

LEFT BEHIND: JUVENILES AND EMERGING ADULTS SERVING LONG AND LIFE SENTENCES IN WASHINGTON STATE

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EXECUTIVE SUMMARY

Record levels of incarceration in Washington in the 2000s and 2010s were neither an accident nor an inevitable response to rising crime. Instead, mass incarceration was mainly driven by tough new sentencing statutes that sent people to prison for longer periods of time.¹ In 1984, the Sentencing Reform Act abolished discretionary parole. Then, in the 1990s and early 2000s, harsh new sentencing laws fueled the imposition of long and life sentences. The fact that Washington had abolished parole in 1984 meant that people who received extremely long sentences — including those who were adolescents or young adults when they committed their offense — no longer had the opportunity to ever be considered for release by a parole board.

The state prison population more than doubled in the wake of these policy changes.² Today, nearly one in three Washington state prisoners is serving a long or life sentence with no opportunity for parole review.³ These excessively long sentences are a costly and ineffective means of promoting public safety.⁴ They also create profound injustices, many of which remain unaddressed today.

The fact that people who were young when they broke the law continue to bear the brunt of this failed policy experiment is one such injustice. Neuroscientific research shows that brain development is a gradual process, one that is not complete until people are in their mid-twenties. Moreover, adolescents and emerging adults are especially amenable to rehabilitative programming⁵ and the vast majority of people “age out” of crime.⁶ Nevertheless, thousands of young people received long and life sentences in the 1980s, 1990s, and beyond.

Thankfully, the state legislature has largely restored age-appropriate punishments for today’s justice-involved youth and the number of children and adolescents sentenced in adult court and sent to adult prison in Washington has fallen dramatically.⁷ Today, children who plead guilty to very serious crimes are potentially eligible for parole at the age of twenty-one.⁸ The comparatively small number of juveniles who are tried as adults have the right to have their youth considered by a court that is fully informed of its discretion to impose a lower sentence.⁹

In 2014 and 2015, the legislature also took steps to address the plight of young people who were already serving excessively long sentences. This legislation was intended to provide people who received a long or life sentence as a juvenile with the opportunity to be considered for release by the Indeterminate Sentencing Review Board’s (ISRB) Juvenile Board after they had served a new minimum term of at least twenty or twenty-five years.¹⁰ Some members of this group were sent back to courts for resentencing, while others were made automatically eligible for review after serving a minimum sentence.

Despite a rocky start, this process has worked reasonably well for the people who were sent directly to the ISRB's Juvenile Board, which now uses a standardized set of criteria to assess whether the release of petitioners would pose a risk to public safety. People who are initially denied release have the right to be reviewed again within five years. Many of the individuals who became eligible for review by the ISRB Juvenile Board have returned home, reconnected with family and loved ones, and are thriving in, and often working on behalf of, the community. Re-offending has been exceptionally rare among this group.¹¹

The legislation that created this process was an important step toward remedying the excesses of the past, but it did not provide a comprehensive solution to the problem. However, two groups of people who were young when they committed their crime and are serving extreme sentences have *not* had the opportunity to be reviewed by the ISRB:

- **Emerging Adults:** The vast majority of people who were emerging adults — eighteen to twenty-five years-old when they committed their crime — and are serving long or life sentences still have no opportunity to have their past youthfulness or subsequent maturation considered by either the ISRB or by courts.¹² The exclusion of emerging adults from the parole review process is in tension with research showing that brain development continues to unfold throughout the mid-twenties, that rehabilitative programming is especially impactful for young people, and that the vast majority of people “age out” of crime.¹³
- **Juvenile Lifers:** Some juveniles who received Life Without the Possibility of Parole (LWOP) sentences years ago still cannot access review by the ISRB even though they have already served twenty-five years or more in prison. The 2014 legislation sent juvenile lifers back to the courts, which were tasked with identifying the minimum sentence these individuals must serve before they become eligible for ISRB review. A decade later, some of these individuals have not yet been resentenced. Others have been resentenced to LWOP or to virtual life sentences – sentences that are so long that they can expect to spend most or all of the rest of their lives behind bars. Some have appealed these sentences, sometimes multiple times. Given the length of the new sentences, it is likely that they will continue to file appeals. This on-going litigation is extremely burdensome for courts, prosecutors, petitioners, and victims alike.

In short, two groups of people (most emerging adults and some juvenile lifers) serving long or life sentences for crimes they committed as young people have been denied meaningful post-conviction review by a body that uses a standardized and transparent set of criteria to assess whether their release would pose a threat to public safety. Community members have attempted

to utilize the courts to address these gaps. The resulting court rulings have benefited a small number of people but have also created glaring inconsistencies and do not provide a comprehensive solution to the problem.

This situation undermines Washington's ability to recognize the nature and significance of youthfulness, to redress the excessive prison sentences imposed on young people in the past, and to maintain an equitable, humane, and effective penal system. Leveraging insights from research on brain development and the experience of juvenile lifers, we show that the most just and practical solution is for the legislature to ensure automatic ISRB review for all people who were twenty-five years old or younger at the time of their offense once they have served fifteen years in prison.

Key findings presented in this report include:

- Emerging adulthood is a distinct phase of life in which brain development continues to unfold. This process continues through the mid-twenties and is especially prolonged for people who have experienced socio-economic adversity and/or significant trauma, as virtually all incarcerated people have.
- The vast majority of emerging adults — people who were eighteen to twenty-five years old at the time of their offense — serving long or life sentences in Washington have been denied any type of resentencing or parole review.
 - The only emerging adults who have been granted resentencing are those who committed aggravated murder at the age of eighteen, nineteen, or twenty.¹⁴ This group comprises an estimated 3.3 percent of all emerging adults serving long or life sentences.
 - An estimated 1,139 emerging adults are serving long or life sentences in Washington prisons with no pathway to either resentencing or parole review.
- Prior research documents extremely low recidivism rates among people who became eligible for review under the 2014 or 2015 juvenile reform legislation and have been released from prison.¹⁵
 - The vast majority of those who were eligible for review and have returned home are productive members of society, community leaders, and caregivers for family and loved ones.

- Many of the juvenile lifers who were sent back to the courts via the 2014 legislation have *not* had a chance to have their releasability considered by the ISRB:
 - More than a decade later, some of these individuals have not yet been resentenced.
 - Among those who have been resentenced, the (first) new sentences range from thirty-two years-to-life to LWOP for the same offense.
 - Roughly a third of these defendants have been resentenced multiple times. The most recent sentences range from twenty-eight years-life to 189 years-life.
 - These processes are expensive and needlessly burden courts, petitioners, and victims of crime.
- Adopting legislation that ensures automatic parole review by the ISRB for all juveniles and emerging adults serving long and life sentences after they have served fifteen years in prison would:
 - Render Washington State sentencing policy and practice consistent with the recommendations of the American Bar Foundation and the American Law Institute as well as with neuroscientific research, which shows that brain development is not complete until people reach their mid-twenties;
 - Significantly reduce the burden that court resentencings and appeals place on courts, prosecutors, and victims of crime;
 - Ensure a focus on public safety, consistency, transparency, and clarity in the post-conviction review process;
 - Reduce the human toll and fiscal costs associated with long and life sentences, and
 - Create consistency and equity in the treatment of people who committed crimes when they were young by ensuring that trained ISRB Juvenile Board professionals apply the same standards in all cases to assess whether release would pose a threat to public safety.

INTRODUCTION

Most crime is committed by young people. Historically, the law has drawn a bright line at age eighteen, stipulating that people become legal adults who bear full responsibility for their behavior on their eighteenth birthday. This legal fiction is in tension with recent neuroscientific research, which shows that brain development is a gradual process, one that is not complete until people reach their mid-twenties.¹⁶ As one scholar put it, “The adolescent brain remains in development well beyond this arbitrary societal line of age eighteen.”

Across the country, courts and legislatures increasingly recognize that “children are different” and that these differences have important implications for sentencing and punishment. In Washington, the legislature created pathways to post-conviction review in 2014 and 2015 for people who received a long or life sentence for an offense they committed as a juvenile. In 2018 and 2019, the legislature extended juvenile court jurisdiction over people convicted of certain crimes before the age of eighteen until they are twenty-five years old, and allowed some adult-sentenced individuals to stay in juvenile detention facilities until the age of twenty-five, signaling the legislature’s recognition of twenty-five as the age of maturity.¹⁷ Today, people who are convicted of crimes they committed as an adolescent are far less likely to be sent to adult court and to serve their sentence in adult prison than they were in recent decades.¹⁸ And finally, courts can no longer impose mandatory juvenile life without parole sentences for those juveniles who are sent to adult court.¹⁹

Yet recent reforms remain inadequate and incomplete in two main ways. First, some juvenile lifers have been left behind. Legislation adopted in 2014 sent people who were juveniles when they committed aggravated murder back to the courts, which were tasked with determining the date at which these defendants would become eligible for parole review. For defendants who were fifteen or younger at the time of the crime, the legislature mandated a new minimum term of twenty-five years. Other than in cases involving multiple charges, this has worked reasonably well: people with a single charge were resentenced to twenty-five-years-to-life and became eligible for parole review after serving twenty-five years. For two individuals with multiple charges, the path has been more arduous; one of these individuals is currently serving a sentence of 189 years.

For defendants who were sixteen or seventeen years old, however, the legislature specified a new minimum term of twenty-five years but allowed courts to impose longer sentences. And they did. Among the sixteen and seventeen-year-olds who have been resentenced, the new sentences range from thirty-two years-life to LWOP. Roughly a third of these defendants appealed these sentences and have been resentenced multiple times.

Among this group, the most recent sentences range from twenty-eight years-life to forty-eight years-life. And more than a decade later, three of these individuals still have not been resentenced and, as a result, are not eligible for parole review by the ISRB.

In short, legislative reforms intended to ensure that juveniles serving long or life sentences have the opportunity to be considered for release by the ISRB Juvenile Board after serving twenty or twenty-five years have left some juveniles lifers behind and mired in litigation. This is especially true for juveniles who received LWOP sentences for crimes committed at the age of sixteen or seventeen or who had multiple charges.

In addition, nearly all of the people who were emerging adults when they committed their crime and are serving long or life sentences in Washington prisons lack a pathway to parole review. This reality is in tension with neuroscientific research, which shows that brain development and maturation are generally on-going until people reach their mid-twenties and is even more prolonged for people from disadvantaged backgrounds or who have experienced trauma, which nearly all incarcerated people have.²⁰ It also means that youthful co-defendants who vary in age by as little as a few months often receive very different punishments for the same behavior, as Brian's story reveals.

CASE STUDY 1: BRIAN'S STORY

In 1999, at the age of nineteen, Brian was sentenced to fifty-seven years for a gang-motivated shooting in which three people were injured. Brian was offered a plea deal of 15-20 months but chose to go to trial, where he received a virtual life sentence of fifty-seven years due mainly to mandatory weapons enhancements. Had Brian accepted the prosecution's initial plea offer, he would have been released in 2000. Instead, he remains in prison where he has already served twenty-seven years.

Under his current sentence, Brian will not be eligible for release until 2049, when he is sixty years old. This is true even though Brian has grown from a lost nineteen-year-old into a responsible middle-aged adult who has the maturity and insight to express deep remorse for his past crimes. Brian has been promoted to the lowest custody level, has maxed out on good conduct points, leads positive programming, and has written several books. Like other emerging adults serving virtual life sentences, Brian has no automatic pathway to post-conviction review despite his rehabilitation.

