

SPECIAL DIRECTIVE 20-14

TO: ALL DEPUTY DISTRICT ATTORNEYS

FROM: GEORGE GASCÓN   
District Attorney

SUBJECT: RESENTENCING

DATE: DECEMBER 7, 2020

This Special Directive addresses issues of the Bureau of Prosecution Support Operations in Chapter 1.07.03 and Probation and Sentencing Hearings in Chapter 13 and Postconviction Proceedings in Chapter 17 of the Legal Policies Manual. Effective **December 8, 2020**, the policies outlined below supersede the relevant sections of Chapter 13 and Chapter 17 of the Legal Policies Manual.

**INTRODUCTION**

Today, California prisons are filled with human beings<sup>1</sup> charged, convicted and sentenced under prior District Attorneys' policies. Effective today, District Attorney George Gascón has adopted new charging and sentencing policies.

Justice demands that the thousands of people currently serving prison terms imposed in Los Angeles County under earlier, outdated policies, are also entitled to the benefit of these new policies. Many of these people have been incarcerated for decades or are serving a "[virtual life sentence](#)" designed to imprison them for life. The vast majority of incarcerated people are members of groups long disadvantaged under earlier systems of justice: Black people, people of color, young people, people who suffer from mental illness, and people who are poor. While resentencing alone cannot correct all inequities inherent in our system of justice, it should at least be consistent with policies designed to remedy those inequities.

The new Resentencing Policy is effective immediately and shall apply to all offices, units and attorneys in the Los Angeles County District Attorney's Office (hereinafter "Office"). While particular attention will be paid to certain people as discussed herein, every aspect of existing sentencing or resentencing policy will be subject to examination. The intent of this Resentencing Policy is that it will evolve with time to ensure that it reflects the values of the District Attorney, and by extension, the people of Los Angeles County.

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<sup>1</sup> We will seek to avoid using dehumanizing language such as "inmate," "prisoner," "criminal," or "offender" when referencing incarcerated people.

## LENGTH OF SENTENCE

The sentences we impose in this country, in this state, and in Los Angeles County are far too long. Researchers have long noted the high cost, ineffectiveness, and harm to people and communities caused by lengthy prison sentences; sentences that are longer than those of any comparable nation. DA-elect Gascón campaigned on stopping the practice of imposing excessive sentences.

With regard to resentencing, the Model Penal Code recommends judicial resentencing hearings after 15 years of imprisonment for all convicted people:

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.

(American Law Institute (2017) Model Penal Code Sentencing, Proposed Final Draft, p. 681.)

National parole experts Edward Rhine, the late Joan Petersilia, and Kevin Reitz have endorsed this recommendation, adding: “We would have no argument with a shorter period such as 10 years.” ... These time frames correspond with criminological research showing that people age out of crime, with most “criminal careers” typically lasting less than ten years.” (Rhine, E. E., Petersilia, J., & Reitz, R. 2017. “The Future of Parole Release,” pp. 279-338 in Tonry, M. (Ed.) *Crime and Justice*, Vol, 46, p. 294.)

**Accordingly, this Office will reevaluate and consider for resentencing people who have already served 15 years in prison.** Experts on post-conviction justice recommend that resentencing be allowed for all people (not just those convicted as children or as emerging adults) and some experts recommend an earlier date for reevaluating continued imprisonment.

## APPLICATION OF SENTENCE ENHANCEMENT POLICY FOR OPEN/PENDING CASES

For any case that is currently pending, meaning that judgment has not yet been entered, or where the case is pending for resentencing, or on remand from another court, the Deputy District Attorney in charge of the case shall inform the Court at the next hearing of the following:

“At the direction of the Los Angeles County District Attorney, in accordance with Special Directive 20-08 concerning enhancements and allegations, and in the interest of justice, the People hereby

1. join in the Defendant’s motion to strike all alleged sentence enhancement(s); or
2. move to dismiss all alleged sentence enhancement(s) named in the information for all counts.

