



The Harms of Extreme Sentences and the Need for Second Look Laws

Too many people are serving long prison terms that don't make us safer. People languish in prison for decades, regardless of how they change or grow, because our laws don't give them a second chance. Extreme sentences devastate families and communities across the country, but they hit communities of color the hardest. Second look laws, which give people an opportunity to be released if they are found to have successfully rehabilitated themselves, can help address these problems:

- **Extreme sentences don't make us safer** — The vast majority of people who commit crimes, even very serious crimes, naturally grow out of criminal behavior as they age and mature, making extreme sentences ineffective and wasteful.¹ Plus, researchers have found no evidence that severe sentences discourage people from engaging in crime.² It is the certainty of apprehension and punishment, not the severity of the sentence, that deters crime.
- **Instead, extreme sentences hurt public safety by consuming massive sums of money that could otherwise support programs that prevent crime** — Lengthy sentences are extremely costly, particularly as people get older and require greater medical care at higher costs to taxpayers.³ Incarcerating people who are no longer a threat wastes prison cells and funds. Second look laws can help reduce costs and divert savings to crime prevention.
- **Extreme sentences exacerbate racial disparities in our criminal justice system** — For example, Black people make up only 13 percent of the U.S. population,⁴ but account for more than half of all life without parole sentences being served in the U.S.⁵ Revisiting extreme sentences is therefore an important step towards addressing these racial disparities.
- **Extreme sentences are often unjust – Thousands of people are serving sentences that are disproportionate to their crime, were imposed without considering the individual's level of culpability or other mitigating factors, or are vastly longer than someone would receive for the same crime today.** For example, mandatory sentences deprive 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 or their age at the time of the offense. And when lawmakers pass smart sentencing reforms or revise an unjust penalty, they rarely apply retroactively, so people continue to serve sentences that we now recognize are too long. Second look laws provide an avenue for rectifying these injustices.
- **Second look laws can reunite families with their loved ones and give those who are released the opportunity to become contributing members of their communities.** People who no longer need to be incarcerated can be released to become breadwinners,

taxpayers, physically present parents and partners, and people whose life experience can be shared to lead others away from crime.

Key Principles for Second Look Laws

Legislatures can achieve these important goals by establishing second look mechanisms that allow for reconsideration and adjustment of extreme sentences. Second look laws should:

- **Have broad eligibility criteria** – Since most people grow out of criminal behavior, the opportunity to demonstrate rehabilitation and be considered for release should be available to all people serving long sentences, without categorical exclusions based on type of offense or length of sentence. The potential fiscal benefits of a second look law are also the largest if people serving the longest sentences are eligible.
- **Require a reasonable, evidence-based minimum time served before eligibility** – People can change tremendously in a decade. Incarcerating someone for longer than necessary wastes taxpayer money and can disrupt supportive relationships, cause job skills to atrophy, and make it harder to successfully transition back into society. The Model Penal Code recommends a second look after 15 years.⁶
- **Focus decision-making on the person’s situation and condition today** – The primary question should be whether continued incarceration is necessary to protect the public *now*. Since people grow and change and recidivism drops sharply as people age, the crime itself and disciplinary infractions that are more than five years old do not provide much insight into answering this question, and should therefore not be primary considerations. This does not, however, preclude consideration of evidence suggesting that the individual is innocent or should not have received such a severe sentence in the first place (e.g., they were not the primary actor, were young at the time of the crime, or received an irrational mandatory sentence).
- **Have presumptions in favor of release for people who meet certain criteria** – Rehabilitation is the norm, not the exception, for people who have served long sentences. 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. Even though their release was not predicated on a finding that they had been rehabilitated, six years later only five (2.7%) had returned to prison for violating parole or committing a new crime.⁷ Release should be the presumption in most cases where the individual has served a significant period of time (e.g., 15 or 20 years).
- **Not impose unduly long or onerous post-release supervision** – Most reoffending by people who are under community supervision happens within the first two years of supervision.⁸ Lengthy terms of supervision and unnecessary conditions of release do not improve public safety, and instead set people up to fail.⁹
- **Provide access to reentry programming and supports both during and after incarceration to help ensure that people given second chances are able to**

successfully transition back into their communities. While reentry support is important for anyone leaving prison, it is especially vital for people who have been disconnected from their communities for decades.

