



**FAMMM**

Families for Justice Reform

# **TIME FOR JUSTICE**

**THE URGENT NEED FOR SECOND CHANCES  
IN PENNSYLVANIA'S SENTENCING SYSTEM**



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This report was written by Emily Bloomenthal, Director of Research at FAMM, with support from Vice President of Policy Molly Gill and Pennsylvania State Policy Director Maria Goellner. The stories throughout the report were written by Ann Espuelas.

FAMM is a national nonpartisan advocacy organization that seeks to create a more fair and effective justice system that respects our American values of individual accountability and dignity while keeping communities safe.



# Executive Summary

Too many people in Pennsylvania are serving long prison terms that don't make communities safer. People who do not pose a risk to public safety languish in prison for decades because Pennsylvania's laws don't give them a second chance. This report, which focuses on people serving minimum sentences of 20 years or longer, looks at the harms and injustices of extreme sentences in Pennsylvania, as well as opportunities for reform.

## Key findings:

**Pennsylvania's prison population has been shaped by some of the harshest sentencing policies in the country.**

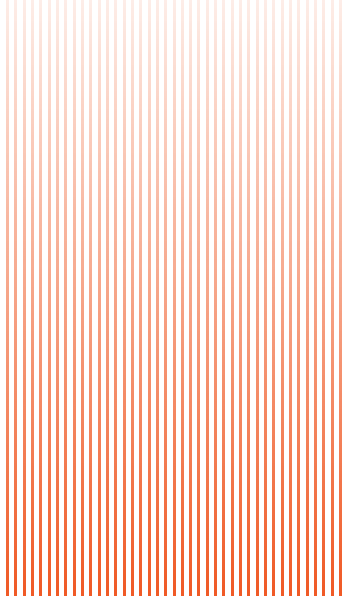
- In 2019, Pennsylvania imprisoned more than seven times the number of people that it did in 1970. That growth was driven by punitive policy choices, not increases in crime, and it did not make Pennsylvanians safer.
- Pennsylvania is a national leader in imposing extreme sentences. This ranking is largely driven by two laws: the mandatory minimum sentence of life imprisonment required for first- and second-degree murder, and the denial of parole eligibility to anyone serving a life sentence. In Pennsylvania prisons, 13.4% of people are serving life without parole (LWOP), compared to only 3.6% nationally.
- The population serving extreme sentences in Pennsylvania has surged over the last few decades. There were more than nine times as many people serving extreme sentences in 2019 than there were in 1980.
- Pennsylvania's extreme sentencing practices have overwhelmingly impacted people of color, especially Black people, who make up less than 11% of Pennsylvania's

population but 65% of people serving life sentences and 58% of those serving non-life sentences of 20 years or longer.

- Pennsylvania's extreme sentencing practices have created a large (and growing) elderly prison population, which increased thirtyfold from 1979 to 2019.

**Pennsylvania's extreme sentences are a high-cost, low-value proposition for taxpayers.**

- Researchers have found no evidence that severe sentencing policies discourage people from choosing to engage in crime.
- Extreme sentences are not necessary for preventing recidivism, because the vast majority of people who commit crimes – even very serious crimes – naturally grow out of criminal behavior as they age and mature. For example, of the 174 Philadelphia juvenile lifers – all originally convicted of homicide – who were resentenced and released following landmark U.S. Supreme Court decisions, only two (1.1%) had been reconvicted of any offense as of 2020.
- Based on average incarceration costs, the Pennsylvania Department of Corrections (DOC) is spending \$220 million per year to incarcerate 3,892 people who have already served at least 20 years. The true cost is undoubtedly higher, because incarceration costs increase dramatically as people age and need more medical care.
- The average cost for incarcerated individuals in skilled or personal care units is \$500 per day (or \$182,625 per year), more than three times the cost for the general population.



**Extreme sentences harm communities, families, and the economy.**

- Extreme sentences deprive the community of valuable human resources. Many people serving extreme sentences could be productive economic assets in their communities if released and could play important roles in community violence intervention.
- Extreme sentences devastate families emotionally, psychologically, and financially, and contribute to poverty.

**Extreme sentences are often unjust, excessive, and imposed without considering individuals’ level of culpability or other mitigating factors.**

- Mandatory LWOP deprives judges of the opportunity to make individualized sentencing decisions that take into account all important facts of a case.
- Nearly half of those serving LWOP were under age 25 at the time of the crime. That means that their brains were still developing and their level of culpability was diminished but that they will generally spend more time in prison than people who were older. More than 2,000 people incarcerated in Pennsylvania have spent more time in prison than the amount of time *that they were alive* prior to their crime.

**Existing release mechanisms fail to remedy extreme sentences.**

- Parole grant rates have declined since the 1970s and early 1980s, and Pennsylvania is 1 of only 7 states that denies parole eligibility to all lifers. The lifer population is the population that most needs parole – and the population that would generate the most cost savings to taxpayers if given the opportunity for parole.
- Commutations, the only way that people serving life sentences can leave prison alive, used to be common but have become extremely rare. That is in part due to a requirement that for lifers, the Board of Pardons must unanimously vote in favor of clemency for an application to be sent to the governor. And clemency alone will never be sufficient to address all excessive sentences doled out in Pennsylvania in the era of mass incarceration.
- Pennsylvania’s law allowing for release of incarcerated people with terminal medical conditions is extremely narrow, procedurally cumbersome, and hardly used. Pennsylvania does not have a geriatric release mechanism.

## Recommendations:

- Repeal and modify mandatory LWOP sentences.
- Expand opportunities for all people serving extreme sentences to demonstrate their rehabilitation and earn the opportunity for release.
- Expand medical release and create geriatric release.
- Make all sentencing reforms retroactive.
- Eliminate the requirement that the Board of Pardons must unanimously vote in favor of clemency before a lifer’s commutation application can be sent to the governor.
- Reinvest savings resulting from decarceration in reentry and victim services.
- Include data collection and reporting requirements in all reforms to monitor and address any disparities that may arise.



