

# SENTENCING REFORM IN WASHINGTON STATE: PROGRESS AND PITFALLS

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## EXECUTIVE SUMMARY

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Washington State’s incarceration rate more than doubled in recent decades, largely as the result of harsh new sentencing laws that sent more people to prison, often for many decades. As a result, the number and proportion of people serving long or life sentences grew dramatically. In most democratic countries, sentences longer than ten years remain quite rare, but in Washington State, they are ubiquitous.<sup>1</sup> In 2023, nearly half of Washington State’s prison population is serving a sentence of ten or more years.<sup>2</sup>

Yet many legal experts, politicians, and advocates now question whether long and life sentences are a reliable way to protect public safety, for a number of reasons.<sup>3</sup> Research shows that long and life sentences are both ineffective and costly. Racial inequities are endemic throughout the criminal legal system and are especially pronounced among people with the longest sentences. Incarcerating elderly people is both inefficient and inhumane. Moreover, many people who are serving long and life sentences committed their offense as an adolescent or emerging adult. The historic failure of the criminal legal system to consider the mitigating qualities of youth is incompatible with contemporary understandings of the nature of brain development and therefore increasingly recognized as unjust.

Although the frenzy to “get tough” on crime has largely receded, numerous tough sentencing laws remain on the books and many people continue to serve excessively long sentences. In this context, the Washington State Supreme Court and the Washington State Legislature have created some new opportunities for some prisoners serving long and life sentences to have their sentence and releasability (re)considered. The implementation of these reforms has led to the release of hundreds of people, some of whom expected to die behind bars.<sup>4</sup>

Yet the reforms that have been enacted are woefully inadequate. These changes to law and policy have been adopted in a piecemeal rather than comprehensive manner. They are confusing, contradictory, and insufficient. Many people serving long and life sentences who pose no threat to public safety remain ineligible for review for technical and/or arbitrary reasons. And the failure to ensure adequate legal representation for eligible petitioners means that many people who are theoretically entitled to a second look never actually get one.

This report provides an inventory of the progress that has been made — as well as the work that remains to be done to ensure that the harm caused by excessive sentencing is comprehensively remedied in Washington State. Our analysis of the impact of recent reforms shows that:

- Many people who are serving long and life sentences have been denied a second look for arbitrary reasons. The insufficiency of the legal resources that have been provided to provide people who may be eligible for a second look likely exacerbates this problem.
- As of the end of 2022, an estimated 637 people have become potentially eligible<sup>5</sup> for review by the Indeterminate Sentencing Review Board (ISRB) or criminal courts because of these recent reforms.
  - An estimated 286 of these people have been released from prison after serving many years behind bars.
  - A slightly larger number remain behind bars for a complex set of reasons, including the fact that legal representation has not been provided to eligible petitioners.
  - The estimated 286 people who have been released as a result of recent reforms represent a tiny fraction of nearly 7,000 people currently serving a sentence of ten years or longer.<sup>6</sup>
- The recidivism rate among people who returned home after receiving a very long or life sentence for a crime they committed as a juvenile and who subsequently became eligible for a “second look” after serving twenty or more years is remarkably low.
  - Just two of 98 people (2.1 percent) who became eligible for review because they committed their crime as a juvenile who have returned to the community have been convicted of a new felony crime.
  - Another five of these 98 people (5.2 percent) have had their parole revoked and were returned to prison for technical violations (as opposed to new criminal violations).
  - In the rare cases recidivism does occur, it often stems from unmanaged mental health issues.
- People who were released through second look processes after serving decades behind bars contribute importantly to their families and communities upon release from prison.

- Reconnecting with family and loved ones, and supporting family and loved ones, has been an especially important source of joy and satisfaction.
- Many have found full-time work, and many work in the non-profit sector where their experiences, skills, and insights are highly valued and where they work to promote healing, safety, and justice.
- The trauma of long-term incarceration continues to pose important challenge even for people who are employed, housed, and connected with loved ones.
  - DOC supervision is experienced as a source of anxiety, stress, frustration, and limitation, raising questions about its role and purpose for people who return home after having spent decades behind bars.
- Interviewees identified numerous changes to policy and practice that would facilitate a smoother and less stressful transition from prison and community.
  - Central among these is the need to provide community-based mental health care and resources both during and after incarceration.

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## PART I: UNDERSTANDING THE NEED FOR SENTENCING REFORM

From 1976 to 2016, Washington State’s incarceration rate more than doubled.<sup>7</sup> By the end of this period, the state’s incarceration rate was three times higher than the average found in Organization for Economic Cooperation and Development member countries; only seven countries in the entire world locked up a larger share of their residents than Washington State did.<sup>8</sup> This increase in the size of the prison population was driven mainly by the proliferation of long and life sentences. By 2019, half of all state prisoners were serving either a life sentence or a sentence of ten years or more.<sup>9</sup>

### Policy Drivers of Long and Life Sentences

Long and life sentences did not become widespread because serious crime spiked. Instead, tough sentencing laws fueled this trend.<sup>10</sup> These new sentencing policies called for longer and longer sentences and were motivated, in part, by misleading claims about the alleged irredeemability of system-involved youth – so-called juvenile “super-predators.” In this context, the Legislature adopted many new tough new sentencing policies. These include:

- The Persistent Offender Accountability Act (often called the three-strikes law) (1993), which required life without parole sentences for people convicted of three qualifying felony offenses;
- The Youth Violence Reduction Act (1994), which mandated that defendants charged with certain crimes committed at the age of 16 or 17 be sentenced in adult courts;
- Numerous sentencing enhancements, and especially the Hard Time for Armed Crime Act (1995), which requires that people convicted of a felony while carrying a weapon receive additional time in prison;
- Myriad changes to the rules governing the calculation of offender scores in ways that increase sentence ranges and sentence length; and
- Significant restrictions on the ability of most prisoners to earn time off of their sentence by avoiding infractions and/or by participating in educational, vocational, and other kinds of rehabilitative programming.

These policy shifts took place in the context of the 1984 Sentencing Reform Act (SRA). The SRA diminished judicial discretion while enhancing the power of prosecutors to affect sentencing outcomes through their charging decisions. The SRA also abolished parole for most prisoners and

reduced the amount of time they could earn off their sentence by participating in programming and through “good behavior.”<sup>11</sup>

As a result of these policy changes, average sentence length and average time served grew notably for all kinds of offenses. Much of this increase took place between the 1980s and 1990s, with average sentence lengths peaking for most offense categories in the 1990s.<sup>12</sup> The number of people receiving long, very long, and life sentences also grew dramatically during this period, peaking in 2011 — even though crime rates fell throughout most of the 1990s and the 2000s.<sup>13</sup>

In most democratic countries, sentences longer than ten years remain quite rare; in the United States and Washington State, they have become ubiquitous.<sup>14</sup> Although the legislative mood has shifted, few of the sentencing reforms that have been enacted have been retroactive. As a result, many people serving excessively long sentences have been left behind.

### **The Costs of Excessive Sentencing**

Meanwhile, evidence that long and life sentences are an ineffective and inhumane means of improving public safety has been mounting for decades. Studies assess the relationship between crime and incarceration in diverse ways, but consistently show that greater reliance on imprisonment and longer sentences do not protect public safety. For example, many countries that rarely impose long or life sentences have historically enjoyed comparatively low crime rates. Moreover, crime fell in recent decades as much in countries without harsh criminal justice policies as in those with them.<sup>15</sup> Similarly, states that have decreased their imprisonment rates the most have enjoyed the largest drops in crime.<sup>16</sup> Research also shows that long sentences do not deter more than short ones,<sup>17</sup> that age is the primary predictor of recidivism risk, and that nearly all middle-aged and elderly prisoners can safely return to their communities. For these and other reasons, the National Research Council concluded in 2014 that “statutes mandating lengthy prison sentences cannot be justified on the basis of their effectiveness in preventing crime.”<sup>18</sup>

Life sentences are especially problematic, resting as they do on the empirically erroneous assumption that people who commit a violent act at one point in their lives (often in their youth) are inherently irredeemable, and that this irredeemability can and should be assumed at the time of sentencing. By contrast, recent studies find extremely low rates of recidivism (i.e., repeat offending) among people who were sentenced to life in prison but subsequently released. For example, a California study of released prisoners who had served life with the possibility of parole sentences for decades found that “... the incidence of commission of serious crimes by recently released lifers has been minuscule.”<sup>19</sup> Similarly, a recent study found a 1 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.<sup>20</sup> It is thus clear that the vast majority of people can safely be released from prison; policies that assume otherwise are both ineffective and inhumane.

Long and life sentences also raise crucial questions about equity, fairness, and justice. Long and life sentences have a highly racially disparate impact. Their imposition in cases involving adolescent and emerging adult defendants whose brains have not fully developed and who, in many cases, have experienced significant trauma, is also concerning. The failure of this approach to meet victim needs, and the unnecessary, inhumane, and costly incarceration of growing numbers of elderly and physically frail prisoners also raise serious questions about the fairness and propriety of this approach to public safety.

### The Importance of Retroactivity

In this context, many academics and advocates now emphasize the importance of modifying or repealing the policies that enable excessive sentencing and ensuring that people sentenced in the past benefit from our recognition of the limits of long and life sentences as a public safety strategy. And although the Legislature has often been reluctant to make sentencing reforms retroactive, the widely accepted principles of equity and parsimony suggest that it is imperative to provide redress to those whose fate would have been quite different had they been charged and sentenced at another time in history.<sup>21</sup> The principle of retroactivity is especially important given the excessive sentences imposed during the 1980s, 1990s, and 2000s. As the Model Penal Code notes, "... it is unsound to freeze criminal punishments of extraordinary duration into the knowledge base of the past."<sup>22</sup>

Recognition of the importance of remedying the excesses of the past has informed many important sentencing reforms, including those deriving from the U.S. Supreme Court's ruling in *Miller v. Alabama* and Congressional modifications of the federal statute that authorized excessive sentences in cases involving crack cocaine. As researchers at New York University's Brennan Center write, "Changes to the federal sentencing law in the last 15 years... have often been framed as necessary course corrections to ameliorate unduly harsh sentencing structures. *There is no moral or practical reason people currently in prison should be exempt from that logic*"<sup>23</sup> (emphasis added). The authors of the Model Penal Code similarly conclude that "From a policy perspective, there is no doubt that a new second-look process should be given retroactive force in some form."<sup>24</sup> This principle of retroactivity is also recognized in the International Covenant on Civil and Political Rights.<sup>25</sup>

Some might object on the grounds that retroactivity undermines determinacy and predictability. But determinacy is never absolute – and should not be. As stated in the Model Penal Code,



*No determinate sentencing system can be absolute, and no purely determinate system has ever existed in American law. All jurisdictions that have abrogated the releasing authority of a parole agency have retained mechanisms such as good-time and earned-time credits, compassionate-release provisions, ad hoc emergency contingencies for prison overcrowding, and the clemency power of the executive. The question is not whether original judicial sentences should ever be subject to change in a determinate structure, but what exceptions should be grafted onto the generally determinate scheme.<sup>26</sup>*

To renounce retroactivity is to compound the injustices of the past with a new generational inequity in which people who came of age in an era of excess are discounted – not once, but twice.

### **Sentencing Reform in Washington**

Despite some resistance to retroactivity, some retroactive sentencing reforms have been enacted in Washington State and elsewhere. Many of these reforms have also been informed by a growing body of neuroscientific research on brain development. This research shows that brain development is a gradual process, one that is not complete until people enter their mid to late 20s. This is especially true for young people who have experienced significant trauma, which is the case for most people who come into contact with the criminal legal system at a young age. Adolescents and young adults are more impulsive, present-oriented, susceptible to peer and other outside influences, sensitive to immediate rewards, and more volatile in emotionally charged situations than older adults.<sup>27</sup>

This body of research has two important policy implications. First, the culpability of youth and young adults is diminished. Second, this population is especially amenable to rehabilitation. Several recent changes to Washington State law and policy are predicated on this body of evidence. These reforms create new opportunities for re-sentencing by courts and/or review by the Washington State Indeterminate Sentencing Review Board (ISRB) for people who were sentenced for crimes they committed during adolescence or young adulthood. The implementation of these reforms has resulted in the release of between two and three hundred people, including some who might reasonably have expected to die behind bars.

Most of those who have been released under the reforms examined in this report were convicted of a serious violent offense. The inclusion of this group marks an important break with past practice: until recently, many criminal justice reforms excluded people who have been convicted of a violent offense.<sup>28</sup> In Washington State, for example, HB 1718 (2011) excludes people who have a developmental disability or traumatic brain injury and have been charged with a violent crime

from participating in mental health courts. Similarly, SB 5990 (2003) excludes people convicted of a violent offense from receiving increased earned time.

