



**Overcrowding and Overuse of Imprisonment in the United States**  
American Civil Liberties Union (ACLU)  
Submission to the Office of the High Commissioner for Human Rights  
May 2015

*“This idea of total incarceration just isn’t working.”*  
U.S. Supreme Court Justice Anthony Kennedy, March 23, 2015

**I. Overcrowding and the Overuse of Imprisonment in the United States**

While the overuse of imprisonment is a problem of endemic proportions around the world, the human rights violations associated with this practice are particularly egregious in the context of the United States. With an incarceration rate five to ten times that of other western democracies, the United States has less than five percent of the world’s population, but our country’s prisoners account for one quarter of the global prison population. Indeed, the U.S. incarcerates more people—in absolute numbers and per capita—than any nation in the world, including the far more populous China, which rates second, and Russia, which rates third.<sup>1</sup>

Over the past 40 years, the number of people held in prisons and jails in the United States per capita has more than quadrupled, with the total number of people incarcerated now surpassing 2.3 million.<sup>2</sup> Since 1970, the U.S. prison population has risen 700%, a rate that far outpaces that of the general U.S. population and crime rates. Every state and the federal government have seen a massive increase in inmate populations in recent decades.<sup>3</sup> Currently, one in 99 adults are living behind bars in the U.S., and one in 31 adults are under some form of correctional control, such as prison, jail, parole, or probation.<sup>4</sup> Existing facilities have been overcrowded far beyond capacity, with prisoners sleeping in gyms and hallways or triple- and quadruple-bunked in cells.

This explosive growth has reverberated far outside the prison walls: one out of every four Americans has a criminal record, which can impose tremendous obstacles to finding employment, securing loans, and obtaining housing.<sup>5</sup> Across the country, young Black men living in neighborhoods of concentrated disadvantage are disproportionately incarcerated and under correctional control. This phenomenon—the excessive use of incarceration and correctional control, especially among poor people and people of color—is commonly referred to as mass incarceration.

Mass incarceration in the United States raises serious constitutional and human rights concerns. The human rights violations inherent in the system of mass incarceration play out on a number of fronts: from racial disparities in arrests, convictions, and sentencing; to draconian sentences mandating that non-violent offenders serve the rest of their lives behind prison walls; to the heightened impact of incarceration on vulnerable populations such as children and the mentally ill.

## **II. Main Causes of Overcrowding and the Overuse of Imprisonment in the United States**

The explosive growth of the U.S. jail and prison population since the 1970s is the inevitable consequence of more than four decades of “tough-on-crime” policies. Since the mid-1970s, state and federal legislators have passed laws creating draconian sentencing and parole schemes designed to keep ever-increasing numbers of people in prison for decades. These policies include mandatory minimum sentencing, which forces judges to issue severe sentences regardless of individual factors meriting leniency, and three-strikes laws, which expand the number of crimes subject to life and life-without-parole sentences. These policies have increased the number of people imprisoned and the lengths of their imprisonments, as well as limited opportunities for release, causing the population of federal and state prisoners to soar.

Two factors primarily determine the number of people in prison: the number of admissions and the length of stay, meaning the amount of time a person spends incarcerated.<sup>6</sup> When these numbers rise, the number of people behind bars increases. In the United States, both admissions and lengths of stay have increased rapidly in state and federal prison systems for decades. Increases in felony charges by prosecutors, as well as increases in parole and probation revocations for technical and other low-level violations, drove admissions up,<sup>7</sup> while severe sentencing practices such as mandatory minimums, three-strikes and other habitual offender laws, and long sentencing ranges with limited possibilities for release have dramatically elongated length of stay.

### **a. The “War on Drugs” and Mandatory Minimum Sentencing Laws**

Beginning in the mid-1970s and increasing throughout the 1980s and 1990s, in response to modest increases in crime rates and reports about the prevalence of drug abuse and drug-related crime, lawmakers around the country enacted harsh mandatory minimum sentencing laws designed to severely punish the manufacture, use, and sale of drugs, among other crimes. Mandatory minimum laws require automatic prison terms for those convicted of certain federal and state crimes. These inflexible, often extremely lengthy, “one-size-fits-all” sentencing laws prevent judges from tailoring punishment to the individual and the seriousness of the offense,

barring them from considering factors such as the individual's role in the offense or the likelihood he or she will commit a subsequent crime. Mandatory minimum sentences defeat the purpose of sentencing by reducing judicial discretion and instead handing it to prosecutors, who then use the threat of lengthy sentences to frustrate defendants seeking to assert their constitutional rights.

Under federal law, most mandatory minimum sentences apply to drug crimes<sup>8</sup> and are based on the weight of the drug(s) involved; these sentences start at five years for certain drug possession offenses and increase to life without parole.<sup>9</sup> Three federal drug offenses can result in life without parole, even if the offenses are relatively minor. For example, a federal conviction for possessing 50 grams of methamphetamine carries a mandatory life-without-parole sentence if the defendant has previously been convicted of two other felony drug offenses, which can be as minor as selling personal amounts of marijuana.<sup>10</sup>

In addition, in 1984, Congress created the U.S. Sentencing Commission, which established federal Sentencing Guidelines that apply in all federal cases and were intended to reduce sentencing disparities. The guidelines, however, set harsh mandatory sentences that lengthened prison times for a range of crimes and eliminated judicial discretion to craft individualized sentences. Though the mandatory nature of the guidelines was found unconstitutional by the U.S. Supreme Court in *United States v. Booker* in 2005, federal judges must continue to use them to guide their sentencing decisions.<sup>11</sup> Moreover, *Booker* is not retroactive, which means that there are thousands of federal offenders sentenced before 2005 still serving mandatory prison sentences handed out under the mandatory guidelines—even in cases where the sentencing judge objected to the mandatory sentence required at the time. In addition, *Booker* did not change any mandatory minimum sentencing laws.

Many states have enacted similar laws that set long mandatory sentences for many nonviolent offenses, particularly those involving drugs.<sup>12</sup> A handful of states have even instituted mandatory life without parole sentences for certain drug offenses. For example, in Alabama, a conviction for selling more than 56 grams of heroin results in a mandatory life-without-parole sentence.<sup>13</sup> Similarly, a person convicted of selling two ounces of cocaine in Mississippi must receive life without parole.<sup>14</sup>

While laws such as these were enacted in part out of concern about drug abuse and drug-related crime, the penalties they prescribe have not succeeded in curbing drug use, or addiction rates, which have essentially remained flat for 40 years.<sup>15</sup> The laws have, however, contributed to mass incarceration in the United States. Harsh drug laws are responsible for a significant portion of our enormous prison population; over the past 15 years, in the wake of policy changes that resulted in a proliferation of extreme sentences for drug crimes, between 19 and 23 percent of state prisoners were incarcerated for drug offenses.<sup>16</sup> Those figures are even more striking in the

federal system; during the same time period, between 55 and 60 percent of federal prisoners were incarcerated for drug offenses.<sup>17</sup>

Mandatory sentencing has directly contributed to the rise in extreme, disproportionate sentences in the United States. An ACLU sample study of prisoners serving life without parole for nonviolent offenses found that the overwhelming majority (83.4 percent) of the surveyed sentences were mandatory.<sup>18</sup> In these cases, the sentencing judges had no choice in sentencing due to laws requiring mandatory minimum periods of imprisonment, habitual offender laws, statutory penalty enhancements, or other sentencing rules that mandated life without parole. In case after case reviewed by the ACLU, the sentencing judge said on the record that he or she opposed the mandatory life-without-parole sentence as too severe but had no discretion to take individual circumstances into account or override the prosecutor's charging decision.