- **Ensure that victims and victims' families are kept informed about the case and provided with services and resources to help support their healing.** Extreme sentences are often framed as serving crime victims. However, survivors of serious crimes have a range of opinions on extreme sentences,¹⁰ and there is no evidence that extreme sentences actually improve victim well-being.¹¹ Moreover, our 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 our criminal justice 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 crucial to provide appropriate support to survivors of crime, particularly as people are released from prison.¹²
- **Include a right to counsel and funding for defense attorneys** – A right to counsel helps ensure that cases are investigated and presented effectively and efficiently, particularly given the challenges of preparing a long-closed case from prison.¹³
- **Include a right to appeal** – A right to appeal promotes fairness and consistency and helps ensure that the decision-making process aligns with the legislature's intent in enacting the second look law.¹⁴
- **Allow people denied release to reapply, and require that rejections include guidance on what an individual should do to become a strong candidate for release at their next review** – Growth is an ongoing process. Someone who is not currently ready for release may be ready several years later, if given direction for improvement. The Model Penal Code recommends a maximum of 10 years before rejected individuals are able to reapply.¹⁵ Those who have fulfilled the recommendations from their prior review should receive a presumption in favor of release.
- **Include data collection and reporting requirements** – These are necessary in order to monitor for and address any disparities that may arise, and to ensure that any other shortcomings can be identified and improved.

Additional Considerations

- **Age-based eligibility criteria** – People who are incarcerated grow and change regardless of how old they were at the time of the crime. This is particularly true for people who were under age 25 at the time of the crime, as their brains were not yet fully developed.¹⁶ Also, recidivism rates are extremely low for people released in their mid-40s or later,¹⁷ and costs increase dramatically for older individuals in prison. While an ideal second

look mechanism would provide eligibility for people of all ages who meet the minimum time-served requirement, if this is not politically feasible, second look mechanisms can be designed specifically for people who were under a certain age at the time of the crime (e.g., 25 or younger) or who are currently over a certain age (e.g., 55 or older). Shorter time served requirements are appropriate for people in these categories.

- **Who can file for a second look** – An ideal second look law would allow incarcerated people to request a second look themselves. The federal compassionate release law is a good example to follow. Historically, the Bureau of Prisons was tasked with initiating compassionate release applications, and filed virtually none. After the First Step Act gave incarcerated people the right to file a compassionate release motion in court, grants of compassionate release increased 19-fold.¹⁸ A second look law that allows only prosecutors to file second look petitions may be ineffective. Many prosecutors are committed to upholding sentences that they or their office originally secured. Also, access to second chances will vary geographically, depending on whether the prosecutors’ office in the county where someone was convicted supports second looks. Prosecutor-initiated second look laws may nonetheless be beneficial and worth considering if other alternatives are not politically viable and there are prosecutors’ offices in the state that are likely to prioritize sentencing review.
- **Who reviews and decides second look cases** –The appropriate decision-maker, typically either courts or a sentencing review board (parole board, indeterminate sentence board, etc.), will vary depending on the jurisdiction. In either instance, the factors considered by decision makers should be consistent with the principles laid out in this document – in particular, a person’s *present* condition, danger, and cost to the public should take priority over the facts or circumstances of the offense.
- **Multiple second look mechanisms** – Even if a state already has second look opportunities, lawmakers may nonetheless wish to create more review and release mechanisms. These could include new forms of parole (e.g., medical and geriatric parole), allowing courts to review and modify sentences when certain criteria are met, or both. For example, if a state’s parole board has a very low rate of granting parole, or a state’s court system is already over-burdened, allowing both avenues for relief can prevent case backlogs, ensure that people receive a meaningful review, and provide an expeditious release for those who are ready to return to the community.

¹ 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>. For example, one study found that, of people 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. Id. at 1688-1690.

² U.S. Department of Justice, Office of Justice Programs, National Institute of Justice (2016), *Five Things About Deterrence*. <https://www.ojp.gov/pdffiles1/nij/247350.pdf>.