# Time for Justice

## The Urgent Need for Second Chances in Pennsylvania's Sentencing System

*"The idea of redemption saved me. It saved me from this narrowly defined existence of us vs. them, of vengeance masquerading as justice. The right to redeem oneself has become as precious to me as the right to live free, because the idea of redemption has awakened in me this incredible sensitivity to a harm that, without my actions, could not exist in the world. It has awakened in me this burning desire to right my wrongs and to give back to the community that I so selfishly have taken so much from."*

– Terrell Carter, Northwestern University Law Review<sup>1</sup>

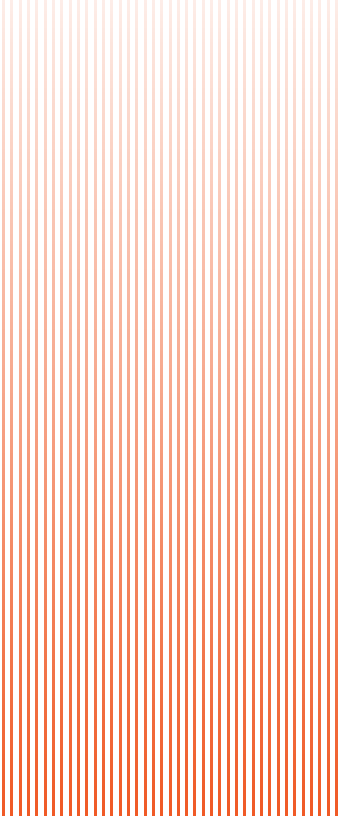
Terrell "Rell" Carter, a loving father and grandfather, is a published poet of three books, including *Guilty Reflections* and *Incarceration of Tears: A Journey of Transformation and Redemption*. He is a co-founder of Right 2 Redemption, which offers support to people in prison and returning citizens, and works to end gun violence in communities.

For Rell, the theme of redemption is very personal: He's currently serving life without parole himself. Nearly 30 years ago, 22 years old and fighting addiction, Rell shot and killed someone. He was convicted of second-degree murder.

Early in his incarceration, he turned to writing for healing and relief. The shift in thinking that followed has meant that his years behind bars have been filled with personal accountability and deep reflection.

Thousands of other people have similarly matured, grown, and changed during lengthy prison sentences. Yet, Pennsylvania laws do not give them a meaningful chance to have their sentences reconsidered and, if appropriate, reduced or modified. If Pennsylvania wants its criminal justice system to be fair, use taxpayer dollars wisely, and make the public safer, it must give people like Rell the opportunity for a second chance. This report, which focuses on people serving minimum sentences of 20 years or longer, looks at the harms and injustices of extreme sentences in Pennsylvania, as well as opportunities for reform.

For more than three decades, Pennsylvania policymakers have put off addressing the ever-growing consequences of the state's extreme prison sentences, costing the state hundreds of millions of dollars each year and causing an immeasurable level of harm to families and communities. Reform is needed *now*.



**“The idea of redemption saved me.”**

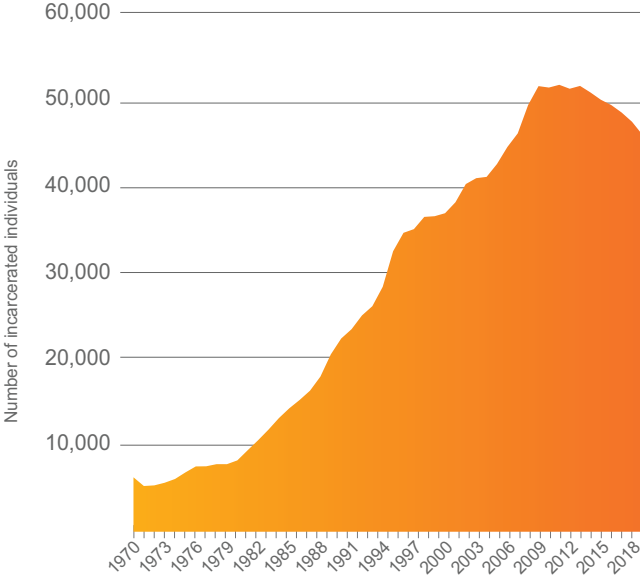
**– Terrell “Reil” Carter**

# Pennsylvania’s extreme sentences and growing prison population

Pennsylvania’s prison population exploded during the 1980s and continued to skyrocket through the early 2000s. In 2019, Pennsylvania imprisoned more than *seven times* the number of people that it did in 1970. The increased incarceration was not due to increased crime, because Pennsylvania’s crime rate began dropping at about the same time that the prison population began rapidly increasing.<sup>3</sup> Nor was the crime decline due to more incarceration; between 75% and 100% of the drop in crime since the 1990s is attributable to factors other than incarceration, such as increased graduation rates, employment, and wages, as well as changes in policing strategies.<sup>4</sup> Moreover, researchers have consistently found that increasing incarceration has no impact on violent crime.<sup>5</sup> The lack of connection between incarceration and crime is further illustrated by the fact that crime continued to drop in Pennsylvania even as the prison population was reduced in recent years.

Instead, increasingly punitive policy choices drove the massive growth in Pennsylvania’s prison population. Not only did more people enter prison, but an increasing number of them were given very long sentences. On the back end, pathways for release from prison dried up as the use of parole and commutations declined. Prisons filled with people staying longer and growing older. In fact, the number of elderly individuals serving lengthy sentences has continued to increase even as the overall prison population has declined.

**Staggering Growth in Pennsylvania’s Prison Population**



# Black, elderly, and in for decades: How Pennsylvania's extreme sentencing practices shape the prison population

**Pennsylvania is a national leader in imposing extreme sentences.** This is largely driven by two laws: the mandatory minimum sentence of life imprisonment required for first- and second-degree murder, and the denial of parole eligibility to anyone serving a life sentence. Pennsylvania is one of only seven states to categorically deny parole eligibility for lifers.<sup>6</sup> In Pennsylvania prisons, 13.4% of people are serving life without parole (LWOP), meaning almost without exception that they will die in prison absent commutation from a sitting governor.<sup>7</sup> In comparison, only 3.6% of people in prison nationally are serving LWOP.<sup>8</sup> Pennsylvania has the second-largest LWOP population in the U.S. and the third-highest percentage of its prison population serving LWOP.<sup>9</sup> It also has the third-largest population in the U.S. of people serving "virtual" or "de facto" life sentences of 50 years or more.<sup>10</sup>

**The population serving extreme sentences in Pennsylvania has surged over the last few decades.** In 1980, just 848 people were serving LWOP statewide, and 83 people had minimum sentences that were 20 years or longer.<sup>11</sup> By 2019, 5,447 people were serving life without parole sentences, and an additional 3,226 had minimum sentences that were longer than 20 years.<sup>12</sup> In total, there were more than nine times the number of people serving extreme sentences in 2019 than in 1980. Notably, the number of people serving extreme sentences has continued to grow even as the overall prison population has decreased. As a result, the proportion of the prison population serving extreme sentences nearly doubled, from 11% in 1980 to 19% in 2019.