A relatively small number of emerging adults do now have the opportunity to be resentenced: under the Washington Supreme Court's *Monschke* ruling,²¹ people who were eighteen, nineteen, or twenty years old when they committed aggravated murder are now eligible to be resentenced in the courts. In this ruling, the Court held that

There is no meaningful cognitive difference between 17-year-olds and many 18-year-olds. When it comes to Miller's prohibition on mandatory LWOP sentences, there is no constitutional difference either. Just as courts must exercise discretion before sentencing a 17-year-old to die in prison, so must they exercise the same discretion when sentencing an 18-, 19-, or 20-year-old. This ruling acknowledges that many youthful defendants older than eighteen share the same developing brains and impulsive behavioral attributes as those under 18.

And yet, *Monschke* applies only to a relatively small number of people. Based on DOC records, we estimate that 39 people are eligible for resentencing under *Monschke*. A much larger number of people who were convicted of less serious crimes at the same ages and are serving long or life sentences do *not* have a right to be resentenced by courts or be reviewed by the ISRB. Put differently, *Monschke* applies to just 3.3 percent of the emerging adults serving long or life sentences.

Among those *not* entitled to resentencing are hundreds of people like Brian who were emerging adults at the time of the crime and are serving virtual life sentences — sentences that are those that are so long that people who receive them can expect to spend all or most of their lives behind bars.²²

CASE STUDY 2: ELI, ROBERT, AND HARRY'S STORY

Current age requirements result in arbitrary and inequitable outcomes for similarly situated young defendants. This is apparent in the case of three co-defendants, friends Eli (fifteen), Harry (sixteen), and Robert (eighteen) burglarized the home of a family acquaintance whom they subsequently killed.

Eli received a forty-two-year sentence with parole review after twenty years. The ISRB found him releasable in 2025 after he had served twenty-one years in prison.

Harry received a thirty-eight-year-sentence with parole review after twenty years. The ISRB found him releasable in 2025 after he had served twenty-one years in prison.

Robert received a forty-year sentence with no parole review. He will remain incarcerated for another nineteen years and has no pathway to either resentencing or parole review.

The existence of clemency is not an adequate solution to this problem. In Washington, prisoners may petition the Clemency and Pardons Board to request commutation of their sentence (i.e., clemency). But the clemency process is not designed to systematically assess petitioners' youthfulness, maturation, or their likelihood of re-offending, as the ISRB is. Moreover, very few cases make it through the clemency process, even when governors generally support it. In the twelve years Governor Inslee was in office, for example, the Board recommended, and the Governor granted, clemency in just eighty-six cases – more than under any other governor in Washington State history.²³ This is an average of seven cases per year.

To put this number in context: 48.3 percent of all Washington State prisoners – nearly 7,000 people – are currently serving a sentence of ten years or more.²⁴ There are more than 1,100 emerging adults serving long or life sentences with no pathway to parole review. Even if the Clemency and Pardons Board were somehow able to double, triple, or even quadruple the number of cases it considers, and the Governor remains amenable to Clemency Board recommendations, the clemency process simply cannot address the circumstances of all emerging adults serving long and life sentences who do not pose a risk to public safety.

In summary, youth is now widely recognized as a mitigating circumstance that is relevant until people reach their mid-twenties. Unfortunately, the legislature has not yet enacted comprehensive reform that reflects this understanding. As a result, some juveniles and more than eleven hundred emerging adults serving long and life sentences have been left behind.

Recent juvenile reforms suggest two possible ways of addressing this problem:

- Ensure automatic ISRB review after a legislatively determined minimum sentence has been served, or
- Return petitioners to the courts to determine a new minimum term after which they become eligible for review by the ISRB.

Our review of these processes shows that outcomes for many juveniles who returned to the courts have been inequitable and unjust. This situation has fueled litigation, burdened courts, and created uncertainty for both petitioners and victims of crime. By contrast, those who were rendered automatically eligible for ISRB Juvenile Board review have avoided entanglement in the courts, and many have come home. The recidivism rate has been remarkably low for these individuals, many of whom are caring for loved ones and actively contributing to their communities. We therefore recommend ensuring automatic parole review by the ISRB for all juveniles and emerging adults after they have served fifteen years in prison.

This recommendation is not radical. Most states have parole boards who review people who are serving indeterminate sentences. Washington State had a parole board for many decades before its near abolition in 1984. And today, the ISRB has a transparent process to review juveniles who were sentenced to long or life sentences and is equipped with a full-time paid staff who receive psychological assessments of petitioners before they appear for their hearing.²⁵

Moreover, the kind of post-conviction review the ISRB conducts for youthful offenders with excessive sentences is recommended by legal experts:

*Legal experts recommend taking a second look at prison sentences after people have served 10 to 15 years, to ensure 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. National parole experts Edward Rhine, the late Joan Petersilia, and Kevin Reitz have recommended a second look for all after 10 years of imprisonment—a timeframe that corresponds with what criminological research has found to be the duration of most "criminal careers."*²⁶

This report shows why automatic review by the ISRB for juveniles and emerging adults serving long or life sentences is needed in Washington State.

Part I summarizes the psychological and neuroscientific literature regarding brain development. We also describe criminological research that shows that the vast majority of justice-involved people “age out” of crime.

Part II describes recent changes to law and policy and shows how these reforms leave some juveniles and nearly all emerging adults serving long and life sentences behind.

To illuminate the scale of the problem, Part III provides information about the number and characteristics of juveniles and emerging adults who are currently serving long and life sentences in Washington without a pathway to parole review.

Part IV reviews the impact of recent juvenile reforms, the inconsistencies and inefficiencies that have resulted, and the benefits of ensuring automatic review by the ISRB for all juveniles and emerging adults who have spent fifteen years in prison.

The conclusion summarizes our findings and highlights the need to expand parole review by the ISRB for all of those serving long or life sentences for a crime they committed as an adolescent or emerging adult.

PART I. BRAIN DEVELOPMENT ACROSS THE LIFE COURSE

Today, juveniles serving long or life sentences in Washington are eligible for review after they have served twenty or twenty-five years in prison. Juveniles are now granted a “second look” (at least in theory) because children and adolescent’s immaturity is recognized as a mitigating circumstance, one that should affect assessments of their culpability.

Yet the vast majority of their emerging adult counterparts (eighteen to twenty-five-year-olds) are entitled to no such relief. This omission is incompatible with neuroscientific research, which indicates that brain development is an ongoing process that unfolds through the mid-twenties.²⁷ To be sure, maturation is gradual, and individual trajectories vary. But the research is clear: “Refinements in brain structure and function continue across the third decade, paralleling the complex cognitive processing and socio-emotional regulation that strongly influence decision making, peer affiliation, behaviour, and wellbeing.”²⁸

Of course, identifying the precise point at which maturation is complete is difficult, if not impossible. This is because “Maturity is the result of a gradual, multifaceted process in which different components of psychological functioning mature at different rates and along different timetables.”²⁹ The gradual nature of the maturation process means that the average twenty-one-year-old is more mature than the average seventeen-year-old, and the average twenty-five-year-old is more mature than the average twenty-one-year-old. Indeed, studies that compare eighteen–twenty-one-year-olds with twenty-two–twenty-five-year-olds find that older emerging adults are, in general, more mature than younger ones.³⁰ Yet it is now clear that brain development and maturation continue well into the third decade of life:

... although maturation of logical reasoning is considered complete from about age 16 years, the development of more mature affect regulation, social relationships, and executive functioning continues for at least another decade. Integrating these perspectives suggests that adolescence could be conceptualised as a phase of brain growth that begins before the visible signs of puberty (around 6–8 years of age) and continues for another two decades.³¹

In fact, research shows that social and economic adversity delay the maturation process.³² Sadly, the vast majority of justice-involved people grew up in poverty and experienced significant trauma even before their imprisonment.³³ This means that youthfulness and immaturity are especially relevant for people who become justice-involved after committing a crime in their adolescence or early twenties.

In addition, one of the most robust findings in criminological research is that people “age out” of crime. Young people commit most crimes: rates peak in the late teenage years, followed by rapid declines. Studies show that the offending trajectories of all groups decline sharply with age; even those with the most extensive criminal records generally desist from crime at relatively early ages, most commonly by their mid-thirties. As two prominent criminologists put it, “crime declines with age even for active offenders.”³⁴

The development that occurs through early adulthood is thus critical: it enables people to make rational decisions, weigh risks, limit high-risk behaviors, and control impulsivity. Our failure to consider the youthfulness of emerging adults has led to excessive sentences and the denial of a second look that would enable assessments of maturation and public safety considerations.

The remainder of this section briefly summarizes the research showing that maturation continues into, and sometimes beyond, the age of twenty-five. It also explains how socio-economic adversity and trauma impact this process and, ultimately, how youthfulness and subsequent maturation are relevant to the criminal sentencing process.

COGNITION AND THE MATURITY GAP

The brain engages in two types of executive function that affect decision-making: “hot” and “cold” cognition. Cold cognition, sometimes referred to as cognitive capacity, is the process by which our brain acquires and scaffolds information. This function involves non-emotional information processing and reasoning. Cold cognition is employed when people recall memories, use language skills, plan their schedule, or evaluate different approaches to a problem. Cold cognition is generally developed by middle adolescence, around sixteen-years-old.³⁵

By contrast, “hot” cognition, also known as psychosocial maturity, refers to decision-making in an emotionally charged situation.” Whereas cold cognition develops by middle adolescence, hot cognition does not fully develop until people are in their twenties. As one researcher puts it, “... facets of hot cognition, including sensation seeking (or lack thereof), impulse control, future orientation, and resistance to peer influence, follow a protracted development into adulthood.”³⁶

For adolescents and emerging adults alike, then, there is a misalignment between cognitive and psychosocial development. This “maturity gap” has repercussions for decision-making and, relatedly, for assessments of culpability. Like juveniles, emerging adults “have a greater tendency to take risks in a state of hot cognition compared to fully grown adults.”³⁷ A seventeen, twenty-one, or twenty-three-year-old can utilize their developed cognitive capacity to make plans, consider what to do when their car runs out of gas, or solve other run-of-the-mill problems.

But their brain cannot execute the same level of levelheadedness in an emotionally turbulent situation as older adults. In such situations, underdeveloped emotional regulation can lead to impulsivity, high-risk behavior, a proclivity to sensation-seeking, and a sensitivity to peer influence “in ways that [can] influence their criminal conduct.”³⁸

While the maturity gap is greater for eighteen to twenty-one-year-olds than twenty-two to twenty-five-year-olds, “the ability to use effective cognitive strategies to regulate emotion in social situations increases with age into the mid-twenties.”³⁹ A judge may look at a physically mature twenty-three-year-old and struggle to understand how youthfulness is relevant. But the research is clear: although emerging adults “often have the intellectual capabilities of fully grown adults, they struggle with the brain functions that operate under hot cognition – emotion regulation, stress management, and behavioral control.”⁴⁰

VULNERABILITY TO HIGH-RISK, HIGH-REWARD BEHAVIORS AND PEER PRESSURE

In addition to the maturity gap, emerging adult brains exhibit an “imbalance between the reward and the regulatory circuitry.”⁴¹ This imbalance leads to heightened reward-seeking behavior aimed at monetary and social rewards as well as novelty.⁴²

Brain imaging identifies the mechanism that fuels this reward-seeking behavior: when performing tasks, emerging adults – like juveniles – have a lower threshold for incentive processing, which allows “delayed or less intense rewards (stopping at the yellow light for safety) to compete with more immediate or salient rewards (showing off for your passengers by speeding ahead).”⁴³

Peer influence greatly enhances the likelihood that juveniles and emerging adults will engage in high-risk behavior due to immature reward circuitry processing.⁴⁴ For juveniles and emerging adults alike, “the presence of peers significantly increases young people’s risk taking because social acceptance serves as a high potential reward.”⁴⁵ For example, although an emerging adult may possess the cognitive skills to pass their driving test, and even excel in safe driving when alone, the presence of peers makes them more likely to drive dangerously.⁴⁶

REWIRING AND THE CONTINUED DEVELOPMENT OF THE EMERGING ADULT BRAIN

The sections above highlight specific characteristics that emerging adult brains share with those of juveniles: the greater propensity to take risks; susceptibility to peer influence; vulnerability to high-risk, high-reward behavior; and failure to emotionally regulate in difficult circumstances.