### **b. Three-Strikes and Other Habitual Offender Laws**

In the early 1990s, a few highly publicized murders, such as those of two young California girls named Kimber Reynolds and Polly Klaas, drew intense public attention. These murders invoked the specter of a dangerous spike in violent crime, particularly by those who had been convicted of previous crimes.<sup>19</sup> There was a widely held belief that people with criminal histories could not be reformed or corrected and, if released from prison, that they would continue to commit serious, violent crimes following their release.<sup>20</sup>

With public outcry about the problem of violent crime mounting, legislatures across the country responded by enacting habitual offender and “three-strikes-and-you’re-out” laws.<sup>21</sup> These laws were sold to the public as a way to stop irredeemable criminals from committing future crimes by requiring very long sentences, often life in prison, upon conviction of a second or third felony offense. Washington passed the first such law—the prototype for California’s Three Strikes law—in 1993,<sup>22</sup> and dozens of other states passed similar laws throughout the 1990s.<sup>23</sup>

What the public was not told, and what many people still do not realize, is that the convictions triggering extreme sentences under these laws need not always be serious, violent crimes. For example, in Nevada, a person facing a fourth felony conviction of *any* kind—nonviolent or otherwise—may be sentenced to die in prison.<sup>24</sup> The ACLU documented thousands of cases of people sentenced to life without parole under habitual offender laws for nonviolent crimes as petty as siphoning gasoline from an 18-wheeler, shoplifting three belts, breaking into a parked car and stealing a woman’s bagged lunch, attempting to cash a stolen check, acting as a go-between in the sale of \$10 of marijuana, or possessing a bottle cap smeared with heroin residue.<sup>25</sup> The ACLU has documented cases of people sentenced to life without parole for a nonviolent offense under a state habitual offender law in which all of the individual’s prior convictions were

nonviolent as well, while some predicate convictions were for crimes committed as a juvenile and/or were decades old.

Furthermore, the gap between the sentence a defendant would receive without the application of the habitual offender law and the actual sentence is often enormous. For example, a Texas man received a 50-year sentence under the state's habitual offender law in 2010 for possession of 3.7 grams of cocaine, a crime that carries a sentence of two to 10 years when charged without the habitual offender enhancement.<sup>26</sup>

The three-strikes movement has had a dramatic effect on sentencing throughout the country, and it has contributed substantially to the rise of the incarceration rate.<sup>27</sup> Today, all 50 states, the federal government, and the District of Columbia have some form of habitual offender or three-strikes law. These laws are often extremely severe. Many permit life-without-parole sentences for specified crimes, while 30 states and the federal government have habitual offender laws that *mandate* life without parole for certain crimes; in seven of these 30 states, a sentence of life without parole is mandatory even if every offense is nonviolent.<sup>28</sup> In addition, in many states prosecutors have discretion whether to charge a defendant under a habitual offender law. In such cases, a prosecutor—not a judge—determines that the person in question deserves to die behind bars, despite the fact that, historically, the U.S. criminal justice system has entrusted judges to impose just and proportional sentences.

The application of these laws is all the more troubling given the range of offenses that are charged as felonies in the first place. For example, defendants in California have been sentenced to 25 years to life in prison under the state's Three Strikes law for the following nonviolent felony crimes: taking small change from a parked car, stealing a pair of socks, shoplifting nine children's videotapes to give as Christmas gifts, stealing a jack from the back of a tow truck, forging a check for \$146, shoplifting a pair of work gloves from a department store, stealing a \$100 leaf blower, snatching a slice of pizza, attempting to steal a car radio, shoplifting three golf clubs, shoplifting meat from a grocery store, theft of chocolate chip cookies from a restaurant, attempting to break into a soup kitchen for food, and possession of less than \$10 worth of cocaine. In November 2012, California voters passed the Proposition 36 ballot initiative to reform California's Three Strikes law, thus preventing life sentences for defendants whose third strikes are not serious crimes, as defined in state law. Until the law was reformed, more than half of the prisoners sentenced under the law were serving sentences for nonviolent crimes. According to the advocacy group Families to Amend California's Three Strikes, approximately 4,431 third-strikers have received sentences of at least 25 years to life for nonviolent offenses in California; unfortunately, many remain behind bars awaiting resentencing and release.<sup>29</sup>

### **c. Changes to Parole Laws and Other Limitations on Release**

At the same time that states and the federal government were passing laws to dramatically increase sentences, there was also a significant push to guarantee that prisoners served a significant portion of their sentences before receiving parole or being granted “good time” credits. The federal system abolished parole in 1984, and a number of states followed suit.<sup>30</sup> By the end of 2000, 16 states had completely abolished discretionary parole, 28 states and the District of Columbia required a prisoner to serve 85 percent of his or her sentence before becoming eligible for parole, and four states abolished parole only for people convicted of certain violent crimes.<sup>31</sup> During this period, many states also rolled back earned compliance provisions, known as “good time” credits, that enable prisoners to earn the possibility of parole through good behavior or completing education and treatment programs while incarcerated.<sup>32</sup>

These so-called “truth-in-sentencing” laws have intuitive appeal: they enhance transparency in the sentencing process and assure crime victims and the public that a defendant will not walk out of prison long before the “true” sentence has been completed. In addition, abolishing parole can have a positive effect on a jurisdiction’s incarceration rate, so long as prison terms are rational. Prison growth over the last four decades was the most restrained in states that both abolished parole release and placed reasonable limitations on sentence length through the adoption of sentencing guidelines.<sup>33</sup>

However, severely cutting back on or abolishing parole while leaving extraordinarily long prison terms intact, can fuel excessive sentences and contribute to mass incarceration, with no obvious benefit to public safety. Predictably, in jurisdictions that have abolished parole while retaining life sentences for people convicted of nonviolent offenses—primarily the federal system, Louisiana, and Oklahoma—the incidence of life-without-parole sentences for nonviolent offenses has skyrocketed.

In addition, because of the steady elimination of meaningful parole consideration over the past few decades, parole-eligible prisoners are routinely denied parole, even those who can demonstrate their rehabilitation and fitness for release. For example, over the past decade, the California Board of Parole Hearings has denied 98 percent of lifers’ parole petitions it has heard.<sup>34</sup> Moreover, the board’s decisions may be reversed by the state governor. In 2007, of the more than 31,000 prisoners serving life sentences with the possibility of parole in California, more than 8,800 had passed their minimum eligible parole dates, but the board found only 172 lifers suitable for parole; of these 172 prisoners, the governor let only 37 parole release decisions stand, meaning only around 0.1 to 0.2 percent of lifers were released that year.<sup>35</sup> While the parole grant rate has increased in California in recent years, the length of time prisoners must wait for a subsequent hearing when denied parole has also increased.<sup>36</sup>