These kinds of exclusions are unsound, for several reasons. First, excluding people convicted of a violent offense means rendering most state prisoners ineligible. At the close of 2022, the vast majority (84.3 percent) of all Washington State prisoners were serving time for a violent or sex offense; only 13.5 percent were serving time for a property or drug violation.<sup>29</sup>

In addition, contrary to popular belief, people convicted of violent offenses have lower recidivism rates than people convicted of other kinds of crimes. As the Washington State Sentencing Guidelines Commission put it, “Despite generally held views, the more violent crimes including manslaughter, murder and robbery... along with sex offenses, had the lowest recidivism rates.”<sup>30</sup> This is especially true when people are released later in life. Studies that find extremely low rates of recidivism among released lifers overwhelmingly include people who were convicted of serious violent crimes.<sup>31</sup> Other recent studies of repeat offending reach similar conclusions.<sup>32</sup>

In part, these findings reflect the fact that nearly all people who go to prison mature and become safe to release. Studies consistently show that law-breaking declines sharply with age.<sup>33</sup> As two prominent criminologists conclude, “crime declines with age even for active offenders.”<sup>34</sup> People who are convicted of violent crimes generally serve more time and are therefore typically older than other prisoners upon release. Categorical exclusions of people who were convicted of a violent crime from criminal justice reforms means disproportionately excluding older prisoners, who are generally considered safest to release.

### **Overview of this Report**

Recent changes to law and policy in Washington State have created opportunities for some people who were convicted of serious violent offenses they committed as children or young adults to be reviewed and potentially released from prison. This report provides an inventory of the progress that has been made — as well as the work that remains to be done to ensure that the harm caused by excessive sentencing is comprehensively remedied in Washington State. More specifically, this report provides information about the impact of recent reforms by:

- Estimating how many people have become eligible for resentencing/sentence review and how many of those people have been released from prison;
- Exploring why some people who are eligible for review/resentencing remain behind bars and clarifying what is needed to ensure that all of those who are eligible for sentence

review can pursue this option;

- Calculating the recidivism rate among people who received very long or life sentences in Washington State for an offense they committed as a juvenile but who were released due to changes to sentencing law and policy; and
- Drawing on qualitative interviews with people who were released earlier than expected through one of the new second look mechanisms to better understand the joys and challenges of returning home after spending decades behind bars.

Part I of this report describes how changes to sentencing policy in the 1980s and 1990s fueled long and life sentences and explains why reforms that mitigate the harm caused by excessive sentencing are needed in Washington.

Part II describes recent sentencing reforms enacted by the judicial and legislative branches of state government, focusing on reforms that have mainly impacted people serving long and life sentences. Case summaries are used to illustrate the arbitrary and often capricious outcomes that persist given the limited and piecemeal nature of the reforms that have been enacted.<sup>35</sup>

Part III provides an overview of the data analyzed and analytic strategy used to assess the impact of these reforms, calculate the recidivism rate of people who became eligible for parole under a Miller fix, and understand the experiences and needs of people who returned home unexpectedly or significantly earlier than expected. Part IV describes the results of these analyses.

The conclusion offers policy recommendations aimed at ensuring that Washington State continues to mitigate the harm caused by excessive sentencing and ensure that appropriate remedies are available to all people whose continued incarceration serves no useful purpose.

## **PART II. REFORM IN WASHINGTON: PROGRESS AND PITFALLS**

Many researchers, legal experts, politicians, and reform advocates are reconsidering the wisdom of imposing long and life sentences as a means of enhancing public safety.<sup>36</sup> This reconsideration is motivated by a growing body of evidence showing that:

- Long and life sentences are expensive and ineffective;
- Racial inequities are especially pronounced among people serving long and life sentences;
- Incarcerating elderly people is inefficient, inhumane, and costly; and
- Brain development is not complete until people reach their mid or late twenties, but many people are serving long and life sentences for offenses committed while young.

In this context, the Washington State Supreme Court and the Washington State Legislature have created several new “second look” opportunities for review and resentencing. Many of these opportunities were triggered by the Supreme Court’s ruling in *Miller v. Alabama* and are limited to people who were adolescents or emerging adults at the time of their offense. These and other opportunities for post-conviction review are described below.

### **Miller v. Alabama and its Progeny in Washington State**

In a landmark 2012 case, *Miller v. Alabama*, the U.S. Supreme Court held that mandatory life without parole sentences imposed on people convicted of murder who were under the age of 18 at the time of their offense violate the 8<sup>th</sup> Amendment of the U.S. Constitution. This ruling had important implications in Washington State, where youth tried as adults and convicted of aggravated murder were automatically sentenced to life without the possibility of parole (LWOP).<sup>37</sup>

In response to this ruling, the Washington State Legislature revised sentencing policy pertaining to youth who had received mandatory sentences of life without the possibility of parole in 2014. This legislation is often referred to as the “Miller-fix.”<sup>38</sup> Under the revised statute, people who were convicted of aggravated murder committed while under the age of 16 were required to be resentenced to 25 years to life, with an opportunity for parole after serving the minimum 25-year term. Defendants who were 16 or 17 at the time of their crime were also eligible for re-sentencing. For this cohort, a judge sets the minimum term the defendant must serve before becoming eligible for parole. That term must be at least 25 years, but can be longer. After the minimum term has been served, the releasability of these defendants is decided by the Indeterminate Sentence Review Board (ISRB). In 2015, the Legislature included a second provision providing for early

release for people convicted of crimes other than aggravated murder who received sentences of longer than 20 years and who were under the age of 18 at the time of the original crime. These people automatically become eligible for parole consideration once they serve 20 years, unless they had a subsequent conviction for an offense that occurred after their 18th birthday.<sup>39</sup>

Initially, this policy change (which we refer to in the remainder of this report as the Miller fix) did not produce significant results, for two reasons. First, the ISRB denied parole in many early cases even though the Miller fix legislation specified that petitioners who had been in prison for the required amount of time enjoyed a presumption of release and that the Board could only deny parole if it found that a petitioner was found to be more likely than not to re-offend. Nonetheless, prior to 2018, the Board often denied parole for other reasons such as the nature and impact of the crime.<sup>40</sup> 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.<sup>41</sup> The ISRB began to grant parole much more frequently subsequent to this ruling.

Early on, people whose sentences were reviewed by courts under the Miller fix did not fare much better, as some judges simply re-sentenced juvenile LWOP defendants to (another) LWOP. In 2018, however, the Washington Supreme Court concluded that the state constitution categorically prohibits LWOP for all juveniles. Specifically, in *State v. Bassett* (2018), the Washington State Supreme Court held that that sentencing people who were under the age of 18 at the time of their offense to LWOP constitutes cruel punishment and is therefore unconstitutional under article I, section 14 of the Washington State Constitution. As a result of this ruling, Bassett and others who had been re-sentenced a second time to LWOP for crimes they committed at the age of 16 or 17 became eligible, once again, for re-sentencing. Where those re-sentencing cases resulted in new, indeterminate sentences, petitioners became eligible for subsequent review by the ISRB's Juvenile Board.<sup>42</sup> No relief was provided for people who were 18 years or older at the time of the offense.

The Miller fix legislation provides some relief to people who committed their offense while under the age of 18. However, limiting these reforms to those who were 17 or younger at the time of their crime is inconsistent with neuroscientific research, which shows brains do not fully mature until their mid 20s. In addition to being inconsistent with brain science, the Miller fix legislation fails to remedy inequities in many cases involving co-defendants.

Mark and his co-defendant Kai were convicted as accomplices for the same offense in 1995. Kai was 17 and Mark was 18, only six months older than Kai, when they committed the offense. Kai was sentenced to 640 months but was released by the ISRB after serving 24 years. Mark was also sentenced to 640 months but since he was 18 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.

Research on adolescent and young adult brain development motivated the adoption of other sentencing reforms as well. In 2015, the Washington State Supreme Court held in *State v. O'Dell*<sup>43</sup> that age can mitigate defendants' culpability even when defendants are over eighteen years old at the time of the crime. Specifically, youthfulness can support an exceptional sentence below the standard range and sentencing courts may exercise discretion to decide when that is appropriate.

The Washington Supreme Court's decisions regarding cases in which defendants are likely to die before completing their sentence—often called de facto life sentences—are even more complicated and even contradictory. In 2017, the Court held in *State v. Ramos*<sup>44</sup> that every youth facing a de jure or de facto life-without-parole sentence is automatically entitled to sentence review:

*[W]hile not every juvenile homicide offender is automatically entitled to an exceptional sentence below the standard range, every juvenile offender facing a literal or de facto life-without-parole sentence is automatically entitled to a Miller hearing. At the Miller hearing, the court must meaningfully consider how juveniles are different from adults, how those differences apply to the facts of the case, and whether those facts present the uncommon situation where a life-without-parole sentence for a juvenile homicide offender is constitutionally permissible. If the juvenile proves by a preponderance of the evidence that his or her crimes reflect transient immaturity, substantial and compelling reasons would necessarily justify*

*an exceptional sentence below the standard range... .*

The court went one step further in *State v. Haag*, seemingly holding that de facto life was *always* unconstitutional for a juvenile sentenced in adult court.<sup>45</sup> The Haag Court also 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” (at 312). Only a year later, though, the court decided *State v. Anderson*, which held that a de facto life sentence could be imposed for a juvenile if the judge finds that the crime did not reflect the “mitigating qualities of youth” without mentioning whether the judge should consider rehabilitative progress.<sup>46</sup> The lower courts have struggled to make sense of this seeming contradiction.

The Washington Supreme Court also expanded the right to juvenile resentencing to sentences less than life based on the neurodevelopmental differences between juveniles and adults. In 2017, the Court held in *State v. Houston-Sconiers* that trial courts *must* consider the relevance of youth and adolescent development prior to imposing a less than life sentence in adult courts. The Court also specified that trial courts 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.<sup>47</sup>

On Sept. 25, 2020, the Court concluded in *In re Domingo-Cornelio and In re: Ali*<sup>48</sup> that *Houston-Sconiers* is a significant and material change in the law and therefore must be applied retroactively.<sup>49</sup> As a result, people sentenced prior to *Houston-Sconiers* for crimes they committed as children can petition for a re-sentencing hearing in which the trial court is obligated to consider the important factors established in *Houston-Sconiers* and to exercise discretion to impose a fair and constitutional sentence. But *Ali* and *Domingo-Cornelio* did not just make *Houston-Sconiers* retroactive – it also held that a defendant is entitled to a new sentencing in any case where a defendant was originally sentenced without consideration of the mitigating qualities of youth or those factors or where the judge's discretion was constrained.

In the next few years, however, the same court announced rules that restricted who could obtain relief. For example, in *Matter of Hinton*, the court held that most, if not all, juveniles who are eligible for parole after serving 20 years cannot seek resentencing.<sup>50</sup> In another case, the court limited the retroactivity of *Houston-Sconiers*, holding that only part of the decision was retroactive and thereby denying resentencing to defendants who followed the court's formula in *Ali* and *Domingo-Cornelio*.<sup>51</sup>

As a result of these and other similar decisions, the rule at the time of this writing is that virtually no juveniles sentenced before *Houston Sconiers* are eligible for resentencing. Defendants who retained or were appointed counsel prior to these contradictory rulings were resentenced, with many receiving significantly lower sentences at their new hearings. Defendants who were indigent and were convicted in counties that either were slow or did not appoint counsel were mostly denied resentencing. Defendants who quickly filed their own legal documents and received favorable decisions before the courts switched their position are the rare exception.

More recently, in 2021, the Washington State Supreme Court ruled *In re Monschke and Bartholomew*<sup>52</sup> that imposing mandatory life without parole (LWOP) for aggravated murder is also unconstitutional for people who were 18-20 years old at the time of the offense. The impact of research on brain development in youth on this ruling is clear. Specifically, the Court wrote that,

*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.*<sup>53</sup>

As a result, of this ruling, people who were convicted of aggravated murder committed at the age of 18, 19, or 20 and who received an LWOP sentence can now also petition the trial court for a resentencing hearing in which the trial court considers the important factors established in *Houston-Sconiers*. However, Washington courts have been unwilling to expand the right to resentencing to individuals who were 21 or older at the time of their crime(s) of conviction even though brain development and maturation continue well past the age of 20.



Recent reforms prohibit people who were under the age of 18 from being sentenced to life without the possibility of parole (LWOP). And in *Monshke* (2021), the Court ruled that people who were 18, 19, or 20 years old when they committed their crime cannot be sentenced to LWOP. Under this ruling, people who were 18-20 years old and sentenced to LWOP can petition for a resentencing hearing. Those over age 20, however, remain subject to unduly long prison sentences, despite brain science demonstrating that brain development continues at least through the mid 20s.

These arbitrary age requirements result in inequitable outcomes for similarly situated defendants, as is apparent in the case of two co-defendants and brothers we call Bob and Arthur. In 1994, Bob was convicted of aggravated murder at 21 years old. He has served 30 years in prison and has no right to resentencing or parole review. His brother Arthur was 16 at the time of the crime and was released by the ISRB after he served 27 years in prison. Bob and Arthur experienced similar childhood trauma and were equally culpable in terms of the actions that led to the loss of the victim's life.

