Sullivan. “Court: Ex-Girlfriend Decries ‘Maniac’ Who Killed Her Mother.” *Seattle Times*. August 28, 2015. <https://www.seattletimes.com/seattle-news/crime/26-year-sentence-for-seattle-man-who-killed-ex-girlfriends-mother/>.

⁵⁶ As a result of the Supreme Court’s ruling in *Miller v. Alabama* (132 S.Ct. 2455 (2012)), people who were convicted of aggravated murder and sentenced to LWOP for a crime they committed while under the age of 18 now have the right to be considered for release by the ISRB, although this was not the case when prosecutors elected to charge the 14 year old with aggravated murder. Mr. Bourgeois’ petition for release was denied by the ISRB in 2017.

⁵⁷ Boerner and Lieb. “Sentencing Reform in the Other Washington.”

⁵⁸ *20 Years in Sentencing: A Look at Washington State Adult Felony Sentencing, Fiscal Years 1989-2008*. Olympia, WA: Washington State Sentencing Guidelines Commission, December 2010. https://sgc.wa.gov/sites/default/files/public/SGC/publications/twenty_years_in_sente_ncing.pdf, 22.

⁵⁹ Melissa Lee. *Washington’s Three Strikes Law: Public Safety & Cost Implications of Life without Parole*. Seattle, WA: Columbia Legal Services, January 25, 2010.

https://columbialegal.org/wp-content/uploads/2019/03/CLS-Report_Washingtons-Three-Strikes-Law.pdf.

⁶⁰ Boerner and Lieb, “Sentencing Reform in the Other Washington,” 105.

⁶¹ Lee, “Washington’s Three Strikes Law,” 3.

⁶² For a complete list of strike-able offenses, see RCW 9.94A.030(33).

⁶³ Lee, “Washington’s Three Strikes Law,” 17.

⁶⁴ James Austin, Patricia Hardyman, John Clark, and D. Alan Henry. *Three Strikes and You’re Out: The Implementation and Impact of Strike Laws*. Rockville, MD: U.S. Department of Justice, National Institute of Justice, 1999.

<https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=181297>.; see also Eric Lotke, Jason Colburn, and Vincent Schiraldi. *Three Strikes and You’re Out: An Examination of the Impact of 3-Strike Laws 10 Years After Their Enactment*. Washington, D.C.: Justice Policy Institute, September 10, 2004.

<http://www.justicepolicy.org/research/2024>.

⁶⁵ Tomislav V. Kovandzic, John J. Sloan, and Lynne M. Vieraitis. “‘Striking out’ as Crime Reduction Policy: The Impact of ‘Three Strikes’ Laws on Crime Rates in U.S. Cities.” *Justice Quarterly* 21, no. 2 (June 1, 2004), 234.

⁶⁶ Marc Mauer. “The Impact of Mandatory Minimum Penalties in Federal Sentencing Viewpoint.” *Judicature* 94, no. 1 (2011 2010): 6–40; Don Stemen. *Reconsidering Incarceration: New Directions for Reducing Crime*. Brooklyn, NY: Vera Institute of Justice, January 2007.

https://www.vera.org/downloads/Publications/reconsidering-incarceration-new-directions-for-reducing-crime/legacy_downloads/veraincarc_vFW2.pdf; Kovandzic, Sloan and Vieraitis, “‘Striking out’ as Crime Reduction Policy.”; Ram Subramanian, and Ruth Delaney. *Playbook for Change? States Reconsider Mandatory Sentences*. Brooklyn, NY: Vera Institute of Justice,

2014. <https://www.vera.org/publications/playbook-for-change-states-reconsider-mandatory-sentences>; Michael Tonry. “The Mostly Unintended Effects of Mandatory Penalties: Two Centuries of Consistent Findings.” *Crime & Justice* 38, no. 1 (2009): 65–114.

⁶⁷ Tonry, “The Mostly Unintended Effects of Mandatory Penalties,” 65.

⁶⁸ Analysis of records included in the National Registry of Exonerations as of July 16, 2018 indicate that 398 of the 2,246 (17.7 percent) of registered exonerations involved cases in which defendants plead guilty, presumably for fear of the consequences of being convicted at trial. The registry may be accessed at <http://www.law.umich.edu/special/exoneration/Pages/detailist.aspx>.