Despite reforms in some states, parole rates in most states remain low. The politicization of parole decisions has made review boards and governors extremely reluctant to grant parole<sup>37</sup> and

procedural rights for prisoners seeking parole are weak. Approximately 325 parole board members nationwide have extraordinary power to order or deny release; many are former prosecutors, judges, or correctional officers and few have training as social workers or psychologists.<sup>38</sup> In Maryland, for example, while the parole board's procedures are sometimes considered a model for other states, the release rate has been very low (in some years, no one was released on parole) because release requires the consent of the governor. In New York, the release rate has been moderate—around 40 percent—but few people with violent criminal convictions are released, and over 70 percent of first-time applicants are denied parole. In Nevada, parole boards only consider the prisoner's risk assessment in deciding whether or not to release a person. In six states (Colorado, Connecticut, Iowa, Michigan, New Mexico and Vermont), parole boards will not consider any input, written or verbal, from the applicant's attorney. Only 10 states appoint counsel for a prisoner at a parole hearing and 14 do not allow attorneys to be present at the parole hearing. All states permit input from the victim and most also allow the prosecutor to provide input.<sup>39</sup> These hearings are likely to produce insufficient and incorrect information, in the absence of procedural protections; and yet, many such hearings are very quick and may take place in a matter of minutes.<sup>40</sup>

Changes in sentencing and parole policies have affected the length of prisoners' confinement in prison across the board. The average time served for all major categories of crime has increased in the vast majority of states over the last two decades.<sup>41</sup> According to research by the Pew Center on the States, people released from prison in 2009 spent, on average, 36 percent more time in custody than those released in 1990.<sup>42</sup> Some of the state-specific statistics are even more striking: between 1990 and 2009, the average time served increased dramatically in Florida (166 percent increase in amount of time served), Virginia (91 percent), North Carolina (86 percent), Oklahoma (83 percent), Michigan (79 percent), and Georgia (75 percent).<sup>43</sup>

#### **d. Barriers to Re-entry and Collateral Consequences of Criminal Convictions**

Re-entry is a formidable challenge for individuals leaving prison. Not only must they adjust to freedom and an ever-changing society after years or decades on the inside, they must also contend with numerous legal barriers to rebuilding their lives. These barriers limit their access to housing, temporary support via the Supplemental Nutrition Assistance Program (SNAP) and Temporary Assistance for Needy Families (TANF), higher education, and employment—barriers that increase the likelihood that even the most well-intentioned returning citizens could recidivate and re-enter the prison system.

### **III. Best Practices from the United States: Sentencing Reform and Alternatives to Incarceration to End Mass Incarceration**

Legislators across the United States are realizing that America's addiction to incarceration is unsustainable, costing taxpayers billions of dollars while doing little to reduce crime rates.

In August 2013, U.S. Attorney General Eric Holder issued a number of guidance memos to U.S. Attorneys—collectively known as the Smart on Crime Initiative—in an effort to focus federal resources on “fewer but the most significant cases” and reduce unnecessary incarceration.<sup>44</sup> These policy changes included 1) ordering prosecutors to omit listing quantities of illegal substances in indictments for low-level drug cases; 2) allowing the transfer of more crimes to state courts; 3) increasing the use of drug-treatment programs as alternatives to incarceration; and 4) expanding a program of “compassionate release” for “elderly inmates who did not commit violent crimes and have served significant portions of their sentences.” In February 2015, the Attorney General reported preliminary data that indicates progress in this effort, particularly relating to drug offenses.<sup>45</sup>

This complements efforts in states, many of them under the stewardship of Republican governors, to reduce their prison populations. An ACLU report, “Smart Reform is Possible: States Reducing Incarceration Rates and Costs While Protecting Communities,” documented bipartisan reforms in historically “tough-on-crime” states that have significantly reduced incarceration rates and lowered crime rates, and should be emulated nationwide.<sup>46</sup>

Important recent state criminal justice reforms have included, among other measures, allowing parole for elderly prisoners, reducing criminal penalties for drug crimes, decriminalizing or legalizing marijuana, raising the threshold of misconduct for what constitutes a felony, using non-prison sanctions for technical violations of probation and parole, and eliminating mandatory minimum sentencing. For example:

By various means, four states—New York, New Jersey, Michigan, and California—have significantly reduced their prison populations in the last several years.<sup>47</sup> In New York, reductions in felony arrests coupled with increases in non-prison sentences have shrunk the prison population by nearly 25%. In New Jersey, higher parole-grant rates due to litigation, reforms related to drug-crime sentencing, and reductions in parole revocations have similarly reduced the prison population by nearly 25%. In Michigan, reductions in parole revocations plus a higher parole-grant rate have lowered the prison population by 17%. And in California, beginning in 2007 with legislative efforts to increase the use of probation, and amid financial incentives following a federal court order to depopulate, the state prison population has declined by nearly 25,000, or 13%.

More recently, in California, a ballot measure known as Proposition 47 passed by an overwhelming 58% majority in November 2014. The measure lowers personal drug use and small-scale property crimes—like vandalism or writing a bad check—from felonies to misdemeanors, and distributes the criminal justice savings to substance abuse and mental health



treatment, anti-truancy programs, and victims' services. Approximately 15,000 to 20,000 people will likely be eligible for re-sentencing and release from either state prison or county jail. By making low-level offenses misdemeanors instead of felonies, sentences are shorter, which should significantly relieve pressure on California's already overcrowded jails. The measure also reduces the severe consequences of a felony conviction on a person's future employment, housing, and life prospects.

Recognizing that much of the (failing) war on drugs has become a war on marijuana—nearly half of all drug arrests in 2010 were for marijuana possession—the states of Washington and Colorado legalized marijuana in 2012. Since then, a variety of marijuana reform bills have been introduced across the country, including medical marijuana, decriminalization (where possession remains illegal but punishable only by fine), Good Samaritan laws to protect those who report an overdose (moving toward treating drug use as a public health problem, not a criminal justice problem), and outright legalization accompanied by taxation and regulation.

In Georgia, the House of Representatives unanimously approved a bill that would reduce the number of kids sent to jail and prison by expanding the number of community-based programs for juveniles convicted of minor offenses and prohibit imprisonment of youth status offenders—kids who skip school or run away.<sup>48</sup>

In Texas, legislation over the last decade has mandated probation rather than prison time for low-level possession of many drugs, invested in drug treatment programs for people on parole or probation and created non-prison sanctions for individuals committing technical parole violations that are not new crimes. The result has been a drop in the state's crime rate to a level not seen since 1973, an incarceration rate that has stabilized since 2007 and a savings of more than \$2 billion.<sup>49</sup>

Similarly, Kansas passed laws in recent years mandating drug treatment rather than prison for some non-violent drug offenses, rewarding counties for reducing parole and probation revocations and expanding earned credits for education and treatment programs. Crime rates in the state dropped 18 percent between 2003 and 2009, the state's incarcerated population declined 15 percent during the same period and the state is projected to save well over \$100 million by the end of 2012.<sup>50</sup>

In Mississippi, state legislators voted in 2008 to partially repeal its truth-in-sentencing law – one of the harshest in the nation—and expand parole eligibility for non-violent offenses. The state legislature also expanded earned time credits for prisoners. The result: a 22 percent reduction in the state's incarcerated population and a projected savings of nearly half a billion dollars. Meanwhile, crime rates in Mississippi have dropped and now stand at their lowest levels since 1984.<sup>51</sup>

Several states have introduced bills that would reform mandatory minimum sentencing.<sup>52</sup> Because mandatory minimums are a major driver of incarceration rates, if passed, these bills could have a big impact. Similar efforts in four other states (Kansas, Michigan, New Jersey, and New York) have preceded large drops in prison populations, as well as drops in crime.<sup>53</sup>

These measures represent significant progress toward ending America's addiction to incarceration and enhancing human rights protections for millions of Americans under correctional control.