Emerging adult brains are also akin to juvenile brains in their plasticity and ongoing development. Changes that occur in the brain throughout the third decade of life affect “movement control,

problem solving, spontaneity, memory, language, initiation, judgement, impulse control, and social and sexual behavior.”⁴⁷ In fact, “the prefrontal cortex is one of the last regions of the brain to reach maturation... .”⁴⁸ The brain’s corpus callosum — a bundle of fibers that facilitates communication between the brain’s two hemispheres and is responsible for facilitating communication and coordination between the brain — also continues to mature through the mid-twenties.⁴⁹ This rewiring process is not complete until approximately twenty-five years of age.⁵⁰

THE IMPACT OF TRAUMA ON BRAIN DEVELOPMENT

While neuroscientific research thus indicates that brain development continues in the third decade of life, maturation is even more prolonged for people who have experienced significant trauma. Because the maturation of the brain is influenced by the environment,⁵¹ “emerging adults who experience trauma or brain injury may take even longer to master decision-making in hot cognition states, as trauma can interfere with and prolong the development of the prefrontal cortex.”⁵²

This finding is highly relevant to discussions of sentencing policy, as studies show that most justice-involved youth experienced multiple traumas during their childhood and adolescence.⁵³ The trauma of imprisonment compounds this pre-existing reality.⁵⁴ Stressors such as dysfunctional family environments or racism can also contribute to a delay in brain development:

*Multilayered environmental stressors, including poverty, lack of access to resources and education, and unstable housing all contribute to a lack of agency. These factors work to substantially diminish or preclude an adolescent’s ability to “extricate” oneself from a negative home or community situation. Each of the factors identified above has significant consequences for behavior, brain development, and future life outcomes.*⁵⁵

CONCLUSION

Neuroscientific research shows that “Brain development is not complete until near the age of 25.”⁵⁶ Maturation generally unfolds through the mid-twenties and is even more prolonged for people who have experienced significant adversity and trauma. Because the maturation of the brain is influenced partly by environment,⁵⁷ “emerging adults who experience trauma or brain injury may take even longer to master decision-making in hot cognition states, as trauma can interfere with and prolong the development of the prefrontal cortex.”⁵⁸

Developmental immaturity has “direct implications for legal decision-making, including waiving *Miranda* rights, susceptibility to false confessions, and making ill-advised trial decisions.”⁵⁹ Because emerging adults “are relatively less likely to have the self-restraint necessary to deserve

the privileges and penalties we reserve for people we judge to be fully responsible for their behavior,"⁶⁰ their youth should be treated as a mitigating circumstance.

PART II. EMERGING ADULTS, JUVENILES, AND SECOND LOOK REFORM IN WASHINGTON

The Washington State Legislature has created opportunities for parole review and resentencing for people who were young at the time of their crime and are serving long or life sentences. However, these opportunities apply narrowly to people who were seventeen or younger at the time of their offense. People who were as little as a few months older do not have an opportunity to have their youth at the time of the crime or their subsequent maturation considered by courts or by the ISRB. Mark and Kai's stories show how this can lead to profound inequities and indefensible injustices.

CASE STUDY 3: MARK AND KAI'S STORY

Mark and his co-defendant Kai were convicted as accomplices for the same offense in 1995. Kai was seventeen and Mark was eighteen, just six months older than Kai, when they committed the offense. Kai was sentenced to 640 months (more than fifty-three years) but was released by the ISRB after serving twenty-four years. Mark was also sentenced to 640 months, but since he was eighteen years old at the time of the offense, he is not entitled to a second look by either a court or the ISRB.

Mark has spent his nearly three decades in prison engaging in peer-support groups, skills-building workshops, art therapy, and counseling to address trauma from his childhood. He hopes to use the skills and therapy he's gained by volunteering with art and healing programs to serve others. His only hope of doing so is through the clemency process.

Even for juveniles, legislative reforms have not solved the problem. Below, we describe what has — and has not — been done to address the plight of people who are serving long or life sentences in Washington State for crimes they committed as a juvenile or emerging adult

RESPONDING TO MILLER: PATHWAYS TO POST-CONVICTION REVIEW FOR JUVENILES

In 2012, the U.S. Supreme Court ruled in *Miller v. Alabama* (2012) that mandatory life without parole (LWOP) sentences imposed on people convicted of murder who were under the age of eighteen at the time of their offense violate the Eighth Amendment's prohibition against cruel and

unusual punishment.⁶¹ This ruling had important implications in Washington State, where children tried as adults and convicted of aggravated murder were automatically sentenced to LWOP.⁶²

In response to this ruling, the Washington State Legislature revised state sentencing policy pertaining to juveniles. The 2014 legislation is often referred to as the (first) “Miller-fix” and specifically impacts juveniles who were convicted of aggravated murder and who therefore received a sentence of Life Without the Possibility of Parole (LWOP).⁶³

For reasons that remain unclear, the legislation divided this group into two and created different paths to review for them. People who were under the age of sixteen at the time of the crime were required to be resentenced to twenty-five years to life. After the minimum term has been served, the releasability of these defendants is decided by the ISRB. This has worked reasonably well in most cases, though the process was delayed in cases involving multiple charges.

Defendants who were sixteen or seventeen years old at the time of the crime became eligible for resentencing, but instead of receiving a mandatory minimum term of twenty-five years, the legislature gave the court discretion to set a new minimum term of *at least* twenty-five years. The minimum term represents the defendant’s future eligibility date to seek review by the ISRB. This resentencing process has yielded inconsistent and arbitrary results. Among those who have been resentenced, the (first) new sentences ranged from thirty-two years to life to LWOP. Roughly a third of these defendants have been resentenced multiple times. The most recent sentences range from twenty-eight years-to-life to forty-eight-years-to-life. And more than a decade later, three of these individuals have not yet been resentenced.

In sum, the 2014 legislation pertaining to juvenile lifers has not worked as intended for those who were sixteen or seventeen years old at the time of the crime. Those who were fifteen or under have fared better, though there has been confusion and delay in cases involving multiple charges. One of these individuals is currently serving a sentence of 189 years.

In 2015, the Legislature expanded the pathway to parole review for juveniles to include people sentenced to twenty or more years for any crime. Under this second “Miller-fix,” people who meet these criteria *automatically* become eligible to have the ISRB’s Juvenile Board consider their releasability once they serve twenty years in prison (unless they had a subsequent conviction for an offense that occurred after their eighteenth birthday or have had an infraction in the past year).⁶⁴ That is, these individuals need not return to the courts. This second Miller fix was quite impactful and, after a rocky start, appears to be working as intended.⁶⁵

Research shows that re-offending among people who became eligible for review under the 2014 or 2015 legislation has been rare. As of May 2023, ninety-eight people who received long and life sentences for crimes they committed as a juvenile had come home. Their recidivism rate has been extremely low: just two of the ninety-eight individuals (2.2 percent) who were eligible for review under Miller fix legislation had been convicted of a new felony offense as of 2023.⁶⁶ None of the other ninety-six people had been convicted of a felony since their release from prison, though one person was facing serious charges.⁶⁷ An additional five of the ninety-eight released people had been reincarcerated for technical violations of the conditions of their supervision.⁶⁸ None of these people were alleged by the DOC to have engaged in property or violent crime. Instead, these revocations appeared to stem from untreated substance abuse disorder and mental health challenges.

Studies in other states report similarly low rates of recidivism for similar populations. For example, a recent study found a 1.14 percent recidivism rate among people who had been sentenced to life without the possibility of parole in Philadelphia for an offense they committed as a juvenile.⁶⁹ The 174 people who were included in the study had been home for an average of twenty-one months. The researchers estimate that the “early” release of this group from prison reduced correctional expenditures by \$9.5 million. Evidence of extremely low rates of reoffending among released juvenile lifers is also consistent with a large body of criminological research, which shows that age is the most powerful predictor of repeat offending⁷⁰ and that people who were convicted of violent crimes generally have the lowest rates of recidivism.⁷¹

In short, people serving long and life sentences for crimes they committed as juveniles now have a pathway to resentencing or parole review in Washington State thanks to recent changes to policy. However, most of the juveniles whose cases were sent to back to Superior Courts to determine a new minimum sentence remain behind bars, mired in litigation, and have yet to have their maturation and development assessed by the ISRB. Juveniles who were eligible for automatic parole review have fared much better, and the vast majority of those who have been released have not returned to prison. Indeed, most have built lives of meaning and purpose that involve caring for family and friends and meaningful work.⁷²

DEVELOPMENTS IN CASE LAW PERTAINING TO JUVENILES

Over the past decade, incarcerated people and their advocates have attempted to use the courts to expand opportunities for post-conviction review for people who were young when they broke the law. In a few of these cases, the Washington State Supreme Court expanded the right to review and resentencing for people who are serving a long or life sentence for a crime they committed as a juvenile or young adult. In the late aughts, the Washington State Supreme Court expanded

opportunities for post-conviction review for young people in several cases:

- The Court held in *State v. Ramos* that every juvenile facing a *de facto* (virtual) LWOP is automatically entitled to sentence review by a court in 2017.⁷³
- Also in 2017, the Court held in *State v. Houston-Sconiers* that trial courts must consider the relevance of youth and adolescent development prior to sentencing juveniles in adult courts.⁷⁴ The Court also specified that judges have the discretion to depart from mandatory sentencing provisions of the Sentencing Reform Act such as enhancements and mandatory minimum terms when sentencing people who were juveniles at the time of their crime.
- In 2020, the Court ruled that *Houston-Sconiers* is a significant and material change in the law and therefore must be applied retroactively.⁷⁵ This meant that people sentenced prior to *Houston-Sconiers* for crimes they committed as children could petition for a resentencing hearing in which the trial court is obligated to consider the important factors established in *Houston-Sconiers*.
- In *State v. Haag*, the Court seemingly held that virtual life sentences are unconstitutional for juveniles sentenced in adult court. The Haag Court instructed judges that their focus must be “forward looking” regarding the prospect of change and rehabilitation, criticizing the judge in that case for giving “undue emphasis to retributive factors over mitigating factors.”⁷⁶

In short, these rulings expanded access to the courts for people serving long or life sentences for crimes they committed as a child or adolescent and disallowed the imposition of virtual life sentences in these cases. These rulings were especially important at a time when the ISRB was denying many petitioners release for reasons the Washington State Supreme Court later determined to be outside of the law.⁷⁷ They were also highly relevant for the people who were serving time for aggravated murder committed at the age of sixteen or seventeen, whose pathway to post-conviction review could be activated or blocked by trial courts.