⁶⁹ Jed S. Rakoff. “Why Innocent People Plead Guilty.” *The New York Review of Books*, November 20, 2014. <https://www.nybooks.com/articles/2014/11/20/why-innocent-people-plead-guilty/>. Judge Rakoff is an Adjunct Professor in the Columbia Law School and serves as a federal judge for the Southern District of New York. For more information, see <https://www.law.columbia.edu/faculty/jed-rakoff>.

⁷⁰ These offenses include: A serious violent felony (Murder 1 or 2, Manslaughter 1, Assault 1, Kidnapping 1, and Rape 1); a violent felony with a criminal history of one or more serious violent felonies; a violent felony with a criminal history of two or

more violent felonies; a violent felony with a criminal history of three or more Class A felonies, Class B felonies, Vehicular Assault, or Manslaughter 2 committed after the 13th birthday and prosecuted separately. See Elizabeth Drake. *The Effectiveness of Declining Juvenile Court Jurisdiction of Youthful Offenders*. Olympia, WA: Washington State Institute for Public Policy, December 2013. <https://www.wsipp.wa.gov/ReportFile/1544/Wsipp-The-Effectiveness-of-Declining-Juvenile-Court-Jurisdiction-of-Youth-Report.pdf>.

⁷¹ These include: Robbery 1, Rape of a child 1, Drive-by shooting, Burglary 1 (with a criminal history of any prior felony or misdemeanor), or any violent felony involving a deadly weapon. See Drake, *The Effectiveness of Declining Juvenile Court Jurisdiction*.

⁷² Drake, *The Effectiveness of Declining Juvenile Court Jurisdiction*.

⁷³ Richard E. Redding. "The Effects of Adjudicating and Sentencing Juveniles As Adults: Research and Policy Implications." *Youth Violence and Juvenile Justice* 1, no. 2 (April 1, 2003), 139.

⁷⁴ Justice-involved youth (as well as adults) have experienced comparatively high levels of childhood trauma. Vincent Schiraldi, and Lael Chester. *Public Safety and Emerging Adults in Connecticut: Providing Effective and Developmentally Appropriate Responses for Youth Under Age 21*. Cambridge, MA: Harvard Kennedy School, Malcolm Weiner Center for Social Policy, Harvard University, 2016. <https://www.hks.harvard.edu/centers/wiener/programs/criminaljustice/research-publications/young-adult-justice/public-safety-and-emerging-adults-in-connecticut>; Erica J. Adams. *Healing Invisible Wounds: Why Investing in Trauma-Informed Care for Children Makes Sense*. Washington, D.C.: Justice Policy Institute, July 2010. <http://www.justicepolicy.org/research/1913>; Bruce Western. "Lifetimes of Violence in a Sample of Released Prisoners." *The Russell Sage Foundation Journal of the Social Sciences* 1, no. 2 (2015): 14–30.

⁷⁵ Engrossed Second Substitute Senate Bill 6160, available at <http://lawfilesexternal.wa.gov/biennium/2017-18/Pdf/Bills/Senate%20Passed%20Legislature/6160-S2.PL.pdf>.

⁷⁶ Sara Jean Green. "Seismic Shift: New Law Will Reduce Number of Juveniles Sent to Adult Court in Washington State." *Seattle Times*. April 2, 2018. <https://www.seattletimes.com/seattle-news/crime/seismic-shift-new-law-will-reduce-number-of-juveniles-sent-to-adult-court-in-washington/>.

⁷⁷ Jens Ludwig. "Better Gun Enforcement, Less Crime." *Criminology & Public Policy* 4, no. 4 (2005): 677–716.

⁷⁸ National Research Council, *The Growth of Incarceration in the United States*; Tonry, "The Mostly Unintended Effects of Mandatory Penalties."; Daniel S. Nagin. "Deterrence in the Twenty-First Century." *Crime and Justice* 42, no. 1 (2013): 199–263.

⁷⁹ Nagin, "Deterrence in the Twenty-First Century."

⁸⁰ National Research Council, *The Growth of Incarceration in the United States*.

⁸¹ National Research Council, *The Growth of Incarceration in the United States*, 192.

