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New report from The Sentencing Project urges a second look at long sentences

Over 200,000 people in U.S. prisons were serving life sentences in 2020. Nearly half of the life-sentenced population is African American. Nearly one-third is age 55 or older. Concerned by this situation, Senator Corey Booker and Representative Karen Bass introduced the Second Look Act in 2019 enabling people with at least 10 years in federal prison to petition a court for re sentencing. Legislators in 25 states, have introduced second look bills. A federal bill allowing re sentencing for youth crimes has bipartisan support, and, over 60 elected prosecutors and law enforcement leaders have called for second look legislation, with several prosecutors’ offices having launched sentence review units.

This report examines the evidence supporting these reforms. Specifically:

- Taking a second look at prison sentences after people have served 10 to 15 years, ensuring that sentences reflect society’s evolving norms and knowledge. The Model Penal Code recommends a judicial review after 15 years of imprisonment for adult crimes, and after 10 years for youth crimes.
- Basing policies on criminological research establishing that long prison sentences are of limited deterrent value and are costly, because of the higher cost of imprisoning the elderly.
- Noting that Crime survivors are not of one mind and many have unmet needs that go beyond perpetual punishment. Ultimately, a survivor’s desire for punishment must be balanced with societal goals of advancing safety, achieving justice, and protecting human dignity.

The report presents in-depth accounts of two reform efforts that can be models for the nation:

- California’s 2018 law (Assembly Bill 2942) allows district attorneys to initiate re sentencing.
- Washington, DC’s Second Look Act (2020) allows those who committed crimes as emerging adults—under age 25—to petition for re sentencing after 15 years of imprisonment.

The Sentencing Project recommends limiting maximum prison terms to 20 years, except in unusual circumstances, abolishing mandatory minimum sentences and applying reforms retroactively to implement a second look policy that can effectively correct sentencing excesses of the past, They also recommends instituting an automatic sentence review process within a maximum of 10 years of imprisonment, with a “rebuttable presumption of resentencing,” and intentionally addressing anticipated racial disparities.

*The American Law Institute, founded in 1923, produces the Model Penal Code, an influential document that recommends legislation to state governments—the first since its original publication—won final approval by the ALI in 2017. It endorses a Second Look provision, which reads, in part:

11.02. “The legislature shall authorize a judicial panel or other judicial decision maker to hear and rule upon applications for modification of sentence from prisoners who have served 15 years of any sentence of imprisonment.”

New report examines Parole Board practices and calls for changes.

Washington and Lee Law School has published a new report on the Virginia Parole Board. The report begins by defending the parole system, arguing that it “fulfills a critically important mission in Virginia: reviewing eligible prisoners to determine whether their release is compatible with the public interest.” The report addresses recent criticism of the board stating that “Much criticism of the board reflects hostility to the very concept of parole itself and makes an effort to score political points by sensationalizing the facts of a long-ago crime whenever the Board makes a decision in favor of mercy and rehabilitation rather than more punishment,” the authors assert. The report also defended Adrienne Bennett, the previous chair, for her advocacy of potential grantees stating that “there should be nothing remarkable about a board member arguing for or against a particular case. “Virginia Parole Board members should engage in discussion about all of the cases under consideration,” it says. Given the number of cases (over 2000) and the few board members (5) available to hear those cases, let alone discuss the cases, more members are needed.

The main shortcoming identified in the report was a lack of objective standards governing the board’s decision.. When denying parole, the board only provides a computer-generated list containing stock explanations. The report also notes that the board expects to hear remorse and accountability for the crimes that sent the prisoners to prison. resulting in, Old-Law prisoners who contend they are innocent being penalized, when they come up for parole, where the single most powerful reason for their release (an innocence claim) can be held against them as indicative of lack of remorse. In summary, the report proposes establishing an office to investigate actual innocence claims of parole-eligible prisoners. Other recommendations include having board members considering cases in panels, meeting with the inmates seeking parole and reporting the number of votes to grant or not grant in each case. The report urges the General Assembly to double the size of the board to 10 voting members and add funding to pay for full-time investigators and parole examiners — it says all the positions are now part time. Finally, the study says there also should be grants to help more parole-eligible inmates to be represented by lawyers. The majority of such inmates have been prisoners for 25 or more years and are indigent

Gov. Northam has announced the appointment of Lethia Hammond as vice chair of the Virginia Parole Board