Like Arthur, who has dedicated his time since release to serving as a reentry counselor a non-profit organization, Bob expresses significant remorse and has used his time in prison to focus on education, counseling, and supporting others. Although he was sentenced to life in prison, and therefore has had little access to programming or hopes of using skills gained upon release, Bob paid for his own education, earning a certificate in web design. He has also led programs for incarcerated people to pursue their education and prepare for release. He was denied clemency in 2022.

### Drug Sentencing Reform: The Blake Decision

In February of 2021, the Washington State Supreme Court initiated a very different change to sentencing law and policy when it held that RCW 69.50.4013, the statute prohibiting simple possession of a controlled substance (PCS), was unconstitutional because it did not require evidence that defendants *knowingly* possess a controlled substance in order to be convicted.<sup>54</sup> As a result of the *Blake* decision, people who had previously been convicted of this offense are eligible to vacate these prior convictions, and individuals with a PCS conviction that increased their “standard sentence range” for other crimes are entitled to a resentencing hearing. In 2021, the Washington Legislature passed SB 5361, amending RCW 9.94A.519 to reflect the Court’s ruling and re-defining knowing drug possession as a misdemeanor offense.

Although some people serving long or life sentences have become eligible for resentencing under *Blake*, most of those who have been resentenced and/or released under *Blake* were serving far

shorter sentences. Because this report focuses on post-conviction sentence review for people serving long and life sentences, we do not include *Blake* re-sentencings in our empirical analyses.

### **Statutory Changes to Sentencing Policy**

The *Blake* decision aside, the legal and policy changes described above resulted from rulings that were responsive to the logic underlying the U.S. Supreme Court's ruling *Miller v. Alabama* in 2012 and the Washington State Supreme Court's responses to the substance of that ruling. The courts have thus played an important role in initiating sentencing reform. Where appropriate, the Washington State legislature has followed that lead and codified these changes in statute. The legislature also initiated two distinct sentencing reforms affecting people serving long and life sentences, each of which is described below.

#### ***Three Strikes Reform***

In 2019, the Washington legislature passed SB 5288, removing Robbery in the Second Degree from the list of offenses that are counted as strikes for sentencing purposes.<sup>55</sup> In 2021, the legislature passed SB 5164, making this change retroactive. Specifically, SB 5164 added a new section to the SRA requiring a resentencing hearing in any case in which an individual has been sentenced as a persistent offender and received an LWOP sentence "if a current or past conviction for robbery in the second degree was used as a basis for the finding that the offender was a persistent offender."<sup>56</sup>

#### ***Prosecutor Initiated Resentencing***

In 2020, the Washington legislature passed SB 6164, creating a new procedure for prosecutors to petition a sentencing court to resentence a person who was previously sentenced for a felony "if the original sentence no longer serves the interests of justice." Prosecutors have discretion to decide which petitions to submit and the trial court has the discretion to grant or deny these petitions. If the court grants the petition, the individual receives a new sentencing hearing. Under this legislation, the court is to resentence the individual "as if they have not previously been sentenced." The new sentence cannot be greater than the original sentence.

SB 6164 is an example of prosecutor-initiated resentencing, an approach that originated in the work of *For the People*, a nonprofit organization founded by former San Francisco prosecutor Hillary Blout.<sup>57</sup> In 2018, the California legislature was the first to authorize prosecutors to petition courts to re-sentence particular individuals. It also funded a three-year pilot project in nine geographically diverse California counties and an independent evaluation of this initiative.

Since the passage of California's statute, other states including Washington have adopted prosecutor-initiated resentencing, but unlike California, none have allocated funding to support these initiatives or for independent evaluation thereof.<sup>58</sup> A follow-up to this report will assess the

implementation of SB 6164 in Washington State.

### Washington State Sentencing Reform in Context

As described above, both the Washington State Supreme Court and the Washington Legislature have initiated notable reforms to sentencing law and policy. Many of these reforms mainly or entirely affect people serving long or life sentences, the vast majority of whom were convicted of violent offenses. The fact that many of these reforms mainly or exclusively targeted people with convictions for violent offenses marked a sharp break with past practice.

As we show in the following section, these reforms – and especially the Courts’ decisions in *In re Domingo-Cornelio* and *In re: Ali* (determining that *Houston-Sconiers* is a significant and material change in the law that must be applied retroactively) have enabled several hundred people to be resentenced, leave prison, and return home sooner than expected. A non-trivial number of these people might reasonably have expected to die behind bars.

While the role of the courts and the Legislature in initiating these processes is laudable, the impact of these reforms has been quite modest, for several reasons. The absence of any provision for the appointment of defense counsel means that some people who are eligible for sentence review have not received it. In some cases, complex questions about eligibility, decision-making criteria, venue, and other important considerations remain unanswered. Moreover, existing reforms have been enacted in a piecemeal and often confusing manner. Both the courts and the ISRB are involved in post-conviction sentence review processes, sometimes in the same cases. And when parole hearings and sentence review do occur, the political and emotional dynamics surrounding post-conviction review are quite challenging, as virtually all of those sentenced to long and life sentences in Washington were convicted of a violent crime and little has been done to help those who were harmed to receive the support and services they need.

In addition, complex and changing rulings from the Washington Supreme Court result in disparate outcomes: some defendants get resentenced and are released from prison while others are denied that opportunity. While the Washington Legislature could easily remedy this situation, it has not done so.

In short, the complex, opaque, and piecemeal nature of sentencing reforms, and the lack of funding for defense counsel for people seeking relief, have blunted the impact of changes to law and policy. For example, recent reforms do not provide relief in the following circumstances:

- Three strikes cases in which none of the strikes stemmed from a conviction of Robbery in the Second Degree, including cases in which one or more strikes occurred when the

defendant was a juvenile who was prosecuted in adult court;

- LWOP sentences imposed on people who were more than 20 years old at the time of the offense;
- De facto life sentences imposed on people for crimes committed after the age of 18;
- Very long sentences stemming from weapons or other enhancements; and
- Very long sentences imposed for a serious crime where a prior drug possession was included in the defendant's "offender score," but where the removal of that conviction due to *Blake* does not result in a change in the "standard range," often due to legislative policies that double or triple the points for certain prior offenses.

Brian was sentenced to 67 years in prison for two bank robberies he committed at the age of 20 in 2002. These were serious offenses, although no one was physically injured. Each robbery lasted less than five minutes. Brian has served 20 years in prison, but like other people serving de facto life sentences, has no pathway to resentencing or parole review.

In 2002, Brian rejected a plea offer of 17 years based on the advice of his attorney. After Brian exercised his constitutional right to trial, prosecutors added an additional 11 counts of Kidnapping in the First Degree to the list of charges. Brian's first trial ended in a hung jury. In the second trial, Brian was convicted and given a mitigated sentence of 397 months (33 years). When Brian appealed an evidentiary matter, the prosecutor cross-appealed the award of a mitigated sentence. On March 27, 2008, the Court of Appeals, in an unpublished opinion, affirmed Brian's conviction but remanded the case for resentencing. The prosecution prevailed, and Brian was resentenced to 812 months (more than 67 years).

Had Brian accepted the prosecution's initial plea offer before the first trial, he would have been eligible for release in 2016. Under his current sentence, Brian will not be eligible for release until 2059, at nearly 78 years old, which exceeds his life expectancy as determined by the DOC. This is despite his profound transformation while incarcerated. Brian has described his remorse for his victims and community and has been motivated by this remorse to innovate an intervention program for at-risk youth, pursue higher education, and serve as a leader in his community. A DOC Captain credits Brian with preventing a riot. Brian has created a detailed and actionable reentry plan with the support of his community and attorneys, and he has been accepted to the UW for the fall of 2024. He will enroll if he is released through clemency.

As a result of these and other omissions, many people serving long or life sentences who are safe to release continue to languish behind bars. In fact, as of June 2023, the number of people in Washington State prisons serving sentences of more than ten years was roughly equal to the number of people serving sentences of less than ten years.<sup>59</sup>

In theory, prosecutor-initiated sentencing reform (i.e., SB 6164) might provide relief in some of these cases. A future report will assess whether this is occurring in a meaningful way, though data collected to date suggests that very small numbers of people have been released through prosecutor-initiated re-sentencing. For many, clemency remains the only possible path to review and release.

Prisoners may also petition the Washington State Clemency and Pardons Board to request commutation of their sentence (i.e., clemency). The grounds for evaluation of such petitions are unclear: the relevant law says only that the petitioner should demonstrate why his or her circumstances are “extraordinary” but does not specify what constitutes extraordinary circumstances. The Board grants a hearing regarding roughly one-fourth of the petitions it receives.<sup>60</sup> For early release to occur, a petitioner must be granted a hearing, the Board must recommend commutation, and the Governor must accept this recommendation. This happens quite rarely. In 2022, for example, the Board recommended, and the Governor granted, conditional clemency in just nine cases.<sup>61</sup>

In sum, the reforms enacted to date have brought relief to several hundred people in Washington State. However, they have fallen far short of providing a comprehensive remedy to the problem of excessive sentencing. The next section describes the data and analytic strategy used to shed empirical light on the impact and limits of these reforms.

## PART III. DATA AND ANALYTIC STRATEGY

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No government agency has been tasked with compiling data or records regarding the impact of the sentencing reforms included in this report. As a result, assessing their scope and impact is a labor-intensive process that entails collection and analysis of various kinds of records. Below, we describe the records we collected and analyzed to address each of the research questions described below. Because the administrative records we obtained are incomplete and occasionally inaccurate, we drew on as many data sources as possible and cross-checked records wherever possible to identify and correct anomalies.

Further complicating matters, people may be eligible for review under more than one reform. For example, some of the people who became eligible for parole or sentence review under the Miller-fix legislation were also made eligible for resentencing in the *Domingo-Cornelio* and *Ali* rulings.<sup>62</sup> For these reasons, we are not able to identify exactly how many people have been released under each specific reform. Rather, we estimate the number of people who became eligible for a second look under each reform and how many of them have been released from prison. More generally, our numerical findings should be understood as estimates based on a comprehensive analysis of imperfect records.

### Assessing the Scope and Reach of Recent Reforms

Our first research objective is to estimate the number of people who have become eligible for parole or re-sentencing as a result of major recent reforms (excluding the Blake decision). We also assess how many of those who are eligible for resentencing/sentence review have been released from prison.

Consistent with our interest in the problem of excessive sentencing, we focus on the following changes in law and/or policy:

- **The Miller Fix:** RCW 9.94A.730, RCW 10.95.030/10.95.035. Under these statutes and prevailing case law, mandatory life without parole sentences were no longer allowed for people who were juveniles at the time of their offense. People who were under the age of 16 at the time of their crime and who were subsequently convicted of aggravated murder receive a new sentence of 25 years to life, with an opportunity for review and release by the ISRB's Juvenile Board after serving the minimum 25-year term. People who were 16 or 17 years old at the time of their crime were eligible for re-sentencing in the court in which they were originally sentenced. Also, people who received a 20 year or longer sentence for crimes committed as a juvenile other than aggravated murder may

petition the ISRB for a hearing in which their releasability is considered.<sup>63</sup>

- ***In re Domingo-Cornelio and In re: Ali.***<sup>64</sup> People sentenced prior to March 2, 2017 for crimes they committed as children can petition for a re-sentencing hearing in which the trial court is obligated to consider the important factors established in *Houston-Sconiers* and to exercise discretion to impose a fair and constitutional sentence.
- ***In re Monschke and In re Bartholomew.***<sup>65</sup> People who received a mandatory life without parole (LWOP) sentence for aggravated murder committed when they were 18, 19 or 20 years old have the opportunity to be re-sentenced and potentially released from prison.
- **Robbery II Reform:** SB 5288 removed Robbery in the Second Degree from the list of offenses that are counted as strikes for sentencing purposes.<sup>66</sup> In 2021, the Washington Legislature passed SB 5154, making this change retroactive. Under SB 5154, anyone sentenced as a persistent offender with one or more strikes stemming from a conviction of Robbery in the Second Degree is entitled to a re-sentencing.

The collection of evidence regarding the impact of these reforms proceeded in several steps. First, we obtained lists of people identified by the Department of Corrections (DOC) as eligible for review by the ISRB's Juvenile Board or a court under the Miller fix legislation from two different criminal attorneys who had requested and obtained that information from the DOC. We cross-checked those lists to ensure their consistency and worked with attorneys from the Seattle Clemency Project to resolve any discrepancies. The resulting list identified 200 currently incarcerated people who were convicted for an offense they committed as a child who would eventually become eligible for sentence review or parole consideration under the Miller fix legislation. Of these, 140 had become eligible for review and release by May 1, 2023.<sup>67</sup>

Second, we submitted a Public Disclosure Act request to, and received records from, the DOC that enabled us to identify people who were eligible for sentence review under SB 5154 (Robbery II reform), the Monschke decision, and Domingo-Cornelio/Ali. Specifically, we requested and obtained the DOC number, name, date of birth, race, gender, date of offense, county of conviction, cause number, admission date, date sentenced, sentence length, expected release date; actual release date, and release type for three groups of imprisoned individuals:

- People who were convicted of at least one Robbery II charge that counted as a strike and received an LWOP sentence;

- People who were 18, 19, or 20 years old at the time of the offense, were convicted of aggravated murder, and received an LWOP sentence prior to June 2021; and
- People who were under the age of 18 at time of their offense(s) and were sentenced prior to June 2017.