⁸² Ilyana Kuziemko. “How Should Inmates Be Released from Prison? An Assessment of Parole Versus Fixed-Sentence Regimes.” *The Quarterly Journal of Economics* 128, no. 1 (2013): 371–424.

⁸³ Boerner and Lieb, “Sentencing Reform in the Other Washington,” 84.

⁸⁴ Washington State Department of Corrections Policy 350.100, “Mandatory Minimum Terms,” RCW 9.94A.540.

<https://app.leg.wa.gov/RCW/default.aspx?cite=9.94A.540>. For example, a person convicted of murder in the first degree cannot earn any time off of the first mandatory twenty years of their sentence. If that person received a low-range sentence of 320 months for this offense, he or she would be eligible to earn just 10 percent off of the final 80 months of the confinement sentence, for a total of 8 months off of a twenty-six-year sentence.

⁸⁵ Drake, Barnoski, and Aos, *Increased Earned Release from Prison*.

⁸⁶ Jordan Schrader. “How Inmates Earn Time Off Their Sentences.” *The News Tribune*. January 19, 2016. <https://www-1.thenewstribune.com/news/politics-government/article55517495.html>.

⁸⁷ Other research suggests that time served by Washington State prisoners increased modestly for people convicted of violent and drug offenses, but declined for those convicted of property crimes, from 1986 to 2002 (see Drake, Barnoski and Aos, *Increasing Earned Release from Prison*, 5). However, these findings rest on an analysis of time served by prisoners who were released during this time frame and exclude those who were not released. Because it excludes those who remain in prison, this observational method is known to produce significant underestimates of actual time served. See Evelyn J. Patterson, and Samuel H. Preston. “Estimating Mean Length of Stay in Prison: Methods and Applications.” *Journal of Quantitative Criminology* 24, no. 1 (March 1, 2008): 33–49.

⁸⁸ Confinement sentences also increased notably for felony defendants sentenced to jail. See Appendix G for data regarding total confinement sentence length increases for felony defendants sentenced to both jail and prison.

⁸⁹ There was some increase in the number of crimes reported to the police through this period. However, the state population was growing much more rapidly than the number of reported crimes; this is why the crime rate dramatically fell even as the number of reported crimes increased slightly.

⁹⁰ Adams, *Healing Invisible Wounds*.

⁹¹ Adams, *Healing Invisible Wounds*.

⁹² *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>.

⁹³ Ashley Nellis. *Life Goes On: The Historic Rise in Life Sentences in America*. Washington, D.C.: The Sentencing Project, December 2013.

<https://www.sentencingproject.org/wp-content/uploads/2015/12/Life-Goes-On.pdf>, Table H.

⁹⁴ DOC data for June 30, 2015 (on file with the author). Our analyses indicate that another 50 virtual life sentences were imposed in 2016 and the first half of 2017.

⁹⁵ On the impact of age on recidivism, see David P. Farrington. “Developmental and Life-Course Criminology: Key Theoretical and Empirical Issues.” *Criminology* 41, no. 2 (2003): 221–56; see also National Research Council, *The Growth of Incarceration in the United States*; For information about the cost of incarcerating the elderly, see B. Jaye Anno, Camila Graham, James E. Lawrence, and Ronald Shansky. *Correctional Health Care: Addressing the Needs of Elderly, Chronically Ill, and Terminally Ill Inmates*. Washington, D.C.: U.S. Department of Justice, National Institute of Corrections, 2004. <https://nicic.gov/correctional-health-care-addressing-needs-elderly-chronically-ill-and-terminally-ill-inmates>; Ruth Delaney, and Christian Henrichson. *The Price of Prisons: What Incarceration Costs Taxpayers*. Brooklyn, NY: Vera Institute of Justice, 2012. <https://www.vera.org/publications/price-of-prisons-what-incarceration-costs-taxpayers>.

⁹⁶ These costs stem primarily from the expense associated with providing medical care in secured environments. See Anno, et al., *Correctional Health Care*.

⁹⁷ The transfer of youth into the adult system also fueled this trend. According to a study by the Washington State Institute for Public Policy (WSIPP), about 1,300 Washington youth were convicted in the adult system under the automatic decline law between 1994 and 2012. See Drake, *The Effectiveness of Declining Juvenile Court Jurisdiction*. Given the severity of the crimes that trigger this statute, many of these youths likely received long, very long or life sentences. However, because our data do not identify such youths, we are unable to quantify the impact of this statute.

