Life Without Parole Sentences in Washington State

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Abstract

Although the United States has the largest prison population in the world and one in nine prisoners is serving an official life sentence, little is known about why or how life-long sentences have increased in the United States. Moreover, most estimates of the number of prisoners serving life sentences omit those serving such long sentences that they are unlikely to leave prison alive. Our report seeks to fill these research gaps by identifying the number of official and de facto lifers in Washington State and the legal processes that lead to life sentences. The report also estimates the costs associated with life-long sentences, and considers whether Washington should reinstate a parole program and what that program might look like. To conduct our research, we analyzed Washington State sentencing data and held interviews with policy experts and parole board administrators across the nation. Our findings include a count and demographic profile of the Washington State population serving de facto and official life without parole sentences, identification of legislation that contributed to the growth of the lifer population, and cost estimations for the imprisonment of this population. In conclusion, we argue that reinstating a well-structured, active review board coupled with a renewed commitment to rehabilitation will best serve the public interest of Washington State.

Key Words

Life sentences, LWOP (life without parole), parole, parole board, prison, prisoners, sentencing reform, Sentencing Reform Act, rehabilitation, Washington State

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I. INTRODUCTION

Although only 5% of the world's population resides in the United States, nearly one-fourth (22%) of the world's prisoners do.[i, ii] Of those incarcerated in U.S. prisons, one in nine prisoners is serving an official life sentence.[iii] This statistic does not include prisoners who have been given other extremely long sentences and are likely to die in prison despite not having received an official life without parole (LWOP) sentence. The widespread imposition of life without parole sentences in the contemporary United States sets it apart from other industrialized countries,[iv] many of which consider such sentences to be in tension with important human rights principles.

Life without parole sentences, including "de facto" life sentences, raise important questions about human rights, fairness, proportionality, and public safety. In this report, we describe the Washington State LWOP population, identify the legal processes that explain the growth of this population, and consider the human and financial costs associated with life without parole sentences. Unlike other recent reports that highlight the growth of the lifer population in the United States, this report identifies and enumerates prisoners serving de facto life sentences as well as official life sentences. Doing so shows that Washington State's LWOP population is larger than previously recognized. The findings also indicate that several important legal developments have contributed to the expansion of LWOPs in Washington State. These include the elimination of Washington's parole board, initiated by the passage of the Sentencing Reform Act (SRA) in 1984 and the adoption of other sentencing reforms that enhance sentencing

severity. Together, these legal developments have created a significant population of prisoners that will never have the opportunity to have their status reviewed or to reintegrate into society.

In addition to providing an up-to-date count and demographic profile of all prisoners serving official and de facto LWOP sentences, this report describes the fiscal, social, and human costs associated with the increase in life sentences. We also recommend the adoption of a new and innovative review process that may pave the way for the return of a formalized parole board. Specifically, we recommend the creation of a Possible Release Evaluation Process (PREP) that would encompass both pre- and post-release rehabilitative services and provide for evaluation of prisoners by a review board. With this recommendation, we hope to usher in the beginning of a formal departure from the determinant sentencing structure mandated in the Sentencing Reform Act. We also recommend repeal of several sentencing statutes that have contributed to the dramatic growth of the LWOP population in Washington State.

This report is divided into four sections. In the remainder of the introduction, we review the history of parole in Washington State, describe our research questions, and provide a summary of key findings. In Part II, we describe our data and methods. Part III presents our findings regarding Washington's LWOP population, the persistence of sentencing disparities under the SRA, and the fiscal costs of LWOP sentences. In Part IV, we present our policy recommendations.

IA. THE HISTORY OF PAROLE IN WASHINGTON STATE

Washington State first established an official parole board on June 15, 1935.[v] The board operated in the context of an indeterminate sentencing framework and evaluated whether prisoners were ready to be released from prison. Its goals were to ensure public safety, promote consistent sentencing practices, and guide prisoners back into society.[vi] The board consisted of five members appointed by the governor.[vii] First, a judge set a maximum sentencing term for the prisoner according to a state legislative sentencing grid. The board then set a minimum sentence that determined when the prisoner could be considered for parole.[viii] The board heard cases involving a variety of charges and held many reviews. For example, the board held a total of 5,000 hearings in 1980 alone, each of which lasted an average of 30 minutes.[ix] Prisoners with long sentences were entitled to review after 20 years minus one third of their sentence if they qualified for good time,[1] or 13 years and 4 months.[x]

The 1984 SRA largely eliminated parole in Washington State,[xi] mainly as result of research that had suggested rehabilitation-based sentencing failed to reduce crime rates and increase public safety.[xi] The legislature and community also had concerns regarding the parole board's discretion and possibly arbitrary practices.[xii] State prosecutors and others expressed frustration with parole board leniency and inconsistencies in sentencing outcomes.[xiii]

These frustrations, along with emerging research indicating that rehabilitation programs were ineffective,[xii] eventually led to heated public debates about sentencing policies.[xi] In 1976, to

[1] Under Washington State law, "The earned early release time shall be for good behavior and good performance as determined by the correctional agency having jurisdiction" (RCW 9.92.151).

address the board's perceived arbitrariness, the legislature attempted to create a uniform guideline matrix for parole board members to use in sentencing decisions.[xi] The board supported the distribution of these matrices. However, follow-up research indicated that the board failed to implement these guidelines. Several attempts throughout the next five years were made to restructure parole board guidelines in order to make the board's decisions more uniform, but these were also unsuccessful, and resulted in the board following these standards only 63% of the time.[xi] Inconsistent sentencing practices, research suggesting the ineffectiveness of rehabilitation programs, and the subjectivity of Washington's parole board all led to bipartisan support for sentencing reform. Ultimately, Washington State eliminated its parole board and certain aspects of judicial discretion.[xv] With the subsequent adoption of the Sentencing Reform Act, the State shifted away from a rehabilitation-based system and instead attempted to create a uniform determinate sentencing structure that prescribed punishments proportionate to the severity of the crime. In so doing, it de-emphasized rehabilitation and terminated the system of sentence review for defendants sentenced after July 1984, thereby eliminating the possibility of review for most prisoners, including those sentenced to life in prison.

IB. RESEARCH QUESTIONS

The primary purpose of this report is to describe the population of prisoners serving life without parole sentences in Washington State and to identify the legal processes that have contributed to the growth of this population. Our research questions are as follows:

- How many people are serving official and de facto life sentences in Washington, and what are the characteristics of this population?
- What legal processes lead to official and de facto official and de facto life without parole sentences in Washington State?
- What is the cost of life without parole for Washington State taxpayers?
- Should Washington State reinstate a parole system, and if so, what should this program look like?

A recent Sentencing Project report found that one in nine prisoners in the United States, and one in six Washington State prisoners, is serving a life sentence.[iii] As previously noted, these figures do not include individuals serving de facto life sentences, i.e., sentences that are so long that prisoners are not expected to leave prison alive. Despite the dramatic growth of the lifer population, the legal processes by which persons receive life sentences have garnered comparatively little attention from researchers. Examining the legal processes related to life sentencing is central to understanding and analyzing the LWOP population in Washington State. Although additional research is needed, the findings presented here clearly indicate that mandatory sentencing laws adopted after 1984 have contributed to the recent rise in the number of prisoners serving life sentences. In particular, both the Persistent Offender Accountability Act (commonly referred to as the "three strikes" law) and the Hard Time for Armed Crime Act of 1995 have significantly contributed to the growth of the Washington State LWOP population.

Part III of this report assesses how these laws have contributed to the lifer population, and in particular, persons serving LWOP sentences. Our analyses consider how the number of people

sentenced to life due to these enactments has changed as well as how the existence of these laws has altered plea bargaining practices and impacted the nature of the "trial penalty" for those who elect to exercise their right to a jury trial. We also explore the fiscal costs of life without parole sentences in Washington State and consider whether the goals of the Sentencing Reform Act of 1984 (SRA) have been met.

Finally Part IV of this report identifies a feasible and effective means for the state to reform existing sentencing practices. We focus on conceptualizing a new parole system for Washington State that includes pre-and post- release programs and creates an incentive for prisoners to participate in rehabilitative programming. We conclude by demonstrating that the financial and social burdens associated with life without parole sentences, and recommend that rehabilitation and review should be systematically reintegrated into the sentencing policy framework in Washington State.

IC. SUMMARY OF KEY FINDINGS

- Nearly one in five (19.3%) Washington State inmates are currently serving a life sentence. There are currently at least 1,383 individuals serving an official or de facto life without parole sentence in Washington State. Of these, 704 are serving an official LWOP, and 679 are serving a de facto LWOP. The LWOP population represents 8% of the Washington State prison population as of 2013.[2] An additional 1,981 (11.3%) of Washington's prisoners were serving a life with parole sentence in 2013.

- Half (50%) of those serving official life without parole sentences in Washington State were sentenced under the Persistent Offender Accountability Act (three strikes) law.

- While felony defendants went to trial in only 5.3% of Washington State Superior Court cases sentenced between July 1985 and June 2013, defendants in two-thirds (67.4%) of all cases that resulted in an LWOP sentence during this period went to trial.

- There are 128 individuals currently serving de facto life without parole sentences solely due to weapons enhancements. These individuals account for nearly 20% of the de facto LWOP population.

- The average life without parole sentence costs taxpayers $2,457,264 per prisoner (in 2014 dollars). Prior to the SRA, when lifers were reviewed and often released, the average life sentence cost taxpayers $767,895 per prisoner (in 2014 dollars).

- Our research indicates the importance of having a review process and a system of rehabilitation and release programs in order to balance public safety concerns against the human and fiscal costs associated with life-long sentences in Washington State.

II. DATA AND METHODS

IIA. Sentencing Data and Analysis

Our analysis of sentencing trends is based on an analysis of Washington State Superior Court sentencing data provided to Dr. Katherine Beckett by the Washington State Caseload Forecast Council. These data include information about all felony cases sentenced in Washington State

from July 1985 to June 2013. During this period, 621,653 cases were sentenced.[3] We analyze these data to explicate trends in sentencing practices and outcomes. In these analyses, cases (rather than people) are the unit of analysis,[4] with one exception. In order to identify the number of inmates currently serving an LWOP sentence in Washington State, we used the court data to identify all cases resulting in a de facto or LWOP sentence since July 1985, then used DOC rosters to identify people sentenced to an LWOP prior to July 1985 and those sentenced to an LWOP who are no longer in custody because they since died in custody. We also removed prisoners who had been released as a result of clemency, commutation or a pardon. By combining court data, DOC and executive records in this manner, we were able to identify the number of prisoners currently serving LWOP in Washington State.

In order to identify prisoners serving de facto LWOPs, we used the U.S. Sentencing Commission standard of 470 months (approximately 39 years) or more to be an LWOP sentence where parole does not exist. The U.S. Sentencing Commission adopted this measure as it is "consistent with the average life expectancy of federal criminal offenders given the average age of federal offenders." [xvii] These sentences will be referred to as de facto life without parole sentences, or de facto LWOPs. We will collectively refer to official and de facto life sentences as all LWOPs (see Table 1).

[3] Fifty-eight cases were removed from our analyses due to missing information.

[4] It is possible for a single individual to be represented more than once within our 621,653 felony cases, as our unit of analysis is instances of sentencing. For example, if a person was sentenced to a felony conviction twice within the years analyzed, they would be represented twice. However, because an individual can only be sentenced to life without parole once, we consider our All LWOP cases to equate to our lifer population from July 1985 to June 2013.

Table 1. Life without Parole Sentence Terminology	
Term	**Definition**
LWOP	A life sentence without the possibility of parole
Official LWOP	Court ordered life without the possibility of parole sentences
De Facto LWOP	Sentences of 470 months or longer (approximately 39 years)
All LWOP	Official and de facto life sentences combined

Because this research specifically concerns those who have been given de facto and official LWOP sentences, we have excluded an additional 23 prisoners who were sentenced to the death penalty. While we understand the importance of acknowledging this population of prisoners, this report focuses on prisoners who have been given LWOP sentences and the processes by which they have received such sentences. We also exclude life sentences with the possibility of release, although note that this population has also increased sharply.

Since the adoption of the Sentencing Reform Act in 1984, two groups of prisoners have life with the possibility of parole sentences. First, prisoners sentenced prior to the implementation of the SRA in 1984 remain eligible to come before the Indeterminate Sentencing Review Board. In addition, legislation adopted in 2001 extended the maximum sentence for certain sex offenses to life and required that the ISRB review these cases and determine whether and when to release affected prisoners.[xviii] These two groups – prisoners sentenced prior to 1984 and certain sex offenders – thus have the chance to be reviewed and considered for release by the Indeterminate Sentencing Review Board. While it is important to acknowledge these life sentences, most

people who receive an indeterminate life sentence have been or will be released. Because the primary focus of this report is to evaluate the impact of the absence of parole in Washington State, we focus mainly on LWOP rather than life with parole sentences.

IIB. Fiscal Cost Analysis: Data and Methods

In this report we calculate the cost of the average LWOP sentence in Washington State, recognizing that elderly prisoners are more expensive to incarcerate than their younger counterparts. To do this, we combine the cost of incarcerating a non-elderly prisoner with the cost of incarcerating an elderly prisoner. Our calculations are based on the following empirical findings.

The average age of incarceration is 25. The average prisoner dies behind bars at age 64.[xx] The average time served by people serving LWOPs is thus 39 years. Due to the increased healthcare and staffing costs associated with aging prisoners, a prisoner is considered elderly at age 55.[xx] Using Washington State DOC data, the VERA Institute has identified the average annual cost of incarcerating a non-elderly prisoner. In our analyses this figure is converted to 2014 dollars to account for inflation.

The average cost of incarceration doubles or triples when prisoners reach their elderly years.[5, x, xi, xxii] For the purposes of this report, we chose the conservative estimate that the annual cost of incarcerating the elderly is double that of incarcerating the non-elderly. Based on these empirical

[5] Notably, this is a conservative estimate. Other sources find elderly prisoners actually cost three times as much to incarcerate. See Lee, M., & Colgan, B. (2011). Washington's three strikes law: Public safety and cost implications of life without parole. In Columbia Legal Services. Using these metrics, the cost of an "elderly" year in prison in 2014 dollars would be $153,579.

findings, we are able to estimate the total cost of an average LWOP sentence in Washington State.

IIC. Qualitative Research on Parole Boards

We interviewed both administrators and officials involved with parole programs in a variety of states to gain a comprehensive understanding of how states structure their parole boards and processes. These interviewees are identified in Appendix A. In addition, although we did not conduct formal interviews with prisoners serving LWOPs, each of us attended meetings of the Concerned Lifers Organization at the Washington State Reformatory to gain a better understanding of their concerns about LWOP sentences. Our recommendations for PREP draw from these interviews and discussions, as well as from our comprehensive review of existing parole boards, clemency hearings and parole equivalents in states that have retained these structures.