## FURTHER DIRECTIVES FOR OPEN/PENDING CASES

The following rules apply to any case where a defendant or petitioner is legally eligible for resentencing or recall of sentence, including but not limited to:

- Habeas corpus cases.
- Cases remanded to Superior Court by the Court of Appeal or Supreme Court.
- Cases referred to the Superior Court under Penal Code section 1170(d)(1).
- Cases pending resentencing under Penal Code sections 1170.126, 1170.127, 1170.18, 1170.91, and 1170.95.
- Cases pending under Penal Code section 1170(d)(2).
- All cases where the defendant was a minor at the time of the offense.
- Any other case that may be the subject of resentencing not specified here.

Any Deputy District Attorney assigned to a case pending resentencing or sentence recall consideration under any valid statute shall comply with the following directives until further notice.

- 1) If the defendant or petitioner is serving a sentence that is higher than what he/she would receive today, due to operation of law or by operation of the District Attorney's new Sentencing Policy, the deputy in charge of the case shall withdraw any opposition to resentencing or sentence recall and request a new sentence that complies with current law and/or the District Attorney's new Sentencing Policy. This policy applies even where enhancements were found true in a prior proceeding. This policy shall be liberally construed to achieve its purposes.
- 2) If the defendant or petitioner is seeking relief under Penal Code section 1170.95, the DDA may concede that the petitioner qualifies for relief. If the assigned DDA does not believe that the petitioner qualifies for relief, the DDA must request a 30 day continuance, during which time the assigned DDA shall review the case in light of the Office's specific Penal Code 1170.95 Policy, *see below*. If the DDA continues to oppose relief, the DDA shall submit the reasons in writing to the Head Deputy. The Head Deputy shall then seek approval from the District Attorney or his designee in order to determine whether the Office will continue to oppose relief.
- 3) If a defendant or petitioner would not qualify for a reduced sentence by operation of law if convicted today or under the Office's new Sentencing Policy, then the DDA in charge of the case may seek a 30-day continuance. During that time, the deputy shall evaluate whether to support or oppose the resentencing (or sentence recall) request. If the deputy believes that compelling and imminent public safety concerns justify opposition to revisiting the sentence, then the deputy must submit those concerns in writing to her Head Deputy who shall then seek approval from the District Attorney or his designee.
- 4) All laws concerning victim notification and support shall be honored.

## PENAL CODE § 1170.95/SB 1437 RESENTENCING POLICY

1. We start with a position of respect for our co-equal branch of government, the legislature. Like the courts, we presume that laws passed by the legislature are constitutional. “[U]nder long-established principles, a statute, once enacted, is presumed to be constitutional.” (*Lockyer v. City and County of San Francisco* (2004) 33 Cal.4th 1055, 1119.) We will no longer seek to delay implementation of laws by making arguments that laws that provide retroactive relief are unconstitutional.
2. The Office’s position is that defense counsel should be appointed when the petition is filed and there should be no summary denials by the court. (*People v. Cooper* (2020) 54 Cal.App.5th 106; *People v. Tarkington* (2020) 49 Cal.App.5th 892, 917, review granted Aug. 12, 2020, S263219 [dis. opn. of Lavin, J.] )
3. Many people accepted plea offers to manslaughter, made by this Office in order to avoid a conviction for murder. It is this Office’s policy that where a person took a plea to manslaughter or another charge in lieu of a trial at which the petitioner could have been convicted of felony murder, murder under the natural and probable consequences doctrine, attempted murder under the natural and probable consequences doctrine, or another theory covered by Senate Bill 1437, that person is eligible for relief under section 1170.95. Such a position avoids disparate results whereby a person who this Office has already determined to be less culpable -- as evidenced by allowing a plea for manslaughter -- serves a longer sentence than a similarly situated person who is now eligible for relief under section 1170.95.
4. Section 1170.95 (d)(2) states, “[I]f there was a prior finding by a court or jury that the defendant did not act with reckless indifference to human life or was not a major participant in the felony, the defendant is entitled to have his or her murder conviction vacated.” This prior finding includes cases where a magistrate found that there was insufficient evidence of major participation in a felony or reckless indifference to human life following a preliminary hearing, or at any stage in the proceedings.
5. The Office’s position is that, consistent with the definition of “prima facie,” the court must not engage in fact finding at the prima facie stage. (*People v. Drayton* (2020) 47 Cal. App. 5th 965.)
6. The Office’s position is that if the person was an accomplice to the underlying felony, and had a special circumstance finding that was decided before *People v. Banks* (2015) 61 Cal 4th 788 or *People v. Clark* (2016) 63 Cal. 4th 522, then the filing of a Penal Code section 1170.95 petition is adequate to trigger the section 1170.95 process. There is no requirement that the petitioner file a separate habeas petition first. (*People v. York* (2020) 54 Cal. App. 5th 250, 258.) The next stage is an evidentiary hearing.
7. The Office’s position is that if allegations pursuant to Penal Code section 190.2 (a) (17) were dismissed as part of plea negotiations and the petitioner was not the actual killer, this Office will not attempt to prove the individual is ineligible for resentencing. This Office will stipulate to eligibility per section 1170.95(d)(2).