Hammond comes from a long career in public service and prior to her appointment served as Assistant Commonwealth’s Attorney in Botetourt County where she handled all phases of trial in General District, Juvenile and Domestic Relations, and Circuit Court proceedings. She was the designated Juvenile and Domestic Relations prosecutor, and frequently served as a special prosecutor in jurisdictions across the Commonwealth. “Lethia Hammond’s vast experience in the criminal justice system will strengthen the Virginia Parole Board and its important work,” Northam said. “Together with the appointment of Lethia Hammond, these concrete steps will bolster our efforts to create a more equitable and accessible clemency process and drastically reduce the backlog of pardon requests.” He insists that he remains committed to tackling the backlog of pardon petitions and has recently dedicated additional staff and resources to ensure those seeking clemency receive efficient consideration. The Northam Administration is also launching a redesigned pardons website and a new petition portal that will enable individuals to submit pardon petitions electronically, check the status of a pending petition, and provide support or opposition for a petition. Governor Northam will also eliminate the costly and confusing requirement that petitioners obtain copies of their criminal history.

Families will be able to visit inmates again at nine Virginia correctional facilities next month.

The Department of Corrections announced Wednesday (Aug 11) that it will open nine pilot sites for in-person family visits on Sept. 1 and officials expect these visits will resume at all facilities by Oct. 1. The department reopened all correctional facilities to attorneys and court officials, embassy and consulate officials last month and this month all facilities were opened to religious visitors and volunteers .The stes that will open for family visits on Sept. 1 are St. Brides, Greensville, Buckingham, Green Rock and Keen Mountain correctional centers; Caroline and Patrick Henry correctional units; Fluvanna Correctional Center for Women and Nottoway Work Center. Fully vaccinated inmates and probationers can meet with members of the public in person. Video visits are available to unvaccinated inmates. Visitors 12 and over must receive a negative result from a rapid antigen test to visit an inmate or probationer in person.

Parole Grant Rates 2021

Month	Reg	Tot	%	Ger	Tot	%	Dual	tot	%
Jan	8	96	8.3	7	77	7.9	2	34	.05
Feb	11	125	8.8	3	59	.05	3	41	.07
Mar	15	126	11.9	0	17	0	9	0	0
Apr	9	68	12.2	4	31	13	5	49	10.
May	11	96	11	3	45	.06	5	50	10
June	14	141	10	2	66	3	2	67	3

Covid prisoner totals

9,121 Total positive cases to date

1 Active cases on-site

0 Active cases in hospitals

56 COVID-19 positive deaths

New Report from The ACLU and Human Rights Watch**Probation, Parole Feed Mass Incarceration**

As of 2016, 4.5 million people, or 1 in every 55, were under supervision, often for years. They are required to follow numerous wide-ranging, vague and oppressive conditions, like paying fines and fees many cannot afford; attending frequent meetings, often far away and during work hours; reporting every address change, even when they lack housing stability; and staying away from “disreputable” people. Human Rights Watch and the ACLU interviewed 164 people, in 3 states : Pennsylvania, Wisconsin, and Georgia. Researchers also interviewed family, government officials, lawyers, advocates, and experts, and analyzed data provided by or obtained from these states and the US Bureau of Justice Statistics.

The report’s findings conclude that

- rather than diverting people from incarceration, probation and parole are feeding jail and prison populations. Council of State Governments data shows that, in 2017, 45 percent of all state prison admissions resulted from probation or parole violations.
- The supervision rule violations that lead to incarceration often involve using drugs, failing to report address changes, and breaking rules of supervision-mandated programs
- .There are stark racial disparities in supervision and its enforcement.
- In many jurisdictions examined in the report, people accused of violating their supervision are regularly detained for months just waiting for a hearing to contest the charges – even for rule violations .
- When found to have violated their supervision, people in the states examined are often subjected to disproportionate punishments, including additional jail or prison time, through a process that does not protect fair trial rights

Probation and parole operate under a separate legal system – one where basic rights, like the presumption of innocence, speedy detention hearings, and burden of proof beyond a reasonable doubt, go out the window.” “This places immense pressure on people to admit to the allegations just to get out of jail.” Many aspects of these supervision systems violate US and international human rights law, including prohibitions on disproportionate punishment, racial discrimination, and arbitrary detention. Human Rights Watch and the ACLU recommend that federal, state, and local governments divest from supervision and incarceration and invest in jobs, housing, and voluntary treatment for substance use disorder and mental health care.