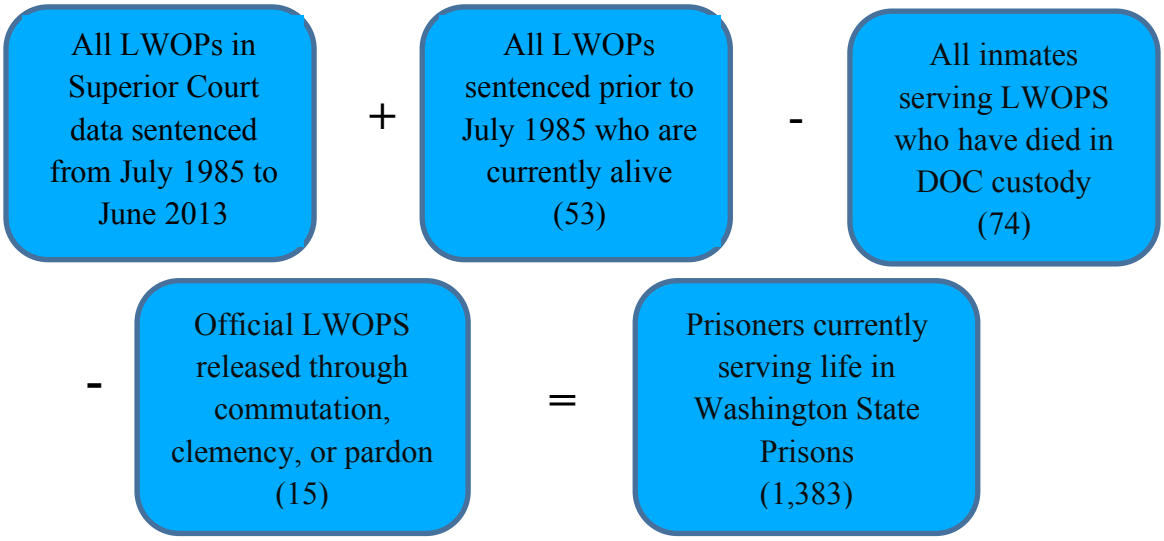
III. FINDINGS

IIIA. Washington's LWOP Population

Below, we describe the Washington State lifer population and identify the legal processes that contributed to the expansion of this population from July 1985 to June 2013. To determine how many people are currently serving and LWOP sentence, we combined the total of all LWOP cases identified in the court data and added those sentenced to life prior to July 1985. We then

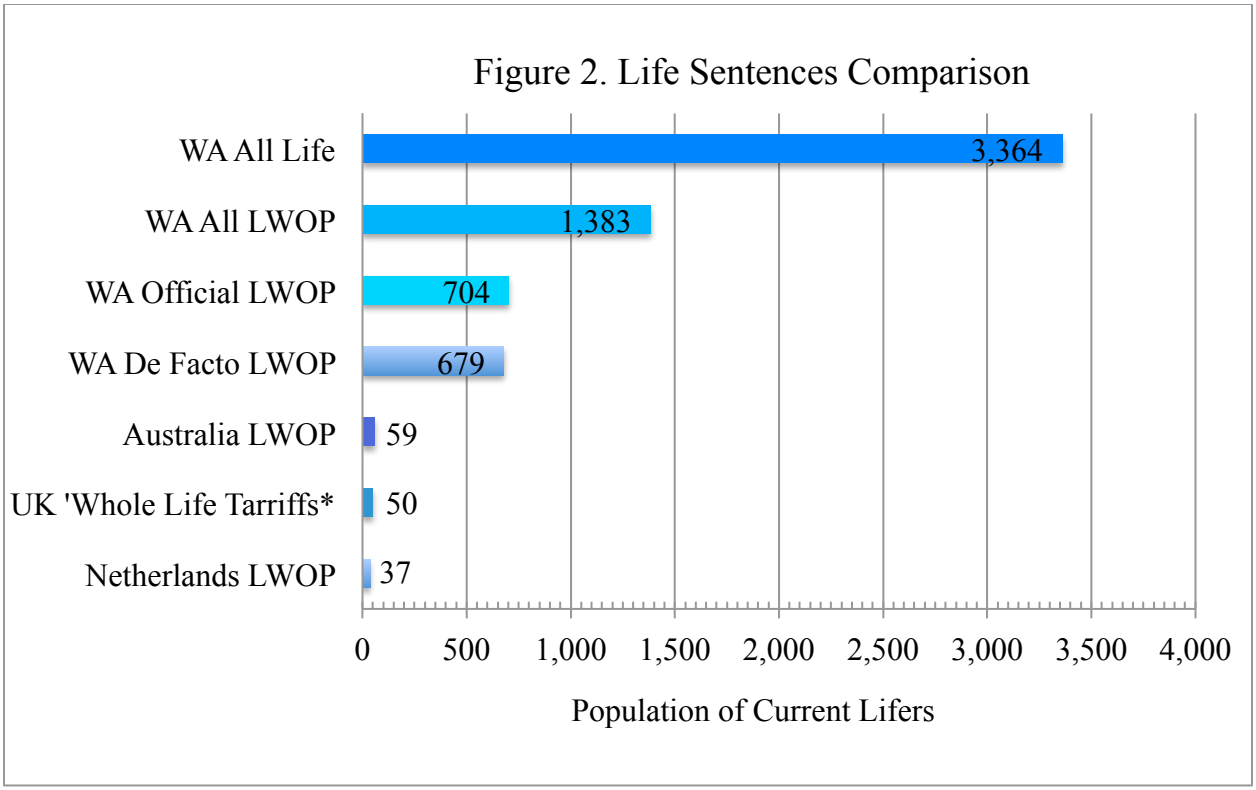
subtracted individuals who died in custody or were released through commutation, clemency, or pardon[6] (see Figure 1).

Figure 1. Enumerating the LWOP Population



In order to contextualize Washington State's use of LWOP, Figure 2 provides a comparison of the current Washington State population and the LWOP equivalent in democratic, industrialized nations often seen as comparable to the United States. The graph below shows the LWOP populations in Washington State, the United Kingdom, Australia, and the Netherlands. These statistics are even more striking considering that the population of Washington State is 7.1 million, while the populations of the United Kingdom, Australia, and the Netherlands are 64.1 million, 23.1 million, and 16.8 million, respectively.

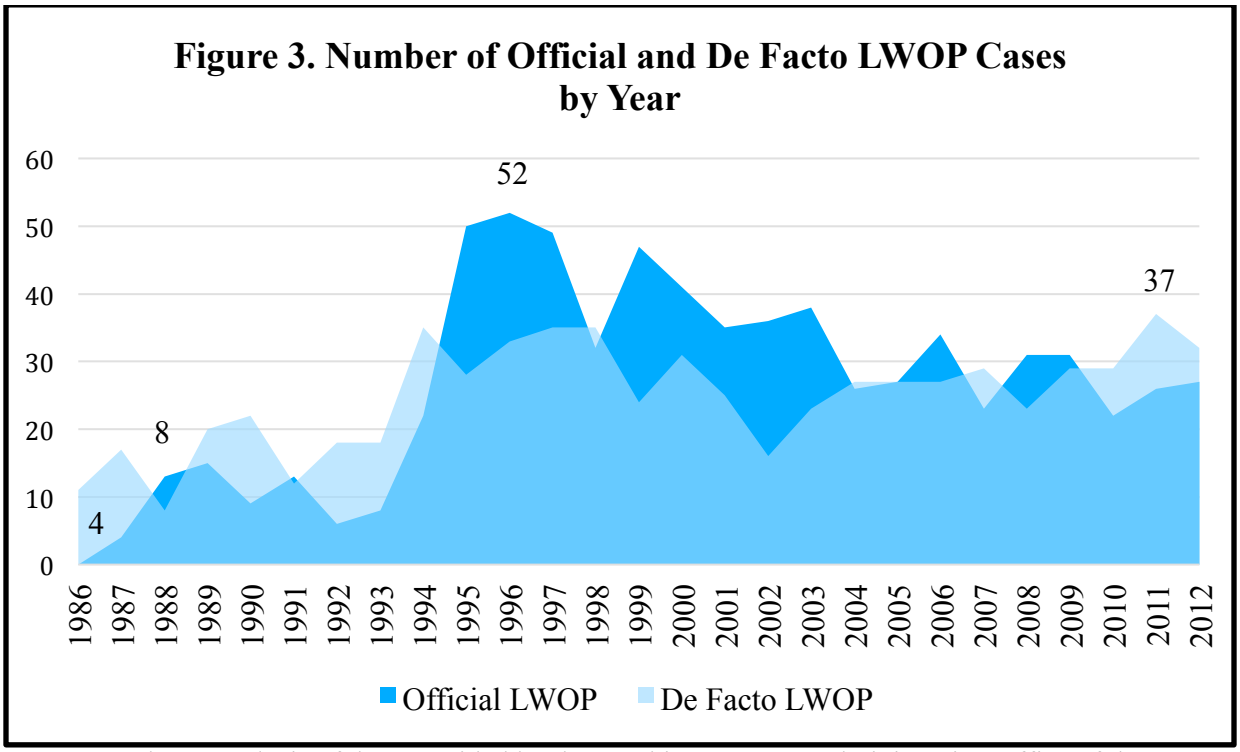
[6] We have not considered the possibilities of good time/earned release credits for the de facto LWOP population in these analyses.



Source: Authors' analysis of data provided by Washington State Administrative Office of the Courts; DOC Current Alpha Roster as of January 30, 2015.
Notes: Figures for the all life category are taken from the Sentencing Project and are from 2012. This is a conservative estimate because some people sentenced to life prior to July 1984 are in fact serving LWOPs, and because people sentenced since 2013 are not included. Also, the DOC alpha roster identifying persons currently serving LWOPs in Washington State appears to be incomplete.
*Information available only for jurisdictions within England and Wales. Source: De la Vega, C., Solter, A., Kwon, S., Isaac, D. M. (May 2012). *Cruel and Unusual: US Sentencing Practices in a Global Context*; United Kingdom Ministry of Justice. (January 2015). *Statistical Bulletin*.

A total of 1,419 LWOP sentences were imposed from July 1985 to June 2013. All further analyses are based upon the sentencing data. Among these cases, 731 prisoners received official LWOP, and another 688 received a de facto life sentence. De facto lifers thus comprise nearly half of the LWOP population in Washington State. Figure 3 illustrates the number official and de facto LWOP sentences by year of sentence. Official LWOP cases peak in 1996 when 52

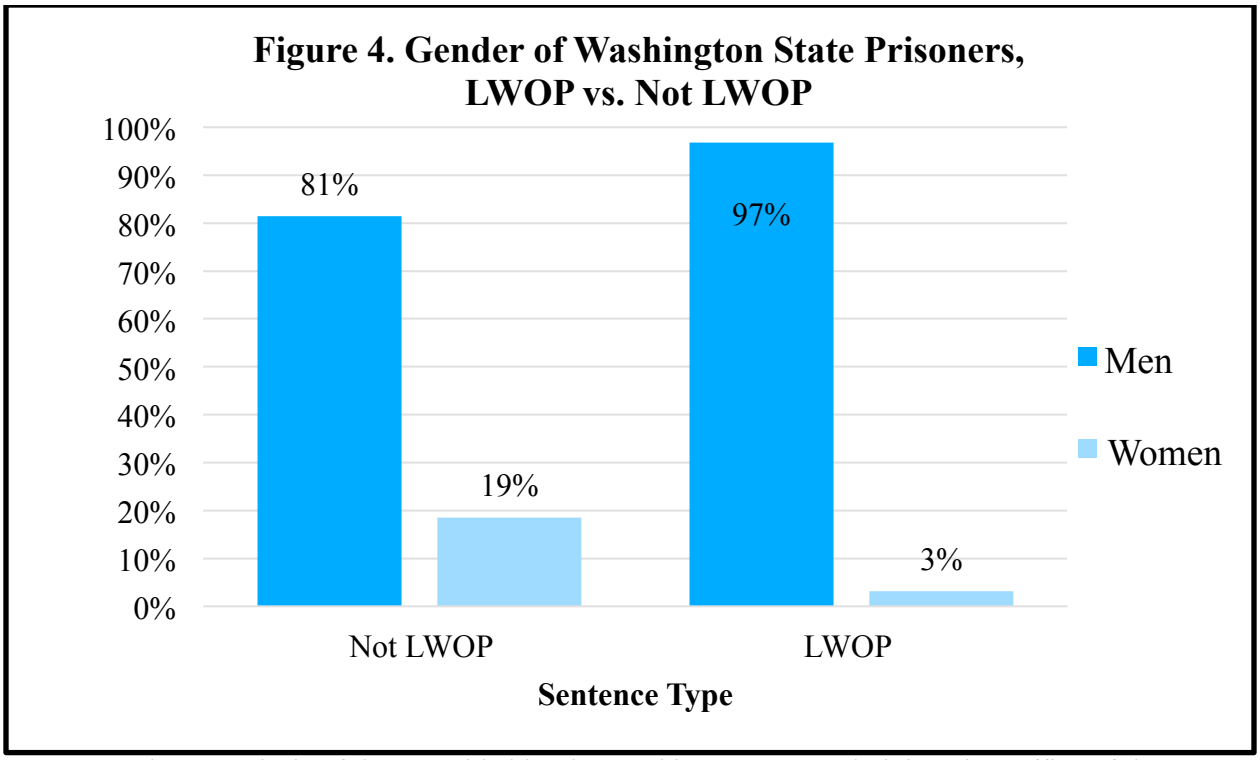
individuals were sentenced to life. De facto LWOP cases were highest in 2011 with 37 individuals sentenced to 39 years or more in state prison.



Source: Authors' analysis of data provided by the Washington State Administrative Office of the Courts
Note: 1985 and 2013 were excluded from this graph because there is only partial data available for these years.

Demographics of the LWOP Population

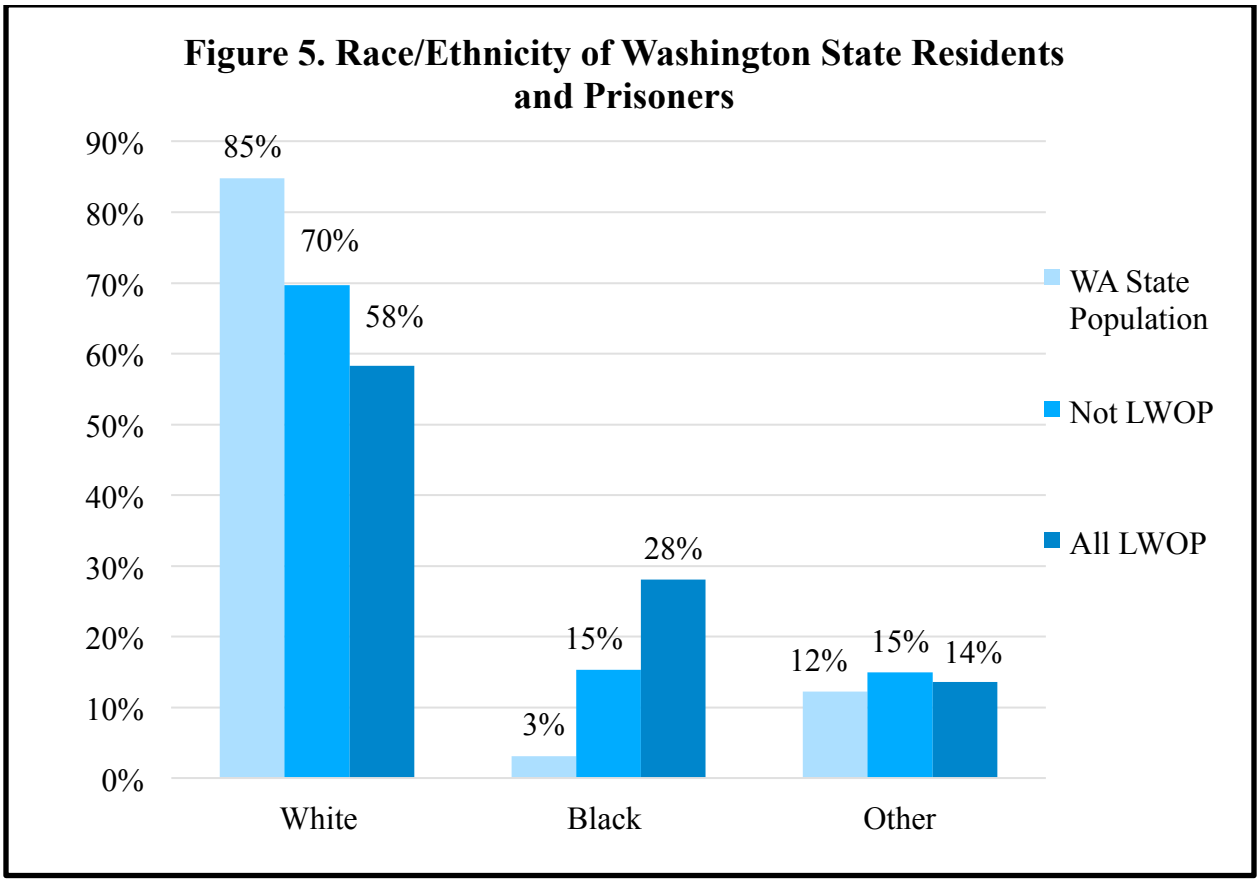
The Washington State LWOP population is primarily male and disproportionately black. Overall, 81% of felony cases involve male defendants. Men comprise an even higher percentage of the population serving LWOP sentences: nearly 97% of those serving official and de facto life without parole sentences are male (see Figure 4). This is likely the case because life without parole sentences are generally imposed for violent crimes.