## MANY WARNINGS BUT NO ACTION

For decades, policymakers have warned of the need to address extreme sentences:

**1985:** "The present influx of inmates serving a life sentence and their length of stay are concerns of administrators within the Department of Corrections."<sup>1</sup>

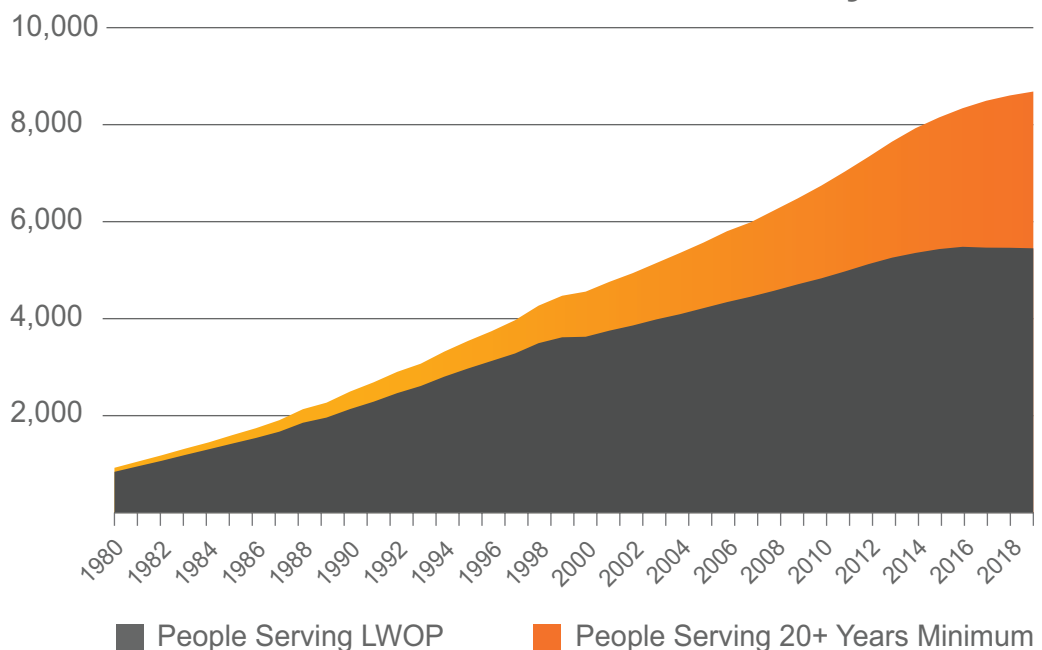
— Pennsylvania Department of Corrections

**2002:** A Joint State Government Commission task force recommended creating parole for the geriatric and lifer prison population.<sup>2</sup> The task force's recommendations were never adopted, and the number of aging people serving long and costly sentences continues to grow every year.

1 Bernard II, L.T. (1985). *Statistical Report for the Years 1980-1985*, Pennsylvania Department of Corrections, at 20. <https://www.cor.pa.gov/About%20Us/Statistics/Documents/Old%20Statistical%20Reports/1980-85AnnualReport.pdf>.

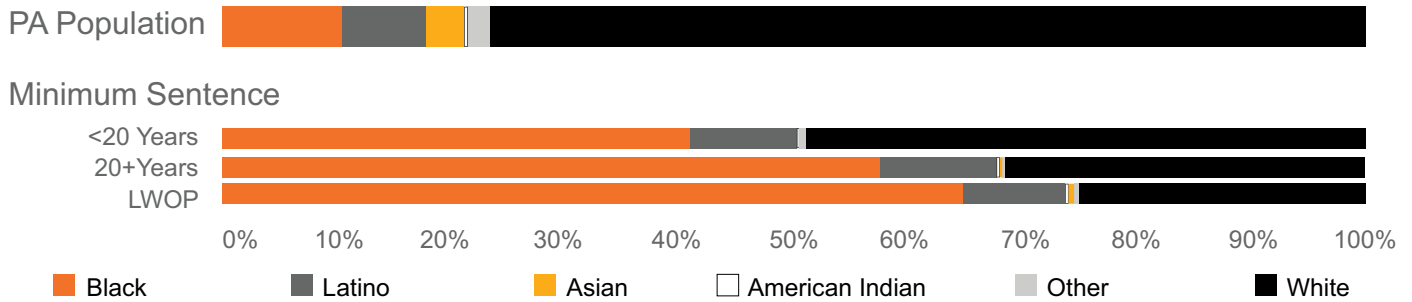
2 Joint State Government Commission Task Force on Geriatric and Seriously Ill Inmates (2005), *Report of the Advisory Committee on Geriatric and Seriously Ill Inmates*. <http://jsg.legis.state.pa.us/resources/documents/ftp/publications/2005-40-inmates%20report.pdf>.

## Growth of Extreme Sentences in Pennsylvania



**Pennsylvania's extreme sentencing practices have overwhelmingly impacted people of color, especially Black people.** Black people are vastly overrepresented in Pennsylvania prisons: They make up less than 11% of Pennsylvania's population<sup>13</sup> but 46% of Pennsylvania's prison population. However, their overrepresentation is *even greater* among those serving the longest sentences: 65% of people serving life sentences are Black, as are 58% of those serving non-life sentences of 20 years or longer. In contrast, white people account for 76% of Pennsylvania's population, but only one-quarter of the people serving life sentences and 31% of those serving non-life sentences of 20 years or longer.

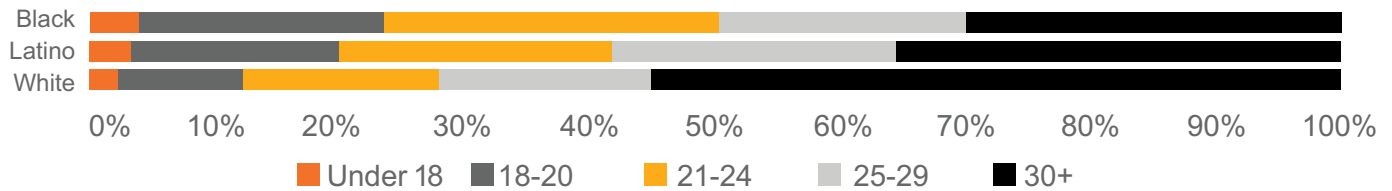
## Minimum Sentence Length by Race Compared to Overall Pennsylvania Population



Compared to white people, Black people in Pennsylvania are 18.5 times more likely to be sentenced to life and 13.6 times more likely to be serving minimum non-life sentences of 20 years or more. Latino people are 3.6 times more likely than white people to be either serving LWOP or minimum sentences longer than 20 years.<sup>14</sup>

Black and Latino people serving extreme sentences also tend to have been younger<sup>15</sup> at the time of the crime than white people serving extreme sentences. This means that they will typically spend longer in prison for conduct that occurred when their brains were less developed and when they could have been considered less culpable than older counterparts.