However, the Court has also issued apparently contradictory rulings and recently ruled that the discretionary imposition of virtual life sentences on juveniles is *not* unconstitutional:

- In *Matter of Hinton*, the Court held that most, if not all, juveniles who are eligible for ISRB review after serving twenty years cannot seek resentencing by the trial court.⁷⁸

- In 2022, in *Matter of Forcha-Williams*, the Court held that only part of its decision in *Houston-Sconiers* was retroactive, thereby denying resentencing to defendants who followed the court's formula in *Ali* and *Domingo-Cornelio*.⁷⁹
- Also in 2022, the Court held in *State v. Anderson* that resentencing courts *can* impose virtual life sentence on a juvenile if the judge finds that the crime did not reflect the “mitigating qualities of youth.”⁸⁰

This change in case law has created notable inconsistencies and injustices. For example, while some defendants who filed legal documents quickly after favorable rulings received some relief, virtually no juveniles sentenced before *Houston Sconiers* in 2017 who remain in prison are now eligible for resentencing in the courts. Those who are resentenced in courts today face more challenging circumstances than was the case just a few years ago.

Contradictory rulings regarding virtual life sentences have also created inconsistent results for similarly-situated people: some people were able to be resentenced before the *Anderson* ruling, while others were not. Many people who were subsequently resentenced by the courts have not received meaningful relief.⁸¹ These rulings underscore the need for a consistent and comprehensive solution to Washington’s imposition of excessively long sentences on young people.

DEVELOPMENTS IN CASE LAW PERTAINING TO EMERGING ADULTS

The Court has done even less to ensure that people who were emerging adults when they committed their crime have the opportunity to be reviewed and considered for release. In 2015, the Washington State Supreme Court held in *State v. O’Dell* that age can mitigate culpability even when defendants are over eighteen years old at the time of the crime.⁸² This decision has been used in individual appeals, but did not create an automatic pathway to sentence review for emerging adults.

More recently, in 2021, the Washington State Supreme Court created the only pathway to review for emerging adults, ruling *In re Monschke and Bartholomew* that imposing mandatory life without parole (LWOP) sentences for aggravated murder is unconstitutional for people who were eighteen, nineteen, or twenty years old at the time of the offense.⁸³ The impact of research on brain development in youth on this ruling is clear:

Modern social science, our precedent, and a long history of arbitrary line drawing have all shown that no clear line exists between childhood and adulthood. For some purposes, we defer to the legislature’s decisions as to who constitutes an “adult.” But when it comes to mandatory LWOP sentences, Miller’s constitutional guarantee

of an individualized sentence—one that considers the mitigating qualities of youth—must apply to defendants at least as old as these defendants were at the time of their crimes.⁸⁴

As a result, people who were convicted of aggravated murder committed at the age of eighteen, nineteen, or twenty and who received an LWOP sentence can now petition the trial court for a resentencing hearing in which the court considers the important factors established in *Houston-Sconiers*. An estimated thirty-nine such individuals who were eighteen to twenty years-old when they committed aggravated murder are now able to petition the courts for resentencing.

While the *Monschke* ruling was a notable step forward, Washington courts have been unwilling to expand the right to resentencing to individuals who were twenty-one to twenty-five years old at the time of their conviction, even though brain development and maturation continue well past the age of twenty. Moreover, the fact that this ruling applies only to people who were convicted of aggravated murder creates yet another glaring inequity: those who were convicted of *less* serious offenses and received an LWOP or virtual life sentence do not have any pathway to post-conviction review.

CASE STUDY 4: NICK’S STORY

Two months after Nick turned eighteen, he shot into a car he thought was filled with gang members and killed one of the passengers. Nick was convicted of aggravated murder as well as and four counts of first-degree assault. Initially, Nick received an LWOP sentence. After serving twenty-five years, and engaging in extensive rehabilitative programming and efforts, Nick was resentenced under *Monschke*. He was released later that same month. In the three years since his release, Nick has been an outstanding community member.

By contrast, the eighteen-year-olds who were convicted of crimes less serious than aggravated murder and are serving virtual life sentences have no right to resentencing.

THE UPSHOT: YOUTH-RELATED CHANGES TO SENTENCING LAW AND POLICY IN WASHINGTON

The legislature's 2014 and 2015 legislation brought relief to some people who were serving long or life sentences for crimes they committed as a juvenile. However, many of the juvenile lifers whose minimum terms are now to be set by the courts continue to serve excessively long sentences and remain mired in appeals. Nor has the legislature provided any pathway to resentencing or parole review for the vast majority of people who were between eighteen and twenty-five years old at the time of their offense.

The Court's ruling in *In re Monschke and Bartholomew* created a resentencing pathway for a very specific group: eighteen, nineteen, and twenty-year-olds who received an LWOP sentence for aggravated murder can now petition the sentencing court for resentencing. However, the vast majority of emerging adults serving long or life sentences have been denied a second look through resentencing or the ISRB.

For this reason, many people who received long or life sentences for a crime they committed as an emerging adult continue to serve excessively long sentences without any pathway to review. The lack of comprehensive sentencing reform not only leaves nearly all emerging adults behind; it also produces grave injustices and bizarre inconsistencies for the juveniles and emerging adults who received extreme punishments during the most punitive period of sentencing in Washington's history.

PART III. THE PEOPLE LEFT BEHIND: A CLOSER LOOK

This report calls attention to the young people who were harmed by the excesses of the past and who continue to lack a pathway to a fair and consistent post-conviction review process. In this section, we identify the number and characteristics of people who are serving long and life sentences in Washington for crimes they committed as emerging adults and who are not currently eligible for either parole review or resentencing and show that this population relies on the courts in the absence of a systematic pathway to review, at great cost to courts, victims, prosecutors, and petitioners. We also examine outcomes for juvenile lifers whose new minimum sentence was, per the 2014 legislation, determined by the courts.

DATA AND ANALYTIC STRATEGY

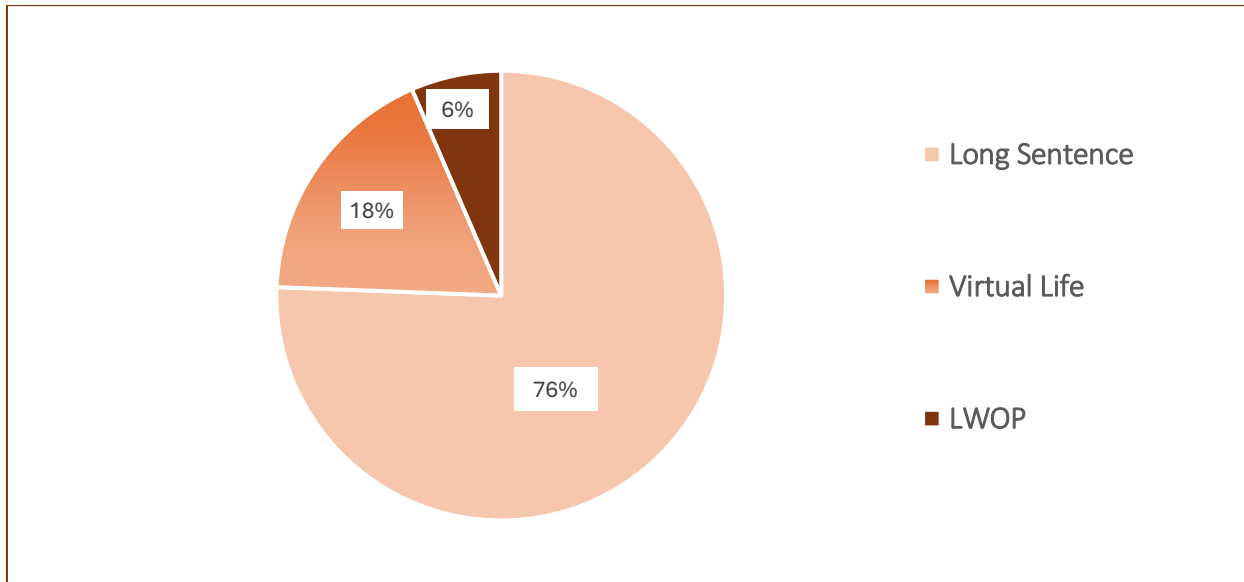
To obtain information regarding Washington's emerging adult population, we began with a dataset provided by the Washington State Department of Corrections that includes information about all prisoners in the state as of May 23, 2023.⁸⁵ We then excluded people whose sentences were less than fifteen years long; people who were seventeen or younger at the time of the crime; people who were older than twenty-five at the time of the crime; and those who were eighteen to twenty-five years old at that time but who already have a pathway to post-conviction review.⁸⁶ The information provided below regarding the emerging adult population is based on our analysis of the remaining data.

To collect information about people serving long or life sentences for crimes they committed as juveniles, we submitted a Public Disclosure Act request to the Washington State Department of Corrections. We cross checked the information received from the DOC against records obtained by other researchers and by the Seattle Clemency Project. Based on these documents, we added two additional names to the list provided by the DOC. The databases listed above, Seattle Clemency Project records, and the Department of Corrections inmate lookup tool were used to determine the status of these individuals.

FINDINGS: EMERGING ADULTS SERVING LONG OR LIFE SENTENCES IN WASHINGTON

As of June 2023, there were an estimated 1,139 people serving a prison sentence of fifteen or more years for a crime they committed between the ages of eighteen to twenty-five who do not currently have a pathway to post-conviction review of any sort. Most (75.6 percent) of these individuals are serving a sentence of more than fifteen years, but less than life. However, nearly one in five (17.9 percent) are serving a virtual life sentence, that is, a sentence that is 470 or more months (39.1 years) long. Another 6.5 percent are serving an LWOP sentence (see Figure 1).

Figure 1. Type of Sentence for Emerging Adults Serving Long or Life Sentences with No Pathway to Review

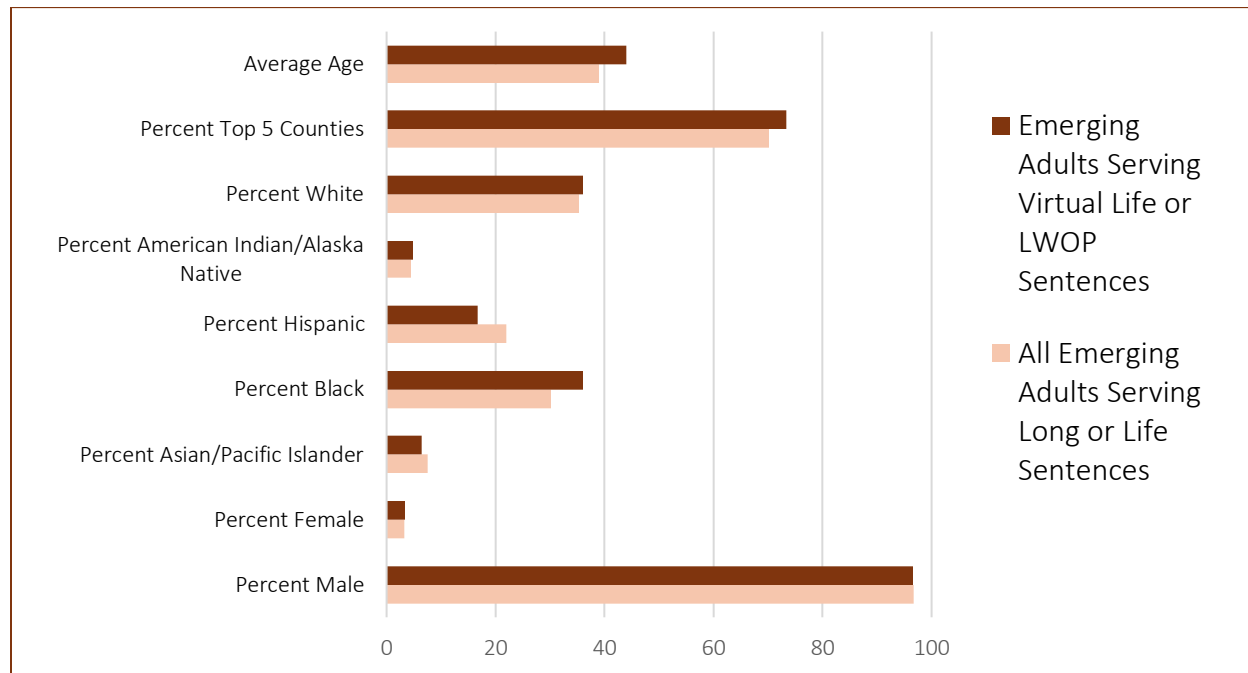


Notes: Here, long sentences are those that are fifteen or more years. Virtual life sentences are those that are 470 months, or just under 40 years long. Calculations based on 2023 data.