Source: Author's analysis of data provided by the Washington State Administrative Office of the Courts,
Note: 'Not LWOP' denotes prisoners with sentences less than 39 years.

Relative to the general population, black individuals are overrepresented among those sentenced to prison. Black men are even more disproportionately represented among those serving LWOP sentences in Washington State. According to Washington State census data, approximately 4% of the general state population identifies as black or African American, while 15% of felony cases involve black defendants. An even greater share - 28% - of defendants serving LWOPs in Washington State are black (see Figure 5). By contrast, white individuals are notably

underrepresented in Washington State prisons and among lifers specifically: approximately 85% of the state population is white, but 58% of all LWOP cases involved white defendants.[7]



Source: Authors' analysis of data provided by the Washington State Administrative Office of the Courts and United States Census Data from 1980, 1990, 2000, 2010
Note: 'Not LWOP' denotes prisoners with sentences less than 39 years.

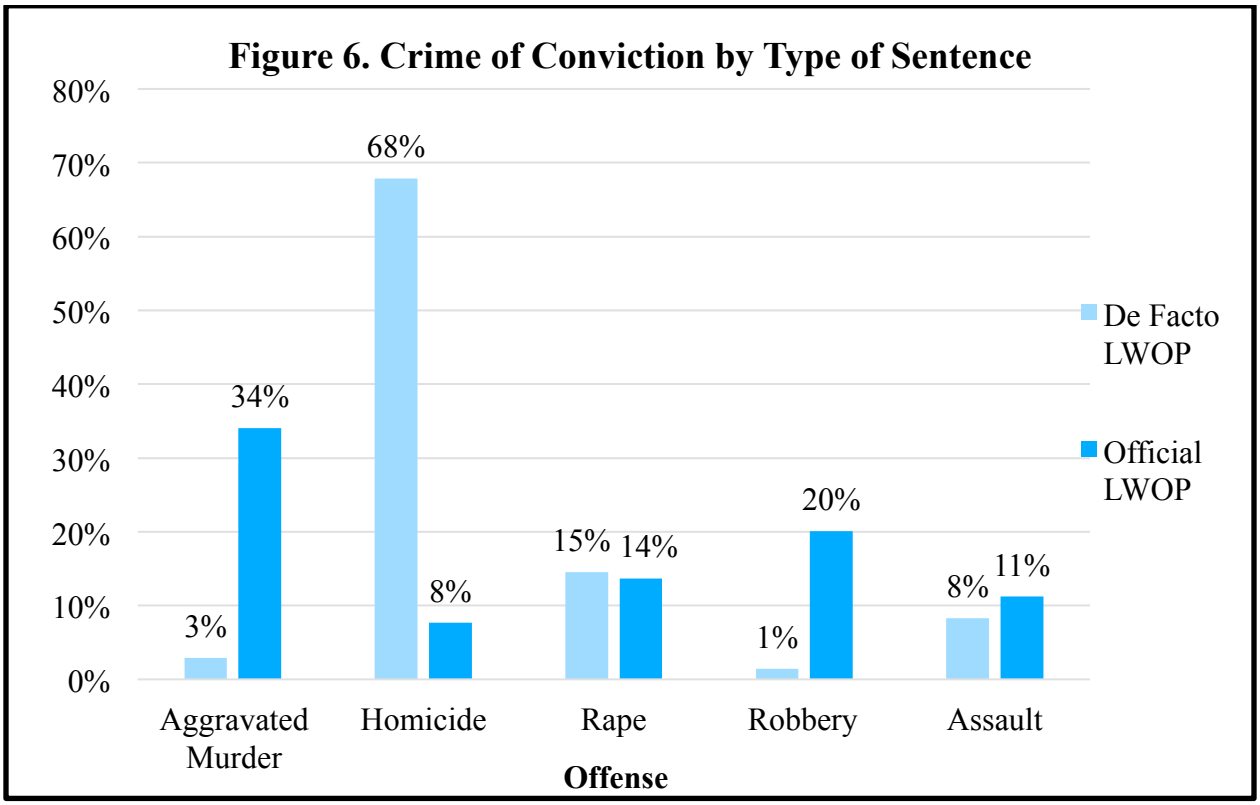
Individuals sentenced to LWOP during the period under investigation ranged from 15 years to 73 years old at the time of sentencing. Seventy-one individuals were sentenced to life without parole as minors. Most LWOP defendants were sentenced between the ages of 31 and 38, although the

[7] These are average proportions across the time period spanning 1980—2010. Washington State has had a relatively stable black population with 2.6% as the lowest percentage, 3.6% as the highest, and the average as 3.13%. For the white population, the lowest percentage was 77.3% and the highest was 91.5%, with an average of 84.8%.

average age at sentencing for other felony cases is between 19 and 24. This pattern likely reflects the fact that individuals with prior convictions are more likely to receive a life sentence under current sentencing policies.

Crime of Conviction

Over half (61.5%) of all LWOP sentences were imposed in cases involving some type of homicide. However, a substantial percentage (39%) of prisoners serving life were sentenced for non-homicide offenses. One in five (20%) of those serving an official LWOP committed robbery. About one in ten (11%) were convicted of some type of assault (see Figure 6).



Source: Authors' analysis of data provided by the Washington State Administrative Office of the Courts

Legal Processes Contributing to the LWOP Population

The Washington Sentencing Reform Act (SRA) is the most important piece of sentencing legislation regarding lifers because it eliminated Washington State's parole system for defendants sentenced after its implementation. A 2000 report by the State of Washington Sentencing Guidelines Commission reiterated the original purpose of the SRA:

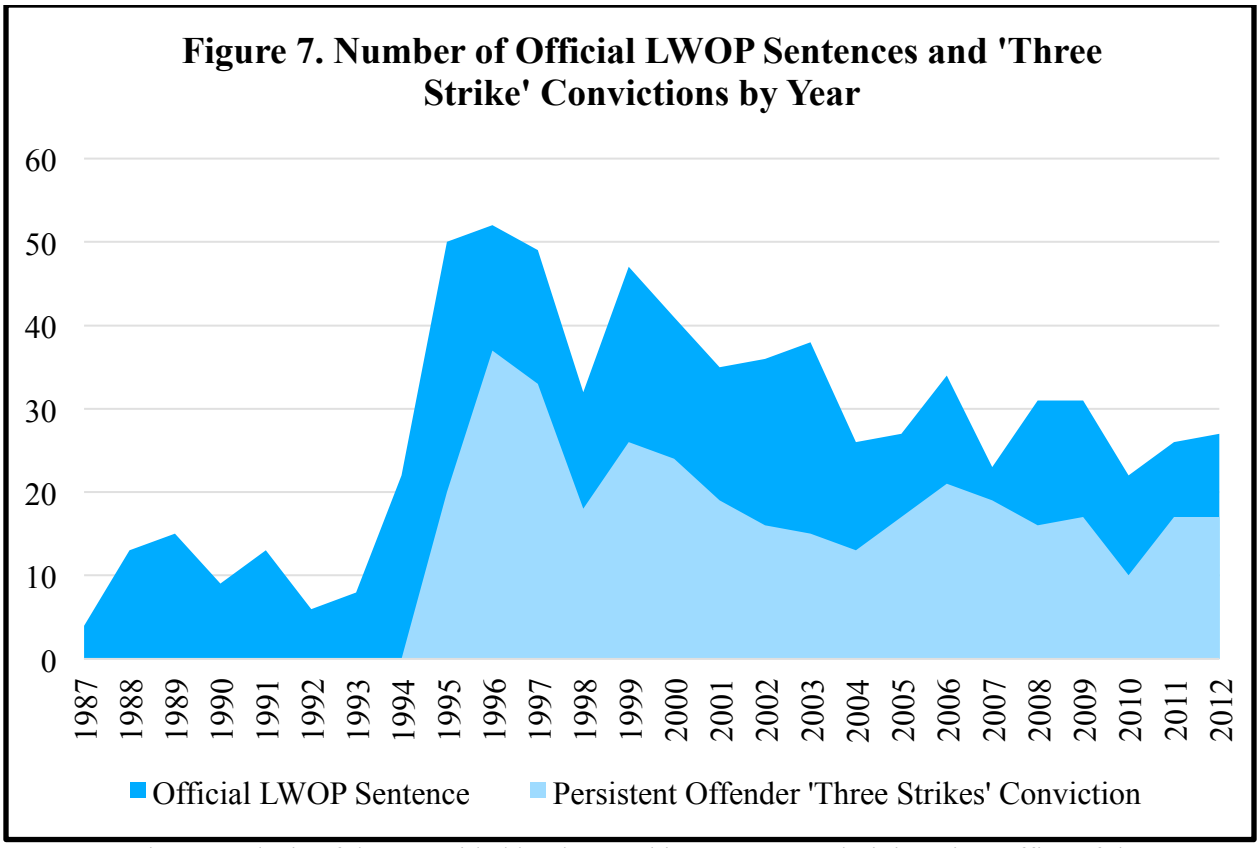
> *When enacting the Sentencing Reform Act in 1981, the state legislature's intent was clear that the paramount purpose of the Act is for punishment. The original purpose of sentencing reform was to shift the emphasis from rehabilitation to proportionality, equality and justice. Rehabilitative treatment and its promise was supposed to be trumped by the primacy of proportionality.*[xxiv]

Since its adoption, the state legislature has frequently amended the SRA. Sentences are now far longer than they were when the SRA was enacted in 1984.[xi] While the shift from indeterminate to determinate sentencing guidelines reduced judicial discretion in sentencing and removed the opportunity to come before a parole board for most defendants, other legislation catalyzed three decades of increasingly harsh sentences in Washington State.

The Persistent Offender Accountability Act (POAA) of 1993[xxv] is one of the most important of the legislative changes that fueled the rise of LWOPs. This "three strikes" law mandates a life without parole sentence for any individual convicted of a third "most serious offense." "Most serious offenses" include all Class A felonies as well as other specific felonies, such as first and second degree assault, first and second degree robbery, and burglary.[xxiii] Those convicted of a

"third strike" offense are sentenced to life without parole and have neither the chance of release (other than through the clemency process) nor the opportunity to appear in front of a parole board.

Nationally, the POAA was the first legislation of its kind, and its enactment it has significantly increased Washington's population of prisoners serving official life without parole sentences.[xxvi] Of the 731 official life without parole sentences, half are "three strikers" who received their LWOP sentences through this legislation. The first POAA cases appeared in 1995, and the numbers quickly skyrocketed (see Figure 7). In 1996, for example, 37 of the 52 individuals who were sentenced to life without parole were sentenced under the POAA. Of the 365 "three strikes" cases, 36%, over one-third, stem from robbery offenses. These cases show that the POAA has become one of the primary contributors to the expanding LWOP population in Washington State.



Source: Authors' analysis of data provided by the Washington State Administrative Office of the Courts

In addition, legislation mandating the addition of weapons enhancements to certain felony sentences is a leading contributor to the de facto LWOP population. Weapons enhancements require additional time beyond the standard sentence range for cases in which the defendant or an accomplice was armed with a firearm.[xxvii] In 1993, the most severe weapons enhancement was an additional 24 months for first degree rape, first degree robbery, and first degree kidnapping.[xxviii]

However, in 1994, the scope of weapons enhancements widened with the adoption of Referendum 43, which added a 12-month enhancement for murder, manslaughter, arson, and

first degree assault. In the wake of several deadly attacks on police officers in 1994, the significance of weapons enhancements increased, when Washington State voters enacted the Hard Time for Armed Crime Act (HTACA), which provided mandatory sentence enhancements for crimes involving firearms. These enhancements apply to nearly all felonies and are based upon the statutory severity of the felony. Class C (least severe) felonies can be enhanced by either six or eighteen months per enhancement. Class A (most severe) felonies can be enhanced by two to five years per enhancement.[xxvii] Any added time must be served consecutively. The HTACA removed judicial discretion to reduce or alter an enhancement, even in exceptional circumstances. In practice, this means that prosecutors can use weapons enhancements as a tool to encourage plea bargaining. However, if a plea bargain is rejected, weapons enhancements added to the charges can substantially lengthen a defendant's prison term.

Our analyses show that weapons enhancements have contributed markedly to the growth of the de facto LWOP population. Although prisoners in only 1.5% of felony cases received weapons enhancements, 40% of all LWOP sentences and 61% of de facto LWOP sentences include weapons enhancements.[8] Nearly 20% of the de facto LWOP population (128 people) would not be serving 470 months or longer if they had not been charged with weapons enhancements. Of these individuals, 47 did not commit homicide. Even more striking is that there are 18 individuals in Washington serving 39 years - a de facto life sentence - due to weapons enhancements alone. Despite the stipulations within the HTACA that mandate a specific number of months for weapons enhancements, added time because of these enhancements ranges widely,

[8] These statistics exclude cases sentenced prior to 1995, as this was the year Hard Time for Armed Crime passed. Of cases sentenced after 1995, 2.3% of the data regarding weapons enhancements is missing.