## Estimated Age at Time of Crime by Race for People With Minimum Sentence of 20+ Years



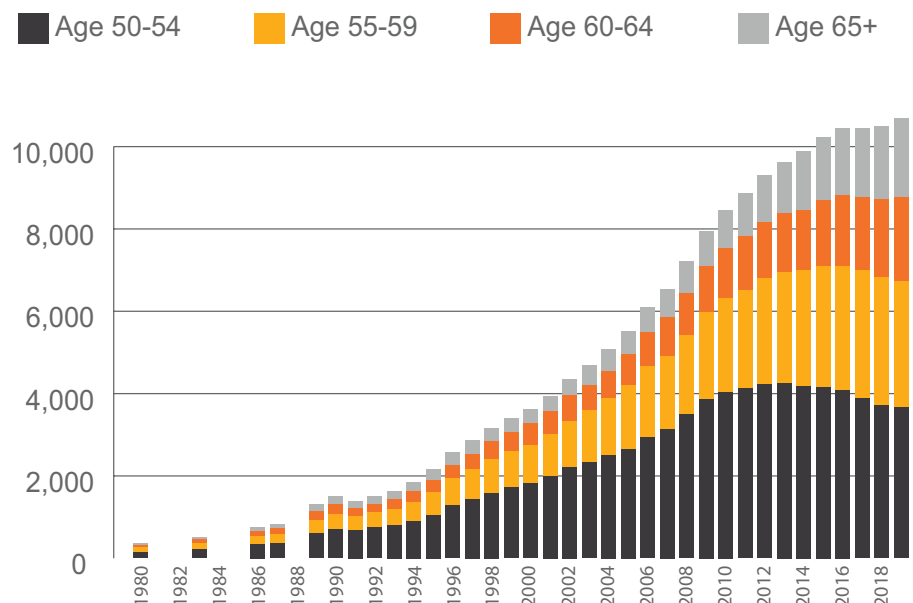
Revisiting extreme sentences is therefore an important step toward addressing racial disparities in the criminal justice system.

### Pennsylvania's extreme sentencing practices have created a large (and growing) elderly prison population.

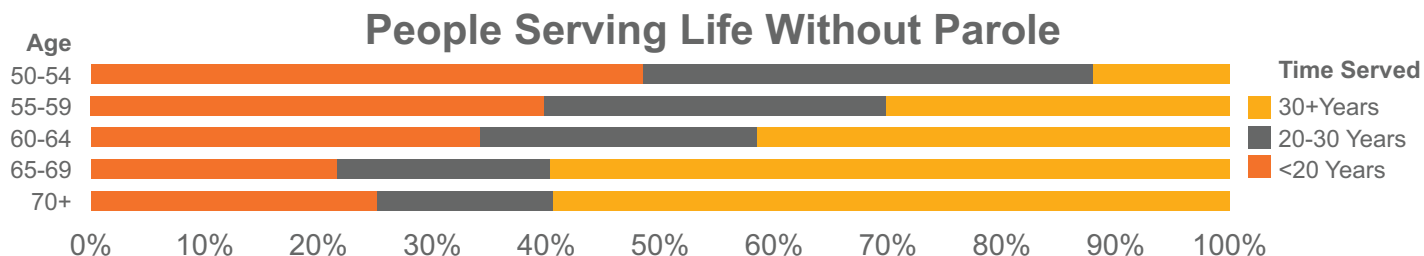
The number of people in Pennsylvania prisons who are over age 50 has skyrocketed. In 1979, Pennsylvania prisons held 351 individuals age 50 or over.<sup>16</sup> As of 2019, that number had grown to 10,706, a *thirtyfold increase*.<sup>17</sup> One-quarter of those now in prison are 50 years or over, compared to only 4% in 1979.<sup>18</sup>

Many of these older individuals are in prison for crimes committed decades ago and are very different people today than they were at the time of the crime. This is particularly true for lifers who are age 50 or over: 82% have been in prison for at least 20 years, and about half for at least 30 years.

## Pennsylvania's Growing Geriatric Prison Population







## Extreme sentences: High cost, low value for taxpayers

**Extreme sentences do not make communities safer:** They do not deter people from choosing to engage in crime, and they waste limited community resources on incarcerating people well past the period in which they present a public safety risk.

**Researchers have found no evidence that severe sentencing policies discourage people from choosing to engage in crime.**<sup>19</sup> People are not generally even aware of the potential penalties for specific crimes or of the length of sentences actually imposed, so harsh punishments are not an effective approach for deterring crime. In 2009, for example, the Pennsylvania Commission on Sentencing studied mandatory minimums and found that only one in three Pennsylvanians could name a crime that carried a mandatory minimum sentence.<sup>20</sup> It is the certainty of punishment, not the length of punishment, that deters crime.<sup>21</sup>

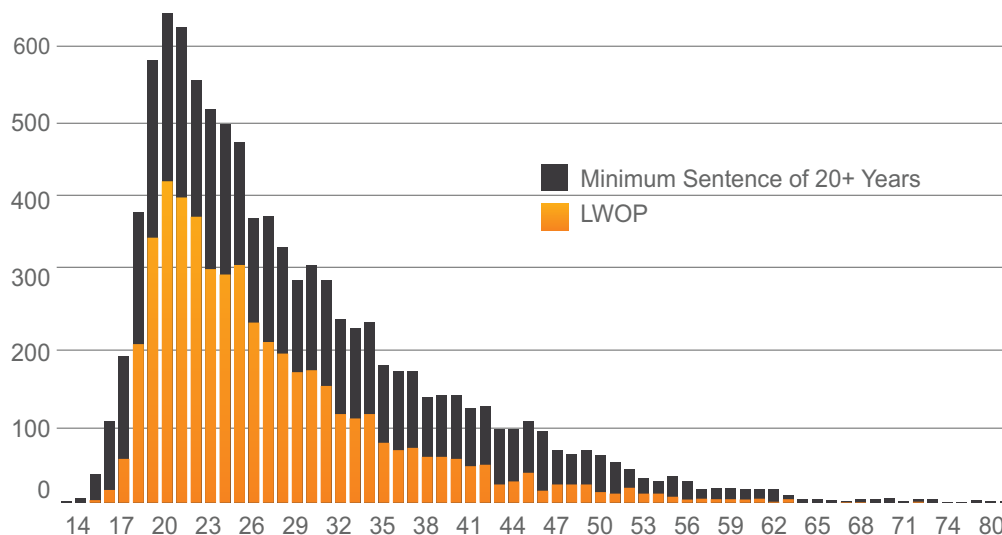
**Extreme sentences are not necessary for preventing recidivism, because the vast majority of people who commit crimes – even very serious crimes – naturally grow out of criminal behavior as they age and mature.** Young people’s brains continue to develop through their mid-20s, particularly the prefrontal cortex, which is responsible for the ability “to exercise good judgment when presented with difficult life situations.”<sup>22</sup> Young people are therefore more impulsive and susceptible to peer influence than older adults and less able to inhibit

inappropriate behavior, manage intense emotions, and fully consider consequences of their behavior.<sup>23</sup> Consequently, criminal activity peaks during the late teen years and early 20s. In fact, breaking the law is normal behavior during this period: In self-reporting surveys, *most* adolescents report having done so.<sup>24</sup>