Source: Washington State Department of Corrections, PDA request #P036116-052323.

As Figure 2 shows, this population is overwhelmingly (96.7 percent) male. Today, their average age is thirty-nine. Nearly three in four (70.2 percent) were convicted in one of the five largest counties: King, Pierce, Spokane, Yakima, and Snohomish. Most were convicted of some type of homicide,⁸⁷ but assault is the most serious crime of conviction for one in six (14.8 percent) of these individuals. Another 9.7 percent are serving a long or life sentence for robbery. Nearly six in ten (57.9 percent) received sentencing enhancements, most of which involve weapons.

Figure 2. Characteristics of Emerging Adults Serving Long or Life Sentences with No Pathway to Review

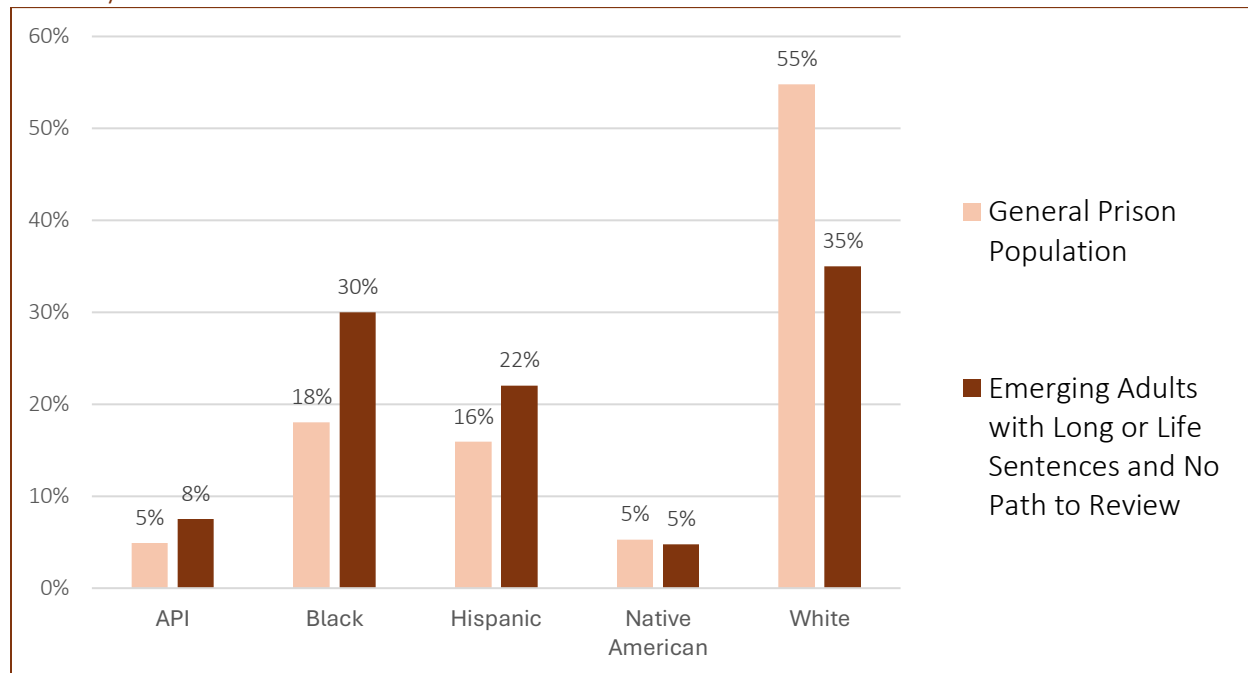


Notes: Here, long sentences are those that are fifteen or more years long. Virtual life sentences are those that are 470 months or just under forty years long or longer. Calculations based on 2023 data.

Source: Washington State Department of Corrections, PDA request #P036116-052323.

Figure 3 compares the racial composition of this group to that of the general state prison population, and shows that Black and Asian/Pacific Islander people are notably over-represented among emerging adults serving long or life sentences with no pathway to review.⁸⁸ For example, eighteen percent of Washington’s prison population is Black, but thirty-one percent of the emerging adults serving a long or life sentence with no pathway to review are Black.

Figure 3. Racial Disparities Among Emerging Adults Serving Long or Life Sentences with No Pathway to Review



Notes: API denotes Asian and Pacific Islander. The Native American category also includes Alaska Natives. Here, long sentences are those that are fifteen or more years. Virtual life sentences are those that are 470 months, or just under 40 years long, or longer. Calculations based on 2023 DOC data.

Source: Washington State Department of Corrections, PDA request #P036116-052323.

In summary, as of 2023, there were an estimated 1,139 people in Washington State prisons who were serving a long or life sentence for an offense they committed as an emerging adult who do not have a pathway to resentencing or ISRB review. These individuals are overwhelmingly male and disproportionately of color. Most were convicted in one of the largest counties in the state, and the majority received sentencing enhancements that augmented their sentence.

DIVERGENT FATES: JUVENILES SERVING LONG AND LIFE SENTENCES IN WASHINGTON

As described in the previous section of this report, the legislature responded to the *Miller v. Alabama* ruling in 2014 by creating pathways to review for juveniles who were convicted of aggravated murder and received an LWOP sentence.⁸⁹ For reasons that remain unclear, the legislature split this group in two and provided each with a distinct pathway to review.

People who under the age of sixteen at the time of the crime were to be resentenced by courts to twenty-five years to life, with an opportunity to be reviewed by the ISRB and released on Department of Corrections (DOC) supervision after serving twenty-five years in prison. After the minimum term of twenty-five years has been served, the releasability of these defendants is decided by the ISRB. The process is similar for defendants who were sixteen or seventeen years

old at the time of the crime, but for this cohort, the term must be at least twenty-five years, but it can be (and often is) longer.

Many of these petitioners have not experienced any relief in the courts, despite their rehabilitation. This is especially true for those who were sixteen or seventeen years old when they committed their offense.

Most of those who were fifteen or younger at the time of the crime received a sentence of twenty-five years-to-life, as the legislature intended, but two defendants with multiple charges did not. One of these individuals was eventually sentenced to twenty-five years-to-life, which rendered him eligible for parole review. The other continues to serve a sentence of 189 years.⁹⁰

Some of those who were sixteen or seventeen years old initially received virtual life sentences while others were sentenced to LWOP a second time. Petitioners appealed these rulings. In 2018, the Washington State Supreme Court held in *State v. Bassett* that that sentencing people who were under the age of eighteen at the time of their offense to LWOP constitutes cruel punishment and is therefore unconstitutional (even if the sentence is not mandatory). As a result of this ruling, Bassett and others who had been resentenced to LWOP became eligible, once again, for resentencing.⁹¹

However, after briefly barring virtual life sentences, the Court has, since 2022, permitted their imposition. Specifically, the Washington State Supreme Court held in *State v. Anderson* that resentencing courts *can* impose a virtual life sentence on a juvenile if the judge finds that the crime did not reflect the “mitigating qualities of youth.”⁹² As a result, some people whose route to post-conviction review has involved the courts have not received meaningful relief.

Table 1 shows resentencing outcomes for juveniles sent back to the courts for resentencing. It includes those whose sentence was ostensibly determined by the legislature (i.e., those aged fifteen and under) as well as those sent to the courts for a new sentence of at least twenty-five years (i.e., those aged sixteen or seventeen at the time of the offense). As this table reveals, the process has been relatively smooth for those aged fifteen or under, with the exception of two individuals with multiple charges.

By contrast, many of the sixteen and seventeen-year-olds have been resentenced two or more times and many will not become eligible for even review by the ISRB Juvenile Board until they have served three or more decades in prison. Moreover, three have not yet been resentenced, even though the statute that allowed them to be was enacted more than a decade ago.

Table 1. New Sentences for Juveniles Originally Sentenced to LWOP

	Original Sentence	New Sentence 1	New Sentence 2	New Sentence 3	Years to be Served Before Parole-Eligible***
<i>Juveniles aged 15 and under at time of crime</i>					
Individual 1	LWOP	25-life	--	--	25
Individual 2	LWOP	25-life	--	--	25
Individual 3*	LWOP	189 years	--	--	189
Individual 4	LWOP	25-life	--	--	25
Individual 5	LWOP	25-life	--	--	25
Individual 6*	LWOP	33-life	25-life	--	25
Individual 7	LWOP	25-life	--	--	25
Individual 8	LWOP	25-life	--	--	25
Individual 9	LWOP	25-life	--	--	25
Individual 10	LWOP	25-life	--	--	25
<i>Juveniles aged 16 & 17 at time of crime</i>					
Individual 1	LWOP	**	--	--	**
Individual 2	LWOP	33-life	--	--	33
Individual 3	LWOP	42-life	--	--	42
Individual 4	LWOP	46-life	--	--	46
Individual 5	LWOP	LWOP	60-life	28-life	28
Individual 6	LWOP	50-life	32-life	--	32
Individual 7	LWOP	48-life	33-life	--	33
Individual 8	LWOP	38-life	--	--	38
Individual 9	LWOP	LWOP	48-life	--	48
Individual 10	LWOP	46-life	33-life	--	33
Individual 11	LWOP	40-life	26-life	--	26
Individual 12	LWOP	**	--	--	**
Individual 13	LWOP	40-life	40-life	40-life	40
Individual 14	LWOP	40-life	--	--	40
Individual 15*	LWOP	LWOP	41-life	36-life	36
Individual 16	LWOP	LWOP	25-life	--	25
Individual 17	LWOP	40-life	--	--	40
Individual 18	LWOP	32-life	--	--	32
Individual 19	LWOP	LWOP	27.5-life	--	27.5
Individual 20	LWOP	35-life	--	--	35
Individual 21	LWOP	**	--	--	**

Source: Department of Corrections and court records

Note: Individuals in these groups were arranged in alphabetical order.

* Defendant had multiple charges

** Not yet resentenced

*** As of August 2025

In cases involving sixteen- and seventeen-year-olds, the resentencing process has consumed a significant amount of court time. It also requires the extensive involvement of prosecutors and often, victims. Some of these individuals continue to litigate because they have been resentenced to very long, sometimes virtual life, sentences. Some have filed multiple appeals and been resentenced multiple times. Moreover, in the absence of clear resentencing criteria, outcomes across similar cases involving these sixteen and seventeen-year-olds vary substantially. Among the sixteen and seventeen-year-olds convicted of a single count of aggravated murder, the most recent *minimum* terms range from twenty-five to forty-eight years for the same offense.

SUMMARY: THE SCALE OF THE PROBLEM

The data presented here indicate that an estimated 1,139 emerging adults serving long or life sentences in Washington State prisons lack a pathway to parole review despite clear evidence that youth is a relevant consideration until people reach their mid-twenties. Many of the juveniles who were sent back to court for resentencing also have also not had the opportunity to be evaluated by the ISRB.

In short, while the Miller fix legislation adopted by the legislature in 2014 was a step in the right direction, it has not meaningfully addressed the extreme sentences that were imposed on juveniles and emerging adults in the past. The 2014 legislation pertained to juveniles who received an LWOP sentence; unfortunately, many continue to serve excessive sentences and to lack a pathway to ISRB review. Nor have court rulings solved this problem.