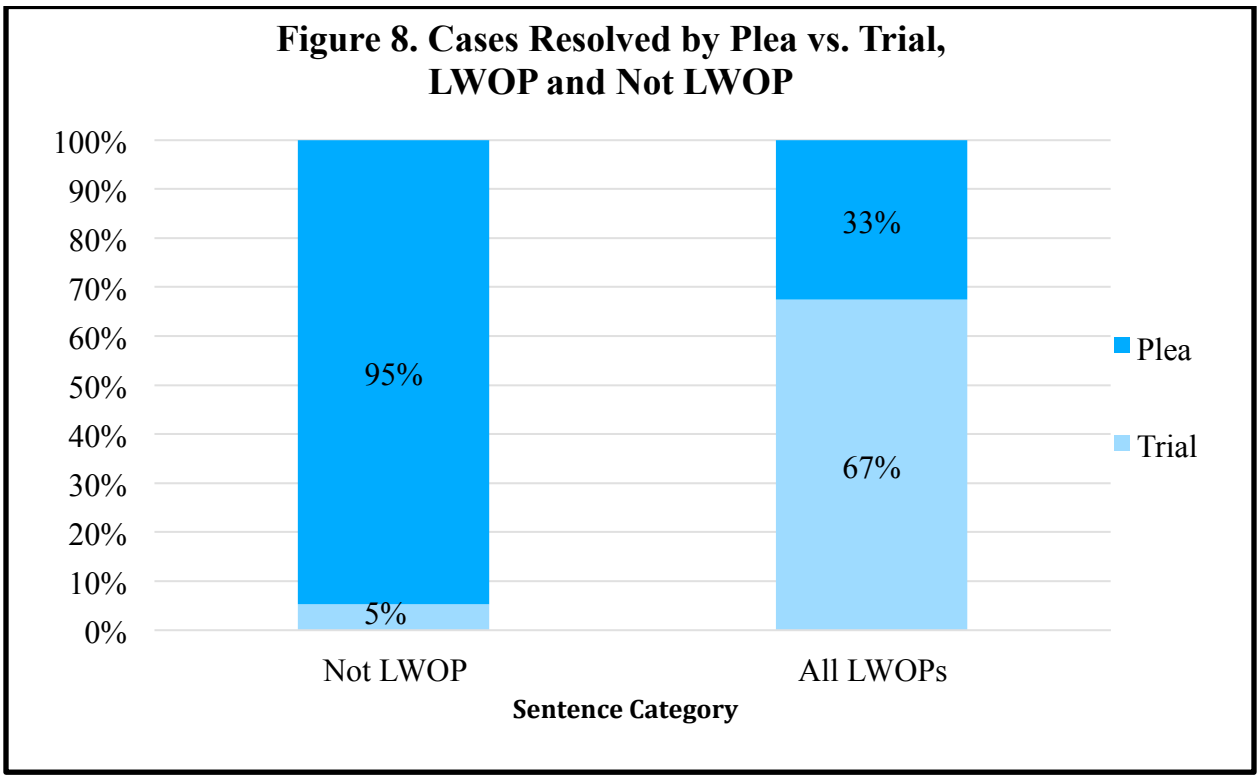
from 1 month to 1,260 months, or 105 years. Weapons enhancements have thus substantially influenced the expansion of the LWOP population in Washington State.

IIIB. Is There Uniformity Under the SRA?

The Sentencing Reform Act imposed sentencing guidelines intended to "reduce disparities among prisoners who are sentenced for similar crimes and have similar criminal histories." [xxix] Although this provision of the SRA did not explicitly seek to eliminate disparities between sentences imposed after trial and those settled by a plea bargain, our findings indicate that defendants convicted of the same crime with the same offender score can and do receive quite different sentences depending upon whether the case went to trial.[9] However, we also find that significant variation in sentencing outcomes persists even among similar cases with modes of adjudication. Finally, the findings presented in this section show that for some offenses, the sentences imposed via plea bargain have also increased over time.

Our exploration of a possible "trial penalty" is motivated by our finding that two-thirds of all people sentenced to LWOP since 1985 went to trial. Figure 8 presents the number of LWOP cases that went to trial or took a plea bargain by type of sentence. Only 5% of cases that did not result in an LWOP went to trial. By contrast, two-thirds, or 67%, of all LWOP cases went to trial. This suggests that there is a correlation between LWOP sentences and the trial process, and raises the possibility that people who take their case to trial are being penalized for doing so.

[9] The offender score is one factor that affects felony sentencing. An offender may receive from 0 to 9+ points on the offender score axis of the sentencing grid. In general, the offender score reflects prior felony criminal convictions. For more information regarding offender scores see Washington State Code RCW 9.94A.525.



Source: Authors' analysis of data provided by the Washington State Administrative Office of the Courts
Note: 'Not LWOP' denotes prisoners with sentences less than 39 years.

Disparities in Sentencing Outcomes

Below, we compare the average sentence imposed in LWOP cases that were adjudicated via jury trial with cases involving identical charges and offender scores adjudicated via plea bargain. We focus on three types of felony convictions that are common among the LWOP population and for which sufficient data were available: first degree homicide, first degree assault, and second degree robbery. The results of this analysis indicate that the SRA has not achieved uniformity in sentencing outcomes (see Table 2). That is, individuals with the same offender score who were

convicted of the same crime and chose to exercise their right to a trial received substantially longer sentences than similarly situated defendants who accepted a plea bargain. This gap is comparatively small for the more serious offense (homicide) but relatively large for less serious offenses. In the case of homicide, individuals who went to trial for first degree homicide and who had an offender score of zero were sentenced to an average of 309 months. However, individuals who accepted a plea bargain with the exact same offender score and were convicted of the exact same charge were sentenced to an average of only 282 months. Individuals with no prior convictions and who opted to go to trial for homicide thus received sentences that were 9.6% longer than their counterparts who chose to accept a plea deal.

The gap between sentences in cases involving plea bargains versus trials is greater in cases involving less serious offense. For example, individuals convicted of first degree assault with an offender score of zero who chose to accept a plea bargain were sentenced to an average of 53 months in prison. By contrast, those in the same circumstances who opted to go to trial were sentenced to an average of 77 months – a 45.3% longer sentence than those individuals who accepted plea bargains. Among individuals convicted of first degree assault with an offender score of two, those who chose to accept a plea bargain were sentenced to an average of 80 months, while those who went to trial received an average of 135 months. Again, the individuals who chose to exercise their Sixth Amendment right to a trial received a longer sentence than their identical counterparts who chose to accept a plea bargain (see Table 2).

Table 2. Average Sentence Length by Offense and Offender Score				
		Average Sentence Length in Months		
Crime	**Offender Score**	**Trial**	**Plea**	**Trial Penalty Mean**
First degree homicide n=811	0	309	282	9.6%
	2	350	333	5.1%
	4	371	362	2.5%
First degree assault n =1,754	0	77	53	45.3%
	2	135	80	68.8%
	4	148	101*	46.5%*
Second degree robbery n = 35,068	0	2*	2*	0.0%*
	2	8	6	33.3%
	4	14*	13*	7.7%*

Source: Authors' analysis of data provided by the Washington State Administrative Office of the Courts
Note: Cases were only these particular offenses were charged were included (i.e. the offense listed was the only charge sentenced in that case). Any months added for weapons enhancements were excluded from these averages.
*Indicates that LWOP cases were removed from these categories in order to more accurately reflect the range and average. However, 3 individuals with an offender score of 0 were sentenced to life for committing second degree robbery; 4 individuals with an offender score of 4 were sentenced to life for committing second degree robbery; and 1 individual with an offender score of 4 was sentenced to life for committing first degree assault.

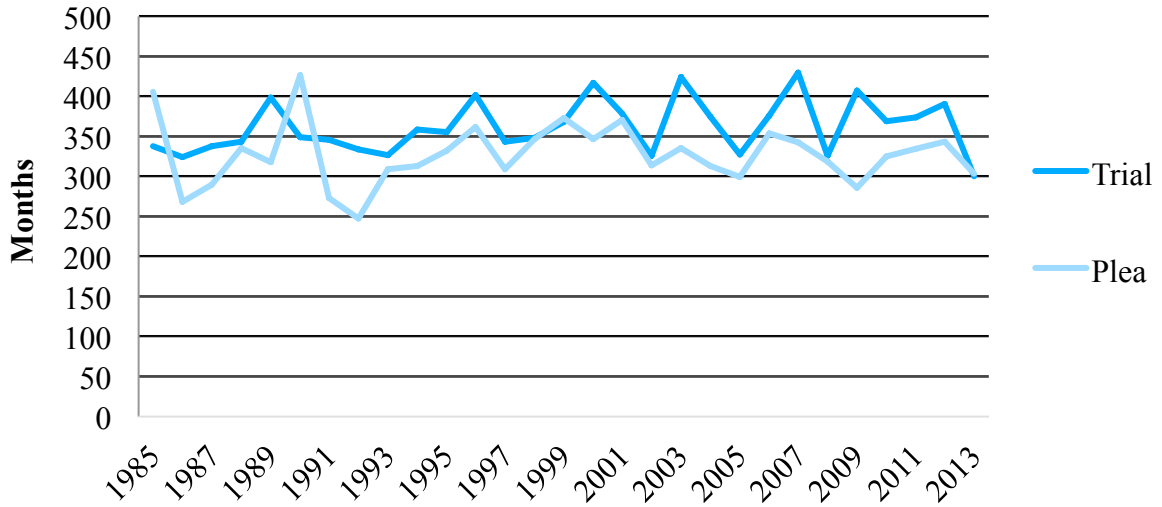
The Nature of the "Trial Penalty" over Time

Below, we explore how the nature of the trial penalty has changed over time. We also explore the possibility that statutes such as the Persistent Offender Accountability Act result in increasingly long sentences both in cases involving trial and those involving plea bargains. This is because statutes such as the Persistent Offender Accountability Act may increase prosecutors' capacity to secure plea deals that involve comparatively long sentences. To assess this hypothesis, we focus on three offenses common among the LWOP population: first degree

homicide, first degree assault, and second degree robbery. Figures 9 - 11 show the average sentence length imposed in cases that went to trial versus those imposed in cases resolved through a plea bargain for cases involving (only) first degree homicide, first degree assault and second degree robbery charges. We use these figures to assess whether the trial penalty has grown larger over time, and, more generally, how sentence lengths have changed over time.

The results shown in Figure 9 suggest that the difference between sentences resulting from trials do not differ very substantially from those that result from plea bargains in cases that involve a single Homicide 1 charge. It also suggests that the average sentence imposed in these cases has been fairly stable over time.

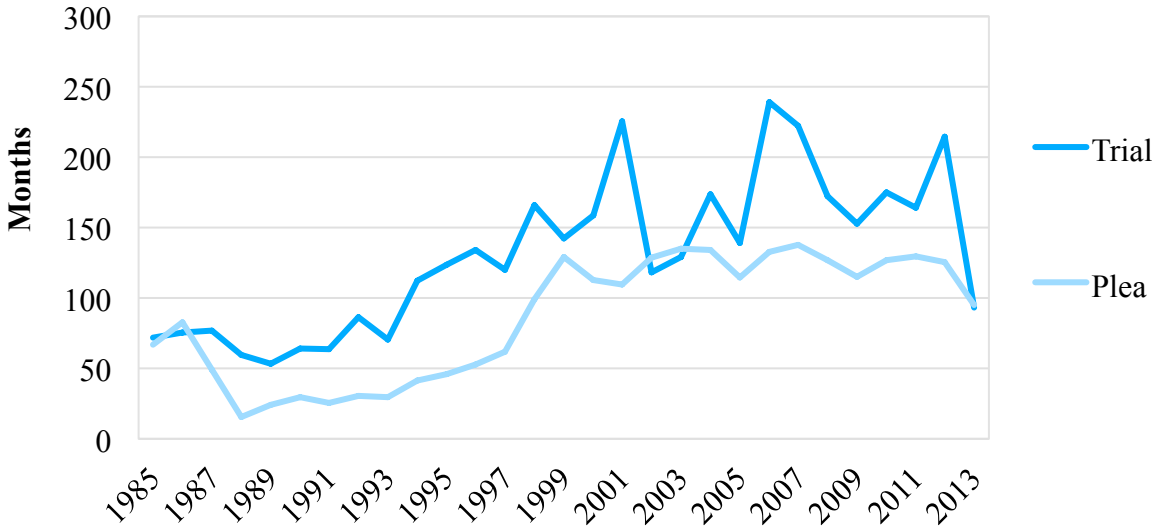
Figure 9. Mean Sentence Length for First Degree Homicide, Plea vs. Trial, 1985-2013



Source: Authors' analysis of data provided by the Washington State Administrative Office of the Courts
Note: Additional months resulting from weapons enhancements were not included in these results.

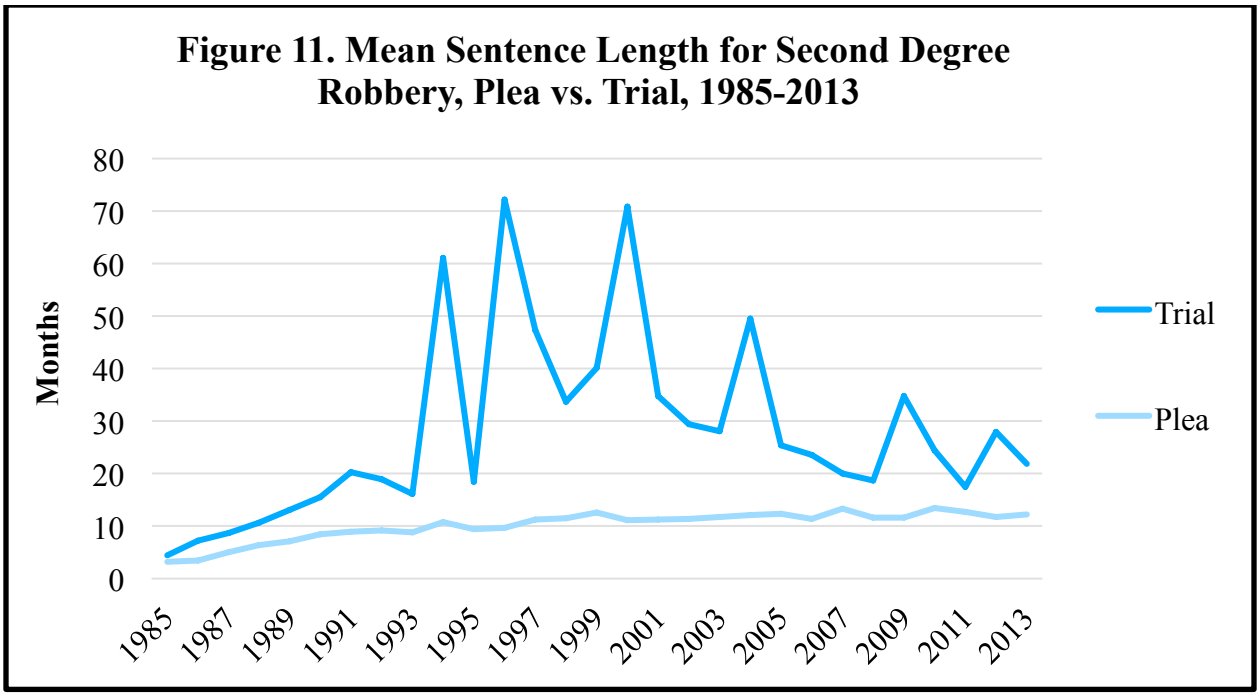
By contrast, the results depicted in Figure 10 indicate that there is a comparatively large gap between the sentences imposed after trial versus through a plea bargain. These results also indicate that the sentences imposed for this offense have grown larger over time regardless of the adjudication method.

Figure 10. Mean Sentence Length for First Degree Assault, Plea vs. Trial, 1985-2013



Source: Authors' analysis of data provided by the Washington State Administrative Office of the Courts
Note: Additional months resulting from weapons enhancements were not included in these results.

Finally, the results shown in Figure 11 indicate that for Robbery 2, the gap between sentences resulting from trials versus plea bargains was largest in the 1990s. These also results also suggest that the sentences imposed for this offense after a trial were longest in the 1990s, but that sentences imposed via plea bargains have increased steadily throughout the period under investigation.



Source: Authors' analysis of data provided by the Washington State Administrative Office of the Courts
Note: Additional months resulting from weapons enhancements were not included in these results.

The results shown in Figures 9 – 11 thus suggest that the nature of the trial penalty has varied over time, and tends to be larger for less severe crimes. The results also provide some support for the idea that legislation such as the POAA has enabled prosecutors to secure longer sentences in cases that are adjudicated through a plea bargain.