Next, we used the DOC's online inmate roster to check if those whose expected release dates had not yet passed remained in custody. In this way, we identified people who had been released unexpectedly. It is important to note that some people eligible for review under a specific reform may have been released "early" through unrelated mechanisms. For example, someone eligible for parole review under a Miller fix may have been re-sentenced because an appeal was successful. For this reason, our estimate of the number of people eligible for sentence review and released should not be equated with the number re-sentenced specifically as a result of specific reforms.

### **Assessing the Recidivism Rate Among People Eligible for Relief Under the Miller Fix**

Next, we calculated the recidivism rate among people who received very long or life sentences in Washington State for an offense they committed as a juvenile but were released from prison prior to their expected release date. To do so, we began with the compiled list of people who had been identified as eligible for review under the Miller fix legislation as of May 1, 2023. To identify those who appeared on this list and had been released from prison, we requested from the DOC a list of people who had been released by the ISRB's Aggravated Murder or Juvenile Boards. We then used the online DOC inmate roster to ascertain if the people eligible for release under a Miller fix and not released by the ISRB remained incarcerated as of February 2023. Through this process we identified 140 people who were eligible for review under the Miller fix legislation as of May 1, 2023, 98 of whom had been released from prison.

Recidivism can be measured in many ways. Researchers often use new felony convictions and returns to prison as key indicators of it; we examine each of these outcomes here. To identify any new felony convictions, we submitted the list of people eligible for review under Miller and released from prison to the Administrative Office of the Courts (AOC) and asked for information regarding new (i.e., since 2014) felony convictions. The information obtained from the AOC identified offenses for which people had been re-sentenced since their release from prison.

To identify returns to prison for technical violations (as opposed to new felony convictions), we requested and obtained information from DOC about individuals who had been eligible for review under a Miller fix and had been released but subsequently returned to prison. We also requested information regarding the reason for the revocation of their parole. The information provided by DOC listed two Miller-eligible individuals who had been released but returned to prison. However,



attorneys who specialize in post-conviction review processes identified three other people who were also revoked and returned to prison. We include the two individuals identified by DOC and the three individuals who were not identified by DOC in our analysis.

### **Experiences of People who Come Home After Sentence Modification**

Finally, we conducted qualitative interviews to explore the experience of coming home unexpectedly or earlier than anticipated after serving decades behind bars. These interviews also help contextualize the recidivism findings and identify improvements to re-entry programming and policy, particularly for people who go to prison at a young age and spend many years in prison.

To accomplish these goals, we used snowball sampling techniques to recruit ten interviewees who had come home from prison unexpectedly or sooner than anticipated.<sup>68</sup> Many, but not all, of these respondents live in the King County area; three were living in other parts of the state. The sample, which may not be representative of people leaving prison in Washington State, included six men and four women. Six of the ten identified as Black and four as white. Respondents ranged in age from 36 to 62, with most in their forties and fifties. All had been convicted of a violent crime, mainly homicide, and had spent at least a decade behind bars. Table 1 provides additional information about those interviewed for this report.

**TABLE I. RESPONDENT CHARACTERISTICS (N=10)**

|                            |                      |   |
|----------------------------|----------------------|---|
| <b>Gender</b>              |                      |   |
|                            | Female               | 4 |
|                            | Male                 | 6 |
|                            | Other                | 0 |
| <b>Race</b>                |                      |   |
|                            | Black                | 6 |
|                            | White                | 4 |
|                            | Other                | 0 |
| <b>County of Residence</b> |                      |   |
|                            | King County          | 7 |
|                            | Other                | 3 |
| <b>Crime of Conviction</b> |                      |   |
|                            | Homicide             | 8 |
|                            | Other                | 2 |
| <b>Relevant Reform</b>     |                      |   |
|                            | Miller Fix           | 3 |
|                            | Domingo-Cornelio/Ali | 3 |
|                            | SB 6164              | 2 |
|                            | Monschke/Bartholomew | 1 |
|                            | O'Dell               | 1 |

Some of the interviews took place in person and some over Zoom. Interviews that occurred in person took place in homes, workplaces, and public places such as coffee shops. The interviews lasted from one to two hours. Participants received a pre-paid VISA card worth \$50 as compensation for their time.

The interviews were semi-structured, meaning that all interviewees were asked a standard set of questions but that the interviewer often followed up with additional questions about new information, topics, or themes introduced. The standardized interview questions were developed in consultation with two formerly incarcerated individuals who served as informal advisers on this aspect of the research. The interview questions are shown in Appendix A.

The interviews were recorded and professionally transcribed. We then coded the transcriptions for main themes, concepts, and events. Once the codes were created, memos on key themes were developed. Contrary or diverging findings were also noted and allow us to highlight potential variation in informants' experiences or understandings. Representative excerpts from the interviews were then identified and are used to illustrate these key themes.

## PART IV: THE IMPACT OF SENTENCING REFORM IN WASHINGTON

This section of the report describes the results of the analyses described in the previous section. We begin with evidence regarding the scope and reach of recent reforms.

### Sentencing Reforms: Scope and Reach

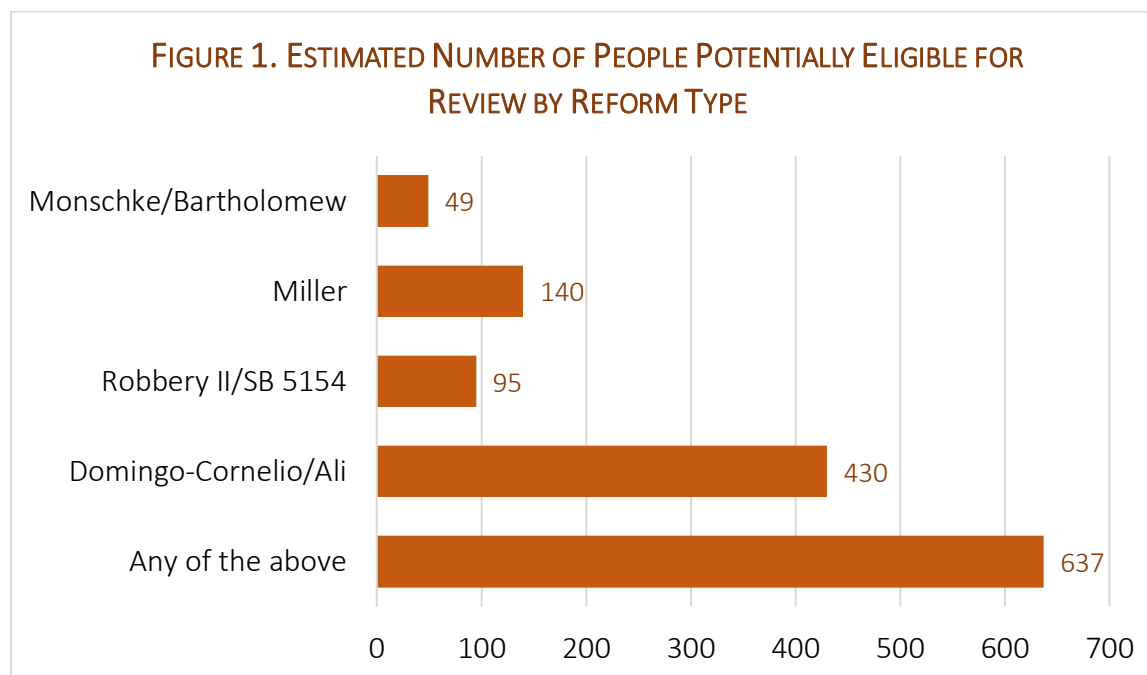
For context, Table 2 shows the most serious offense for people who have become eligible for review/resentencing because of one or more of the reforms described in the previous section. These findings confirm that the vast majority of those impacted by the reforms analyzed in this report were serving time for a serious violent offense. Insofar as previous reforms often excluded this population, the recent reforms analyzed here mark a sharp break with past practice.

**TABLE 2. MOST SERIOUS OFFENSE AMONG PEOPLE POTENTIALLY ELIGIBLE FOR REVIEW, BY REFORM**

|                          | Aggravated<br>Murder | Other<br>Homicide | Rape  | Robbery | Assault | Other |
|--------------------------|----------------------|-------------------|-------|---------|---------|-------|
| Miller Fix               | 18.6%                | 65%               | 8.6%  | 2.9%    | 4.3%    | .7%   |
| Domingo-<br>Cornelio/Ali | 5.1%                 | 41.8%             | 19.3% | 10.2%   | 15.8%   | 7.7%  |
| Monschke/<br>Bartholemew | 100%                 | 0%                | 0%    | 0%      | 0%      | 0%    |
| Robbery II/<br>HB 5154   | 0%                   | 23.2%             | 10.5% | 60%     | 0%      | 6.3%  |

Note: By potentially eligible, we mean people with qualifying offenses and circumstances such as time served. In some instances, there are additional eligibility requirements such as not having had a major infraction in the past year that may render certain prisoners ineligible for review and explain why some individuals with qualifying offenses and other case characteristics remain behind bars.

Below, Figure 1 shows the estimated number of people who have become eligible for review by the ISRB or re-sentencing by the courts under each reform. As noted previously, there is some overlap between these categories. Specifically, many people who became eligible for parole review or re-sentencing under Miller later also became eligible for re-sentencing under Domingo-Cornelio/Ali. The total number of people eligible under one of these review processes shown in Figure 1 represents our estimate of the total number of discrete individuals who are potentially eligible for a second look.



Notes: These numbers are based on records provided by the DOC in November 2022. By potentially eligible, we mean people with qualifying offenses and/or circumstances. The Miller fix specifies that people must serve either 20 or 25 years before becoming eligible for review depending on the crime of conviction. People are included in the eligible Miller category if they had served the required amount of time by May 1, 2023. People may be eligible for review under more than one reform. The estimated number of discreet individuals who are potentially eligible for review under one or more of these reforms is 637.

As this figure reveals, the Washington Supreme Court’s rulings in the *Domingo-Cornelio* and *Ali* cases were the most consequential of these reforms as measured by the number of people who became eligible for review.

Below, Table 3 shows the proportion of people who have become eligible for review/release under each mechanism who have been released from prison (through any mechanism). Although people identified as released in each these categories were likely released through a new post-conviction review mechanism associated with the relevant reform, some were eligible for review under multiple mechanisms and others may have been released via other mechanisms such as a successful legal appeal. Moreover, some categories are largely duplicative. In particular, virtually all of those who became eligible for review under a Miller fix also became eligible for review under *Domingo-Cornelio* and *Ali*. As a result, it is not possible to determine the exact number of people who have returned home as a result of each reform.

**TABLE 3. NUMBER AND PROPORTION OF PEOPLE POTENTIALLY ELIGIBLE FOR REVIEW AND RELEASED**

|                             | Released from<br>Prison | Eligible<br>for Review | Percent<br>Released |
|-----------------------------|-------------------------|------------------------|---------------------|
| Miller Fix (2014, 2015)     | 98                      | 140                    | 70%                 |
| Domingo-Cornelio/Ali (2020) | 160                     | 430                    | 37.2%               |
| Monschke/Bartholomew (2021) | 8                       | 49                     | 16.3%               |
| Robbery II/HB 5154 (2021)   | 55                      | 95                     | 57.9%               |

Notes: By potentially eligible, we mean people with qualifying offenses and/or circumstances. In some instances, there are additional eligibility requirements such as not having had a major infraction in the past year that may explain why some individuals with qualifying offenses remain behind bars. The Miller fix specifies that people must serve either 20 or 25 years before becoming eligible depending on the crime of conviction. People are included in the eligible Miller category if they had served the required amount of time by May 1, 2023. The released figures for the Miller fix include people who were ever released from prison, including a small number who have returned to prison. The released figures for all other categories reflect the number of people no longer in custody as of February 2023. People who were eligible for a second look under multiple reforms and released are included in more than one category.

### **Why Some People Who Are Eligible for Review Remain Behind Bars**

As Table 3 shows, many people who meet the age, offense, and time-related requirements to be eligible for review have not been released from prison. There are several reasons this may be the case:

- They do not have counsel and/or have not (yet) sought resentencing;
- They are awaiting a sentencing hearing;
- They have been resentenced but a court has not issued a final decision;
- They were resentenced but have not served their new sentence;
- They were reviewed by the ISRB but were not paroled;
- Although they are a member of the group generally eligible for resentencing, a court found that they did not meet the additional criteria (i.e., a juvenile who has not established "prejudice");

- They appear to, but do not in fact, meet the criteria for re-sentencing (i.e., they have a Robbery II conviction and are serving an LWOP sentence as a three-striker but they would remain a three-striker even without the Robbery II conviction); and/or
- They have chosen not to be resentenced.