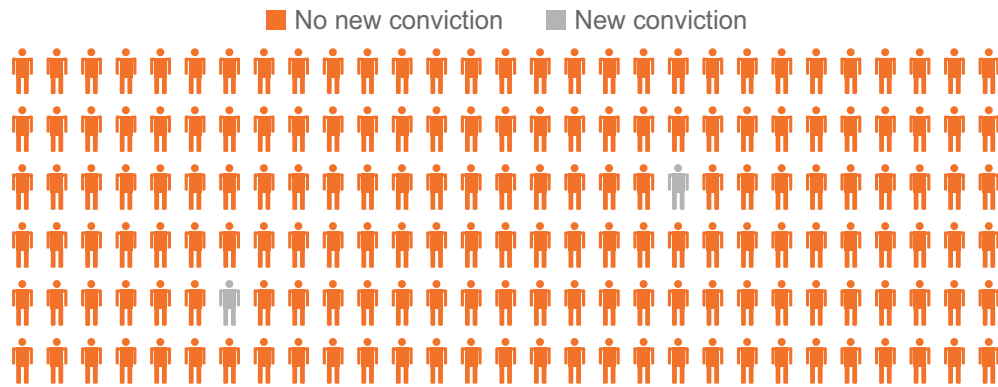
Fortunately, people grow and change. As people age, they become less and less likely to engage in crime.<sup>25</sup> Arrests drop steeply by the early 30s. Almost three-quarters of arrests are of people below age 40; fewer than 4% are of people age 60 or over.<sup>26</sup> Consistent with these findings, most people serving extreme sentences in Pennsylvania were young at the time of the crime.

Recidivism rates decline dramatically as people age, including for those convicted of violent offenses, who are often found to be *less* likely to reoffend after release from prison than those with other offenses.<sup>27</sup> In one study, only 4% of people convicted of violent crimes released between ages 45 and 54, and 1% released at age 55 or older, were reincarcerated for new crimes within three years. Among people previously convicted of murder, those rates fell to 1.5% and 0.4%, respectively.<sup>28</sup> In comparison, when looking at the full Pennsylvania prison population, 43% to 49% of individuals released between 2000 and 2008 were reincarcerated within three years.<sup>29</sup>

### Estimated Age at Time of Crime for People Serving 20+ Years



## Released Philadelphia Juvenile Lifers



The low risk of recidivism for people convicted of serious crimes who have served long sentences is illustrated by the 174 juvenile lifers in Philadelphia – all originally convicted of homicide – who were resentenced and released following landmark U.S. Supreme Court decisions. After they had been in the community for an average of 21 months, only two (1.1%) had been reconvicted of any offense.<sup>30</sup> Similarly, as of 2005, of the 285 (primarily adult) Pennsylvania lifers who had their sentences commuted and were released on parole, only seven had returned to prison for any new crime, and of the 99 who were over age 50 at the time of release, only one had returned to prison for a new crime.<sup>31</sup>

Case studies from other states echo these findings. For example, in Maryland, 188 people serving life without parole (mostly for murder or rape) were released after serving 30-plus years because a court found that there had been constitutional errors in their trials. Six years later, only five (2.7%) had returned to prison for violating parole or committing a new crime.<sup>32</sup>

**Extreme sentences are exorbitantly expensive.** Based on the average annual cost of \$57,230 per person in DOC custody in 2018-2019,<sup>33</sup> DOC is spending \$220 million per year to incarcerate 3,892 people *who have already served at least 20 years*. The true price tag is undoubtedly substantially higher.

Incarceration costs increase dramatically as people get older because of their increased need for medical care. The average cost for incarcerated individuals in skilled or personal care units is \$500 per day (or \$182,625 per year),<sup>34</sup> more than three times the

cost for the general population. Even when older individuals do not require that level of care, their incarceration still tends to cost more than their younger counterparts' due to higher prescription drug costs, more frequent visits to outside medical providers, and other increased needs. Plus, due to factors such as inadequate medical care prior to and during incarceration, substance use disorder, and the stress of being in prison itself, the aging process is typically accelerated for incarcerated individuals.<sup>35</sup> The DOC therefore classifies incarcerated individuals age 50-plus as elderly.<sup>36</sup> Costs continue to rise as more and more people in prison reach that age group.

**In short, Pennsylvania's extreme sentences are a high-cost, low-value proposition for taxpayers:** They fail to deter crime, do not protect communities, lock up low-risk people for too long, and increase prison costs exponentially.

### ONE PERSON, \$5.7 MILLION

Seventy percent of lifers were under age 30 at the time of the crime,<sup>1</sup> which means that Pennsylvania taxpayers could be paying to incarcerate them for 50 years or more, an extraordinarily pricey possibility. For example, if someone enters prison at age 20, moves to a skilled or personal care unit at age 55, and lives to be age 75, the lifetime cost to incarcerate just that one person would be approximately \$5.7 million, plus inflation.

<sup>1</sup> Based on estimated age at the time of the crime, as discussed in footnote 15, *supra*.