8. The Office's position is that, consistent with *People v. Medrano* (2019) 42 Cal. App. 5th 1001, 1008, rev. granted, that a person who was convicted of attempted murder under the natural and probable consequences doctrine is eligible for resentencing under section 1170.95. Among other reasons, this avoids the great disparity that arises when one who was convicted of murder under the now abolished natural and probable consequences doctrine is able to be resentenced but one who was convicted of attempted murder is not.
9. If the client has previously won relief under *People v. Chiu* (2014) 59 Cal. 4th 155, the Office will not attempt to argue that the petitioner is ineligible for resentencing, or could be convicted as a direct aider and abettor.
10. If the jury was never instructed on direct aiding and abetting, implied malice murder, or any other intent-to-kill theory, or if the trial prosecutor never argued one of these theories, this Office will not argue that the petitioner can now be convicted under one of these theories during 1170.95 proceedings. Theories must remain consistent.
11. Relatedly, if a jury was not even instructed on implied malice murder or some other theory of homicide not covered by section 1170.95, the prosecution cannot now meet our burden of proof beyond a reasonable doubt that the petitioner is ineligible for resentencing.
12. If the petitioner was convicted of murder and the petitioner's jury was instructed on the natural and probable consequences theory doctrine and/or a first or second degree felony murder instruction at trial, then it may have been possible that petitioner was convicted under one of these theories and this Office will not seek to rebut petitioner's prima facie showing. The case must proceed to the evidentiary hearing.
13. Because jury deliberations are secret, in the absence of special findings, it is not possible to determine the actual basis of a jury verdict when multiple theories were before the jury. Therefore, at an evidentiary hearing, if the petitioner was convicted of murder and the petitioner's jury was instructed with a felony murder or a natural and probable consequences doctrine instruction along with other theories, there is a reasonable doubt that the jury convicted petitioner under the old felony murder rule or the now abolished doctrine of natural and probable consequences. Because the statute allows for the introduction of "new or additional evidence," the deputy district attorney may introduce evidence to show, for example, that the petitioner was the actual killer, or acted as a major participant with reckless indifference to human life, or was convicted under a still-valid theory on which the jury was instructed. See below for this Office's position on evidence that we will and will not seek to admit.
14. At an evidentiary hearing pursuant to section 1170.95 (d)(3), the prosecution must prove beyond a reasonable doubt that the petitioner is ineligible for resentencing. A deputy district attorney may not argue that the standard for the court to determine whether a petitioner is ineligible for resentencing is whether there is "sufficient evidence" to uphold the conviction. This is a standard of proof for an appellate court affirming a conviction. It is not the standard of proof for a trial court in a section 1170.95 proceeding. (*People v. Lopez* (2020) 56 Cal.App. 5th 936, 949-950.)