#### **IV. U.N. Treaty Body and Human Rights Council Recommendations to the United States**

In order to bring its prison system in line with international human rights standards, [the U.S. should](#):

- a. Eliminate incarceration as a penalty for certain classes of low-level, non-violent offenses, especially when these offenses are the result of mental illness, drug addiction or are first-time offenses;
- b. Strengthen cost-effective alternatives to incarceration and drug treatment programs;
- c. Distinguish between the people currently in prison who continue to pose threats to safety and those who are ready to re-enter society; and
- d. Require regular, systemic evaluations of the U.S. criminal justice system.

Following are the key recommendations issued by U.N. treaty bodies during periodic reviews of the United States outlining essential reforms to bring the U.S. criminal justice system into compliance with its human rights commitments.

#### **Review of the United States by the U.N. Human Rights Committee**

##### **[Concluding Observations on the Fourth Periodic Report of the United States of America, April 2014](#)**

- Racial disparities in the criminal justice system
  6. While appreciating the steps taken by the State party to address racial disparities in the criminal justice system, including the enactment in August 2010 of the Fair Sentencing Act and plans to work on reforming mandatory minimum sentencing statutes, the Committee continues to be concerned about racial disparities at different stages in the criminal justice system, as well as sentencing disparities and the overrepresentation of individuals belonging to racial and ethnic minorities in prisons and jails (arts. 2, 9, 14 and 26).

*The State party should continue and step up its efforts to robustly address racial disparities in the criminal justice system, including by amending regulations and policies leading to racially disparate impact at the federal, state and local levels. The State party should ensure the retroactive application of the Fair Sentencing Act and reform mandatory minimum sentencing statutes.*

- Conditions of detention and use of solitary confinement

20. The Committee is concerned about the continued practice of holding persons deprived of their liberty, including, under certain circumstances, juveniles and persons with mental disabilities, in prolonged solitary confinement and about detainees being held in solitary confinement in pretrial detention. The Committee is furthermore concerned about poor detention conditions in death-row facilities (arts. 7, 9, 10, 17 and 24).

*The State party should monitor the conditions of detention in prisons, including private detention facilities, with a view to ensuring that persons deprived of their liberty are treated in accordance with the requirements of articles 7 and 10 of the Covenant and the Standard Minimum Rules for the Treatment of Prisoners. It should impose strict limits on the use of solitary confinement, both pretrial and following conviction, in the federal system as well as nationwide, and abolish the practice in respect of anyone under the age of 18 and prisoners with serious mental illness. It should also bring the detention conditions of prisoners on death row into line with international standards.*

- Juvenile justice and life imprisonment without parole

23. While noting with satisfaction the Supreme Court decisions prohibiting sentences of life imprisonment without parole for children convicted of non-homicide offences (*Graham v. Florida*), and barring sentences of mandatory life imprisonment without parole for children convicted of homicide offences (*Miller v. Alabama*) and the State party's commitment to their retroactive application, the Committee is concerned that a court may still, at its discretion, sentence a defendant to life imprisonment without parole for a homicide committed as a juvenile, and that a mandatory or non-homicide-related sentence of life imprisonment without parole may still be applied to adults. The Committee is also concerned that many states exclude 16 and 17 year olds from juvenile court jurisdictions so that juveniles continue to be tried in adult courts and incarcerated in adult institutions (arts. 7, 9, 10, 14, 15 and 24).

*The State party should prohibit and abolish the sentence of life imprisonment without parole for juveniles, irrespective of the crime committed, as well as the mandatory and non-homicide-related sentence of life imprisonment without parole. It should also ensure that juveniles are separated from adults during pretrial detention and after sentencing, and that juveniles are not transferred to adult courts. It should encourage states that*

*automatically exclude 16 and 17 year olds from juvenile court jurisdictions to change their laws.*

[Concluding Observations on the Second and Third Periodic Report of the United States of America, July 2006](#)

- 24. The Committee, while welcoming the mandate given to the Attorney General to review the use by federal enforcement authorities of race as a factor in conducting stops, searches, and other enforcement procedures, and the prohibition of racial profiling made in guidance to federal law enforcement officials, remains concerned about information that such practices still persist in the State party, in particular at the state level. It also notes with concern information about racial disparities and discrimination in prosecuting and sentencing processes in the criminal justice system. (articles 2 and 26)

*The State party should continue and intensify its efforts to put an end to racial profiling used by federal as well as state law enforcement officials. The Committee wishes to receive more detailed information about the extent to which such practices still persist, as well as statistical data on complaints, prosecutions and sentences in such matters.*

- 32. The Committee reiterates its concern that conditions in some maximum security prisons are incompatible with the obligation contained in article 10 (1) of the Covenant to treat detainees with humanity and respect for the inherent dignity of the human person. It is particularly concerned by the practice in some such institutions to hold detainees in prolonged cellular confinement, and to allow them out-of-cell recreation for only five hours per week, in general conditions of strict regimentation in a depersonalized environment. It is also concerned that such treatment cannot be reconciled with the requirement in article 10 (3) that the penitentiary system shall comprise treatment the essential aim of which shall be the reformation and social rehabilitation of prisoners. It also expresses concern about the reported high numbers of severely mentally ill persons in these prisons, as well as in regular in U.S. jails.

*The State party should scrutinize conditions of detention in prisons, in particular in maximum security prisons, with a view to guaranteeing that persons deprived of their liberty be treated in accordance with the requirements of article 10 of the Covenant and the United Nations Standard Minimum Rules for the Treatment of Prisoners.*

- 33. The Committee, while welcoming the adoption of the Prison Rape Elimination Act of 2003, regrets that the State party has not implemented its previous recommendation that legislation allowing male officers access to women's quarters should be amended to provide at least that they will always be accompanied by women officers. The Committee also expresses concern about the shackling of detained women during childbirth. (articles 7 and 10)

*The Committee reiterates its recommendation that male officers should not be granted access to women's quarters, or at least be accompanied by women officers. The Committee also recommends the State party to prohibit the shackling of detained women during childbirth.*

- 34. The Committee notes with concern reports that forty-two states and the Federal government have laws allowing persons under the age of eighteen at the time the offence was committed, to receive life sentences, without parole, and that about 2,225 youth offenders are currently serving life sentences in United States prisons. The Committee, while noting the State party's reservation to treat juveniles as adults in exceptional circumstances notwithstanding articles 10 (2) (b) and (3) and 14 (4) of the Covenant, remains concerned by information that treatment of children as adults is not only applied in exceptional circumstances. The Committee is of the view that sentencing children to life sentence without parole is of itself not in compliance with article 24 (1) of the Covenant. (articles 7 and 24)

*The State party should ensure that no such child offender is sentenced to life imprisonment without parole, and should adopt all appropriate measures to review the situation of persons already serving such sentences.*

## **Review of the United States by the U.N. Committee on the Elimination of Racial Discrimination**

### **[Concluding Observations on the Combined Seventh to Ninth Periodic Reports of the United States of America, September 2014](#)**

- Criminal justice system

20. While welcoming the measures taken by the State party to address racial disparities in the criminal justice system, such as the launch of the "Smart on Crime" initiative in August 2013, the Committee remains concerned that members of racial and ethnic minorities, particularly African Americans, continue to be disproportionately arrested, incarcerated and subjected to harsher sentences, including life imprisonment without parole and the death penalty. It expresses concern that the overrepresentation of racial and ethnic minorities in the criminal justice system is exacerbated by the use of prosecutorial discretion, the application of mandatory minimum drug-offence sentencing policies, and the implementation of repeat offender laws. The Committee is also concerned at the negative impact of parental incarceration on children from racial and ethnic minorities (arts. 2, 5 and 6).