³ Mai, C. and Subramanian, R. (2017.), *The Price of Prisons: Examining State Spending Trends, 2010-2015*, Vera Institute of Justice, at 7. https://storage.googleapis.com/vera-web-assets/downloads/Publications/price-of-prisons-2015-state-spending-trends/legacy_downloads/the-price-of-prisons-2015-state-spending-trends.pdf; McKillop, M. and Boucher, A. (2018), *Aging Prison Populations Drive Up Costs*, The Pew Charitable Trusts,

<https://www.pewtrusts.org/en/research-and-analysis/articles/2018/02/20/aging-prison-populations-drive-up-costs>.

⁴ U.S. Census Bureau (2019). *Quick Facts: United States*. <https://www.census.gov/quickfacts/fact/table/US/PST045219>

⁵ Nellis, A. (2021). *No End In Sight: America's Enduring Reliance on Life Imprisonment*, The Sentencing Project, at 18. <https://www.sentencingproject.org/publications/no-end-in-sight-americas-enduring-reliance-on-life-imprisonment/>.

⁶ Model Penal Code § 305.6. Modification of Long-Term Prison Sentences; Principles for Legislation, <http://www.thealiadviser.org/wp-content/uploads/2019/03/Modification-of-Long-Term-Prison-Sentences.pdf>.

⁷ 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>.

⁸ Bradner, K., et al. (2020). *More Work to Do: Analysis of Probation and Parole in the United States, 2017-2018*, Columbia Justice Lab, at 13. <https://justicelab.columbia.edu/sites/default/files/content/More%20Work%20to%20Do.pdf>.

⁹ *Id.* Doleac, J.L. (2018). *Study after study shows ex-prisoners would be better off without intense supervision*, The Brookings Institution, <https://www.brookings.edu/blog/up-front/2018/07/02/study-after-study-shows-ex-prisoners-would-be-better-off-without-intense-supervision>.

¹⁰ Alliance for Safety and Justice (2019). *Crime Survivors Speak: The First-Ever National Survey of Victims' Views on Safety And Justice*. <https://allianceforsafetyandjustice.org/wp-content/uploads/documents/Crime%20Survivors%20Speak%20Report.pdf>; Hardison, E. (2019). *These crime victims have lost loved ones to murder — and to prison. That's why they want to end life without parole in Pennsylvania*, Pennsylvania Capital Star. <https://www.penncapital-star.com/criminal-justice/these-crime-victims-have-lost-loved-ones-to-murder-and-to-prison-thats-why-they-want-to-end-life-without-parole-in-pennsylvania/>.

¹¹ Sered, D. (2019). *Until We Reckon*, The New Press, at 39.

¹² *Id.* at 27-28.

¹³ Murray, J. et al. (2021). *Second Look = Second Chance: Turning the Tide Through NACDL's Model Second Look Legislation*, National Association of Criminal Defense Lawyers, 13-14. <https://www.nacdl.org/getattachment/c0269ccf-831b-4266-bbaf-76679aa83589/second-look-second-chance-turning-the-tide-through-nacdl-s-model-second-look-legislation.pdf>.

¹⁴ *Id.* at 16.

¹⁵ Model Penal Code, *supra* note 6.

¹⁶ Arain, M., et al. (2013). Maturation of the adolescent brain. *Neuropsychiatric disease and treatment*, 9, 449–461. <https://doi.org/10.2147/NDT.S39776>.

¹⁷ In one study, only 4% of people convicted of violent crimes 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. Prescott, J.J., Pyle, B., and Starr, S.B. (2020). Understanding Violent-Crime Recidivism. *Notre Dame Law Review*, 95:4, 1643-1698, 1688-1690. <http://ndlawreview.org/wp-content/uploads/2020/05/9.-Prescott-et-al..pdf>.

¹⁸ Approximately 324 releases were granted between 2013 and 2017 (Thompson, C. (2018). *Old, Sick and Dying in Shackles*, The Marshall Project. <https://www.themarshallproject.org/2018/03/07/old-sick-and-dying-in-shackles>), while 3,691 were granted between December 2018 and September 21, 2021. Federal Bureau of Prisons (2021). *First Step Act: FSA Numbers*. <https://www.bop.gov/inmates/fsa/>.