## WASTED MONEY, WASTED OPPORTUNITIES TO PREVENT CRIME AND ADDRESS VICTIMS' NEEDS

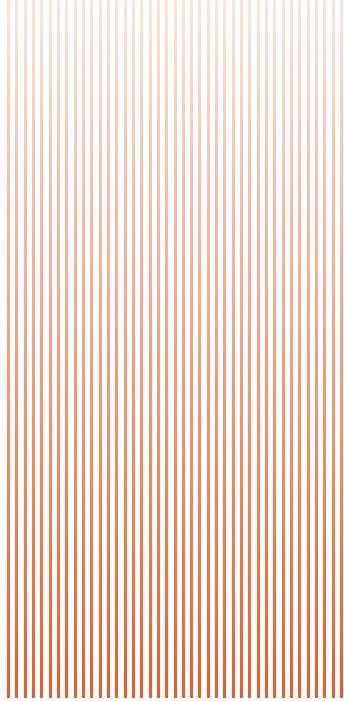
Pennsylvania's extreme sentences waste hundreds of millions of dollars that could otherwise be spent on preventing crime and addressing all victims' needs. For example:

- The Philadelphia City Controller found that the city is under-investing in evidence-based community violence intervention (CVI) by approximately \$22 million compared to cities with more successful CVI programs.<sup>1</sup>
- Traditional victims' services agencies, as exist throughout Pennsylvania, leave behind most survivors of serious crimes.<sup>2</sup> The trauma recovery center model, used in California, Ohio, and Michigan, is effective at reaching these underserved survivors, improves crime survivors' mental and physical health, and increases their odds of returning to work. Trauma recovery centers have a recommended annual budget of \$1 million.<sup>3</sup>

<sup>1</sup> Rhynhart, R. (2021). *Data Release: The FY22 Anti-Violence Budget*, Philadelphia Office of the Controller, at 4. <https://controller.phila.gov/wp-content/uploads/2021/08/FY22-Anti-Violence-Funding-Data-Release.pdf>. The report concluded that it would cost \$55 million annually to invest at a level comparable to cities with more successful CVI programs, but Philadelphia will only allocate at most \$33 million for this purpose in fiscal year 2022.

<sup>2</sup> Of people who survive a violent crime that is reported (which excludes more than half of violent crimes), only one in 10 receive direct assistance from a victim service agency. National Alliance of Trauma Recovery Centers (2020). *Trauma Recovery Centers: Addressing the Needs of Underserved Crime Survivors*, at 1. <http://traumarecoverycenter.org/wp-content/uploads/2020/01/TRCBrief-R3.pdf>.

<sup>3</sup> *Id.*



## Extreme sentences: Harming communities, families, and the economy

**Extreme sentences deprive the community of valuable human resources.** When given the opportunity, many people serving extreme sentences complete educational or vocational training programs, obtain jobs, serve as mentors to their younger peers, and take on other leadership roles within prisons as they mature.<sup>37</sup> At a time when job openings are at a record high, these individuals would be valuable economic assets to their communities if they were released. Moreover, some of the most effective community violence interventions rely on formerly incarcerated individuals, who are often uniquely able to serve as mentors and develop relationships with at-risk youth.<sup>38</sup>

**Extreme sentences devastate families and contribute to poverty.** When someone is incarcerated, their families “do the time” with them. The incarcerated individual can no longer contribute to the household income, which often makes it difficult for their families to meet basic needs, such as food, housing, and utilities.<sup>39</sup> Plus, many family members spend hundreds of dollars a month to visit, call, and email their loved ones and to provide prison commissary funding for toiletries and other essentials.<sup>40</sup> The emotional and psychological toll of the incarcerated individual’s absence from major milestones and day-to-day life is horrendous. Children of incarcerated parents experience significantly higher rates of mental health, educational, behavioral, developmental, and relationship problems than their peers.<sup>41</sup> Similarly, incarceration is associated with negative mental and physical health consequences for adult family members.<sup>42</sup>

**Providing meaningful opportunities for release to people serving long sentences gives them hope and incentivizes them to engage in rehabilitative activities.** That can reduce problematic behavior in prisons and lower recidivism upon release, making people safer both inside and outside of prisons.<sup>43</sup>



### Antoinette Osei

My son Jay’s been in prison for 28 years, serving life without parole. He was 19 when he went in. He just had a birthday, and now he’s 48. He is not the same person he was all those years ago.

When Jay first went in, it was devastating. When people go to prison, entire families pay the price. I went into shutdown mode and buried my life in my job and taking care of my younger son, who basically lost this important presence in his life – his older brother. My relationships with many in my own family suffered. We ended up uprooting our whole life and moving to try to ease the pain. But it didn’t work.

Finally, I started telling my story to other families going through the same thing. It was hard not to share it without bawling. But eventually, I started healing. I saw that it was helping others to hear it. Now I’m active in advocacy groups, and I went back to school for criminal justice.

I have hope. More people are starting to see that life without parole sentences are cruel. More people – even lawmakers – are starting to see that people like Jay deserve second chances.



## Extreme sentences: Unjust and excessive

**Extreme sentences are frequently imposed without considering individuals' level of culpability or other mitigating factors.**

This is particularly true with regard to mandatory sentences, especially automatic LWOP sentences for first- and second-degree murder. Mandatory LWOP deprives judges of the opportunity to make individualized sentencing decisions that take into account all important facts of a case, like the role the person played in the offense, their age at the time of the offense, or the relationship between the defendant and the victim. For example:

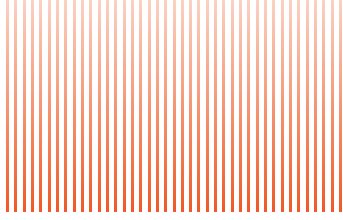
- Nearly half of those serving LWOP and more than one-third of those serving other extreme sentences were under age 25 at the time of the crime,<sup>44</sup> which means that their brains were still developing and their level of culpability was diminished.<sup>45</sup>
- Life and virtual life sentences are, in practice, typically significantly longer for younger people than for those who are older. A person given LWOP at age 20 will likely spend much more time in prison than someone given LWOP at age 40. Ironically, life and virtual life sentences mean more punishment for those who are less culpable because of their age and incomplete brain development. There are more than 2,000 people incarcerated in Pennsylvania who have spent more time in prison than the total amount of time *that they were alive* prior to their crime.
- A survey of more than 600 women incarcerated for manslaughter or murder found that 30% had been trying to protect themselves or loved ones from physical or sexual violence, either by killing the person who was the source of the threat or by contributing to the death of a third party under duress at the order of someone who abused them.<sup>46</sup>
- Two-thirds of women convicted of killing someone who was close to them had been abused by the person they killed.<sup>47</sup>
- Under Pennsylvania's second-degree murder or "felony murder" law, people are subject to automatic LWOP if they participated in certain types of felonies and a death occurred – even if the individual neither harmed nor intended to harm the victim.<sup>48</sup>



### Charles Brown

My life is peaceful and rich beyond compare. But until four years ago, I was in prison for 36 years. When I was 16, I witnessed a friend stab someone, and we ran away. I was arrested near my home for murder and robbery, among other charges. I received a mandatory life without parole sentence.

I knew I was not a monster nor a lifer, and I refused to let those labels define me. In prison, I grew into a respected leader. I became a facilitator in reentry and cognitive-behavioral groups, helping thousands of men. Eventually, changes in the law led to me being released in 2017. Now, I am very involved in Bibleway Baptist Church's Prison Ministry (BrothaHood), visiting the county jail to talk with juvenile offenders charged as adults, just as I once was. I can't change what happened. But I can learn from that experience, and give back in an effort to prevent another youth from having to walk in the shoes I once walked in.