*The Committee calls upon the State party to take concrete and effective steps to eliminate racial disparities at all stages of the criminal justice system, taking into account the Committee's general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, by, inter alia:*

(a) *Amending laws and policies leading to racially disparate impacts in the criminal justice system at the federal, state and local levels and implementing effective national strategies or plans of action aimed at eliminating structural discrimination;*

(b) *Imposing a moratorium on the death penalty, at the federal level, with a view to abolishing the death penalty;*

(c) *Ensuring that the impact of incarceration on children and/or other dependents is taken into account when sentencing an individual convicted of a non-violent offence and promoting the use of alternatives to imprisonment.*

- Juvenile justice

21. The Committee is concerned at racial disparities at all levels of the juvenile justice system, including the disproportionate rate at which youth from racial and ethnic minorities are arrested in schools and referred to the criminal justice system, prosecuted as adults, incarcerated in adult prisons and sentenced to life imprisonment without parole. It also remains concerned that, despite the recent Supreme Court decisions which held that mandatory sentencing of juvenile offenders to life imprisonment without parole is unconstitutional, 15 states have yet to change their laws, and that discretionary sentences of life imprisonment without parole are still permitted for juveniles convicted of homicide (arts. 2, 5 and 6).

*The Committee calls upon the State party to intensify its efforts to address racial disparities in the application of disciplinary measures, as well as the resulting “school-to-prison pipeline”, throughout the State party and ensure that juveniles are not transferred to adult courts and are separated from adults during pretrial detention and after sentencing. It also reiterates its previous recommendation to prohibit and abolish life imprisonment without parole for persons who were under 18 years at the time of the crime, irrespective of the nature and circumstances of the crime committed, and to commute the sentences for those currently serving such sentences.*

#### [Concluding Observations on the Combined Fourth, Fifth, and Sixth Periodic Reports of the United States of America, March 2008](#)

- 20. The Committee reiterates its concern with regard to the persistent racial disparities in the criminal justice system of the State party, including the disproportionate number of persons belonging to racial, ethnic and national minorities in the prison population, allegedly due to the harsher treatment that defendants belonging to these minorities, especially African American persons, receive at various stages of criminal proceedings (art.5 (a)).

*Bearing in mind its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system,*

*according to which stark racial disparities in the administration and functioning of the criminal justice system, including the disproportionate number of persons belonging to racial, ethnic and national minorities in the prison population, may be regarded as factual indicators of racial discrimination, the Committee recommends that the State party take all necessary steps to guarantee the right of everyone to equal treatment before tribunals and all other organs administering justice, including further studies to determine the nature and scope of the problem, and the implementation of national strategies or plans of action aimed at the elimination of structural racial discrimination.*

- 21. The Committee notes with concern that according to information received, young offenders belonging to racial, ethnic and national minorities, including children, constitute a disproportionate number of those sentenced to life imprisonment without parole (art. 5 (a)).

*The Committee recalls the concerns expressed by the Human Rights Committee (CCPR/C/USA/CO/3/Rev.1, para. 34) and the Committee against Torture (CAT/C/USA/CO/2, para. 34) with regard to federal and state legislation allowing the use of life imprisonment without parole against young offenders, including children. In light of the disproportionate imposition of life imprisonment without parole on young offenders, including children, belonging to racial, ethnic and national minorities, the Committee considers that the persistence of such sentencing is incompatible with article 5 (a) of the Convention. The Committee therefore recommends that the State party discontinue the use of life sentence without parole against persons under the age of eighteen at the time the offence was committed, and review the situation of persons already serving such sentences.*

## **Review of the United States by the U.N. Committee Against Torture**

### **[Concluding Observations on the Combined Third to Fifth Periodic Reports of the United States of America, December 2014](#)**

- Solitary confinement

20. While noting that the State party has indicated that there is “no systematic use of solitary confinement in the United States”, the Committee remains concerned about reports of extensive use of solitary confinement and other forms of isolation in United States prisons, jails and other detention centres, for purposes of punishment, discipline and protection, as well as for health-related reasons. The Committee also notes the lack of relevant statistical information. Furthermore, it is concerned about the use of solitary confinement for indefinite periods of time and its use with respect to juveniles and individuals with mental disabilities. Full isolation of 22 to 23 hours a day in super-maximum security prisons is unacceptable (art. 16).

*The State party should:*

*(a) Limit the use of solitary confinement as a measure of last resort, for as short a time as possible, under strict supervision and with the possibility of judicial review;*

*(b) Prohibit the use of solitary confinement for juveniles, persons with intellectual or psychosocial disabilities, pregnant women, women with infants and breastfeeding mothers, in prison;*

*(c) Ban solitary confinement regimes in prisons, such as those in super-maximum security detention facilities;*

*(d) Compile and regularly publish comprehensive disaggregated data on the use of solitary confinement, including related suicide attempts and self-harm.*

- Protection of prisoners against violence, including sexual assault

21. The Committee is seriously concerned at the widespread prevalence of sexual violence, including rape, in prisons, jails and other places of detention, by staff and other inmates. It also notes with concern the disproportionately high rate of sexual violence faced by children in adult facilities, as well as the even higher rate of sexual victimization reported by inmates with a history of mental health problems and lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals. While welcoming the adoption, in 2012, of the National Standards to Prevent, Detect, and Respond to Prison Rape, pursuant to the Prison Rape Elimination Act, the Committee is concerned by reports that their implementation at the state level continues to be a substantial challenge. In that context, the Committee notes with concern that six states have not certified that they are in full compliance with the standards under the Act, and several agencies operating federal confinement facilities are still in the process of issuing their own regulations for the implementation of the Act.

The Committee remains concerned at the negative effects of the Prison Litigation Reform Act on the ability of prisoners to seek protection of their rights. While noting the amendments to the Act in 2013 (inter alia, adding “the commission of a sexual act” as an alternative to physical injury in order to establish eligibility for compensation for emotional distress), the Committee considers that the State party has continued to place greater emphasis on the goal of curbing prisoner lawsuits at the expense of inmates’ rights. Thus, the Committee regrets that section 1997 e (e) provides for either “physical injury” or “the commission of a sexual act” as prerequisites to obtaining compensatory damages for mental or emotional injury. It is concerned further about section 1997 e (a) of the Act, which requires prisoners to exhaust all internal complaint procedures before bringing an action in federal court, which implies that they have to meet applicable deadlines for filing the initial grievance and making administrative appeals.

Finally, the Committee notes that 19 states have enacted laws restricting the shackling of pregnant inmates and that such legislation has been under



consideration in a number of other states. The Committee is nevertheless concerned at reports that, in certain cases, incarcerated women are still shackled or otherwise restrained throughout pregnancy and during labour, delivery and post-partum recovery (arts. 2, 11, 12, 13, 14 and 16).