⁹⁸ On October 11, 2018, the Washington State Supreme Court invalidated Washington’s death penalty in *State of Washington v. Gregory* (427 P.3d 621 (2018)). As a result, aggravated murder convictions may not result in a death sentence and must result on the imposition of an LWOP sentence.

⁹⁹ In April of 2019, Governor Jay Inslee signed Senate Bill 5288 into law. This bill removed Robbery in the 2nd degree from the list of offenses that count as a strike under the POAA. Although the original version of the legislation made the bill retroactive, legislators removed that provision at the urging of the Washington Prosecuting Attorneys Association. As a result, an estimated 62 people will be left in prison to serve their life without parole sentences for a crime that often does not result in any bodily injury and is no longer defined as a strike-able offense under state statute. See Tom James. “Lifer Inmates Excluded from Washington ‘3 Strikes’ Change.” *Seattle Times*. May 20, 2019. <https://www.seattletimes.com/seattle-news/its-just-wrong-3-strikes-sentencing-reform-leaves-out-62-washington-state-inmates/>.

¹⁰⁰ In these calculations, we exclude the seven cases in which the third strike offense was aggravated murder, because LWOP would have been imposed even if the defendant had not been sentenced under the Persistent Offender Accountability Act.

¹⁰¹ Department of Corrections data provided by *Data Analytics*; on file with the authors.

¹⁰² We used the following method to perform these calculations. First, we determined the average offender score and sentence length for people sentenced at each SRA level in 1986. Using the date-relevant sentencing grid, we then imputed the 1986 average sentence length corresponding to 1986 offender scores and SRA levels. For crimes committed between July 1, 1990 through July 26, 1997, we adjusted our calculations to incorporate SRA level 15; for crimes committed after July 24, 1999 we adjusted our calculations to incorporate SRA level 16. For cases sentenced under drug sentencing grids, we imputed the relevant average sentence length for the corresponding SRA level and offender score using drug sentencing grid A. This method assumes that weapons enhancements would have remained constant and that individuals sentenced after 1995 would have still received LWOP for a third- or second-strike offense.

¹⁰³ Mona Pauline Lynch. *Hard Bargains: The Coercive Power of Drug Laws in Federal Court*. New York: Russell Sage Foundation, 2016; Richard A. Oppel. "Tough Sentences Help Prosecutors Push for Plea Bargains." *The New York Times*, September 25, 2011. <https://www.nytimes.com/2011/09/26/us/tough-sentences-help-prosecutors-push-for-plea-bargains.html>; Rakoff, "Why Innocent People Plead Guilty."; Benjamin Weiser. "Trial by Jury, a Hallowed American Right, Is Vanishing." *The New York Times*, August 7, 2016. <https://www.nytimes.com/2016/08/08/nyregion/jury-trials-vanish-and-justice-is-served-behind-closed-doors.html>.

¹⁰⁴ Lynch, *Hard Bargains*.

¹⁰⁵ R. Schauffler, R. LaFountain, S. Strickland, K. Holt, and K. Genthon, eds. *Court Statistics Project DataViewer*, accessed February 9, 2018, <http://courtstatistics.org/>.

¹⁰⁶ *State Expenditures Report, 2017*. Washington, D.C.: National Association of State Budget Officers, 2019. <https://www.nasbo.org/reports-data/state-expenditure-report>, Table 32.

¹⁰⁷ According to the DOC, capacity in June 2018 was 18,977, but the average daily prison population included 19,802 people. See *Average Daily Population of Incarcerated Individuals, Fiscal Year 2018*. Washington State Department of Corrections, June 2018. <https://www.doc.wa.gov/docs/publications/reports/400-RE002-1806.pdf> (retrieved May 7, 2019).

¹⁰⁸ Nazgol Ghandnoosh. *Can We Wait 75 Years to Cut the Prison Population in Half?*, 3.

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¹¹⁰ Katherine Beckett, Anna Reosti, and Emily Knaphus. "The End of an Era? Understanding the Contradictions of Criminal Justice Reform." *The ANNALS of the American Academy of Political and Social Science* 664, no. 1 (March 1, 2016): 238–59.