15. It is this Office's position that the Evidence Code applies to any evidentiary hearing pursuant to section 1170.95. Statements made after promises of leniency or threats of punishment (express or implied) are unreliable. A parole hearing is a coercive environment and therefore statements made in them are unreliable and involuntary. This Office will not seek to introduce statements by a petitioner made in parole hearing transcripts into court for any purpose.
16. As a matter of due process, it is this Office's policy that a petitioner has a right to confrontation at a hearing under section 1170.95. Accordingly, this Office will not seek to admit statements of a declarant when the petitioner did not have an opportunity to cross-examine the declarant or when a purported expert's opinion is based on inadmissible hearsay. (See *People v. Sanchez* (2016) 63 Cal.4th 665.)
17. The Office will comply with all of our obligations under *Brady v. Maryland* and its progeny during resentencing procedures.
18. The Office's position is that any defendant who was under the age of 25 when the crime occurred is entitled to present mitigation documents pursuant to *People v. Franklin* and Penal Code section 3051.
19. The Office's position is that a person's age and the "diminished culpability of youth," a person's mental illness, or cognitive impairment, or a person's intoxication is relevant to the determination whether a petitioner meets the standard of "reckless indifference to human life."
20. On resentencing, this Office will dismiss enhancements consistent with our current enhancement policies and otherwise not seek a sentence that is inconsistent with this Office's current sentencing policies.

### **RESENTENCING UNIT**

This Office declares that new Sentencing, Enhancement and Juvenile policies must apply with equal force to sentences where the judgment is final. Accordingly, this Office commits to a comprehensive review of cases where the defendant received a sentence that was inconsistent with the charging and sentencing policies in force after Tuesday, December 8, 2020, at 12:01 AM.

In such cases, this Office shall use its powers under Penal Code section 1170(d)(1) to recommend recall and resentencing. While priority shall be given to the cases enumerated below, the ultimate goal shall be to review and remediate every sentence that does not comport with the new Sentencing, Enhancement and Juvenile Policies.

Specifically, this Office commits to an expedited review of the following categories of cases, which are themselves a subset of a universe of 20,000-30,000 cases with out-of-policy sentences:

- People who have already served 15 years or more;
- People who are currently 60 years of age or older;
- People who are at enhanced risk of COVID-19 infection;
- People who have been recommended for resentencing by CDCR;

- People who are criminalized survivors;
- People who were 17 years of age or younger at the time of the offense and were prosecuted as an adult.

In formulating this policy, we rely on current statistical data from the California Department of Corrections and Rehabilitation (CDCR). (See Appendix.) Over time, the data may be subject to change; the urgency of our mission will not be. In seeking resentencing under 1170(d)(1), this Office shall argue that resentencing is necessary to eliminate disparity of sentences and to promote uniformity of sentencing.

At all types of resentencing hearings, filing deputies shall assist the Resentencing Court by setting forth any and all postconviction factors that support resentencing, including, but not limited to: mitigation evidence; CDCR disciplinary records and record of rehabilitation and positive programming while incarcerated; evidence that reflects whether age, time served, and diminished physical condition, if any, have reduced the risk for future violence; evidence that reflects that circumstances have changed since the original sentencing so that continued incarceration is no longer in the interest of justice; and post-release reentry plans, demonstrating any family or community support that is available upon release. (See e.g. Assembly Bill 1812, Pen. Code § 1170, subd. (d).)

### **LIFER PAROLE HEARINGS**

This Office recognizes that parole is an effective process to reduce recidivism, ensure public safety, and assist people in successfully rejoining society. The CDCR's own statistics show that people paroled from life terms have a recidivism rate of less than four percent.

We are not experts on rehabilitation. While we have information about the crime of conviction, the Board of Parole Hearings already has this information. Further, as the crime of conviction is of limited value in considering parole suitability years or decades later, (see *In re Lawrence* (2008) 44 Cal.4th 1181; *In re Shaputis* (2008) 44 Cal. 4th 1241, 1255), the value of a prosecutor's input in parole hearings is also limited. Finally, pursuant to Penal Code section 3041, there is a presumption that people shall be released on parole upon reaching the Minimum Eligible Parole Date (MEPD), their Youth Parole Eligible Date, (YEPD), or their Elderly Parole Date (EPD). Currently, sentences are being served that are much longer than the already lengthy mandatory minimum sentences imposed. Such sentences are constitutionally excessive. (See *In re Palmer* (2019) 33 Cal.App.5th 1199.)

This Office's default policy is that we will not attend parole hearings and will support in writing the grant of parole for a person who has already served their mandatory minimum period of incarceration, defined as their MEPD, YEPD or EPD. However, if the CDCR has determined in their Comprehensive Risk Assessment that a person represents a "high" risk for recidivism, the DDA may, in their letter, take a neutral position on the grant of parole.