Unfortunately, ascertaining which of these (and possibly other) factors is operative in specific cases would require detailed evaluation of individual case files. This very labor-intensive analysis is beyond the scope of this report.

## **PART V: RECIDIVISM AMONG PEOPLE ELIGIBLE FOR REVIEW VIA MILLER**

Over the years, changes in sentencing policy have created opportunities for researchers to examine repeat offending among people who once served life or very long sentences but came home “early” due to changes in law or policy after serving decades behind bars. These studies consistently find extremely low rates of recidivism among this population, which generally includes people who were convicted of very serious crimes. For example, a California study of released prisoners who had been sentenced to life with the possibility of parole and served decades behind bars with life found that “... the incidence of commission of serious crimes by recently released lifers has been minuscule.”<sup>69</sup> Two years later, the California Department of Corrections and Rehabilitation (CDCR) confirmed that recidivism rates remained extremely low for this group of people. Specifically, the CDCR concluded,

*Examination of lifer parolee recidivism rates for a fiscal year cohort that was followed for a period of three years from release to parole shows that lifer parolees receive fewer new convictions within three years of being released to parole (4.8 vs. 51.5 percent, respectively). They also have a markedly lower return to prison recidivism rate than non-lifer parolees (13.3 vs. 65.1 percent, respectively).<sup>70</sup>*

Even more dramatically, 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.<sup>71</sup> The 174 people who were included in the study had been home for an average of 21 months. As of December 2019, just two had been convicted of a new felony offense since their release. The researchers estimate that the release of this group from prison reduced correctional expenditures by \$9.5 million.

Exceedingly low rates of recidivism among people who serve life or long sentences and were released because of changes to sentencing law or practice challenge widespread stereotypes that suggest that some people – and especially those who commit an act of violence at one point in their lives – are inherently irredeemable.<sup>72</sup> But evidence of extremely low recidivism rates among released lifers is entirely consistent with criminological research, which shows that age is the most powerful predictor of repeat offending,<sup>73</sup> and that people who were convicted of violent crimes generally have the *lowest* rates of recidivism.<sup>74</sup>

In short, studies in other states have found that people who returned home after being sentenced to life in prison rarely reoffend. Below, we assess recidivism among people who were eligible for sentence review/release under the Miller fix legislation. To be clear, some of these people may also have been eligible for review under another change to sentencing law and policy, usually the

Court’s ruling in *Domingo-Cornelio* and *Ali*. The analyses below thus calculate the recidivism rate among people who became eligible for post-conviction review under the Miller fix legislation and have been released from prison through any legal mechanism.

### Recidivism Among People Eligible for Post-Conviction Review Under the Miller Fix Legislation

According to the records we obtained from the DOC and other legal documents, 140 people became eligible for release before May 1, 2023 under the Miller fix legislation. Of those, 98 have come home. Table 4 shows the number of people released each year by the ISRB Juvenile Board (including both its Aggravated Murder and Long-Term Juvenile Boards) and by the courts.

**TABLE 4. NUMBER OF PEOPLE ELIGIBLE FOR SENTENCE REVIEW UNDER MILLER WHO HAVE BEEN RELEASED, BY RELEASING INSTITUTION AND YEAR OF RELEASE**

|                               | ISRB Juvenile Board | Resentencing Court | Total Released |
|-------------------------------|---------------------|--------------------|----------------|
| 2015                          | 0                   | 4                  | 4              |
| 2016                          | 2                   | 4                  | 6              |
| 2017                          | 4                   | 10                 | 14             |
| 2018                          | 7                   | 4                  | 11             |
| 2019                          | 9                   | 8                  | 17             |
| 2020                          | 12                  | 7                  | 19             |
| 2021                          | 8                   | 8                  | 16             |
| 2022                          | 7                   | 4                  | 11             |
| <i>All 2015-2020 releases</i> | 34                  | 37                 | 71             |
| <i>All 2015-2022 releases</i> | 49                  | 49                 | 98             |

Notes: Figures shown include all *first* releases for people eligible for review under a Miller Fix. Four individuals have been released more than once.

The records provided by the Administrative Office of the Courts indicate that just two of the 98 individuals (2.2 percent) who were eligible for review under the Miller fix legislation and have been released have been convicted of a new felony offense. In both cases, the new charge was assault in the third degree. None of the other 96 people had been convicted of a felony since their release from prison.



**TABLE 5. NEW FELONY CONVICTIONS AND RETURNS TO PRISON AMONG PEOPLE ELIGIBLE FOR REVIEW UNDER A MILLER FIX**

|  | Among those released<br>By the end of 2020<br>(n=71) | Among those<br>released by May 1, 2023<br>(n=98) |
|--|--|--|
| Individuals with new felony convictions                | 1.4%<br>(1/71)                                       | 2.2%<br>(2/98)                                   |
| Individuals who have returned to prison for any reason | 5.6%<br>(4/71)                                       | 7.1%<br>(7/98)                                   |

Source: Information regarding new felony convictions was provided by Duc Luu at the Administrative Office of the Courts. Information regarding revocations/returns to prison was provided by the Department of Corrections and Seattle Clemency Project attorneys.

If recidivism is measured in terms of new felony convictions, the available records suggest a 2.2 percent recidivism rate among people who were eligible for sentence review under a Miller fix and who have been released from prison. Among the group that was released three or more years ago, that rate is 1.4 percent. Unfortunately, it appears that another person is likely to be convicted in the relatively near future.<sup>75</sup> Assuming this third person is convicted, the recidivism rate among all of those eligible for review under the Miller fix legislation who returned home will rise to 3.1 percent.

Recidivism rates remain low if we focus on returns to prison for technical violations of the conditions of supervision (as opposed to new felony convictions). Among the 71 people who were first released from prison three or more years ago, three have returned to prison for technical violations.<sup>76</sup> If we include all 98 Miller-eligible individuals who have been released from prison, two additional individuals have been released and returned to prison, for a total of five people who were reincarcerated for technical violations of the conditions of supervision. None of these individuals who have been revoked and reincarcerated are alleged by the DOC to have engaged in property or violent crime. Instead, review of the available records suggests that these revocations stem from untreated substance abuse disorder and mental health challenges.

In short, depending on which time frame and outcome measure are used, *we estimate a recidivism rate of between 1 and 10 percent among the people who were sentenced to more than 20 years in prison for offenses committed as a juvenile and who have come home.* This is a remarkably low

level of re-offending, particularly since very little has been done to prepare this population for re-entry or to address the trauma associated with long-term incarceration. Moreover, a review of case records suggests that the new felony convictions and parole revocations that have occurred often involve untreated mental illness and substance use disorder, which could be addressed through policy and programmatic improvements.

In sum, the vast majority of people who became eligible for sentence review and have come home have not re-offended. consistent with other studies, the recidivism rate among people who received very long or life sentences as adolescents or young adults in Washington State is remarkably low: between 1-10 percent depending on the measure and time frame used. This is far lower than the recidivism rate for all people releasing from Washington State prisons: in 2014, 37 percent of all released state prisoners had been convicted of a new felony offense within three years of their release.<sup>77</sup> In the rare instances that people have been returned to prison or committed new crimes, untreated mental illness seems to be highly salient.

Below, we draw on interviews with ten such individuals to make sense of how people who have experienced so much hardship have nevertheless returned to their families and communities and are now giving back in meaningful and constructive ways.

## PART VI: COMING HOME: EXPERIENCES AND INSIGHTS

The people interviewed for this research had much in common. All received very long sentences ranging from 20 years to life without the possibility of parole. All had been convicted of a serious violent crime, usually murder. All spent decades behind bars and returned home relatively recently. Nine of the ten were under the age of 21 at the time of their crime. And nearly all described growing up amidst family instability, poverty, violence, and abuse.<sup>78</sup>

Below, we describe how these interviewees described what it was like to be sentenced to, and serve, very long sentences, as well as the process and experience of coming home unexpectedly. We conclude by offering a list of their policy-related suggestions that would enhance the quality of life and well-being of those who return to our communities.

### Life in Prison

When asked about the period immediately after their conviction and imprisonment, most interviewees described having difficulty absorbing the fact that they would spend the next several decades, or more, behind bars. Some reported being in shock, denial, or even dissociating to such a degree that they could not recall that period with any clarity. People coped in varied ways. Some were convinced that they would have to serve their entire sentence, whereas others said they simply could not believe or accept that.

Most, however, recounted a complex mix of thoughts and feelings about their present and future. For example, when asked if he believed that he would ever be released from prison, one person who received an LWOP sentence for a crime committed at the age of 20 responded this way:

*That's a tricky question. One answer to that is no, no, absolutely not. Another answer to that is ... that I felt like I always had to lie to myself, and that lie was that there was some kind of hope that I was going to make it, but at the same time, yeah, I was conscious that it was a lie that I kept repeating internally, invoking like a mantra in order to keep going. So, on the one hand, no, absolutely not. They gave me no breathing room for hope. And after you do 10, 20, 30 and you're almost to 40 years, and they've given you no breathing room, what hope is there? I mean, absolutely none. At the same time, I created this powerful lie over years and years and years of survival that I was going to make it. So a lot of it was obstinacy, just refusing to quit. Just doggedly refusing to quit. So yeah, all that to say, that's a tough question.*

Receiving a very long or life sentence came on the heels of traumatic life events and often pushed people to the brink. Nearly all of those who entered prison as an adolescent or young adult

reported that they acted out a great deal in the early years of their incarceration. Here is how one man described himself in the years following his receipt of a 96-year sentence:

*I lost all hope of everything. Future gone, hope gone, and now I turn into a whole nother person. And this happens for a while. My transformation don't happen for probably about 10, 12 years. I go in the hole, I spend hole time. I'm staying in fights, I'm confused. I'm still immature, I'm still naive, I'm so reckless. I'm doing things that I shouldn't be doing and getting involved in more things that I wouldn't even been getting involved with as much on the outside because now I'm in a whole nother environment and a whole nother community, and this one is more dangerous than the one outside...*

Many reported that they had tried to enroll in classes or programs upon arriving in prison but could not because people with long and life sentences are last on the list for programming. Several reported that this lack of access to positive, pro-social activities increased their involvement in the negative aspects of prison life:

*So when I first went to prison, it was in Monroe. And I looked into doing some classes and some programs, but again, I was shot down... And then I just kind of got in with the wrong crowd... 17 years old, impressionable, looking for somebody to show them the way kind of thing. Fell in with the wrong crowd. And I got in trouble. I got kicked out of that prison and I went to Walla Walla, which is not the prison you want to go to at 18 years old. So that just made it worse. And then I tried at Walla Walla to actually go into the education department and try to help tutor people and teach math and stuff because school's kind of a passion of mine. And again, that was a no-go based on time and stuff like that.*

Similarly, a woman who entered prison at the age of 16 and was denied access to programming because of the length of her sentence explained that the lack of access to constructive activities contributed to her instability and troublesome behavior:

*And so I just became crazy rebellious... I never was mean or violent or anything like that. I just started getting really oppositional with authority... If you didn't have positive attitude throughout the day or do all these programming things, you wouldn't make your points. And so at night, if you don't make your points, they would take your personal TV from you, make you turn off your personal light. It was lights out, you're going to bed. And I was just... I can't... Just leave me alone. You know what I mean? So I had this whole protest with legislators and everything. We even printed off diagrams showing what our living conditions were as juveniles. We weren't getting religious services. It was just crazy. And because of that, it caused a lot of backlash in the institution. And they kept me in the hole for a year and tried to send me out of state then. But I fought it and beat it. And then it just set this whole trajectory of... I would get out the hole and get a job for a while and then something*

would happen or... I remember one year, I had been doing good for two years, working and tutoring and stuff like that. And then I was just like, "I want to do something for New Years." And so I caught the bathroom on fire so everybody could go outside and do the New Years together and have fun. Just something different and oh God. I stayed in the hole for two years for that.