A Note About Letters to Virginia CURE

While Virginia CURE cares about your concerns and appreciates being kept informed, we don’t have a volunteer staff large enough to reply promptly to all letters received .Please, keep it short and to the point. **Do not send legal papers.** We do not have the capacity to deal with legal issues. Send mail to **P.O. Box 2310, Vienna, VA 22183**

New Prosecutors Begin Push for Resentencing Laws

New state and county prosecutors are arguing that they need the power to request resentencing from judges to correct past injustices, end mass incarceration, give people second chances and divert money spent on incarceration to more effective crime prevention methods. In April, more than 60 current and former prosecutors signed a statement by the nonprofit network Fair and Just Prosecution urging their colleagues to review decades-long sentences in their jurisdictions and to no longer seek such sentences, except in cases where the convicted individual poses a serious safety risk. While these resentencing laws have the power to end harsh sentences and end mass incarceration, some advocates have criticized resentencing laws that only allow prosecutors to request resentencing, arguing that incarcerated people should also be allowed to petition courts for resentencing in their cases. Not all prosecutors are prioritizing resentencing even when they have the power to do so, leaving incarcerated people serving overly long sentences.

Arlington launches a Conviction Review Unit

Arlington County has established a conviction review unit to investigate claims of wrongful convictions. The unit will look into claims of those who were convicted at trial of murder, kidnapping, aggravated assault, and other felonies. Just last year, the General Assembly passed a law (HB974) that actually expands the pool of defendants who are eligible to challenge convictions. Established within the Commonwealth's Attorney Office for Arlington County and Falls Church, the unit will also be responsible for litigating motions for post-conviction DNA testing and responding to Freedom of Information Act requests. It's similar to the Conviction Integrity Unit that the Virginia Attorney General's office launched in January

Virginia DOC faces law suit against use of dogs to manage prisoners

Using dogs as weapons against prisoners has been prohibited by many states and even the U.S. military. Revised regulations from 2019 for the Military Working Dog claims that canines "will not guard detainees, U.S. military prisoners, or dislocated civilians. Units will not use MWD teams to harass, intimidate, threaten, or coerce detainees for interrogation purposes. " Yet, a recently filed law suit claims that Virginia is doing just that Letters from prisoners to advocacy organizations, including Virginal CURE, describe instances of men being bitten and mauled by dogs in the presence, and with the active cooperation of prison officers. Moreover, medical attention is sometimes denied. Recently filed lawsuits describe Virginia's two maximum level prisons as regularly using "unmuzzled canines to terrify and attack prisoners." The two prisoners in the suit are being represented by Kelly Jo Popkin of Rights Behind Bars, and D.C.-based firm Arnold & Porter Kaye Scholer. Ms. Popkin describes Virginia as an "outlier state" when it comes to using dogs as weapons in prisons. She also emphasized the historical context with dogs being used against mostly black prisoners. " DOC spokesperson, Lisa Kinney said, when asked about the complaints "If there are specific, credible allegations I would encourage the advocacy group to let us know so we can look into them." '

Fairfax County Prosecutors Concerned Over State Funding Formula

Fairfax County, Virginia's largest county, has spent over \$12 million on the Diversion First program, which includes a drug court, a veteran's court and other specialty dockets steering low level offenders away from incarceration and towards support and rehabilitation. Fairfax county is a leader in the movement to reform the state's criminal justice system. One would think that they would be praised for their effort. Instead, Fairfax County says it is being punished by a state funding formula that has been geared toward rewarding local prosecutors for seeking harsher felony sentences instead of leniency. This is the result of the State Compensation Board allocating funds to attorneys based on the number of "sentencing events" an office has per year, awarding more money for more offenders convicted in circuit court. Unfortunately, there is no award for the hours of work that prosecutors put in on all the cases that will be directed to alternative justice programs. Advocacy groups say the system effectively rewards a tough-on-crime approach that is out of step with the wave of reform movements that have emerged across the country. The county Commonwealth's Attorney, Steve T. Descano, says his office lacks the resources to hire attorneys to properly handle all of his office's cases and, as a result, stopped prosecuting cases involving allegations of non-felony assault, larceny and other low-level crimes. While the county recently approved an additional \$3.7 million, critics worry that amount isn't likely to be enough to fund the 98 additional positions Descano says he needs and argue that the state should be doing more to shoulder the burden