# No way out: Existing release mechanisms fail to remedy extreme sentences

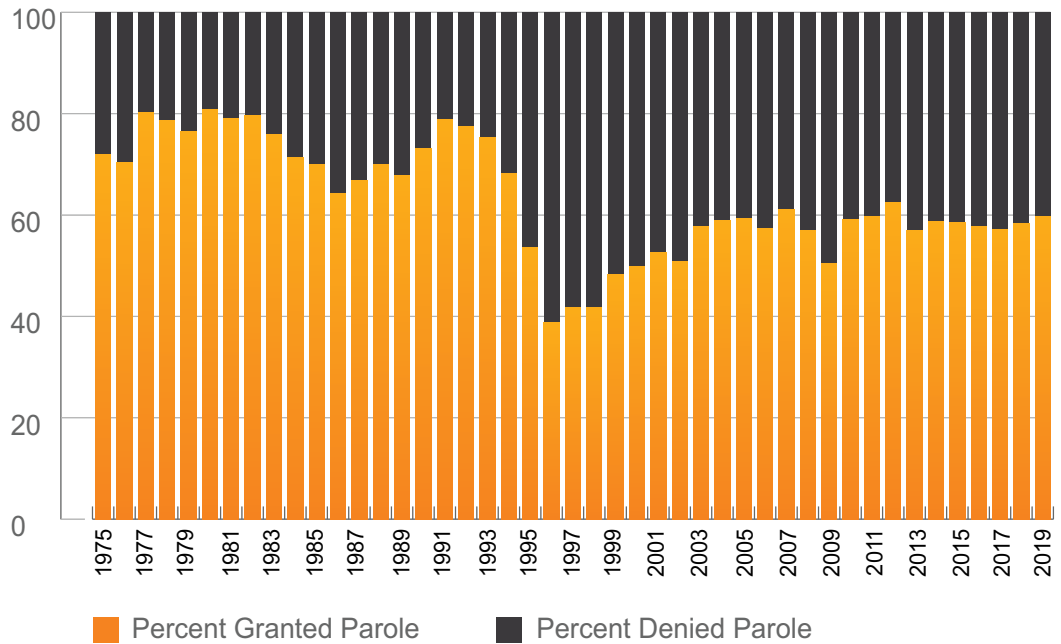
Because extreme sentences are unjust, costly, and provide little public safety benefit, it is crucial to ensure that people serving these sentences have meaningful opportunities for release. Existing mechanisms in Pennsylvania fall far short of meeting that need.

## Parole: Declining grant rates and unavailability to those who need it most

Among those who are eligible for parole, parole grant rates declined at the same time that lengthy sentences increased. In the late 1970s to early 1980s, parole was granted to 70% to 80% of applicants. The parole grant rate has since fallen to 57% to 60%.<sup>49</sup>

Moreover, people with life sentences in Pennsylvania, unlike most other states, are automatically denied the possibility of parole, while others serving extreme sentences will not be eligible for parole for decades. The lifer population is the population that needs parole most – and the population that would generate the most cost savings to taxpayers if given the opportunity for parole.

### Parole Grant Rates



## Clemency: Structural barriers limit releases

Because people serving life sentences in Pennsylvania are not eligible for parole, the only way that they can leave prison alive is if the governor commutes their sentences. Commutation was common in the 1970s, when more than 250 lifers received commutations.<sup>50</sup> However, as the lifer population grew, commutations dwindled almost to nonexistence. Between 1995 and 2014, only six lifers were given commutations.<sup>51</sup> That decrease is in part due to a requirement that for lifers, the Board of Pardons must unanimously vote in favor of clemency for an application to be sent to the governor, a rarely surmountable hurdle. Commutations have increased slightly in recent years but remain far rarer than they were in the 1970s, even though the lifer population is many times larger. Clemency must be expanded, but it will never be sufficient to address all excessive sentences doled out in Pennsylvania in the era of mass incarceration.

## Medical and geriatric release: Nonexistent and not compassionate

Finally, Pennsylvania's law allowing for release of incarcerated people with terminal medical conditions is extremely narrow, procedurally cumbersome, and hardly used. Only nine people were released for medical reasons between January 2010 and June 2015, while around 850 people died in prison during that time.<sup>52</sup> And Pennsylvania law does not allow compassionate release on any grounds other than terminal illness. As former Secretary of Corrections John Wetzel describes, "It's not compassionate, nor do we release anybody."<sup>53</sup>

Unlike 24 other states and Washington, D.C.,<sup>54</sup> Pennsylvania has no legal provision at all to permit the release of geriatric incarcerated people who do not have a terminal diagnosis, dooming the elderly to age and often die in prison.<sup>55</sup>

## SECOND CHANCES AND VICTIMS OF CRIME

Extreme sentences are often framed as serving crime victims. However, survivors of serious crimes have a range of opinions on extreme sentences,<sup>1</sup> and there is no evidence that extreme sentences actually improve victim well-being.<sup>2</sup> Moreover, the criminal justice system's primary functions are to promote justice and to protect the community. To ensure that justice, not vengeance, is the touchstone of the criminal legal system, the U.S. Constitution guarantees that society at large, not crime victims, determines what crimes to charge, who will be convicted (hence, the right to trial by jury), and what sentence is appropriate. Decisions regarding second chances should likewise be made in the interest of justice, safety, and broader community needs. One person's desire to see the full service of an extreme sentence should not trump public safety – communities are less safe when people remain in prison unnecessarily, at enormous cost to taxpayers. At the same time, it is imperative to ensure that victims are kept informed about the case and provided with services and resources to help support their healing.<sup>3</sup> A portion of the savings from reduced prison sentences can be reinvested for this purpose.

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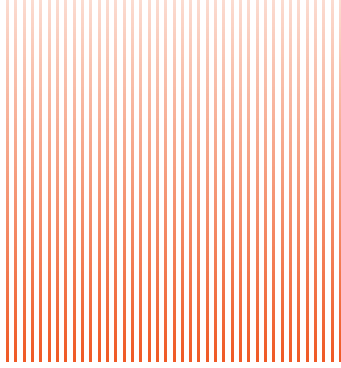
3 *Id.* at 27-28.