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- ¹¹³ National Research Council, *The Growth of Incarceration in the United States*, 101-2.
- ¹¹⁴ Doob and Webster. "Countering Punitiveness."; Tonry and Farrington, "Punishment and Crime Across Time and Space."; Zimring, *The Great American Crime Decline*.
- ¹¹⁵ *Prisons and Crime: A Complex Link*, PEW Charitable Trust. See also Magnus Lofstrom, and Steven Raphael. "Prison Downsizing and Public Safety." *Criminology & Public Policy* 15, no. 2 (2016): 349–65; Magnus Lofstrom, and Steven Raphael. "Incarceration and Crime: Evidence from California's Public Safety Realignment Reform." *The ANNALS of the American Academy of Political and Social Science* 664, no. 1 (March 1, 2016): 196–220; Sundt, Salisbury, and Harmon, "Is Downsizing Prisons Dangerous?"
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- ¹¹⁸ National Research Council, *The Growth of Incarceration in the United States*, 155.
- ¹¹⁹ Nagin, "Deterrence in the twenty-first century," 199.
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- ¹²² Farrington, "Developmental and Life-Course Criminology."
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- ¹²⁴ National Research Council, *The Growth of Incarceration in the United States*, 155-6.

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¹²⁶ E. Ann Carson, and William J Sabol. *Aging of the State Prison Population, 1993-2013*. Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, May 2016.

<https://www.bjs.gov/content/pub/pdf/aspp9313.pdf>. According to the National Institute of Corrections, prisoners aged 50 and older are likely to have a “physiological age” that is 10 to 15 years greater than their chronological age. This is because the stresses of life behind bars (including separation from family and friends, physical confinement, poor healthcare, and the threat of victimization) combined with the lack of access to healthcare and healthy lifestyles before imprisonment exacerbate the risk of physical and mental illness and accelerate the aging process. Also see Anno et al., *Correctional Health Care*.

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<https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/>. Although Latinx people are over-represented in jails and prisons nationally, they do not appear to be over-represented among those sentenced to confinement in Washington State prisons relative to their representation in the state population. To ensure that Latinx people were identified as such in our dataset, we employed Hispanic Surname Analysis. This program utilizes the U.S. Census Spanish Surname database and assigns a numeric value between 0 and 1 to all surnames in that database. The list used to identify defendants of Hispanic origin contained 12,497 different Spanish surnames that have been determined by the Census Bureau to be regularly associated with people who identify as Hispanic. These numeric values represent the probability that a

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¹⁸⁴ In the letter in which his attorney describes the prosecutor's plea offer, Anthony's attorney wrote that the prosecutor was willing to stipulate that Anthony

was not the one who shot the child if Anthony accepted the plea offer. Letter on file with the authors.

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¹⁸⁶ On June 14, 2019, the Clemency and Pardon Board unanimously recommended that Eugene Youngblood's virtual life sentence be commuted. Governor Inslee will make the final decision in this case.

¹⁸⁷ National Research Council, *The Growth of Incarceration in the United States*, 344.

¹⁸⁸ *Inmate Population by Age*, Washington State Department of Corrections. Nationally, too, the share of the prison population that is aged 50 or older has increased. A recent nationwide study found that adults age 55 years and older grew from 3 to 10 percent of the total state prison population between 1993 and 2013, a 400 percent increase. See Carson and Sabol, *Aging of the State Prison Population, 1993-2013*.

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²⁰⁷ *Washington State Clemency & Pardons Board Policy Manual*. Olympia, WA: State of Washington, Office of the Governor, December 8, 2017.

<https://www.governor.wa.gov/sites/default/files/Washington-State-Clemency-and-Pardons-Board-Policy-Manual-updated-12082017.pdf>.

²⁰⁸ Austin Jenkins. “Long Sentences, Aging Inmates May Strain Washington’s Clemency System.” *NW News Network*, July 15, 2014.

<http://nwnewsnetwork.org/post/long-sentences-aging-inmates-may-strain-washingtons-clemency-system>.

²⁰⁹ Calculations based on records available at

<https://www.governor.wa.gov/sites/default/files/Status-Table-for-CPB-website-January-2018.pdf>

²¹⁰ *Facts about Individuals in Confinement*, Washington State Department of Corrections.

<https://www.doc.wa.gov/docs/publications/reports/100-QA001.pdf>. These figures include those serving life with and without parole.