Over time, though, maturation occurred despite the lack of access to programming, even among the most rebellious. People's accounts of how and when this maturation occurred varied. For some, the imperative to change was a sudden revelation followed by years of effort. For example, one woman shared how a suicide attempt initiated a life-long transformation:

*It [the suicide attempt] was serious, like bad, had to take me to the hospital. They called my family and told them I wasn't going to make it. And I had never been suicidal throughout anything. But I think I was just so tired of the administration and it's like, "Okay, just leave me alone. I'm never getting out. I'm never coming home"... So we tried to kill ourselves and then they ended up putting me into the... mental unit. And they tried claiming I was schizophrenic to keep me there. So, they housed me in a glass room for three months and then they proceeded to put me in seg under IMU status for a year. And then I found out that they were trying again to ship me out of state.... So I just turned into a lunatic at that point. I started setting off the alarms all the time and the sprinklers and fighting the cops. And they were having to strap me down to the bed all the time and they couldn't understand... . And they'd be like, "What is going on? What do you want?" I'd be like, "I want Domino's Pizza." And they're like, "What is seriously wrong with you?" It was my way of trying to keep myself from being sent out of state because that was the only thing I knew. Right? And I was probably like 24 at this point, 25, maybe.*

*So, I was an absolute basket case. I knew I was getting sent out. I didn't know where. And then one day I met with... He's a psychiatrist, he's retired, and he's probably one of the wisest individuals I've ever come across. He came in and he gave me this test... At the end of it, he was like, "Jesus Christ, I do this in private practice. I've never seen anybody do that test so well. What are you doing? You're far too intelligent to be locked in segregation for years at a time fighting the staff. What are you doing with yourself?" And we spent hours talking and I think he talked to me in a way that nobody really ever had and got me to understand - because at this point, there was no Miller fix. And he was just like, "You can do something with your life regardless of where you're at. You don't have to let this place define who you are. You just got to figure out who you are." And so I made a commitment to that... And prior to this, I've had over a hundred major infractions just from my nonsense. Right? And so, I had a meeting with administration that day and I was like, "You're not going to have any more problems out of me whether you send me out of state or not." And they saw it. And I never from that day forward had any kind of infraction.*

Others described a more gradual process during which they became less involved in prison and gang life and more engaged in activities like reading, education, exercise, and programming. For example, one person described how he learned to love reading while in solitary confinement, which then became a source of support and inspiration to make positive changes in his life:

*I was still involved in the gang stuff, and everything else, but I just kept reading. I went from reading military books and everything that you can get in solitary confinement, to actually reading self-help books. Once I started doing that, that was a real shift for me. It seemed like there was a whole new world. And even at that time, even my mind was opened up to different things, I wasn't able to apply any of it. I was still extremely immature. I think that I probably didn't actually come to mature until maybe 29.*

Another recounted a similarly gradual transition from gang life to programming:

*I was so worried about fitting in or having that connection or that family, which was actually one of the reasons that I joined the gang. Because I was alone, none of my family could come see me. I was all the way across the state. So that's why I got into the wrong crowd. And it wasn't until I was 26, 27, 28 that I started taking control of my life and making decisions for myself. And so I dropped out of the prison gang in 2014, I think. But the change had started in 2010, '11, '12 is when I started to change my thought process. And then I just fully submerged myself into education programs. Every single program, it didn't matter what it was, self-help, college, beekeeping, you name it. I was in. I mean, there was one point where I was taking, I think 28 college credits and having a job in one term.*

All ten of the people interviewed emphasized that although they had difficulty accessing programs due to their sentence length, programming ultimately became a major source of support, inspiration, mentorship, and direction. At least half earned an AA or BA through two community-based organizations, the Freedom Education Project of Puget Sound (FEPPS) or University Behind Bars (UBB). This represents a much higher level of involvement in post-secondary education than is generally found among people imprisoned in Washington State.<sup>79</sup> Many also referenced peer-led groups and such as the Black Prisoners Caucus (BPC) and Concerned Lifers' Organization (CLO) and community-based programs such as HEAL<sup>80</sup> (as opposed to DOC programming) as especially helpful.

These programs were beneficial for many reasons. The content was often useful and/or enlightening, and programming provided a pro-social alternative to prison life. Many also found mentors who served as role models and counselors. For some, being involved was a way to give back to the community, to mentor younger prisoners, and/or to atone. And some people acquired skills and made connections that helped them obtain work after their (unexpected) return home. Here are a few examples:

*I wasn't even thinking about freedom when we first started TEACH and we first started giving back. My thing was to help give back because we did so much wrong, especially from us growing up in this community. For me, especially being part of the Hilltop, being part of that from the conception of it, so just how many lives was ruined and how many people that's been in prison and how many friends I done lost over all these years. So that's the part for me was more to help and give back. And even if I had to be there, I felt like that was my mission. That was my cause. I had a bigger cause than I once had.*

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*I started to go to the education floor. Because of that, I was able to get involved with the BPC, actually being a founding member of the BPC at Stafford Creek, in 2016, I believe. Just taking a leadership role, being a youth committee facilitator, and just having that difference. In one aspect, I was the gang leader and I had to push for violence, and retaliation, and negative habits and behaviors. And on the other hand, I was a leader in something that was positive, and something that could change the narrative for the whole prison population as far as the youth go. And so, now I was doing all of these things in the opposite way, and it was just positive. And so, I was in a space to where being in that leadership role, I could finally say, "No, I'm not going to do that anymore."*

As a result of their extensive involvement in programming, education, and peer-led organizations, the people interviewed for this report were in an excellent position to pursue release when the courts and legislature created new avenues to post-conviction review. Access to community-based programming also meant that many had established relationships with people on the outside who could vouch for them and offer support upon their release.

### Leaving Prison

News about sentencing reforms spread quickly in Washington State prisons. Many of the people interviewed were already pursuing legal appeals and/or clemency when this happened, but the creation of new post-conviction review processes expanded the range of options they could consider. Imprisoned people shared information with each other and worked with attorneys to craft strategies that might yield a resentencing or parole hearing.

Interviewees reported that this liminal time was both exciting and stressful. On the one hand, people sensed that change was in the air and became more hopeful. But feeling hope was a mixed blessing:

*Hopeful that... It's like living in complete blackness and then you see a window for the first time. You're not outside yet but at least now you have a window. So it's like, "I may not be out, but at least now I can see that out is there." So it's like... I don't*

*know how to describe it. It's like you remain detached from it... Imagine it would be like if we lived in outer space. Literally. You can't even wrap your mind around what that would look like because all you literally know, all of my memories are from a small chunk of period of my life because you don't remember much before you're like nine. You have little memories, but not a whole lot. So it's like I have this small chunk of memory which isn't based on anything... . It feels unreachable and it feels unreal.... . I didn't even know how to comprehend that. I just knew I had a window.*

In short, people felt relief because there was reason to hope and that being hopeful could also create anxiety. Several also noted that their relationships with some other imprisoned people and guards became more complicated during this time:

*It was extremely stressful, it was more stressful. People get to know that there's things that you got coming, they'll do different things and react differently with you. And so, they might call you out when they wouldn't have before, but because they know that you can't do anything, because you have the possibility of getting out. And these are individuals who, they believe that they're staying in there, so they don't have no issue with trying to get you in trouble. Because it's like, well, yeah, misery loves company. And so they most definitely would like to pull you down, and keep you there with them. If you react, if I get into a fight right before re-sentencing, there's nothing that I can say. That was extremely hard. And just the wait.*

In some cases, it was obvious that pursuing sentence review via a new reform was preferable to pre-existing review processes such as clemency. In such cases, clemency petitions were set aside. In other cases, multiple reforms and avenues were in play. In one case, for example, the King County Prosecuting Attorney's Office (KCPAO) had signaled that they would likely support a 6164 process a few years down the road. But because the Washington State Supreme Court ruling in *Blake v. Washington* meant that the original sentence would be cut substantially, the KCPAO was convinced to expedite its submission of a 6164 petition.

Most of those interviewed reported that the time between pursuing review under one of the new reforms and being released was relatively short. While ecstatic to be leaving prison, many also reported returning home without feeling prepared for life on the outside at all. Despite this lack of overt preparation, all of those we interviewed have gone on to build stable, constructive, and rich lives.

### Life on the Outside

After serving many years behind bars, people were universally thrilled to leave prison. Nearly all said that they most looked forward to connecting with loved ones:



*My kids. I had my kids prior to going in. I hadn't had one visit, video visit. All I had was phone calls with them. I hadn't seen my kids. My youngest daughter was probably as small as my hand when I went in, and she was 10 now, so it was ... That was what I was looking most forward to. My wife, of course, because without her I still would be in there.*

*Essentially half my life, I was inside of prison. And to go from there to being able to drive, to being able to live, to be with family, to share life with my partner and all, have a family of my own one day. That made me excited about life.*

Still, the process was variously described as intense, frightening, wonderful, overwhelming, and more, sometimes all at once. Many described profound sensory overload upon returning home, and an inability to sleep for days on end. As one woman explained,

*Wasn't scared. That's a f\*\*\*\*\* lie. I wasn't scared. I am lying. I think I'm supposed to be scared. I was excited. And of course, what's it going to be? There's excitement, like trepidation, I guess would be a really good word. But going home that first year, there was just such immense joy just to be out, period. And I'm thankful for that joy.*

Consistent with their predictions, most respondents described being with loved ones as their most fundamental source of joy since coming home. As one person put it,

*The most joyful things about coming home, man, there's so much, so many moments and memories that I've already been able to make. One that comes to mind is me, my girlfriend, my mom, and her husband. We've tried to get into a pattern of going out to dinner with them and maybe once a month, and it's been so great.*

Family, partners, and friends played a crucial role in people's lives as they transitioned home, providing housing, access to networks, financial support, companionship, and more:

*I had a very good support structure. I had a friend who had been released, who dropped everything he was doing for a week and helped drive me around to get my driver's license and all the stuff that I needed to do. My dad actually came over from*

*Montana with his camper, and he stayed at another one of my friends who's still incarcerated, at his house. And he let him park in his yard a mile away from my transition home. And then my family gave me like \$7,000 between all of them. And then my dad gave me a truck. And so I was set up.*

*\*\*\**

*So my plan was to go work with my brother, live with my other brother and family, and then find my way. I did exactly that. And that was successful for me.*

*\*\*\**

*But the most grounding, grounding that really held me was my family, is my family. This shit takes a community. And everybody has a different part in my life.*

In addition to the deep gratification of connecting with loved ones, many also reported a sense of exhilaration as a result of their newfound freedom: being able to drive, swim on the ocean, listen to music, eat food they loved, and move their bodies freely brought tremendous joy.

After returning home, all ten of the people we interviewed found stable employment. Many were employed by non-profits that valued their lived experience and unique skill sets and provided opportunities to use the skills and knowledge people had acquired while in prison. For example, one individual who spent time as a child in the foster care system and had been a leader in the Concerned Lifer's Organization's State-Raised Youth Group is now policy analyst for a non-profit that serves foster-involved youth. Another is employed as a case manager in a pre-arrest diversion program that serves people who contend with addiction and other behavioral health issues.

In some cases, these employment opportunities were also facilitated by personal connections forged through involvement in community-based programs during incarceration. For instance, one interviewee who participated in and served as a facilitator in HEAL was subsequently hired by the organization that offers HEAL; it seems that both the skills and the connections he acquired were relevant to his subsequent employment. Connections to family and formerly incarcerated friends were also often helpful. For example, one woman was hired to do reentry work in non-profit organization run by her brother. Yet another was hired to do similar work by an organization that was founded by a person who had been released from prison because of the Miller fix legislation. Just one interviewee reported not having been able to find full-time employment that would enable him to earn a living salary, though he was working part-time.

In short, despite spending many, many years behind bars, the people who shared their stories with us reported strong connections with family, friends, and loved ones. When asked about their most joyful moments since coming home, most talked about their connections with family and loved ones. Obtaining employment was a top priority for people when they returned home, and the people we interviewed were gratified that they had been able to find work. Many found their work meaningful and satisfying. All respondents had also found stable housing, and at least one had bought a house, though many noted that finding housing on their own would have been extraordinarily difficult given their criminal record.

These accomplishments and sources of stability help make sense of the low rate of recidivism among this population. Yet for all their successes and accomplishments, more than half of those we spoke with openly shared their on-going struggles with anxiety, depression, and PTSD. This occurred even though our interview protocol did not include questions about the emotional damage caused by incarceration, early childhood events, or mental health issues. Nevertheless, most interviewees noted that they had already experienced significant trauma prior to their incarceration, and there was uniform agreement that imprisonment left a lasting and painful legacy, one that continued to have ripple effects. As one woman explained,

*I could see the shit happening as it was happening, and how ugly it was and how twisted it was, and how staff f\*\*\* with inmates' heads. I saw it. I sat back and watched it because I had a different positionality of it. I didn't know what to do with it. I mean, what do you do with all this? I don't know what I'm watching at the time. I know what I'm feeling. ... Weird. That's harmful... And while that started with my childhood, it built in incarceration. And they gave us nothing. F\*\*\*\*\* zero.*

When asked where and when he finds joy now, one of the men we interviewed put it this way:

*I know that I've matured in a lot of ways, but there's a lot of stuff I am processing. I'm working at [a restorative justice program] and I'm still struggling with processing trauma and shit that happened in prison. I'm super institutionalized and trying to feel. I think the joy is just being with my kids. But it's really hard to find joy sometimes.*

Given the lingering pain of long-term incarceration, many interviewees expressed a need and desire for the time and resources to go to therapy and/or join support groups, but identified numerous barriers that limit access to these kinds of mental health supports. For some, it was a practical matter of not knowing how to access them. Some felt that the nature of the trauma they had experienced – which several described as compound PTSD – meant that there were few providers able to provide sufficient care, and virtually none who had experienced incarceration.