But it is not merely the discrepancies between sentences resulting from trials and those resulting from plea bargains that are notable, but also the ranges *within* these groups. Table 3 shows these ranges, which are surprisingly substantial. For example, of those convicted of first degree homicide with an offender score of 0 who went to trial, sentences ranged from 48 months and 900 months. Among those charged with first degree assault with an offender score of zero, some

individuals spent no time in prison, while others were sentenced to 20 years in prison. Very disparate sentences were thus imposed in cases involving the same crime and offender score.

Table 3. Sentence Length Range by Offense and Offender Score

		Sentence Length Range in Months	
Crime	**Offender Score**	**Trial**	**Plea**
First degree homicide n=811	0	48 – 900	60 – 640
	2	204 – 700	120 – 924
	4	210.75 – 494	216 – 510
First degree assault n=1,754	0	0 – 240	0 – 246
	2	12.03 – 300	11 – 216
	4	20 – 366	1.84 – 246*
Second degree robbery n=35,068	0	0 – 24*	0 – 240
	2	0 – 24	0 – 67.50
	4	0 – 40*	0 – 120*

Source: Authors' analysis of data provided by the Washington State Administrative Office of the Courts
Notes: Cases were only these particular offenses were charged were included (i.e. the offense listed was the only charge sentenced in that case). Any months added for weapons enhancements were excluded from these ranges
*Indicates that LWOP cases were removed from these categories in order to more accurately reflect the range and average. However, it is important to consider that 3 individuals were sentenced to life for committing second degree robbery with an offender score of 0; 4 individuals were sentenced to life for committing second degree robbery with an offender score of 4; and 1 individual was sentenced to life for committing first degree assault with an offender score of 4.

In short, the findings indicate that there is a measurable penalty associated with going to trial. This penalty is larger for less serious offenses, such as second degree robbery, perhaps due to the broader range of charges the prosecutor can bring against the defendant. The magnitude of the trial penalty for this offense was greatest in the 1990s, when many of the prisoners now serving LWOP sentences were convicted. These findings underscore the importance of creating a review

process for prisoners serving LWOP sentences. More generally, these findings indicate that despite the fact that the primary goal of the SRA is to reduce variation in outcomes in similar cases involving similar crimes, significant variation in sentencing outcomes persist even in cases in which the offender score, current charge, and the mode of adjudication is identical.

Findings indicating the existence of a "trial penalty" raise questions about whether the gap between sentences secured through plea bargains and trials result from unconstitutional practices. There is a substantial body of case law regarding possible "prosecutorial vindictiveness." Appendix B provides a detailed summary of the history of these cases. Our data suggest that defendants who choose to exercise their right to trial after rejecting a plea deal receive significantly longer sentences. This gap may result from practices that are thought to constitute prosecutorial vindictiveness. However, possible instances of prosecutorial vindictiveness are difficult to prove, and often involve cases in which prosecutors add multiple additional charges *after* a defendant elects to go to trial. Since our data include information only about conviction charges, we are unable to address whether this dynamic exists in Washington State.

IIIC. The Fiscal Cost of LWOP Sentences

Life sentences are a burden on both the prisoner and Washington State taxpayers. As noted previously, the costs associated with incarcerating the elderly are much higher than those associated with incarcerating younger prisoners.[xxx] As a result, Washington State taxpayers are carrying the fiscal burden of incarcerating individuals throughout their elderly years. This burden

has increased over time due to the boom in younger prisoners sentenced to life without parole in the 1980s and 1990s who are now aging behind bars.

The Cost of Incarcerating the Elderly

Elderly individuals are at a greater risk for most health conditions because of natural aging processes. Incarceration exacerbates these health risks, requiring additional medical care and resource. All prisoners are at greater risk for most health conditions when compared to people of the same age outside of prison.[xxxi] Both prisoners' lifestyle before serving time and the prison environment contribute to this increased health risk. That is, prior to entering prison, incarcerated individuals are more likely to have engaged in high-risk behaviors such as drug and alcohol use poor diet, lack of preventative healthcare, and a high-stress environment than their non-incarcerated counterparts.[10, xxxii]

Once incarcerated, prisoners face a greater risk of infectious disease, poor diet, physical abuse, and high levels of stress, all of which contribute to poor mental and physical health. These factors lead to a greater rate of chronic illness, sickness, and injury.[xxx] It follows that the elderly prisoner population is a high risk community because they require more medical attention and health care than their non-incarcerated counterparts. In addition to off-site transportation for treatments and procedures, this population may require wheelchairs, walkers, canes, portable oxygen, and hearing aids. Others need daily assistance with using the toilet, bathing, and getting dressed. Furthermore, prisoners dying or battling chronic illness may be incontinent, forgetful,

[10] A 1997 Bureau of Justice Statistics survey revealed that 83% of state prisoners and 73% of federal prisoners reported past drug use in the United States. [xxxii]

and unable to be left alone for lengthy periods of time. It is important to note that prisoners experience these health issues and normal processes of deterioration more quickly than those who are not incarcerated.[xxxiv]

Prisons are not equipped to accommodate aging and elderly prison populations. Typically, prisons are unable to implement preventative healthcare measures or monitor chronic conditions. As a result, elderly prisoners require health care and treatment from external providers. Thus, the government must not only pay for the specialized treatment, but also the transportation of the prisoner and the additional (often overtime) wages of officers who accompany the prisoner.[xxxiv]

To address the specific needs of its aging prison population, Washington State opened an assisted-living unit in the Coyote Ridge correctional facility in 2010. This 74-capacity unit houses disabled prisoners who require a greater level of daily assistance or medical care. To cut costs associated with consistent off-site transportation, the DOC employs two nurses on site at all times and has built in sinks, toilets, and hospital beds in the rooms.[xxxv]

The Taxpayer's Burden

Life sentences are a significant fiscal burden on taxpayers. Nationally, the average LWOP sentence results in a 39 year prison stay, with the average prisoner beginning their sentence at age 25 and dying behind bars at age 64.[xxxvi] Each LWOP sentence will cost Washington State $51,193 each year for 30 years (until age 55).[11] Elderly prisoners over 55 are at least twice as

[11] According to the 2010 fiscal year, the average price of incarceration was $46,897, citing Vera Institute of Justice (2013). *The price of prisons Washington: What incarceration costs taxpayers.* In C. Henrichson & R. Delaney (Eds.) The Price of Prisons. Center on Sentencing and Corrections. The figure displayed in

costly to incarcerate than their younger peers.[12] From age 55 until their death at approximately age 64, this prisoner will cost Washington State $102,386 each year, for a total of nine years. Based on these calculations, the sum of the average cost of a life without parole sentence in Washington State is $2,457,264 per prisoner.[13]

Table 4. Cost Analysis Methodology	
Average age of incarceration	25 years
Average age of death	64 years
Average length of incarceration (lifers)	39 years
Average annual cost per non-elderly prisoner (under 55)	$51,193
Average annual cost per elderly prisoner (over 55)	$102,386
Average total cost of a life sentence	$2,457,264

Sources: Vera Institute of Justice. (2013). The Price of Prisons Washington: What Incarceration costs taxpayers. In C. Henrichson & R. Delaney (Eds.), *The Price of Prisons*. Center on Sentencing and Corrections; American Civil Liberties Union. (2012). *At America's Expense: The Mass Incarceration of the Elderly.*

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our report has been converted to 2014 dollars using CPI Inflation Calculator, http://data.bls.gov/cgi-bin/cpical.pl, such that the average annual cost per prisoner (under 55) in Washington in 2014 is $51,193.

[12] The average annual cost per "elderly" prisoner over 55 is double that of a prisoner under 55, totaling $102,386 in Washington State. According to the ACLU, incarcerating the elderly costs two times the price of incarcerating an average prisoner under age 55. American Civil Liberties Union. (2012). *At America's Expense: The Mass Incarceration of the Elderly*. Given this, $46,897 x 2 = $93,794 in 2010 dollars. This number has been converted to 2014 numbers, using CPI inflation calculator displayed in our report.

[13] From age 25 to 55, then, the average prisoner is incarcerated for 30 years at an average price. The sum over these 30 years is $1,535,790. From age 55 to 64, an average prisoner is incarcerated for 9 years at an elderly price. The sum over 9 years totals to $921,474. In total, this cost is $2,357,264 in 2014 dollars. Algebraically, (51,193(55-25))+(102,386(64-55))=1,535,790+921,474=2,457,264.

Historically, life sentences in Washington State resulted in prison stays that resulted in far shorter prison stays than is the case today. Prior to the adoption of the SRA, a life sentence included the possibility of parole, and all prisoners were automatically reviewed after serving the minimum term of 20 years.[xxxvii] With good behavior, they were entitled to review after 20 years minus one third of this sentence,[14] which is 13 years and 4 months.[xxxviii] Reports published prior to 1985 indicate that the average time served by lifers was between 15 and 20 years.[15]

During this time, life sentences were much less of a fiscal burden on taxpayers. Prior to the SRA, prisoners who served the minimum life term of 13 years and 4 months[xli] were approximately age 38 upon release.[16] That means their life sentence cost taxpayers an average of $682,573 per prisoner.[17,18] In other words, an average life sentence imposed in 1980 cost taxpayers about $1.8 million less per prisoner than LWOPs imposed today (in 2014 dollars). Those who served a life sentence of 15 years cost taxpayers $1.7 less than the average LWOP sentence today.[19]

[14] Before sentencing reforms, prisoners could serve substantially less time by proving good behavior while in prison, referred to as "good time."

[15] The average life sentence in Washington resulted in a prison stay of 15 years and 3 months.[xxxix] The average life sentence in California for first degree homicide resulted, on average, in 12 years behind bars.

[16] 13.3+25.

[17] According to Vera (see 12) and adjusted for inflation, incarceration in Washington State costs $51,193 per prisoner per year. This number multiplied times 13 years and 4 months (13.33 years) is $682.573.

[18] These numbers have been adjusted for inflation and are represented in 2014 dollars using CPI Inflation Calculator, http://data.bls.gov/cgi-bin/cpicalc.pl.

[19] According to Vera (see 12) and adjusted for inflation, incarceration in Washington State costs $51,193 per prisoner per year. This number multiplied times 15 years is $767,895. This number subtracted from $2,457,264 is $1,689,369.

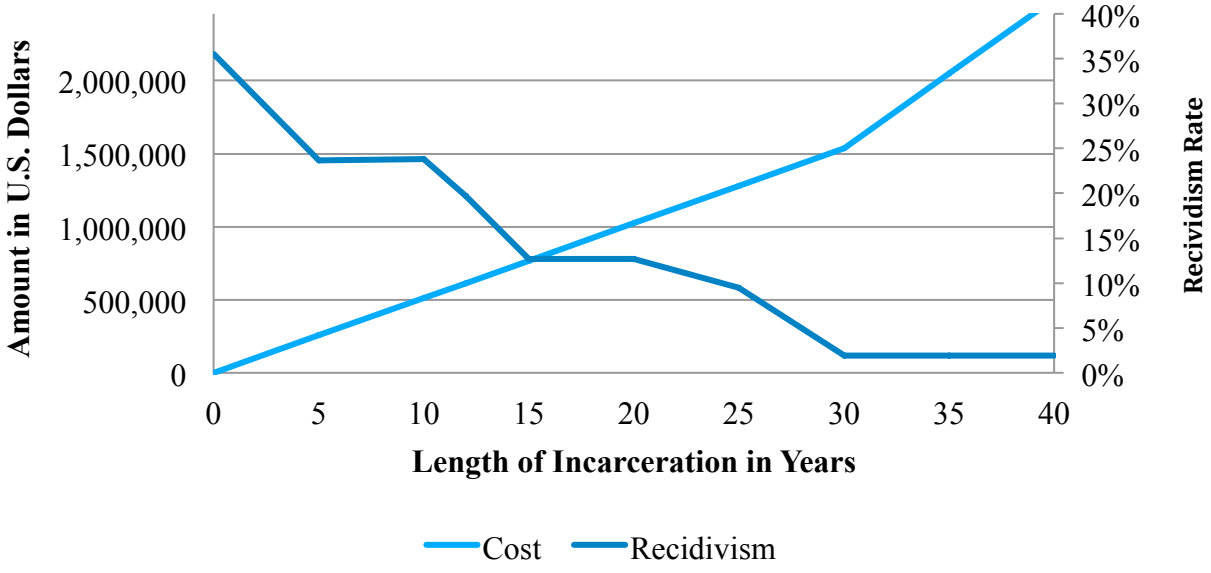
Table 5. Cost and Savings According to Sentence Length					
Length of Life Sentence	**13 years, 4 months**	**15 years**	**20 years**	**35 years**	**39 years**
Age of Release/Death	38	40	45	60	64
Cost	$682,573	$767,895	$1,023,860	$2,047,720	$2,457,264
Savings per Prisoner	$1,774,691	$1,589,369	$1,433,404	$409,544	$0

In short, as a result of the increased number of life sentences and the expansive growth of mass incarceration, Washington State is spending billions extra by imposing life sentences without the possibility of parole. This is because the number of prisoners currently serving an LWOP sentence (1,342) multiplied by the 2014 average cost of a life sentence ($2,457,264) minus the historical cost of a life sentence ($767,895) is $2,267,133,198. The Sentencing Reform Act intended to "[m]ake frugal use of the state's and local governments' resources." [xlii]. Despite this intention, taxpayers are now paying over $1.4 million more for each LWOP compared with the cost of life sentences prior to the enactment of the SRA.

These costs may be justified if the widespread imposition of LWOPs significantly enhanced public safety. However, any public safety gains associated with this trend are minimal, and therefore do not offset the fiscal costs associated with LWOP sentences. Criminological experts overwhelmingly agree that age is the most consistent predictor of recidivism. A large body of evidence shows that individuals age out of crime.[xliii] That is, older prisoners are much less likely to reoffend than are younger prisoners. While prisoners under 25 have a re-offense rate of over

34%, those over age 50 have a re-offense rate of only 10%.[xliv] Moreover, prisoners over age 55 have a recidivism rate of less than 2%.[20,xlvi] Life sentences overstate the necessity of prolonged incarceration because elderly prisoners are highly unlikely to reoffend. Although prisoners over 55 years old are twice as costly to incarcerate annually, they are 17 times less likely to reoffend upon release than their younger peers.[21] The costs and recidivism rates are illustrated in Figure 12.

Figure 12. Recidivism Rate and Cost of LWOP for a Typical Prisoner



Sources: Castillo, R. et al., United States Sentencing Commission, (2004). *Measuring recidivism: The criminal history computation of the federal sentencing guidelines* (Release I). Washington, D.C.; Hughes, T. A., Wilson , D. J., & Allen, J. B. U.S. Department of Justice, Office of Justice Programs. (2001). *Trends in state parole, 1990-2000* (NCJ 184735). Washington, D.C.: Bureau of Justice Statistics.
Note: This figure depicts the cost of incarceration and recidivism rate for one individual throughout an average 39 year sentence.

[20] Refers only to parole violations for those "55 or older."
[21] 34 percent divided by 2 percent equals 17.

It is also important to note that lifers in particular have exceptionally low recidivism rates. For example, a California Department of Corrections and Rehabilitation (CDCR) study compared recidivism rates among prisoners released after serving life sentences with those who did not receive life sentences. The CDCR found that lifers were 10 times *less* likely to be convicted of a misdemeanor or felony within three years of release than those who did not receive life sentences. Specifically, lifers had a re-conviction rate of 4.8%, whereas other parolees had a re-conviction rate of 51.5%. Moreover, when released lifers did reoffend, the offense was very likely to be a comparatively minor one.[xlvii] Other studies have also found the especially low recidivism rates among the lifer population.[22]

In sum, the Sentencing Reform Act sought to address the increasing costs of Washington State's criminal justice system, yet the amount spent on corrections has skyrocketed, in part because of the high cost of incarcerating the elderly. If Washington were to return to historical sentencing standards, the State would save well over $1 million per life sentence. Our analysis suggests that any sentence exceeding 24 years is fiscally unwise. On average, sentence of this length would allow the average prisoner to be released at age 50. At this age, prisoners pose little risk to public safety. What is more, prisoners released at this age could have the opportunity to qualify for federally-funded social services. This would shift much of the fiscal burden from Washington State taxpayers to the federal government. For these reasons, we argue that prisoners deserve to be reevaluated and possibly released from state custody.