*The Committee recommends that the State party increase its efforts to prevent and combat violence in prisons and places of detention, including sexual violence by law enforcement and penitentiary personnel and other inmates. In particular, the State party should:*

- (a) Ensure that the standards pursuant to the Prison Rape Elimination Act or similar standards are adopted and implemented by all states, and that all federal agencies and departments operating confinement facilities propose and publish regulations that apply the standards of the Act in all detention facilities under their jurisdiction;*
- (b) Promote effective and independent mechanisms for receiving and handling complaints of prison violence, including sexual violence;*
- (c) Ensure that all reports of prison violence, including sexual violence, are investigated promptly and impartially, and that the alleged perpetrators are prosecuted;*
- (d) Ensure the use of same-sex guards in contexts where the detainee is vulnerable to attack, in scenarios that involve close personal contact or the privacy of the detainee;*
- (e) Provide specialized training to prison staff on prevention of sexual violence;*
- (g) Develop strategies for reducing violence among inmates. Monitor and document incidents of violence in prisons with a view to revealing the root causes and designing appropriate prevention strategies;*
- (h) Authorize monitoring activities by non-governmental organizations;*
- (i) Amend sections 1997 e (a) and (e) of the Prison Litigation Reform Act;*
- (j) Revise the practice of shackling incarcerated pregnant women, bearing in mind that the prison regime should be flexible enough to respond to the needs of pregnant women, nursing mothers and women with children.*

- Deaths in custody

22. The Committee notes with concern that 958 inmates died while in custody in local jails, in 2012, an 8 per cent increase over the 889 deaths in 2010. During the same year, State prison deaths remained stable with 3,351 reported deaths. The Committee is particularly concerned about reports of inmate deaths that occurred as a result of extreme heat exposure due to imprisonment in unbearably hot and poorly ventilated prison facilities in Arizona, California, Florida, New York, Michigan and Texas (arts. 2, 11 and 16).

*The Committee urges the State party to promptly, thoroughly and impartially investigate the deaths of all detainees, assessing the health care received by the inmates as well as any possible liability of prison personnel, and provide, where appropriate, adequate compensation to the families of the victims.*

*The State party should adopt urgent measures to remedy any deficiencies relating to temperature, insufficient ventilation and humidity levels in prison cells, including death row facilities.*

- Juvenile justice

23. The Committee remains concerned at the notable gaps in the protection of juveniles in the State party's criminal justice system. In particular, the Committee once again expresses concern at the detention conditions of juveniles, including their placement in adult jails and prisons, and in solitary confinement (arts. 11 and 16).

*The State party should take the necessary measures to ensure the proper functioning of the juvenile system in compliance with international standards. In particular, the State party should:*

(a) *Ensure full implementation of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines);*

(b) *Ensure that juvenile detainees and prisoners under 18 are held separately from adults, in line with the provisions of the Beijing Rules (rules 13.4 and 26.3) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (rules 17, 28 and 29);*

(c) *Prohibit the use of solitary confinement for juveniles (see para. 20 above);*

(d) *Resort to alternatives to incarceration, taking into account the provisions of the United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules) and the Bangkok Rules.*

- Life-without-parole sentences for juvenile offenders

24. While welcoming the Supreme Court rulings in *Graham v. Florida* (2010) and *Miller v. Alabama* (2012), in which the court imposed limitations on juvenile life-without-parole sentences, the Committee remains concerned that some courts have ruled that the *Miller v. Alabama* ruling does not apply retroactively and that the majority of the 28 states that allow mandatory life sentences without the possibility of parole for children have not passed legislation to comply with the ruling. Moreover, the rulings leave open the possibility for judges to impose life-without-parole sentences in homicide cases, even where the child played a minimal role in the crime, and courts continue to impose the sentence (arts. 11 and 16).

*The State party should abolish the sentence of life imprisonment without parole for offences committed by children under 18 years of age, irrespective of the crime committed, and enable child offenders currently serving life without parole to have their cases reviewed by a court for reassessment and resentencing, to restore parole eligibility and for a possible reduction of the sentence.*

[Concluding Observations on the Second Periodic Report of the United States of America, May 2006](#)

- 29. The Committee is concerned at section 1997 e (e) of the 1995 Prison Litigation Reform Act which provides “that no federal civil action may be brought by a prisoner for mental or emotional injury suffered while in custody without a prior showing of physical injury” (art. 14).

*The State party should not limit the right of victims to bring civil actions and amend the Prison Litigation Reform Act accordingly.*

- 32. The Committee is concerned at reliable reports of sexual assault of sentenced detainees, as well as persons in pretrial or immigration detention, in places of detention in the State party. The Committee is concerned that there are numerous reports of sexual violence perpetrated by detainees on one another, and that persons of differing sexual orientation are particularly vulnerable. The Committee is also concerned by the lack of prompt and independent investigation of such acts and that appropriate measures to combat these abuses have not been implemented by the State party (arts. 16, 12, 13 and 14).

*The State party should design and implement appropriate measures to prevent all sexual violence in all its detention centres. The State party should ensure that all allegations of violence in detention centres are investigated promptly and independently, perpetrators are prosecuted and appropriately sentenced and victims can seek redress, including appropriate compensation.*

- 33. The Committee is concerned at the treatment of detained women in the State party, including gender-based humiliation and incidents of shackling of women detainees during childbirth (art. 16).

*The State party should adopt all appropriate measures to ensure that women in detention are treated in conformity with international standards.*

- 34. The Committee reiterates the concern expressed in its previous recommendations about the conditions of the detention of children, in particular the fact that they may not be completely segregated from adults during pretrial detention and after sentencing. The

Committee is also concerned at the large number of children sentenced to life imprisonment in the State party (art. 16).

*The State party should ensure that detained children are kept in facilities separate from those for adults in conformity with international standards. The State party should address the question of sentences of life imprisonment of children, as these could constitute cruel, inhuman or degrading treatment or punishment.*

- 36. The Committee remains concerned about the extremely harsh regime imposed on detainees in “supermaximum prisons”. The Committee is concerned about the prolonged isolation periods detainees are subjected to, the effect such treatment has on their mental health, and that its purpose may be retribution, in which case it would constitute cruel, inhuman or degrading treatment or punishment (art. 16).

*The State party should review the regime imposed on detainees in “supermaximum prisons”, in particular the practice of prolonged isolation.*

## **Recommendations on Criminal Justice - Universal Periodic Review of the United States of America, May 2015 ([U.N. Human Rights Council Working Group report](#))**

### **Sentencing reform**

**5.238.** End the use of life imprisonment without parole for offenders under the age of 18 at the age of crime, regardless of the nature of that crime (Austria);

**5.239.** Abolish life imprisonment without possibility of parole for non-violent offenses (Benin);

**5.52.** Pass legislation domestically to prohibit the passing of life imprisonment without the possibility of parole on offenders who were children at the time of offending, and ratify without any further delay the CRC (Fiji);

**5.280.** Accelerate the process of passing a legislation to reform the mandatory minimum sentences begun with the Smart on Crime initiative (Nigeria);

### **Other criminal justice issues**

**5.240.** Take further steps to improve the current conditions of its prisons (Japan);

**5.279.** Devise a national strategy for the re-insertion of former detainees and to prevent recidivism (Morocco);

**5.281.** Conduct in-depth examinations into how race-related issues are affecting law enforcement and the administration of justice (Ghana);

**5.282.** Conduct in-depth examinations into how race-related issues were affecting law enforcement and the administration of justice, both at the federal and state levels (Poland);

**5.296.** Ensure that youth in conflict with the law are handled by the juvenile justice system and have access to free legal advisory assistance (Republic of Moldova);

**5.297.** Ensure that children under 18 are handled by the juvenile justice system in all circumstances (Slovenia);

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<sup>1</sup> See American Civil Liberties Union, *Mass Incarceration: Problems*, available at [https://www.aclu.org/files/assets/massincarceration\\_problems.pdf](https://www.aclu.org/files/assets/massincarceration_problems.pdf).