. Excerpted from The Crime report July 7, 2021

The Virginia Department of Corrections announces the end of “restrictive housing”

The Virginia Department of Corrections has announced that it has completed the removal of restrictive housing in Virginia’s prisons. The process began January 6, 2020, when the Virginia DOC embarked on a progressive revision of its restrictive housing areas, by offering a minimum of four hours per day of out-of-cell time for inmates assigned to restrictive housing. The Department has maintained this practice for the past 18 months. By offering a minimum of four hours of out-of-cell time each day to all inmates in these programs, the Department no longer operates anything that meets the American Correctional Association definition of restrictive housing. Effective August 1, 2021, this effort will culminate with the adoption of Restorative Housing. Although this move looks like a step in the right direction, activists from groups like the Coalition Against Solitary, remind us that 4 hours a day out of cell is not an end to solitary and that much more could be done to really end the use of this abhorrent practice. Another issue is the lack of clarity concerning restorative housing. It sounds good, but what is it anyway and how will it be used?

Informing judges of the cost of incarceration

In a article for the *Criminal Justice Law Review*, Michael Conklin of Angelo State University calls it a “common sense” approach to justice system reform that could also win support from both liberals and conservatives. Giving a jury or a judge information about the potential cost of their decisions would be “a more palatable method for reform among politicians who fear being labeled “soft on crime,” Conklin wrote. While cost is frequently part of the discussions about repairing the flaws of the justice system, it has usually been ignored at the most basic level of a trial. The practice of informing judges of incarceration costs before they decide on sentencing for a defendant has been used successfully in Missouri, resulting in reductions in both prison populations and recidivism, Conklin reported.” “The current cost structure of the criminal justice system creates a perverse incentive in favor of incarceration because state criminal cases are tried at the local (typically county) level, while felony incarceration costs are borne at the state level,” Conklin wrote. “This results in what commentators have accurately described as a ‘correctional free lunch.’ “This system allows for responsibility and accountability to be obscured, and it allows law enforcement and prosecutors to diffuse the costs of their actions from the community level to the state level. When tested in six cases involving a variety of serious crimes ,the results were consistent with what Conklin argued. In each case, the participant was given the details first without costs incurred, and then with costs included. The results were consistent with what Conklin argued.

Virginia DOC receives award for diversion program

Virginia’s reform efforts resulted last week in the Council of State Governments’ Southern Legislative Conference awarding the Virginia DOC the 2021 State Transformation in Action Recognition (STAR) award for the Department’s Secure Diversionary Treatment Program for inmates with a serious mental illness. The program was developed to divert inmates with a serious mental illness who are at risk of engaging in severe and disruptive incidents from a restrictive housing setting into a program where their unique needs are met and supported. The STAR award identifies and promotes state government solutions to regional problems, focusing on policy innovations that are creative, impactful, transferable, and effective. initiatives were selected this year by a panel of judges comprised of state legislators, legislative staff, and policy experts.

Group beginning recall campaign against Commonwealth Attorneys

Aug. 2, 2021— A Republican-linked group recently announced that it was beginning a recall campaign backed by undisclosed donors to brand Democrats and their allies as soft on crime by targeting progressive prosecutors. The focus will be on 3 prosecutors from the DC suburbs who were elected as reformers. The group, Virginians for Safe Communities, said the targets of the recall effort were Buta Biberaj of Loudoun County, Parisa Dehghani-Tafti of Arlington County and Steve Descano of Fairfax County, all of whom hold the position of Commonwealth’s Attorney. The campaign will be difficult in this very liberal part of the state. But the organizers described it as part of a broader national push to harness voters’ concerns about rising crime rates in cities and a backlash to anti-police sentiment

Eight new judges join the Appeals Court August 10

Following a selection process that Republicans criticized as one-sided and secretive, six new judges were elected in the Democrat-controlled House and Senate as part of a court expansion plan approved by the legislature earlier this year. The other two judges were elected to fill vacancies on the court. The court expansion plan drew charges of “court packing” from some Republicans who said it was an attempt to change the political makeup of the court and promote a liberal agenda. Democrats, however, said the additional judges are needed to expand the intermediate court’s jurisdiction and give both criminal defendants and civil litigants an automatic right of appeal, something every other state in the country now provides. Several Republicans blasted Democrats for meeting privately with judicial candidates to narrow the list of applicants to eight. But the judges were elected with no discussion on the House or Senate floors before the votes.

