



*Testimony submitted to the Joint Committee on the Judiciary
In Support of [S.826/H.3358](#) -- An Act to reduce mass incarceration
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Nearly 30% of the Massachusetts prison population is sentenced to virtual life,¹ with more than one out of ten sentenced to life without parole (1,081 people in 2019²). This population has increased dramatically over the past 40 years, despite a decrease or little change in major crimes (see Figures 1 and 2 below). According to Michael Medwed and Daniel Meltsner from Northeastern University School of Law, the “tough on crime” era resulted in more people getting sentences without a chance of a parole hearing, even though parole hearings are where people are given a plan for rehabilitation and an incentive to adhere to that plan.³ Life without parole sentences are akin to a slow, drawn-out death penalty.⁴ This increase in life without parole sentences is costly, it is not the most effective way to increase public safety, it is unfair, and it is immoral.

In March, Rep. Lindsay Sabadosa and other legislators visited the lifers group at the Massachusetts Correctional Institution in Norfolk to “meet with about a hundred men who will likely die in prison.”⁵ Estimates show at least 4% of death row-sentenced individuals are falsely incarcerated, and the study authors conclude that the “rate of innocence must be higher for convicted capital defendants who are not sentenced to death than for those who are,”⁶ such as Darrell Jones, who spent 32 years in prison in Massachusetts for a crime he did not commit before he was exonerated. “In a state that is 80% white, well over half [in the lifers group] were men of color. When I asked how many of them had been in prison since the age of 21 or before, over half the hands went up. When I asked how many had been sentenced to life in prison without the possibility of parole for joint venture, slightly fewer than half of those same hands went up. Joint venture is a legal concept that requires a jury to infer that the joint venturer had the same intent as the principal perpetrator.” In Massachusetts, “we have the oldest inmate population in the country, and we are currently under federal investigation for issues related to solitary confinement and the treatment of ill and elderly inmates in the state prison system,”⁷ Rep. Sabadosa wrote. The number of incarcerated men over the age of 60 increased 41% between 2010 and 2018, while the overall prison population declined by 18%, according to Prisoners’ Legal Services of Massachusetts, and it’s up to three times more expensive to house an elderly prisoner in the general population.⁸ According to reporting by Gal Tziperman Lotan in the Boston Globe in 2019, despite new legislation to medically parole terminally ill or incapacitated prisoners who are no longer a threat to public safety, many are still dying while incarcerated.⁹

This bill provides parole hearings for anyone in custody once they serve 25 years, but it does not require that anyone would be released on parole. Despite having the lowest incarceration rate among the states, Massachusetts has the fifth highest rate of life or virtual life sentences.¹⁰ This is a waste of public resources without increasing public safety, as it is well documented that people age out of crime (see Figure 3). It is also more expensive to care for the aged and infirm in custody. Allowing parole hearings gives people the opportunity to set rehabilitative goals. Some will succeed in meeting those goals.

In 2012, the Supreme Court ruled that mandatory life without parole sentences are unconstitutional for juveniles. The Massachusetts Supreme Judicial Court decided that discretionary life without parole sentences were also unconstitutional for juveniles, thereby reducing all such sentences to second degree life sentences, and the state applied this law retroactively after such individuals had served at least 15 years.¹¹ In 2012, the Legislature decided to extend life without parole sentences to “three strikes” felonies, which extends the reach of these sentences to 18 felonies which do not involve taking someone’s life. Prior to this law, these offenses allowed for parole hearings after 15 years. These directives recognize that juveniles should not be treated the same as adults, but they also extend the worst punishment to lesser crimes. As we learn more about the



developing adolescent brain, we find that it is not fully formed until the mid-20s¹² and perhaps emerging adults should not be considered as culpable as mature adults. Expanding virtual life sentences to crimes that are not the worst is not in the interest of either public safety or cost efficiency.

Currently there is a national conversation about the six-fold increase in lifers since 1984, in part caused by the use of “three strikes” laws and mandatory life sentences. During President Obama’s final two years, he commuted 1,700 sentences, about one-third of them life sentences from mandatory third-strike drug cases.¹³ In April, the Missouri House passed bipartisan legislation to grant a parole hearing after 30 years for certain lifers over the age of 65.¹⁴ Pennsylvania is considering bills to abolish life without parole sentences and to retroactively offer parole hearings to lifers who have served at least 15 years.¹⁵ In California, the lifer population increased to 20%, and most are serving time for first- or second-degree murder. Due to overcrowding, 18% of lifers are now granted parole, although only 6% who have committed murder are paroled. The incidence of serious crimes committed after these releases has so far been minimal.¹⁶ The Sentencing Project is working to require parole hearings after 20 years.¹⁷

Life sentences without parole fall predominantly on African American (35%) and Latino (19%) populations relative to their prevalence in the Commonwealth, with an increasing number of women, many of whom are victims of abuse themselves.¹⁸ Commutation as a safety valve has been virtually nonexistent in Massachusetts since 1997 despite over 180 petitions filed since 2004.¹⁹ Spain, Germany and France have outlawed life without parole sentences and many other European countries have no life sentences.²⁰ There are fewer legal protections for those with life without parole or virtual life sentences than for those on death row.²¹

In a Penal Reform International briefing with Professor Dirk Van Zyl Smit and Dr. Catherine Appleton in 2018, they recommend that “life imprisonment without parole (LWOP) should be abolished. The most severe form of life imprisonment can never meet fundamental human rights standards. At the same time, abolishing LWOP will reduce the overall use of imprisonment.”²² “Life imprisonment without parole, in particular, raises issues of cruel, inhuman and degrading punishment, and undermines the right to human dignity by taking away the prospect of rehabilitation.” Instead we should consider having a policy of parole review for all.