By contrast, the 2015 legislation pertained to juveniles who received a sentence of twenty or more years (but not LWOP). This legislation rendered affected youth automatically eligible for ISRB review (absent a subsequent conviction or recent infraction) and has proven to be a fairer and more effective remedy than returning people to the courts.

Some opponents of retroactive reforms argue that expanding opportunities for postconviction review for people who received long or life sentences as a young person would over-burden our already backlogged courts. This argument overlooks the fact that replicating the direct, automatic parole pathway that the legislature created for juveniles who received a long (but not LWOP) sentence would place *no* burden on the Superior Court system. In fact, the evidence shows that sending people directly to the ISRB for review after a minimum sentence set by the legislature has been served has proven to be the most efficient and fair option for remedying the excesses and injustices of the past.

PART IV. THE PATH FORWARD

The absence of a pathway to parole review for some juveniles and the vast majority of emerging adults serving long or life sentences is clearly a justice problem. Neuroscientific research shows that brain development is a long and gradual process, one that unfolds at least through the mid-twenties – and often more slowly for people who have experienced significant adversity and trauma. Moreover, age is the most powerful predictor of recidivism; most people pose little safety risk once they have aged out of crime.⁹³

Yet most people who are serving long or life sentences for an offense they committed as an emerging adult have been denied resentencing or parole review in which their youth and maturation are considered, and the courts have still not provided justice in some cases involving juveniles. More than a decade has passed since the *Miller v. Alabama* ruling and the Washington State Legislature attempted to bring state policy in line with the spirit of that important ruling. It is imperative that the legislature develop a comprehensive solution that provides a clear, consistent, and transparent review process for juveniles and emerging adults that takes youthfulness into account and prioritizes public safety.

The question is how this should be done. The data presented here show that the courts have *not* provided consistent relief in cases involving juvenile defendants. The resentencing process for sixteen and seventeen-year-olds has been cumbersome and expensive. And, in cases where youthful defendants are resentenced to very long confinement terms, litigation in the appellate courts continues.

It is clear that sending people who were given extreme sentences as juveniles directly to the ISRB Juvenile Board after they serve a minimum term has been a more efficient and consistent remedy than returning people to the courts for resentencing. For this reason, we believe that ensuring that the ISRB's Juvenile Board automatically reviews all people who were twenty-five or younger at the time of their offense and have served fifteen years in prison would yield the most fair, consistent, efficient, and public safety-oriented outcomes. Below, we describe what this process currently entails.

UNDERSTANDING THE ISRB JUVENILE BOARD REVIEW PROCESS

Washington's original Board of Prisons Terms and Paroles (Parole Board) was established in 1936 but was renamed the Indeterminate Sentence Review Board (ISRB) after the 1984 Sentencing Reform Act shifted the state sentencing framework toward determinate sentencing and rendered most prisoners ineligible for parole review. However, some people do receive indeterminate sentences in Washington. In such cases, the ISRB functions as a parole board.

The ISRB is comprised of five governor-appointed members, each of whom serves a five-year term. Initially, the ISRB had jurisdiction over a relatively small group of people who were convicted prior to the enactment of the Sentencing Reform Act in 1984 and who therefore received an indeterminate sentence. Today, it also has jurisdiction over two other groups of people with indeterminate sentences: those who committed certain sex offenses after September 2001 and those who committed crimes prior to their eighteenth birthday but were sentenced as adults. As of October 2023, the ISRB had jurisdiction over 2,357 cases, the vast majority of which are cases involving sex offenses.⁹⁴

Each population under ISRB jurisdiction has different release criteria. For the juvenile parole population, the ISRB Juvenile Board is statutorily required to apply a presumption of release on Department of Corrections (DOC) supervision unless it “determines by a preponderance of evidence that despite conditions, it is more likely than not that the person will commit new criminal law violations.”⁹⁵

Although there is a presumption of release, the Juvenile Board systematically reviews each case with a particular focus on public safety. That is, the Board does not relitigate the crime but rather considers the degree to which the release of the petitioner would pose a risk to the public. The Board’s decisions are informed by case specific information and input from stakeholders. Case specific information is gathered through validated risk assessment tools, criminal history information, correctional programming records, and infraction histories. The Board also seeks input from victims, law enforcement, and prosecuting attorneys.

This process does not occur overnight. Petitioners must file a petition to become eligible for review. Once filed, petitioners are scheduled for a DOC psychological evaluation conducted by a DOC psychologist. These psychological evaluations typically take place over one to three days and are used to determine risk level.

Once the evaluation is complete, petitioners are scheduled for a hearing, (typically) within three-to-six months. The Board then begins to compile the petitioner’s information and reach out to prosecutors, victims, and other community members. At the hearing, the petitioner is asked about their crime, psychological evaluation, transformation, and release plan. The Board then deliberates and returns a decision within thirty days.

This in-depth review process means that roughly half of all petitioners are not found releasible. In recent years, the ISRB Juvenile Board’s release rate has been forty-four percent.⁹⁶ In these cases, petitioners given feedback and scheduled to return to the Board at a future date, typically three to five years later, but sometimes sooner.

While no decision-making body or process is perfect, the ISRB review process has become more consistent and transparent over time. In its early years, the ISRB Juvenile Board denied release in many cases even though the Miller fix legislation specified that the Board could only deny parole if it found that a petitioner was found to be more likely than not to re-offend. Nevertheless, prior to 2018, the Board often denied parole for other reasons, such as the nature and impact of the crime.⁹⁷

In 2018, however, the Washington Court of Appeals reiterated in *In re: Brashear* that the Board could only deny release if it found that the petitioner was more likely than not to reoffend.⁹⁸ Petitioners who believe that the ISRB Juvenile Board has not followed proper procedure can file a PRP, which triggers court review of the decision-making process. In 2024, for example, a Division 3 Washington Court of Appeals found that the ISRB had failed adhere to proper procedure and ordered the ISRB to re-evaluate the petitioner, who was subsequently found releasable.⁹⁹

Since the *Brashear* ruling, the ISRB has applied the standard of release more consistently and more petitioners have been released. As noted previously, this release rate of roughly fifty percent has not imperiled public safety, as the recidivism rate among this population is remarkably low. Moreover, many of the people who have come home are doing important work caring for their communities and their families.¹⁰⁰

CONCLUSION: A CALL TO ACTION

Long and life sentences are not an effective, humane, or cost-effective way of protecting public safety. Although they are imposed less often today than in the past, many young people were impacted by tough sentencing laws adopted in the 1980s and 1990s. Many remain behind bars without an opportunity to have their youthfulness and subsequent maturation considered by a body that has the authority to order their release.

Washingtonians deserve a justice system that is consistent with neuroscientific research, recognizes adolescence and emerging adulthood as a distinct life phase during which people continue to mature, and prioritizes public safety. Ideally, these policies would also create consistency, simplicity, and transparency while reducing the burden placed on the courts, prosecutors, and victims.

Based on these considerations, and the findings presented in this report, **we recommend that the legislature ensure that all people who were twenty-five years-old or younger at the time of their crime become eligible for review by the ISRB Juvenile Board after they have served fifteen years in prison.**

The findings presented in this report indicate that automatic eligibility for ISRB review is the only way to provide a comprehensive, consistent, and transparent remedy to what is clearly an unresolved problem. This solution will also reduce the burden that current injustices and inconsistencies place on the courts (and on prosecutors and victims). Automatic review by the ISRB would ensure more consistency in the criteria used in the post-conviction review process, more transparency and predictability for victims, and more just outcomes based on standardized criteria and professional assessments of public safety risk.

This recommendation is consistent with those of other experts. In 2017, the American Law Institute (ALI) – an independent organization composed of judges, lawyers, and law professors – recommended that states adopt a second look review process after fifteen years of imprisonment.¹⁰¹ Additionally, the ALI recommended review at ten years for sentences imposed on youth, and a sentence review at any time for those experiencing “advanced age, physical or mental infirmity, exigent family circumstances, or other compelling reasons.”¹⁰² In adopting the second recommendation, the ALI wrote:

[The second look recommendation] is rooted in the belief that governments should be especially cautious in the use of their powers when imposing penalties that deprive offenders of their liberty for a substantial portion of their adult lives. The

provision reflects a profound sense of humility that ought to operate when punishments are imposed that will reach nearly a generation into the future, or longer still. A second-look mechanism is meant to ensure that these sanctions remain intelligible and justifiable at a point in time far distant from their original imposition.

The ALI is not alone. In 2022, the American Bar Association (ABA) adopted Resolution 502, urging governments to enact legislation permitting courts to take a second look after ten years of incarceration.¹⁰³ In 2022, the National Academies of Sciences recommended establishing second-look provisions as a way to reduce racial disparities in incarceration, given that racial disparities in imprisonment increase with sentence length.¹⁰⁴

In summary, legislation that guarantees automatic review by the ISRB for any person serving time in prison for a crime they committed at the age of twenty-five or younger after they have served fifteen years behind bars would have many benefits, including:

- Bringing Washington State sentencing policy in line with the recommendations of the American Bar Foundation, the American Law Institute, and other experts as well as neuroscientific and psychological research regarding youthfulness and the maturation process;
- Allowing people who have served decades behind bars for crimes they committed as juveniles or emerging adults to have their youth as well as their maturation considered;
- Incentivizing involvement in prison programming and other rehabilitative activities;
- Reducing the burden the current situation places on courts, prosecutors, and victims;
- Ensuring a focus on public safety, consistency, transparency, and clarity in the post-conviction review process; and
- Reducing the human toll and fiscal costs associated with long and life sentences.

Endnotes

¹ Tough new mandatory sentencing laws were the primary driver of rising incarceration rates; changes in prosecutorial practice also fueled mass incarceration in Washington. See K. Beckett and H. Evans, *About Time: How Long and Life Sentences Fuel Mass Incarceration in Washington State* (ACLU of Washington, 2020).

² Ibid.

³ As of June 2024, 31.8 percent of those incarcerated in Washington were serving a sentence of ten or more years (see Department of Corrections, *Expanded Agency Fact Card*, December 2024). Of these 4,571 individuals, just 166 will have the opportunity to be reviewed by the ISRB under current policy. Another 16.5 percent of the prison population is serving Life with the Possibility of Parole sentences, so are potentially eligible for review. See Washington State Department of Corrections, Indeterminate Sentencing Review Board, *2022-23 Bi-Annual Report* (300-RE006 (2/2024) at 7.

⁴ National Research Council, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, edited by J. Travis, B. Western, and S. Redburn (Washington, D.C.: The National Academies Press, 2014).

⁵ B.J. Casey, C. Simmons, L.H. Somerville, and A. Baskin-Sommers, "Making the Sentencing Case: Psychological and Neuroscientific Evidence for Expanding the Age of Youthful Offenders," *Annual Review of Criminology* 5: 321-43 (2022).

⁶ National Research Council, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, edited by J. Travis, B. Western, and S. Redburn (Washington, D.C.: The National Academies Press, 2014).

⁷ See Washington State Institute for Public Policy, *Changes to Washington State's Juvenile Court and Juvenile Rehabilitation Jurisdiction: A Preliminary Analysis of "JR to 25"*, July 2024. Despite the magnitude of this shift, unwarranted racial disparities in juvenile transfers to adult court persist. See H. Evans and E. Knaphus-Soran, *The Persistence of Racial Disparities in Juvenile Decline in Washington State, 2009-2024* (2024).