This Office will continue to meet its obligation to notify and advise victims under California law, and is committed to a process of healing and restorative justice for all victims.

## YOUTH AND CHILDREN<sup>2</sup>

Currently, there are thousands of people from Los Angeles County serving sentences in the CDCR for crimes they committed as children. As recent developments in adolescent brain science teach us, young people are uniquely capable of rehabilitation and can lead productive lives as contributing members of society without serving long sentences.

Under new Juvenile Directives, available here, people who are 17 or younger at the time of their offense, will not be transferred to adult court and will remain committed to the youth system until they are mature enough to reenter society. Accordingly, any person who was a minor at the time of the offense and meets the eligibility requirements for recall and/or resentencing in adult court, including but not limited to actions pursuant to Penal Code sections 1170(d)(2), or 1170(d)(1), falls within this Office's policy to oppose transfer of minors to adult court. In such cases, DDAs shall join in any defense motion seeking to transfer the person to juvenile court for further proceedings, and the deputy on the case shall state the reasons for supporting such transfer, consistent with this Office's policies, on the record.

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<sup>2</sup> We will refer to "youth," "child," or "children" instead of "juvenile(s)." The word "juvenile" is used almost exclusively as a way to describe children who are in the criminal legal system or as police descriptors. As a result, it has become a way to mark certain children as "other." To the extent possible, we will refer to the children in the criminal legal system as we would to all children, as "young person(s)" or "children." In accordance with Penal Code § 3051, we will refer to persons age 18 to 25 as "youths."

**APPENDIX**

**A. Current CDCR Population from Los Angeles County**

*Table A.1: Descriptive Statistics for Demographic and Other Data*

<b>Variable</b>	<b>Level</b>	<b>Number</b>	<b>Percentage</b>
Total CDCR Prison Population Originating in Los Angeles County = 29,556* (*excluding LWOP and condemned cases)			
<i>Gender</i>			
	Female	1,078	3.65%
	Male	28,478	96.35%
<i>Race/Ethnicity</i>			
	Black	11,139	37.69%
	Latinx/Hispanic	14,683	49.68%
	White	2,263	7.66%
	Other	1,471	4.98%
<i>Age Group</i>			
	Less than 20	31	0.10%
	20-29	5,945	20.11%
	30-39	9,098	30.78%
	40-49	6,489	21.95%
	50-59	5,043	17.06%
	60+	2,950	9.98%
<i>Offense Category</i>			
	Crimes Against Persons	25,391	85.91%
	Drug Crimes	461	1.56%
	Property Crimes	2,230	7.54%
	Other Crimes	1,474	4.99%
<i>Time Served</i>			
	Less than 5	8,307	28.11%
	5 to less than 10	6,762	22.88%
	10 to less than 15	5,123	17.33%
	15 to less than 20	3,446	11.66%

	20+	5,918	20.02%
<i>Sentence Type</i>			
	2nd Strike	8,106	27.43%
	3rd Strike	2,395	8.10%
	Determinate Sentence	9,841	33.30%
	Life with Parole	9,214	31.17%

***Table A.1: Time Served, Age at Time of Offense, Current Age, Classification Scores, and Serious Rules Violation Reports (RVRs) Received in Past 3 Years***

	<b>Count/ Percentage of Total LAC Prison Population</b>
Served 20 Years or More	5,918 (20.02%)
Served 15 Years or More	9,364 (31.68%)
Served 10 Years or More	14,487 (49.02%)
Served 7 Years or More	18,206 (61.60%)
Currently 60 Years or Older	2,950 (9.98%)
Currently 65 Years or Older	1,367 (4.62%)
Age 25 or Younger at Time of Offense	13,410 (45.37%)
Age 18 or Younger at Time of Offense	3,291 (11.13%)
Age 17 or Younger (Under 18) at Time of Offense	1,557 (5.27%)

Age 16 or Younger at Time of Offense	778 (2.63%)
Age 15 or Younger at Time of Offense	255 (0.86%)
Classification Score of 25 or Below	12,297 (41.61%)
Classification Score of 19 or Below	10,700 (36.20%)
No Serious RVRs in Past 3 Years	25,501 (86.28%)
CS of 25 or Below with No Serious RVRs in Past 3 Years	12,016 (40.66%)
CS of 19 or Below with No Serious RVRs in Past 3 Years	10,490 (35.49%)