Some Republicans, including Sen. David Suetterlein, opted not to cast votes on the Court of Appeals judges. Suetterlein said he objected to the lack of public input on the candidates and the way the Democratic leadership controlled the interview process. Democrats praised the new slate of judges, saying it is a diverse group, both demographically and professionally. Before the expansion, the only cases granted automatic hearings with the appeals court were those involving domestic issues, such as divorces and adoptions; workers compensation claims; and administrative law cases. Criminal cases, the court only heard a fraction of the cases it was asked to hear. “At the end of the day, I truly believe we put forward a slate of candidates that is both historical as well as transformative,” said Sen. Joe Morrissey. (AP)

Prisoner rebellion in Lynchburg ends peacefully

Inmates at the Lynchburg Adult Detention Center took over a maximum security housing unit of the jail around 6 p.m. August 10. Correctional officers were able to get out safely and notify supervisors. During the barricade, inmates damaged property and destroyed equipment in the unit.

For 14 hours, local, state and federal officials worked to resolve the situation safely and managed to relocate all of the inmates without using force, Lynchburg Police Chief Ryan Zuidema said, noting the restraint of the people involved. “I think it can be used as an example of how we can take a very trying, difficult situation and resolve it peacefully, without any injuries, without any use of force and ultimately bring some type of calm back to the chaos that was last night,” he said. There were 66 inmates barricaded inside the 48-cell housing unit and there was damage to equipment inside the unit, authorities said. There was damage to cell windows and areas officers use for daily activities and camera systems on the unit were “drastically affected the unit will be out of service for a time, but it’s not clear how long. It was not immediately clear what sparked the situation, but authorities promised a thorough investigation. Officials had not noticed a recent uptick in complaints about conditions in the unit,

The Case for the Abolition of Criminal Confessions

Guha Krishnamurthi, an assistant law professor at the Southern Texas College of Law, argues that criminal confessions are too easily subject to police coercion or plea bargaining by prosecutors, and should be “abolished” as a form of evidence. As a matter of theory, confession evidence has low probative value in showing a defendant’s guilt, because the pressures of the criminal justice system have the potency to force false confessions,” and. “As a matter of practice, we know that law enforcement and prosecutors exploit the conditions of the criminal justice system to push defendants to confess. But in a justice system where “no confession is admissible, the innocent defendant will not likely face the same kind of choice of confessing for lowering punishment,” the paper asserted. Researchers have noted that threats made against a suspect, promises of leniency, and lies about forensic evidence were all leading reasons as to why someone would falsely confess under a lengthy and stressful interrogation — one that has a median length of 12-16 hours, respectively. Moreover, as the Supreme Court observed in a 1990 case, “a confession is like no other evidence,” noting that a defendant’s admission of guilt “is probably the most probative and damaging evidence that can be admitted against him.” Because of the importance that confessions have in trials, the author believes abolition is the only long-term and permanent solution.

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**Have You Renewed
Your Membership?**

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without you!**

Book Review:**Charged: The New Movement to Transform American Prosecution and End Mass Incarceration****By Emily Bazelon (2019)**

Because the United States contains several thousand prosecutor jurisdictions, identifying misconduct is often difficult. In this potent book, *New York Times Magazine* writer Bazelon emphasizes prosecutors who care more about winning convictions than upholding their sworn duty of seeking justice. She makes a convincing argument that if there were a larger number of justice-seeking prosecutors, we could reduce incarceration by a substantial percentage in a nation overwhelmed by prison costs. In addition, individual lives would no longer be derailed by criminal charges that are unnecessarily severe or even downright false. Bazelon aims her book at non lawyer voters as well as defense attorneys, judges, police officers, social workers, prison wardens, and others in the criminal justice system. A clear message that resonates throughout the book: Never confuse the law with common sense. The author narrates her impressively researched book primarily through two defendants who were exposed to 2 very different systems with very different results. This book is a vitally important new entry in the continued heated debates about criminal justice.

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Virginia CURE will not return submissions unless prior arrangements are made. Send submissions to: Newsletter Editor, Virginia CURE, P.O. Box 2310, Vienna, Virginia 22183

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