⁸ C. Freeman, "Teen Pleads Guilty to Fatal 2022 Shooting of Ingraham High School Student," *Seattle Times*, June 10, 2024.

⁹ *State v. Houston Sconiers*, 188 Wn.2d 1,9, 391 P.3d 409 (2017); *State v. O'Dell*, 358 P.3d 359, 360 (2015).

¹⁰ RCW 10.95.030 and 035.

¹¹ K. Beckett and A. Goldberg, *Sentencing Reform in Washington State: Progress and Pitfalls* (Seattle: University of Washington, 2024).

¹² A relatively small number of this group- people who were eighteen, nineteen, or twenty years old when they committed aggravated murder- became eligible for resentencing under the Monschke decision (in re PRP Monschke, 197 Wn.2d 305, 482 P.3d 276, consolidated with in re PRP Bartholomew, 2021). See K. Beckett and A. Goldberg, *Sentencing Reform in Washington State: Progress and Pitfalls* (Seattle: University of Washington, 2024).

¹³ National Research Council, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, edited by J. Travis, B. Western, and S. Redburn (Washington, D.C.: The National Academies Press, 2014).

¹⁴ In re PRP Monschke, 197 Wn.2d 305, 482 P.3d 276, consolidated with in re PRP Bartholomew) (2021).

¹⁵ See K. Beckett and A. Goldberg, *Sentencing Reform in Washington State: Progress and Pitfalls* (Seattle: University of Washington, 2024).

¹⁶ C. Northrop et al. "What's My Age Again?: Adolescent Development and the Case for Expanding Original Juvenile Court Jurisdiction and Investing in Alternatives for Emerging Adults Involved in Maine's Justice System," *Maine Law Review* 74 (2022): 243- 279 at 259. See also B.J. Casey, C. Simmons, L.H. Somerville,

and A. Baskin-Sommers, “Making the Sentencing Case: Psychological and Neuroscientific Evidence for Expanding the Age of Youthful Offenders,” *Annual Review of Criminology* 5: 321-43 (2022).

¹⁷ Engrossed Second Substitute Senate Bill 6160, Chapter 162, Laws of 2018, and Engrossed Second Substitute House Bill 1646, Chapter 322, Laws of 2019.

¹⁸ A. Nellis and D. Brown, *Still Cruel and Unusual: Extreme Sentences for Youth and Emerging Adults* (Washington DC: The Sentencing Project, 2024); H. Evans and E. Knaphus-Soran, *The Persistence of Racial Disparities in Juvenile Decline in Washington State, 2009-2024* (2024).

¹⁹ *Ibid.*

²⁰ S. Sawyer et al., “The Age of Adolescence,” *Lancet Child & Adolescent Health* 2, 223 (2018): 223-26; J.N. Giedd et al., “Brain Development During Childhood and Adolescence: A Longitudinal MRI Study,” *Nature Neuroscience* 2, 10 (1999): 861–63; E.R. Sowell et al., “Mapping Continued Brain Growth and Gray Matter Density Reduction in Dorsal Frontal Cortex: Inverse Relationships During Postadolescent Brain Maturation,” *The Journal of Neuroscience* 21, 22 (2001): 8819–29. See also studies cited in L. Steinberg and G. Icenogle, “Using Developmental Science to Distinguish Adolescents and Adults Under the Law,” *Annual Review of Developmental Psychology* 1: 21-40 (2019).

²¹ In re PRP Monschke, 197 Wn.2d 305, 482 P.3d 276, consolidated with in re PRP Bartholomew) (2021).

²² The U.S. Sentencing Commission defines a de facto (virtual) life sentence as one that is 470 months or longer (see U.S. Sentencing Commission, *Life Sentences in the Federal System*, July 2022). We employ that definition here.

²³ Personal communication with Delaney Mosca, Ph.C., Seattle Clemency Project researcher.

²⁴ Calculations based on data in Washington State Department of Corrections, *Agency Fact Card*, December 2024.

²⁵ Immediately after the Sentencing Reform Act was adopted in 1984, the ISRB only reviewed people sentenced prior to July 1984. Today, it also has jurisdiction over two other groups of people with indeterminate sentences: those who committed certain sex offenses after September 2001 and those who committed crimes prior to their eighteenth birthday but were sentenced as adults. As of October 2023, the ISRB had jurisdiction over 2,357 cases: 2,201 sex offense cases, 142 pre-1984 cases, and 24 juvenile parole cases.

²⁶ N. Ghandnoosh, *A Second Look at Injustice* (Sentencing Project, May 2021).

²⁷ S. Sawyer et al., “The Age of Adolescence,” *Lancet Child & Adolescent Health* 2, 223 (2018): 223-26; J.N. Giedd et al., “Brain Development During Childhood and Adolescence: A Longitudinal MRI Study,” *Nature Neuroscience* 2, 10 (1999): 861–63; E.R. Sowell et al., “Mapping Continued Brain Growth and Gray Matter Density Reduction in Dorsal Frontal Cortex: Inverse Relationships During Postadolescent Brain Maturation,” *The Journal of Neuroscience* 21, 22 (2001): 8819–29. See also studies cited in L. Steinberg and G. Icenogle, “Using Developmental Science to Distinguish Adolescents and Adults Under the Law,” *Annual Review of Developmental Psychology* 1: 21-40 (2019).

²⁸ S. Sawyer et al., “The Age of Adolescence,” *Lancet Child & Adolescent Health* 2, 223 (2018): 223-26 at 24.

²⁹ L. Steinberg and G. Icenogle, “Using Developmental Science to Distinguish Adolescents and Adults Under the Law,” *Annual Review of Developmental Psychology* 1: 21-40 (2019) at 32.

³⁰ Center for Law, Brain & Behavior at Massachusetts General Hospital, *White Paper on the Science of Late Adolescence: A Guide for Judges, Attorneys and Policy Makers* (January 2022).

³¹ L. Steinberg and G. Icenogle, “Using Developmental Science to Distinguish Adolescents and Adults Under the Law,” *Annual Review of Developmental Psychology* 1: 21-40 (2019) at 32.

³² R. Gur et al., “Burden of Environmental Adversity Associated with Psychopathology, Maturation, and Brain Behavior Parameters in Youth,” *JAMA Psychiatry* 76 (9): 966-975 (2019); R.J. Herringa, “Trauma, PTSD, and the Developing Brain,” *Curr Psychiatry Rep.* ; 19(10): 69 (2018); D. Cross et al., “Neurobiological Development in the Context of Childhood Trauma,” *Clinical Psychology* (New York) 24, 2: 111-24 (2018); C.

Bryan-Hancock & Sharon Casey, "Psychological Maturity of At-Risk Juveniles, Young Adults and Adults: Implications for the Justice System," *Psychiatry, Psychology and Law* 17:1, 57-69 (2010).

³³ L.J. Jaggi, B. Mezuk, D.C. Watkins, and J.S. Jackson, "The Relationship Between Trauma, Arrest, and Incarceration History Among Black Americans," *Society and Mental Health* 6, 3 (2016): 187-206; B. Western, "Lifetimes of Violence in a Sample of Released Prisoners," *The Russell Sage Foundation Journal of the Social Sciences* 1, 2 (2015): 14-30; N. Wolff et al, "Trauma Exposure and Posttraumatic Stress Disorder Among Incarcerated Men," *Journal of Urban Health: Bulletin of the New York Academy of Medicine* 91,4 (2014):707-19.

³⁴ Quoted in K. Beckett and H. Evans, *About Time: How Long and Life Sentences Fuel Mass Incarceration in Washington State* (ACLU of Washington, 2020) at 48. See also National Research Council, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, edited by J. Travis, B. Western, and S. Redburn (Washington, D.C.: The National Academies Press, 2014).

³⁵ K. Poon, "Hot and Cool Executive Functions in Adolescence: Development and Contributions to Important Developmental Outcomes," *Frontiers in Psychology* 8 (2018): 2311; G. Icenogle et al., "Adolescents' Cognitive Capacity Reaches Adult Levels Prior to Their Psychosocial Maturity: Evidence for a 'Maturity Gap' in a Multinational, Cross-Sectional Sample," *Law and Human Behavior* 43, 1 (2019): 69–85.

³⁶ G. Icenogle et al., "Adolescents' Cognitive Capacity Reaches Adult Levels Prior to Their Psychosocial Maturity: Evidence for a 'Maturity Gap' in a Multinational, Cross-Sectional Sample," *Law and Human Behavior* 43, 1 (2019): 69–85 at 71.

³⁷ R. Barkin, *Hot and Cold Cognition: Understanding Emerging Adults' Cognitive Reasoning* (Emerging Adult Project, December 2021), at 1, citing L. Steinberg, "Risk Taking in Adolescence: New Perspectives from Brain and Behavioral Science," *Current Directions in Psychological Science* 16, 2: 55–59.

³⁸ Ibid. See also E. Mercurio et al., "Adolescent Brain Development and Progressive Legal Responsibility in the Latin American Context," *Frontiers in Psychology* 11 (2020): 627.

³⁹ Center for Law, Brain & Behavior at Massachusetts General Hospital, *White Paper on the Science of Late Adolescence: A Guide for Judges, Attorneys and Policy Makers* (January 2022) at 14.

⁴⁰ R. Barkin, *Hot and Cold Cognition: Understanding Emerging Adults' Cognitive Reasoning* (Emerging Adult Project, December 2021), at 2, citing L. Steinberg, "Risk Taking in Adolescence: New Perspectives from Brain and Behavioral Science," *Current Directions in Psychological Science* 16, 2: 55–59.

⁴¹ E. Mercurio et al., "Adolescent Brain Development and Progressive Legal Responsibility in the Latin American Context," *Frontiers in Psychology* 11 (2020): 627.

⁴² A. Galvan, "Adolescent Development of the Reward System," *Frontiers of Human Neuroscience* 4, 6 (2010).

⁴³ B. Taber-Thomas, and K. Pérez-Edgar, "Emerging Adulthood Brain Development," *The Oxford Handbook of Emerging Adulthood* (2015): 126-141.

⁴⁴ M. Gardner and L. Steinberg, "Peer Influence on Risk Taking, Risk Preference, and Risky Decision Making in Adolescence and Adulthood: An Experimental Study," *Developmental Psychology* 41 (2005): 625–635.

⁴⁵ R. Barkin, *Hot and Cold Cognition: Understanding Emerging Adults' Cognitive Reasoning* (Emerging Adult Project, December 2021), citing J. Chein, D. Albert, L. O'Brien, K. Uckert, K., & L Steinberg, "Peers Increase Adolescent Risk Taking by Enhancing Activity in the Brain's Reward Circuitry," *Developmental Science* 14, 2 (2011): F1–F10.

⁴⁶ M. Gardner & L. Steinberg, "Peer Influence on Risk Taking, Risk Preference, and Risky Decision Making in Adolescence and Adulthood: An Experimental Study. *Developmental Psychology*," *Developmental Psychology* 41(4): 625–635.

⁴⁷ M. Arain et al, "Maturation of the Adolescent Brain," *Neuropsychiatric Disease and Treatment* 2013: 449-461; L.J. van der Knaap and I. JM van der Ham, "How Does the Corpus Callosum Mediate Interhemispheric Transfer? A Review," *Behavioural Brain Research* 223,1 (2011): 211-221.

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⁴⁹ J. Pujol et al., "When Does Human Brain Development End? Evidence of Corpus Callosum Growth up to Adulthood," *Annals of Neurology: Official Journal of the American Neurological Association and the Child Neurology Society* 34,1 (1993): 71-75.

