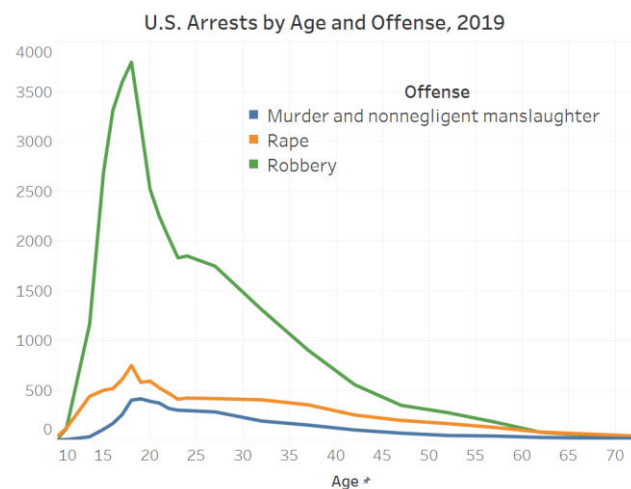


## The Older You Get: Why Incarcerating the Elderly Makes us Less Safe

The vast majority of people who commit crimes – even very serious crimes – naturally grow out of criminal behavior as they mature.

Because young people’s brains are still developing through their mid-20s, they are 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>1</sup> Consequently, criminal activity peaks during the late teen years and early 20s. In fact, breaking the law is normal behavior during that period: In self-reporting surveys, *most* adolescents report having done so.<sup>2</sup>

Fortunately, people grow and change. As they get older, they become less and less likely to engage in crime.<sup>3</sup> Arrests drop steeply by the early thirties, and almost three-quarters of arrests are of people below the age of 40; fewer than 4% are of people aged 60 or over.<sup>4</sup> Similar trends are seen with recidivism rates, which also decline dramatically as people age.<sup>5</sup> Plus, older adults who are arrested tend to have relatively minor offenses, such as DUI, simple assault, public drunkenness, larceny (typically shoplifting), drug violations, and disorderly conduct.<sup>6</sup>



This pattern holds true for people who committed violent crimes, who may actually be *less* likely to reoffend after release from prison than those with other offenses.<sup>7</sup> One study found that of those convicted of violent crimes, only 4% released between ages 45 and 54 and 1% released at 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>8</sup> Several case studies also illustrate this:

- In Philadelphia, 174 people were resentenced and released after having been sentenced to life without parole (LWOP) for homicides committed as children. After they had been in the community for an average of 21 months, only two (1.1%) had been reconvicted of any offense.<sup>9</sup>
- In Maryland, 188 people serving LWOP, mostly for murder or rape, were released after serving 30 or more years because a court ruled that jury instructions in their cases had been unconstitutional. Six years later, only five (2.7%) had returned to prison for either violating parole or a new crime.<sup>10</sup>
- In California, of 860 people convicted of murder who were granted parole between 1995 and 2011, only five (0.5%) had been reincarcerated for a new crime as of 2011.<sup>11</sup>



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<sup>1</sup> Arain, M., et al. (2013). *Maturation of the adolescent brain*. *Neuropsychiatric Disease and Treatment*, 9, 449–461. <https://doi.org/10.2147/NDT.S39776>.

<sup>2</sup> Bonnie, R.J., et al. (Eds.). (2013). *Reforming Juvenile Justice: A Developmental Approach*. National Academy of Science, 100. <https://www.nap.edu/read/14685/chapter/6#100>.

<sup>3</sup> Snyder, H.N. (2012). *Arrest in the United States, 1990-2010*. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. <https://bjs.ojp.gov/content/pub/pdf/aus9010.pdf>.

<sup>4</sup> Federal Bureau of Investigation, Criminal Justice Information Services Division. (2020). *2019 Crime in the United States*, Table 38. <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/topic-pages/tables/table-38>. The available data is only broken down into individual ages between age 15 and 24. Below age 15 and above age 24, the data is grouped into age groups. To account for this data limitation, within each age group, the average number of offenses for an individual age was plotted at the midpoint of the age group. For example, for the 25-29 age group, the number of robberies was divided by 5 (because that age group includes 5 individual ages) and that number was plotted at age 27 (the midpoint of the age group). The strategy did not work beyond age 65 because all arrests of people age 65 or older (which likely includes 25 or more individual ages) are lumped in a single age group. To best approximate frequency above age 65, the number of offenses within each category was divided by 10 and plotted at age 72.

<sup>5</sup> Prescott, J.J., Pyle, B., and Starr, S.B. (2020). *Understanding Violent-Crime Recidivism*. *Notre Dame Law Review*, 95:4, 1643-1698, 1688. <http://ndlawreview.org/wp-content/uploads/2020/05/9.-Prescott-et-al..pdf>.

<sup>6</sup> These, along with a residual category that includes public nuisance offenses, trespassing, and local ordinance violations, are the most common offenses for which people age 55 or over are arrested. Feldmeyer, B. and Steffensmeier, D. (2007). *Elder Crime: Patterns and Current Trends, 1980-2004*, *Research on Aging* 29(4):297-322, at 303, 313. [https://www.researchgate.net/publication/240691083\\_Elder\\_Crime\\_Patterns\\_and\\_Current\\_Trends\\_1980\\_2004](https://www.researchgate.net/publication/240691083_Elder_Crime_Patterns_and_Current_Trends_1980_2004).

<sup>7</sup> Id.

<sup>8</sup> Prescott, *supra* note 5, at 1688-1690.

<sup>9</sup> Daftary-Kapur, T. and Zottoli, T. (2020). *Resentencing of Juvenile Lifers: The Philadelphia Experience*. Montclair State University. <https://digitalcommons.montclair.edu/cgi/viewcontent.cgi?article=1084&context=justice-studies-facpubs>. Four others were rearrested but their cases were dismissed.

<sup>10</sup> Justice Policy Institute. (2018). *The Ungers, 5 Years and Counting: A Case Study in Safely Reducing Long Prison Terms and Saving Taxpayer Dollars*. <https://abell.org/publications/ungers-5-years-and-counting-case-study-safely-reducing-long-prison-terms-and-saving>.

<sup>11</sup> Weisberg, R., Mukamal, D.A., and Segall, J.D. (2011). *Life in Limbo: An Examination of Parole Release for Prisoners Serving Life Sentences with the Possibility of Parole in California*. Stanford Criminal Justice Center. [https://law.stanford.edu/index.php?webauth-document=child-page/164096/doc/slspublic/SCJC\\_report\\_Parole\\_Release\\_for\\_Lifers.pdf](https://law.stanford.edu/index.php?webauth-document=child-page/164096/doc/slspublic/SCJC_report_Parole_Release_for_Lifers.pdf).