²¹¹ *New Model Penal Code for Criminal Sentencing Approved by the American Law Institute: Comprehensive Reform Recommendations for State Legislatures*.

Minneapolis, MN: Robina Institute of Criminal Law and Criminal Justice, June 5, 2017. <https://robinainstitute.umn.edu/news-views/new-model-penal-code-criminal-sentencing-approved-american-law-institute-comprehensive>.

²¹² *Miller v. Alabama*, 132 S. Ct. 2455, 2469, 183 L. Ed. 2d 407 (2012).

²¹³ For an overview, see Schiraldi, and Chester. *Public Safety and Emerging Adults in Connecticut*.

²¹⁴ On the impact of age on recidivism, see Farrington. *Developmental and Life-Course Criminology*; see also National Research Council, *The Growth of Incarceration in the United States*. For information about the cost of incarcerating the elderly, see Anno, et al., *Correctional Health Care*. Delaney and Henrichson, *The Price of Prisons*.

²¹⁵ Drake, *Inventory of Evidence-based and Research-based programs for adult corrections*; Kuziemko, “How should inmates be released from prison?”

²¹⁶ Segall, Weisberg, and Mukamal, *Life in Limbo*, 4.

²¹⁷ The CDCR concluded that “Examination of lifer parolee recidivism rates for a fiscal year cohort that was followed for a period of three years from release to parole shows that lifer parolees receive fewer new convictions within three years of being released to parole (4.8 vs. 51.5 percent, respectively). They also have a markedly lower return to prison recidivism rate than non-lifer parolees (13.3 vs. 65.1 percent, respectively).” See *Lifer Parolee Recidivism Report*, California Dept of Corrections and Rehabilitation Corrections Standards Authority, 9.

²¹⁸ Nazgol Ghandnoosh. *Delaying a Second Chance: The Declining Prospects for Parole on Life Sentences, Thirty-Two Jurisdiction Profiles*. Washington, D.C.: The Sentencing Project, January 31, 2017.

<https://www.sentencingproject.org/publications/delaying-second-chance-declining-prospects-parole-life-sentences/>.

²¹⁹ Ghandnoosh, *Delaying a Second Chance*.

²²⁰ Rhine, Petersilia, and Reitz, *Improving Parole Release in America*.

²²¹ *New Model Penal Code*, Robina Institute.

²²² *New Model Penal Code*, Robina Institute, 98.

²²³ Rhine, Petersilia, and Reitz, *Improving Parole Release in America*, 2.

²²⁴ See *Victim Statements to the Board*. Washington State Department of Corrections, <http://www.doc.wa.gov/corrections/isrb/victim-statement.htm>.

²²⁵ Rhine, Petersilia, and Reitz, *Improving Parole Release in America*.

²²⁶ *Sentences for Aggravated First-Degree Murder*, Washington State Legislature, RCW 10.95.030 section 3(f).

<https://apps.leg.wa.gov/RCW/default.aspx?cite=10.95.030>.

²²⁷ For an in-depth discussion of these issues, see Michael Tonry. “Legal and Ethical Issues in the Prediction of Recidivism.” *Federal Sentencing Reporter* 26, no. 3 (2014): 167–76; see also Kelly Hannah-Moffat. “The Uncertainties of Risk Assessment: Partiality, Transparency, and Just Decisions.” *Federal Sentencing Reporter* 27, no. 4 (2015): 244–47.

²²⁸ *New Model Penal Code*, Robina Institute, 98.

²²⁹ Data provided by Michael Hirsch, Research Associate, Washington State Institute for Public Policy (October 17, 2017).

²³⁰ Kuziemko, “How should inmates be released from prison?”

²³¹ Data provided by the Washington Statistical Analysis Center, available at <http://wa-state-ofm.us/CrimeStatsOnline/index.cfm>.

²³² See, for example, Steven Raphael. *Why Are so Many Americans in Prison?* New York: Russell Sage Foundation, 2013.

²³³ This information is taken from *The 2016 Washington State Adult Sentencing Guidelines Manual*. Olympia, WA: Washington State Caseload Forecast Council, 2016. https://www.cfc.wa.gov/PublicationSentencing/SentencingManual/Adult_Sentencing_Manual_2016.pdf.