<sup>2</sup> E. ANN CARSON & DANIELA GOLINELLI, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, PRISONERS IN 2012 – ADVANCE COUNTS 1 (2013); TODD D. MINTON, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, JAIL INMATES AT MIDYEAR 2012-STATISTICAL TABLES 1 (2013).

<sup>3</sup> See American Civil Liberties Union, *Mass Incarceration: Problems*, available at [https://www.aclu.org/files/assets/massincarceration\\_problems.pdf](https://www.aclu.org/files/assets/massincarceration_problems.pdf) and *Combating Mass Incarceration: Facts*, available at <https://www.aclu.org/combating-mass-incarceration-facts-0>.

<sup>4</sup> See American Civil Liberties Union, *Mass Incarceration: Problems*, available at [https://www.aclu.org/files/assets/massincarceration\\_problems.pdf](https://www.aclu.org/files/assets/massincarceration_problems.pdf).

<sup>5</sup> MICHELLE NATIVIDAD RODRIGUEZ & MAURICE Emsellem, THE NATIONAL EMPLOYMENT LAW PROJECT, 65 MILLION “NEED NOT APPLY” THE CASE FOR REFORMING CRIMINAL BACKGROUND CHECKS FOR EMPLOYMENT (2011), available at [http://www.nelp.org/page/-/SCLP/2011/65\\_Million\\_Need\\_Not\\_Apply.pdf?nocdn=1](http://www.nelp.org/page/-/SCLP/2011/65_Million_Need_Not_Apply.pdf?nocdn=1).

<sup>6</sup> Todd R. Clear & James Austin, *Reducing Mass Incarceration: Implications of the Iron Law of Prison Populations*, 3 HARV. L. & POL'Y REV. (2009).

<sup>7</sup> John Pfaff, *The Causes of Growth in Prison Admissions and Populations* (2011).

<sup>8</sup> Some federal mandatory minimum sentences apply to other offenses, such as certain firearm, pornography, and economic crimes. For example, a person in possession of a gun who has three prior felony convictions is required to serve a mandatory 15-year term. 18 U.S.C. § 924(3)(1); § 2K2.1 (see also § 4B1.4).

<sup>9</sup> For example, in the federal system, possession of 10 grams of LSD, 50 grams of methamphetamine, or 280 grams of crack cocaine with intent to distribute results in a 10-year mandatory minimum sentence. The mandatory sentence for these drug amounts rises to 20 years if it is a second offense, and life-without-parole if it is a third offense. 21 U.S.C. §§ 841(a), 841(b)(1)(A); § 2D1.1.

<sup>10</sup> 21 U.S.C. §§ 841(a), 841(b)(1)(A); § 2D1.1.

<sup>11</sup> *United States v. Booker*, 543 U.S. 220 (2005).

<sup>12</sup> E.g., FLA. STAT. § 893.135(c) (2011) (establishing a 25-year mandatory minimum for possession or sale of 28 grams or more of heroin, morphine, or other opiates); LA. REV. STAT. ANN. § (B)(1) (2011) (establishing a mandatory minimum sentence of five years in prison for possession or distribution of certain drugs).

<sup>13</sup> ALA. CODE § 13A-12-231(3)(d) (1995).

<sup>14</sup> MISS. CODE ANN. § 41-29-139(f) (West 2011).

<sup>15</sup> Matt Groff, *Questions on the 1315 Chart* (Oct. 2012), available at <http://www.mattgroff.com/questions-on-the-1315-project-chart/>; Matt Groff, *Updating the 1315 Chart* (Oct. 2012), available at <http://www.mattgroff.com/updates-the-1315-chart/>.

<sup>16</sup> PAUL GUERINO ET AL., U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, PRISONERS IN 2010 28 tbl.16A (2011), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/p10.pdf>; CHRISTOPHER J. MUMOLA & ALLEN J. BECK, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, PRISONERS IN 1996 10 tbl.13 (1997), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/p96.pdf>.

<sup>17</sup> GUERINO ET AL., *id.* at 28 tbl.16B; MUMOLA & BECK, *id.* at 11 tbl.14.

<sup>18</sup> AMERICAN CIVIL LIBERTIES UNION, A LIVING DEATH: LIFE WITHOUT PAROLE FOR NONVIOLENT OFFENSES (2013), available at <https://www.aclu.org/files/assets/111813-lwop-complete-report.pdf>.