**Table A.3: Eligibility by Offense Type and Time Served (mix of lower-level offenses)**

Offense Type	Served 10 Years or More		Served 7 Years or More		All	
	Frequency	Percentage of Total Prison Population Originating in LAC*	Frequency	Percentage of Total Prison Population Originating in LAC*	Frequency	Percentage of Total Prison Population Originating in LAC*
Drug Offenses	132	0.45%	158	0.53%	461	1.56%
Residential Burglaries	476	1.61%	688	2.33%	1,643	5.56%
Robberies	2,045	6.92%	2,828	9.57%	5,297	17.92%
Residential Burglaries & Robberies	2,521	8.53%	3,516	11.90%	6,940	23.48%
Non-Sex Offenses	12,393	41.93%	15,618	52.84%	26,029	88.07%
Non-Murder & Non-Sex Offenses	5,731	19.39%	7,937	26.85%	17,048	57.68%
All Non-Violent, Non-Serious, Non-Sex Crimes	527	1.78%	644	2.18%	2,236	7.57%
All Non-Non-Non Crimes (with Residential Burglaries)	1,003	3.39%	1,332	4.51%	3,879	13.12%
All Non-Non-Non Crimes (with Res. Burglaries & Robberies)	3,048	10.31%	4,160	14.07%	9,176	31.05%
All Incarcerated*	14,463	48.93%	18,167	61.47%	29,556	100.00%

\*The total prison population originating in LAC in this table excludes all LWOP and condemned cases.

## **B. Background on Our Incarceration Crisis**

Our ballooning prison population [did not result from an increase in crime](#). In fact, our crime rate has declined dramatically since the early 1990's. Rather, [harsher sentencing laws like](#) Life Without the Possibility of Parole, an increase in mandatory minimum sentences for indeterminate sentences, Three Strikes sentencing, and requirements that that restrict people to complete 85% of their imposed time now keep people in prison for longer than ever before, long after they pose any safety risk to their community.

There are currently [more people serving life sentences](#) in America than were locked up in prison at all during the 1970s. [One in seven](#) people behind bars is serving a life sentence.

California has led the way in this explosion. We had [23,000 people](#) incarcerated in 1980. By 2000, [we had over 160,000](#) people. By 2010 we had 164,000. In the last 10 years, spurred by a [United States Supreme Court decision](#) holding that California's overcrowded prisons constituted cruel and unusual punishment, as well as by a growing public awareness that we are incarcerating too many people for too long, we have moved to reduce our prison population. However, we have five times as many people incarcerated as we had in 1980.

California spent [a shocking \\$15.7 billion on prisons in 2019-2020](#). This represents 7.4% of all state funds. This is occurring while people are sleeping in our streets, our parks are trash-ridden, our schools are in need of repair, our once-free public universities are underfunded and tuition rises, people are hungry, and we need major infrastructure repair to even do things like provide clean water to the people of California.

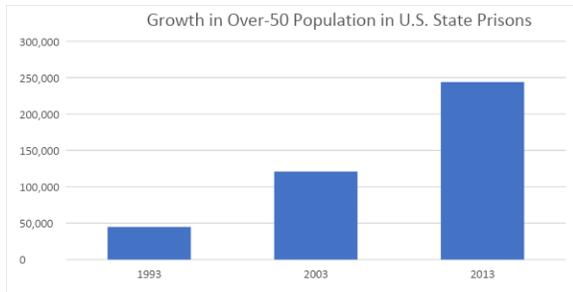
In Los Angeles County alone we currently have almost 30,000 people in CDCR.

Nationally, our criminal justice policies have disproportionately impacted minority populations. 60% of people in prison are Black, despite making up just 13% of the population. One out of every five Black persons behind bars has a life sentence.

**Almost 93% of people sent to prison from Los Angeles County are Black people and people of color.** Black people are approximately 9% of Los Angeles's population. They constitute 38% of Los Angeles's state prison population. We can no longer deny that our system of hyper-criminalization and incarceration is anything other than racist.

The incarceration rate of women [is also on the rise](#). In 1980, there were 13,206 women in prison; in 2017, there were 111,360.