[22] Irwin, J. (2009). Lifers: Seeking Redemption in Prison (1st ed.). Routledge.

V. POLICY RECOMMENDATIONS

BACKGROUND: THE ISRB TODAY

With the enactment of the SRA in 1981 and its implementation three years later, Washington State eliminated its parole board and instituted the Indeterminate Sentence Review Board (ISRB). The ISRB currently consists of four members with backgrounds in corrections or law who are appointed by the governor to serve five-year terms.[xlviii] As noted previously, two categories of prisoners may be considered for release by the ISRB. First, the ISRB acts as a parole board for prisoners who committed their crimes before July 1, 1984 and were given indeterminate sentences that included the possibility of parole (PRE prisoners). A sentence is considered indeterminate because at the time of sentencing it is not known how much time will be served. Instead, a maximum sentencing length was set by the judge based on statutory maximums, and the ISRB determined the minimum amount of time a prisoner must serve before they are granted a preliminary review by the board.[xlix] At the minimum sentencing date, the offender was eligible for an ISRB hearing, which may lead to release. In 2011, there were 325 PRE prisoners in Washington State.[xlix]

Second, the board also reviews cases involving determinate-plus sentences, which are imposed in cases that involve certain kinds of sex offenses committed after August 31, 2001.[23, 24] In these cases, the judge sets the minimum term the prisoner must serve. When the minimum term is

[23]These are also referred to as CCB cases (Community Custody Board).
[24]This date was determined by the passage of RCW 9.94A.507, which restructured the guidelines for sex offender sentencing.

reached, the board holds a hearing to determine if the prisoner is ready for release.[xlviii] Both determinate-plus and PRE cases have two possible outcomes: either the prisoner is released, or the ISRB sets a future review date.

The ISRB considers several factors before granting parole to a prisoner. These include: the likelihood that the prisoner will commit another offense, the length of time already served, the original recommendation of the trial judge, the defendant's participation in prison programs, the victim and victim's family's concerns, behavior in prison, and threats to reoffend.[xlviii] The ISRB recommends release in 45% of determinate-plus hearings and 38% of PRE hearings. This averages to a release rate of approximately 40% of all cases heard by the board.[xlix] These numbers are similar to the release rates of parole boards that hear a wider range of cases. For example, New York State's parole board, before which nearly all prisoners are entitled to appear, has a release rate of 36%.[l,li] In New York, only 1,346 prisoners are ineligible for parole and must serve the entirety of their sentence regardless of successful rehabilitative programming or good behavior.

In order to develop our recommendations, we also acquired information about parole boards and pre- and post-release rehabilitative programs offered in other states where parole continues to exist.[25] We discovered that each state has a unique parole board. The table shown in Appendix C demonstrates the varying policies, mission statements, and board compositions of parole boards

[25] A DOC or its equivalent, as well as rehabilitative programs were researched in AL, AK, AZ, CA, CO, CT, DE, FL, GA, HI, IA, KS, LA, ME, MD, MA, ME, MI, MN, MS, MO, MT, NV, NH, NJ, NY, OH, OK, RI, SC, SD, TX, UT, VT, WA, WI and WY. Research was conducted via the internet and personal contact via phone interviews.

nationwide, and clearly shows that there is significant variation in the structure of parole across the country. Moreover, these findings indicate that many states structure their parole boards that allow for greater emphasis on the importance of creating rehabilitative programming and providing an opportunity for release for prisoners who have successfully engaged in this programming.

RECOMMENDATION I. REINTEGRATE REHABILITATION

According to the United States Department of Justice, approximately ten thousand prisoners a week are released from state and federal prisons, all of whom will eventually find their way back into communities throughout the nation.[lii] We recommend the adoption of programs and processes before, during, and after release that adequately prepare prisoners for the challenges of life beyond prison walls. More generally, we recommend that Washington State reevaluate the "just deserts" punishment model embodied by the SRA. This model limits judicial discretion, de-prioritizes rehabilitation, and mandates that judges disregard circumstances that may have played a key role in the motivation and actualization of the crime.

The paramount function of the penal system should be the rehabilitation of prisoners. Individuals who are released without reintegration guidance and the tools to effectively participate in society may threaten public safety. Because of the holistic, multi-faceted nature of rehabilitation, we have also incorporated pre- and post-rehabilitative programs into our recommendation that Washington implement a PREP. This emphasis on rehabilitation has implications for sentencing policy. Absent the possibility of sentence review and release from prison, the system provides no incentive for prisoners to pursue rehabilitation.[liv] Pre-release rehabilitation, PREP board

evaluation, and post-release programming must function cohesively to ensure that prisoners are afforded their greatest chance to become productive members of society. By naming this three part process PREP, we aim to draw greater attention to the rehabilitative process while distancing ourselves from the political failures of Washington's former parole system.

A first step in this process would be to review and update Washington's Department of Corrections' mission statement to reflect the centrality of rehabilitative goals. The current statement emphasizes the need "to protect public safety" but fails to address rehabilitation and reintegration.[lv] Many of the states we studied provide examples for Washington to follow in this regard. For example, the Texas Department of Criminal Justice explicitly states their goal to promote "positive change in offender behavior" and to "reintegrate offenders into society."[lvi] Alaska's Department of Corrections mission statement emphasizes "reformative programs." [lvii], while Colorado's Department of Corrections aims for prisoners to "become law-abiding, productive citizens".[lviii] We recommend that the Washington Department of Corrections incorporate these terms into a new mission statement.

This re-orientation should also inform pre-release programs in Washington State. Parole board members and non-profit post-release service providers nationwide find that the four most important programs affecting prisoners' successful reintegration into society are: cognitive therapy while incarcerated, addiction and anger management therapy, education opportunities, and assistance securing housing upon release.[lvix,lx] Cognitive therapy involves identifying and addressing the thoughts and feelings associated with psychological disturbances. Anger and addiction therapies address underlying problems with social behavior and help teach coping

strategies to positively affect prisoners' future lives and relationships. Educational opportunities raise prisoners' actual and perceived social value and impart important skills and knowledge. One recent report found that individuals who participated in educational programs while incarcerated were 13% more likely to obtain employment upon release and 43% less likely to recidivate.[26] The report ultimately concludes that "providing correctional education can be cost-effective when it comes to reducing recidivism."[lxii]

We recommend that Washington State significantly expand pre-release rehabilitative programs. Many states offer models of how this might be done. Texas, a historically conservative state, has an entire division within its Department of Justice dedicated to rehabilitative programs. In addition to standard sex offense and drug treatment programs, these programs include non-traditional offerings such as faith-based pre-release programs, the "Baby and Mother Bonding Initiative", programs tailored to former participants in the sex industry, rehabilitation for prisoners who have experienced solitary confinement, and opportunities to pursue higher education within a school district that exclusively serves Texas State prisons. This is important because prisoners who participate in correctional education programs are 43% less likely to reoffend than those who do not.[lxii] We recommend that the Washington Department of Corrections incorporate programs similar to those of Texas in order to better prepare prisoners to reintegrate into society. We also recommend that Washington State repeal its prohibition on the use of state dollars to support the education of prisoners.

[26] Recidivism is defined in multiple ways in these studies, including rearrests, conviction, incarceration and technical parole violations. The length of time considered varied from 6 months since release to 10 years since release. The majority of the 50 studies on which this report relied used re-incarceration as the measure and 1-3 years as time frame. [lxii]

In addition to its Rehabilitation Programs Division, the Texas Department of Criminal Justice also formed the Re-Entry and Integration Division. Their statement of purpose emphasizes "the successful reentry and [re]integration of offenders into the community." The Re-Entry and Integration Division (RID) provides prisoners with case managers that help prisoners develop a comprehensive release plan.[27] The RID also orders birth certificates and social security cards for eligible prisoners prior to their release. Employment opportunities for former prisoners also increased in 2013 when Texas passed legislation that limits the liability of employers who hire persons with criminal backgrounds.[lxiii] We recommend that Washington implement these procedures in order to promote post-release rehabilitation.

Prisoners face a variety of societal, economic, and community challenges upon release from prison. These issues include inadequate access to social programming, job opportunities, education, assistance with substance abuse, struggles with family life, and housing. Post-release programs enhance public safety because they provide monetary, physical, and emotional resources to individuals who may otherwise engage in criminal behavior to fulfill their financial and emotional needs. For this reason, any consideration of the implementation of parole, or in our case, the PREP, must incorporate an array of programming opportunities for formerly incarcerated individuals reentering society. In advocating for PREP, we are calling for the creation and implementation of a wraparound service for prisoner reentry.

[27] This plan deals with issues such as identification, housing, employment and education, health care, substance abuse, transportation, clothing/food/amenities, financial resources, and support systems.

There are two approaches to reentry that aim to address the barriers prisoners face when they return to society. One approach separately targets housing, employment, and substance abuse treatment. This fragmented approach focuses on programs that address specific challenges that formerly incarcerated individuals face during reentry. Although used regularly, this approach can be problematic because it forces formerly incarcerated individuals to seek help from separate service providers. Conversely, the second approach, called a wraparound approach, simultaneously addresses reentry barriers.[lxiv,lxv] The purpose of this approach is to identify and fill gaps in services, to mitigate the accessibility and usage of services, and to conserve institutional resources.

In 2007, Washington State applied the wrap-around approach in a program called the Reentry Housing Pilot Program (RHPP). RHPP provided recently released high-risk prisoners in Spokane, Clark, and King counties with 12-month housing under the condition that they commit to treatment, employment, and self-sustainability. The state also introduced programs funded by the Housing Grant Assistance Program (HGAP) to create similar opportunities for prisoners released in several other counties.[lxvii] RHPP and HGAP participants were then compared to others in order to measure the effectiveness of these programs. After three years of evaluation, RHPP and HGAP participants were significantly less likely than non-participants to return to prison.[lxviii] These programs thus provide a model upon which post-release programming could be extended.

RECOMMENDATION II. ADOPT A POSSIBLE RELEASE REVIEW PROCESS

In addition to reintegrating rehabilitation, we recommend the creation of a review board and process that will give each lifer in Washington State the opportunity for reevaluation. The existence of this board and process would motivate prisoners to work towards rehabilitation while also protecting the public from prisoners who are not ready to be released.

Specifically, our recommendation is that the board re-adopt Washington State's past definition of minimum duration of confinement as established by legislative action.[x] This would mean that those serving LWOP sentences would be eligible for evaluation after 13 years and 4 months served. We also recommend the adoption of a review board consisting of seven members, at least five of whom must be present during all PREP hearings. These board members should be appointed by the Governor to four year terms, as this will mitigate political pressures that board members may feel if it were an elected position. A board consisting of members with varied professional backgrounds and experiences will reduce personal bias in board decisions and protect against the arbitrariness of Washington's former parole system.[xvi,xiv] We also recommend that a third party, nonpartisan adjudicator audit and evaluate board decisions on an annual basis. We recognize that any system reliant on humans has the potential to involve bias. Nonetheless, the purpose of these recommendations is to mitigate the effects of bias and to enhance public confidence in the board's decisions.

Our recommended board would consist of a community member with a social service background, a retired judge, a psychologist, two former Department of Corrections employees,

an addiction specialist, and a formerly incarcerated person. This diversity of skill sets and backgrounds assures a holistic evaluation of rehabilitative progress. To alleviate potential costs associated with prisoner transportation and technology, we recommend that the board conduct hearings using one of three recommended formats.[28]

A recent national trend in parole hearing procedures enhances the victim's role in their assailant's hearing. For example, California's 2009 Victim's Bill of Rights[lxix] extends special considerations for victims and their families in parole hearings.[lxx] Subsequently, multiple other states have adopted similar legislation.[xxi] Victim involvement has unfortunately led to the assumption that "the offender's gain is the victim's loss" and vice versa. [lxix] While the victim's preferences arguably should be considered at the time of sentencing, the prisoner's rehabilitative progress should be the primary focus of the parole hearing. Other states have recognized and embraced the need for this shift in focus. For example, New Jersey's legislature will only use the victim's written statement if they identify a substantial or pressing issue.[29] [lxii,lxiii] In addition, we recommend that victims, in conjunction with a state sponsored victim's advocate, be allowed to contact the board through a written statement. This will allow the board to evaluate the victim's concerns without turning the parole hearing into a retrial of the original crime.

[28] Colorado has conducted research and found no measurable differences between having hearings over the phone, through video conferences, or in person.[vii]

[29] The report may include a written statement concerning the continuing nature and extent of any physical harm or psychological or emotional harm or trauma suffered by the victim, the extent of any loss of earnings or ability to work suffered by the victim and the continuing effect of the crime upon the victim's family.

In an attempt to emphasize the importance of rehabilitation, we suggest that the board focus on the latter third of time served. This recommendation stems from recognition of the fact that prisoners are more likely to receive infractions in the first two thirds of their sentence due to difficulties adjusting to prison life. By weighing the latter third of time served, the board would recognize that rehabilitation is a process. In addition to this weighted evaluation process, we recommend the board focus on the prisoner's involvement within the prison community and participation in rehabilitative programs. This will ensure that the board values rehabilitation over the course of a sentence above minor infractions. Under our proposed evaluative board, prisoners denied parole will receive suggestions for improvement and a mandatory follow-up review date scheduled within a maximum of five years of the previous review. This timeframe sets an obtainable goal for the prisoner, incentivizes good behavior, and ensures public safety by only releasing prisoners who are prepared to reenter society.

RECOMMENDATION 3: REPEAL THE PERSISTENT OFFENDER ACCOUNTABILITY AND HARD TIME FOR ARMED CRIME ACTS

It is imperative that Washington State re-evaluate its sentencing practices. The POAA accounts for half of the official LWOP cases in Washington State, many of which involve crimes other than homicide. We also recommend reforming the Hard Time for Armed Crime Act of 1995. Additional time for weapons enhancements must be proportional to the offense and properly restricted. For example, our data identified an individual who received over 1,000 months (or 83 years) from weapons enhancements alone. While this case is an outlier, it demonstrates the harshness of weapons enhancements in sentencing. If repeal of this law is not feasible, allowing

judges to allow sentences flowing from weapons enhancements concurrently rather than consecutively may provide some relief.

V. CONCLUSION

In Washington State, the implementation of the Sentencing Reform Act, coupled with the adoption of harsh sentencing laws, led to a dramatic rise in the number of people sentenced to die in prison. Lifelong imprisonment without the possibility of review arguably denies the fundamental human right to dignity. In fact, the European Court of Human Rights recently ruled that life without the possibility of parole sentences violate human rights because they are "incompatible with the provision on human dignity in the basic law for the state forcefully to deprive a person of his freedom without at least providing him with a chance to someday regain that freedom."[30] Washington State's sentencing practices are thus not only fiscally imprudent, but, according to international human rights standards, are also in violation of the human right to dignity. We recognize that deciding if LWOP sentences constitute a human rights violation is a contentious and ongoing debate. However it is impossible to ignore that fact that life without parole eliminates prisoners' chance to go in front of a review board and demonstrate how they have grown and changed since the time of sentencing. Denying this opportunity to an already invisible population is, we contend, morally costly to the state of Washington.

