



October 10, 2024

Governor Chris Sununu
State of New Hampshire
107 North Main Street
Concord, New Hampshire 03301

Dear Governor Sununu:

Please use your clemency authority to its fullest extent during your remaining time in office. Clemency is a bedrock of the American criminal justice system – understood as a critical check on excessive sentencing and a mechanism of redemption since the ratification of the U.S. Constitution.

Unfortunately, throughout the country and in New Hampshire, excessive sentences have become the rule rather than the exception. Nationally, one in seven incarcerated people is serving a life or virtual life sentence. In New Hampshire, there are 252 people serving life or virtual life sentences with no hope for relief or a second chance outside of the clemency powers bestowed upon your office. We know that long sentences do not make us safer. They are a drain on public safety resources and fail to deter crime. It is the certainty of being caught and held accountable, not the severity of punishment, that deters criminal behavior.

Given the limited time remaining in your term and the limited hearings scheduled for the Executive Council, we encourage you to urge the Executive Council to hold as many hearings as they can and to recommend cases where the petitioning individual has shown a clear record of rehabilitation and would not be an elevated risk to public safety upon release.

We believe that clemency consideration should be open to everyone regardless of offense. Determinations should be made based on their record of rehabilitation and readiness for release at the time of review. We also believe that everyone whose clemency petition makes it before your desk should receive a fair and individualized assessment. However, we would like to flag for you two populations of incarcerated people for whom clemency is an urgent and appropriate consideration: people who were under 25 at the time of their offense and incarcerated people currently over the age of 55.

Research has shown that, due to their still-developing brains, people under the age of 25 have diminished culpability and greater propensity for rehabilitation and change than is currently reflected in New Hampshire's sentencing laws. Current release opportunities do not reflect the established science on sentencing for emerging adults. Science has established that our brains do not fully develop until the age of 25. 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.¹ Consequently, criminal activity peaks during the late teen years and early 20s.

Fortunately, people mature as they age – even those who have committed serious offenses. For example, Washington, D.C. allows judges to resentence individuals who committed an offense before their 25th

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

birthday once the individual has served 15 years of their sentence. As of June 2023, 195 people had been released under this expanded second look law, and only seven people, or 4 percent, had been rearrested.²

To that end, we encourage you to provide strong consideration to people seeking clemency who were under the age of 25 at the time of their offense. Not only would this be a righteous use of your clemency powers, but it would lessen the burden on the New Hampshire prison system.

In addition, research has shown that elderly individuals are the least likely to reoffend yet the most expensive to incarcerate. American prisons were not designed to serve as gerontological wards, and our communities are not best served by spending finite resources on incarcerating the elderly.

Older adults who return to the community after serving long sentences pose little public safety risk. One study found that only 1 percent of people released at age 55 or older after serving sentences for violent crimes were reincarcerated for any new crime within three years.³ Similarly, in Maryland, 200 people were released from prison after a state court found the jury instructions used in their trials to be unconstitutional. Their average age when released was 64, and all had served 30 years or more. As of May 2021, only 3 percent had been re-incarcerated.⁴

Clemency is one of the most powerful tools at your disposal. As a critical component of your gubernatorial powers and invaluable piece of New Hampshire's criminal justice system, we hope that you will take our recommendations under strong consideration and use your clemency powers to their fullest extent during your remaining time in office. Data and evidence show that you can embrace public safety while leading with justice and mercy – these values are not mutually exclusive. Rather, they are intrinsically linked.

Thank you for your time and consideration of our views. If you have additional questions or would like to discuss this further, please feel free to contact me at bwidenhouse@famm.org.

Sincerely,

Bryan Widenhouse
Senior Policy Associate
FAMM

² Testimony of Warren Allen at Hearing on B25-291 before the Committee on the Judiciary and Public Safety of the Council of the District of Columbia (2023). <https://www.sentencingproject.org/app/uploads/2023/06/WarrenAllen-Safer-Stronger-Amendment-Act-2023-Testimony.pdf>.

³ Prescott, J.J., Pyle, B., and Starr, S.B. (2020). Understanding Violent-Crime Recidivism. *Notre Dame Law Review*, 95:4, 1643-1698. <http://ndlawreview.org/wp-content/uploads/2020/05/9.-Prescott-et-al..pdf>

⁴ Millemann, M., Chapman, J.E., and Feder, S.P. (2022). Releasing Older Prisoners Convicted of Violent Crimes: The Unger Story, *U. MD. L.J. RACE, RELIGION, GENDER & CLASS*, 21:2, 185-247, <https://secondchanceslibrary.org/wp-content/uploads/2022/06/Releasing-older-prisoners.pdf>