The League of Women Voters of the United States “believes alternatives to imprisonment should be explored and utilized, taking into consideration the circumstances and nature of the crime” and “supports the abolition of the death penalty.” The League of Women Voters of Massachusetts supports “measures to protect the civil and individual rights of the offender and to promote the offender’s rehabilitation through individualized treatment,” “measures that provide sufficient prison space at minimum security and pre-release levels to permit the gradual reintegration of the prisoner into society,” and “sentence lengths that encourage rehabilitation and reintegration into society.” The League “opposes indeterminate sentences and the death penalty.”²³

The League of Women Voters of Massachusetts, with 47 local Leagues from Cape Cod to the Berkshires, asks that you report this bill favorably out of committee.

Thank you for your consideration.

1. MA DOC Criminally Sentenced Population by Sentence and Age Group, MA DOC Research and Planning Division, Public Records Request, Feb. 2019. Virtual life sentences include life without parole, life with parole or sentences of 25 years or more. (1081+978+289/8044=29%)

2. <https://www.mass.gov/files/documents/2019/03/19/FactCards2019.pdf>

3. <https://www.metrowestdailynews.com/opinion/20190922/medwed-and-meltsner-repealing-life-without-possibility-of-parole-sentences>

4. <https://truthout.org/articles/fighting-to-end-the-other-death-sentence-life-without-parole/>

5. <https://www.gazettenet.com/Column-Lindsay-Sabadosa-26434739>
6. <https://www.pnas.org/content/111/20/7230>
7. <https://www.gazettenet.com/Column-Lindsay-Sabadosa-26434739>
8. <https://newbostonpost.com/2019/03/01/no-more-life-sentences-some-massachusetts-legislators-say/>
9. <https://www.bostonglobe.com/metro/2019/07/15/first-year-medical-parole-just-four-inmates-granted-relieve/cHf9pcDys4lB1uIToRiW9K/story.html>
10. <https://www.sentencingproject.org/publications/still-life-americas-increasing-use-life-long-term-sentences/>
11. <https://www.masslive.com/news/2017/08/a-look-at-mandatory-life-witho.html>
12. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2892678/>
13. <https://obamawhitehouse.archives.gov/blog/2017/01/19/reinvigoration-clemency-authority>
14. <https://themissouritimes.com/60688/senate-considers-reforms-to-parole-option-for-elderly-inmates/>
15. <http://www.pahouse.com/InTheNews/NewsRelease/?id=76618>
16. http://www.law.stanford.edu/sites/default/files/child-page/164096/doc/slspublic/SCJC_report_Parole_Release_for_Lifers.pdf
17. <https://endlifeimprisonment.org/>
18. <https://www.prisonpolicy.org/profiles/MA.html> ; LWOP African Americans 375/1081=35%, Hispanic 206/1081=19%
19. <https://www.bostonglobe.com/opinion/letters/2019/06/24/mass-parole-board-blocks-way-justice/I26rgfyxgVi6MqtxGmOFQK/story.html>
20. <https://thinkprogress.org/top-european-human-rights-court-deems-life-in-prison-without-parole-inhuman-and-degrading-d615fc306396/>
21. Judith Lichtenberg, *Against Life Without Parole*, 11 Wash. U. Jur. Rev. 39 (2019)
22. <https://www.penalreform.org/resource/life-imprisonment-a-policy-briefing/>
23. <https://lwwma.org/advocacy/league-postions/>

Figure I. The number serving life sentences has increased over the past 40 years. Data collated by Sen. Brownsberger <https://willbrownsberger.com/lifer-population-has-kept-incarceration-rates-high/>