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- <sup>19</sup> PEW CENTER ON THE STATES, *TIME SERVED: THE HIGH COST, LOW RETURN OF LONGER PRISON TERMS 7* (2012), available at [http://www.pewstates.org/uploadedFiles/PCS\\_Assets/2012/Prison\\_Time\\_Served.pdf](http://www.pewstates.org/uploadedFiles/PCS_Assets/2012/Prison_Time_Served.pdf).
- <sup>20</sup> Michael G. Turner et al., “*Three Strikes and You’re Out*”: *A National Assessment*, FED. PROBATION 16 (1995).
- <sup>21</sup> Michael Vitiello, *Three Strikes: Can We Return to Rationality?*, 87 J. CRIM. L. & CRIMINOLOGY 395, 395-96 (1997).
- <sup>22</sup> WASH. REV. CODE 9.92.090 (West 2012).
- <sup>23</sup> Vitiello, *supra* note 21, at 400 n.25, 463-81.
- <sup>24</sup> NEV. REV. STAT. § 207.010(b) (West 2009).
- <sup>25</sup> AMERICAN CIVIL LIBERTIES UNION, *A LIVING DEATH: LIFE WITHOUT PAROLE FOR NONVIOLENT OFFENSES* (2013), available at <https://www.aclu.org/files/assets/111813-lwop-complete-report.pdf>.
- <sup>26</sup> Jessica Langdon, *Man sentenced to 50 years for cocaine possession*, WICHITA-FALLS TIMES RECORD NEWS, June 25, 2010. Possession of cocaine, a penalty group 1 substance, is a third-degree felony. See TEX. HEALTH & SAFETY CODE ANN. § 481.115 (West 2009). Third-degree felonies carry 2- to 10-year sentences; see TEX. PENAL CODE ANN. § 12.34 (West 2009).
- <sup>27</sup> E.g., ASHLEY NELLIS & RYAN S. KING, THE SENTENCING PROJECT, *NO EXIT: THE EXPANDING USE OF LIFE SENTENCES IN AMERICA* 27 (2009).
- <sup>28</sup> 21 U.S.C.A. §§ 860, 849, 861, 841(B)(1)(A) (WEST 2010); ALA. CODE §§ 13A-12-233, 13A-5-9(C)(4), 15-22-27.2 (2012); GA. CODE ANN. § 17-10-7(C) (West 2012); 730 ILL. COMP. STAT. ANN. 5/5-4.5-95, 5/3-3-3 (West 2012); IOWA CODE ANN. §§ 124.401D, 902.1 (West 2012); LA. REV. STAT. ANN. §§ 15:529.1(A)(3)(B), 15:529.1(A)(4)(B) (2012); MICH. COMP. LAWS ANN. § 333.7413(1) (West 2012); OKLA. STAT. ANN. TIT. 63, § 2-415(D)(3) (West 2012). The states in which all strikes can be nonviolent are Alabama, Georgia, Illinois, Iowa, Louisiana, Michigan, and Oklahoma. See also Charles J. Ogletree Jr. & Austin Sarat, *Introduction: Lives on the Line: From Capital Punishment to Life without Parole*, in *LIFE WITHOUT PAROLE: AMERICA’S NEW DEATH PENALTY?* 1, 4-5 (Charles J. Ogletree Jr. & Austin Sarat eds., 2012).
- <sup>29</sup> *About 3 Strikes*, FAMILIES TO AMEND CALIFORNIA’S THREE STRIKES (last visited Oct. 25, 2013), available at <http://facts1.live.radicaldesigns.org/article.php?list=type&type=55>.
- <sup>30</sup> Sentencing Reform Act of 1984, Pub. L. No. 98-471, 98 Stat. 1987 (1984).
- <sup>31</sup> TIMOTHY A. HUGHES ET AL., U.S. DEP’T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, *TRENDS IN STATE PAROLE, 1990-2000 1* (2001), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/tsp00.pdf>.
- <sup>32</sup> PAULA M. DITTON & DORIS JAMES WILSON, U.S. DEP’T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, *TRUTH IN SENTENCING IN STATE PRISONS* (1999).
- <sup>33</sup> American Law Institute, *Model Penal Code: Sentencing* 13 (Tentative Draft No. 2, Mar. 25, 2011), available at <http://www.ali.org/00021333/Model%20Penal%20Code%20TD%20No%20-%20online%20version.pdf>.
- <sup>34</sup> Sharon Dolovich, *Creating the Permanent Prisoner*, in *LIFE WITHOUT PAROLE: AMERICA’S NEW DEATH PENALTY?* 111, n.99, citing Keith Wattlely, Presentation at UCLA School of Law: Introduction to Life Sentences in California (Nov. 10, 2010); Jennifer Chaussee, *For Paroled Lifers, Release Dates May Come Only with the Courts*, CAPITOL WKLY., Jan. 13, 2011 (reporting that, according to one survey of 300 lifers in custody, only two had been granted release dates by the state parole board).
- <sup>35</sup> Alexander Cockburn, *Dead Souls*, THE NATION, Apr. 15, 2009.
- <sup>36</sup> STANFORD CRIMINAL JUSTICE CTR, STANFORD LAW SCHOOL, *LIFE IN LIMBO: AN EXAMINATION OF PAROLE RELEASE FOR PRISONERS SERVING LIFE SENTENCES WITH THE POSSIBILITY OF PAROLE IN CALIFORNIA* (2011).
- <sup>37</sup> Sharon Dolovich, *Creating the Permanent Prisoner*, in *LIFE WITHOUT PAROLE: AMERICA’S NEW DEATH PENALTY?* (Charles J. Ogletree Jr. & Austin Sarat eds., 2012).
- <sup>38</sup> Laura Cohen, *Freedom’s Road: Youth, Parole, and the Promise of Miller v. Alabama and Graham v. Florida*, 35 CARDOZO L. REV. 1031, 1072-73.
- <sup>39</sup> Sarah French Russell, *Review for Release: Juvenile Offenders, States Parole Practices, and the Eighth Amendment*, 89 INDIANA L. J. 373 (2014).
- <sup>40</sup> Laura Cohen, *Freedom’s Road: Youth, Parole, and the Promise of Miller v. Alabama and Graham v. Florida*, 35 CARDOZO L. REV. 1031, 1061.
- <sup>41</sup> See, e.g., BRUCE WESTERN, *PUNISHMENT AND INEQUALITY IN AMERICA* 43-45 (2006); PEW CENTER ON THE STATES, *TIME SERVED: THE HIGH COST, LOW RETURN OF LONGER PRISON TERMS 7* (2012), available at [http://www.pewstates.org/uploadedFiles/PCS\\_Assets/2012/Prison\\_Time\\_Served.pdf](http://www.pewstates.org/uploadedFiles/PCS_Assets/2012/Prison_Time_Served.pdf).
- <sup>42</sup> *TIME SERVED*, *id.*, at 2.
- <sup>43</sup> *Id.* at 3.

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<sup>44</sup> U.S. DEP'T OF JUSTICE, SMART ON CRIME: REFORMING THE CRIMINAL JUSTICE SYSTEM FOR THE 21ST CENTURY 1 (2013), available at <http://www.justice.gov/sites/default/files/ag/legacy/2013/08/12/smart-on-crime.pdf>.

<sup>45</sup> Eric Holder, Att'y General, Remarks at the National Press Club (Feb. 17, 2015), available at <http://www.justice.gov/opa/pr/attorney-general-holder-delivers-remarks-national-press-club>.

<sup>46</sup> AMERICAN CIVIL LIBERTIES UNION, SMART REFORM IS POSSIBLE: STATES REDUCING INCARCERATION RATES AND COSTS WHILE PROTECTING COMMUNITIES (2011), available at [https://www.aclu.org/sites/default/files/field\\_document/smartreformispossible\\_web.pdf](https://www.aclu.org/sites/default/files/field_document/smartreformispossible_web.pdf).

<sup>47</sup> See American Civil Liberties Union, *The Journalists' Guide to Criminal Justice Reform 2013* (2013), available at [https://www.aclu.org/sites/default/files/field\\_document/aclu-justice\\_reform\\_final-1.pdf](https://www.aclu.org/sites/default/files/field_document/aclu-justice_reform_final-1.pdf).

<sup>48</sup> See American Civil Liberties Union, *Reducing our Reliance on Incarceration: A Look at Promising State-Level Reforms in 2013* (2013), available at <https://www.aclu.org/blog/reducing-our-reliance-incarceration-look-promising-state-level-reforms-2013?redirect=blog/criminal-law-reform/reducing-our-reliance-incarceration-look-promising-state-level-reforms-2013>.

<sup>49</sup> See AMERICAN CIVIL LIBERTIES UNION, SMART REFORM IS POSSIBLE: STATES REDUCING INCARCERATION RATES AND COSTS WHILE PROTECTING COMMUNITIES (2011), available at [https://www.aclu.org/sites/default/files/field\\_document/smartreformispossible\\_web.pdf](https://www.aclu.org/sites/default/files/field_document/smartreformispossible_web.pdf).

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> See American Civil Liberties Union, *Reducing our Reliance on Incarceration: A Look at Promising State-Level Reforms in 2013* (2013), available at <https://www.aclu.org/blog/reducing-our-reliance-incarceration-look-promising-state-level-reforms-2013?redirect=blog/criminal-law-reform/reducing-our-reliance-incarceration-look-promising-state-level-reforms-2013>.

<sup>53</sup> See Sentencing Project, *Downscaling Prisons: Lessons from Four States* (2010), available at [http://www.sentencingproject.org/doc/publications/publications/inc\\_DownscalingPrisons2010.pdf](http://www.sentencingproject.org/doc/publications/publications/inc_DownscalingPrisons2010.pdf).