[30] See Castle, S. (2013, July 9). "Court Rules Against Britain in Life Terms for 3 Convicts." *The New York Times.*

In addition, lifelong imprisonment without the opportunity for review is disproportionately imposed on black men, is very expensive, and yields little in terms of public safety. Moreover, our findings suggest that one of the primary goals of the SRA – achieving greater uniformity in sentencing outcomes – has not been achieved. It thus appears that the SRA has entailed a very significant cost – the growth of the LWOP population – but has not achieved its primary objective.

A Post-Rehabilitation Evaluation Process (PREP) is the most immediate and effective remedy to this statewide problem. We recognize that current sentencing laws cannot accommodate a fully-functioning parole board in the short term. As an interim step, implementation of the PREP would propel the adoption of rehabilitative programming and a review processes that may ultimately comprise a successful parole system. Although the return of a comprehensive parole board after over three decades may be controversial, public concern surrounding the issues of mass incarceration has continued to increase regardless. The use of LWOPs and extreme sentences have played a notable role in contributing to the human and financial costs associated with mass incarceration. Controversial first steps may need to be taken in order to ultimately address a far more urgent, problematic issue facing our state and nation. PREP would begin to amend the effects of the elimination of parole and other legislation on the Washington LWOP population, a first step towards creating a policy framework aimed at enhancing human rights, public safety, fiscal responsibility, and rehabilitation.

VI. SOURCES CITED

I. Roy Walmsley (2013). World Prison Population List (tenth edition). *International Centre for Prison Studies.* Retrieved April 19, 2015 from http://www.prisonstudies.org/sites/prisonstudies.org/files/resources/downloads/wppl_10.pdf

II. U.S. and World Population Clock. (n.d.). Retrieved May 2, 2015, from http://www.census.gov/popclock/fin

III. The Sentencing Project. (2013). *Life Goes On: The Historic Rise In Life Sentences In America.* Retrieved April 25, 2015, from http://sentencingproject.org/doc/publications/inc_Life Goes On 2013.pdf

IV. De la Vega, C., Solter, A., Kwon, S., Isaac, D. M. (May 2012). *Cruel and Unusual: US Sentencing Practices in a Global Context*

V. Washington State Legislative Budget Committee. (1981). *Washington State Board of Prison Terms and Paroles*. Olympia, Washington: State of Washington Legislative Budget committee.

VI. Washington State Legislative Budget Committee. (1981). pg. 15.

VII. Washington State Legislative Budget Committee. (1981). pg. 2

VIII. Washington State Legislative Budget Committee. (1981). pg. 3

IX. Washington State Legislative Budget Committee. (1981).pg. 28

X. RCW 9.95.115

XI. Boerner, D. & Roxanne Leib. (2001). Sentencing Reform in the Other Washington. *Crime and Justice*, 28, 71-131. Retrieved from http://www.jstor.org/discover/10.2307/1147673?uid=3739808&uid=2&uid=4&uid=3739256&sid=21106450604453

XII. Silets, H.M. (Susan W. Brenner. (1986). Commentary: Commentary on the Preliminary Draft of the Sentencing Guidelines Issued by the United States Sentencing Commission in September 1986. *Northwestern School of Law Journal of Criminal Law & Criminology*, 77 (1069), 1-29.

XIII. Fallen, D.L. (1993). The Evolution of Good Intentions: A Summary of Washington State's Sentencing Reform. *Federal sentencing Reporter*, l6 (3), 147-151. Retrieved from http://www.jstor.org/stable/20639663

XIV. The American Friends Service Committee. (1971). *Struggle for Justice* (1st ed.). New York, New York: Hill and Wang.

XV. Empey, L., Lipton, D., Martinson, R., & Wilks, J. (1975). The Effectiveness of Correctional Treatment: A Survey of Treatment Evaluation Studies. *Contemporary Sociology*. Retrieved April 18, 2015, from https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=19591

XVI. Boerner, D. (1985). *Sentencing in Washington*. Redmond, Washington: Butterworth Legal.(pg. 147)

XVII. U.S. Sentencing Commission (2014). Preliminary Quarterly Data Report. Retrieved from http://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/quarterly-sentencing-updates/USSC-2014-Quarter-Report-2nd.pdf

XVIII. RCW 9.94A.507

XIX. United States Sentencing Commission, (2001). *Appendix a: Descriptions of datafiles, variables, and footnotes.*

XX. American Civil Liberties Union. (2012). At america's expense: The mass incarceration of the elderly.

XXI. Lee, M., & Colgan, B. (2011). Washington's three strikes law: Public safety and cost implications of life without parole. In Columbia Legal Services.

XXII. RCW 3, 49.94A.010,

XXIII. RCW 9.94A.930

XXIV. State of Washington Sentencing Guidelines Commission. (2000). The Sentencing Reform Act At Century's End. Retrieved April 25, 2015, from http://www.cfc.wa.gov/PublicationSentencing/Research/SentencingReformActReportCenturyEnd.pdf

XXV. RCW 9.94A.555

XXVI. National Institute of Justice. (1997). Three Strikes and You're Out: A Review of State Legislation. *National Institute of Justice: Research in Brief.* Retrieved from http://sjra1.com/index_files/cjreports/1997%20NATL%20INST%20OF%20JUST-3-STRIKES%20REPORT-1997-165369.pdf

XXVII. LaCourse Jr., R. (1997, January 1). Hard Time for Armed Crime: A Review. Retrieved April 23, 2015.

XXVIII RCW 9.94A.555

XXIX. Adjustments to standard sentences, Washington Code RCW 9.94A.533

XXX. Aday, R. H. (2003). *Aging prisoners: Crisis in American corrections.* Westport, CT: Praeger.

XXXI. Office of Legal Research. (2013). *State Initiatives to Address Aging Prisoners* (Connecticut General Assembly Report No. R-1066). Hartford, Connecticut.

XXXII. Bureau of Justice Statistics. (1997). *Substance Abuse and Treatment, State and Federal Prisoners* (US Department of Justice Publication No. NCJ 172871). Washington, DC: U.S.

XXXIV. Aday, R., & Krabill, J. (2012). *Older and geriatric offenders: Critical issues for the 21st Century.* In L Gideon (Ed.), Special Needs Offenders in Correctional Institutions. Thousand Oaks, CA: Sage Publications.

XXXV. McCarthy, K., & Rose, C. (2013, March 4). State Initiatives to Address Aging Prisoners. Retrieved February 13, 2015, from http://www.cga.ct.gov/2013/rpt/pdf/2013-R-0166.pdf

XXXVI. United States Sentencing Commission, (2001). *Appendix a: Descriptions of datafiles, variables, and footnotes.*

XXXVII. Ninth Biennial Report of the board of Prison Terms and Paroles. (1968). In *State Prison Terms and Paroles Board* (Vol. 1935/36-1966/68). Olympia, Washington: State of Washington.

XXXVIII. RCW 9.95.115. Supplemented with interpretation by Attorney General of Washington Don Eastvold, AGO 1955 No. 77 – May 17, 1955.

XXXIX. J. (1989, November 13). Killers May Serve More Time Behind Bars than They Expect. Seattle Post-Intelligencer, p. B2.

XL. Irwin, J. (2009). Introduction. In Lifers. New York, New York: Routledge.

XLI. Ninth Biennial Report of the board of Prison Terms and Paroles. (1968). In *State Prison Terms and Paroles Board* (Vol. 1935/36-1966/68). Olympia, Washington: State of Washington.

XLII. Washington State Sentencing Guidelines Commission. Washington State Government, Sentencing Guidelines Commission. *Goals of the sentencing reform act* (RCW 9.94A.010). Olympia: Office of Financial Management.

XLIII. Hirschi, T., & Gottfredson, M. (1983). Age and the explanation of crime. *The American Journal of Sociology*, *89*(3), 552-584.

XLIV. Castillo, R. et al., United States Sentencing Commission, (2004). *Measuring recidivism: The criminal history computation of the federal sentencing guidelines* (Release I). Washington, D.C.

XLV. The Sentencing Project. (2010, June). *State Recidivism Studies*.

XLVI. Hughes, T. A., Wilson , D. J., & Allen, J. B. U.S. Department of Justice, Office of Justice Programs. (2001). *Trends in state parole, 1990-2000* (NCJ 184735). Washington, D.C.: Bureau of Justice Statistics.

XLVII. State of California. California Department of Corrections and Rehabilitation, (2013). *Lifer parolee recidivism report.*

XLVIII. Washington State Department of Corrections. (2015). *Indeterminate Sentencing and Review Board*. Retrieved April 18, 2015 from http://www.doc.wa.gov/isrb/

XLIX. Washington State Department of Corrections. (n.d.). Indeterminate Sentencing Review Board at a Glance. Retrieved from http://www.doc.wa.gov/isrb/docs/at_a_glance.pdf

L. Massachusetts Department of Correction. (n.d.) (Website). Retrieved April 19, 2015, from http://www.mass.gov/eopss/agencies/doc/

LI. About DOCCS. New York Department of Corrections and Community Supervision (n.d.) (Website). Retrieved April 19, 2015, from http://www.doccs.ny.gov/

LII. U.S. Department of Justice (n.d.). Retrieved April 19, 2015, from http://www.justice.gov/

LIII. Barton, Alana. "Just Deserts Theory." (2004) Encyclopedia of Prisons & Correctional Facilities. Ed. . Thousand Oaks, CA: SAGE, 2004.
504-07. SAGE Reference Online. Retrieved April 19, 2015, from http://www.sagepub.com/hanserintro/study/materials/reference/ref3.1.pdf

LIV. Longford, A. (2014, December 8). Hopelessness in Prison [Personal interview conducted by Madison Brown, Hannah Schwendeman, and Nicholas Scott].

LV. Washington State Department of Corrections. (2015). *Mission Statement*. Retrieved April 18, 2015 from http://www.doc.wa.gov/aboutdoc/mission.asp

LVI. Texas Department of Criminal Justice. (2015). Retrieved April 18, 2015 from http://tdcj.state.tx.us/

LVII. Alaska Department of Corrections. (n.d.) Retrieved April 18, 2015 from http://www.correct.state.ak.us/corrections/index.jsf

LVIII. Colorado Department of Corrections. (n.d.) (Website). Retrieved April 18, 2015, from http://www.doc.state.co.us

LVIX. DeLano, L. (Sitting Chair of ISRB) (2015, January 21). ISRB - Now and Future [Telephone interview conducted by Madison Brown, Allison Buchanan, Bryce Ellis, and Nicholas Scott].

LX. Satterberg, D. (2014). Prosecutorial Changes in Washington State [E-mail interview, and personal interview conducted by Madison Brown, Alison Buchanan, Bryce Ellis and Nicholas Scott].

LXI. Jackson, C., Nissenson, K., Cloitre, M., Courtois, C., & Ford, J. (2009). Cognitive-behavioral therapy. *Treating complex traumatic stress disorders: An evidence-based guide*,(Print) pg. 243-263.

LXII. Davis, Lois M., Robert Bozick, Jennifer L. Steele, Jessica Saunders and Jeremy N. V. Miles. *Evaluating the Effectiveness of Correctional Education: A Meta-Analysis of Programs That Provide Education to Incarcerated Adults*. Santa Monica, CA: RAND Corporation, 2013. http://www.rand.org/pubs/research_reports/RR266.

LXIII. Texas House Bill 1188 (2013)

LXIV. Raphael, S. (2010, April 1). Incarceration and Prisoner Reentry in the United States. Retrieved April 18, 2015, from http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.192.872&rep=rep1&type=pdf

LXV. Lattimore, P., & Visher, C. (2010). The Muti-site Evaluation of SVORI: Summary and Synthesis. Retrieved April 19, 2015 from https://www.ncjrs.gov/pdffiles1/nij/grants/230421.pdf

LXVI. Wilson, K., (2008, January). Literature Review: Wraparound Services for Juvenile and Adult Offender Populations. Retrieved April 18, 2015, from

http://www.cdcr.ca.gov/adult_research_branch/research_documents/wraparound_services_ucdavis_jan_2008.pdf

LXVII. Falconer, S., Rosky, J., & Lutze, F. (2011). *Washington State's Reentry Housing Pilot Program Evaluation: Year 3 Final Report*. Retrieved April 19, 2015, from http://www.doc.wa.gov/aboutdoc/measuresstatistics/docs/WAStatesReentryhousingPilotProgamEvaluation-FaithLutzeWSU2011.pdf

LXVIII. Lutze, F.E., Rosky, J.W., and S.F. Falconer (2011). *Washington State's Reentry Housing Pilot Program Evaluation: Year 3 Final Report.* Washington State University.

LXIX. Garland, D. (2001). *The Culture of Control Crime and Social Order in Contemporary Society*. Chicago, Illinois: The University of Chicago Press.

LXX. California Department of Corrections & Rehabilitation. (n.d.) (Website). Retrieved April 18, 2015 from http://www.cdcr.ca.gov/

LXXI. Rights of victims, survivors, and witnesses. (n.d.). Retrieved May 2, 2015, from http://apps.leg.wa.gov/Rcw/default.aspx?cite=7.69.030

LXXII. New Jersey Crime Victims' Law Center. NJ Statute 30:4-123.54 (n.d.) (Website). Retrieved April 19, 2015, from http://www.njcvlc.org/reference/njl/view_law.php?id=31

LXXIII. VictimLaw - Victims Right. (n.d.) (Website). Retrieved April 19, 2015, from https://www.victimlaw.org/victimlaw/pages/victimsRight.jsp

LXXIV. Oppel, R. (2011, September 25). Sentence Shift Gives New Leverage to Prosecutors. New York Times, p. A1. Retrieved from http://www.nytimes.com/2011/09/26/us/tough-sentences-help-prosecutors-push-for-plea-bargains.html?_r=1

LXXV. *United States v. Goodwin,* 457 U.S. 368 (1982). Retrieved April 18, 2015 from LexisNexis 1982.

LXXVI. *Blackledge, Warden, et al. v. Perry*, 417 U.S. 21 (1974). Retrieved April 18, 2015 from LexisNexis.

LXXVII. *North Carolina et al. v. Pearce,* 395 U.S. 711 (1968). Retrieved April 18, 2015. from LexisNexis.

LXXVIII. *Bordenkircher v. Hayes,* 435 U.S. 918, 98 S. Ct. 1477, 55 L. Ed. 2d 511, 1978 U.S. 1067 (1978).

LXXVIX. Breathing New Life into Prosecutorial Vindictiveness Doctrine. (2001). Harvard Law Review, 114(7), 2074.

LXXX. *State v. McDowell*, 2011 Wash. App. LEXIS 232 (Wash. Ct. App., Jan. 21, 2011)

LXXXI. *United States v. Meyer*, 810 F.2d 1242, 1244 (D.C. Cir. 1987). Retrieved April 18, 2015 from LexisNexis.

LXXXII. *State of Washington v. Korum,* 120 Wn. App. 686, 86 P.3d 166 (2004). Retrieved April 18, 2015 from LexisNexis.

LXXXIII. *State of Washington v. Nicholas Daniel Hacheney*. No. 77767-5. (2007) Retrieved May 19,2015.

LXXXIV. Sentencing Reform Act, (1984) Washington Code RCW 9.94 Retrieved April 18, 2015 from http://apps.leg.wa.gov/rcw/default.aspx?cite=9.94A

LXXXV. U.S. Constitution Amendment VI

APPENDIX A. ACQUIRING DATA REGARDING PAROLE BOARDS

As noted previously, we interviewed administrators who are knowledgeable about parole boards in all states where such boards continue to exist. The interviews were semi-structured: every interview began with the same questions, but due to natural flow of conversation, we allowed the discourse to shift when it needed to. The questions that we started from were:

1) Do you consider parole in your state to be a success? If yes, how do you define success?
2) Of those that are seen by the parole board, how many are released?
3) Do you see certain aspects of your parole board as more or less effective?
4) Is there anything that you would change about the current system?
5) Do you feel that parole motivates good or bad behavior from within prison?
6) If your state has recently brought back parole, why? How has the transition been for members of the DOC?
7) Would you like to see parole boards given broader jurisdiction, or would you rather that their powers be limited?