⁵⁰ M. Arain et al., "Maturation of the Adolescent Brain," *Neuropsychiatric Disease and Treatment* 9, 449-461 (2013), citing L. Gavin et al, "Sexual and Reproductive Health of Persons aged 10-24 years," *Morbidity & Mortality Weekly Report Summaries* 58, 6 (2009): 1-58.

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⁵² R. Barkin, *Hot and Cold Cognition: Understanding Emerging Adults' Cognitive Reasoning* (Emerging Adult Project, December 2021), citing C. Chen et al., "Traumatic Injury to the Immature Frontal Lobe: A New Murine Model of Long-Term Motor Impairment in the Absence of Psychosocial or Cognitive Deficits," *Developmental Neuroscience* 35, 6 (2013), 474-490.

⁵³ L.J. Jaggi et al., "The Relationship Between Trauma, Arrest, and Incarceration History Among Black Americans," *Society and Mental Health* 6, 3 (2016): 187-206; B. Western, "Lifetimes of Violence in a Sample of Released Prisoners," *The Russell Sage Foundation Journal of the Social Sciences* 1, 2 (2015): 14-30; N. Wolff et al, "Trauma Exposure and Posttraumatic Stress Disorder Among Incarcerated Men," *Journal of Urban Health: Bulletin of the New York Academy of Medicine* 91,4 (2014):707-19.

⁵⁴ C. Haney, "The Psychological Effects of Imprisonment," in *The Oxford Handbook of Sentencing and Corrections*, edited by Joan Petersilia, and Kevin R. Reitz (eds) (Oxford Handbooks, Oxford Academic, 2012).

⁵⁵ Center for Law, Brain & Behavior at Massachusetts General Hospital, *White Paper on the Science of Late Adolescence: A Guide for Judges, Attorneys and Policy Makers* (January 2022), at 22.

⁵⁶ M. Arain et al., "Maturation of the Adolescent Brain," *Neuropsychiatric Disease and Treatment* 9, 449-461 (2013).

⁵⁷ *Ibid.*

⁵⁸ R. Barkin, *Hot and Cold Cognition: Understanding Emerging Adults' Cognitive Reasoning* (Emerging Adult Project, December 2021), citing C. Chen et al., "Traumatic Injury to the Immature Frontal Lobe: A New Murine Model of Long-Term Motor Impairment in the Absence of Psychosocial or Cognitive Deficits," *Developmental Neuroscience* 35, 6 (2013), 474-490.

⁵⁹ Center for Law, Brain & Behavior at Massachusetts General Hospital, *White Paper on the Science of Late Adolescence: A Guide for Judges, Attorneys and Policy Makers* (January 2022), at 22.

⁶⁰ G. Icenogle et al., "Adolescents' Cognitive Capacity Reaches Adult Levels Prior to Their Psychosocial Maturity: Evidence for a 'Maturity Gap' in a Multinational, Cross-Sectional Sample," *Law and Human Behavior* 43, 1 (2019): 69-85.

⁶¹ *Miller v. Alabama*, 567 U.S. 460 (2012).

⁶² Aggravated murder is defined in RCW 10.95.020. This statute identifies fourteen circumstances that distinguish aggravated first-degree homicide from non-aggravated first-degree homicide. However, the legal distinction between aggravated and non-aggravated murder does not meaningfully differentiate the most severe offenses from those that are slightly less severe. For example, homicides in which the assailant is in a vehicle are not inherently more serious than those that take place in a house or on a sidewalk. Moreover, many murders that could be charged as aggravated murder are not. See K. Beckett and H. Evans, *About Time: How Long and Life Sentences Fuel Mass Incarceration in Washington State* (ACLU of Washington, 2020).

⁶³ 2SSB 5064, Ch. 130, sec. 10, Laws of 2014.

⁶⁴ HB 1319 allows youth sentenced to more than twenty years to be released even with mandatory sentencing enhancements, adds community custody for those individuals released by the ISRB, and added no good time provision to sentences pursuant to RCW 10.95.030/.035.

⁶⁵ Petitioners who believe that the ISRB Juvenile Board has not followed proper procedure can file a PRP which triggers court review of the decision-making process. In 2024, for example, a Division 3 Washington Court of Appeals found that the ISRB had failed adhere to proper procedure and ordered the ISRB to re-evaluate petitioner Donald Lambert, who was subsequently found releasable. See <https://caselaw.findlaw.com/court/wa-court-of-appeals/115841754.html>

⁶⁶ Ibid.

⁶⁷ This person, Mr. Zion Carter, was recently found not guilty by reason of insanity for a non-fatal shooting in 2021 and will remain at Eastern State Hospital under Department of Social and Health Services supervision. Experts in the case testified that the defendant had untreated schizophrenia and was experiencing a psychotic episode at the time of the shooting. See https://www.khq.com/news/airway-heights-shooting-suspect-committed-to-eastern-state-hospital/article_682ea621-ed28-4e4a-86ef-3bb1b852accd.html. This tragic case underscores the need for improved mental health care for currently and formerly incarcerated people.

⁶⁸ DOC data provided pursuant to PDA request SP6469 shows that as of May 2025, a total of seven people who were reviewed and released by the ISRB Juvenile Board had been revoked. The most serious violation for these seven people involved substance use.

⁶⁹ T. Daftary-Kapur and T.M. Zottoli, *Resentencing of Juvenile Lifers: The Philadelphia Experience* (Montclair State University, 2020).

⁷⁰ National Research Council, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, edited by J. Travis, B. Western, and S. Redburn (Washington, D.C.: The National Academies Press, 2014), 156.

⁷¹ M. Alper, M.R. Durose, and J. Markman, 2018 *Update on Prisoner Recidivism: A 9 Year Follow Up Period* (Washington D.C.: Bureau of Justice Statistics, 2018); L. Kazemian and J. Travis, “Imperative for Inclusion of Long Termers and Lifers in Research and Policy,” *Criminology and Public Policy* 14, 355-395.

⁷² K. Beckett and A. Goldberg, *Sentencing Reform in Washington State: Progress and Pitfalls* (Seattle: University of Washington, 2024).

⁷³ 187 Wn.2d 420, 434, 387 P.3d 650 (2017).

⁷⁴ State v. Houston-Sconiers 188 Wash. 2d (2017). In 2020, the Washington Legislature passed E2SSB 5488, Ch. 330, Laws of 2020, codifying State v. Houston-Sconiers.

⁷⁵ See In re: PRP Domingo-Cornelio No. 97205-2 (2020) and In re: PRP Ali No. 95578-6 (2020).

⁷⁶ 198 Wash.2d 309, 495 P.3d 241 (2021) at 312.

⁷⁷ See M.L. Ramakrishnan, “Providing a Meaningful Opportunity for Release: A Proposal for Improving Washington’s Miller-Fix,” *Washington Law Review* 95, 2: 1053 (2020); In re Brashear, 6 Wash. App. 2d 279, 285, 430 P.3d 710 (2018).

⁷⁸ 1 Wash.3d 317, 525 P.3d 156 (2023).

⁷⁹ Matter of Forcha-Williams, 200 Wash. 2d 581, 520 P.3d 939 (2022).

⁸⁰ 200 Wash. 2d 266, 516 P.3d 1213 (2022).

⁸¹ See Part II of this report. See also S.M. Galvan, “Growing Pains: The Evolution of JLWOP Sentences in Washington,” *Washington Law Review* 100, 195 (2025).

⁸² 183 Wn.2d 680, 358 P.3d 359 (2015).

⁸³ In re PRP Monschke, 197 Wn.2d 305, 482 P.3d 276 (consolidated with in re PRP Bartholomew) (2021).

⁸⁴ In re PRP Monschke, 197 Wn.2d at 306-307.

⁸⁵ These data were provided in an excel sheet to the ACLU of Washington in response to PDA request #P036116-052323. In response to a similar request for 2024 data, the DOC indicated that it will no longer provide this information in a spreadsheet but rather would provide it in (thousands of pages of) PDFs.

Creating a dataset from these PDFs would be extremely time-consuming. For this reason, we rely on 2023 data in this report.

⁸⁶ Emerging adults who already have a pathway to review include people who committed a sex offense that results in an indeterminate sentence; those who were sentenced prior to 1984; and those who committed aggravated murder at age eighteen, nineteen, or twenty years-old and are therefore entitled to resentencing under Monschke.

⁸⁷ This category includes Aggravated Murder, Murder 1, Murder 2, Homicide by Abuse, Vehicular Homicide, and Manslaughter.

⁸⁸ Because Asian and Pacific Islander people are combined in DOC data, it is not possible to separate these groups. However, prior research has found that Pacific Islanders and people from Southeast Asia are more likely to be over-represented in prison than other Asians and Asian Americans (Cathy Hu and Sino Esthappan, *Asian Americans and Pacific Islanders, a Missing Minority in Criminal Justice Data*, Urban Institute, 2017).

⁸⁹ 2SSB 5064, Ch. 130, sec. 10, Laws of 2014.

⁹⁰ In the first of these cases, the Supreme Court clarified in 2019 that lower courts do have the discretion to consider the mitigating qualities of youth and impose an exceptional sentence in such cases (see <https://www.courts.wa.gov/content/publicupload/eclips/2019%2004%2005%20Supreme%20Court%20orders%20new%20sentence%20for%20juvenile%20offender.pdf>). Jeremiah Gilbert was subsequently resentenced to twenty-five years-to-life. By contrast, Barry Loukaitis, who killed three people in school shooting at the age of fourteen, continues to serve a 189-year sentence.

⁹¹ This decision was subsequently codified in RCW 10.95.030.

⁹² 200 Wash. 2d 266, 516 P.3d 1213 (2022).

⁹³ National Research Council, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, edited by Jeremy Travis, Bruce Western, and Steve Redburn (Washington, D.C.: The National Academies Press, 2014).

⁹⁴ Washington State Department of Corrections, Indeterminate Sentencing Review Board, *2022-23 Bi-Annual Report* (300-RE006 (2/2024)), at 7.

⁹⁵ S.M. Galvan, “Growing Pains: The Evolution of JLWOP Sentences in Washington,” *Washington Law Review* 100, 195 (2025).

⁹⁶ Washington State Department of Corrections, Indeterminate Sentencing Review Board, *2022-23 Bi-Annual Report* (300-RE006 (2/2024)).

⁹⁷ M.L. Ramakrishnan, “Providing a Meaningful Opportunity for Release: A Proposal for Improving Washington’s Miller-Fix,” *Washington Law Review* 95, 2: 1053 (2020).

⁹⁸ In re Brashear, 6 Wash. App. 2d 279, 285, 430 P.3d 710 (2018).

⁹⁹ See <https://caselaw.findlaw.com/court/wa-court-of-appeals/115841754.html>

¹⁰⁰ K. Beckett and A. Goldberg, *Sentencing Reform in Washington State: Progress and Pitfalls* (Seattle: University of Washington, 2024).

¹⁰¹ American Law Institute, *Model Penal Code: Sentencing* § 305.7 – *Modification of Prison Sentences in Circumstances of Advanced Age, Physical or Mental Infirmary, Exigent Family Circumstances, or Other Compelling Reasons* (2017).

¹⁰² American Law Institute, *Model Penal Code: Sentencing* § 6.14 – *Sentencing of Offenders Under the Age of 18* (2023). See also K. Reitz, C. Klingele, & J. Moringo, “Sentencing of Offenders Under the Age of 18,” *The ALI Adviser* (2023).

¹⁰³ American Bar Association, H.D. Resolution 502 (2022).

¹⁰⁴ See N. Ghandnoosh, N., C. Barry, C., & L. Trinka, *One in Five: Racial Disparity in Imprisonment – Causes and Remedies* (Washington D.C.: The Sentencing Project, note 4, p. 8).