For others, there did not seem to be enough time in the day, particularly given need to contribute to their families financially and in terms of childcare. Several interviewees who were still on community supervision also expressed concern that anything they shared with a therapist could be used against them:

*I did therapy for a minute but it's like I'm not going to feel comfortable talking about what I'm struggling with because in my head I'm like, "Okay, if this gets sent to the board or my CCO, are they going to flag me as, 'Oh, she's struggling,' or... You know what I mean?"*

Although most attributed their difficulty accessing joy and maintaining their wellbeing to the trauma of incarceration, several reported that being on supervision exacerbated it. In fact, with one minor exception, all of those who discussed supervision described it as a source of constant frustration and stress. Here is how one person explained it,

*Even during one of the gay pride events, I was down here, and there were some peace officers that were starting to bully this homeless individual for sitting on the street, and they started putting their hands on them and stuff and so I'm with a couple friends and I go over there. I'm like, "It's okay. I'll help him up. You don't have to be pushing him." You know what I mean? And then afterwards, some of my friends are like, "Gail, what if they would've arrested you for interfering with something?" Just because back when it happened, it was all the crazy protesting that was going on and stuff. And they're like, "One misdemeanor charge and it's a wrap for you." So living like that, it's incredibly stressful, right?"*

Several of the women also noted that they were subject to restrictions such as not being allowed to date or have sexual relations that, they believed, men were not subject. This was understandably experienced as galling.

In addition, the fact that many people worked for non-profit organizations that deal with issues related to violence, imprisonment, homelessness, and addiction meant that work was both a source of income, meaning, and purpose but also a source of trauma and stress. Here is how one woman explained it,

*As a case manager, I'm running these streets talking to all kinds of people. Oh, yeah. I'm doing the things. I want to say that my incarceration really helped me do this work. Number one, my lived experience allows me to connect with people in a way never before. I have results. And this f\*\*\*\* shit, it's just me building out a different path and that's being seen... But at the same time, it's a constant reminder. I can't*

*get away from it. I am constantly reminded of all the f\*\*\*\*\* up shit that led me to prison in the first place.*

In general, the people we interviewed reported that the main challenges associated with the reentry process had to do with mental health and emotional well-being:

*I just think so much of how reentry is framed inside is, it's all about professional goals. What are you going to do to be successful? And successful has to do with material possessions or professional accomplishments. And it doesn't really center your well-being at all. ... what would it mean to actually let a person get out and not have to worry about getting a job?... . And we don't have that, and then you get trapped in this job because you don't have time to go explore what you need at your core as a human being. And so you end up getting the job, you get all the shit, but internally you're fucked up. You know what I'm saying? You don't know how to relate to people. You don't know how to connect to people. You don't know how to connect to yourself. And so, if you flip it on its head, maybe you could take that time to really, I guess, decompress, process, do all the things you need to do, and the job and all that other shit will come, but at least you'll be well.*

### Suggestions for Improving Reentry Practice and Policy

The people interviewed for this report had many thoughtful suggestions for how to make the reentry process more conducive to health and well-being for people returning home (as well as their loved ones). Some of their ideas go well beyond suggesting minor tweaks or reforms. For example, there was broad consensus that being on community supervision was a counter-productive source of stress, frustration, trauma, and limitation rather than support and guidance. These experiences suggest the need to reevaluate the nature and scope of community supervision – something that is unlikely to occur in the near future.

Some of their ideas about how to improve the transition process are more doable in the short or medium term. Although space limitations preclude a full discussion of these ideas, some highlights include:

- Provide valid identification to people upon their departure from prison. (Some people left prison with only a prison ID, which was not at all useful outside of prison. They were told by DOC that an ID would be awaiting them, but many reported that this did not occur. This was time-consuming and frustrating).
- Revisit the practice of providing people with a \$40 check upon their departure from prison. This amount of money is woefully inadequate and often cannot be accessed

because people cannot cash a check without a valid identification.

- Expand prison programming, especially peer-led and community-based programs. Do not restrict access to these programs based on length of sentence, which may not accurately predict whether and when people will return home.
- Begin preparing people for departure from prison as soon as they enter prison, focusing on acquisition of practical life skills such as financial literacy, computer software and programming skills, vocational training, and more. Also provide information about practical matters such as opening bank accounts, applying for jobs, and finding housing.
- End the use of solitary confinement, which exacerbates and compounds the trauma associated with long-term incarceration.
- Provide greater access to affordable, non-congregate, non-punitive housing for people who have been released from prison and are unable to live with family or friends.
- Ensure access to affordable, accessible, high quality mental health care in prison and upon release.
- Most ambitiously, for individuals who have already served decades in prison, assign a reentry and transition navigator instead of a community corrections officer upon release given evidence that the existing community corrections model does not fit the needs of people coming out of long-term incarceration, does not enhance public safety and is a source of anxiety, limitation, and frustration for people who return home.<sup>81</sup>

## PART VII: CONCLUSION

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Growing awareness that long and life sentences are an inhumane and ineffective way of protecting public safety – and that their imposition on young defendants is deeply problematic – has motivated the enactment of several retroactive changes to sentencing law and policy in Washington. The analyses provided in this report suggest that just under 300 people have returned home as a result of those retroactive reforms that target people serving long and life sentences. A slightly larger number are eligible for review but remain behind bars.

In short, a meaningful number of people who were serving long or life sentences have returned home due to new opportunities for post-conviction sentence review. Yet many people have been left behind. This is because these reforms have unfolded in a piecemeal and often complex manner, are incomplete, and have been undermined by the very Court that is responsible for notable change. Some who are theoretically eligible for sentence review lack legal representation, and this lack may well explain their on-going incarceration. Moreover, thousands of other prisoners who are serving long sentences appear not to be eligible for review under any of these reforms. Thus, while the reforms enacted to date have had a meaningful impact, they have fallen far short of providing a comprehensive solution to the problem of excessive sentencing in Washington State.

Findings from the recidivism analysis and qualitative interviews with people who returned home “early after spending decades behind bars underscore the importance of doing more to address the problem of excessive sentencing. Most notably, the vast majority – over 90 percent – of people who have returned home have not been convicted of new offenses or been returned to prison for technical violations of the conditions of DOC supervision. Just two percent have been convicted of a new felony offense; the vast majority have not. These findings are consistent with those of other criminological studies, and underscore the capacity for resilience and maturation among people once deemed “super-predators.”

The people interviewed for this report were highly successful: they had reconnected with loved ones, found housing, and were working, often in the non-profit sector focused on reducing the harm associated with violence and mass incarceration. Many found tremendous joy in their lives, reconnecting with loved ones and working in their communities. Still, interviews with people who came home “early” after decades behind bars also highlight the need for community-based mental health care and support before and after release from prison. The trauma of long-term incarceration lingers, even among people who are ticking all the usual boxes associated with “success.” Interviewees identified a number of policy changes that would help prepare people for release and render the transition home a smoother and more joyful one.

In the small number of cases in which people have committed new crimes or returned to prison for other reasons, it appears that untreated mental illness, likely exacerbated by long-term incarceration, is a central factor. Although most prisoners serving long and life sentences do not pose a threat to public safety, the very small risk associated with recent reforms could almost certainly be further reduced by investments in quality mental health treatment both during and following incarceration.

In summary, nearly half of the state prison population is serving a sentence of longer than ten years, but there is strong evidence that long sentences are unhelpful and counter-productive in the vast majority of cases. The evidence provided in this report shows that the problem of excessive sentencing persists, and that comprehensive and retroactive sentencing reform is still needed in Washington.

Ideally, the State Legislature will remedy this situation by enacting comprehensive sentencing reform soon. Short of this, more limited legislative reforms would help address the problem of excessive sentencing. For example, statutory reforms that restore the capacity of all prisoners to earn up to a third of their sentence off through “good time” credits would incentivize program involvement and ensure that fewer people remain in prison in their 50s, 60s, and beyond. Reform of the Hard Time for Armed Crime Act to specify that confinement sentences deriving from weapons enhancements be served concurrently rather than consecutively would make an enormous difference. Making policy that removes points associated juvenile adjudications from the calculation of adult offender scores retroactive would reduce some excessive sentences and reduce racial inequities. Allowing resentencing for all three strikers – not just those with a Robbery II conviction – would produce meaningful change. And providing funding to ensure that petitioners have access to legal representation to pursue the second look opportunities that do materialize would help to ensure that people who are theoretically eligible for review truly have a chance of a “second look.”



## APPENDIX A. INTERVIEW PROTOCOL

1. How old were you when you went to prison? What was your sentence?
2. Before you became eligible for resentencing/sentence review, did you imagine that you might ever be released from prison?
3. Did your beliefs about this affect how you did your time? If so, how?
4. How did you find out that you were eligible for resentencing/review?
5. How did you feel when you found this out?
6. Did that realization affect how you structured and spent your time inside?
7. What happened after you found out you were eligible for review/resentencing? (Legal representation, legal process)
8. What was it like when you learned that you would be coming home?
  - a. What were you most looking forward to?
  - b. What were you most concerned about?
9. What have been some of the biggest largest challenges you've experienced since coming home?
  - a. What supports do you wish you had that weren't available/provided?
  - b. What could the reentry community/DOC do differently to support people coming home?
10. What have been some of the greatest joys you've experienced since coming home?
11. How are you using your time now? What feels most meaningful to you, and why?
12. Is there anything else you think we should understand about your experiences and/or policy in this area?

## ENDNOTES

- <sup>1</sup> Michael Tonry, *Sentencing Fragments: Penal Reform in America, 1975-2025* (New York, NY: Oxford University Press, 2016). Also see Jorge Renaud, *Eight Keys to Mercy: How to Shorten Excessive Prison Sentences* (London: Prison Policy Initiative, November 2018).
- <sup>2</sup> As of September 2023, 48.9 percent of the state prison population was serving a sentence of ten or more years or a sentence of life with or without the possibility of parole. Washington State Department of Corrections, Agency Fact Card, September 2023.
- <sup>3</sup> See, for example, Marc Mauer and Ashley Nellis, *The Meaning of Life: The Case for Abolishing Life Sentences* (New York: The New Press, 2018); 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).
- <sup>4</sup> Alexi Jones, *Reforms Without Results: Why States Should Stop Excluding Violent Offenses from Criminal Justice Reforms* (Northampton, MA: Prison Policy Initiative, 2020).
- <sup>5</sup> These individuals are eligible for review by courts or the ISRB based on offense and age-related factors. In some cases, additional requirements such as an infraction history may render them ineligible for review for a period of time.
- <sup>6</sup> As of September 2023, 48.9 percent of the state prison population was serving a sentence of ten or more years or a sentence of life with or without the possibility of parole (Washington State Department of Corrections, Agency Fact Card, September 2023). This means that 6,832 of the states prison population is serving a long or life sentence.
- <sup>7</sup> Katherine Beckett and Heather Evans, *About Time: How Long and Life Sentences Fuel Mass Incarceration in Washington State* (ACLU of Washington, 2020), Figure 1. Available at <https://www.aclu-wa.org/docs/about-time-how-long-and-life-sentences-fuel-mass-incarceration-washington-state> (hereafter, Beckett and Evans, *About Time*).
- <sup>8</sup> Beckett and Evans, *About Time*, Figure 2. Comparable countries include other members of the Organization for Economic Co-Operation and Development (OECD).
- <sup>9</sup> Beckett and Evans, *About Time*, 6 and footnote 29.
- <sup>10</sup> Beckett and Evans, *About Time*, Part IV.
- <sup>11</sup> David Boerner, and Roxanne Lieb, "Sentencing Reform in the Other Washington," *Crime and Justice* 28 (2001): 71-136.
- <sup>12</sup> Beckett and Evans, *About Time*, Table 1.
- <sup>13</sup> Beckett and Evans, *About Time*, Figures 6 and 8.
- <sup>14</sup> Michael Tonry, *Sentencing Fragments: Penal Reform in America, 1975-2025* (New York, NY: Oxford University Press, 2016). Also see Jorge Renaud, *Eight Keys to Mercy: How to Shorten Excessive Prison Sentences* (London: Prison Policy Initiative, November 2018).
- <sup>15</sup> Anthony Doob and Cheryl Marie Webster, "Countering Punitiveness: Understanding Stability in Canada's Imprisonment," *Law & Society Review* 40, no. 2 (June 2006): 325-67; Michael Tonry, and David P. Farrington, "Punishment and Crime Across Time and Space," *Crime and Justice* 33 (2005): 1-39; Franklin E. Zimring, *The Great American Crime Decline* (New York: Oxford University Press, 2007).
- <sup>16</sup> PEW Charitable Trust, *Prisons and Crime: A Complex Link* (Washington D.C.: Public Safety Performance Project, PEW Charitable Trust 2014); Magnus Lofstrom and Steven Raphael, "Prison Downsizing and Public Safety: Evidence from California," *Criminology and Public Policy* 15, no. 2

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(2016): 349-65; Magnus Lofstrom and Steven Raphael, "Incarceration and Crime: Evidence from California's Public Safety Realignment Reform," *The ANNALS of the American Academy of Political and Social Science* 664, no. 1 (March 1, 2016): 196–220.; Jody Sundt, Emily J Salisbury, and Mark G Harmon, "Is Downsizing Prisons Dangerous?" *Criminology & Public Policy* 15, no. 2 (2016): 315-41.