# Recommendations for Pennsylvania lawmakers

- **Repeal and modify mandatory LWOP sentences.** They do not protect public safety, fail to account for the reality that people grow and change, waste millions of dollars each year, and are a primary driver of Pennsylvania's aging prison population. The mandatory life sentence statutes for first- and second-degree murder should be repealed, and all people serving life sentences should be given the opportunity to have their incarceration reviewed either through parole or through court action.
- **Expand opportunities for all people serving extreme sentences to demonstrate their rehabilitation and earn the opportunity for release.** Because most people who commit crimes age out of criminality, release policies should avoid categorical exclusions based on type of offense or length of sentence. The decision-making process should focus primarily on the person's situation and condition today and whether continued incarceration is necessary to protect the public and worth the cost to taxpayers. In addition to expanding parole eligibility, there are a range of potential mechanisms for giving people the opportunity to show that it no longer makes sense to incarcerate them. For example:
  - The Model Penal Code recommends a second-look sentencing provision that allows people to be considered for a sentence modification after they have served 15 years, and to be reconsidered every ten years after that.<sup>56</sup>
  - Washington, D.C.'s Second Look Amendment Act, which went into effect in 2021, allows anyone incarcerated for a violation of D.C. law who was under age 25 at the time of the crime to petition the court for a sentence reduction after serving 15 years.<sup>57</sup> That reform expands a successful sentence review process that was originally established in 2016 for individuals who were under age 18 at the time of the crime.
  - California,<sup>58</sup> Washington,<sup>59</sup> Illinois,<sup>60</sup> Oregon,<sup>61</sup> and Louisiana<sup>62</sup> have passed legislation in recent years allowing courts to review and reduce sentences at any time, either at the prosecutor's request or with prosecutorial support.

Pennsylvania should adopt a broad second-look mechanism that allows anyone to request a reconsideration of their sentence, with or without prosecutor approval, after they have served 15 years in prison.

- **Expand medical release and create geriatric release.** More than one-quarter of Pennsylvania's prison population is over age 50, many of whom have chronic health conditions. Maintaining such an enormous population of aging and ill people in prisons is expensive, unnecessary, and unjust. Pennsylvania should create release mechanisms based on a) age and time served, and b) medical necessity, with no exclusions based on type of offense or length of sentence.
  - The federal First Step Act provides a strong model to emulate. In it, the U.S. Congress expanded eligibility for compassionate release and streamlined the application process. The bipartisan law established a right for any individual who presents "extraordinary and compelling reasons" justifying early release to file a motion for compassionate release in court.<sup>63</sup> Since the passage of those reforms, grants of compassionate release have increased nineteenfold, with most going to those who are elderly, very ill, medically vulnerable, or who present a combination of those factors.<sup>64</sup>



- **Make all sentencing reforms retroactive.** When lawmakers pass smart sentencing reforms or revise an unjust penalty, they should apply these reforms retroactively. In Pennsylvania, this reform is particularly important given the human and fiscal crisis presented by the Commonwealth's growing, aging prison population.
- **Eliminate the requirement that the Board of Pardons must unanimously vote in favor of clemency before a lifer's commutation application can be sent to the governor.** Clemency is currently the only hope of relief for people serving very long and LWOP sentences. The unanimous vote requirement is an unreasonably high barrier to accessing commutations. Pennsylvania should repeal the constitutional amendment imposing that hurdle.
- **Reinvest savings resulting from decarceration in reentry and victim services.** While reentry support, both during and after incarceration, is important for anyone leaving prison, it is especially necessary for people who have been disconnected from their communities for decades. It is also crucial to ensure that those who have undergone trauma, including recognized victims, are connected with appropriate support and resources, particularly as people are released from prison.
- **Include data collection and reporting requirements in all reforms to monitor and address any disparities that may arise.** It is vital to get a complete picture of how second chances reforms are used so that shortcomings can be identified and improved in the future.



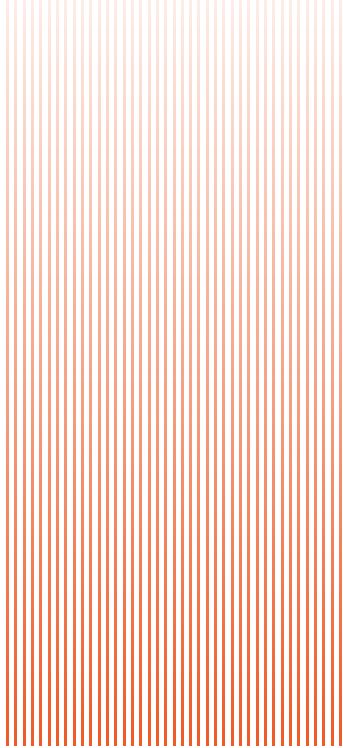
#### Marie Scott

Marie Scott is known as “Mechie” to her friends, and in her 50 years in prison, she's made many. She's helped hundreds of women survive prison, maintain hope, and become better people. She's earned her degree in sociology, and has participated in every program possible to bring meaning to her time in prison. With a life sentence, it hasn't been easy.

And now, she needs all the friends she can get. Marie, 68, suffers from several significant health problems and is in a wheelchair. Recently, her pain became so intolerable that she was admitted to an outside hospital. Her condition is serious and not improving.

When she was 19, Marie served as a lookout during a robbery in which her codefendant killed a man. Marie and her codefendant were sentenced to life without parole. That was 1974. It was a tragic turn in a difficult life; Marie suffered sexual abuse throughout her childhood.

Her codefendant was under 18 at the time of the murder, and he was resentenced in 2017 and released. Yet Marie is set to die behind bars. Meantime, her health problems worsen. Medical parole would be a mechanism for her to earn a second look from the system — and a second chance.



# Conclusion

Pennsylvania's extreme sentencing system is unjust, costly, and makes Pennsylvanians less safe. Extreme sentences keep people locked up for decades or life. They deny people hope, harm families and communities, and exacerbate racial and other disparities. And they cost taxpayers hundreds of millions of dollars, without providing public safety benefits in return.

Providing meaningful release opportunities for people serving extreme sentences makes everyone safer. Pennsylvania cannot afford to perpetually bear the burdens of this costly and growing crisis. The time for reform is now, with the passage of second chances legislation and other much-needed administrative, statutory, and constitutional reforms.

For more information, contact FAIM at [famm@famm.org](mailto:famm@famm.org) or (202) 822-6700.





# Endnotes

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15 Data on age at the time of the crime is unavailable. Estimates regarding age at the time of the crime, as used throughout this report, were developed by calculating individuals' ages at whichever of the following dates was the earliest: sentence date, first admit date, or reception date (in most cases the sentence date was the earliest date), then subtracting one year to account for the time elapsed between the date of the crime and the date of sentencing/admit/reception. Because less serious cases are often processed in less than a year and serious cases often take longer than a year to process, this likely underestimates the age of those convicted of minor crimes and overestimates the age of those convicted of serious crimes.

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