We also acquired information about parole board structure and process from the following websites:

Alabama - http://www.doc.state.al.us/
Alaska - http://www.correct.state.ak.us/corrections/index.jsf
Arizona - https://corrections.az.gov/
Arkansas -- http://adc.arkansas.gov/Pages/default.aspx
California - http://www.cdcr.ca.gov/
Colorado - http://www.doc.state.co.us/
Connecticut - http://www.ct.gov/doc/site/default.asp
Delaware - http://www.doc.delaware.gov/

Florida - http://www.dc.state.fl.us/
Georgia - http://www.dcor.state.ga.us/
Hawaii - http://dps.hawaii.gov/
Idaho - http://www.idoc.idaho.gov/content/probation_and_parole
Illinois - http://www.illinois.gov/idoc/Pages/default.aspx
Indiana - https://indianasavin.in.gov/Default.aspx
Iowa - http://www.doc.state.ia.us/
Kansas - http://www.doc.ks.gov/
Kentucky - http://corrections.ky.gov/Pages/default.aspx
Louisiana - http://www.doc.louisiana.gov/
Maine - http://www.state.me.us/corrections/
Maryland - http://www.dpscs.state.md.us/
Massachusetts - http://www.mass.gov/eopss/agencies/doc/
Michigan - http://michigan.gov/corrections
Minnesota - http://www.doc.state.mn.us/PAGES/
Mississippi - http://www.mdoc.state.ms.us/
Missouri - http://doc.mo.gov/
Montana - http://www.cor.mt.gov/default.mcpx
Nebraska - www.corrections.nebraska.gov
Nevada - http://doc.nv.gov/
New Hampshire - http://www.nh.gov/nhdoc/
New Jersey - http://www.state.nj.us/corrections/pages/index.shtml
New Mexico - http://cd.nm.gov/
New York - http://www.doccs.ny.gov/
North Carolina - http://www.doc.state.nc.us/DOP/index.htm
North Dakota - http://www.nd.gov/docr/
Ohio - http://www.drc.ohio.gov/
Oklahoma - http://www.ok.gov/doc/
Oregon - http://www.oregon.gov/doc/pages/index.aspx
Pennsylvania - http://www.cor.pa.gov/Pages/default.aspx#.VVqQpGYbsnI
Rhode Island - http://www.doc.ri.gov/index.php
South Carolina - http://www.doc.sc.gov/pubweb/
South Dakota - http://www.doc.sc.gov/pubweb/
Tennessee - http://www.state.tn.us/correction/
Texas - http://tdcj.state.tx.us/
Utah - http://tdcj.state.tx.us/
Vermont - http://www.doc.state.vt.us/
Virginia - http://vadoc.virginia.gov/offenders/
Washington - http://www.doc.wa.gov/
West Virginia - http://www.wvdoc.com/wvdoc/
Wisconsin - http://doc.wi.gov/Home
Wyoming - http://doc.state.wy.us/

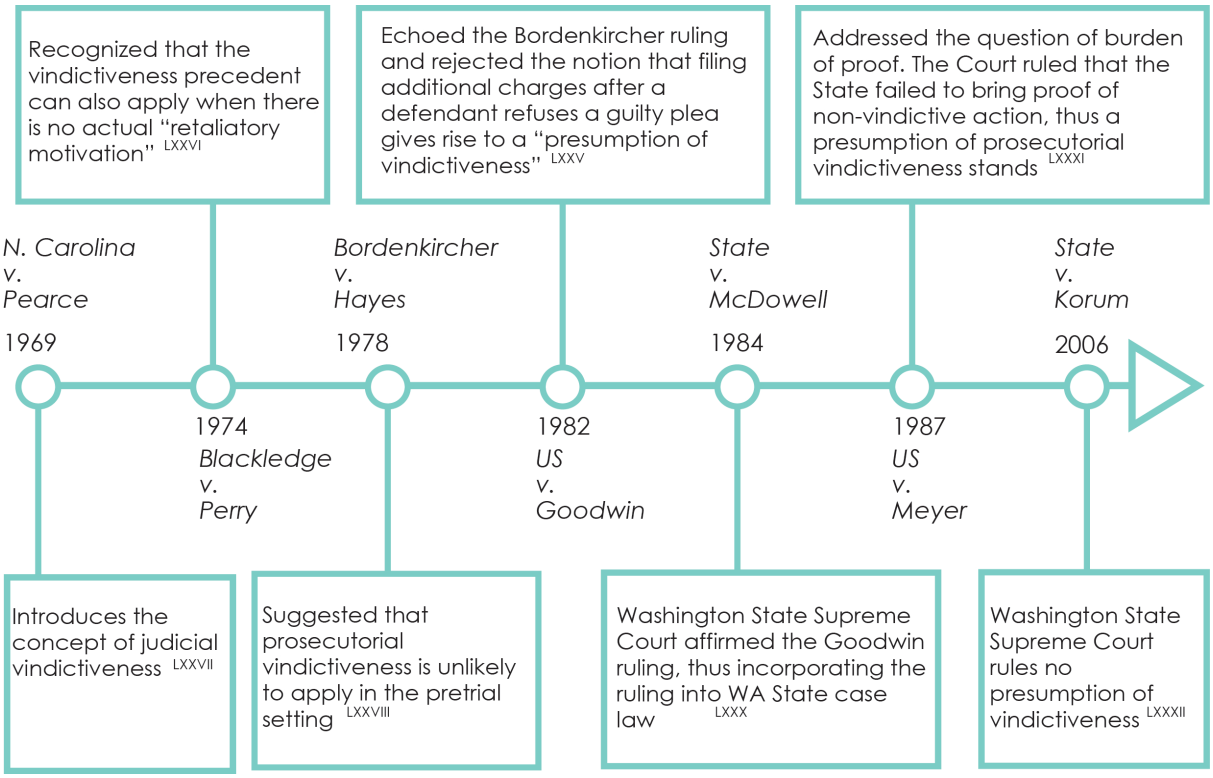
APPENDIX B. CASE LAW REGARDING PROSECUTORIAL VINDICTIVENESS

The SRA is a determinate sentencing scheme that transfers discretionary power from the judge to the prosecutor. This gives the prosecutor greater power to negotiate plea bargains. The data analyzed show that in Washington State, 95% of felony cases are resolved through plea bargain. By contrast, two thirds of LWOP cases were adjudicated through jury trials. This correlation between life sentences and plea deal rejections raises concerns about the viability of defendant's' right to a trial.

The term "prosecutorial vindictiveness" refers to a situation in which the government acts vindictively against a defendant by additional charges against them when the defendant invokes a legally protected right.[31, lxxv] The Supreme Court has established two ways in which a defendant can show prosecutorial vindictiveness. First, the defendant can show "actual vindictiveness" on the part of a prosecutor, which is difficult to prove. Second, the defendant can establish a "presumption of vindictiveness" given the facts and circumstances of the case. A presumption of vindictiveness means that the state must bring "objective evidence" to justify the prosecutor's actions.[lxxvi] The timeline depicted below demonstrates the development of this concept of vindictiveness over time.

[31] This can include their decision to attack a conviction or to a trial *de novo* among other situations. This generally entails the prosecution filing additional charges against the defendant after they have chosen to exercise this right, equating in a longer or more severe punishment upon conviction.

Figure B1: Prosecutorial Vindictiveness Timeline



North Carolina v. Pearce (1969). This case introduced the concept of judicial vindictiveness. The court decided that in order to defeat the presumption of vindictiveness, the prosecutor must supply new evidence. If the defendant fears a vindictive prosecution "for having successfully attacked his first conviction," in trial, then this may "unconstitutionally deter a defendant's exercise of the right to appeal," constituting a Fourteenth Amendment due process violation.[lxxvii]

Blackledge v. Perry (1974). The court recognized that the vindictiveness precedent can also apply when there is no actual "retaliatory motivation." [lxxvi] After a physical altercation, Perry was

charged with misdemeanor assault with a deadly weapon. When he sought a trial *de novo*, the prosecution increased the charges to felony assault with a deadly weapon with intent to kill or inflict serious bodily injury. The *Blackledge* majority first cited *Pearce's* ruling that "fear of such vindictiveness" could discourage a defendant from exercising their right to appeal a conviction due to "retaliatory motivation on the part of the sentencing judge" and thus violate their due process right. [lxxvii] The court then determined that this was applicable to *Blackledge*. Recognizing that the defendant had the right to a trial *de novo* under state law for a misdemeanor charge, the Court determined a fear of the State bringing more serious charges would violate the defendant's Fourteenth Amendment Due Process rights.[lxxvi]

Bordenkircher v. Hayes (1978). During negotiations, the prosecutor warned that the defendant would obtain additional charges carrying a harsher punishment if he chose to reject the plea deal, failing to "save the court the inconvenience and necessity of a trial." The defendant rejected the deal. Subsequently, a jury trial convicted him of all charges and the judge ordered a life sentence under Kentucky's recidivist statute. The prosecutor had all of the evidence at the time of the original indictment and only added these more severe charges after the defendant rejected the plea deal. Nonetheless, the court determined that the standard process of plea negotiation occurs prior to trial, thus changes made during this time are permissible. Differentiating *Bordenkircher* from *Pearce* and *Blackledge*, the court suggests that prosecutorial vindictiveness is unlikely to apply in the pretrial setting.[lxxviii]

United States v. Goodwin (1982). This case echoes the *Bordenkircher* ruling and rejected the notion that filing additional charges after a defendant refuses a guilty plea gives rise to a

"presumption of vindictiveness." In this case, the defendant rejected a plea deal in favor of trial and the prosecutor increased the charges. The court largely cited *Bordenkircher* when it stated that it was unlikely that there would be a presumption of vindictiveness in the pretrial setting, compared to the post trial setting.[lxxix]

State v. McDowell (1984). Washington State Supreme Court affirmed the *Goodwin* ruling, thus incorporating the ruling into Washington State case law. The defendant refused a diversion program for a reckless endangerment misdemeanor. At trial in the Superior Court of Washington, the prosecutor filed information to charge the defendant with second-degree assault. The defendant filed to dismiss this charge on the grounds of prosecutorial vindictiveness, but the appeals court and Supreme Court of Washington affirmed that there had been no due process violations, affirming *Goodwin's* decision regarding the pretrial setting.[lxxx]

U.S. v. Meyer (1987). This case addressed the question of the burden of proof in cases involving allegations of prosecutorial vindictiveness. The Court ruled that the State failed to bring proof of non-vindictive action, thus a presumption of prosecutorial vindictiveness stands. The court recognized that a prosecutor's decision to significantly change the charges against a defendant, when taken into consideration with other facts, can, but will not always, qualify as a presumption of vindictiveness. *Meyer* relies heavily on a discussion of *Goodwin,* noting the cases' similarities. The court determined "the facts indicate a realistic likelihood of vindictiveness," and thus a there is a presumption of which the government must "come forward with objective evidence justifying the prosecutorial action."[lxxxi]

State v. Korum (2006). Washington State Supreme Court ruled that no presumption of vindictiveness occurred. *State v. Korum* is an important case for Washington State case law because it sets a precedent that makes it difficult for defendants to prove a presumption of vindictiveness. In this case, the court chose not to rule on whether prosecutorial vindictiveness could occur in the pretrial setting (but recognized that *Bordenkircher, Goodwin,* and Washington State's *McDowell* suggested that it cannot). Additionally, *Korum* also recognized that *McDowell* suggests the defendant must prove actual vindictiveness and not just a presumption of vindictiveness. However, the court again declined to make a concrete decision on this issue. Instead, the court ruled that no presumption of vindictiveness existed in *Korum*. The court cites Washington State's SRA, which notes that the "other charges should be filed if they are necessary to strengthen the State's case at trial". Thus, the court determined that the prosecution's decision to add charges after Korum withdrew his plea deal in favor of a trial was "not only within the prosecuting attorney's discretion," but also "supported by the SRA guidelines and strengthened the State's case."[32, lxxxii]

Individuals sentenced to life without parole sentences are significantly more likely to exercise their right to a jury trial, which can make them more vulnerable to "prosecutorial vindictiveness." The defendant's decision to go to trial can prove consequential when prosecutors add charges as reprisal for rejecting a plea deal. Although *United States v. Meyer.*[lxxxi] recognized 'prosecutorial vindictiveness' at the federal level[lxxxii], this case is the exception and

[32] The Court also cited the SRA by emphasizing its purpose which is to "[e]nsure that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history." (7).

not the rule. Many prisoners we spoke with reported that they received additional charges after exercising their Sixth Amendment right.

An example of disparity between the sentence offered during plea bargaining and the one issued at trial is the case of Nick Hacheney, a prisoner at the Washington State Reformatory. Prosecutors initially offered Hacheney a plea deal of 84 months, but he later received LWOP at trial. Hacheney appealed and received a sentence of 320 months, still nearly four times longer than the original plea offer.[lxxxiii] Hacheney's case illustrates the human consequences of 'prosecutorial vindictiveness' as established in previous cases. The prosecutor originally determined that Hacheney would no longer pose a threat to society after seven years of incarceration, but he was sentenced to LWOP at trial. Hacheney's case demonstrates the need to reevaluate whether current practices serve the SRA's goal to "[p]romote respect for the law by providing punishment which is just."[lxxxiv]. Although the Sixth Amendment guarantees "the right to a speedy and public trial, by an impartial jury"[lxxxv], Hacheney most likely received a significantly longer sentence for exercising this right.

APPENDIX C.

Many states structure their parole boards that allow for greater emphasis on the importance of creating rehabilitative programming and providing an opportunity for release for prisoners who have successfully engaged in this programming. Table C1 summarizes the wide variation in prison practices and parole processes across selected states that have retained parole.

TABLE C1. VARIATION IN PRISON PROGRAMMING AND PAROLE BOARD STRUCTURE							
	WA		TX	CO	NJ	AK	MA
EDUCATIONAL OPPORTUNITIES AVAILABLE TO PRISONERS							
GED	X		X	X	X	X	X
Vocational Programs	X		X	X	X	X	X
Higher Education			X		X	X	X
VICTIM IMPACT STATEMENTS							
Written Victim Impact Statement Allowed			X	X	X	X	X
Verbal Victim Impact Statement Allowed	X			X	X	X	
BOARD MEMBER COMPOSITION							
Law	X			X	X		X
Appointed by Districts						X	
Corrections/Justice	X		X	X	X		X
Social Work				X	X		X
Mental Health			X		X		X
MISSION STATEMENT EMPHASIS							
Reform						X	
Reintegration			X			X	
Behavioral Change			X	X			
Public Safety	X					X	X
POST-RELEASE PROGRAMS							
Left to private parties	X						X
Limited liability for employers of the formerly incarcerated			X				
Case managers			X				
Reentry prep courses					X		
RELEASE RATES	WA CCB	WA PRE	TX (2014)	CO (2014)	NJ (2014)	AK (2013)	MA (2013)
Parole Release Rate	45%	38%	38%	36%	53%	41%	59%