<sup>17</sup> Daniel S. Nagin, "Deterrence in the Twenty-First Century," *Crime and Justice* 42, no. 1 (2013): 199–263; National Research Council, *The Growth of Incarceration in the United States: Causes and Consequences*, edited by Jeremy Travis, Bruce Western, and Steve Redburn (Washington D.C.: The National Academies Press, 2014); Michael Tonry, "The Mostly Unintended Effects of Mandatory Penalties: Two Centuries of Consistent Findings," *Crime & Justice* 38, no. 1 (2009): 65–114.

<sup>18</sup> National Research Council, *The Growth of Incarceration in the United States: Causes and Consequences*, edited by Jeremy Travis, Bruce Western, and Steve Redburn (Washington D.C.: The National Academies Press, 2014), pp. 155-6.

<sup>19</sup> Jordan D. Segall, Robert Weisberg, and Debbie A. Mukamal, *Life in Limbo: An Examination of Parole Release for Prisoners Serving Life Sentences with the Possibility of Parole in California* (Stanford, CA: Stanford Criminal Justice Center, 2011).

<sup>20</sup> These individuals were released as a result of reforms stemming from *Miller v. Alabama*. See Daftary-Kapur, Tarika and Tina M. Zottoli, *Resentencing of Juvenile Lifers: The Philadelphia Experience*. Montclair State University, 2020.

<sup>21</sup> See, for example, Liz Komar, Ashley Nellis, and Kristin M. Budd, *Counting Down: Paths to a Twenty-Year Maximum Sentence* (Washington D.C.: The Sentencing Project, 2023).

<sup>22</sup> American Law Institute, *Model Penal Code: Sentencing*, 2021, p. 808.

<sup>23</sup> Ram Subramaanian and Ames Grawert, "What Can Federal Courts Do About Extreme, Outdated Sentences?" Brennan Center for Justice, February 17, 2023.

<sup>24</sup> American Law Institute, *Model Penal Code: Sentencing*, 2021, p. 813.

<sup>25</sup> Article 15 of the ICCPR states that "If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby."

<sup>26</sup> American Law Institute, *Model Penal Code: Sentencing*, 2021, p. 801.

<sup>27</sup> 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).

<sup>28</sup> Alexi Jones, *Reforms Without Results: Why States Should Stop Excluding Violent Offenses from Criminal Justice Reforms* (Northampton, MA: Prison Policy Initiative, 2020).

<sup>29</sup> Washington State Department of Corrections, Agency Fact Card, June 2023.

<sup>30</sup> State of Washington Sentencing Guidelines Commission, *Recidivism of Adult Felons* (Olympia, WA, 2008), p. 2.

<sup>31</sup> Jordan D. Segall, Robert Weisberg, and Debbie A. Mukamal, *Life in Limbo: An Examination of Parole Release for Prisoners Serving Life Sentences with the Possibility of Parole in California* (Stanford, CA: Stanford Criminal Justice Center, September 15, 2011). This study found that "... the incidence of commission of serious crimes by recently released lifers has been minuscule."

<sup>32</sup> The CDCR concluded: "Examination of lifer parolee recidivism rates for a fiscal year cohort that was followed for a period of three years from release to parole shows that lifer parolees receive fewer new convictions within three years of being released to parole (4.8 vs. 51.5 percent,

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respectively). They also have a markedly lower return to prison recidivism rate than non-lifer parolees (13.3 vs. 65.1 percent, respectively).” See “Lifer Parolee Recidivism Report.” Sacramento, CA: California Dept of Corrections and Rehabilitation Corrections Standards Authority, January 2013.

<sup>33</sup> 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), pp. 143-5; see also David Farrington, “Developmental and Life-Course Criminology: Key Theoretical and Empirical Issues,” *Criminology* 41, no. 2 (2003): 221–56.

<sup>34</sup> Robert J. Sampson, and John H. Laub, “Life-Course Desisters - Trajectories of Crime among Delinquent Boys Followed to Age 70,” *Criminology* 41, no. 3 (2003): 555–92.

<sup>35</sup> We use pseudonyms in these case summaries to protect people’s privacy.

<sup>36</sup> See, for example, Marc Mauer and Ashley Nellis, *The Meaning of Life: The Case for Abolishing Life Sentences* (New York: The New Press, 2018); 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).

<sup>37</sup> Aggravated murder is defined in RCW 10.95.020. This statute identifies fourteen circumstances that, in theory, distinguish aggravated first-degree homicide from non-aggravated first-degree homicide. In fact, the legal distinction between aggravated and non-aggravated murder does not meaningfully differentiate the most severe offenses from those that are slightly less severe (see Beckett and Evans, *About Time*, 13-14).

<sup>38</sup> 2SSB 5064, Ch. 130, sec. 10, Laws of 2014.

<sup>39</sup> In 2015, the legislature passed HB 1319, modifying the original “Miller-fix” legislation. This legislative change allows youth sentenced to more than 20 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.

<sup>40</sup> Maya L. Ramakrishnan, “Providing a Meaningful Opportunity for Release: A Proposal for Improving Washington’s Miller-Fix,” *Washington Law Review* 95, 2: 1053 (2020).

<sup>41</sup> *In re Brashear*, 6 Wash. App. 2d 279, 285, 430 P.3d 710 (2018).

<sup>42</sup> This decision was subsequently codified in RCW 10.95.030.

<sup>43</sup> 183 Wn.2d 680, 358 P.3d 359 (2015).

<sup>44</sup> 187 Wn.2d 420, 434, 387 P.3d 650 (2017).

<sup>45</sup> 198 Wash.2d 309, 495 P.3d 241 (2021).

<sup>46</sup> 200 Wash. 2d 266, 516 P.3d 1213 (2022).

<sup>47</sup> *State v. Houston-Sconiers* 188 Wash. 2d (2017).

<sup>48</sup> See *In re: PRP Domingo-Cornelio* No. 97205-2 (2020) and *In re: PRP Ali* No. 95578-6 (2020).

<sup>49</sup> In 2020, the Washington Legislature passed E2SSB 5488, [Ch. 330, Laws of 2020](#), codifying *State v. Houston-Sconiers*.

<sup>50</sup> 1 Wash.3d 317, 525 P.3d 156 (2023).

<sup>51</sup> *Matter of Forcha-Williams*, 200 Wash. 2d 581, 520 P.3d 939 (2022).

<sup>52</sup> *In re PRP Monschke*, 197 Wn.2d 305, 482 P.3d 276 (consolidated with *in re PRP Bartholomew*) (2021).

<sup>53</sup> *In re PRP Monschke*, 197 Wn.2d at 306-307.

<sup>54</sup> *In re: PRP Washington v. Blake* No. 96873-0 (2021).

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<sup>55</sup> These offenses are enumerated in RCW 9.94A.030.

<sup>56</sup> This legislation was signed into law on April 26, 2021.

<sup>57</sup> For the People, *Prosecutor-Initiated Resentencing: California's Opportunity to Expand Justice and Repair Harm* (Oakland, CA: For the People, 2021).

<sup>58</sup> *Ibid.*

<sup>59</sup> Washington State Department of Corrections, *Agency Fact Card*, June 2023. This report indicates that 50.5 percent of Washington State prisoners are serving a sentence of ten years or less; the remainder are serving a longer or life sentence.

<sup>60</sup> Austin Jenkins. "Long Sentences, Aging Inmates May Strain Washington's Clemency System." *NW News Network*, July 15, 2014.

<sup>61</sup> See

<https://governor.wa.gov/sites/default/files/202312/Status%20Table%20for%20CPB%20website%20%2812.15.23%29.pdf> The Governor also pardoned a similar number of people. These pardons are typically issued when a person has completed their sentence in order to prevent deportation.

<sup>62</sup> Some of these questions about venue have recently been decided. In 2023, the Court ruled in *In re: Hinton* that a person who received a sentence of 37 years for a crime committed at age 17 is not entitled to PRP relief and re-sentencing at court because RCW 9.94A.730 provides an adequate alternate remedy. Similarly, in *In re: Carrasco* the Court ruled that a child prosecuted as an adult and sentenced to 93 years was not entitled to a re-sentencing hearing because RCW 9.94A.730 affords that defendant an adequate alternative, namely, a parole hearing after 20 years. Unlike some people who have been resentenced and released by courts, those who are released on parole are subject to community supervision for life and may be returned to prison in the absence of new felony convictions.

<sup>63</sup> Under both RCW 10.95.030 and RCW 9.94A.730, petitioners enjoy a presumption of release, which can only be (legally) denied if the Board determines by a preponderance of the evidence that the petitioner is more likely than not to commit new criminal law violations. If a petitioner is denied parole, they are entitled to another hearing in no more than five years.

<sup>64</sup> See *In re: PRP Domingo-Cornelio* No. 97205-2 (2020) and *In re: PRP Ali* No. 95578-6 (2020).

<sup>65</sup> *In re PRP Monschke*, 197 Wn.2d 305, 482 P.3d 276 (consolidated with *in re PRP Bartholemew*) (2021).

<sup>66</sup> These offenses are enumerated in RCW 9.94A.030.

<sup>67</sup> To be eligible, at least twenty-five years must have lapsed since the offense date for people convicted of aggravated murder; for people convicted of other crimes, at least twenty years must have passed. We used offense date to calculate eligibility because arrest date was not known and sentence date often occurred years after the offense. Most people are arrested quickly and given credit for time served in jail while awaiting adjudication.

<sup>68</sup> These interviews were authorized by the University of Washington's Institutional Review Board.

<sup>69</sup> Jordan D. Segall, Robert Weisberg, and Debbie A. Mukamal, *Life in Limbo: An Examination of Parole Release for Prisoners Serving Life Sentences with the Possibility of Parole in California* (Stanford, CA: Stanford Criminal Justice Center, 2011).

<sup>70</sup> See *Lifer Parolee Recidivism Report* (Sacramento, CA: California Dept of Corrections and Rehabilitation Corrections Standards Authority, January 2013), 9.

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<sup>71</sup> These individuals were released via reforms stemming from *Miller v. Alabama*. See Daftary-Kapur, Tarika and Tina M. Zottoli, *Resentencing of Juvenile Lifers: The Philadelphia Experience* (Montclair State University, 2020).

<sup>72</sup> Katherine Beckett, *Ending Mass Incarceration* (New York: Oxford University Press, 2021).

<sup>73</sup> 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), 156.

<sup>74</sup> Mariel Alper, Mathew R. Durose, and Joshua Markman, *2018 Update on Prisoner Recidivism: A 9 Year Follow Up Period* (Washington D.C.: Bureau of Justice Statistics, 2018); Lila Kazemian and Jeremy Travis, “Imperative for Inclusion of Long Termers and Lifers in Research and Policy,” *Criminology and Public Policy*, 14, 355-395.

<sup>75</sup> Mr. Zion Carter is currently in Spokane County Jail facing very serious charges. It is not yet known whether Mr. Zion will be found guilty. According to attorneys who work in the post-conviction realm, however, Mr. Zion’s infraction history is unusually serious and worrisome. While many of the people who enter prison at a young age rack up many infractions in their youth, most of those who spend decades behind bars become less involved in prison and gang culture and more involved in programming and other pro-social activities, and their infraction histories reflect this (see Steve Herbert, *To Easy to Keep: Life Sentenced Prisoners and the Future of Mass Incarceration* (University of California Press, 2019). Enduring and serious infraction histories such Mr. Zion’s may be a sign of untreated mental illness and unprocessed trauma, and should be treated as such.

<sup>76</sup> These three individuals have been returned and released twice, and were in DOC custody as of September 1, 2023.

<sup>77</sup> See L. Knoth, P. Wanner, and L. He, *Washington State recidivism trends: FY 1995– FY 2014* (Document Number 19-03-1901) (Olympia: Washington State Institute for Public Policy, 2019), Exhibit 8.

<sup>78</sup> These accounts are consistent with research showing that as a group, justice-involved people have experienced more adverse childhood events than the general population; many are also survivors of crime and violence. See Katherine Beckett, *Ending Mass Incarceration* (New York: Oxford University Press, 2021).

<sup>79</sup> L. Knoth and D. Fumia, *Postsecondary Program Participation and Completion Patterns Among Individuals Incarcerated in Washington State Prisons* (Document # 21-06-1901) (Olympia: Washington State Institute for Public Policy, 2021). This report shows that from 2009 to 2019, between 10 and 17 percent of Washington state prisoners were enrolled in post-secondary education programs (see Exhibit 8).

<sup>80</sup> Healing for Accountability and Liberation (HEAL) is an 18-month long program, delivered by trained facilitators, intended to reduce stress, promote insight and accountability, improve general well-being, and decrease feelings of aggression among people serving lengthy prison sentences. It was offered by Collective Justice at the Washington State Reformatory in 2018-19. Unfortunately, it has not been allowed by DOC to resume operations since most prison programming ended during the pandemic.

<sup>81</sup> See Vincent Shiraldi, *Mass Supervision: Probation, Parole, and the Illusion of Safety and Freedom* (New York: The New Press, 2023).