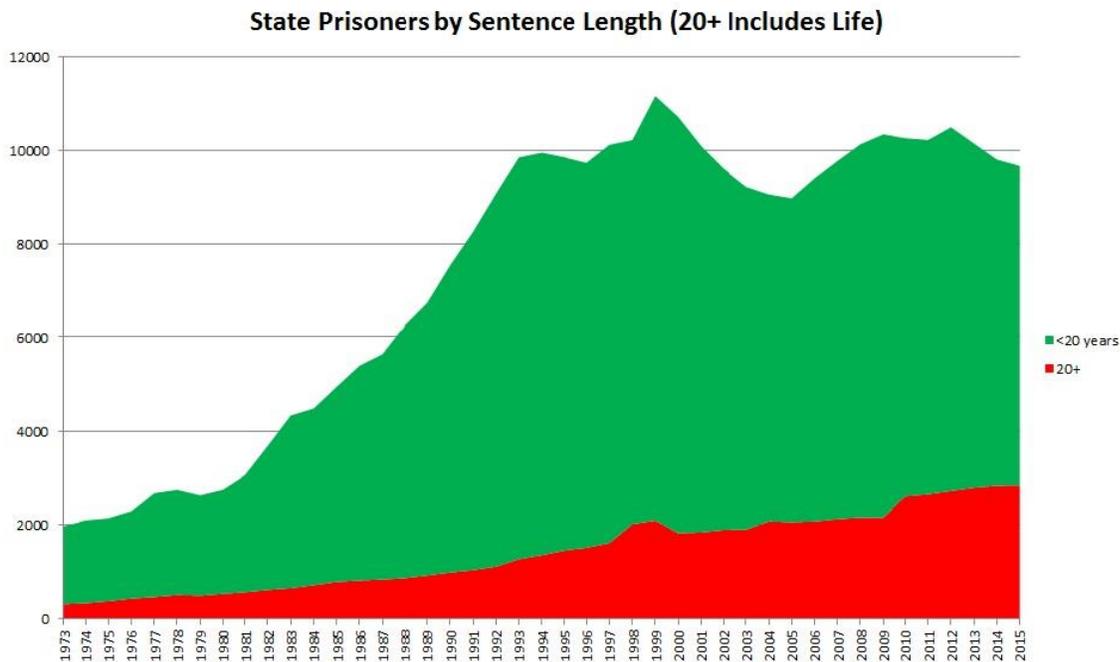


Figure 2. Violent crimes, including murder have decreased or stayed the same.

See <https://willbrownsberger.com/50-years-of-crime-and-punishment-in-massachusetts-1965-2015/> for the actual data.

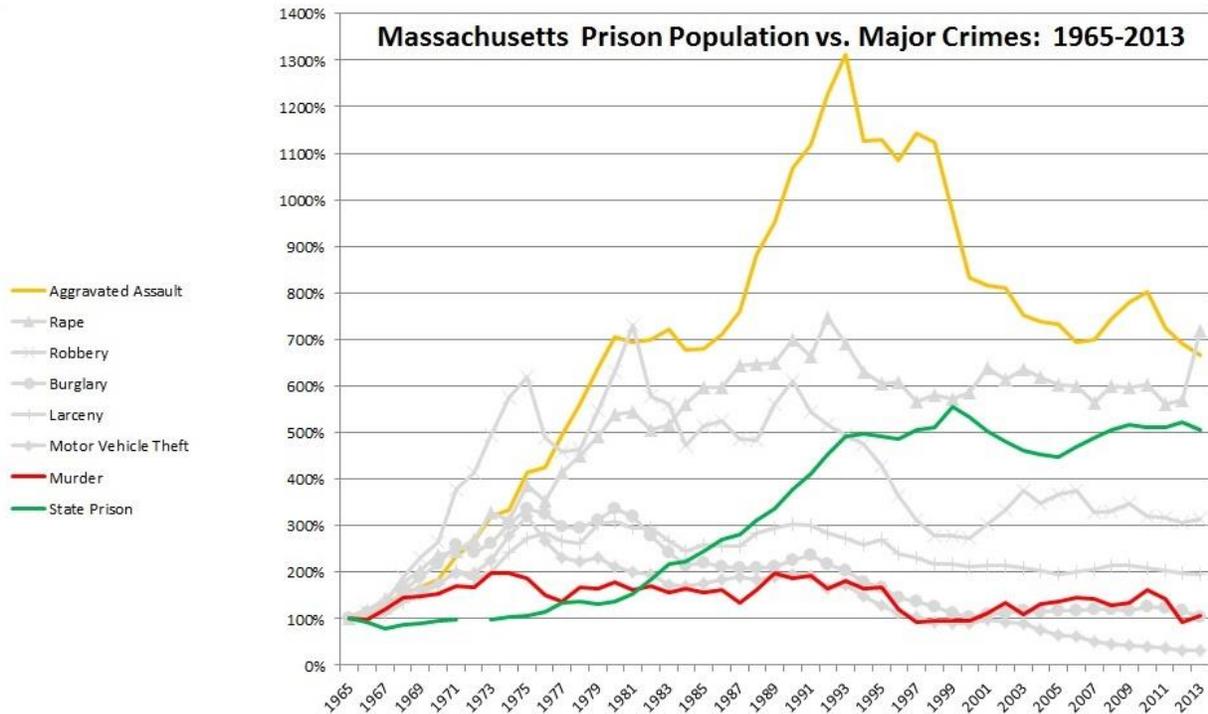


Figure 3. People age out of crime. <https://endlifeimprisonment.org/news-events/the-case-for-capping-all-prison-sentences-at-20-years/> Graph from the book “The Meaning of Life” by Marc Mauer and Ashley Nellis, p. 134.

Arrest Rates by Age for Robbery, 2014