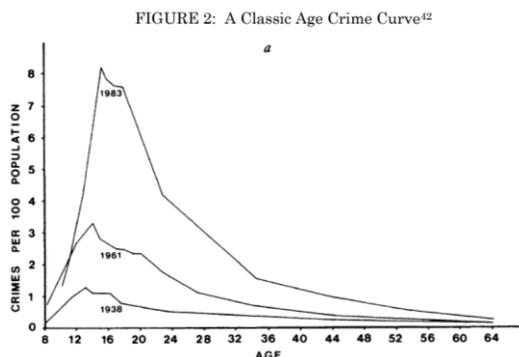
Harsh sentencing laws have also meant that the prison population is old. If we continue at current rates, [one in three people behind bars](#) in state prisons will be over 50 by 2030. In 1993, there were 45,000 people over 50 in U.S. state prisons. Twenty years later, there were 243,800. The growth in the aging prison population has continued. Since 1999, New York has decreased its prison population by 30 percent [but during that same time span saw a doubling](#) of its over 50 population. Between 2001 and 2014, [29,500 people over 55](#) died in federal and state prisons.



Current estimates show that the U.S. spends upwards of \$16 billion a year to care for its elderly population. In 2013 in Virginia, **nearly half of the Department of Corrections budget** for prisoner health care went to caring for the elderly.

### Recidivism and the Age-Crime Curve

Research consistently shows that individuals age out of crime, even those convicted of the most serious offenses. By the time individuals reach their thirties, their odds of committing future crimes drop dramatically. Much of this is due to neurological changes, which take place in profound ways up until an individual turns 26. The prefrontal cortex, which is highly involved in executive functioning and behavior control, continues to develop until age 26, making it harder for young people to make what adults consider logical and appropriate decisions.



Given these changes, it makes little sense to sentence children and adolescents to lengthy terms of incarceration without any meaningful opportunity for review, as the odds are extremely high that those children can be rehabilitated and reenter society.

Likewise, incarcerating an aging population makes little penological sense. Those aged 50-64 have [far lower recidivism rates](#) than the national average: seven percent compared to 43.3 percent. And those over 54 have just a four percent recidivism rate. In other words, we are spending billions to lock up people, 96% of whom will not even commit a technical violation once released.

### Jurisdictions that allow for a “second look” or increased parole opportunities

“Look back” provisions allow sentenced individuals to petition for a reduced sentence after they have shown meaningful signs of rehabilitation that indicate an ability to return to society. While several jurisdictions have parole eligibility, only California has enacted a robust “look back” Act thus far. Delaware has implemented one to address those sentenced under habitual offender laws.

**Federal:** Los Angeles Congresswoman Karen Bass and United States Senator Cory Booker introduced a bill for people serving in federal prison to reevaluate cases involving people [over 50 years old and for those who have served at least ten years of a sentence](#), creating a rebuttable presumption of release for those over 50.

**District of Columbia:** Recently, the District of Columbia passed Second Look Sentencing for youths. This month, the Council [is poised to expand this second look resentencing](#) to all who were under the age of 25 at the time of the crime.

**Oregon:** in January 2020, [Oregon's Second Look Resentencing](#), for minors [SB 1008](#) goes into effect.

**Florida:** Florida allows a second look for children who were sentenced as adults for offenses committed before their 18<sup>th</sup> birthday.

**Delaware:** People convicted before their 18th birthday of a first-degree murder may petition for modification after 30 years, and after 20 years for any other offense.

**Colorado:** Senate Bill 16-180 requires the Department of Corrections (DOC) to create a program for kids sentenced as adults for a felony and presumes release upon participation after 3 years.

**California:** has made many of its recent changes retroactive, including resentencing for those convicted of a third strike, Proposition 47, SB 1437, Penal Code section 1170, subsection (d), among others. California also [provides automatic parole review](#) when a person commits the crime before the age of 26 and has served 15, 20, or 25 years, depending on the controlling offense. California has also expanded elderly parole this year with [AB 3234](#) so that people who are 50 and have served at least 20 years are eligible for parole consideration.

***The policies of this Special Directive supersede any contradictory language of the Legal Policies Manual.***

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